

Business and Trade Committee

Oral evidence: The 2026 review of the UK-EU Trade and Co-operation Agreement, HC 1569

Tuesday 18 July 2023

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Members present: Darren Jones (Chair); Alan Brown; Jonathan Gullis; Antony Higginbotham; Jane Hunt; Ian Lavery; Andy McDonald; Mark Pawsey.

Questions 28 - 54

Witnesses

II: William Bain, Head of Trade Policy, British Chambers of Commerce; Professor Catherine Barnard, Senior Fellow and Deputy Director, UK in a Changing Europe; Dr Peter Holmes, Fellow, UK Trade Policy Observatory; Anton Spisak, Senior Fellow and Head of Political Leadership, Tony Blair Institute for Global Change.

Examination of witnesses

Witnesses: William Bain, Professor Catherine Barnard, Dr Peter Holmes and Anton Spisak.

Q28 Chair: We now move on to our second panel, where two witnesses are appearing virtually on the screen: William Bain, who is the head of trade policy at the British Chambers of Commerce, and Professor Catherine Barnard, who is a senior fellow and deputy director at UK in a Changing Europe. In the room, we are welcoming Dr Peter Holmes, who is a fellow at the UK Trade Policy Observatory, and Anton Spisak, who is a senior fellow and head of the political leadership programme at the Tony Blair Institute for Global Change.

Dr Holmes, I am going to come to you first. You have been talking about trade and co-operation 2.0. You have heard the evidence we have just taken in the first panel. What might TCA 2.0 mean in practice?

Dr Holmes: I am not as closely in touch with the folks in the negotiations as David is, but I have been working with people in the trade policy area here and in Brussels for a very long time, so I still have my contacts and I get occasional private emails from people over there. What I am saying is informed but not necessarily super-informed.

What I understand from the messages I receive from Brussels is that the TCA is not going to be upended. It is not going to be TCA 2.0 or a new TCA. The TCA provides a whole series of avenues for, potentially, discussions about the alignment of ETS to avoid the worst of the CBAM charges. Regulatory co-operation is referred to. There is a whole series of areas, such as rules of origin, where you can make modifications to the way the system works without changing the TCA.

The extent to which that is covered by the title "implementation" is not clear. I wrote to someone at a high level in the Commission and got a rather interesting answer on this. They said, "The TCA is not going to be changed, but there can be agreements on the side", so we can see that this is a possibility. David has written very cautiously and sceptically about whether you can get a lot out of the TCA reform. That could still be true, and yet there will be a process going on on the side.

The TCA review process refers to discussions about the trade in services, for example, though not financial services. The reform of the TCA could be the centrepiece of the start of an evolutionary process. There is not going to be a big change. The worry is that there will not be enough of a change.

I will stop in a moment, but the key thing we have to focus on is what we can offer to the EU. What is it in our interests to offer? What is in their interests to ask for that is worth our while giving in order to get something? That is not just within the terms of the things that can and cannot be changed by the Partnership Council without going back to the



treaty negotiation, which is an interesting and important point, but what things across the board can we do and are in our interests to do?

For example, the UK conformity assessment regime keeps being pushed off. It cannot be in our interests to keep that uncertainty, particularly since we are members of the CEN and CENELEC agreements in the EU for standards. We are legally obliged to adhere to what are not EU standards but European standards. We have given that manoeuvre away.

The certainty point is vital. As long as the UK says, "We are going to do what we feel like over the next few years", nobody knows what that is going to be. When is this UKCA thing going to come in? We should be thinking about where it is in our interests to try to make changes in the arrangements. The key point is what we can offer to secure those changes.

Q29 Chair: Has there been any early view about the sectors or areas where we might have a trade and where there are things that we want from the Europeans? The Europeans, for example, are quite keen for us to join Erasmus. We have heard lots of talk about the energy sector. We heard earlier in the first panel that access to fish stock is going to be a big issue. Has there been any early sense about where the negotiating priorities might be, or is it too early to say?

Dr Holmes: I do not know enough about it to answer that properly. I would say, though, that some EU regulatory agencies have the possibility for non-member participation, just like the standards bodies, which are not EU. That has not been talked about. The thing I would recommend people think about is EASA—the European Aviation Safety Agency. There is a form of mutual recognition at the moment, but that should be extended. There is the medicine agency and so on.

The really interesting things have not come up yet. On cars, we want the German car industry to come to our rescue again, but my current view is that it is more likely to take a unilateral move and say, "We will let British batteries in as long as we feel like it". There are obvious things there, but the important things have not really been discussed enough yet.

