



European Scrutiny Committee

Oral evidence: Transatlantic Trade and Investment Partnership, HC 292

Wednesday 11 June 2014

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Members present: Mr William Cash (Chair); Andrew Bingham; Mr James Clappison; Michael Connarty; Geraint Davies; Kelvin Hopkins; Chris Kelly; Stephen Phillips; Jacob Rees-Mogg; Henry Smith; Mr Michael Thornton

Questions [1-79]

Witnesses: **Lord Livingston of Parkhead**, Minister of State for Trade and Investment, Department for Business, Innovation and Skills, and **Edward Barker**, Head of Transatlantic and International Unit, Department for Business, Innovation and Skills, gave evidence.

Q1 Mr William Cash (Chair): Good afternoon, Lord Livingston and Mr Barker. Thank you very much for coming along. We regard this as a very important inquiry into a very important agreement: the Transatlantic Trade and Investment Partnership. To start with, we have some important questions about scrutiny and transparency.

Lord Livingston, the EU and the US together account for nearly half of world GDP—gross domestic product—so if a Transatlantic Trade and Investment Partnership is concluded, it is likely to set standards that will echo across the global world. The Council of Ministers decided, however, to keep the negotiating mandate secret. Why was this?

Lord Livingston of Parkhead: All mandates have been kept secret because they often set out information that it is felt would be very helpful for the negotiating party on the other side to know, in that it sets out the basis upon which negotiations take place. It happens in all trade agreements, from my understanding, that the negotiating mandate is kept confidential. As it happens, this one has become available. For those of you minded to use the internet, I tried to locate the negotiating mandate last night and I believe it took about two minutes to locate, so it did get released. The right principle should be that we should not release things that would harm our own negotiating position, and I believe it was felt that releasing this—and also creating a precedent where we release negotiating mandates just as a matter of course, because it is almost a question of, “Why did you release this one and not another one?”—could harm negotiating positions by setting out too clearly what the limits and expectations are.

Q2 Chair: But the work document is not the same as formal deposit with the Government, which means that we do not get an explanatory memorandum.

Lord Livingston of Parkhead: In terms of making it a public release?

Chair: Yes.

Lord Livingston of Parkhead: They have still not released it publicly. You can find it on the internet because it has been leaked rather than released, but I am saying that, as a principle, the EU does not issue, on any trade, its negotiating document for the reasons I set out.

Q3 Chair: Just to pursue that, can you comment on reports that when the Council considered publicly releasing the mandate in May, the United Kingdom voted against it?

Lord Livingston of Parkhead: It was discussed, I think, by Coreper afterwards. What I said during the Council meeting is, if we are going to release it, we should be looking forward rather than back, and we should be making precedent decisions. It is important for anybody to decide what is the policy and why you have it. I basically said what I have just said to you, which is that it does not seem a good idea to release things that harm our negotiating position by displaying them to the counterparty to the discussions. There are many things we should not do, and I am not saying transparency is as good as it could or should be, although we can talk about certain other documents that have been released, and also about some of the public consultations, but with the negotiating mandate from a time past that was already available on the internet, I think the debate was how much use that served other than create precedent.

Q4 Chair: Of course, the whole question of transparency and secrecy is a matter of concern in a democratic society. When you are dealing with something on this scale, with all the benefits that people are claiming that this will generate, it does not fill one with a great deal of confidence, for example, to hear, according to reports we have had, that the Commission negotiators, who do have access to the United States position texts, have consented to a United States offer to create read-only rooms in agreed locations in Europe where required persons, as it is put, can have access but without the ability to take copies or to take notes. This kind of secrecy and methodology, given the importance that is being attached to this, does not fill one with any confidence that the right people are necessarily going to have access. Indeed, it was only because of a leak that we have even the knowledge that we have at the moment.

Lord Livingston of Parkhead: In terms of the access to US documents, we would agree with you, and we did push the EU very hard and, to be fair, they pushed the Americans very hard to make the documents more open and available. But the US documents are the US documents. The EU has released 11 position papers, setting out positions. They have also done a number of things in terms of public consultations. They have press briefings for state of play; they have regular updates. I think the EU has made some very good progress in terms of keeping people informed on the progress of discussions. I share your

view about the US documents. We would find it very useful if we could access them as well.

