

Committee on the Future Relationship with the European Union

Oral evidence: Progress of the negotiations on the UK's future relationship with the EU, HC 203

Tuesday 17 March 2020

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Members present: Hilary Benn (Chair); Florence Eshalomi; Sally-Ann Hart; Antony Higginbotham; Dr Rupa Huq; Stephen Kinnock; Seema Malhotra; Jane Stevenson; Matt Vickers; Dr Philippa Whitford.

Questions 80 - 137

Witnesses

I: Stephen Booth, Head of the Britain in the World Project, Policy Exchange; Professor Anand Menon, Professor of European Politics and Foreign Affairs, King's College London; and Christophe Bondy, Partner, International Trade and Investment Law Group, Steptoe & Johnson LLP, London.

Examination of witnesses

Witnesses: Stephen Booth, Professor Anand Menon and Christophe Bondy

Q80 **Chair:** On behalf of the Select Committee, thank you very much to our three witnesses today for coming to give evidence in slightly different circumstances, because of unfolding developments to do with the coronavirus. If I could ask each of you to introduce yourselves, that would be great.

Christophe Bondy: I am Christophe Bondy. I am a partner at Steptoe & Johnson here in London. I was called, I believe, because I was formerly of Canada's trade law bureau and spent several years negotiating the Canada-EU free trade agreement.

Stephen Booth: I am Stephen Booth, head of the Britain in the World project at the think tank Policy Exchange.

Professor Menon: I am Anand Menon, an academic based at King's College, and I run an organisation called UK in a Changing Europe.

Q81 **Chair:** Thank you all very much indeed for coming today. We have questions to put and a lot of ground to cover. Do not feel under obligation, each of you, to answer every question put to you. If you could keep your answers as succinct as possible while assisting the Committee, we would be really grateful. Can I kick off? You will have seen the statement of position of the two sides. I am most interested in what you see as the main areas of disagreement and differences of approach that need to be resolved if there is to be an agreement?

Professor Menon: There are broad areas of agreement around things like mobility of people and goods. There are areas where the two sides are relatively close to each other. The big problems, which will come as no surprise to this Committee, are going to be fisheries, although the leak from the EU side implied that the gap might not be as big as we had feared—of course, that is not an approved draft and when it goes through the member states it might be toughened up—and level playing field, in particular state aid, where the role of the European Court of Justice is being insisted on front and centre by the European Union. As things stand, the British Government will reject that as a matter of principle.

Q82 **Chair:** What about the implementation of the withdrawal agreement?

Professor Menon: I do not want to second-guess what progress will be made. It is certainly the case that the EU reserves a right to monitor the progress of implementation and to stop the trade talks if it feels the British Government are not implementing as they should be. It is a potential issue of disagreement between the two sides.

Q83 **Chair:** The matters to do with the implementation of the withdrawal agreement are matters for the joint committee and not matters for the



negotiation on the future relationship?

Professor Menon: Yes and no. It is the joint committee that will decide on the modalities of implementation and the details of that. The EU, nevertheless, reserves a right to say, "The indications are that you are not implementing in the way we want or as quickly as we want, and therefore that will have a spill-over effect on the trade talks".

Stephen Booth: Following on from that, the implementation of the Northern Ireland protocol is fraught and there are disagreements about what the protocol actually means, in terms of the UK position and the EU position. Moving away from the withdrawal agreement to the future relationship, the other difficult area I would identify is likely to be the governance of the arrangements, whether they are individual separate arrangements or a collective agreement under one system, which I think the EU prefers.

I would echo Anand's point that we are talking about quite big disagreements about relatively few issues. On the broad range of issues and the kind of deal we are trying to negotiate—a comprehensive, modern FTA—there is broad agreement between the UK and the EU about the objective there and the objective of having zero quotas and zero tariffs. Broadly, the good news is that both sides are on the same page. Under previous regimes, that was not necessarily the case. Notwithstanding that, there are clearly disagreements about specific issues that we have identified.

Q84 **Chair:** Mr Bondy, one of the arguments we hear is that the British Government say, "We would like a deal like Canada, and you have given one to Canada, so you should be able to give one to us." The EU side says, "Hang on a minute. The UK is not quite like Canada." Given your experience, what is your view on that difference of view?

Christophe Bondy: The UK is in a radically different situation vis-à-vis the EU than Canada was when it started the negotiation back in 2007 that led to the CETA. I agree that the current areas of disagreement seem to be level playing field, the level of engagement—the EU is requesting of the UK undertakings to remain in dynamic alignment—and the Northern Ireland issue. The interesting thing there is that the EU puts that in its mandate as an issue, whereas the UK tries to push it away.

What really struck me from the start, when looking at the UK's mandate, was that this could have been drafted as though one were New Zealand trying to do a deal with the UK, as though one were on the other side of the planet just doing a bog standard FTA. One question I had, looking at it, is whether UK businesses, service providers and goods producers have realised the impact of even what the UK is asking on their economy, assuming they get it.

Beyond that, the EU has raised the bar, saying that this is not any other FTA negotiation: "If you are going to have even an FTA level of access to



our economy, you have to make certain commitments around level playing field issues, and we are very concerned about Northern Ireland. That is a priority." There are other things, in terms of the broader range of undertakings, like judicial co-operation. The EU is linking that to continued adherence of the UK to the European Convention on Human Rights. The UK has said no to that, so that is clearly an issue of disagreement.

Professor Menon: It is worth stressing, as Christophe just did, how thin what we are talking about is. The British ask is not very ambitious at all. Certainly, it falls far short of what anyone would have expected during or immediately after the referendum campaign. That is to say, we are dealing with a relatively small-scale agreement that covers relatively little of the economic interaction between the two sides.

On the geography point, both sides use geography to further their own ambition. The European Union will say, "You are not Canada, you are far closer, and you are a big competitor, so different conditions apply." The British went to great lengths to say, "We want something just like any other member state." Even in the British negotiating mandate, interestingly enough, when it comes to road transport, the Government say, "We are geographically very close to you. We are not like Australia or Canada so we would like some special arrangements on that piece." Both sides are willing to use geography to further their own objectives.

Q85 **Chair:** As we look across our country and Europe at the moment, we see societies and parts of economies going into lockdown. This may continue for several months. In circumstances where economies are facing real difficulties—we could be heading for a global recession—where does that leave negotiations like these? Where might it leave negotiations like these? There is the practical question of how the negotiations take place. It is reported that the negotiators are thinking about different ways of doing that without necessarily meeting face to face. What happens if you try to overlay this process and the outcome, whatever it is, on top of very challenging and difficult economic circumstances?

Professor Menon: It makes it harder to get things agreed. There is an argument to say it is harder to carry out this sort of negotiation by Skype than it is in person. It cuts down the time. It makes an already compressed timetable still more compressed. Almost more important than that is the task of business adaptation, which was already going to be very difficult, to a whole new trading relationship with our biggest and nearest trading partner.

Remember, for those who are in favour of Brexit for economic reasons, the reason is that you can adapt your economy to make it more efficient, to work better. Adding that sort of adaptation to the kind of forced adaptation that COVID-19 is causing will be massively disruptive. The addition of this pandemic means that the case for an extension to transition becomes much stronger, even leaving aside the possibility of



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getting a deal, just to allow the economy to adapt and put the requisite measures in place.

Stephen Booth: I agree that, practically, it is early days. We do not know how this is all going to develop. Clearly, it creates bandwidth issues for Government and business. Set against that, you would say that politically this may also focus minds on both sides of the channel to try to find a way through the negotiations and underline the importance of reaching a deal for both sides, but at this stage we are speculating.

Christophe Bondy: From the perspective of the negotiations, anyone who has done business will know that, in the beginning phases, it is very important for the parties to be together in the room, developing a rapport face to face. This is a loss, even if one thinks about it in terms of negotiating by Skype. Once that relationship is more developed and working relationships at particular tables have gone ahead, that could be feasible.

I agree with Anand that there is a bigger question. This is such a huge shock to the UK economy and the EU economy. It also maybe calls into question ways of doing business. One does not know what the implications of that are now. That should, theoretically, feed into the total scope of this deal. At the same time, I agree with Anand that, even as drafted, even if the UK gets exactly what it wants in this agreement, this is going to be a huge shock to the UK economy. To impose a double shock at this time would be extremely challenging.

