

Select Committee on the European Union

Uncorrected oral evidence: Scrutiny of the Brexit negotiations

Tuesday 1 May 2018

4 pm

Members present: Lord Boswell of Aynho (Chairman); Baroness Armstrong of Hill Top; Baroness Brown of Cambridge; Baroness Browning; Lord Cromwell; Baroness Falkner of Margravine; Lord Jay of Ewelme; Baroness Kennedy of The Shaws; The Earl of Kinnoull; Lord Liddle; Baroness Neville-Rolfe; Lord Selkirk of Douglas; Lord Teverson; Baroness Verma; Lord Whitty; Baroness Wilcox; Lord Woolmer of Leeds.

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Questions 1 – 14

Witness

I: Rt Hon David Davis MP, Minister of State for Exiting the European Union, Department for Exiting the European Union.

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Examination of witness

David Davis MP.

Q1 **The Chairman:** Hello, Secretary of State. You are very welcome.

David Davis MP: I have a horrible feeling that we are going to have a rerun of the time when I had to rush up and down the stairs every two minutes. But we can get started, even if we have to stop.

The Chairman: We cannot be responsible for another place.

David Davis MP: Oh I do not know. People hold me responsible for all sorts of things. Why not that?

The Chairman: If those sitting in the gallery are in their seats—

David Davis MP: It is getting bigger by the day. The number of people in the department is now up to 650, and it is all your fault that we have had to take them on.

The Chairman: In the words of a certain fictional figure, I couldn't possibly comment, but what I can comment on more positively is that you, Secretary of State, are very welcome. It is very useful for this Committee to be briefed on the state of play, to continue to seek to elicit information from you, as we shall do this afternoon, and to listen to where we are. Self-evidently, the pace is quickening. We understand that. Our purpose is not to add to the problem but to throw a spotlight on the issues of concern to us and, arguably, to others.

I think you are very familiar with the rules of engagement. This is a public evidence session and it is being televised. It is all on the record and we will send you a transcript thereafter. We are conscious of your time constraints and are very grateful for your attendance. We will be as crisp in proceeding with this as we can be.

To kick off, it might help if I ask you to update us on the negotiations on the withdrawal agreement since that memorable joint press conference with Michel Barnier on 19 March, in particular—trying to compress the concern—how it interacts with the focus, pace and structure of the negotiations leading up to the June Council and, beyond that, looking ahead to October and beginning to get to decision time on the withdrawal agreement. If you want to throw in a comment at this point, given recent events in both Houses, there is clearly a parliamentary aspect to how you can brief and you might want to reflect that in your answer.

David Davis MP: When you started, Lord Chairman, you reminded me that when that famous comment "I couldn't possibly comment" was made, it was at the beginning of a television programme about the Whips' Office. You and I were both new Government Whips at the time.

The Chairman: Reverting to that role momentarily, I need to draw the Secretary of State's attention to the fact that there is a Division in the Commons.

David Davis MP: I thought that the ringing was not just tinnitus. I remember saying at the time—before I dash off and dash back—that we both started in the Whips’ Office and nobody knew what we did. After that programme, they thought that they knew what we did. It is a bit like this job too. I will be as quick as I can.

The Chairman: Thank you. We fully understand.

The Committee suspended for a Division in the House of Commons.

David Davis MP: I am afraid that the day when I can run 10 miles without breaking a sweat are long past.

The Chairman: In order to enable you to get your breath back, I will just say that on one occasion when we were Whips together—I had been at this end, coincidentally and not prospectively, I assure the Committee—I needed to get back as our Division Bell went in the Commons and, on my way to the vote, I overtook a rather distinguished Member of this House who was a well-known athlete.

I do not think we would wish to repeat that, nor do I need to repeat the first question. What we basically asked for was a sitrep on developments post the 19 March press conference and an indication of the time and modalities of what will be happening in the next month or two.

David Davis MP: I remember the question. I guess the best summary came from Michel Barnier, who said a couple of weeks ago that we are at 75%, but the last 25% is the hardest. That is the summary position. In essence, we have locked down whole chapters on citizens’ rights and finance, and that is obviously very important. We are working on this, although not today because today is a bank holiday in Brussels, but generally speaking my officials have been in Brussels for a considerable amount of the time.

The outstanding areas that are not locked down are obviously Northern Ireland, which people know about, some elements of the remaining separation issues, which I will come back to in a second, and the governance of the agreement, which sounds bland but is quite controversial because of the wish on one side for the European Court to be involved and our wish for it to be impartial. That is the basic position.

Northern Ireland is clearly highly controversial. We stand by the words in the joint report of December, but we do not agree with the Commission’s interpretation of it. In the words of the Prime Minister, what it has proposed no British Government could agree to—in effect, a division of the kingdom down the Irish Sea. We are still working on our response to that.

The teams are still working through the separation issues, which I will list for you: intellectual property, customs, VAT, Euratom, public procurement, and ongoing co-operation on civil and commercial matters. We think that we are going to get a resolution of those—the easier parts—by June, but the main aim is October.

At the same time, because the March Council laid down guidelines for the future economic partnership, we have been endeavouring to come to an agreement with the Commission on how we approach that. As you know from history, the Commission is very keen on its sequencing and so on. We want to do this in parallel. There are a large number of parallel streams. We have not quite numbered them all yet, but I think there are over 40. We expect the Commission to agree that, because, again, Michel Barnier said back in March that they expected to deal with the future partnership in a series of parallel negotiations. That is what has been happening since then, and we are literally at the point of talking about the structure of that last piece.

The Chairman: Very briefly before we move on to questions from colleagues, I take it from the way you presented that that you see the framework for the future relationship—however it is formally integrated or considered with the withdrawal agreement in its legal form and a decision is taken on it—as being a rather important, granular document that will have to contain more than a few political aspirations.

David Davis MP: Yes, absolutely. Article 5 requires the withdrawal agreement to take into account “the framework of the future relationship”, but we take the view that that has to be pretty substantive. How can you take into account something that consists of just a few airy-fairy aims? It has to take that into account.

You mentioned Parliament's role in this. Parliament will vote more than once on the withdrawal agreement. I would be surprised if parliamentarians were happy to vote for the expenditure of £35 billion to £39 billion without knowing, as it were, what we were getting for it. That is not quite a fair legal description. Nevertheless, people will see it in those terms. So it would be quite difficult to get the withdrawal agreement through the House if we did not have it set out substantively.

One other thing that is important to understand about the sequencing of this is that the implementation period is supposed to be just that: the implementation period. It is not supposed to be an ongoing bit of further negotiation. If you have an implementation period for businesses, they need to know at the beginning of it what they are going to implement. So we have to have it pretty nailed down even legally at the beginning of the implementation period. It will not be ratified, because they cannot sign a deal with us until we are a third country, which will be shortly after formal departure from the Union, but the ratification process will also take place during that period.

So to have it all done, we have to be substantively there in October, in joint report-type terms, and there in legal terms pretty much by the time we leave.