Chair: So I have no doubt you will welcome the questions we are asking, so at least you can put your answers on the record.

Lord Livingston of Parkhead: Yes, I am very happy to. I think there should be more transparency of documents. If they are being shown by the US side to the EU, these should be more readily available to individual member states.

Q5 Chair: It does not follow that everyone knows this, of course, but the whole thing is ultimately driven by the European Commission, who have effective control over the negotiations in the first place. We will be moving on to majority voting in a moment.

Lord Livingston of Parkhead: They do not have control over the American documents, because they are the American documents.

Chair: We understand that, but it is a question from the United Kingdom's position within the framework of the European Union and the people who actually effectively run the negotiations in the context of the treaties, which gives the European Commission a very special position.

Q6 Kelvin Hopkins: As I understand it, the legislators and the public do not have access to papers but corporate leaders do. Is this not just a stitch-up on behalf of the global corporate world against democratic government?

Edward Barker: No. That is not my understanding. There is a small group of advisers that the European Commission has put together to consult on governance in the negotiations, and that group of advisers, which includes a couple of business representatives as well as representatives from civil society, I think will be given some controlled access to papers, but, as I say, it is not just business leaders, and it is a very small group who have been prepared for that role with the Commission.

Lord Livingston of Parkhead: It will be confidential to them as well.

Edward Barker: Absolutely.

Q7 Kelvin Hopkins: Even if you had this confidential group, it could be made up of legislators, which would be at least democratically elected people. Having corporate leaders involved in this group, and one guesses that that was the condition for their support, they want an inside track, which is denied to legislators and the public.

Lord Livingston of Parkhead: Regarding the notion of having advisers—and, as Edward said, civil society is represented as well, so it is not merely corporate leaders—many, many things are done with some sort of an advisory board; the concept is not abnormal, and certainly a few of them you would expect from the corporate world, and from other sectors, because they are the people who day-to-day have a view—as are civil society, and civil society absolutely has a say and a view. We certainly involve them in discussion.

These are the people who, beyond just politicians, should be able to give input, and that is what they do: they give input to things. Of course, it remains, as we will discuss later, the case that with EU competence it would be the EU role, and our own Parliament has its own role and its own scrutiny. But having advisers, as we do in many areas of Government, where we give confidential access to certain things on a range of expert areas, is very normal. I really would not classify it as some sort of stitch-up, as you said. I do not recognise that at all.

Q8 Kelvin Hopkins: The Commission has a way of operating—I know, because people have told me—in that they basically choose who goes on to what committee. It is tightly controlled. Even commissioners, certainly for some of the lesser posts, are quietly stitched up by the Commission bureaucracy itself and sold to Governments later. Is that not the way they operate and is that not what is happening now?

Lord Livingston of Parkhead: That is not what I recognise, to be honest. I do not recognise that.

Q9 Michael Connarty: You come from a corporate background so maybe you will have some of your corporate glasses on when you reply, defending the corporate involvement rather than the democratic involvement.

Lord Livingston of Parkhead: I never had any access, I tell you, when I was in the corporate world.

Michael Connarty: I am sure you did not.

Lord Livingston of Parkhead: I struggled enough with the EU.

Michael Connarty: I remember. Now the understanding I have is that there is an EU committee that have access to EU negotiating papers—not just the remit but ongoing negotiations. Now that seems sensible to me but it does seem to be a model that we should be copying here. I presume they act in confidence; we act in confidence similarly. I just do not see why there is not the use of this Committee—I do not care what other countries think—to look at what negotiations the Government is involved in at EU level, because it does seem that the balance has been tipped entirely towards the EU Parliament if they have a committee that is looking at these papers and we are not.

Lord Livingston of Parkhead: There are certain types of EU papers it may be possible to share, and certain ones that we are not allowed to share. I do not see them on a regular basis. I receive advice on what has happened in various meetings, but there are certain types of papers that I am certainly happy to look into if you want them shared. I believe there are certain other types of EU papers that are not allowed to go beyond the EU itself.