Q30 Antony Higginbotham: Mr Bain, can I come to you? I read the BCC report on the TCA called, *Two Years On*. It was very interesting. In there, you had a series of policy recommendations. You segregated those into short term, medium term and the 2026 review.

As we heard in the earlier session, the European Commission has been very clear that it sees the 2026 review as an implementation review; it is not a time for major change. I just wondered how you came up with those categorisations and whether you have benchmarked them against the soundings from the Commission.

William Bain: That is an interesting question. In terms of the short-term asks, there are issues like the requirement for a fiscal representative in the EU that GB firms using the import one-stop shop to account for their



VAT on transactions to the EU have to comply with. That is the kind of thing that can be dealt with in the specialised committee. On issues like professional qualifications, the regulators in the countries concerned can engage and accelerate that work well before the review in 2026. Those are the reasons why we would categorise those as short-term issues.

There are more medium-term issues, such as a youth mobility scheme, and then longer-term issues, which would be, following on from Dr Holmes's point, what supplementary agreements we might look at in order to deal with issues like rules of origin, which are being raised by traders with us regularly.

Now, we accept that, with a free trade agreement, it is not like the arrangements we had before. You will continue to have rules of origin, but one concrete recommendation that we would give is that, to give greater flexibility for manufacturers in the UK selling across the European neighbourhood and beyond, we would recommend that the UK, the EU and the other countries look at the UK again being part of the pan-Euro-Mediterranean—PEM—convention. It is that sort of longer-term issue that would need side agreements and, obviously, mandates from the UK Government and the European Commission to reach such agreements.

Q31 Antony Higginbotham: One benefit of the BCC is that you have an international network as well. You work with chambers in other countries. Have you had discussions with counterparts in Brussels and other member states about some of those 2026 options that you have put in the report? What kind of response have you had to them?

William Bain: Yes, we work with our overseas peer organisations very closely indeed. We spoke recently with Voka, which is the chamber in Flanders. I recently gave evidence alongside Voka and Irish chambers with German chambers of commerce to a committee in Brussels about the operation of the TCA. There was a real commonality in terms of the recommendations. The evidence I was giving was mirrored by what was coming from German chambers of commerce.

We are looking at ways to do a lot of joint working over the next year to make sure that the message is going to the European Commission that business in the EU wants to see some changes in the short, medium and long term, very similar to those we have been setting out to business and yourselves here in the UK.

Q32 Antony Higginbotham: If you had to pick one or two of your longer-term or 2026 recommendations that are the most important, which would you pick?

William Bain: In terms of the longer-term recommendations, one is a veterinary agreement to try to simplify and reduce the costs for agrifood traders selling their goods into the EU. That would be top of the list, as well as having simpler rules around youth mobility. We do not have a youth mobility scheme with the EU. Since Brexit, we have negotiated



some schemes with other trading partners like Australia and New Zealand. Those would be the top two.

On rules of origin, another would be for the UK to again be part of the PEM convention, giving us that greater flexibility and allowing our manufacturers to more easily sell goods throughout the European neighbourhood and also in the EU itself.

Q33 Mark Pawsey: Mr Spisak, I want to talk about your report that you have brought forward—*Moving Forward: The Path to a Better Post-Brexit Relationship*. You seem to be suggesting there that the 2026 review does not give any big opportunities to change, and that is what has come from our evidence so far this morning, but might provide a springboard to broader objectives that we might have at some point in the future.

You are quite critical of the Government for not listening to the views of business. Mr Bain might have a word or two to say about the influence of his organisation. We have other manufacturing bodies and directors' bodies as well. Do you agree with what Mr Bain is saying? For example, he gave us three longer-term recommendations: to simplify the costs for agrifood; to simplify the rules of youth mobility; and to provide some flexibility in the rules of origin. Is that it? Do we know enough? What would you set as priorities for a longer-term review?

Anton Spisak: First of all, thank you very much for the kind invitation to be here today. It is a real privilege.

I would agree with that. I would also just say at the outset that, in the report that you cited, we concluded that the TCA review process is not a silver bullet for revisiting, renegotiating or even amending the TCA as it is, but it is a very good and important vehicle for bringing more clarity about the kind of relationship that the UK and the EU want to have in the medium to long term.

Let me give you two examples of how the TCA review process can be useful in this way. Bilaterally, the TCA review process will set up some kind of structured process by which the two sides will come together and talk about not just the issues of implementation, but also the broader economic, political and diplomatic context in which the relationship will take place. That will be in 2026; quite a lot can happen in the space of those couple of years, as we have seen in the last couple of years. That cannot be instructive, but the context will really matter.