Beyond that, there is the fact that the timetable for this negotiation, in my experience as a negotiating participant of these kinds of complex agreements, was, from the start, incredibly aggressive. The Government announced in their mandate that they would check in by June to see how they were doing and potentially pull out. These negotiations typically last for years, even when both parties from the start know what they are aiming for and are broadly agreed on that. In the situation here where the UK and the EU are on separate tracks from the start, add to this the coronavirus crisis and it makes that very aggressive negotiating schedule even less realistic.

Professor Menon: One thing is worth adding. If you look at the structures we have put in place, we have a very centralised approach to these negotiations. The Prime Minister is ultimately responsible for these negotiations. He is also responsible for our response to COVID-19. Stephen's point is well made: bandwidth from the Prime Minister and his office is going to be an issue going forward, if they try to keep these two processes running in parallel.

Chair: Although we are closer than we normally are, the acoustics are not brilliant. If you could speak up, just for my benefit—I do not know about others—it would be really helpful.

Q86 **Sally-Ann Hart:** To pick up on the EU and UK positions, the UK sees the



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future relationship based on sovereign equals and the EU on a level playing field, but ensuring the autonomy of the EU's decision-making and legal order. I am not sure how level a playing field that is. How realistic do you think their positions are?

Professor Menon: They are both realistic, in terms of the objectives we have set. For the EU, the objectives are to maintain the basic principles that govern the operation of the single market and to have an eye on issues of competitiveness, which, in the EU's defence, have been there from the start. Back in 2018, when the first EU mandate was produced, they were talking about a level playing field and stuff. This is not something they have invented.

From our point of view, this is about de-institutionalisation and I think this is where the problems come from. We want to pull ourselves out of the orbit of EU institutions and that causes two problems. The first problem is with regard to things like level playing field, where we do not want to see a role for the European Court of Justice. The second is that the British Government want to carve off parts of this negotiation. The EU is obsessed with house diagrams and has done a house diagram for the Brexit negotiations, which is meant to stress the fact that it wants one set of governance institutions to cover everything. The British Government very clearly do not.

If you look at the British mandate, they have structured it saying "the trade negotiation", and then they say "other agreements". That is deliberately in response to the EU's attempt to put everything under one roof and say, "We do not need to. We can talk about foreign and security policy. We do not need all these institutions". That fundamental difference over institutions and institutional structures lies at the heart of the problem. To get an agreement, someone has to give some ground on some of those issues.

Stephen Booth: On level playing field, it is not the same approach to different issues. On state aid, the EU's ask is much more demanding. It is dynamic alignment with EU law, so the EU framework, and ongoing alignment with future EU law, and then having the right of appeal to the European Court of Justice as the final arbiter on that.

Q87 **Sally-Ann Hart:** That is not really a level playing field, is it?

Stephen Booth: I am just saying that this is the EU ask on that. On other areas, so social employment law and environmental measures, the issue is about non-regression, not going below a floor that exists when we leave the European Union. That is adapted to say non-regression on future protection. That is where it is not clear what the EU really means. The UK, I think, in principle, is not opposed to some degree of level playing field measures on things like social employment law and environmental law.



If you look at the UK mandate for the US negotiations, the UK accepts the need for those measures, but the question is the nature of those commitments. In the US negotiations, the UK is saying, "We are happy to sign up to international standards, but we are not happy to sign up to the EU rulebook." That is where the big issue is. Where that is most demanding of the UK is on state aid and I think the UK will flatly reject that. If the EU insists on that red line, it is very hard to see where an agreement can be made. On social and environmental issues, there is much more scope for a potential compromise on the basis of non-regression, where the Prime Minister himself has said that is the kind of agreement we would be happy to sign up to.

You have to look at it in terms of individual instances. Level playing field is talked about as one issue and actually it is several different issues.

Christophe Bondy: It is a level playing field in the sense that the EU is looking for a common minimum threshold of standards on these issues between the UK and the EU. The point you are making is who sets those standards. There are mechanisms within international trade agreements for disciplines to be applied on environmental and labour standards. The challenge is, in this context, especially given the policy announcements of the current Government, the notion that the UK has turned the taps on and suddenly you are going to have subsidised UK businesses competing against EU businesses that are subject to much more stringent rules.

As far as whether those positions are realistic, at the end of the day it is a negotiation. Either side can walk away and say, "This is too high a price to pay." If they are going to do that, they have to know what the impact on their own economy is. That high price has to be costed.

Stephen Booth: The suspicion, if you are looking at it from the UK side, of the EU's motives is that, traditionally, these mechanisms are included in FTAs to avoid distortions in competition in trade between the parties. I think the suspicion on the UK side is that the EU wants to use these measures to curtail any competitive advantage the UK might seek in general, as opposed to just on trade between the UK and the EU. That is where the UK, from my point of view, is right to resist those types of measure.

Q88 **Sally-Ann Hart:** I will not explore that any further. One area of disagreement that you raised, Professor Menon, was fisheries. It is interesting that Canada has its own fishing waters. Was access to your fishing waters an aspect that the EU brought up in your free trade agreement?

Christophe Bondy: There were separate agreements on that issue. That has to be looked at in the context of UK-EU and the actual trade patterns. The difficulty for the UK in that dynamic is that British people do not eat British fish. If you are going to be quite restrictive about access to UK waters, in that context the EU has a fairly strong card to play, saying, "All right, we will not buy your fish." Then where are you going to sell it? It is



hard to compare the two situations because it is a very specific situation for UK-EU. As I understand it, the initial position of the EU was that this notion of renegotiating access on a year-by-year basis is impractical. I am not sure whether its position on that has shifted.

Professor Menon: The indication from the leaked document is that its position might be shifting on that. There is another side to the coin that Christophe was talking about. It is not just a question of whether we eat the fish we catch but whether we have the capacity ourselves to catch. In the short term, we simply do not. There is scope for an agreement on fisheries whereby we get to negotiate annually. We might get an annual parliamentary vote that agrees to approve whatever has been decided. In that sense, we have reclaimed our sovereignty and ability to decide, while using that sovereignty to allow continued access to our waters, perhaps not as great as it is now.

There are the makings of a deal here. My suspicion is that, when the member states get their hands on this draft, the language might be toughened up a little. That is certainly what happened last time round.

Christophe Bondy: It strikes me as eminently political rather than economic, given the small place that fisheries has. It is obviously very important for those who engage in it. That has to be very carefully dealt with. At the same time, in terms of the overall UK economy, it is a very small piece of a much bigger pie. In trade negotiations, at some point there are trade-offs internally to countries. I wonder where that is going to go in the bigger picture of UK interests in these negotiations.

Stephen Booth: In the way the political declaration was set up, the EU felt it wanted to put pressure on the UK to agree a fisheries agreement at the same time as we had to make the decision about whether to extend the transition. As Anand suggests, the election result may have slightly changed the dynamics of the negotiation. Therefore, I think the EU recognises that trying to force the UK to agree a fishing system at the same time as we are talking about transition extensions, theoretically, is probably a counter-productive approach. It is much more likely that these negotiations are all going to be bundled up towards the end of the process, that fish will become part of a wider set of trade-offs, as opposed to the EU trying to isolate that as an issue.

Christophe Bondy: Typically in trade negotiations, the highly sensitive, highly politicised issues get pushed down the line to the end, and then the politicians have to come in and there is a deal. The operational-level people are working on the things that are easier, can be put together, and things get elevated more and more as the negotiations wind towards their end. Then there is an endgame in which some of these things that have seemed stuck for a long time come unstuck. Fisheries may end up being one of those issues.

Q89 **Sally-Ann Hart:** Unfortunately, I am not sure the EU really understands



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that, for many fishing committees in the UK, from all over the UK, it is not really an economic issue. It is a political issue. It is the heart and soul. It is an emotional issue for our fishing communities and that will mean a huge amount for people in this country. This is something the EU really needs to think about. It could be generating a massive kickback on that.

Christophe Bondy: I understand there are different points of view about that within the fisheries community, depending on the role that one plays in the overall fisheries economy.

Q90 **Sally-Ann Hart:** Do you think the maintenance of the status quo that the EU is seeking on fishing is going to change? At the moment, it does not want any change, basically. Do you think that will have to change? Will it change? Is it possible to change?

Stephen Booth: As Christophe said, at the moment we are seeing opening negotiating positions. Anand is suggesting, and I think that is right, that there may already be a slight softening of that approach. I think there has to be a combination of a long-term framework for fisheries that also looks at the annual quota shares. The EU is effectively insisting that we would maintain the status quo. The UK rightly says, "That is not going to be sustainable, given that we are going to be an independent state."