Q2 Baroness Kennedy of The Shaws: Hello there, Secretary of State. Will it be possible to have a draft legal text of the withdrawal agreement in time for the June meeting?

David Davis MP: We are aiming for October. There has been a degree of talk about it having to be June. That was not how it was laid out in March, but of course we are used to this; the Commission likes to use time pressure in this exercise. We will get there as fast as we can.

Baroness Kennedy of The Shaws: Are you saying no to June?

David Davis MP: I am saying that I cannot guarantee June.

Baroness Kennedy of The Shaws: You think it is unlikely.

David Davis MP: Let me explain the structure, and then you can draw your conclusions.

The withdrawal agreement includes A, B and C on Northern Ireland. There is a lot of argument about C, which is the fallback option. We take the view that we need to address all three, and A depends to a very large extent on the substantive future economic partnership. If we have a tariff-free free trade agreement and a light-touch customs agreement, that makes Northern Ireland very much simpler than if we do not have those things.

Baroness Kennedy of The Shaws: Yes, sure.

David Davis MP: We want all three. We do not just want the one, because, truth be told, I would not consider it a success if we fell back on option C. I can see why the Irish Government want it as a guarantee, but we have to have all three, not just the one.

Whether we can do that by June, I am not at all sure, but we certainly aim to complete it easily by October.

Baroness Kennedy of The Shaws: So you are saying early October.

Your letter of 19 April states that, "the dispute resolution mechanism for the Withdrawal Agreement is a matter for negotiation. We are clear it must respect the autonomy and integrity of both the UK and the EU". What does that mean in practice?

David Davis MP: First, it means that in practice it needs to be impartial; it cannot be the court of one or another. It could not be the Supreme Court and it could not be the European Court. So it has to be a Joint Committee and some sort of specialist support committees.

Baroness Kennedy of The Shaws: It will be quasi-judicial.

David Davis MP: Probably. We are still in negotiation on this, of course. This is not one of the green areas. I cannot remember the elements—125, or something like that. It is still in discussion, but it has to be something like that, I think.

Obviously the Union wants the European court to do it, because it sees it as an extension of EU law. We do not. We see it as encapsulated access to the single market and so on. Obviously EU law will apply to the country

in single-market issues and so on during that period, but not, in our view, to the overarching settlement.

Baroness Kennedy of The Shaws: I just wondered how you imagined intractable disputes being resolved. There are different kinds of disputes. There will be trade disputes, for example, and you recognise that there will have to be some sort of trade system: a quasi-court, a tribunal, an arbitration tribunal—whatever you want to call it.

I think you have recognised that you will have to have something similar to deal with security issues and the Euro warrant. You are a big man for civil liberties, and we have battled on those things together. When liberty is at stake, you need a court, and again it will have to be outside either of our nations. Therefore, there will have to be a court for Euro warrant and security issues, too, will there not?

David Davis MP: My expectation, and this applies to Euro warrants, privacy issues and data, is that in essence we will have to have a choice of forum—your terminology, not mine—which will be dictated by where the issue arises. I would expect the ECJ to have a say on data gathered in Europe. I would expect data gathered here to be a Supreme Court issue. Basically, we have to have a divider there somewhere.

Baroness Kennedy of The Shaws: But we would go to the ECJ when we were involved in a dispute on data coming from Europe that affects us.

David Davis MP: It is the other way around, I think. It is somebody saying, “The Brits should not have my data”. They would take it to the ECJ.

Baroness Kennedy of The Shaws: Yes. So there is a role for the ECJ there. There will also have to be some kind of quasi-court for agencies, such as Euratom, and for disputes that might arise in relation to medicine controls or aviation matters.

David Davis MP: Aviation is a well-documented example. We have said that we are interested in being a part of EASA, the European Aviation Safety Agency. The Swiss have associate membership of that. That allows the Swiss equivalent of a civil aviation authority to certify aircraft, make judgments on safety and so on. That is tested in a Swiss court. I think we will have to struggle to negotiate it, but we are aiming for something like that.

Baroness Kennedy of The Shaws: We need a court for that or a decision on the court.

David Davis MP: Most of these things will have some sort of arbitration structure generally—as you say, quasi-judicial or judicial—and we will have to negotiate them piece by piece under the overarching requirement. We are not going to allow the ECJ to have a say inside the UK. It is the same as if we were extraditing someone to the States.

Baroness Kennedy of The Shaws: But that is different. We have had the benefit, for extradition, of the Euro warrant here, which is very easy. As you know, extradition to the United States or other countries can be lengthy processes that can take years. There is an aspect of this that people want to retain, which is the ease of the Euro warrant for trafficking and all kinds of serious crime.

David Davis MP: I stayed off the European arrest warrant, which I presume you mean, because of course we are debating it at the moment and there are constitutional issues in the European Union on individual rights of citizens of member states. Historically, they have not extradited their own citizens, so we have to get past that before we know what the oversight arrangements are.

Baroness Kennedy of The Shaws: So we are going to be looking at multiple dispute resolution mechanisms—quasi-courts.

David Davis MP: We could well be, as we do now to some extent.

Baroness Kennedy of The Shaws: In your letter to us of 19 April, you stated that the issue of onward movement rights has not been forgotten—

David Davis MP: No.

Baroness Kennedy of The Shaws: —and that you will seek a final deal on this. We know what we are talking about here: we are talking about our citizens in other parts of Europe who have enjoyed freedom of movement and what will happen about that right.

David Davis MP: There are two outstanding citizens' rights that will carry forward, one of which we can probably resolve, and the other we will have to do bilaterally. Putting the bilateral one to one side, the other is voting rights, which we have not got agreed. The issue of onward movement is particularly important in the Low Countries, where there are lots of borders and people working on one side and living on another—that sort of thing—or wanting just to move a few miles and be in another country. I did not realise until recently that it also applies quite a lot even to the retirement community, who may move to a more economic place to live. Good luck to them. This is an important right.

We think the Commission's resistance to dealing with this in the withdrawal agreement was because it saw this as a future ongoing relationship and it was very, very resistant to dealing with any ongoing relationship in the withdrawal agreement. So this comes up again in the future economic partnership, basically.

Baroness Kennedy of The Shaws: So that is an ongoing discussion and is still not resolved.

David Davis MP: We have not restarted it yet.

Baroness Kennedy of The Shaws: Finally, other than Northern Ireland

and Ireland, what do you see as the real sticking points that you are looking at—that make you toss and turn and give you sleepless nights?

David Davis MP: Nothing keeps me awake at night.

Baroness Kennedy of The Shaws: Lucky you.

David Davis MP: it is quite hard to pick one, because they change. The Ireland issue looked like it was semi-resolved in the last part of last year.

Baroness Kennedy of The Shaws: Until we unpicked it and showed that in fact some of the ideas—for example, that technology can deal with all this—are not doable.

David Davis MP: Not quite true.

Baroness Kennedy of The Shaws: What are the sticking points that you see beyond Ireland? Forget Ireland.