Edward Barker: It is the difference between restricted and limited.

Chair: It is a question of what is known as *liberté*, and I would simply say that this is one of my *bête-noire*.

Lord Livingston of Parkhead: To carry on the French.

Q10 Chair: Indeed. I do not know what the German for it is but I do know that we do not like them, and I also would say that my Committee have reported recently on this question, and we do not care for either the principle of or, for that matter, the manner in which Coreper functions in relation to limited documents, and in turn therefore our own representatives in Brussels, so we have made some recommendations about all that. I am glad to hear you say that you would prefer more transparency, but I would like to ask a question in relation to that, and it is this: given that the mandate has been leaked and shows broad goals or aims for the negotiation, but not the detailed negotiating parameters, is the United Kingdom Government exerting pressure on other Council members to allow for formal disclosure of the mandate, so that it can be properly and openly scrutinised by national parliaments, which they keep on telling us are so important, of EU member states before the agreement becomes a done deal?

Lord Livingston of Parkhead: I think we have moved on quite a lot since the original mandate. As I said, it is available. No, we have not exerted such pressure because I am concerned about the creation of precedent. If we do formally release this mandate—I think it is arguable both ways—then are we saying that all negotiating mandates, which may contain other things that we do not want public, should be released? I am not sure it serves a huge amount of purpose, given it is already available and it does create precedent. What I would like to do is to see more, on a go-forward basis, being made available to have exactly these sort of discussions. To be fair, the EU have upped their game in terms of what they have released in terms of position papers, in terms of having briefings and the like. So I think there is an improvement. Of course, we do report on a pretty regular basis to this and other Committees about where things are, what the issues are and I am here to hopefully answer some of the questions you have about that. Of course, if there are particular subjects or facts on which you want us to provide better and more detailed particulars, to the full extent we can, we would be more than happy to do so. I am not sure going back and potentially forming a new precedent is going to be a good way, given it is available, with the practical benefits against some of the challenges, but I do see the argument the other way: if it is already available, why do you not just formally release it. We did, among the member states, have a discussion about that and some felt in different ways about it.

Chair: Did you want to ask another question, Michael?

Q11 Michael Connarty: Yes. I think there was another question coming before the one I wanted to ask, but I just have one supplementary on the question of what is made available and what is not. I look at the Lords report and it says specifically, “The UK Government and the European Commission should articulate more clearly which areas of regulation will be under discussion, and which will not”. There is still a lack of clarity. There is a lot of concern from the trade union and labour movement. Will it be a levelling down in terms of regulation of rights of workers, or levelling up? Our aspiration is obviously to level up, but are the US aspirations to level down, etc. These are the kind of things that need to be made available to our stakeholders. We are only here by the right of election to Parliament. We speak for the people against the Executive in this Committee, so if the Executive are not clear about what the consequences are, or even the areas of discussion, particularly things like regulation—I have a few more I will raise as we go through, not just to do with labour—then there is a concern and, I think, a growing doubt that the Government are in fact representing the interests of the individuals and the groups in our society.

Lord Livingston of Parkhead: I think Commissioner De Gucht, indeed supported by the member states, was very clear: there is no intent to lower standards, full stop. They are very clear about that. The regulatory coherence we have talked about is about finding how, where we have different but broadly the same standards, we can bring them together. There are two different ways in which an airbag is designed, and both might be right. In terms of food standards and working standards, Commissioner De Gucht—and he has the full support of the member states—has been really clear that there is no intent to dilute European standards. In none of the discussions that I have heard report back has there been any suggestion of such.

Michael Connarty: Make those available and let people see them.

Lord Livingston of Parkhead: I could make his comments available. Yes, absolutely.

Michael Connarty: Not the comments. I am talking from the Lords' conclusions; we are not satisfied when you have finished being interviewed by them, because you are named here in the report.