A long-term framework that gives the EU some degree of certainty about the kind of rights it will have, alongside annual negotiations led by the scientific evidence on how many fish can be fished that year, seems to me where a compromise might be. We are very early in terms of what that might look like and the detail. There will have to be a compromise. I do not think the UK will be able to agree to the EU's opening position.

Q91 **Dr Whitford:** I am sure both the EU and you recognise the fear within the fishing community, as I raised last week. The small-boat industry, inshore fishing, which is actually the majority boat-wise, does not gain much from this. They are terrified of being sold out. Scottish fishermen were described as expendable in 1973 and a lot of them feel that is exactly what is coming down the track because of what you describe. When you look at the whole pie, it is small, but if you live in the Western Isles it is one of your main industries.

Christophe Bondy: Absolutely, in the context of a larger agreement, it is typical for states to decide that certain communities need to be compensated because of the outcome of the entire agreement. That happens as well. That is the thing about trade agreements: they always flow back to real people's real jobs and real economies. For obvious reasons, for each one of those people, that economy is absolutely important.

Q92 **Dr Whitford:** You recognise that compensation, giving the Western Isles some money for the next three generations of unemployment, simply does not work. In Scotland, we have a danger of depopulating into the



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central belt. The comments from one of the advisers saying, "Agriculture and fishing are not important," are literally a death knell to rural Scotland.

Christophe Bondy: That is what is interesting about those who say this was needed to free UK fisheries. It is an interesting issue generally in these negotiations, where the position even within a particular industry can be divided, because the interests are not aligned, even within that industry.

Professor Menon: It is really worth emphasising that point. For some parts of the fishing community, this is about quota shares and the ability to fish our own waters. For others, it is about markets. Their interests are pretty hard to reconcile in the context of these negotiations.

- Q93 **Stephen Kinnock:** I wanted to follow up on the Chair's line of questioning regarding the interaction between the implementation of the withdrawal agreement and the future relationship negotiations, focusing in particular on the Northern Ireland protocol. I wanted to ask you a broad and general question on this. On 14 February, the Northern Ireland Secretary said, "We are absolutely clear. As a UK Government, we will not be having a border down the Irish Sea." As you will know, the Northern Ireland protocol is, in essence, predicated on having a border down the Irish Sea, because Northern Ireland is going to have a significantly different set of rules and regulations with regard to its interaction with the European Union's customs union and single market from the rest of the United Kingdom.

Can you outline how you think this is going to work in practice? We have signed up to an internationally legally binding withdrawal agreement, which is predicated, in essence, on having border checks down the Irish Sea, but the UK Government are saying, "We will not, under any circumstances, have border checks in the Irish Sea." At what point are we considered to be in violation of that withdrawal agreement, which is internationally legally binding? At what point would that trigger the termination of the negotiations on the future relationship, because we would be violating the duty of sincere co-operation?

Professor Menon: The first part of that question is easy to answer. I do not know at what point the EU would see the UK as in breach of its obligations. Under article 12 of the protocol, we are liable to infringement proceedings and possibly fines levied by the European Court of Justice, in the event that we are seen to be not implementing the protocol in accordance with the text of the treaty. There is a legal mechanism already contained in the protocol that we have signed up to and approved. At the first hint that we are not implementing, I imagine that will be the route the European Union chooses to go down in the first instance.

- Q94 **Stephen Kinnock:** You do not think that the Secretary of State for Northern Ireland's statement on 14 February, which says, "Under no



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circumstances will we have checks in the Irish Sea," constitutes a violation under article 12, as things stand?

Professor Menon: The EU will probably judge the UK on the basis of what it does, rather than what it says. The proof of the pudding there will be in the eating. Certainly my reading of the protocol implies that there will have to be checks on produce going from Great Britain into Northern Ireland. There will be strong pressure, not just from the EU institutions but from other member states, to make sure those checks are carried out satisfactorily.

Stephen Booth: I will take a step back. You said that the protocol was based on the premise of an Irish Sea border. It is based on the premise of respecting the Good Friday agreement and avoiding disruption to the political and economic circumstances in Northern Ireland as far as possible. That should be the starting point, rather than saying, "How do we implement an Irish Sea border?"

Q95 **Stephen Kinnock:** It is a means to an end. You cannot have one without the other.

Stephen Booth: Yes, but the point is this. If there is an intrusive set of checks east-west, how that does not undermine the basic objective, which is to respect the Good Friday agreement?

Q96 **Stephen Kinnock:** It is about the land border primarily, is it not?

Stephen Booth: That is why this issue is contentious. I think for some member states in the EU it is primarily about respecting the integrity of the single market.

Q97 **Stephen Kinnock:** Yes, but the UK has signed up to something that is based on protecting the land border primarily. That was the big shift from having a UK-wide backstop to having a Northern Ireland backstop.

Stephen Booth: It is based on avoiding a north-south border, yes. The question is how you implement the protocol in a way that is as non-intrusive as possible. On things like agri-food, I think everyone recognises the need for certain checks and building on the checks that already exist east-west. For other areas of industrial goods and so on, it is very difficult to see how having an intrusive east-west border is not going to undermine east-west trade and therefore undermine the sustainability of the protocol, which is not in anyone's interest, including the Republic of Ireland and the rest of the EU. Mechanisms have to be found to move those checks away from ports and so on, looking at the de-escalation of checks that Michel Barnier was talking about a long time ago, in terms of how these things can be checked in-market, as part of the wider regulatory regime we would normally enforce.

Clearly, this is a crucial issue. How this is implemented has the potential to derail the whole process, if I am honest. It is important to take a step back and recognise that the objective of this is to maintain confidence in



Northern Ireland of all the communities. A system that undermines that confidence, and I think a hard Irish Sea border would do that, is not in anyone's interest. Some of the language from the EU side has not been particularly helpful either.

Christophe Bondy: From a technical point of view, the UK is currently as if it were a member state. All the rules and regulations, as though one were a member state, continue to apply, so there is no issue now until the end of the withdrawal agreement period. The interesting thing is to what extent the EU will be mindful of whether the UK is getting ready for what is coming and the point at which it says, "You are not going to be ready for this and therefore we no longer believe you are going to comply with this, so we are suspending negotiations." From a technical point of view, Northern Ireland will, in effect, remain in the EU, subject to EU rules and regulations. If you want to sell between Northern Ireland and the rest of the UK, you will have to fill out forms. There will be checks. It is the solution this Government agreed to, to preserve peace in Northern Ireland.

Q98 **Stephen Kinnock:** Would it be fair to say that this is going to be a major factor in the June progress check, assuming that we stay on the basis of the current timeline? In that case, what evidence will the European Union be looking for as proof? As you rightly say, Professor Menon, what you do is more important than what you say. What would be evidence that this is going forward in good faith and therefore the future relationship negotiations can continue? The assumption is that that decision has to be made in June. If there is no evidence whatsoever of preparation for a border check, whether it is hard border, soft border, some kind of technical action to show something is happening, I assume that, in June, would be the trigger to terminate the negotiations. What is the EU looking for, in terms of evidence of action?

Professor Menon: I imagine the EU, somewhere in an office in Brussels, has a timeline of the actions that need to be taken and how long they will take to put in place to make the protocol work. The European Union could suggest that we extend transition because, given the pandemic, there is simply no time to implement. It is open to the European Union to suggest that. It is not necessarily the case that they will say, "Not enough progress has been made. We are suspending talks." They might say, "Not enough progress has been made. We understand the situation because we are in the same situation. Why do we not sit down and talk about extending this process so we can do it properly?"

Q99 **Stephen Kinnock:** Whatever timeline we are in, the expectation will be that measures are being put in place, technical, institutional, the paperwork. Do you all agree on that? Do we know what the UK's idea of evidence of a border is? The Northern Ireland Secretary has said, "There will not be a border."

Stephen Booth: This is not just about unilateral implementation on the UK side. There is a joint committee, which is designed to implement this.



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The job of the joint committee is to try to build processes that are unobtrusive to east-west trade. The first job should be to use that joint committee to try to develop processes that are unobtrusive, that are not impinging on east-west trade. The first job under the protocol is to try to reach compromises between the UK and the EU about how to implement this, rather than the UK unilaterally implementing.

Professor Menon: The UK, under the terms of the protocol, is solely responsible for the implementation of these measures. You are right; there is a joint committee.

