HOUSE OF COMMONS

International Trade Committee

Oral evidence: UK-EU trading relationship, HC 1206

Thursday 22 April 2021

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Watch the meeting

Members present: Angus Brendan MacNeil (Chair); Mark Garnier; Paul Girvan; Sir Mark Hendrick; Anthony Mangnall; Mark Menzies; Martin Vickers; Mick Whitley.

Questions 109 - 142

Witnesses

I: Dr Emily Lydgate, Deputy Director, UK Trade Policy Observatory (University of Sussex); Dr Damian Raess, Professor, World Trade Institute, University of Bern; and James Webber, Partner, Shearman & Sterling.

Examination of Witnesses

Witnesses: Dr Emily Lydgate, Dr Damian Raess and James Webber.

Q109 **Chair:** Good morning and welcome to the International Trade Committee's oral evidence session on UK-EU trading relationships and the level playing field provisions. This morning we have just the one panel, a panel of three. We have Emily Lydgate, Damian Raess and James Webber. I hope I have pronounced names correctly. I will ask each of you to introduce yourselves, name, rank and serial number, on your own terms.

Dr Lydgate: I am a senior lecturer at the University of Sussex and also deputy director of the UK Trade Policy Observatory.

Chair: Thank you very much, the famous University of Sussex that has at various times come in to advise us on trade.

Dr Raess: Good morning, everyone. I am a lecturer at the World Trade Institute at the University of Bern. I am a political scientist and I specialise in the globalisation-labour nexus. Whenever I talk about the level playing field today, it will be in relation to labour and social standards. That is important to keep in mind when you listen to me.

Chair: Thank you, a very important area. Last, but by no means least, Mr Webber. With a "W" at the start of your surname, this might happen quite a lot.

James Webber: I am also the only witness without a doctorate.

Chair: It is good to be unique.

James Webber: Unique in many ways. I am a partner at Shearman & Sterling in Brussels and London. I am an EU lawyer, specialising in competition and state aid matters. I was the subsidy control state aid lawyer who wrote the subsidy control part of the star chamber opinion for the ERG, so I have been quite involved in the development of these negotiations and the development of the subsidy control rules in the TCA. Like Damian, I should say that my answers will come from a subsidy control perspective in respect of the level playing field.

My day job involves acting for companies and Governments, predominantly in front of the European Commission, in respect of competition in state aid matters.

Q110 **Chair:** Thank you, we will bear all that in mind. I will kick off with a general question. Could each of you explain what the level playing field provisions are and summarise it in the aspect of the trade and co-operation agreement? Who would like to kick off?

Dr Lydgate: We will maintain alphabetical order. The driving concern of the level playing field, which the EU is now describing as open and fair competition, is what happens if it is more expensive for domestic

producers than their competitors because of their more ambitious environmental regulation, higher labour standards, subsidy rules and so on, and how we can address these kinds of concerns in a trade agreement, given this is not something that you can control fully at the border. What the TCA level playing field tries to do is create some sort of equality, of conditions of competition in this respect, to prevent competitive deregulation across a pretty wide range of areas. We have competition subsidy controls, state-owned enterprises, taxation, labour standards, environment, climate and sustainable development. I suppose we will be spending the rest of the session looking into how it does this, so I will stop there.

Dr Raess: Level playing field provisions refer to a set of rules and practices that will ensure this level playing field in order to prevent distortions in trade and investment flows between countries. It is to prevent one country obtaining an unfair advantage of some kind by, for example, lowering its standards.

With respect to labour, one historical example is prison labour. If the UK were to compete with a country that exports goods made by prisoners who are undernourished and unpaid, that would of course be an unfair competitive advantage for that country and would hurt UK producers that produce similar goods. It is a question of social dumping or environmental dumping and how we can regulate precisely to prevent this.

In terms of labour standards, it is important to recognise that over time the ILO is the organ that sets international labour standards by which the members of the ILO have to abide. The ILO is the standard setter of so-called internationally recognised labour standards. There are some core labour standards that every country has to abide by, irrespective of whether they have ratified these conventions, by the mere fact that they are part of the ILO. These four core labour standards are the freedom of association and the right to collective bargaining, the elimination of forced labour, the abolition of child labour and non-discrimination in respect to employment and occupation.

I will transit a little to what is a level playing field in regard to social and labour affairs in the trade and co-operation agreement. One first commitment that the countries have taken, and which is quite standard nowadays in EU free trade agreements, is precisely committing to these four core labour standards, the so-called fundamental labour rights.

As part of this question I could elaborate on what is the level playing field as agreed by the countries in the TCA, or should I give over and we can come back to this later?

Chair: Yes, thank you. James Webber, it is all about regulations to ensure fairness and equality on all sides.

James Webber: Yes. I would start from a slightly different place, I suppose. I agree with Emily that the level playing field rules are about controlling aspects of an economy that affect trade, but that cannot be readily detected or enforced on a border. It is essentially how something is made rather than whether or not, say, a toy is painted with lead paint or would be unsafe or something. It is the way in which a product is made. Therefore there is a level of intrusion into each side's domestic arrangements because, as Damian was just saying, it goes to the terms on which people are employed, whether or not subsidies can be provided and so on.

That is the idea. The TCA and the level playing field provisions of the TCA are the most extensive level playing field-type arrangements that have ever occurred in a trade agreement anywhere in the world between two sovereign entities. The reason for that, in my view—and it is much, much more extensive than the EU has obtained in its other trade agreements—is the EU wants to prevent the UK from competing with it too assertively and essentially to export the EU's regulatory norms to the UK.

In subsidy control specifically, the EU's starting position was, in international law terms, quite amazing. It was that the EU's rules on subsidy control ought to apply to and in the UK. That was the starting position. If you think about that for a minute, it is a very surprising position for anyone to take in an international treaty, that, "You, the other party, are going to use my rules." It is a genuinely extraordinary position. Not much has been made of it in the commentary, but it was an extraordinary starting point.

I do not think the EU achieved quite that objective in the TCA itself. In the TCA itself—we will talk what subsidy control rules do—it did not get as far as that, and the UK did quite a good job, I think, of reframing the subsidy control rules so they were more equitable. Unfortunately, the EU has achieved that objective indirectly through the Northern Ireland protocol, which I know is not the remit of the Committee, but the existence of those provisions in the Northern Ireland protocol effectively mean it is the unexploded ordnance of the level playing field. Nothing much yet is being made of it, but the provisions of that protocol are genuinely extraordinary in subsidy control terms and will require the UK to effectively follow EU rules in their entirety in Northern Ireland, rather than the more balanced arrangement in the TCA itself.

Q111 **Chair:** What was it they were trying to achieve when they were negotiating these level playing field provisions? Did they both agree on what the point of achievement was, or were they trying to achieve one thing to later tell the other side that it actually meant something a little different to what they had agreed and would wrangle about it later? Was it a genuine coming together, do you think? I can see the point of view of the EU in the beginning. It is the big beast in the room. It is 10 times the size of the UK, or not quite, but it is obviously feeling its relatively muscular size to the UK. They both came together on an agreement. Do

you think they fully agree on the agreement?

James Webber: I think the UK Government's objectives were to recover sovereignty and to ensure that the level playing field—

Chair: Have they achieved that?

James Webber: Yes. In the context of the trade and co-operation agreement, yes, it is fair to say it has achieved that. The EU's objectives were to export its standards to the UK, and in part it achieved that as well, so there was a coming together to a place where a compromise was felt. We will talk about the subsidy control rules and how that compromise works, I expect, as we go through your questions. The subsidy control provisions do represent a compromise between the UK's desire to recover its sovereignty and its freedom of movement in these respects and the EU's desire to export its standards.