It will also matter because we will have a new UK Government at that point; we will have a new European Commission. It will be important to view that review process as a function of the politics on both sides, so I am not wholly sceptical that the process is not important. It can be an important vehicle for having a strategic discussion about the nature of the current relationship and how it can be improved.

Even more importantly, it can be a useful vehicle for bringing more clarity domestically for stakeholders about how the TCA has been functioning



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and what the reality of the post-Brexit relationship has been, not only for economic operators and traders but for the broader community in the UK. I find it astounding that, since the 2016 referendum, there has not been a single business consultation from the Government about the nature of UK-EU trade.

Q34 Mark Pawsey: Do you think the Government do not understand the wishes or interests of business effectively?

Anton Spisak: I do not have a really good judgment about how far they understand those views. Mr Bain would be able to answer that question better. I would say that there is a real value in trying to understand the relationship systematically, not only listening to one industry group or another, but taking a holistic view about the relationship, looking at the numbers, doing proper data analysis of what has happened to trade in the last couple of years and starting to build some level of consensus domestically about the kind of relationship that the UK Government should want to seek with the EU in the years to come.

Q35 Mark Pawsey: We are not going to change it massively in 2026, but there will be a further review five years after that. Are you saying that the UK should give some thought to where it might like to see changes in 2031, for example?

Anton Spisak: Absolutely, that is exactly the point I am making here. It should be an opportunity to try to build a degree of domestic consensus on the kinds of changes that would be in the UK's interests and the kinds of changes that the UK Government should make domestically in their own domestic policy. We have heard some examples in the regulatory space. There are a couple of others, such as in the migration and mobility space, in relation to foreign policy and defence, and so on. That review process can be a real opportunity to bring that clarity, both bilaterally and domestically.

Q36 Mark Pawsey: Mr Bain, do you think that Government understand properly the wishes, needs and desires of business in terms of looking at the TCA? Do your issues and concerns work their way through to Ministers and the people who are effectively conducting negotiations on your members' behalf?

William Bain: Yes, there are bilateral mechanisms and discussions that we have. There are also collective discussions that business groups will have with individual Government Departments. It is also important to recognise the structures within the TCA. There is a domestic advisory group in which we take part as business stakeholders, together with the trade unions and the voluntary and third sector. These are motoring ahead now, forming subcommittees and producing recommendations, so that voice is being heard loud and clear.

Q37 Mark Pawsey: You are making the noises, Mr Bain, but are the Government listening? I suppose that is the challenge. Mr Spisak seems to think that the Government have not even bothered to listen to what



you have to say.

William Bain: There has been listening, but there could be a lot more action. That would be the summary.

Q38 **Alan Brown:** Mr Bain, you said you are looking for a youth mobility scheme. What are the youths missing out on at the moment and what needs to change?

William Bain: When you talk to schools and chambers around the UK, but also when you engage with our peer organisations across the EU and many of the embassies, there is a sense that it has become a lot more difficult to arrange things like bilateral visits. Obviously, there is no scheme that is analogous to that in the Australia and New Zealand trade agreements that the UK has signed, which permit youth mobility for up to three years for under-35s. That is something that was not in the TCA and is a clear area where we would like to see a supplementary agreement agreed in this first review process in 2026.

The other area is around services and the tough rules around labour mobility and business travel that particularly affect those providing services. We hope that is something else that can be addressed in the review.

Q39 **Alan Brown:** Professor Barnard, we have already heard there from Mr Bain that youth mobility needs, labour access and the sale of agri-goods need to be streamlined or improved. What is your reading of the potential scope of the TCA review process, particularly considering how EU institutions and member states view it? Is there scope for widespread negotiations, changes and improvements?

Professor Barnard: I would say that the scope of article 776 is quite narrow. It just talks about a review of the implementation. Some people have put weight on the next part of the sentence that says "and any matters related thereto". The question is about political will. I had the privilege of interviewing Maroš Šefčovič a couple of weeks ago, and all I am hearing is that, at the moment, the Commission is determined to damp down expectations. This is not going to lead to radical change. Of course, the politics may change for the reasons we have already heard.

Remember too that, when the TCA was agreed, there was much emphasis placed on supplementary agreements. This was envisaged in the sandwich structure of the TCA. As you know, the TCA has common provisions across the top on institutions that we have heard about, and common provisions across the bottom in terms of dispute settlement. It was always intended that the agreement be fleshed out with further supplementary arrangements.

The question then is how you get to the point of a supplementary agreement. If the EU takes a view that it is going to need a mandate from the member states before the Commission can negotiate any



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supplementary agreement, then this is perhaps going to take longer than we might anticipate.