Lord Livingston of Parkhead: I can only say what I have said again: I have never heard. It is very difficult to prove that nothing was discussed. Of course, overall standards and a whole load of things were discussed about how we can bring them together. We will show you the quotes and the comments and any written documents that help set out that there is no intent to reduce the standards enjoyed in the EU in relation to health and safety, food, etc.

Q12 Kelvin Hopkins: Trade union rights?

Lord Livingston of Parkhead: I have never heard trade union rights being discussed at all as a matter. Have you ever?

Edward Barker: No. We are certainly not looking to dilute labour rights.

Lord Livingston of Parkhead: Perhaps we can maybe just put in writing some of the quotes and background and comments and any written documents to offset this. I have heard it mentioned. I have never seen any documents or any discussion. In life, it is very difficult to prove that something has never been done, but I can assure you. The Commissioner has said repeatedly on the record on many occasions in public about the intent of this agreement. Of course, it is a charge that has been made, but we will happily look through the files of anything written that really confirms that this is not the intent. This notion that TTIP is somehow on behalf of multinationals to cause some sort of dilution of rights is completely false. I am sorry. TTIP is about finding a way, particularly that will help smaller businesses, with multiple standards between the two countries—between the EU and the US.

Chair: If I may say, you made quite an interesting comment just then—two countries.

Lord Livingston of Parkhead: Yes, between the EU and the US. The EU has a reasonably common set of standards on many things as a whole; there are some areas where we do not. It is about finding where we are similar but different, and finding ways in which we can converge in areas, and that has been done in other areas I know of, and to make it easier for companies to trade, particularly smaller companies. Big companies can cope

with this stuff, because they have departments to do it. They have different factories in different countries. Small companies cannot cope. Also, consumers will get better deals. It is not some big plot by multinationals, as it is painted out to be, and nothing I have seen puts it in that context.

Q13 Michael Connarty: I will remain with the conclusions of the Lords Committee. I am sure you have read them and therefore will know what they say. I mean, in paragraph 81 it says specifically—I presume you gave them the same assurances—“We nonetheless urge the UK Government and European Commission to seize the opportunity presented by the sustainable development charter of the negotiations to press the United States to ratify the International Labour Organisation’s core conventions”, which of course they do not do.

Lord Livingston of Parkhead: Yes, but that is not the same as reducing the EU’s labour laws. That is a different thing. I note that the Lords recommended doing that but it is a different question from the one you asked me.

Q14 Michael Connarty: It is a very important question because clearly there are concerns that if you do not do that, then their attitudes will start to infiltrate into—this is talking about even the first phase, 2027—the behaviour in the EU. That will happen if we are not using a common standard, which clearly even the Lords recommend should be the ILO standards for labour.

Lord Livingston of Parkhead: I think what you are asking for is actually a movement in labour standards in the US. I think we have been clear. We have rejected a movement down in any way for labour standards in Europe, but we will continue to see if there can be a convergence. I suspect that will not result in a shift in US labour standards and it will certainly not result in a shift in EU labour standards. Let us be very clear about that.

Q15 Andrew Bingham: During the negotiations, the Commission consults with the UK and other EU Governments via the Trade Policy Committee. Does the Government consider that the Commission is keeping Member States sufficiently well informed through the process of negotiations as they are going forward?

Lord Livingston of Parkhead: I think the Commission keeps us reasonably well informed. Certainly the reports back that we receive when we go to Council meetings are very full. There is also, at this end, quite lengthy documents reporting back, for instance, on the latest negotiating rounds. By their nature, there is a bit of a delay, but the reports back are quite substantial. Maybe ask Edward, because on a day-to-day basis he gets the reporting back.

Edward Barker: Yes. It has certainly expanded for this negotiation and we have, both through the regular Trade Policy Committee meetings but also through additional experts’ meetings, quite an opportunity to give the Commission our views based on the papers we can see, but, as we just discussed, it would be even better if we could see the US papers to comment on as well.

Q16 Andrew Bingham: Taking that a stage further, how much are you then consulting across Government and also with the devolved Administrations?