Q112 **Chair:** Certainly my shellfish exporters are at the mercy of the EU bureaucrats like they have never been before while we were in the EU. The bureaucrat definitely rules now.

Damian Raess, your perspective on exactly what they were trying to achieve: did they achieve it and did they achieve it to a mutually agreed agreement or is it something to wrangle about later?

Dr Raess: I want to follow up on James and actively second what he said with respect to the level of ambition of this agreement, that in fact with regard to the level playing field conditions it is the most extensive free trade agreement that we have seen out there. This is also correct with respect to labour standards. Pretty much everything that is in the CETA agreement in terms of labour provisions is there in the trade and co-operation agreement between the UK and EU.

On top of that you have, for example, new provisions such as the protection of information and consultation rights at the company level and also restructuring of undertakings. These provisions are new and they come—this is my reading—from the acquis communautaire because there are some European directives basically covering these issues. The EU has insisted that these are the existing levels of protection, and that is the starting point for this agreement.

This brings me to what the EU tried to achieve with this agreement. Clearly it wanted to prevent significant regulatory divergence due to geographical proximity and the trade volume involved in EU-UK relations, so it insisted on very high standards, the standards as they stood by 31 December 2020. Also it insisted on the so-called evolving level playing field, such that over time these standards should be adjusted, mainly upwards—that would be the view of the EU, I think—to avoid their becoming outdated with real-world developments.

The EU was largely successful in getting what it wanted in that respect. Just like James said, I think the UK's main objective was sovereignty, to

take back regulatory autonomy. It agreed to these high standards in labour and social affairs in order to get near frictionless trade—zero tariffs, zero quotas for goods—but this was the price to pay to sign up to these high labour standards.

Q113 **Chair:** From an EU perspective, was this maybe their most successful agreement in regards to standards and harmonisation? Is this the closest it has got anybody to its orbit in a trade agreement?

Dr Raess: I believe the UK Government's negotiating stance was also to say, "We agree to these high standards. That is what we want. We commit to this. We are not planning to deregulate." At least it is not on the agenda, and it has never been the negotiating position of the UK. Maybe I will come back to that later. There might be a risk in the medium or longer term that it might one day be on the table of the UK Government.

I think the UK managed to preserve its right to diverge, but the price to pay is relatively high with, among others, these rebalancing measures that have been entered into the agreement. Also, it provides scope to impose tariffs. We will come back to this discussion later, because this is one of the novelties of the agreement.

Q114 **Mick Whitley:** Damian, you were talking about high standards when talking about labour. What we have now in the UK is fire and rehire, where companies are terminating contracts and making them inferior. If you do not sign, you are sacked. That is not high standards, in my view. I know this was happening in France, but it was outlawed in Germany. I do not think we are sticking to these high standards. It seems to me this is a diminution of the conditions of workers. Similarly for ferry crews, they are bringing in foreign labour, sailing from the UK to Ireland on inferior terms and conditions. I do not see that as high labour standards. What is your view on that?

Click here to enter text.***Dr Raess:*** I guess it always depends a little on whether one looks at the glass half full or half empty. What I mean by high standards is in the comparative perspective. If you look at previous EU trade agreements, including CETA, South Korea, the so-called trade agreements of the new generation, which started with the EU-Korea agreement, the current agreement with the UK is more ambitious, has more provisions and has more stringent provisions.

The acquis Communautaire, to a large extent, is also written into this, although maybe without naming it, but the principles covered are aligned with, for example, the European working time directive and so on. Those could still be made more stringent, but there are always power relations involved and what you can get, power relations between unions and employer associations and the like.

I am not a specialist on the UK labour market to comment on some of the domestic legislation that you were referring to.

Q115 **Chair:** Emily, do you have a comment, a summary, a divergence or a harmonisation on what they were trying to achieve as regards the level playing field provisions?

Dr Lydgate: Your mention of shellfish made me realise that I should declare that I am a specialist adviser to the EFRA Committee. I am not sure if that is a conflict of interest, but obviously I am not speaking in that capacity.

Chair: Not at all. If you can help sort the shellfish issues, that is—

Dr Lydgate: That is next week, I guess. We all remember the nail-biting moments when the negotiation came down to the wire, and level playing field was at the heart of that. It is one of these most contentious issues in this agreement. What the compromise does is build that contentious element into the agreement through these provisions that allow more avenues for punitive tariffs and more avenues for calling the agreement into question. They have built in an element of instability, I would say. We will probably circle back to that a bit later.

I should say something briefly on the environmental element of this, because that is my area of expertise. I would say that the EU, along the lines of what other witnesses said, wanted more control. It wanted to lock down common standards as a reference point. The UK wanted a relatively light-touch approach, more traditional. It was very heavily inspired by CETA in its proposal. The core of that approach was that each side would maintain its own domestic standards.

I do think there is a genuine compromise in what came out of this in the end, in that the core of the approach is what the UK wanted, the traditional non-regression clause, but it comes with much stronger enforcement mechanisms than the UK was after and there is also some innovative stuff in there, notably on climate.

Q116 **Sir Mark Hendrick:** I am going to continue this theme about the level playing field provisions. It was an interesting characterisation of James's with regard to the EU exporting standards, as if these negotiations—maybe they should have done—started from a blank sheet of paper. The fact is we have been in the EU for decades and we have adopted these standards, so it is not as if they are anything new to us or they are not there and they are being exported. We already have them. The question is divergence, as in how and when and what the consequences of that divergence will be. We do not have the benefits of the single market, but we do have, to some degree, frictionless trade and an agreement there. So to talk about it as if this is a clean slate, let's start again, that is not where the country is and I do not think it should be characterised as such.

Generally, how do the agreement's level playing field provisions compare with those that the EU has typically agreed with other third countries? How do people feel about that? I will let you come in first, James, and then throw it open to the others, as I commented on what you said

previously.

James Webber: My export comment is perhaps best understood in the state aid subsidy rules, because the EU's subsidy rules are unique in the world. It does not have any domestic analogue. You are absolutely right that, in respect of labour and environmental standards, those directives are adopted at an EU level and then implemented at a member state level, so they effectively become our standard. In state aid, subsidy control does not work that way. There is no domestic equivalent, the rules are only at an EU level. That is what I had in mind.

Sir Mark Hendrick: They might not be UK law, but we have accepted them.

James Webber: We have in the past accepted them, but they only really work in the context of the EU institutional architecture, because the consequence of a subsidy in the UK or in any member state—let's say in a member state—is that you have to go to the Commission for approval.

Sir Mark Hendrick: Exactly. We will develop our own competition law, as we know.

James Webber: That is right. By leaving it, you leave all that behind because you are not going to be notifying anything to the Commission. In subsidy control it wanted to re-export that rule, re-establish the EU system that would have otherwise dropped away completely on Brexit, which makes it quite different to the labour and environmental standards that stayed on our statute book. That is a bit of a nuance as to why I said export.

In terms of your main question, how do they compare, we have all made the point that the level playing field provisions in the trade and co-operation agreement are very different to those in any other EU trade agreement. That stems from the fact that the EU and the UK started from a point of complete convergence on all EU rules. If the EU is negotiating an agreement with, say, Australia, it obviously cannot say that the starting point is that Australia has all the EU's rules on everything, because clearly that is not the starting point. It was bound to be different because the starting points were one of convergence, and the exercise is managing how you cope with a degree of divergence. It is very different, but it was bound to be.

If you look at what the UK is doing now with its trade policy, the UK is not seeking to replicate the level playing field provisions that are in the TCA with its other trade partners, at least not in respect of my area in subsidies. The TCA is a category of its own. That is the best way to understand it.