It is worth emphasising that, with the current range of Commission officials, there is Brexit fatigue. They have essentially been thinking and negotiating around Brexit since 2016, and there is not much appetite for doing more at the moment. Of course, they also have other large issues on their plates.

This may sound like a counsel of low expectation and low delivery. On the other hand, we should also bear in mind that article 776 is perhaps not the gateway to radical transformation, not least because the Commission's view is that there is quite a lot of room within the framework of the TCA to do more. My fellow panellists have outlined what that might be. Of course, some things can still be done via the Partnership Council, which is the political body, without the need to go through any supplementary agreement.

Q40 Alan Brown: Would these alternate negotiations allow much more radical changes, such as what I was just talking about and what Mr Bain is saying is required? Is that a realistic proposition?

Professor Barnard: All of these are realistic propositions, provided there is will on the EU side. In my view, the two areas where there is perhaps most scope for negotiation with the EU are on some sort of foreign and security policy and on cultural matters.

We have talked about youth mobility schemes, but there is also some mutual interest in the ability for actors and musicians to move. Both sides are being affected by the fact that the very limited provisions in the TCA on services do not include musicians, which is one of the reasons why they are protesting so long and loud about what is in the TCA at the moment.

Q41 Alan Brown: What does the UK need to concede to allow that to happen for musicians?

Professor Barnard: I understand from the UK's point of view that any concessions on mobility risk being conflated with free movement, but this ship has absolutely sailed. Any concessions on either youth mobility or mobility for a wider group of people than is currently envisaged in the annex to the TCA are a far cry from free movement. They are coming for short periods of time.

The issue, particularly for actors and musicians at the moment, is that, because they are not covered by any of the provisions in the TCA, they are going to have to get work permits every time they move to another country. If you are there for a gig, you might be getting £1,000. If you are going to Spain and it is €600 already to get the work permit, and several weeks to try to wait for the process, it is just not worth your while. That is why they would like some sort of agreement. You are



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absolutely right that the UK too will have to concede as far as that is concerned.

Q42 Alan Brown: Can I turn to Anton on that? I have a quote from Stefan Fuehring, head of the European Commission's TCA unit, where he references your organisation. He said, "There's almost on a bi-weekly basis a report"—on how to improve the existing Brexit deal—"coming from the Tony Blair Institute, the UK in a Changing Europe, the House of Lords and so on", but he is not aware of anything that has come out of the EU system. Are you howling in the dark, for want of a phrase, or are there realistic prospects of change that you see?

Anton Spisak: I am delighted that Mr Fuehring is reading the reports we are producing inside my institute. I had an exchange with the European Commission about some of these questions, and I would say that it is important to think about any future changes that the UK Government may want to make to the overall UK-EU relationship in three different ways.

There is a set of changes the UK Government can make unilaterally, regardless of any TCA review process or any future negotiations. In my view, there is a set of sensible domestic policy choices that could make a real difference to the way that the trading relationship is working and would not involve any negotiation at all. An example of this would be recognising the CE marking on products that are placed on the UK market beyond the current deadline, which ends at the end of 2024. That would make a tangible difference.

There is then the second bucket of issues that are purely about implementation and, in my view, are covered by the TCA review process, and those are things that the TCA already provides for. An example of this would be the electricity trading scheme, which has not been agreed within the current agreement, but there is a provision within the TCA that allows the two sides to have a meaningful, detailed discussion about it. There are a couple of others where progress can be made.

Q43 Alan Brown: Why is that not happening? Earlier on, I quoted Energy UK saying that the current electricity trading arrangements are adding £1 billion a year to our electricity bills. Why does there not seem to be prioritisation of that?

Anton Spisak: It is a very good question. I believe it is a function of politics and the way that the relationship has evolved in the last couple of years. It is only very recently that we have got to a point where there is a little bit of equilibrium politically in the relationship. I agree with Professor Barnard that there is a bit of Brexit fatigue in the EU institutions.

This is a real challenge for the next UK Government. There will need to be a real focus not only on what the UK Government want to achieve,



whether through the TCA review process or some new political process, but on what the EU is after in all this. What are the EU's interests?

We need to switch this discussion from looking at the list of asks from the UK Government to trying to identify an agenda of mutual policy interests that the UK and the EU have. In my view, there are quite a lot where the TCA is structurally inadequate. An example of this would be co-operation on issues of strategic interest such as foreign policy, defence, decarbonisation or regulation of future technologies. All these issues are basically left out of the TCA as it stands.

Q44 **Alan Brown:** That was a political choice, effectively.

Anton Spisak: It was a political choice at the time when the TCA was concluded. My argument would be that the world has moved on since the Brexit days. We now see a whole set of different challenges that we are facing.