David Davis MP: I expect that during the next set of negotiations on the economic partnership we will have something of a tussle over financial services and the extent of the financial services chapter. But bear in mind that the views on that inside Europe might not be uniform. The views of Luxembourg are probably different from those of France.

Baroness Kennedy of The Shaws: So financial services.

The Chairman: Are there any more?

David Davis MP: Services more generally. Bear in mind that we are a big service exporter—probably one of the biggest in the world these days. Things such as professional qualifications will be an issue. We may well get pressure on migration issues and so on, but that may tie into the professional qualifications issue. I cannot give you a wholly exhaustive list because it will take me a while, but that is the sort of thing that we would expect to have some issues with.

On the wider scope of security and defence, I will give you an example of where we might run into issues. I do not know whether you have followed the Galileo episode. The negotiators on the European side have not behaved quite as we expected. We have been told that we will not have access to certain secure information. That is a good example of something that has popped up unexpectedly.

The Chairman: At that point we might move on. That is a useful exchange and I am sure that the Committee will want to return to some of those topics.

Q3 **Baroness Wilcox:** Good afternoon, Secretary of State. We put it to you in our letter of 21 March that under the terms of the withdrawal agreement the UK will, on 29 March 2019, enter into a number of legally binding commitments. Do you agree with that?

David Davis MP: Yes, that is right.

Baroness Wilcox: You do? That is good. Michel Barnier is on record as saying that formal negotiations on future UK-EU relations will start only after March 2019. Do you agree with that as well?

David Davis MP: That formal negotiations will start? No, I do not agree with that. I think he is conflating two things. We are starting the negotiations right now, but signatures will not be put to the treaty until then because they can only sign with a third party, as Lord Jay knows better than most, I guess. So I will aim to conclude the negotiation, if I can get to that point by then, so that they can sign and then start the ratification process. Remember that ratification will require a brand new European Parliament, which will only just be being elected at that point, and a brand new Commission, and almost certainly—for some of it at least, if not for all of it—it will be a mixed agreement, so it will go round the Parliaments of Europe. So there is quite a lot to get done in ratification terms. We absolutely have to have ratification concluded before the implementation period is over, otherwise we will be in a sort of limbo.

The Chairman: Brexit has obviously been a preoccupation of this country, but is there a danger that other member states will take a rather different view of the priorities and that they will be concerned about the political debates in their countries and the EP and the Commission?

David Davis MP: Of course.

The Chairman: And we might lose sway on that. Is that the reason you are anxious to get up front on this?

David Davis MP: No. The first thing to say is that Brexit is definitely not the priority in the vast majority of the 27 that it is here.

The Chairman: If I can interpose for a moment for the record, we were talking to Benelux parliamentarians yesterday. I would not like to give the impression that they were not concerned about the Brexit issue.

David Davis MP: That, I guess, is the stark exception. There are countries, sectors and even provinces for which Brexit is not existential but incredibly important. You have mentioned the Benelux countries. The littoral states—Belgium and the Netherlands in particular—have a very high investment in cross-channel trade. I cannot speak for the veracity of them but there are estimates that put the impact of a so-called hard Brexit on their economies at 3% to 4%—quite big numbers. If you are a Government dealing with that as a risk, it may not be at the top of your agenda but it will be quite close to it. Others will see it in different ways. Germany, for example, has very strong views on this process but the situation might be slightly different in Bavaria. Bavaria does an enormous amount of trade with us, whether in BMWs, airbuses or agricultural products, in all of which they major. Therefore, it varies. Part of my task is to make sure that each country is aware of its own interests in Brexit. They do not necessarily automatically know. That is why, in the run-up to March, I went to 18 countries, from memory. That was very useful,

because it both delivered information to me and influenced their interest in what the March Council guidelines looked like.

The Chairman: We ought to draw the Committee's attention to the timing issues and the sequencing of this first. I know that one or two colleagues want to come in afterwards with their points. Baroness Falkner next.

Q4 **Baroness Falkner of Margravine:** Secretary of State, you said a little earlier in reply to Baroness Kennedy that Parliament would want to know what it was getting for the £39 billion. I was slightly taken aback by that, because that money relates to commitments under this current multi-annual financial framework. It is not what we will get in the future; it is what we are getting today as a member state.

David Davis MP: The second half of the sentence was, "That is not a legal description". That is the point I was making.

Baroness Falkner of Margravine: So let us not raise expectations that that money will be used to leverage.

David Davis MP: With respect, nobody is raising expectations, but I would lay good money—although not £39 billion—that people in both Houses will raise that issue in debate.

Baroness Falkner of Margravine: Quite. So, coming to the money, would you agree with recent reports of what the head of the NAO, Sir Amyas Morse, has said: that once the withdrawal agreement comes into force, the UK's commitments under that financial settlement—the sum of money we have just been talking about—will be legally binding and therefore cannot be used as leverage, regardless of the success or failure of the negotiations on future relations? In other words, we are not going to pay you the money once we have agreed to pay it.

David Davis MP: Generally speaking, I would advise people, when making legal judgments, to read the contract first, and we have not yet concluded the legal text. It depends on what conditionalities are in the legal text. At this stage I do not know what they are. Somewhere in there will be a reference to the future framework. It depends on what the text says.

Baroness Falkner of Margravine: I have a tiny point to follow up on that. Do you envisage—I think you have said this on the record elsewhere; I am just trying to find out whether it is still the case—that the payments will be staggered over a period of time?

David Davis MP: Yes. They relate to so many components of the MMF and so on that they are quite hard to pin down exactly, but I would expect them to take some years to conclude. I saw somewhere—I do not know whether it is accurate—that someone said it would take something like 40 years to conclude.

Baroness Falkner of Margravine: I saw that too.

David Davis MP: I do not know whether that is true but it will take some years.

Baroness Falkner of Margravine: That relates to pensions, which is a long haul.

The Chairman: Long-tail liabilities, then.

David Davis MP: You are not on a European pension as well, are you, Lord Chairman?

Lord Selkirk of Douglas: Secretary of State, in your reply to our letter, you said that, "while the final terms of our future relationship can only be concluded once the UK has officially left the EU, we expect first to agree the terms of our future security and economic partnerships". What will this mean in practice?

David Davis MP: To some extent it is what I have said already: that we get to a substantive agreement in October if we hit the Commission's timetable, and we then detail that in legal terms between October and the point of departure. That is a target. Of course, you can never be sure that you will hit those targets; it is a negotiation, after all.

While the economic partnership will probably not bite until 1 January 2021, our aim is to get the defence and security partnership in place as soon as we can.

Lord Teverson: Secretary of State, you just described very well the challenges of the implementation period and everything that has to be done there. What I do not understand is why you agreed almost immediately to the 21-month European Commission proposal rather than trying to defend our own argument, which I understand is the Government's position, that it should have been 24 months. That gave away something in a period that, as you say, was critical and difficult, and I do not see anything in return. It creates a lot of issues, not just for government but for all the organisations that have to cope during that implementation period.

David Davis MP: First, we did not commit to 24 months per se. We said about two years.

Lord Teverson: Two years was the ask, was it not?