Dr Lydgate: That was an element of the tension here, that the EU wanted a more invasive, you might say, approach to the level playing field, accompanied by an agreement that was in other areas more basic, whereas the UK almost wanted the inverse of that. It wanted market

access provisions in certain respects, but not accompanied with those flanking measures on production conditions.

I would amplify that there are novel features here that are compromises between both sides. If we were to summarise what those are very briefly, the scope of the issues covered is wider, the commitments are more specific and the enforcement is stronger.

Dr Raess: There is a continuity in the EU's approach. I do not want to say there is a total discontinuity with its approach to trade labour linkages, at least compared to previous agreements, but I agree there are some novel elements also with respect to the scope of the commitments. The substantive commitments have been broadened, but all the elements like the institutional mechanism to monitor those commitments and their effective implementation, for example, with the involvement of the social partners, the so-called DAGs, the domestic advisory groups and the civil society forums of the two countries that are to meet in order to do the monitoring and the implementation. This is very much in place as well, so there is not too much difference. This agreement needs to be reviewed on a periodical basis. That is in there as well, related to some impact assessments of whether these provisions work and reach their targets.

With respect to the dispute settlement mechanism there are two steps. First, governmental consultations. If those fail, you can establish a panel of experts that will analyse the dispute and make some recommendations. Here also in the trade and co-operation agreement the report of this panel of experts is, in principle, non-binding, but the respondent party has to take them into account when it is proposing the measures to be taken to be again confined with the agreement.

To conclude, the real novelty here that I see—and we can come back to that—is the non-regression provisions, which are also called non-derogation clauses. These are not new, I would argue. What is new is the so-called evolving level playing field. Although it is not a dynamic alignment, the countries in the UK commit to "continue to strive to increase their respective laws and social levels of protection". That is Article 6.2.4. They are committing to best efforts to continue improving the labour standards over time. This is new and it is built into the agreement, whereas in the past the EU would have had to renegotiate the trade and sustainability chapter with a partner if it wanted to update the provisions. What is new—and I am sure we will come back to that later—is the so-called rebalancing measures and the review of the agreement itself.

Q117 **Sir Mark Hendrick:** As a follow-up—James has answered a little bit, and I wondered what other people's take on it was—how much is known about the approach the UK is taking to level playing field issues in its other trade agreement negotiations? James was saying that is not a major consideration. If it is not, why not? Do you want to start again,

James, because you touched on it? I will ask the other witnesses afterwards.

James Webber: The UK's general approach is to take a more traditional and conservative negotiating position with respect to its other free trade agreements with Australia, New Zealand and so on. Subsidy control in particular is only dealt with very lightly in even the most advanced free trade agreements, because it is such an intrusive and politically sensitive matter. Subsidy control is talking about controlling the public spending decisions of your trade partner, and you can immediately tell why that is sensitive.

The provisions of the TCA require the UK, as the trade partner with the EU, to set up an independent regulator or an independent body to have an appropriate role—it is a little bit open-textured—and then to require the UK courts to have powers to intervene and consider subsidy measures and provide recovery and for the intervention of the other trade partner in court proceedings. That level of intrusion is completely outside the norms of a normal free trade agreement. The UK, as a policy matter, wants to have a more conservative approach to its free trade negotiation because it wants to do free trade agreements. It wants to do lots of free trade agreements and get the benefits they bring in terms of lower tariffs, increased market access and so on.

The second element that I think is true is that it is completely unrealistic to expect Australia, in a trade agreement with the UK, to set up a brand new court-based system in which the UK can participate to enforce public spending decisions in Australia or wherever. It is unrealistic, and the EU is not asking for it either. The EU has never asked for subsidy control provisions like we see in the TCA in any of its free trade agreements, also because it is completely unrealistic. That is why we see the difference in approach.

Q118 **Sir Mark Hendrick:** I can understand that as far as subsidy control is concerned, but in terms of other aspects of the level playing field that might not be the case, for example. Also the fact that the EU is a much bigger trading partner and the volume of trade and the percentage of imports and exports is so significant, it could make a major difference to both the EU economy and the UK economy, so I can see why it has been done in that case. Clearly with the implications for the likes of Australia or New Zealand, they are much smaller fish, so to speak, and therefore I would not have seen it as that critical.

Outside of subsidy control, perhaps one of the other witnesses could comment on how relevant you think these level playing field provisions could be or might be, had the Government the mind to implement them.

Dr Lydgate: In terms of future UK FTAs, there is not a crosscutting strategy for the level playing field in the UK, so we have to look to individual negotiating objectives. These tend to be quite high level, but I do not think there is overwhelming evidence that the UK is keen to

replicate the approach that it has taken to the environmental level playing field. For example, there are mentions of climate in the Australia, New Zealand and US objectives but nothing on, say, requiring that both parties have an effective approach to carbon pricing, which is a more ambitious approach that the TCA includes.

It is probably worth mentioning that the Trade and Agriculture Commission report has recommended that we implement an FTA strategy that seems to be inspired by the TCA rebalancing mechanism. It is also worth mentioning that a lot of our trade agreements are rolled over, and some of them have within them pretty historic EU provisions on environmental co-operation. We have published something tracking environmental provisions in rolled-over agreements, if anyone is interested.

Dr Raess: I have not followed very closely what the UK is trying to negotiate in terms of labour provisions in its new trade agreements it is negotiating or has concluded. Switzerland and the UK have also signed an agreement. Swiss-EU relations, as you might know, are regulated by the so-called bilateral agreements that date back to 1999. There is a heated discussion going on right now on a new framework agreement that would resettle these relationships, because they also need to be updated, some of these agreements. There is a big disagreement, and currently the situation looks like the negotiations will fail. Our federal councillor from Switzerland will go to Brussels next week. We can also come back to that later for the last question.

In the bilateral trade agreement between UK and Switzerland, they took over the agreements that existed between the EU and Switzerland, so there is no innovation there and there was no interest, it seems, for the UK to bring over the higher labour standards it has now in the TCA and take those over into the trade agreement with Switzerland. Clearly the UK seems not to be demanding of some third parties the same level of commitments with respect to labour, which is not that surprising.

Paul Girvan: I go back to a comment made by James earlier in this session, where he said that we were taking back sovereignty. From a Northern Ireland perspective we believe that the protocol has effectively—we do not have full sovereignty. We take EU rules and apply them in their totality.

To come back to the level playing field approach—apologies for the digression here—I do not believe that we have been competing on a level playing field. I look at our closest neighbour, the Republic of Ireland, which has basically played fast and loose with what have been deemed to be state aid rules, with no sanctions and no action being taken. It is what one member state interprets as state aid rules and another on what they implement. It seems to be very much left to their own discretion, as opposed to what happened with the UK. In the United Kingdom we seem to have adopted every rule that has been put down and imposed it on our businesses and on our opportunity to further expand. That is from a

Brexiteer perspective. I believe we have been shafted and are being punished by Europe for leaving.

Chair: I am not sure if there was a question there.

Q119 **Paul Girvan:** It was just to come back on James for having said that we have sovereignty in the United Kingdom. All other regions have it, yes, but Northern Ireland, no.

What would be the implications for the UK-EU trade relationship were future EU agreements with countries such as New Zealand to include higher level playing field standards than those in the TCA?

James Webber: You are absolutely right, and hopefully I was clear enough in my opening that the decision or the acquiescence in leaving the Northern Ireland protocol in place, as well as the TCA, is disastrous. The Northern Ireland protocol is a disaster.

From a subsidy control perspective, it is not understood anything like closely enough just how bad those provisions are, because they require Northern Ireland to comply with the EU state aid rules, the entirety of the EU state aid rules. The jurisdictional perimeter—what we call Northern Ireland for this purpose—is anything that affects trade north and south. The Commission has published a note saying that what affects trade north and south is anything that could advantage someone in the north, or a trade opportunity lost in the north.