Lord Livingston of Parkhead: In terms of Government, we write quite regularly to this Committee and to the House of Lords Committee.

Q17 Andrew Bingham: Beyond that as well?

Lord Livingston of Parkhead: There is also debate I know a number of you contributed to on TTIP in the House of Commons. There is a debate on Tuesday in the House of Lords on TTIP, so there is a lot of discussion and information going on about it. I think we sent to all parliamentarians a brief sheet on TTIP and there is an all-party group on TTIP as well. So there is a lot that goes on and is available on TTIP, and there is also a credible amount of public discussion. Ken Clarke, in particular, has been leading a lot of those discussions, bringing in all sorts of interest groups—those who are for and many who are against: NGOs; civil society, some are for and some are against; and companies of differing sizes who have expressed particular concerns. I think there has been a lot of discussion. One of the things I would add to the point about consultation from the EU is the move, for instance, on ISDS clauses to have a three-month open consultation. We welcomed that. That was a good thing to have a clear discussion about what the issues and concerns, real or illusory, were about ISDS clauses. The EU has been holding many open meetings as well, including in London. Also, with Spain, we are going to coach a group on TTIP, which again will be encouraging significant participation from various parts of society, so there is a lot going on.

Q18 Andrew Bingham: What about the devolved Administrations?

Lord Livingston of Parkhead: I am seeing them on Monday night to talk that through. As you know, trade policy is not a devolved power, but funnily enough, tomorrow night I will be going to Northern Ireland and on Monday night I have a meeting. That was arranged before I saw your questions.

Q19 Chair: In light of your own origins, apart from anything else in relation to Scotland, of course, there is the Scottish referendum to come, and no doubt the outcome of that will be extremely significant in terms of these negotiations, whichever way it goes.

Lord Livingston of Parkhead: The result of the referendum will be very significant for a host of reasons, but one of them would be, obviously, if Scotland voted for separation, then it would have to go through a whole process of reapplying for EU membership. I think the negotiations about the trade almost would pale into insignificance for it compared to that process.

Q20 Jacob Rees-Mogg: Thank you, Lord Livingston. Moving on from the discussions to the point at which a deal is agreed, it would be very helpful if you could explain how that may happen because, obviously, some parts are a qualified majority vote, some parts are reserved for unanimity and, from what we know of the contents, some of the TTIP will mean it will have to be agreed by the EU itself, including the European Parliament, obviously by

the US, by the individual member states with some degrees of unanimity and then possibly with ratification at country level. Is that broadly right?

Lord Livingston of Parkhead: Yes, focusing on the country level, we believe it will be an agreement that will require each member to also approve it individually. Whilst there will be mixed competence, the extent of the agreement as such will mean it will need the unanimous agreement of the Council. Before we would give agreement, we would then go through to scrutiny and then afterwards it clearly has to be laid before the two Houses of Parliament in the UK. I cannot speak for the other countries, but it will require approval from our Parliament.

Q21 Jacob Rees-Mogg: What role will the European Parliament have to play?

Lord Livingston of Parkhead: They will also go through a process. Is it QMV?

Edward Barker: They would have to consent, yes.

Q22 Jacob Rees-Mogg: And they have to consent to the whole thing, not just the bits to which the EU has competence.

Edward Barker: My understanding is they have a single vote based on the deal as a whole.

Q23 Jacob Rees-Mogg: I think you have answered the follow-on question. So from our point of view, we would see for scrutiny, and the scrutiny debate, elements of the overall treaty that were UK competence that was involved in the total treaty, but then there would probably be a Bill for the final ratification of the treaty?

Lord Livingston of Parkhead: Yes. There would be a ratification. It is certainly our belief that there would be a proper ratification and there would be a debate on it in the two Houses.

Q24 Jacob Rees-Mogg: Do you think the ratification would require an Act of Parliament?

Edward Barker: I do not know.

Lord Livingston of Parkhead: I think it may depend if there is some enabling. Can I check with some experts?

Q25 Jacob Rees-Mogg: Okay, I understand that it would require an Order in Council under the European Communities Act. I was going to ask if there were any bits of it that might trigger any part of 2011 Act, which obviously require specific exercise of the competence to be ratified in different ways.