David Davis MP: We said about two years. I am afraid that, in a negotiation, you have a bird in the hand, given that we had a tight timetable, and I suspect that if we had tried to go beyond December 2020 we would have been in a new MMF. Knowing our negotiating partners, I would have thought that the bill for that last three months might be quite big. Added to which, when I talked to commercial interests in the UK about this, their concern was certainty by March, over and above the couple of months' extra length. It was a judgment call that seemed to us the smart one to make.

The Earl of Kinnoull: I want to come back to what you said about the European Union not being able to agree a treaty with us while we are still members. I have been troubled and scratching my head over that. In real life, of course, an agreement to agree on something is very normal, and in European Union-land we have also seen an agreement to agree. In the David Cameron negotiations, he came back and said, "I've agreed some treaty changes and that they will happen in the future. They're binding in international law and they'll be deposited at the UN", as I remember.

I am sure that very clever structure, which I never saw the full details of, works. It must do, because he told it to us. Will it not be possible to use a structure such as that, so there is the certainty that Baroness Falkner just talked about: that when all the cards fall on the table in March next year—

David Davis MP: You would have to do it. He was talking about a change in European treaties, in essence—

The Earl of Kinnoull: I understand that.

David Davis MP: —arbitrated by the ECJ and all the things that go with that. That is not what we are after. We are after a free trade agreement, and we actually want third-country status in this context, but they can only do it when we are a third country.

Q5 **Lord Cromwell:** That segues quite neatly into what I would like to ask you about.

On 18 April, this House passed an amendment requiring the Government to negotiate a customs union and to make a statement on the outcome of that. On 24 April, evidence to this Committee from the CBI and the TUC also favoured the customs union. On 26 April, a Back-Bench Motion in the House of Commons called for an effective customs union. That and some of the media criticism of the Government's proposal for a customs partnership suggests to me that Parliament and the Government are in disagreement. Are they, and if they are, how can that be reconciled?

David Davis MP: I am trying to think which amendment to the withdrawal Bill you are talking to. The last one I looked at was an undertaking to make a statement but not a commitment to join a customs union. I may be reading the wrong one. But you are right in this respect.

Just one other thing: in the course of primary legislation going through the House, some amendments will be put down on the Trade Bill, for example, which relate to that. Whether I am right about that or not, your substantive point stands that we will have to resolve this matter in the Commons and the Lords.

The Government's position is very plain. We view leaving the European Union as meaning leaving the single market and the customs union. We say that for a variety of reasons. One is that that is what the British people were told in the referendum by both sides of the argument. There

were disputes about facts and Lord knows what else in many areas in the referendum debates, but on this it was plain. Mr Cameron, Mr Osborne, Mr Johnson and Mr Gove all said on the Marr programme within weeks of one another, "This means that". That is the first thing. It is a question of meeting what we think is the understanding of the British people.

The second thing, however, relates to all the other elements that fall about it: control of the borders, control of laws. You do not get that if you are in the customs union. By definition, you do not get control of your borders.

The third thing in this context is the economic judgment as to the best outcome. The Labour Party, perfectly properly, argues, "We want to make the best economic case here. We want a Brexit for the 100, not the 48 or the 52". In the last 20 years, exports from the United Kingdom have gone from 60:40 to the European Union to almost 40:60 the other way. It is not 40:60 yet, but it probably will be by the end of the decade. The fastest growing, largest component of our exports is outside the Union.

What being outside the customs union gives us is the right to control our own commercial policy, which means opening up the markets that 60% of our exports are already going to. If we are inside the customs union, we forgo that. That is the primary economic benefit arising from departure.

The point, of course, is whether we can do that at the same time as maintaining frictionless or near-frictionless trade with the European Union. You will see from the guidelines from March that they have asserted that they want a tariff-free arrangement. That is the first step out of the way. The second step concerns how we deal with regulation, et cetera. That is not even a customs union. It is a single market issue, and it will be the centrepiece, I suspect, of the negotiation as it comes.

I am sorry for a rather long-winded answer, but the answer to your question I think is yes.

Lord Cromwell: Yes, that they are in disagreement, or, yes, that they will be reconciled?

David Davis MP: We will make these arguments when it comes to the primary legislation. Of course, we will also make arguments when we get into ping-pong.

Lord Cromwell: Many of these arguments have been made on the Floor of the House and the amendment went the other way—

David Davis MP: And they will be made again in the Commons. I have had the pleasure of two Bills so far on the Article 50 process, and we had quite a lot of ping-pong then. I suspect that we will have it not just on this but on other issues, and on the withdrawal Bill.

The Chairman: There is a delay with the Trade Bill in the other place as well, is there not? Are you going to plan?

David Davis MP: There is a whole series of Bills—about four Bills—for which this has an implication. We are between Committee and Report stages on the Trade Bill, from memory. It is not directly my Bill; it is one of my sibling Bills, if you like. I am not quite sure what you call them.

Lord Cromwell: We could spend a lot of time on this, but if I can jump off to one side slightly, the other thing that the CBI and the TUC told us was that one reason they favoured a customs union was that they saw it as the only way to avoid a hard border between Ireland and Northern Ireland. How do you respond to that?

David Davis MP: I do not think they are right. One always has to start from the memory that it is not a non-border. There is a border on excise. There is a border on tax, whether VAT or corporation tax. There is a currency border. There is a judicial border. The border works very well, invisibly as it stands, dealing with all those things. Customs and excise, for example, are dealt with by intelligence-led operations north and south of the border, normally away from the border itself, and more than 20 kilometres away.

In the event that we get a free trade agreement, even on a basis of the opening guidelines from the European Union, there will be no tariffs. From that point of view, it is not a tariff issue; it is a regulatory issue and/or a rules of origin issue. The rules of origin issue is related to the customs union but it will not be the biggest issue. I imagine that will be regulation, and that is a single market rather than a customs union issue, and I do not think anyone is arguing that at the moment.

The Chairman: I think we might return to some of these issues again.

David Davis MP: I am sure you will.

The Chairman: Before that, we might ask Baroness Verma's question.

Q6 **Baroness Verma:** Thank you, Lord Chairman. Secretary of State, what assessment have the Government undertaken of the cost implications for small and medium-sized businesses, particularly those that will be caught up in the supply chains after Brexit if there is no customs union?

David Davis MP: We do not yet have an agreement relating to this, so it is a bit hard to make the assessment. We have said that at the end of the process we will present both Houses of Parliament with an economic assessment of the impact of all the elements. We are seeking to minimise those costs for all businesses—small, medium and large—and we do that by a variety of mechanisms. One is authorised economic operators, which are principally for large businesses. One part of it is having no tariffs, and one part is electronic pre-notification, which is not too difficult, although it requires some work, and it will facilitate crossing the border. So there is a whole series of things that we are going to do to minimise the impact. When we get near to the end piece of the negotiations, we will be able to make the assessment that you are talking about, but not at the moment.

Baroness Verma: Perhaps I can follow that with a small question. If that is the case, how will those businesses get their budgets prepared when they do not know the cost implications that are coming round the corner?