You could have Nissan in Sunderland, not in Northern Ireland, subsidised to produce a new battery vehicle, and one of those battery vehicles could come for sale in Belfast. That is a sale lost to Volkswagen, and therefore you have affected trade north and south and therefore the subsidy in Sunderland is also caught by the Northern Ireland protocol. That is why I describe it as unexploded ordnance. The whole thing is completely unworkable and should have been replaced by the TCA regime for subsidy control at the time of the negotiation or, if that were not possible, as a matter of extreme urgency now. That is on Northern Ireland.

On your other point on what the implications would be if the UK was to include higher standards than are in the TCA, from a subsidy control perspective it is inconceivable, for the reason I said previously. The TCA's provisions are very, very intrusive and reflect the starting point of both parties. I do not think it is going to happen, frankly, that you have a subsidy control provision in a trade agreement with any trading partner where we, the UK, are requiring that partner's domestic court system to respond to local subsidies and requiring that partner to establish its own domestic subsidy control regime. We would not have the leverage to achieve that, even if we wanted to.

I say that because the EU has been trying to export its regime of subsidy control in its free trade agreements for some time and has not yet succeeded. If the EU has not succeeded, presumably we will not either, and I do not think it is an objective. From a subsidy control point of view,

the TCA is the high water mark and we should not worry about what would happen if we did anything over it with other countries.

Dr Lydgate: The level playing field of the TCA from an environment and labour perspective is focused on a country maintaining its own domestic standards, so the UK and the EU maintaining domestic standards and keeping pace with those standards. In that sense it is not directly relevant whether those standards stem from another FTA. There is nothing like a most-favoured nation clause here where we would be pressured to match those obligations.

You might argue that another country could influence the EU to increase its ambitions. For example, if New Zealand wants the EU to agree to commit to a fossil fuel subsidies reduction, then in the TCA context maybe the EU could revoke the rebalancing mechanism and say that the UK was failing to keep pace and this was a significant divergence that materially impacts upon trade because it drives up prices of fossil fuels in the EU and inflicts some tariffs. This is all hypothetical, but to trace that through. Again, this is more about what the EU is doing on the EU level than a New Zealand FTA per se, but maybe I am not fully understanding the question.

Dr Raess: I agree with Emily that, hypothetically, if the EU signs with New Zealand, for example, provisions that are even more ambitious and more stringent on labour or the environment than what it has currently with the UK, the EU over time might change its domestic laws to adapt to this higher standard, and this could lead to some divergence with the UK and precisely bring up this issue within the TCA and whether the UK would have to align with the way the EU has moved upwards. Theoretically it is possible.

With regard to labour and social standards, it is quite unlikely because European countries have among the highest labour standards in the world and I do not think there is any country out there that will try to impose even higher standards on the EU, so it is quite unlikely.

Q120 **Paul Girvan:** How might the TCA's level playing field provisions constrain the UK's ability to negotiate new agreements with other major economies such as the USA?

James Webber: I do not think they would.

Dr Lydgate: I do not think they constrain us much at all, which from the UK's perspective was very much the objective. But there are a couple of grey areas in the environment realm. I will just mention one briefly, which is that, unusually for an FTA, the precautionary approach features quite heavily. Obviously the US opposition to precaution is notorious and other FTAs like CPTPP are not particularly supportive of it either. Not in the SPS chapter, where you might expect, but in the level playing field chapter, the EU and the UK agreed to uphold the precautionary approach. Also non-regression requirements apply specifically to antibiotics,

decontaminants and chemicals. Theoretically, if the UK started to produce, say, chlorinated chicken, the EU could initiate a dispute alleging it had regressed in the area of decontaminants and had failed to uphold the precautionary approach.

This all sounds quite constraining, but I am struggling to understand what this means in practice and why it is there, because the EU already bans the import of chlorinated chicken or chemicals or antibiotic use that does not conform to its domestic requirements.

Q121 **Paul Girvan:** I do not mean to be wrong or contradict what you are saying, but is it not a double standard where you complain about chlorinated chicken, yet you will buy lettuce that is wrapped up in a plastic bag that has been washed in chlorinated water prior to being sent to the supermarket?

Dr Lydgate: I was just using chlorinated chicken as a rhetorical device, because it is the one that is often brought up, but it applies to a cross-section of regulation. They list chemicals and antibiotics as well. The point is that there is some uncertainty about how this might be used in practice. My acting hypothesis is that this was just put in there to appease some of the member states that felt particularly strongly about this and it will not get up to much in practice, but I could be wrong on that.

Q122 **Paul Girvan:** In your own area of expertise there has already been an agreement. In fact, as far as the United Kingdom is concerned, we would like to increase standards in many areas where it is possible to do so, and be a leader rather than a follower in many areas. That already has been demonstrated by this Government's approach.

Dr Lydgate: The bigger question here is whether these level playing field provisions are going to impinge upon product standards rather than wider production conditions. Generally, the EU's position historically has been, "We don't need to worry so much about product standards in these level playing field provisions because we already police those at the border." This is about things that are not policed at the border. I think there is a bit of a grey area, so it will be interesting to see what happens on that.

Dr Raess: On this point I fully agree with my co-panellists. I do not see how the TCA would constrain the UK in any way in its negotiations with the US. That said, with regard to labour provisions, the UK can expect the US also to come with some high standards, because we know it insists on highly enforceable labour provisions in its trade agreements.

In my work I developed a new dataset that systematically codes labour provisions in trade agreements. If you look at the average number of labour provisions per agreement for the US and the EU, the US has even more provisions than the EU. It has very strong labour provisions in its trade agreements. This has even been increased in NAFTA 2.0. Just a

side note on what to expect in terms of the labour chapter as the UK starts negotiating with the US.

Chair: Just for general information, we are well over half our allotted time already, but that is purely for guidance.

Q123 **Anthony Mangnall:** Might I come to Dr Lydgate on the environment side of things? The Chair raised the point about the shellfish sector. The UK has higher regulations in testing our water gradations through the Food Standards Authority, yet the European Union has lower standards of testing its own water. How does this match up with the point about a level playing field? We are pushing a higher level of standard for testing our waters and it is lower, yet we are at its mercy as to whether or not it now accepts our produce from our waters.

Dr Lydgate: This is a bit of the same grey area that we were talking about in the context of the precautionary principle, because normally we think of non-regression clauses as not being something that we would use to tackle issues with product standards. In this case you have SPS, you have fisheries and that is where these kinds of things are normally hashed out. The question—and it is an important question—is whether the UK could invoke this non-regression logic or a failure to keep pace logic and challenge the EU on a product-related issue.

Q124 **Anthony Mangnall:** Thank you, that is a helpful answer. Can I ask you—and please tell me to get lost if it is an unfair question—do you feel confident in the mechanisms to be able to challenge the EU that are in place within the agreement thus far?

Dr Lydgate: There are lots of mechanisms to challenge the other party, and that is a notable feature of this agreement. It builds in multiple channels for one side to challenge the other if it gets to that contentious level. Definitely, yes.

Q125 **Anthony Mangnall:** I am going to come to my main question in a second. We are hoping the deal is going to be ratified as soon as possible by the EU. It looks like we have a number of specialised trade committees to be set up. Do you think those trade committees will be the appropriate conduit to be able to deal with product issues, but also the general points that we are discussing here in terms of level playing field and so on?

Dr Lydgate: You have a Partnership Council, and that Partnership Council is able to discuss and amend elements of the agreement. Then, as you mentioned, there are specialised committees that correspond with more or less all the substantive chapters, including on the level playing field, that are able to discuss issues that arise. So there is definitely scope for resolving issues before they come to disputes and tariff retaliation.