In a geopolitically fragmented world where the UK and EU are essentially two incredibly close strategic partners and allies, we need to look afresh at some of those provisions. The question is about the TCA, but equally—and this is where I agree with Mr Fuehring from the Commission—the TCA review process does not provide a vehicle for those changes. If we want these kinds of changes, we will need to look for a more political mechanism that will be a reflection of the shared desire on both sides to address those difficulties.

Q45 **Jonathan Gullis:** It is a perfect time to segue into this area. We are talking about further changes. Professor Barnard, we have this five-year review, but parties could agree to adjust the agreement by means of the UK-EU Partnership Council, for example, to quote article 7(4)(d), “provided that such amendments are necessary to correct errors, or to address omissions or other deficiencies”.

Obviously, the Partnership Council can delegate certain powers to the trade partnership committee or to a specialised committee. Is it therefore fair to say that we do not need to solely rely constantly on this five-year review? There is no reason why both the UK and the EU cannot get round the table to find, as Mr Spisak said earlier, commonality on policy areas.

Professor Barnard: Yes, you are absolutely right. I have the text in front of me. We have seen that the equivalent provision in the withdrawal agreement was used to help deliver on some of the Windsor framework, so we know that “deficiencies” is quite a broad term. Absolutely, there is space to use article 7(4) and get the Partnership Council to do what is needed but, as we saw with the Windsor framework, it requires political will on both sides. At the moment, we are not seeing that will coming from the EU side.

Of course, the EU is about to go into election mode. There are going to be European Parliament elections and a new European Commission, so it seems to me that the likelihood of anything happening in the short to



medium term is very slim. There is a point of principle from the EU side that it says, "Look, we have negotiated a deal that the UK wanted. They wanted a free trade agreement, and that comes with consequences". We are feeling the consequences now through the increased paperwork that has been necessitated by having rules of origin and, therefore, we have to accept the consequences of the choice that we made. There is very little appetite at the moment pre the European elections for any decision to change, but you are absolutely right that there is certainly space within article 7.4, and that is a political decision.

- Q46 Jonathan Gullis:** Do you think therefore, Professor Barnard, that it is quite disappointing, in a sense, that with a UK general election within the next 12 to 18 months, and with the European elections, this five-year review of the TCA is effectively acting as a perfect cover? It is allowing both sides to talk but, like you say, there is a lack of political will because of electioneering coming up. You could argue that, sadly for business and for consumers, that means this is potentially going to be a wasted 24 months.

Professor Barnard: Yes, I agree with you. Because the EU is saying that the TCA review under article 776 is five years, it is taking the view that 2021 plus five is 2026, so that is when the review will start. Of course, that might change post elections. All the reports that have been mentioned are at least doing good work in testing the waters and preparing the ground, but the bottom line is that we will probably see very little action in respect of the TCA until 2026.

There might be some limbering up and preparing of the ground in 2025, but you are absolutely right. We have two to three years before anything might happen. In reality, it may be that the EU continues to take a fairly hard line with the UK and says, "You have to work through the existing provisions within the TCA before we even consider a supplementary agreement".

- Q47 Jonathan Gullis:** Mr Bain, what about you? From a business community perspective, how does it feel when we hear that we are going to have a period of time where there could still be negotiations in some of the areas, but, really, there are not going to be and, ultimately, we are now waiting until 2026?

William Bain: I return to the point I made earlier. On things like VAT, businesses are having some real difficulties. It is an extra burden in costs having to hire a fiscal representative within the EU simply to account for their online VAT on sales to customers in the EU. That is exactly the kind of issue that does not require a supplementary agreement of the sort we have been talking about. It simply requires some administrative decision-making in the relevant specialised committee.

Our focus at this point is on using the processes we have. We have talked about the domestic advisory group. There is the civil society forum as well, which had its first meeting last year and will meet again this



autumn. We see these as key institutions to get these administrative decisions done now to help businesses while looking at the longer-term issues, which, as has been described, may well have to wait until 2026.

Q48 Jonathan Gullis: The VAT thing was an interesting point. I have not read the report in the level of detail that Mr Higginbotham has, but I am grateful to the clerks of the Committee for having given me the bullet points. In terms of the VAT, have you had any mood music from Government, alluding to what Mr Pawsey was asking earlier, around something like that? Is there any mood music coming out that there could be some sort of agreement made?

William Bain: The Government have been very supportive. When we had the civil society forum meeting last autumn, FCDO officials were there making the case to their EU counterparts, helped by officials from the Treasury and supported by business organisations like ours.

Obviously, we had the Windsor framework, and things were stalled until that was agreed. The question now is about taking the improved relations that have come post Windsor framework and making sure that we get some tangible progress. VAT would be one area where I would be confident that we could get that progress.