David Davis MP: I would concern myself more with the practicalities than with the budget. We have to deal with how they are going to do things such as electronic pre-notification. I shall pick out a couple of examples. Post departure, one thing that will definitely be an issue is rules of origin. That is quite something for a small company to deal with. It is done for people by the British Chambers of Commerce relatively economically. We also have to see the extent to which the existing freight forwarding community will be able to deal with things. If you are a small business selling a small amount of stuff abroad, you do not use your own trucks. If you do, you are probably capable of being an economic operator and a trusted trader. So you do it through intermediaries. Those are the sorts of people we will be talking to.

Baroness Armstrong of Hill Top: Will they have to pay?

David Davis MP: Absolutely, but our aim will be to make it as economic as we can.

The Chairman: I was just going to make that point myself. I take it that you would accept that a concomitant level of government expansion will also be required to set these systems in place.

David Davis MP: As you will be aware, the Treasury has so far set aside £3 billion. We have not spent it all—we have spent about three-quarters of a billion, I think.

Lord Teverson: Secretary of State, one thing that I think everybody has the same view on is that we should try to remain within the internal energy market. The Prime Minister has mentioned that, and certainly my own sub-committee did an inquiry into it. This is one of the big asks. Of course, in Ireland it is completely integrated. We have a whole interconnector programme that is still to be rolled out as part of our energy investment. I am interested in understanding whether you think that that investment in interconnectors will continue.

It seems to me that Europe would define trying to remain in the internal energy market as cherry picking if you are out of the single market. Are you optimistic about that? Do you feel that this is something we might be able to achieve, at least to some degree?

David Davis MP: I would certainly hope to achieve it—that is what we would aim for. Bear in mind that there is not a sort of wall around Europe in terms of energy. Europe buys in energy from outside from lots of places. Regarding the interconnectors, from memory—I am afraid that it is from memory; you can correct me if I am wrong—we were the buyers from the French primarily last winter and the winter before, so there is an interest for them too.

Lord Teverson: Actually, one of the big hopes is that that will turn

round. But the history of it indicates that that will not be the case.

David Davis MP: Therefore, there is an interest in both directions. You will know better than most that it is not just a question of cost and revenue; it is also a question of stabilisation and flywheel effects and so on.

With respect to Ireland, we are very engaged in trying to get that right, and I want to get on to the future economic partnership so that we can talk about that. That is one of the north/south strands, and it is also incredibly important to Northern Ireland in that context because that is the way the dependency runs at the moment. That is what we are aiming for.

The Chairman: That leads us very neatly to the next line of questions.

David Davis MP: You seem to have segued all these questions, Mr Chairman.

The Chairman: For the avoidance of doubt, they have not been pre-rehearsed—not in this way and certainly not the sequencing.

Q7 **Lord Jay of Ewelme:** Some Members of this Committee went to Derry/Londonderry in Northern Ireland and the border a few weeks ago. The closer we got to the border, the more we had a sense of real anxiety on the part of businesspeople, politicians and local politicians on both sides of the border about what the implications of Brexit might be for them. I know that you have just been there yourself, I think for the first time in your capacity as Secretary of State. I wonder whether you had the same sense that people on and around the border have a real concern about the possible implications for them.

David Davis MP: There is undoubtedly economic nervousness. On one road that we went down there was a sign saying "This road will be blocked in the event of a hard Brexit". That was not true. I cannot imagine the circumstances in which that road or any road would be blocked. Yes, of course that concern is there, and there is no doubt that it is one of the things that we need to deal with. I reiterate that there is a border there at the moment. It is not visible but it works, and by the way, it did not look very different from how it had looked on the previous several occasions when I had been there. Some of my briefing was from the police and the various services, who were very forthright about how it works.

Lord Jay of Ewelme: There has been a certain amount in the newspapers—of course, one does not believe everything that one reads in the newspapers—about the Government's proposals for the border having been rejected or questioned by the Commission. Can you say a little more about that and whether it is true? Do the Government have a plan B if the proposals that you have put forward are not acceptable to the Commission?

David Davis MP: Two proposals were put forward. One was for a streamlined customs system, which is essentially the one based on technology and existing techniques used elsewhere, such as trusted traders, which I referred to before. The other is the new customs partnership, which in essence assumes keeping the common external tariff barrier around the UK and then rebating the tariffs to assist people who buy things for the UK from people with whom we start trade deals.

The Commission pushed back on both. The bases of the push-backs were slightly different. The Commission was concerned, on the one hand, about how the new customs partnership would be run. On the other hand, in the context of Northern Ireland, it objected to the notion of exempting small businesses from the streamlined arrangement. There will be other bits that I have not remembered but, from memory, those were the two primary reasons for pushing back.

Lord Jay of Ewelme: May I ask a final question on Ireland? What are your own relations with the Taoiseach, Simon Coveney and others in the Irish Government who are dealing with and worrying about these issues day by day, as I imagine you are?

David Davis MP: I have not met the new Taoiseach, although I met the old one. I have met Simon Coveney a number of times and get on with him perfectly well. We obviously take a different stance on these things but, as you will remember from your old career, you can be perfectly friendly with people without being on the same side.

Lord Jay of Ewelme: It is rather important to do that sometimes.

David Davis MP: It is rather important. You and I are both believers in old-fashioned diplomacy. We have had this conversation before.

Baroness Browning: Because of the Government's expressed promise that there would be no hard border, no equipment that you can see, no barriers and no police checks on the UK side of the border, it has been suggested to us that the challenge is then that if the Irish Government did not find a satisfactory outcome the onus would be on them to erect whatever sort of barrier they thought they or the EU felt they should erect. Has that conversation taken place?

David Davis MP: No, not in those terms. Aside from the issue that I just responded to Lord Jay about, the concern in the Commission is that this will be an external border for the EU, and it wants neither porosity in the border or, indeed, a precedent for other elements of its external border. That, I think, is the logic behind it. To be honest, I cannot imagine a circumstance in which an Irish Government would put up a hard border. It is part of our task to make all this work without that. It is for both sides. I quite explicitly do not put the responsibility on either side. It is better to treat it as a joint problem.

Q8 **Baroness Brown of Cambridge:** Secretary of State, we have taken quite a lot of evidence about border control for various types of border in

Europe and how it works. We have also heard from a number of witnesses—indeed, two MEPs yesterday—who have had rather different ideas about what there might or might not be at a hard border.

You have been absolutely clear on this. You have said that a hard border excludes any physical infrastructure related to checks.

David Davis MP: At the border.

Baroness Brown of Cambridge: So would you even exclude from that any cameras for number recognition or anything like that?

David Davis MP: At the border. The thing to understand in the context of the history of Northern Ireland is that there used to be border posts before the Troubles. They became the first point of attack, if you like.

Baroness Brown of Cambridge: We, like you, have made the visit, and met and talked about this.

David Davis MP: I hate to tell you how many times I have made that visit, but, as Lord Jay says, I made it before, not since. The point is that it does not really matter what it is: a camera on a pole, a building or whatever. It is not wise to create that.