Stephen Booth: It is responsible for enforcing the measures that are decided. All it says at the moment is that the Union Customs Code will be the basis for this. I think everyone acknowledges, if you look at this practically, that just enforcing the Union Customs Code is going to be hugely challenging in the context of the political circumstances in Northern Ireland. The job of the joint committee is to look at how those processes can be adapted to respect the wider agreement.

By the way, that also included article 6, which talks about Northern Ireland remaining within the UK internal market. There are obviously conflicting elements here that have been present all along, throughout this whole process, going right back to the joint report in 2017. Political work will have to be done, because if you leave this to technocrats it will fail. There has to be a political process that looks at how these processes are implemented. Just saying, "We are going to copy and paste the EU's rules and regulations," is not going to work.

Q100 **Stephen Kinnock:** Can I just drill down on that point, into one aspect of the Northern Ireland protocol? Article 10 relates to state aid. There, it is absolutely clear in the protocol that the full range of EU state aid regulations will have to apply in Northern Ireland. The UK has signed up to that. It is a legally binding contract that we have. It relates of course to trade between Northern Ireland and the EU 27. If, for example, you are producing widgets in Birmingham and selling them to the EU through a branch or sales activity in Northern Ireland, you will be subject to the full panoply of EU state aid rules.

How do you see that playing out in these negotiations? Do you think it is generally accepted as a condition of the talks going forward that both sides recognise that, through Northern Ireland, the UK, one way or the other, is going to be shackled, if you accept that term, to EU state aid regulations, whatever happens?

Christophe Bondy: It says what it says. If the agreement is there and the Government have signed up to it, the issue will be interpretation, so what this actually means, what this actually implies. From there, I would think one would go to the dispute resolution mechanisms. In the period of the withdrawal agreement, during these negotiations, those constraints will not, in effect, be active, because the UK remains within the general EU legal framework. It is not as though one were separate here at this



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point, but it is the day after. On that point, just because it is a question of what the UK Government do after the withdrawal agreement period is closed, it is slightly different from the Irish Sea border, where one can measure progress about getting ready for it.

Q101 Seema Malhotra: Thank you for coming in today. I want to probe a little further on the level playing field question. I recognise that we have had some interconnectedness between the questions asked today. I want to lay out very briefly, partly for the record, what we mean by level playing field because it is not always clear to everybody who participates. It refers to a common set of rules or standards, the key being to help make sure companies operating in different countries operate in a similar enough environment. In the context of UK-EU relations, that is quite broad, in terms of what that is the umbrella for, including state aid, which we have just had a discussion about, competition law, workers' rights and environmental rights, so a lot of that and more may come under it.

The other side is enforcement. With a single market, the Commission and the CJEU have a role in enforcing so there is this level playing field. So we are clear, for the UK the question is what it will have the ability to flex outside of that, whether that is around state aid or competition.

There is a very useful grid that Simon Usherwood, the professor of politics at Surrey University, put together. What has really struck me with that framework, which has combined other frameworks, is that, when you try to plot the UK in the EU, the EU is, understandably, for what it is seeking to protect, at the very strongest end, in terms of options for level playing field—it is not just a one size fits all; there are all the separate parts to this—whether that is applying the other parties' regulations or maintaining regulatory parity into the future. The UK seems to be in a sort of range of the other four, not going past the option for maintaining regulation at existing levels as it is.

You spoke a little bit about compromise, but it is a big minefield to navigate here, in terms of where there might be a sensible settling. Could I just probe a bit further where and how you see a compromise around level playing field coming in, and how we navigate that with the least impact and most insight into how the UK economy is working?

Professor Menon: One problem here is that one party is negotiating from the point of view of economic competitiveness and the other party is negotiating from the point of view of political principle. That makes it quite hard to reconcile. In a sense, the British Government's position on this is motivated by a desire to be free of the influence of the European Court of Justice. That does not mean you cannot have references to the European Court of Justice. It basically means that, when it comes to dispute resolution, the British Government will not accept a direct role for the European Court of Justice. This is the problem with state aid.

As Stephen Kinnock was quite rightly saying, we have already accepted that a bit via the protocol via the provisions for state aid in Northern Ireland. I think that will be a contentious issue going forward. There will



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be some spill-over into GB from the NI protocol on state aid. That contrasts with the rather stark language the British Government have used about the European Court of Justice. There is scope for a compromise using other forms of dispute resolution mechanism.

One of the fundamental misunderstandings about this is that, from the EU point of view, the principle at stake is not what your standards are going to be. The principle at stake is whether you have the ability to diverge, should this Government or a future Government want to. The argument that says, "Let us be serious about this. We are not really going to undercut your standards on environmental rights, workers' rights and things like that," is not the argument the EU is having. The EU is saying, "You cannot have the ability to do that. That is the point because under your system the next Government can simply say, 'We have decided to do something completely differently.'"

We get to, in a sense, where this conversation started this morning: institutionalisation. What institutional fixes can be used to give the EU enough certainty that we will not and cannot diverge, and us the happiness to know it is not the European Court of Justice ultimately overseeing this?

Stephen Booth: You mentioned the framework for enforcement of it. The other aspect the EU is proposing is the ability to use remedies, so the ability for the EU to withdraw market access in the case of the UK not complying with whatever is agreed. I struggle to understand why you need both. Why do you need to say, "The UK cannot have the ability to diverge, but if it does diverge, we want the ability to slap tariffs on certain things or withdraw market access."? Surely you only need one or the other. You do not need both. To me, the compromise ultimately is likely to land on the basis of saying, "The UK can sign up to so-called non-regression, not falling below a certain floor in certain areas." If there are disputes over these areas in the future, the EU will have the right to penalise us, in terms of the trade relationship in the future. That seems to me to be a relationship based on sovereign equals, as you mentioned earlier. You live with the consequences of your actions in acting independently. That seems to me where a compromise might land.

Christophe Bondy: With respect, saying you only have to have the rules and no means of enforcing the rules is like saying you have laws but no means of enforcing the laws. That is the thinking of it. We want to say, "These are the standards and if they are not respected these are the remedies". Level playing field refers to environmental rights, labour rights, state aid, competition law, taxation policy. It is not the regulatory piece in terms of standards for product safety and standards for plant and animal safety. That is a separate discussion and that boat has sailed. It is about that fundamental framework.

There are ways of dividing these up. We were making reference to this earlier. North American-style free trade agreements have disciplines on



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environment, labour standards and dispute settlement procedures specific to those areas. The hardest nut to crack seems to be this issue of state aid. The EU places much stronger disciplines on state aid on EU member states. When you have a Government making noises about vast amounts of public spending, it is probably not unreasonable for the EU to think, "We need to ensure it." In the WTO there are subsidies agreements, safeguards, provisions, but those mechanisms can be unwieldy, so they probably need something they can use to be lighter on their feet. That would be linked, for example, to the imposition of countervailing duties. Something like that might be a way forward on the state aids.

Moving back to the point that we do not want to line up with EU standards, what about international standards? To what extent can we internationalise so that depoliticises the notion of us maintaining common standards?

Stephen Booth: That is what I meant in terms of enforcement: enforcement with what framework? If it is an international framework, I do not think it is as contentious. I was saying, "Why the need to enforce an EU framework and have the ability to penalise the UK for not doing that?" That seems like using two instruments where one would suffice. That is what I meant.

Q102 **Seema Malhotra:** Could I just ask a slightly different question, because I know I will be caught out on time here? Michael Gove told this Committee that he was sceptical about the accuracy of impact assessments and that Government had not conducted an assessment of costs arising from the new customs procedures for goods exported from the UK to the EU. What do you make of such comments and how much scepticism is there about a possible increase in costs for UK exporters, based on where we might reach in terms of the negotiating positions at the moment?

Professor Menon: There is going to be an increase in cost for UK exporters, even if the kind of deal that both sides are talking about is signed and approved. When it comes to impact assessments, it is just a question of using them properly and not unscrupulously. They will usually provide a range of outcomes. They are forecasts and not predictions, and should be handled with care, but they will give you a broad direction of travel if done properly.

Stephen Booth: I agree that, clearly, if you introduce new processes that come with a cost, there is a wider cost to that. I question whether impact assessments on things such as Brexit really take into account the full range of factors that are going to be moving around in that. It is one thing doing an impact assessment on how much a customs form costs. That is fairly easy to do. The question is about the wider economic impact of that when the Government are pulling other levers. That is where it is much harder to say these are firm predictions of the future. They give an indication of directions of travel. Whether they give you a hard and fast number that you can rely on is a different question.