Jonathan Gullis: As someone who was one of the 22 who voted against the Windsor framework, I will defer to greater minds than mine on that area.

Professor Barnard made a point, and I think it is well known by colleagues on the Committee that I am quite hardline when it comes to migration, both legal and illegal. Mr Bain, your report talks about broadening the categories for cross-border labour mobility. I just want to give you the opportunity to expand, if you are happy to do so, on what it is you are looking for and what you mean by that.

William Bain: We have said that, in the short term, there should be some two-year visas expanded. We would want to see some additional occupations added to the shortage occupation list. We very much welcome the report that the House of Lords European Affairs Committee issued earlier this year, which agreed with that recommendation.

In areas like care, hospitality and manufacturing, we are still seeing large numbers of vacancies. Despite the best efforts of Government, chambers of commerce and other organisations on the ground in their communities and regions, we are not seeing those vacancies filled. We would recommend as a first step widening those occupations within the shortage occupation list, and then in the longer term examining what our needs are and how they can best be filled.

Q49 Jonathan Gullis: Professor Barnard, you are correct that expanding visa routes, as Mr Bain has said, is not equivalent to free movement, but you can understand why people like me would be deeply concerned that we are essentially looking to always rely on pulling the lever of immigration



rather than focusing on skilling up or training up within our own country as well as making, in Government's terms, the necessary supply side reforms, as we saw in part with HGV drivers when we needed to fill shortages there.

In fact, there are some numbers I have seen in the past that have suggested that sometimes adding to the occupation list has not led to the influx or the numbers needed to fill those vacancies. Do you accept therefore that, in the eyes of some members of the public—according to a YouGov poll, 61% think that immigration is too high at the moment, with nearly 50% of Labour voters suggesting that—expanding mobility is essentially free movement through the backdoor, albeit with a different name?

Professor Barnard: I would agree in part, but not entirely. Specifically on your point that adding to the occupational list has not brought people in, we have seen that, particularly when there was a chronic shortage of HGV drivers, it is not good enough to just put them on a list. These people have a choice of where to work. If you are a Hungarian or Polish HGV driver having to get a visa to come to the UK as opposed to enjoying free movement without the restrictions, it is therefore much easier to go to Germany than the UK.

Mr Bain was talking about a two-year visa. Another possible route, which is a far cry from free movement, would be to say that there is free movement of services for 90 days out of any 180 days. That would allow people to come temporarily, services provide and do business, get paid for it and then return home. If they were coming from France to the UK, they could not work in the UK for another 90 days after that, so there is an absolute brake on the period of time that they are allowed to provide their services, but it also would mean that businesses could take advantage of short-term mobility without having to go through the paperwork.

If people are going from the UK to France providing consultancy services, for example, they are earning money there, and they will be paying taxes in the UK without in any way recreating the free movement regime that a number of people—including you but also large numbers of the public—objected to, leading to the leave vote.

Q50 **Andy McDonald:** Dr Holmes, you touched upon this earlier, but I wanted to explore it a little further with you. You said in your paper that the one overlooked element emerging from the TCA was that the EU relaxed its principle of no cherry picking. The original position was that the single market was all or nothing, and that the UK could not pick and choose what disciplines it was willing to adhere to and get full access to those sectors without taking the full package.

The EU has indicated that it would consider further arrangements such as an SPS deal and limited expansion of free movement. How far do you think we might be able to push the EU in this direction, in this process



that is coming up?

Dr Holmes: It is a question that I do not have the answer to, but I will try my best. It is undeniably true that the rigidity on “all or nothing” has gone. They have made it clear that various agreements can be done. The principle is there, but the question is about how far you can apply it. For example, in the TCA itself, there is even mutual recognition of testing and certification in three sectors: most of aerospace, cars and pharmaceuticals. That principle is there.

It comes back to something Anton said. Britain can go along and say, “We would like these things. Give us these. We want youth mobility but not mobility for carers”. We are going to see that they may want to pick cherries, or they may want a whole bowl of fruit. Clearly, the narrower the list of Britain’s ambitions, the less we are going to be able to get. We need to say, “What does the EU want?” As various people said, we need to be looking across the board at what the EU wants.

A message I got in April from the Commission’s UK team is that they are aware that the UK is not in a position to align with the EU on everything. This is one of the points that David was making earlier. It is in our interests, for example, not to have a separate conformity assessment scheme, as we have the same standards and our regulations are based on those standards. The more we are prepared to open up what we are prepared to offer, the more we are prepared to get.