Baroness Brown of Cambridge: That is great.

David Davis MP: I reiterate the point I made before: the existing border is done by intelligence-led policing and customs regulation through a variety of mechanisms. Intelligence comes from all sorts of sources, including ANPR cameras back in Belfast. There is a variety of mechanisms, but they do not require a border structure.

Baroness Brown of Cambridge: If I may go on, we took evidence from the Norwegian and the Swiss border forces and customs authorities. Our Swiss colleagues were very keen to move towards technological solutions at the border. Indeed, they said that they were involved in understanding the opportunities, but they still thought that such systems would take up to a decade to develop and implement.

In that context, we have not been convinced that there is an immediate technological solution to the Irish border and that something could be put in place before the end of the transitional period. I would be interested in your comment on that.

Also, are we discussing with the EU, or indeed planning, any trials of these technological solutions at the border? Should we not be trying to set something up?

David Davis MP: Not yet. You will remember from my previous appearances before this Committee that the EU's stance is not talking about any part of the future partnership until we get to a certain point, so we have not been able to have that conversation yet.

Baroness Brown of Cambridge: But is a proposal being got ready on

where we would like to get to?

David Davis MP: We have some ideas, and some of that will come out in the near future. Some of it we published last year. We published 14 papers. You have them all, Lord Chairman, including a paper on Northern Ireland and a paper on customs.

Let me just make a point to you about pre-existing border arrangements. First, most of them are more than 15 years old. In the last 15 or 20 years, there has been a huge change in all sorts of technology—electronic technology, online technologies, and so on. The other thing that happened in that 20 years was 9/11, and border security has altered. I went to the American-Canadian border, because I knew that border too; I sold goods across it in times of old. The security there was dominated by 9/11 security-related issues, and it was old technology.

That is not the case today and, even now, electronic pre-notification is pretty common. Authorised economic operators are well understood; there are not many of them in this country, because so far we have used other customs facilitation mechanisms, unlike in Germany where there are a vast number of them. They are all well-tested procedures.

The main issue here is time. I do not think it will take 10 years. We are talking of only a few years, so we have a race on our hands.

Baroness Armstrong of Hill Top: It seems to me that the Northern Ireland issue is symptomatic of the real problems that need to be faced. We need people who understand the history but who also understand the Good Friday Agreement, and we need to make sure that we do not go backwards. We do not yet have total peace, and we need to keep working at it. So when we hear that the Government advertise jobs in the new border agency in Northern Ireland for which people must have a British passport, we worry about that, because the Good Friday Agreement allows you to live legally in Northern Ireland with an Irish passport.

David Davis MP: It allows you to choose when you are there already. It is one of the rights that are guaranteed.

Baroness Armstrong of Hill Top: That is what I mean: you are allowed to live there legally with just an Irish passport. I give that anecdote to say that we have to be very careful about how we handle this.

David Davis MP: Oh yes.

Baroness Armstrong of Hill Top: Virtually everyone we saw in Ireland, Northern Ireland and the border, other than the DUP, said that they did not know how it would work without a customs union or a customs arrangement. There was real concern from people who were not necessarily in an economic relationship—except, of course, that ends up as an economic relationship. We went to the new cancer hospital. People were going locally from the Irish Republic to the hospital, which was actually in Northern Ireland, and it was paid for jointly by both. Ambulances cross the border all the time. Health facilities cross the

border all the time.

David Davis MP: Yes.

Baroness Armstrong of Hill Top: So these things are trickier than simply an economic relationship.

David Davis MP: I agree entirely.

Baroness Armstrong of Hill Top: How are you going to demonstrate that we understand this and are on top of it? We met a dairy company at the border, and they complained to us that we were the first politicians they had seen; we do not really regard ourselves as politicians at this end. It is that sort of thing that is really difficult.

David Davis MP: I agree.

Baroness Armstrong of Hill Top: So what will you do to make sure that, across government and Northern Ireland non-government, they are paying daily attention to this?

David Davis MP: You allude elliptically to one of the issues I have to deal with: there is no Northern Ireland Executive. That makes this much more difficult than it would otherwise be. Some of the solutions that we have in mind are really only doable by a Northern Ireland Executive, not by a UK Government, because of the need for local sensitivities on this.

Similarly, we are looking at a whole series of issues cross-border. Let me pick you an example. In a way, it is trivial, but not if you are the subject of it. If you live near the border, you are allowed to take a prescription to the local pharmacist, whichever side of the border it is on. You might be on one side and you go to the other side. That arises from a 2011 directive on that. There is a whole series of such things that will be carried through.

This is where part of the controversy of the withdrawal Bill comes up, because we have to take 40 years of laws, including laws such as that one, and turn them into reality in a couple of years—hence all the argument about secondary legislation. I am acutely conscious of that. When I was there last week, I did not just go to the border, I went to a home for autistic children. I have an interest here because of my own family, but the point was that it was funded by both north and south. Its outreach programme, which is now much more powerful than it is, is, again, north and south—all over the island. So we are acutely conscious of these things.

Right at the beginning of the process, it was we who first said—I do not think we had to push very hard—that we needed to put Ireland into the withdrawal agreement.

Baroness Armstrong of Hill Top: The withdrawal agreement has that aspect to it, which people are now calling the backstop option. But there is significant disagreement between the UK Government and the

European Union and the Irish Government as to what that means.

One phrase that has led to confusion is that the UK will maintain full alignment. When we met Simon Coveney, he said that they understood—I was then reminded about what you had said at a previous meeting—that the EU operates from precedents and legal statute, or whatever. He said, “We have therefore a particular understanding of full alignment, which is why we agreed to the word, because that is the phrase that is used in the treaties for accession countries”. So we know what full alignment means.

David Davis MP: Plainly, we are not an accession country, and the preceding words that were removed were—I have forgotten the actual words, but they relate in effect to harmonisation and they were not acceptable to us. So it is plain that we were not talking about harmonisation.

We will have to address this for each of the north-south strands. That is why what we do on agriculture, agribusiness, agrifood—the biggest individual issue—will be quite important. That is why I said at the beginning of my answer that the Northern Ireland Executive’s non-existence at the moment is a problem for us.

At the moment, the island of Ireland is a single epidemiological area. You will remember, Lord Chairman, that this goes back to my delightful time in the Foreign Office when we dealt with BSE. That works well, and may deal with some of that. We have also said that we are talking about outcome. We are not talking about the guarantee that we will be inside the single market, which was their interpretation, but that our food will be no less safe and our farm animals no less well treated when it comes to those absolutes. That is how we saw it.

This is exactly where the argument and the negotiation is right now. That is what it is about.

Baroness Armstrong of Hill Top: I would make the point that when we were there, a lot of the people we talked to in the north and the south were really concerned that it looked almost as though the withdrawal agreement was unravelling a few days and weeks later as different interpretations came. It seems very important that when you are agreeing and announcing something, there is some common purpose, some common agreement, particularly on Ireland, given how much some people like to misinterpret what is happening.