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Professor Menon: A good impact assessment will not try to predict what happens to the British economy. It will simply try to forecast the impact of certain specific measures.

Stephen Booth: Yes. That is where your point comes in about how they are used in public discourse and how they are debated.

Christophe Bondy: In any proposed free trade agreement it is absolutely standard to have an assessment of the benefit of this agreement for the wealth of the country. Why are we doing this? It seems staggering to be engaged in the most fundamental legal and economic change for the UK in living memory and not try to undertake some kind of assessment of that. We will just see, I guess.

The impacts are clearly laid out when you start thinking about the regulatory difference that is certainly going to occur as a result of the type of agreement the Government have proposed, and the fact that one is no longer in the customs union. In the last month, one has already seen EU-based businesses, continental European-based businesses, turning away from UK suppliers in anticipation of these things happening. There are ways of projecting these things. One can always debate around the margins, but I think the Government did some projections last year. We now know that the best case scenario is a bare bones free trade agreement.

Professor Menon: It is worthy of note that we spend time wondering about the impact of the future relationship on the fishing industry and far less time debating its impact on services or the automobile industry, which contribute far more to our economy overall. I always start from the premise that it is best to know as much as possible, even if you take the findings of these studies with a pinch of salt. The more knowledge you have, the better informed your decision will be.

Q103 **Florence Eshalomi:** Professor Menon, on that point, why do you think that there are more focused discussions about that impact as opposed to the other areas?

Professor Menon: We are not alone in that. You can say the same for the French. I thought it was interesting that the French Europe Minister came here and said that it is time to be rational about fisheries. You can point that finger in both directions. The fact is, and it has always been the case, that fisheries is politically totemic, far beyond its economic impact. I remember being told by our first permanent representative to the European Community that the night before we signed our agreement to join he was forced to spend the night with the Conservative Minister in the building in Brussels, going over a map of the coastal constituencies in the United Kingdom and deciding what impact the common fisheries policy would have on Tory coastal constituencies.

Fisheries has been there from the start and looks like it is going to be there at the end. It is just massively important politically. My only point



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was to say that, at a certain point, we should also think about the economics here. Compared to some other sectors that are going to be very badly affected by this kind of deal, we spend a disproportionate amount of time thinking about the impact on fishing communities, important though they are.

Q104 Antony Higginbotham: I wanted to talk first about the logistics of the negotiations, because some concern has been raised over the time-lining. Can anyone think of a similar set of free trade negotiations where we have started from this position, of already being broadly aligned?

Christophe Bondy: That is a bit of a red herring. It has always been a red herring. The question is not day one. The question is what happens 10 days from now or 100 days from now. The question is that issue of dynamic alignment. This negotiation is unique, because free trade agreement negotiations are about economies finding ways to do more business together. This is about two economies pulling apart. The outcome of any projections for this, to the extent they have been made, has been negative.

What we have described as sticking points in this negotiation are precisely what you are going to do going forward on environmental standards, labour standards, competition law, state aid and taxation. If you just want a free trade agreement, CETA-style or Japan-EU-style, fine, that is a decision that has been made. In the very specific situation of the UK-EU relationship, the EU is saying, "We need more safeguards for going forward." The question is how you work that out, even to get a Canada-style free trade agreement.

Stephen Booth: Yes, clearly the timescale is challenging, notwithstanding current events. If you look at the history of these negotiations, the UK and the EU negotiated the backstop, so the customs union for the UK, which directly addressed some of these issues. Level playing field was a part of that discussion. That was done in a matter of weeks. It has been demonstrated that both sides can move quickly where there is the political will to do that. I have always been very sceptical that much was going to happen before June anyway. Until you get to the point of no return, no transition, minds are not going to be focused. History demonstrates that both sides can move quite quickly in addressing the kinds of issue we have been talking about.

I return to the point I made earlier: there are some quite big disagreements, but over not that many things. We are talking three or four issues here. I am not trying to minimise the difficulty, but we are not starting on completely different planets as we were in elements of 2017 and 2018. Both sides agree the broad outline of what we are trying to do. It is about negotiating details within that.

Professor Menon: On the question of uniqueness, you are absolutely right. This is the first trade negotiation that has been undertaken with the sole purpose of making trade harder.



Q105 **Antony Higginbotham:** Or setting trade on a different footing.

Professor Menon: Yes, but it is going to add frictions to trade. The negotiation will add friction to trade between us and the European Union. You are right that the European Union does not have to spend the time it might have had to spend with Canada at scoping our economy because it knows us pretty well after all these years. As Christophe says, from the EU perspective, the important issue is not where we are. It is where we end up. That is precisely the point that David Frost made in his speech in Brussels. What is the point of doing this if we cannot do things differently? That is the concern for them, rather than that we start from a position of being within the single market and therefore complying with EU law.

Q106 **Antony Higginbotham:** That is helpful. Thank you. Christophe, this is probably aimed slightly more at you on the logistics of how the EU and Canada negotiated. That will help frame it for us. Is this three-week cycle, multitrack, broadly the same kind of process that the EU and Canada went on? Were there any pitfalls of doing that?

Christophe Bondy: It is slightly more accelerated. You would usually have a six-week hiatus between rounds. You have multiple tables going on at the same time. As a word of caution, the scoping exercise between Canada and the EU began in 2007 and ended in 2009. The actual negotiations began in about 2009-10 and ended in 2015.

Q107 **Antony Higginbotham:** But then there was a political dimension as well?

Christophe Bondy: That was in the context of two parties that were basically agreed about what they were doing. These are complex agreements and, as I was saying earlier, a lot of the tough political issues end up getting punted down to the end.

Q108 **Antony Higginbotham:** What were the big logistical challenges? Broadly, we are entering a slightly different world. We are on this accelerated timeline. Were there logistical challenges then that we might look at and go, "These are now exacerbated," or was it broadly fine, and so we are looking at something totally different?

Christophe Bondy: Coronavirus is certainly going to be a huge challenge to face-to-face negotiations for the foreseeable future. Another thing that is logistically hard to pull back from is the need for internal consultations. That is consultations across Government in light of positions taken by the other side, consultations with other levels of Government, with devolved Governments, to get their views on things, consultations with industry, consultations with consumer and other groups.

Those things all take time. If those negotiators are properly engaged in all those outreach exercises at the same time, that is why these things can take a number of years. I know that, in the UK mandate that was published recently, they said they were going to consult with industry in



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the spring. I assume that consultations have gone on before then, but, again, it seems to me an incredibly aggressive schedule, even without the issue that we cannot meet face to face.

Q109 Antony Higginbotham: Were all the Canada-EU negotiations face to face?

Christophe Bondy: Yes, pretty much. I was back and forth on a plane to Brussels. Towards the end, I think I went back and forth to Brussels eight times in the six-month period. Each time I would be spending a week there. We would sometimes have intercessionals by video conference, but that was much further down the road, at which point relations had been established, with a certain dynamic and a level of trust. It was just a practical thing, as opposed to having all the tables by video conference right from the start. That strikes me, from both a human and a logistical point of view, as pretty tricky.

Q110 Antony Higginbotham: You might say that the relations are already reasonably well established, having been a member for the last 40-odd years.

Christophe Bondy: The dynamics of the UK-EU negotiation are unique.

Q111 Antony Higginbotham: Can anyone else on the panel see any pitfalls with the coronavirus and the impact it could have on the negotiations?

Stephen Booth: As we described earlier, there is the question of bandwidth in Government: are they able to refocus on negotiations in this period, when lots of other things are being occupied?

Professor Menon: Commission staff are working from home, which will have an impact on how things work at their end. Of course, there is massive economic uncertainty, which changes the dynamics.

Q112 Antony Higginbotham: Finally on the logistics, am I right in saying that some aspects of the CETA needed national ratification across Europe? How much of a challenge was that? Presumably, those were the non-trade aspects of the deal.

Christophe Bondy: There are issues that relate to mixed responsibility within the EU, which give rise to this need to ratify the deal at the member state level. When you are dealing with certain states like Belgium, for example, it goes down the level of regional parliaments. In the CETA, we had an issue of the Walloon Parliament holding up the final signature of the deal, in the autumn of 2016, because it wanted assurances about certain aspects of the deal. That is another analysis that remains to be done: to what extent this will be seen as a mixed agreement and, therefore, need ratification at the member state level?

On certain things, I can see that the EU's and the UK's positions have been intended to try to avoid that as much as possible. This is not a classic free trade agreement to the extent that the EU and the UK are seeking to maintain issues like security co-operation, judicial co-operation



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and data protection. A whole range of other things has been thrown into the hopper, so to what extent are those things also giving rise to mixed EU member state competence and, therefore, the need to ratify at the member state level?