In a sense, you can think of an FTA as an elaborate scaffolding for an intent on both sides to co-operate for mutual benefit. What you would

hope is that, if the will to co-operate is there—and that is very important for FTAs—issues can be resolved. But if they cannot be resolved, there are routes for retaliation.

Anthony Mangnall: We can all say, those of us who represent the shellfish sector, this is something that needs to be dealt with quickly, as the EU seems to have changed its mind on what was agreed originally in the agreement last year.

Chair: Europe is king at the moment, is it not?

Q126 **Anthony Mangnall:** It is disappointing that it has not stuck with what it agreed, and hopefully these trade committees will be able to sort it out.

James, how much do you feel that level playing field commitments constrain domestic policy?

James Webber: They do constrain domestic policy, and that is what they are designed to do. That is why they are so contentious. This discussion, like pretty much all the discussions that we have about the level playing field, always starts from the mental assumption that it is the UK trying to duck out and escape, but these provisions are mutual. They are expressed to be mutual, and they operate mutually.

On the subsidy control end, the EU clearly wanted to avoid having to make any changes to its domestic arrangements, subsidy control and its state aid rules, as part of this negotiation. I think it achieved that. The domestic impact on the EU is not going to require it to change any law, it is fair to say, but there is a domestic change in that it will have to treat effects on subsidy within the EU. If those subsidies have an adverse effect on the UK, it will have to consider that to a much, much greater degree than it would have to consider it in respect of any other third country.

If you imagine the EU looking at a subsidy the Czech Republic wants to pay to an automotive manufacturer to build a new car factory, if the alternative site for that car factory is in the UK, the EU is going to be obliged to think about its obligations under the trade and co-operation agreement and whether or not that is going to cause an effect on trade and investment between the UK and the EU. In practice what that means, because of the European Commission system, is that the UK will effectively get sucked in and treated as if it were another member state.

That is very protective of the UK because the EU has a greater propensity to subsidise than the UK does historically. Of course there are certain member states in the EU that have much greater fiscal strength than the UK does, Germany especially. That is net protective and will be different treatment of a third country compared to other countries the EU has a trade agreement with, like Mexico.

Q127 **Anthony Mangnall:** I will wrap up because I know we have a number of other questions, but we do tend to couch this always as a race to the

bottom rather than an improving of standards or the benefits around this. Damian, do you get the sense that sometimes the level playing field is halting the progress that could be made in different areas and different fields?

Dr Raess: Do you mean whether it is holding back progress we could make in this particular field? Why would it?

Anthony Mangnall: Let's take environmental policy, for example, and using the fishing sector as well. We may decide that we want to use a different type of net or a different type of process, which may have a cost on our fishermen but benefit the fishing stocks or whatever it may be. We can take that decision, but we then find ourselves looking at Europeans fishing in a different way. It would therefore limit our ability to catch as much, but we would be doing a better job environmentally. Is there a restriction to this? I might be barking up the wrong tree and it is just our own choice.

Dr Raess: The agreement stipulates that there is this so-called right to regulate. The right to regulate means basically that any party can set its policies and priorities the way it wishes to, but this needs to be consistent with international rules and obligations, as well as with the obligations as stipulated in the agreement.

This is a thin line. When can you change your domestic laws and call upon the right to regulate, and when does it need to be aligned with international obligations? For example, if you change some laws in the public sector and the public sector is not exposed to trade, and hence it would not have any implications for trade and investment flows, that is easier to implement than in the tradeable sector where it can have an impact on trade and investment flows. That is also why, at least for the non-regression clauses, the TCA stipulates that you cannot diverge in a way that affects trade, because this would create an unfair competitive advantage.

It is true that it is constraining, these level playing field conditions, but as James said, they are meant to be so by design. We have to see that this is part of a compromise. The UK was offered to remain in the customs union, the so-called soft Brexit. The UK did not want that because it meant it could not take back sovereignty in the way it wanted. It wanted to take back control over immigration, for example, one of the four freedoms. Hence you have border controls, for example, on imports and the like.

If you had stayed in the customs union, you would have taken over the acquis communautaire or stuck to the acquis communautaire as it is. Now it is a compromise where you might be able to deviate, but there might be a price to pay because the EU might be able to impose some tariffs if you deviate too far from the current level playing field. It is a compromise solution, but the door remains open for the UK to deviate if it wants to. There is a price tag to that, but it is the UK's choice.

Dr Lydgate: That example illustrates what the rebalancing mechanism could do for the UK. If the UK decided to raise its biodiversity or other types of environmental ambition through regulation that made it more expensive for UK producers and the EU did not, the UK could then have an opportunity to try to prove that this had a material impact on its trade and investment and then impose a tariff. It is very much about providing a mechanism to protect UK producers in that type of situation.

Anthony Mangnall: Thank you very much. That is very helpful.

Dr Raess: In a way, these mechanisms are leading to a race to the top in environmental and labour standards between the UK and the EU.

Q128 **Mark Garnier:** James Webber, you mentioned that during the future relationship negotiations you put forward a set of proposals for compromise between the UK and the EU on subsidy control and that was done with the ERG, I think you said. More importantly, what were the specific issues that you were trying to address? Do you think they have been dealt with within the agreement?

James Webber: Yes, I published a paper last summer on what the compromise could look like. That was done in the context of the starting positions of both sides, which were very far apart. The EU started with, "You are going to have all our rules," and the UK started with, "We are going to have the Canada subsidy rules," which would basically mean we tell the EU what we are doing once every couple of years. The difference was extreme. The compromise proposal was an attempt to bridge the gap. The arrangements in the TCA largely follow the proposal I put forward. Maybe that is because it was one of the only ways it could be done, but it was obviously gratifying.

What I was trying to do in designing that compromise was to say that the subsidy control rules between two trading partners should only bite where there is a real effect on trade, a real distortion caused by either side's subsidy practices. That is very different from state aid rules, which do not have any regard to effect on trade and competition. There is a legal test, supposedly, that to qualify for state aid in the EU it has to affect trade in the EU, but in the way that has been interpreted the hurdle is so low it captures pretty much anything. The first job was to try to make sure that the rules only gripped on subsidies that had a serious effect on trade and competition.

Q129 **Mark Garnier:** On that specific point, is this a difference between the WTO rules and the EU rules on this type of thing?

James Webber: Yes. The WTO rules and the EU rules have a similar definition of subsidy—not quite the same, but very similar—but the WTO rules do not have any procedural mechanism, so there is no way of prechecking that subsidies comply with them. The WTO rules are based on effects. You have to prove an effect on trade before you can engage the WTO rules, whereas the EU rules do not have that. This demonstrating an effect is an import from the WTO Agreement on

Subsidies and Countervailing Measures. Conceptually it has come from that direction, although the mechanisms in the TCA are more advanced and more ornate than in the WTO SCM agreement.

We will talk about rebalancing in a second, but subsidy control rebalancing is the key enforcement mechanism. If the other side is subsidising in such a way that causes trade distortion, you are entitled to retaliate, but the bar for using that retaliatory tool is very high, which again is consistent with what I said last summer. There has to be a serious risk that the subsidy does that; it has to have a significant effect on trade; it has to be based on evidence, rather than just the concept of a causal link that a lawyer could describe; there has to be evidence; and it has to be limited to the minimum necessary, retaliation has to be proportionate to the harm that is so caused. All that is supervised by the arbitration tribunal. That retaliation mechanism is pretty much exactly what I was suggesting last summer, and it is very pleasing to see that.

Of the two areas where the TCA differed from my proposal, the main one is in respect of Northern Ireland. I always took the view that if you had a subsidy control regime inside the TCA that was sufficient to provide a level playing field between the UK and the EU, both sides were essentially accepting that that was enough and therefore you should not need to require Northern Ireland to simply follow the EU rules and to literally notify all its aid to the European Commission for approval. That is quite wrong, in my view. If the TCA subsidy regime is effective, it would be effective in Northern Ireland just as much as it is for the rest of the UK.