David Davis MP: You are quite right. We sometimes see that latter tendency more than once. I remind you that immediately after December I was asked whether this was a legally binding agreement. I said that it was a clear statement of intent, but, no, it was not a legally binding agreement. There was uproar. Of course it is not the legal treaty yet. Even stating the truth causes annoyance, I am afraid. It was not an indication that we were not going to carry it through. It was just a statement of fact.

Baroness Armstrong of Hill Top: I want to ask a very techy question.

David Davis MP: You are frightening me now.

Baroness Armstrong of Hill Top: No, no, it is parliamentary stuff. You agreed last week with the Commons Committee that they would get advance sight of the mapping exercise of areas of north-south co-operation. We simply want to be assured that we will get the same privilege.

David Davis MP: Yes. I would just say, Lord Chairman, that we have to wait for it to be completed first.

The Chairman: Yes, of course.

David Davis MP: It is still under way. When it comes, you will get it the same way.

Baroness Falkner of Margravine: On the backstop and regulatory alignment, could you clarify something for us? When the text says that the UK will maintain full alignment, does that mean for the whole of the UK?

David Davis MP: No. First, we are not going to allow differences in the Irish Sea. The reference was directly to the north-south strands. It is a limited rule thing.

The Chairman: There is one other question on this. There was an agreement with text about alignment of regulatory outcomes. Some people in Dublin are taking a slightly different view where there is a suggestion that this may be rather less facilitative than it might be. We all know what you are driving at in trying to get an objective through that is broader—I had better not use the word “equivalence”, as that has a particular resonance, but you know what I mean.

David Davis MP: Yes.

The Chairman: Now, if people stand on the letter of that, it may mean something more literal. Is that something that you will be able to work your way through?

David Davis MP: I think so. We are in the middle of a negotiation, which is almost three-way, because it is Ireland, the Commission, implicitly the other 26, and us—so more than three-way. We expect there to be interpretive differences along the way that we have to resolve. That is my job.

The Chairman: At this point we will move on, because we are conscious of votes. We have had one Division. I hope you can allow us a little leeway on your timetable, but we want to get through a lot here.

Q9 **Lord Whitty:** In a sense, this question goes back to the sequencing point, but it is designed to ascertain just how much disagreement you think there still is. When you say that you are 75% there, or Michel

Barnier says that, that relates to the withdrawal treaty and possibly a general declaration of where you want to go with the future relationships. Leaving that seems a little exaggerated.

Most people tell us that there is no way we could get a trade treaty, for example, 75% agreed by October or indeed by March 2019. Your view that by 2019 we will have everything on paper and it will just a question of implementation is not one that any of our witnesses has ever concurred with.

We have also had the Mansion House speech and the guidelines from the European Council. Michel Barnier has now said, "We've set out our position, and it's now up to the UK to set out its vision of the future relationships". Our reading of the two documents is that they are not very close at the moment in certain key respects and in certain key psychology. In your judgment, how far apart are we in relation to the future relationships?

David Davis MP: It is hard to give a demonstrable answer. Throughout this whole process, the Commission has laid down some lines of argument and has then said, "The UK has not told us what it wants".

This is part of the process that we go through.

They try to use time pressure. These are all just negotiating mechanisms, but they are perfectly legitimate and perfectly reasonable. At the moment we are endeavouring to get an agreement on the future economic partnership. You are right that the 75% did not apply to that; I do not think that it meant that at all. But the first thing is that the aim is to get started on that in parallel. If, for the sake of argument, we tried to deal with 45 different subjects in sequence, I and my grandchildren would probably be dead and buried before we got there. We have to do it in parallel and we have to get that agreement. We are dealing with that now and I think that we will get there soonish.

The next thing to bear in mind—this is why I think that the advice you are getting from people is not right—is that we start, uniquely in terms of international trade agreements, with identity and with no product differentiation between us. The question is then how we maintain the following pair of apparently inconsistent issues. On the one hand, we want to give back control—we want Parliament to decide what the future regulations should be. On the other hand, we want to maintain alignment in outcome terms with the European Union and give it the confidence that it will not be undercut in some way. Some in the European Union are terrified of the Wild West of Anglo-Saxon deregulation that we all live among here. Of course, plainly we do not, but we have to deal with that concern. The mechanism that we are looking at there is one that the EU has used many times before. I say that because it is important that it understands the mechanism from its own experience. It is a dispute resolution mechanism—that is what Baroness Kennedy started with—which is fair to both sides and has appropriate defences for both sides. Once we get that structure broadly agreed, we will make a lot of progress on the goods front.

We have a similar issue to deal with in relation to financial services and services, and that may be a little more complicated to say the least. However, we already have an in-house design for that which we will put out into the public domain at some point.

Baroness Falkner of Margravine: At some point.

David Davis MP: At an appropriate point, yes.

Q10 **Lord Woolmer of Leeds:** On that point, what do you have now in relation to services and financial services?

David Davis MP: As I said, we will put it into the public domain at the appropriate point, but not now.

Lord Woolmer of Leeds: I thought you said “shortly”.

David Davis MP: No, I did not. I am sure that you have a recording, Lord Chairman. I did not say “shortly”.

Lord Woolmer of Leeds: But services, not merely financial services, are very important for the United Kingdom. It is no good having even a free trade understanding if it does not cover services.

David Davis MP: With regard to our interests, services are a very large component of our exports, so clearly we want to maintain the most open access possible to services. Strictly speaking, there is not really a single market in services in the European Union now—its impact is quite small—but we will want to get the most liberal arrangement for services that we can.

Lord Woolmer of Leeds: Monsieur Barnier told us—I think that he also made this point in his recent Hamburg remarks—that he sees the relationship in four pillars: free trade; bilateral agreements on areas of common interest; justice and home affairs co-operation; and security co-operation. Is that approach something with which the United Kingdom Government agree, and is it the basis on which you are seeking to take forward discussions?

David Davis MP: There is nothing wrong with that approach—it seems perfectly sensible. What are its implications? Earlier I said that we would like to bring some of the security, defence and foreign affairs elements into effect more quickly than by December 2020. We may or may not be able to do that, but if the four pillars all have to happen at the same time, we will probably dispute that. It depends what the four pillars mean. Evidently there are four separate entities that we need to negotiate.

Lord Woolmer of Leeds: He used those words and I assume that you and your colleagues will have sought to understand what he means.

David Davis MP: Not necessarily. Lord Jay will remember the “pillars” of the European Union being a standard phrase. In the old days, we had the pillar which was decided by qualified majority voting and the others which

were not. I think that all of them, or pretty much all of them, are now QMV. So it is a normal European phrase, but it depends what Monsieur Barnier means by it. I think we will engage on that only once we engage on what the future partnership is to be.

The Chairman: Secretary of State, can you be with us until 6.10 pm in view of the Division?

David Davis MP: Can I make it 6.05 pm? I have another appointment at 6.15 pm.

The Chairman: Right, we must all respect that.