Q113 Antony Higginbotham: Is that partly why the UK has tried to separate the trade aspects from other aspects such as security and judicial co-operation?

Christophe Bondy: It may be. It may be also because it wants to compartmentalise. The EU looks at this from the perspective of Switzerland, where it has had 100 different agreements and is trying to bring them together. The EU also has the practice of putting its trade agreements under a general political co-operation umbrella, so it is acting consistently with its usual approach in seeking to put an umbrella over this entire suite of arrangements.

Stephen Booth: There is the option of provisionally implementing the aspects that can be done without national ratification. I do not see that necessarily being a huge practical problem, if a deal is completed. When you start talking about security, it is clearly going into the area of mixed competencies. Whether security will be concluded at the same time as the trade aspects is still an open question. As I see it, this current negotiation is about establishing a base line, ultimately, for the trading relationship, and there is nothing stopping both parties looking at developing that in the future and adding to it in other agreements. There are disagreements between the UK and the EU on how that might all be put together under governance.

Professor Menon: This goes back to the discussion about the EU's house model: the EU wants to do everything under one roof, partly because of the horror that is felt in Brussels about the Swiss model, which it does not want to emulate, and partly because it wants to be able to do dispute resolution across the piece. The UK's approach is to ring-fence specific areas of co-operation and to have different dispute resolution methods for each. There is partly an institutional logic between the two positions.

Christophe Bondy: It is a negotiating issue as well, because the EU's mandate clearly signals that nothing is agreed until everything is agreed. In a negotiation where one has more moving pieces, one has better opportunity to play one thing off against the other and to achieve some kind of package, so there may be resistance on the EU side to that compartmentalisation, for precisely that reason.

Q114 Dr Whitford: Since the end of January, the UK is already formally outside of European agencies, many of which are thought to be beneficial. The understanding was that we would be looking for various association agreements, et cetera, to keep as much of the benefit. There was certainly surprise in aerospace and aviation, which are quite important in my constituency, at leaving EASA and not asking. Not all of these things



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are easy to get, but to what extent would participation in these programmes depend on accepting ECJ rulings?

Stephen Booth: It depends on the relationship you have with that institution and on the terms of any association, so that would have to be ultimately negotiated. The EU's approach would genuinely be that, for anything that is conducted on the basis of EU law, there would be a reference opportunity to the ECJ. Given that the UK's position on that is pretty clear, it is quite hard to see what the middle ground is there.

The Swiss have some kind of an agreement with EASA, and the Swiss have also had very staunch views on adherence to the ECJ. I am not familiar with the technical details but that might be an arrangement to look at, in terms of how you might circumvent submitting to the jurisdiction of the ECJ.

Christophe Bondy: There is an issue that will cut across these—for example, pulling out of the European patent court. If one is going to have a pan-European approach to patent law, there has to be an ultimate decider, and that turns into the ECJ. It is arguably a very good, practical thing to be in a common patent area for the European space but, if from an ideological point of view one has said that that is a step too far, it is a questioning of costing that. What is the impact of that going to be? What are the implications of that?

Q115 **Dr Whitford:** With the European Centre for Disease Prevention and Control, we are still in the pandemic early warning and response system during transition, but will COVID-19 change that and cause a recognition that the European Medicines Agency data, research and clinical trials system are too beneficial to simply leave because of the ECJ?

Christophe Bondy: That is a political question and I am not really the right person to answer it.

Professor Menon: The simple answer is that I do not know. At the moment, the Government's position is that they are not particularly willing to pay to play in these kinds of thing. They certainly are not willing to put themselves under the authority of the European Court of Justice, which, as Stephen said, is implied by the agencies. In a sense, this takes us back to the question of resources and bandwidth. In 2018, the chief exec of the CAA said it would not be viable for the CAA to take over the tasks of EASA. If we leave EASA, it will have to. This brings us back to whether there is simply the time to do all this before December.

Q116 **Dr Whitford:** Even before COVID, the industry did not feel the CAA would be ready to replace EASA by the end of this year.

Professor Menon: I suspect that the Government's position might not change in principle, but the Government's position on transition might in order to put the necessary steps in place.

Q117 **Dr Whitford:** With regard to security and taking part in the police and



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judicial mechanisms, how easy will it be to have a good relationship with Europol, Eurojust and data exchange? In the end, you are coming back to the rights of the people involved, including someone who is being arrested under the European arrest warrant or being followed through Europol. Do we not end up in exactly the same place, to some extent?

Stephen Booth: The question here is going to be political on both sides in terms of how much scope there is to adapt arrangements. The fact is that some of the arrangements will have to adapt just by virtue of our position of being outside the European Union. Germany will not surrender German nationals to a non-EU country, no questions asked, as it does under the European arrest warrant, so some things have to change.

Q118 **Dr Whitford:** Is that not one of the major weaknesses: that the arrest warrant cannot be resisted?

Stephen Booth: That is a normative question, which it is too late to answer now. We are outside the European Union and that has to change. There are going to be elements of this that will have to change. The logic of operational co-operation is undeniable. The question is on what basis that occurs. Is the EU going to insist that you have to submit to the ECJ in order for that operational conduct to occur, or can we look at other mechanisms? Things around data will be important—that the EU feels that personal data is safeguarded—but I imagine there are ways of demonstrating that other than having the ECJ as the ultimate arbiter. That is a political question as much for the EU as it is for the UK.

Q119 **Dr Whitford:** Do you recognise that added to that is the concern around the language about the European Convention on Human Rights, which is as low as you can go? That is really in danger of undermining any of this co-operation.

Stephen Booth: Yes. As Christophe mentioned earlier, it is in the EU's negotiating mandate that that is a precondition, ultimately.

Q120 **Dr Whitford:** The Norway/Iceland-type accelerated extradition has been discussed but, being from Northern Ireland, I know how important the European arrest warrant is on the island of Ireland. What kind of consideration is being taken of the impact—we come back to Northern Ireland as an issue—if someone can just jump over the border and make faces at you, and you cannot follow them without going through a whole extradition procedure? Is that being considered? We hear about the Northern Ireland protocol around trade but I am not hearing, to the same extent, the concerns of PSNI about how critical the European arrest warrant is.

Professor Menon: I do not know; that is the simple answer. I would like to think that the police and security services are thinking ahead to this. It is worth stressing just how damaging it will be to both sides if we can no longer collaborate on police, counter-terrorism and so on. As Stephen said, it is a question of how creative both sides are willing to be to make



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that co-operation work, regardless of political principles on both sides. At the moment, I am not hopeful.

Q121 Dr Whitford: There, the land border becomes a bigger issue. If people are coming in through ports or airports, you have some degree of identity check. If there are over 300 land crossings, which is the case in Ireland, you do not have that opportunity. The Chief Constable has been raising this literally since virtually the day after the referendum. Are you aware of this being recognised? I am not seeing it in the same way as I am seeing Northern Ireland trade issues considered.

Christophe Bondy: Across a broad range of things, people in the UK will see the implications of the means of Brexit that have been implemented only after it has happened. It has not really happened yet. Then there will be all sorts of political pressure because of security issues. On the regulatory side, it is easier, in a sense, because businesses will say, "I know that there is a political discourse about regulatory freedom but I want to sell into that market. I want to maintain my supply chains and value chains as much as possible in the circumstances." There is going to be a voluntary dynamic alignment, just because it makes economic sense. On these security issues, there can be all sorts of political repercussions. In the notion that Brexit is not an event but a process, it seems to me that, once implications of what has been agreed start manifesting themselves, there may be further movement, but it would be a shame not to take these things into account at this point.

Q122 Dr Huq: I was going to ask some questions on what the impact of all this would be on the economy, if, hypothetically, everything in the UK mandate was to be achieved. I was interested from the very beginning in the answers you were giving to the Chair about the global unseen killer in our midst at the moment. Given that everyone is having to change their lifestyles and the hit that there will be to the economy, which was acknowledged in the Budget, it feels that we have moved so much further on than last Wednesday—it is not even a week ago—in what we will all have to do.

If I understood correctly, at least two out of three of you were saying that there is a case to reconsider this very tight deadline to give Britain the chance to get the best possible deal by having an extension. I do not know if I was reading too much into that, but is there not a case for extending, given these completely unprecedented and unforeseen circumstances?