Youth mobility is different from freedom of movement. I once heard the Finnish ambassador giving a little talk where he said, “One of the problems we have is that we cannot recruit interns into the Finnish embassy”. Clearly, that is the sort of thing where they are prepared to do a little deal. The SPS thing is a separate deal. The existence of these mutual recognition agreements in several sectors implies that there would be other areas. In pharmaceuticals, for example, it is not a completely mutual recognition. There are other aspects of pharmaceutical testing that can be done.

We are going to have to explore. We are going to have to work out what the EU wants as well as what we want. The more we are prepared to offer, the more we are going to get. As I say, the text message I got says on the bottom line, “Step-by-step improvements are taking place and will continue if UK politics allows it”. This is a message directly from a Commission official. The five-year review is not particularly important in this process. There will be lots of things going on, but the TCA is clearly at the heart of an ongoing process.

There is one thing that I just wanted to throw in. Another senior EU official sent me a message at one point saying that you have to be careful about accidental divergence. If, for example, the EU introduces new car safety rules and we do not, then our cars cannot be sold in the EU. The retained EU law Bill was a default thing. If you move it around the other way so that you align except when you have a very good



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reason not to, then you are opening up a lot more possibilities. I am sorry that I cannot answer the exact question, but, if we look across at where the EU has interests, then we will be able to build on that.

Q51 Andy McDonald: You have opened up an interesting area of conversation. Anton, the TCA provides that neither the EU nor the UK shall weaken or reduce, in a manner affecting trade or investment between the parties, its labour and social levels of protection below the level that is in place at the end of the transition period. That does not mean no regression, and it does not mean that all existing safeguards will be protected. In fact, under article 6.2, title 11, it affirms the rights of the parties to depart.

On this issue of accidental divergence, if we take, for example, the strikes Bill that is going through right now, which is obviously a weakening of labour rights, while the Commission listens to your institute and what you say, are you picking up any concerns in the European Union about how that is impacting upon trade in that way? Should it, and is this an issue that your institute is paying any attention to?

Anton Spisak: On this particular issue, I have not picked up any signals from the EU institutions or member states that they are particularly concerned about those standards. They are concerned about the direction of travel on the UK regulatory model as a whole and the absence of strategic thinking about the direction in which the UK regulatory model evolves, especially the retained EU law Bill, which has been going through Parliament. They are concerned about that piece of legislation and the implications it would have, but not so much about other issues.

This is a broader point, but it addresses the question that Peter has talked about, which is the absence of political will and its necessity if we want to achieve any changes. There is quite a lot that the UK Government can do to improve that political will. One example of that would be trying to signal to the EU that they adhere to those high domestic regulatory standards, not only on labour regulations but on the environment, climate change, commitments to decarbonisation and so on.

One of the recommendations that we put forward in our report as an idea for the future Government is to take a very holistic assessment of the UK regulatory model post Brexit, and to decide from first principles about what standards we want to have as a sovereign nation. Do we want to align in some areas to EU standards or, indeed, standards of other jurisdictions where it is clearly to the UK's benefit, or do we have a very solid economic case for diverging?

We need to build that case from those first principles and then signal to the other side that there are some areas where the UK has an active interest in upholding the same level of regulatory standards. It does not mean having the exact same standards, because we will not be able to replicate those for the legal reasons that we no longer have the



mechanism for direct effect in law, but we can maintain the same regulatory outcomes and objectives.

The message I have here is that it requires a proper and deep strategy from the UK Government, and a holistic, systematic assessment of the areas where it would be in the UK's interests to maintain that and those where there is a decent case for divergence, either because the UK wants to build a competitive advantage in some areas, which may be the case, or because there is a space for some kind of regulatory innovation that would not be possible otherwise.

Q52 Andy McDonald: On workers' rights, which is it? Is it about divergence or is it about alignment? What is in the best interests of the working people of this country? What is the view there? That is what I am trying to get at. Is that something we should be concerned about?

Anton Spisak: It is a question that the Government should look at in proper depth and do a systematic assessment. There are existing mechanisms within Government, such as the Regulatory Policy Committee and so on, which would require a much longer discussion. In some sectors and areas, especially in highly regulated goods sectors, I believe there is a very strong economic case for continued alignment by default. In others, there may be a case for divergence.

Professor Barnard: I wanted to deal with your specific point about the level playing field provisions and the non-regression provisions. I know that the EU is watching extremely closely what is happening in the labour law field, and talking to all sorts of groups to keep a careful eye on what is happening.

You are absolutely right to say that the provision allows for divergence, but the moment the divergence affects trade then the EU has the power to intervene using the level playing field provisions. The million dollar question is what is meant by "affects trade". In respect of the non-regression provision, there is no threshold. It just says "affects trade". It does not say "materially affects trade" or "substantially affects trade".