The other area where there is a significant difference between what I said and what the TCA ended up with is in respect of tax. We might talk about tax later.

Mark Garnier: I am coming back to you on tax.

James Webber: Tax is another big difference.

Mark Garnier: You could save your insight for that. That is absolutely fine. We could go on about this for hours, but I think we are beginning to run out of time. Thank you very much indeed for that.

Q130 **Mick Whitley:** This question is to Damian and Emily. The UK-EU agreement's non-regression provisions regarding labour standards and the environment say that measures can only be deemed to be in breach of those provisions if they can be shown to have affected trade or investment. How can such effects be proved?

Dr Raess: The non-regression provisions are relatively standard in EU trade agreements. They are also called so-called non-derogation provisions. The idea is to ensure that the level playing field is being upheld: another country cannot unilaterally lower its standards in order to gain a competitive advantage and increase its trade or be attractive for inward investment. Indeed, they are trade-related.

It is very much the same in previous EU agreements. You are not entitled to derogate from the current levels of protection in order to boost trade. Therefore you need to demonstrate in any possible dispute settlement that you have been hurt by your partner, which has lowered its standards and has increased trade.

You might have heard of the dispute between the US and Guatemala, the first dispute that went to dispute settlement. The US lost the case because it could not demonstrate that the action or inaction of the Guatemalan Government regarding the failure to enforce its domestic laws in respect of freedom of association and collective bargaining was affecting trade.

It is a heavy burden of proof to demonstrate. I think it makes the likelihood of winning a case, a complaint, harder to some extent. On the other hand, I would say—this question should be addressed to an economist, but I think there is not an economist among the panellists—that I think the economists have the tools to investigate and assess whether a change in domestic labour regulation has had an impact on trade. It is possible to demonstrate such links, and hence to bring it up in a court case and to win a dispute. I do not think it is impossible to win a case in court.

Dr Lydgate: This is an important question because, if you are trying to argue that the other side has regressed, you also need to prove that it has affected trade or investment. How do you do that? How do you prove such effects? I think there is a lot of room for interpretation here, which means that the particular panel will have a lot of sway.

Damian mentioned the US-Guatemala dispute, where there was a relatively high evidentiary threshold for the causal link. Recently, in an EU-Korea dispute, the panel made that test much easier to pass. As far as I understand it, they just said fundamental labour rights are integral to trade and sustainability, and therefore labour regulations affect trade: QED, causal link made.

There are very few precedents from which to draw inspiration, particularly in the environmental area where there are no precedents. What this means is that the individual panel will have quite a bit of influence.

Q131 **Mark Garnier:** James, do you want to crack on about the tax stuff and how it interacts with the subsidies regime?

James Webber: Tax is always a complex issue. The level playing field provisions, insofar as they speak to tax directly, are fairly light. I think 5.1 of the LPF chapter talks to information sharing, adherence to the OECD standards and so on, and that section of the level playing field is not subject to dispute settlement. The level playing field bit that has tax at the top of it is pretty uncontentious. My beef with the tax provisions comes from the way that tax is imported into the subsidy control rules.

This is because the definition of subsidy has brought in the EU's concept of the reference framework, which is an extremely pointy-headed area of subsidy control, state aid.

Essentially the ECJ, in trying to design a system for identifying when a tax counts as a subsidy, has created this thing called the reference framework. It is highly controversial and very difficult to apply. It is practically impossible to apply to a given set of facts in a predictable manner in advance. It introduces complexity and uncertainty into the tax regime, especially when you are looking at digital goods and services, where profits are highly mobile internationally. Tax residence of a company may depend on the tax ruling that that company can get about its individual tax arrangements.

If you look at Apple, Google and a lot of the tech companies that are present in Ireland, their presence in Ireland is dependent on tax rulings from the Irish authorities. This goes a little bit to Paul's comments. The Irish have taken a very aggressive view as to how generous their tax rulings can be, crudely. The European Commission has been attacking this, belatedly and not that successfully. The court has essentially set up this reference framework as the way of trying to work out whether a tax regime is a subsidy or not.

The real difficulty with it is that, broadly, you are trying to work out whether a measure is specific. That is a general tax measure, so obviously a tax rate is general, everyone pays whatever the income tax or the corporation tax level is. An aid or a subsidy has to be specific to an individual company, but of course tax measures discriminate between companies all the time. Public spending measures discriminate between companies all the time. If you build a motorway junction near an Amazon logistics depot, that will obviously benefit Amazon more than it benefits someone else. That does not mean it is a subsidy.

Q132 **Mark Garnier:** There is an interesting dilemma. A tax regime achieves many different things. Everybody thinks about things like paying the NHS and the police and so on. Clearly it does, it raises revenue, but it is also about behavioural outcomes. I am going to ask Emily about the environmental stuff. You can also use a tax regime for fiscal policy. If your interest rates are very low, one alternative you have is reducing your tax rate to increase money supply. It is a fiscal thing. You can incentivise people to do good things; you can do any number of different things. Ultimately, you can subsidise a sector to try to be more competitive globally. How do you differentiate?

James Webber: It comes down to whether a tax measure is specific or whether it is general. The traditional way of measuring that was if it was generally applicable, if anyone who met the criteria could benefit from it, it was general. If a tax measure was specific, for example, only for companies in one sector or for an individual company that does not have to pay its national insurance contributions and so on, that is clearly a subsidy.

The traditional test was based on the availability of a tax measure. The EU's reference framework tries to make that much more sophisticated or tries to make the subsidy rules catch more tax measures by saying, first, we have to define what the normal system of tax is and whether the tax measure that you are attacking is an exception to that normal system of tax—

Q133 **Mark Garnier:** But very quickly, what about specific taxes where people have made an unusually large amount of money? For example, the oil and gas sector, where when you see a constriction of supply they make a huge amount of money because the price goes through the roof. Isn't this the opposite of that, where you can argue that you have companies almost being punishing.

James Webber: Yes, it could be the opposite of that, but if that is just a function of someone making a lot of profit in one year, that would be a function of the general regime. The real mischief here is that using the EU's reference framework tests to work out whether a tax measure is a subsidy or not is extremely difficult and it requires: is the measure part of the normal system of tax or is it an exception to the normal system of tax? Conceptually that is a very difficult thing to do.

You have two tax measures sat next to each other, a tax rate and then a rebate for some reason, or amortisation of R&D expenses being more generous than amortisation of other expenses. Are both those things together part of the normal system of tax, or is one an exception from the normal system of tax? Lastly, can that exception be justified by the objectives of the normal system of tax? This is all gibberish.

A tax regime follows a large number of different and competing objectives: fairness; maximising revenue; incentivising positive behaviours; and environmental behaviours. Those objectives are not in a hierarchy. They are all together. They are all different things that the tax regime is trying to achieve. When you look at these cases being litigated in the ECJ, unsurprisingly the taxpayer points to one objective, the member state points to a second and the Commission points to a third, and they are all genuine objectives of the tax regime. Then the court decides, for instance, "The objective of the tax regime in this circumstance is X."

Importing all this essentially bad law—it will all be straightened out eventually—means that the UK's tax design will have to consider a great degree of complexity about whether a tax measure counts as a subsidy or not, and I think that is very unfortunate.

Q134 **Mark Garnier:** Emily, taking all of that and using an example of climate-friendly products, if the UK levies zero VAT on climate-friendly products, is that going to be a tax subsidy or is it going to be absolutely fine?

Dr Lydgate: This is a timely question, looking to the G7 and the COP, because there is a lot of global movement on carbon pricing and carbon

taxation, but also a lot of uncertainty about how countries will work together or co-ordinate in this area.