Professor Menon: There is a case for extending, both to maximise the chances of getting a deal and to allow us to put the preparations in place in the event of no deal. It is not simply about a negotiated deal. For me, the pandemic just means that, in terms of bandwidth, scale of adaptation and the challenge to our underlying economic assumptions, the case for extending gets stronger.

Q123 Dr Huq: That is what I thought you were saying. I was just checking if I



had understood correctly. I imagine you are going to say no.

Stephen Booth: I do not have a fixed position on whether it will happen. It is very early days in terms of how much this crisis will affect bandwidth. It clearly looks like it is going to. Ultimately, a decision on transition was never going to be taken at the deadline stated in the political declaration. It was quite clear that, ultimately, this question was always going to be left until the last minute, in terms of whether a deal looks likely. There is also a question of implementation as opposed to extending the transition: could you have a deal agreed in principle that might take a longer time to implement post-2020? That is a debate that we were likely to have in any case, irrespective of coronavirus.

Looking at timescales, that was always going to have to be addressed at some point, probably in the autumn. I do not know whether this will become more pressing. We will have to see how the situation develops. There is no particular ideological reason to do one thing or the other.

Q124 **Dr Huq:** You are not completely closing the door?

Stephen Booth: It is not my decision.

Christophe Bondy: I would agree with Professor Menon that it is already an extremely aggressive schedule by any professional trade negotiator's assessment, given everything on the table and where the parties are. Add to that a pandemic that looks like it is going to shut down the economy for at least a couple of months, and that takes a big bite out of your schedule, as well as the issues of bandwidth and longer-term effects. Should we step back and assess this? As we said at the beginning, exit from the EU in real terms is going to be a huge adaptation for UK businesses. Are they prepared to face that when you add coronavirus on top?

Professor Menon: I would add one thing to what Stephen said. In the absence of a deal as we get to the autumn, it is not clear to me how we extend the transition. The withdrawal agreement gives us an easy option, which is to do it by the end of June. There are ways of putting in place unilateral mitigation, as the EU did, with a view to reducing disruption around no deal, but they are purely unilateral and it will not look or feel like transition. The only way to extend transition is to extend transition, in other words. If you do not do it by that deadline, you are going to have to cobble something together. It is not clear to me that, under EU law, it will be all that easy to do.

Q125 **Dr Huq:** We had Michael Gove this time last week or the day after—again, not even a week ago—and he seemed to be saying that there is absolutely no room for manoeuvre on this. It felt like, in answer to my questions, he was pretty much saying, "We have left. Brexit is done. Get over it. You lost," which, to me, feels a bit irresponsible, if the economy is going to be sacrificed for this. Following on from Philippa Whitford's questions on arrangements with other agencies, we are still in the EU



pandemic early warning system at the moment because we are in a transition, but is there a case for extending that transition for that particular agency because it is jolly useful, given what is going on?

Professor Menon: All I would say to that is that last week was a different world compared to where we are now. Personally, it is a question of temperament, I suppose. I get slightly uneasy when I hear the phrase “under no circumstances”, but it seems to me that the circumstances we face now are pretty unique. If ever there was a time when you could question your initial assumptions, it is under circumstances like these.

Stephen Booth: I agree. We should not be definitive about things like this. There are two questions here, one of which is timescales and adaptation to the new arrangement, which is a live question. The second is whether it alters the UK’s fundamental approach to the type of deal it is trying to do. On the second question, no, it will not alter the fundamental approach. How you implement that might be a separate question, but it is not going to change the shape of the final arrangement, whatever that is.

Q126 **Dr Huq:** In terms of cutting back on EU regulations, polling shows that people want to remain with the standards we have on employment rights, food, the environment, products and safety. Is there a danger that these red lines are turning into red herrings? If one were to commit to those as a minimum standard, because we are told that we can go higher, what would there be to lose?

Stephen Booth: There is a risk of talking at cross-purposes. I agree with you; there is not necessarily evidence of huge public appetite to rip up the rulebook. If you created a poll asking, “Would you be happy for the European Union to have ultimate say over those rules? By the way, the UK no longer has a vote in the European Parliament or the European Council”, you would also get quite interesting answers from the general public. Part of the problem here is that we are assuming the UK is operating in a vacuum and this is something we have suddenly decided.

We have been through a process where a previous Government tried to negotiate gradual divergence and a bit of pick-and-mix: we can be part of the market for certain aspects and not the other parts. The EU flatly said no and quite publicly humiliated the Prime Minister at a previous European Council summit, so we have already been through this process of trying to do a bit in and a bit out. The conclusion, both domestically and in Brussels, is that, ultimately, it is not going to work. You are either very much in the EU sphere of influence in the regulatory regime, or you are out. We are now in the process of negotiating something that looks like we are out.

I do not really see what the middle ground is on that. Both sides need to follow the logical conclusion, which is that it is very difficult for the UK to agree to be, effectively, in a Canada-style relationship, where it does not



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have the benefits of being in the single market, and be asked to sign up to the single market regulatory regime for things like state aid. It is quite hard to see how that is a balance of rights and obligations, which is precisely what the political declaration talked about.

The way you phrased the question is looking at it in terms of what regulations we have in place. That is one question. The second question is who governs those, which is fundamentally what Brexit is about for this Government.

Professor Menon: I would add two things to that. First, just building on what Stephen said, there is a slight irony to this because, of course, one of the reasons the EU rejected that first proposal was an unwillingness to let us be in charge of enforcing the Union Customs Code, which is precisely what we are now talking about having to do under the terms of the Northern Ireland protocol.

Secondly, this is political. This is about politics. This is about a political principle. It is not about the nature of our laws or regulations, but about who gets to make them. Whether it is anything that the Prime Minister has said on the subject, or the David Frost speech, that is at the heart of this Government's approach to Brexit. It is about being able to take back control rather than about the substance of what we choose to do with that control.

Christophe Bondy: This is the irony. From a practical point of view, if you are a business functioning in the UK and 75% of your sales are to continental Europe, are you going to comply with EU rules and standards in order to sell your product? Of course you are. If a Canadian producer wants to sell to the United States, it is going to seek to ensure that its products meet US standards, for purely economic reasons. This is more of a political thing.

As we were talking about earlier, at least on these level playing field issues, a way out of the impasse may be to try to internationalise or create bespoke verification procedures within the EU-UK agreements that do not look as much like the UK is somehow under the heel of the EU or forced, from a legal point of view, to follow its standards. There are going to be fights. You are, in effect, manufacturing a longer-term system of conflict, which I suppose is good news for lawyers engaged in dispute resolution, but if the UK truly wants to go its own way on certain regulatory issues there are going to be disputes.

Q127 **Dr Huq:** What I was meant to be asking you was this: if everything went according to plan, how would you expect such a relationship with the EU, in this changed, brave new world, to affect the UK economy in the long and short term? Again, it seems a bit redundant with everything that we know is happening.

Christophe Bondy: I would go back to the impact assessments done last year looking at projections of a Canada-style agreement on the UK



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economy. We are seeing in practice, right now, continental European clients turning away, it looks like, from UK manufacturing. You have very deeply integrated value chains; it is unusual now for something to be made in one place. Where you have 90% of production in place A and 10% in place B, and there ends up being frictions between A and B because of regulatory differences or because of tariffs, the logical thing for EU-based businesses is to repatriate. There are going to be impacts; it is a new world. As Anand was saying, Brexit is not an economic project but a political project.

Q128 **Dr Huq:** Will we be better or worse off at the end of it?

Christophe Bondy: Look to the projections from last year.

Q129 **Dr Huq:** That is worse off?

Christophe Bondy: My recollection is that it is worse off and that, to me, seems a logical outcome.

Stephen Booth: Clearly, there is going to be a cost to UK-EU trade. The question is how much of that can be compensated for by other things: trade agreements with other countries but also wider changes that the Government can make to policies that have nothing to do with the European Union. We could have done them if we were in or out. We have to really consider this in the round and that does not necessarily mean that the things that the Government might do to make people better off have anything to do with Brexit, but the Government might do some of those things as a result of the political change we are experiencing. That is why this all gets quite muddy when you start talking about the whole UK economy.

Q130 **Dr Huq:** Michael Gove was quite similar.