The issue for the EU and the UK side is that nobody quite knows the scope of that provision. The closest guidance we have is a case involving Korea where there is a free trade agreement that has a similar provision. The relevant panel in that case did put a threshold in and say there had to be a significant effect on trade.

Then the question is what that means in practice. Had the retained EU law Bill gone through in its original form, with the sunset as a default, then it is very likely that the EU would have triggered those provisions. Now that the retained EU law Bill has now gone through with the default that everything must stay except the 600 pieces of legislation in the schedule, six of which relate to employment matters—and it must be said that those six are quite minor—it is very unlikely that the EU will in any



way trigger those provisions in respect of the retained EU law Act as it stands at the moment.

The more interesting question is what happens down the line as the UK decides to diverge. There is a letter that was written to the Lords assuring them that the UK was going to uphold good labour standards. Indeed, the changes that are currently being consulted on about working time and TUPE are unlikely to lead to a triggering of the level playing field provisions, but any more substantive changes may well cause concern. I know that the member states are watching very closely too.

- Q53 **Antony Higginbotham:** Dr Holmes, I am going to come to you first, but I am keen to get a couple of other views as well, so we might have to be brief. When the TCA was negotiated, relationships were clearly quite acrimonious. The EU would have said at times that the UK was not being a fair negotiating partner, and many in the UK, myself included, would have said the EU was not acting as a friend and ally would in negotiations. When the review comes up, we need to move beyond that and engage as friends and partners, as we all want to.

You have spoken a few times about our need to be clear about what our offer to the EU is, and presumably the EU needs to be clear what its offer to the UK is. Are there any specifics that you can think of and say, "The UK could offer this"? In return, what do you think the EU's offer should be so that it is a mutual exchange of trying to rebuild those relationships?

Dr Holmes: I would just like to make one point, reflecting on our previous debate. This will take place in 2026. We can be talking about these kinds of things in the meantime. It is useful that this Committee is picking up issues that have not been debated before. What you are saying needs to be public. We need to have a debate about where our interests are and what we can do between now and 2026. The breathing space may be quite useful.

Again, I am going to evade the question, but I remember the time when the Hungarians and particularly the Poles were negotiating accession. When you met Polish officials and German officials at the same time, the Polish officials would say, "Tell us exactly what we have to do to demonstrate our good faith to get a good deal"; the Germans would say, "No, we will watch to see what you choose to do".

We cannot take an excessively transactional approach. There has to be a package of what the UK thinks is in its own interests, either because it is directly in its own interests or because it is useful to improve the atmosphere of negotiations. We want to establish trust. As I say, I do not think we can do it point by point: "You give us this or give us that". It is a whole package where we decide we will do certain things unilaterally, as Anton said, certain things that we know are in the interests of the EU, and certain things where we will make offers, because they are just offers.



We have to look at it across the board. There is a whole string of things, such as membership of regulatory agencies or alignment with the EU ETS so that we avoid the paperwork as well as the charges involved in carbon border adjustments. I mentioned EASA. There is a whole series of things where, if we put a package together, we may appear to be someone that they want to co-operate with.

Q54 **Chair:** Because of the time, I will ask witnesses, if you have anything in addition, to please add it, but please do not repeat what we have heard already.

Anton Spisak: I very much agree with Peter. This is about establishing a new balance of rights and obligations. It is not about creating more rights and fewer obligations. It is about trying to create a coherent package where the UK is able to articulate not only its offensive asks—and there are quite a few—but to put something on the table and create a package of those rights and obligations. That is very important because that is the way that the EU thinks about this.

Professor Barnard: I would add access to universities without having to pay overseas fees. It is good for British universities. One of the things that we are asked most often is when European students can enjoy the privileges of a British university education without paying £40,000 or £50,000 a year in fees.

William Bain: Another issue that we have not raised so far in the discussion, but will be uppermost in the minds of many car manufacturers, is of course having a deal that suits both sides in terms of the rules of origin on the batteries for electric vehicles, avoiding 10% tariffs on sales of those vehicles on both sides.

Chair: Thank you so much to all of you. Just so witnesses are aware, the minutes from today's meeting will be sent to the members of the UK-EU Parliamentary Partnership Assembly, which, of course, I am also a member of, so that they all have sight of the issues when we next have our discussions with counterparts in the European Parliament. There will be a flow of information going in a useful direction.

I am sure that this Committee will be coming back to this issue at some point in the near, medium and long-term future, and we may call upon you again. Thank you to all four of you and to our first panel for getting us started on this discussion. We will bring the session today to an end.