Q11 **Lord Whitty:** In reply to Lord Woolmer, you said that the four pillars would be one way of doing things, but how much detail about the future agreement will we have by October? We in this House keep talking about a meaningful vote. How are you going to get parliamentary backing for that?

David Davis MP: The first answer to that is: by getting good deal.

Lord Whitty: How much detail will Parliament have on which to take a decision?

David Davis MP: First, the withdrawal agreement itself will by then, I hope, be a full legal text. That is the clear intention. It will be very substantive on the future relationship—it has to be from everybody's, not just our, point of view. I think you will find that Angela Merkel has said that she wants to see a lot of detail in October. That, for me, is a good thing. If the biggest member state is pushing for a lot of detail, that is an incentive for the Commission to do it.

The Chairman: At this point, I make a plea all round for short questions and short answers so that we can get through everything. That is not an implied criticism—you have been very helpful.

Q12 **Baroness Neville-Rolfe:** Secretary of State, in view of what you have just said, does the European Parliament proposal for an UK-EU association agreement have any merit? In particular, Guy Verhofstadt made what might be viewed as a constructive point—that it could be applied before ratification by member states and would avoid the need for a Swiss-style relationship with perhaps over 100 agreements.

David Davis MP: In principle I see no problem with it but, again, it depends exactly what you mean by that—a point that I made before on the issue of pillars. Some association agreements are stepping stones to membership, as in the case of Ukraine, for example, so it depends what is included. We would not, for example, want to see it bring in ECJ jurisdiction. However, as a concept, I have no intrinsic objection to it. Guy Verhofstadt has played an interesting role in this. He has been very supportive, for example, on issues relating to citizens' rights—the ones that the Baroness raised. He is thoughtful. He is a former Prime Minister

of Belgium. So I listen to what he says fairly carefully, sometimes even when I am watching him race his antique Aston Martin.

Baroness Neville-Rolfe: To look ahead a bit further, we had a Norwegian parliamentarian here recently who told us that Brexit would turn the UK from an EU member into a lobbyist. Have you given any thought to mechanisms going forward, and is that a fair remark?

David Davis MP: A lobbyist?

The Chairman: Perhaps we can treat that as an issue about resources and the amount of effort that we will have to put in to maintain our interest in Brussels.

David Davis MP: I see.

The Chairman: You may want to reply to it now or later by correspondence.

David Davis MP: Actually, we could reply by correspondence. We have given a tiny bit of thought to that, because obviously at some point, once we have left, the status of UKRep will come up. So we have given a little thought to that. Let me write to save time.

Q13 **Lord Liddle:** Secretary of State, this is on what we are going to have in October. I do not know whether you agree with this comment, but what you agree by March is not really relevant to the question of parliamentary approval of Brexit, is it? That is about what is available when we take the vote on the withdrawal agreement. We keep being told that all we can have is a political declaration. We have also been told by people in Brussels that this political declaration will not be a legally binding document, so it will not bind the parties to the future trade talks. Obviously, the risk then is that in this political declaration you can include all kinds of political compromise language, which means different things to different people and allows claims to be made about what we have won, as it were, in these negotiations that then prove to be bogus. Do you accept that there is a risk here?

David Davis MP: I do not think that it is a material one. I say that for the following reason. You are hearing the negotiating stance. Always remember when you are talking to all these people that they are not presenting you with scientific fact; they are presenting you with a negotiating stance. Their negotiating stance is that nothing is binding on them. Their favourite phrase is, "Nothing is agreed until everything is agreed". The ratification process for the withdrawal agreement will not be instantaneous. For a start, there are at least two phases to it: the first is the initial debate in your House and the Commons; the other is the withdrawal and implementation Bill, which will put it into effect. The House has a fairly long time to deliberate on this before we get to the conclusion. Also, again, I cite Angela Merkel, who is said to have said—there is always a risk of repeating what one reads in a newspaper—that she wants to see details on this. There is a reason for that. Go back to the original arguments on where the negotiating leverage is. Between

them, the European Union countries have sales to the United Kingdom of way over €300 billion a year—ours is about €200 billion to them. This will affect their access to us as well as our access to them, so they want that pinned down, certainly on goods. The more difficult area is services and financial services, where the balance is the other way, but not hugely so—it is not overwhelming. Of course we will have to manage the transition from the political agreement to the legal agreement. Some of it will have hiccups, but I think that, broadly speaking, we will have a very, very good idea of where we are going to be at the end.

The Chairman: As you know, Secretary of State, we have a continuing interest in some of the constitutional ramifications of this. I will ask two of my colleagues to raise disparate but related questions: Lord Selkirk and then Lord Woolmer. Perhaps you can answer them together and then I will move to wrap up questions.

Q14 **Lord Selkirk of Douglas:** Secretary of State, what is the basis of the United Kingdom Government's agreement with the Welsh Government regarding returning powers from Brussels, devolved competences and UK frameworks? Also, how can the continuing impasse with the Scottish Parliament be resolved?

The Chairman: We will ask Lord Woolmer to put his questions on Gibraltar at the same time.

Lord Woolmer of Leeds: Secretary of State, the European Union's position on Gibraltar is that no agreement between the EU and the United Kingdom will apply to the territory of Gibraltar without an agreement between the Kingdom of Spain and the United Kingdom. How do you interpret the asterisk that it uses to keep that in the game? What is your understanding of Spain's aims in relation to Gibraltar? Can you envisage Spain using this to block agreement?

David Davis MP: Let me deal with Wales first and I will come back to that. This relates to Clause 11 and the amendment to Clause 11 that has been laid. I will be very quick on this.

The Chairman: I will waive my final question.

David Davis MP: I will just say that we have an agreement with the Welsh Government that they recommend an LCM, which is good. We are arriving at an agreement with respect to their continuity Bill. Basically, from that point of view, we are in a good place in terms of their acceptance of our intent to devolve many powers to them and retain some for the United Kingdom. I am sorry about the shortness of the answer.

The Chairman: And Gibraltar, quickly?

David Davis MP: On Gibraltar, very quickly, we are in quite lengthy official-to-official negotiations. We are also keeping the Gibraltar Government heavily involved. A whole range of issues has come up. Rather than me bouncing this, it might be better if I write to you on it.

Lord Woolmer of Leeds: With whom are we still in negotiations? Spain?

David Davis MP: We are in official-to-official discussions, rather than negotiations, with a number of countries, of which Spain is the nearest. We keep the Gibraltar Government in the loop on that; they are heavily involved.

The Chairman: Secretary of State, we need to wind up. As a former Whip, I understand that. First, I thank you for your courtesy in getting us a quick response to our letter of 19 April. We appreciate that. We need this dialogue to continue in a positive way. Secondly, a huge thanks for your contribution this afternoon. It has been helpful and we will reflect on it. We have got through all our business, except for two questions, which I will put into correspondence. They relate to your notice on the service of documents during the transition/implementation period and the joint committee.

David Davis MP: Thank you, Lord Chairman. You are helping me to keep up my record as the lead appearer before Select Committees.