Christophe Bondy: Something that Christophe said was interesting: the degree of uncertainty here and why this is unique, in the sense that we are not moving two systems together, but moving two systems apart, is the degree to which the private sector will adapt to that. Yes, there clearly is going to be some change to supply chains with onshoring and so on, but, as Christophe also said, there will be businesses that choose to align with the EU regulatory system and continue to align with it in order to safeguard those supply chains. We do not know at this stage the effect of how those two forces that are in conflict with each other are going to play out. There is a challenge in modelling this because it is a unique situation, as we are not moving together but moving apart.

Professor Menon: That is true, although it will not be the same as the situation now, even if those businesses choose to comply, because they will be subject to checks. Being outside of the single market is different from being inside the single market. The Government's figure was that a Canada-style deal would knock 5% off economic growth over the next 15 years. That is not to say that our economy will not keep growing. This is not a cliff edge; it will be a slow adaptation of our economy. But being



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outside the single market and the customs union will have a negative economic impact on us, unless and until we can make up for it with other things.

It is also worth thinking about this in other than aggregate terms. This will have a very patchy regional impact. It is worth bearing in mind that this Government seems to have a political objective to address some of the regional economic inequality that has blighted us for the last 20 or 30 years. If that happens—we are living in a whole new fiscal environment now—there are parts of the country that might come out of this thinking, “We have seen the scale of Government investment that we have not seen since before the 1980s, and that has affected us positively.”

Q131 Jane Stevenson: Could I ask Professor Menon to expand on the biggest issues that the EU has with the Swiss model and where you think that might create issues with the UK-EU negotiation?

Professor Menon: The EU wants simple, easily justiciable structures. The Swiss agreement is none of those things. The Swiss have a number of different bilateral agreements with the European Union that are a nightmare to monitor. They are a nightmare to talk about compliance with. Since before Brexit, the EU has been very clear that it is not doing anything like this again.

In fact, one consequence of Brexit is that the Swiss have been on the receiving end of an EU attempt to tighten up their agreement to increase the role of the European Court of Justice, because it has enhanced the fear that the Swiss model is seen as something to be replicated by other partners. There are a whole host of reasons why, inside the European Commission, the Swiss model is seen as a mistake and not something to be tried again.

Q132 Jane Stevenson: Can I ask a follow-up on the dispute resolution in the Swiss-EU agreement? Are there many channels of different dispute resolution and are we headed for very many different sorts?

Professor Menon: Interestingly, at the moment, the European Union wants to give the European Court of Justice a bigger role in dispute resolution with the Swiss, which points to a problem in our negotiations with the European Union.

Stephen Booth: The Swiss have a system of, effectively, joint committees, which are political. Another read-across where we talked about governance earlier with the UK and EU negotiations is that the Swiss relationships with the EU are subject to the so-called guillotine mechanism, where the EU can say, “You are not complying in this area; therefore, we are going to hit you somewhere else.” Issues that are not particularly well linked logically end up being part of a broader political negotiation. We have seen trade-offs between free movement of people and access to funding for universities. The dispute over governance has led to a dispute over listing of stock exchanges and equivalence for the



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Swiss stock exchange. The EU has form in using these different issues for political leverage.

Christophe Bondy: The other distinction between the UK-EU and the EU-Switzerland scenario is that the Swiss are in dynamic alignment with EU rules and have freedom of movement. Therefore, they have a fluidity of exchange with the EU, but that comes with the various trade-offs that one has if one is a member state of the EU or is approaching member state status.

Q133 **Chair:** Coming back to the European Convention on Human Rights, why would the Government not wish, unilaterally, as part of the negotiation, to give a commitment about the UK's continued adherence to it, given that it may have an impact on the EU's willingness to grant a number of things that we want as part of the negotiations?

Professor Menon: I am not privy to their thinking on this.

Q134 **Chair:** I am struggling with it because, if you take something like data adequacy, as we know, the exchange of data is hugely important to a lot of businesses. This will be a regulatory decision taken by the Commission, because it will be in respect of a third country, which we are. Might that not be one factor that it takes into account because it would be looking at the legal framework in the United Kingdom surrounding decisions about data and the way in which they are used? Similarly, in respect of the very important databases that, as we understand it, at the moment non-EU member states do not have access to, we rely absolutely and fundamentally on access to SIS II, Prüm and ECRIS for our own security.

Stephen Booth: Ultimately, it comes back to politics on both sides of the channel. The data adequacy regime is designed for all third countries, including non-European countries, which, by definition, will not be applying the European Convention on Human Rights. Ultimately, this will be a political decision on what kind of relationship the EU wants with the UK, and vice versa. I do not know what the UK logic is on the ECHR. That is a matter for them to answer. Ultimately, the conditions placed on any of these decisions from the EU's side are as much political as they are set in any necessarily legal framing.

Q135 **Chair:** Legally, how big a stretch would it be for the EU side to say, "I know you are no longer a member state, but you can continue to have access to the data that you have been making use of and relying on," for our own security? That comes from SIS II, Prüm and ECRIS.

Stephen Booth: It makes it more complicated, because you then have to come up with a structure that the EU can say allows the UK to demonstrate compliance with whatever standards the EU is happy with. The EU has negotiated data agreements with the US, for example, so it is possible to do that. The EU would like it to be simple and say, "We have a set framework. You apply that and it is done," but there is nothing



precluding an agreement on different terms. It just makes it more complicated to do so.

Q136 **Chair:** That comes back to my original question. Would the UK Government saying, "Yes, we are committed to the European convention," help in precisely that issue that you have highlighted?

Stephen Booth: If the EU says those are the conditions, it would certainly help in getting a deal. The question is whether it is a deal that the UK Government are happy to agree.

Christophe Bondy: I am not privy to their thinking on this but it seems to me that it is a constitutional issue, ultimately. If all Government action is ultimately reviewable in light of a convention on human rights, which has a court that is situated outside of the UK, that becomes a political issue. The irony, of course, is that the European Convention on Human Rights is a separate thing from the European Union and they are not the same thing. You can be a member of one and a member of the other, but perhaps the thinking that led to Brexit is the same thinking that led to saying, "We should not be under the aegis of this multilateral convention."

The whole notion that we are giving up our sovereignty is a red herring, because through international agreements is one pools one's sovereignty and one co-operates in order to jointly achieve things that are mutually beneficial. The issue is whether you want to be part of that.

Stephen Booth: It is a question of degree. What we are discussing today is ultimately that the degree to which Canada has pooled its sovereignty with the EU is quite different from the way that the EU wants the UK to pool sovereignty, and that is why it is politically contentious.

Professor Menon: It is worth stressing that EU law is unique in the degree to which it intrudes on the national. It is a wholly different hybrid between national and international law. That is the root of the problem.

Going back to the ECHR, I remember saying earlier in this session that the EU will judge us on what we do, not on what we say, and I have come to realise that, thinking about it, that is probably wholly untrue. Particularly when it comes to the ECHR, because there has been a rhetoric around this over the last five or 10 years, that is one reason why. Equally, with regard to deregulation, the EU listens to our political debates and is aware of the kinds of thing that are going on. When it comes to the ECHR, it has heard the sort of stuff that is going to be said, and that affects its thinking and makes it more cautious when it comes to these negotiations than it otherwise would have been.

Q137 **Matt Vickers:** You have talked about the logistics around COVID-19 and the issues. In terms of state aid rules, there is provision for mitigation in exceptional occurrences but this is likely to be exceptional state aid. Do we think that that is likely to create pressure in the EU, and what impact



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might it have on the negotiations?

Professor Menon: There is pressure already in the EU. There is pressure from the French and the Germans already to loosen the EU competition law regime. They are not imposing this on us because they think it is a fantastic system; they do not. They are imposing this on us because they do not want to see us getting an unfair advantage, and that principle will remain.

Christophe Bondy: The extent to which these measures are adopted by any Government in response to coronavirus and because of this extraordinary situation, or whether they would have done them anyway, will, in a sense, muddy the waters. Are things going to happen under the cover of that? Some level of Government intervention is going to be required when airlines are saying that they are going to shut down in a few months if they do not have some kind of support. All sorts of industries are going to be affected.

Stephen Booth: In a real crisis like this, this becomes quite a political question. In the financial crisis, the levels of state aid were huge. You could have levelled that question at that point as well: was that state aid purely in response to the crisis or was it convenient to help certain banks at a certain time? I cannot imagine it being a crucial issue at this stage. Most people will be focused on doing what is necessary.

Christophe Bondy: Some things will be easier to parse between building a transportation infrastructure to the north and assisting communities, but some might be more difficult.

Chair: That concludes our session. On behalf of the Committee, can I express our grateful thanks to all three of you for coming today and for giving really helpful and useful evidence?