Lord Livingston of Parkhead: I think it depends what we get in the end. We are so early on in what it is that it will certainly come, so the question is if there is anything and any question about competence we and, I have to say, a large number of member states will push very clearly to insist on member state competence.

Q26 Chair: You have indicated that you thought there was some information you could make available to us. Perhaps you could give us an assessment of what we are discussing now in writing after this is over. I think that would be helpful.

Lord Livingston of Parkhead: Yes, I am very happy to, and the process that it goes through. We actually did for the House of Lords a single page on what you have to go through to get it through, on the assumption it is what we expect and it is substantial in terms of what is in it. We will happily give that briefing.

Q27 Chair: I would like to ask one simple wrap-up question on this. Is it going to be unanimity or qualified majority vote in the Council?

Lord Livingston of Parkhead: For the Council, it will have to be unanimous. That is my understanding, because each country has to approve it.

Edward Barker: That is our expectation, but we cannot be sure until we see the final agreement.

Lord Livingston of Parkhead: Assuming there is competence that is outside the EU, it would have to be. We are working on the basis of an ambitious agreement, and if there is an ambitious agreement, I believe it would require unanimity.

Q28 Chair: So any one of the 28 member states could veto?

Lord Livingston of Parkhead: Yes. They effectively could refuse to ratify. If they refused to put it forward for ratification, then it does not go through.

Q29 Jacob Rees-Mogg: But will it be compartmentalised? That is to say, there are bound to be parts that are QMV.

Lord Livingston of Parkhead: I would not have thought so. One of the things we are pressing in the US is a fast-track authority to effectively get the same thing because of course the danger you get with compartmentalisation is people saying, “I like this bit but I do not like that bit”, or “They can reduce our tariffs but we would prefer not to”.

Q30 Jacob Rees-Mogg: Without fast track, Congress can ratify clause by clause.

Lord Livingston of Parkhead: Yes.

Q31 Michael Connarty: The second question with that is if they ratify this agreement, do they give up the unanimity clause on any of the parts that were unanimous before? Because clearly if there are within this agreement things that are qualified majority voting and other things that require unanimity, then clearly you have to wrap them up in one unanimity vote. If everyone then votes for it, do they then give up their control of those areas where they required a unanimous vote before? In other words, do they hand the power to the EU

Commission because that is the kind of thing I have noticed in the 15 years I have been on this Committee; that is how they use competence creep.

Lord Livingston of Parkhead: The Council members being required to be unanimous, which is what we expect, gives the member states quite a lot of power in this.

Q32 Michael Connarty: Once they go through the barrier and vote for the agreement, should it go ahead, do the sub-clauses that would have required unanimity under earlier treaties be given up and therefore all future negotiations in these areas lie with the EU Commission and the Council and not with individual Governments?

Lord Livingston of Parkhead: I do not recognise that.

Michael Connarty: I can show you models in the past where this has happened.

Lord Livingston of Parkhead: Maybe I am not understanding you correctly. Certainly there has been some push in the Commission to say that the competence lies with the Commission on matters, and therefore it does not require the Council to have unanimous approval, because there is no competence in the member states. We have pushed, and I will continue to push, and, to be fair, a number of other states have been strongly pushing to see that such agreements have clauses in them that are actually member-state competence. Therefore we have to individually sign this agreement as well and, as such, we therefore have to individually approve, so, as Jacob Rees-Mogg said, therefore effectively all countries have to agree it.

Q33 Michael Connarty: It links to my next question, but what you do not seem to be getting is the possibility that, having given that unanimous support to the total agreement, should items be amended in that agreement in the future that used to lie with unanimity with Governments, they would be taken as an EU competence to agree in the future. So you are giving away permanently your right on that area of policy.

Lord Livingston of Parkhead: It is not the issue of qualified majority voting; it is the issue of: do you move competence outside the agreement?

Michael Connarty: Yes.

Lord Livingston of Parkhead: It is the reason we insist on member states signing it, because that does not give away competence. It still says that that bit of the agreement is the competence of individual member states.