What the TCA does specifically on climate and climate tax is pretty ground-breaking because, for the first time in an FTA, it obligates the EU and the UK to maintain effective carbon pricing and to work towards linking ETS schemes. This could be a model for other countries in forming the basis for exempting each other from, say, border carbon adjustment.

Thinking about your specific question, thinking through how we would deal with it if, say, we were taxing producers more and they were facing higher tax burdens, the TCA also affirms the net zero ambitions of both sides. We could try to argue that the EU was regressing in its ambitions, so that would be non-regression logic. We could try to apply tariffs on that basis. We could argue that there has been significant divergence and a more ambitious approach is needed. It seems to me that, given we have broadly shared targets and objectives, probably working with the EU to avoid these kinds of tariffs, rather than working against them, might be more useful.

Mark Garnier: Angus, since we have only six minutes for a lot more questions—

Q135 **Chair:** We are squeezing the envelope. There was a reference there to Irish independence out-muscling the European Commission when it came to the Apple tax. It was a staggering amount of money, about €500 million per county in the Republic of Ireland that the Irish Government has refused to accept from Apple. Bizarre. I understand there is a long-term argument. You might not agree with it.

Damian and Emily, how much divergence between the EU and UK do you expect in the short to medium term? A lot has been made of the right to do it. Will those rights be used by anybody? Is it sensible to do so?

Dr Lydgate: This is a fun question. My sense is that the UK is very much finding its feet as to what it wants to do with this regulatory freedom. Government have canvassed businesses on what they want to change, and there have been no overwhelming bonfires of Brussels red tape, but obviously some divergence is already happening. We are not keeping pace, for one thing, and some areas are emerging where the UK consciously wants to take a different approach. I am thinking about things like gene editing.

Then there are other areas where we are moving in the same direction, but maybe we get there a bit differently, things like climate change or the circular economy. Obviously the most relevant area to the level playing field is regulatory divergence, where one side sees it as regression or a failure to keep pace.

Q136 **Chair:** What I hear from some chemical or pharmaceutical companies on the REACH area is that one of the things they do not want to be doing is spending extra money to do the same stuff but having no further

advantage, which is basically where they see this process taking them.

Dr Lydgate: Yes. In a sense an adjacent point, we have this process of adapting EU regulation to domestic rulebooks, which implies pretty significant changes in how we do those processes and also pretty significant expenditure replicating some of those functions, such as the chemicals database. I am not sure that would be characterised as regression per se, but there have been things in the news—

Chair: A diversion, perhaps.

Dr Lydgate: Yes, it could be, if we do not list the same number of hazardous chemicals in the future as the EU has done, for example. Labour standards have been in the news. There has been controversy about the proposal the UK floated on the working week. When we gave emergency approval for neonicotinoids, Barnier made a comment. A few things have cropped up, and this is obviously an area to watch.

Chair: Damian Raess, do you have any comment on divergence? What do you expect in the short to medium term?

Dr Raess: With respect to labour, I do not expect the EU to budge much. I think there will not be much action there. I think they will commit to what is in the agreement.

As far as the UK is concerned, if anything, there might in the medium term be some incentives that build towards the type of political economy that the UK is, to diverge by lowering standards. We know that the UK, for example, has an opt-out with regards to the directive on working time. That was an issue that has been part of the UK's participation in the EU over many years. I think in the end it has to do with what type of political economy the UK is. We can look at this a bit from a comparative perspective.

One point to mention is Manchester capitalism. The idea that economic liberalism should form the basis for government policy is an ideology that is relatively strong in the UK, at least stronger, I would say, than in some continental European countries. It also means that the median voter is maybe situated somewhat more on the centre right in the UK than elsewhere, and so maybe favours laissez-faire as opposed to Government interventions. That of course has implications for labour market outcomes.

In addition I would say that, relative to Germany, the UK has relatively weak social institutions that socially embed the market. What does this mean? It also means that at least parts of the UK's economy, to simplify a little bit, are competing based on price as opposed to quality. To restore competitiveness, of course a trick is to reduce labour standards in order to save some labour costs and boost your exports. This is the so-called low road to international competitiveness that has also been followed by the US economy and other liberal market economies.

The risk is there, but I would say the question is under what condition could this divergence happen, which is maybe the more important question here. I think one factor could be if there is sustained declining competitiveness, there might be calls to restore competitiveness by reducing labour costs and therefore reducing labour standards. Another factor would be Government partisanship. I would not expect a Labour Government to act the same with regard to deregulating labour market conditions compared with a Conservative Government.

There are also power relations between unions and employers, and within the employers' camp because not all employers would benefit from reducing labour standards to boost competitiveness, because a lot of the modern economy is basically investment in human capital and maybe reducing wages is not a good way to restore competitiveness. It might demotivate the workers and reduce productivity.

The concluding line on this point: I think that if the UK were to go for this strategy in the medium term, it would be self-defeating because it would not be fully understanding what the nature of the global economy is about. One has to understand that the global economy nowadays is made up of global supply chains with very reputation-sensitive buyers and importers. Basically, these importers will care about the conditions under which products are being made.

Also consumer patterns are changing. Consumers increasingly demand that products are made to high social and environmental standards, which means there is a demand for these products. That is not to mention international development such as the UN 2030 agenda, to which the UK and other countries have committed to inclusive growth, which basically means signing up to the Decent Work Agenda of the ILO and therefore maintaining high standards. Personally I think it would be a mistake for the UK to go for the low-wage, low-road strategy for restoring competitiveness over the medium to long term.

Q137 **Chair:** You mentioned laissez-faire. I am not sure that the UK Government is as laissez-faire as some might imagine. Some very interesting contracts are dominating the headlines at the moment, and subsidies to certain individuals perhaps, but that is an area of political controversy.

Sir Mark Hendrick: I am interested in Damian Raess's reference to Manchester capitalism. I was born and bred in Manchester. Richard Cobden, who was one of the proponents of Manchester capitalism in the 1840s, 1850s and 1860s, had a mill in Salford, where my mum and grandmother worked. It belonged to the Cobden family and was there for many decades after the 19th century when Cobden first did his work with Manchester capitalism. He later became a Liberal MP.

I am particularly concerned about the effect it might have on labour standards and the idea of a race to the bottom. While the Government have denied that this will be the result of the TCA, I am still concerned

that it may happen in the future and not just in labour standards. I am thinking of standards generally. We may see a race to the bottom, so mine is as much a comment as it is a question, and I am conscious of the fact that we want to move on, Chair, so I have had my two penneth.

Q138 **Mark Menzies:** James, can you explain what role the domestic courts of the UK and the EU play in the level playing field provisions and say if you are aware of any developments thus far that might lead to litigation in the courts of either jurisdiction?

James Webber: The second part first. No, there isn't any litigation yet that I am aware of. It is sure to come, but we are all feeling our way at the minute. The domestic courts play a very significant role in the subsidy control elements of the level playing field. This is again trying to replicate the role of the domestic courts in the EU state aid regime and import that into the trade and co-operation agreement structure. Here the UK has committed to having a role for domestic tribunals and that they will—I am just looking at the provisions—be able to review subsidy decisions that are made by public authorities and also quash those decisions and order recovery, that is order that a subsidy, if it is found to be unlawful, to be repaid to the Government.

That I think is the principal mechanism by which the UK domestic subsidy regime is intended to work. We have a consultation out at the moment and decisions have not yet been made, but the TCA does not require it and it seems the UK is not going to have an administrative system where everyone has to apply for approval before you pay a subsidy, so it is predominantly going to be a judicial enforcement, a court-based enforcement structure. That is a very important component of the subsidy control part of the TCA.

In my proposal last year I wanted the UK and the EU and the undertakings in each to be able to have standing in each other's domestic court system to make that judicial enforcement mechanism work most effectively. That did not happen in the end. I expect neither party was particularly keen on that idea. The EU would not have been keen to let the UK participate in its court system effectively as if it were still a member state. It would have looked odd, and I think having the European Commission suing the British Government in British courts would probably jar with the UK as well, but it would not be a sovereignty issue because the decision maker is a UK court.

Each side is entitled to intervene in cases that are brought by other people, so in a UK context I think—in fact, I strongly think—that the European Commission is rather hoping that the Good Law Projects and the Gina Millers of this world will bring a suit and then the European Commission can join, so it has a treaty right to intervene but not a treaty right to bring litigation in the courts on its own two feet. That is a few minutes on court enforcement.

Mark Menzies: That is excellent. Chair, there is lots more that I would

like to follow up on, but in the interests of time I will call it a day.

Q139 **Martin Vickers:** How well have the Government, up until this stage, engaged with stakeholders as regards making use of the new regulatory freedoms that the UK now possesses?

Dr Lydgate: I think this is a question about how stakeholder consultation should happen post-Brexit, and this is obviously important because we have to develop domestic regulatory systems. I would say this isn't really my area of expertise. Some of my colleagues at Sussex have submitted evidence that addresses how Defra could improve stakeholder consultation processes on gene editing. I can forward that along, but other than that, I think I will bow out.

Dr Raess: I also have to admit that I am not very well placed to answer this question because I have not followed the first months of the implementation of this agreement and whether any meetings have already taken place domestically in the UK and in the EU. The two participative bodies involving civil society that have been created are the domestic advisory groups on the one hand, which are established at the national level and typically bring in the social partner, civil society actors such as the NGOs and so on. Then there is a civil society forum that is supposed to meet once a year. That brings together the DAGs of the UK and the EU. I would be surprised if they have already met, because we are just into the fourth month of the application of this agreement and it has not even been ratified by the EU.

This brings me back a little to what we discussed earlier. I would call upon the civil society groups in the UK and in the EU to invest those fora, because I think they are crucial to finding common understanding to deliberate over precisely obtaining new commitments or where there is going to be divergence at some point. This could lead to conflict if it is not discussed and if the parties cannot find a little bit of common agreement and understand each other on where a country wants to go or the bloc wants to go.

These are crucial because there are regular meetings being planned and these can lead to, as I said, deliberations and socialisation that is developing this mutual understanding of where the other's interests stand and maybe also moving in one's position and one's interest, to the extent that maybe it makes sense to budge a little bit in order to reach a compromise. Also this could prevent some of the issues from going down the dispute settlement and, for example, the panel of experts, and could be dealt with through high-level consultations and the involvement of civil society groups.

James Webber: I think the Government have done a very good job so far. On the subsidy control side, there was a very open-textured consultation document about the new UK subsidy control rules, which generated an excellent set of discussions about how the UK's new regime should work, which will hopefully be faster and more liberal and generate

significant improvements over the EU state aid regime. In my field, they have done a very good job.

Q140 **Martin Vickers:** Do you think UK stakeholders will be able to keep abreast of EU changes that affect the level playing field?

James Webber: I expect so, certainly in my—

Martin Vickers: How difficult is it going to be?

James Webber: In most parts of subsidy control, everyone who knows anything about subsidy control in the UK grew up in these EU state aid rules, so it will be very easy to see changes. Also, frankly, London is still a very large centre of expertise in these rules for other member states and for companies and inward investors into the EU. The British media is also very closely followed in Brussels, *The Economist*, the *FT* and the newswires and things, so I would not be too worried about that.

Q141 **Chair:** I will probably bring it to a general close here. Finally, and this is a question to everybody, all this huge Brexit process has surely been about trade. Quite often we have been dealing with the trees here and we sometimes can't see the wood for the trees. We talk about sovereignty, we talk about migration, we talk about regulation, but I want to ask perhaps an overarching question, perhaps a disarming question. We will see. Do you expect all these changes to increase the UK's trade volumes, because this is ultimately what it is about? Will the UK be trading more or less with Europe and with the world as a result of all these changes? Who would like to go first and who would like to completely duck the question?

Dr Lydgate: I will take a stab at it, while acknowledging that it goes far beyond my pay grade and I am not an economist. I think we are in a unique situation because we have agreed a pretty distanced third-country FTA with the EU, so in a sense there is less at stake for us with this level playing field we have been discussing because we have already pretty much killed off our preferential market access. On the other hand, we don't want a bunch of new tariffs in place and politically there are various factors pulling us into closer alliance with the EU, so I think the positioning of the UK in terms of trade and alignment on regulatory issues with the EU is very complex and there are going to be continuing push/pull factors while we settle into what that looks like.

Certainly in terms of your question about trade flows, it is an enormous market at our doorstep, so even if our intention is going to be to redirect our trade, it is going to be pretty hard to ignore what the EU is doing with its regulation.

Q142 **Chair:** As the betting companies say, "We will give you a free bet. You have £10." Do the UK's trade volumes, imports and exports, increase or decrease as a result of these Brexit actions?

Dr Lydgate: Overall trade volumes?

Chair: Yes.

Dr Lydgate: Oh, gosh.

Chair: On your free bet.

Dr Lydgate: All right, I will say decrease.

Chair: Okay, thank you very much. We can see what time does with that one.

Dr Raess: My response would be the same as Emily's, although of course this is very speculative. We have to keep in mind that the UK relies on the EU market for 50% of its total trade in goods. As we have seen in the last three months, statistics on trade flows have come out and they have shown a significant decline. We are not having frictionless trade because there are some controls at the border to document, for example, entry and exit of the products and so on. That is probably responsible for some of the decrease.

The question is whether this loss and this trade diversion will be recaptured by opening up markets elsewhere, but because of the sheer volume of trade that the UK depends on with the EU market, it is going to take a lot of other trade agreements and a lot of gains elsewhere to compensate for the decline that is happening at the EU level. Overall, I am not too optimistic that it is going to increase the total trade level of the UK. Controlling for time trends, because overall in the world we have seen an increase in trade openness over the last 30 years, although there has been a little bit of de-globalisation over the last two or three years, but that may just be a transitional thing and not a structural change.

Chair: The same question to James Webber, ignoring the individual trees and looking at the overall wood of the forest here, James.

James Webber: I think the usual trade models would suggest a decrease. There is trade friction with our largest trading partner where there wasn't before. The question is whether or not the UK is able to do anything in a way that causes the economy to grow faster than it would have done while being a member of the EU. That might involve small 1% changes or improvements on a lot of our regulatory economy.

The UK is quite good at regulating our economy. A lot of the areas of EU regulation in energy, communications, capital markets and financial regulation all started in the UK. Those regulatory concepts are ones that we exported to the EU. If you think about new areas of UK comparative advantage around data and technology, biotechnology, financial technology, professional financial services, financial services, I think it is possible over time that the UK regulatory environment will be more conducive to investment and economic growth than it would have been inside the European Union. I think the advantage will be seen in dynamic effects, which are very difficult to predict at the moment.

Chair: Thanks, all three of you. A decrease in trade from all, but some optimism from James at the end with regulations and dynamic effects.

Time of course will tell. Time is telling on us, we have overshot a little bit.

All that is left for me to do is to wish my English colleagues a happy St George's Day tomorrow. I think the weather is looking good. It is a good time of year, St George's Day, certainly better than St Andrew's Day at the end of November, of all days of the year to have any sort of celebration. It should be better than the Irish day. I think things are opening up a bit in England, so happy St George's Day to you all. With that, we will bring matters to a close. Thanks particularly to our three guests.