Michael Connarty: After they give it away—

Lord Livingston of Parkhead: No. They do not give it away.

Q34 Michael Connarty: We are talking at cross-purposes here. Let us say everyone agrees unanimously to go for the final agreement. If in that there are areas that at the moment require a Government's individual agreement on an issue, does that policy issue then transfer to the competence of the EU for future amendments to that policy? That has happened in the past, and if that happens in the future, I think people must know that.

Lord Livingston of Parkhead: If I am understanding the question correctly, by making it clear that we are signing it and it is our competence, then the policy area remains our competence. What may be an issue, which is why we have resisted, for instance, on CETA, is if certain aspects such as immigration rules become part of a trade agreement, and we have resisted, for instance, with Canada, accepting certain clauses on immigration into CETA that relate to trade matters, related to the provision of services, even though these clauses are actually less than we already make open and provide—and the reason we have done that is not so much a matter of competence. It does not come under the Treaty; it remains the UK's own decision.

Q35 Michael Connarty: But you had to resist it being included in this trade agreement?

Lord Livingston of Parkhead: We will be very careful that we do not give away things, particularly in relation to immigration. We cannot give away exclusive member state competence—that cannot be given away—but if we enter into an agreement to do something that stops us changing certain policies later, than that is something that could cause a problem. That is not a competence issue per se, because although we are using our competence to give that away, the problem is once we give it away we cannot then change our own policy. It would be the same if you were entering into a bilateral agreement as a country. If you entered just into something on a trade agreement, the Parliament could not then just say, “Well, we are going to rip up what we have agreed.”

Q36 Michael Connarty: I disagree with that. If a Government decides that having a trade agreement has a negative influence on their country, they can renegotiate that trade agreement at any time and change the agreement.

Lord Livingston of Parkhead: You need two parties to agree.

Michael Connarty: Yes, exactly.

Lord Livingston of Parkhead: Both sides need to agree.

Q37 Michael Connarty: I read your briefing. You referred to your page of briefing that you gave the Lords. It says quite clearly, “Trade policy is an exclusive competence of the European Union”. Now if something gets wrapped up in the trade policy on which we used to have unanimous competence, if it becomes an EU competence, I am not saying it is good or bad. People must know, and that is why my question is quite frankly, if we then move on to what they call—

Lord Livingston of Parkhead: But I am saying, you cannot give away competence.

Edward Barker: It is exclusive.

Lord Livingston of Parkhead: Yes, it is exclusive. If, however, we did not sign the agreement and said, “It is okay; the EU can sign the agreement on behalf of all of us,” we would be implying that that meant the EU had competence on it, and that would be a problem. That is why we sign the agreement to avoid giving away competence on the issues where we have competence. We expect TTIP to be so wide it will cover some areas

where we and other member states have competence. That is why both the EU sign it and individual member states sign it: to avoid giving away that competence.

Q38 Michael Connarty: So when we agree this, after it, any further amendments to any of these policies that were our competence that we then voted into the agreement would still remain with individual members? In terms of any amendment that was then put forward by the Commission in the future, in what is called the living agreement, which seems to be a kind of open door for future amendments to the treaty, the question for me is: will there be such a lack of transparency that people will not know, or will it be quite clear which competences remain with us for future amendments, as well as which competences we use to agree the agreement, which is in our vote? That is a concern because as it says here in the evidence—page 36 of the Lords report: “In our view, GDP figures beginning with zero and household income gains that would not materialise in full until 2027 will not win the hearts and minds, even if they are substantive effects.” The question is, with a lack of transparency remaining on the ongoing issues after the trade agreement comes into force, given the intent for it becoming a living agreement, what assurances can be given clearly, and what assurances will be given, item by item, of things that we will still have competence over for future amendments?

Lord Livingston of Parkhead: If we had competence on a subject before, by making sure we sign it, the competence will remain with us afterwards.

Q39 Michael Connarty: You will be prepared to list those for Parliament and the people?

Lord Livingston of Parkhead: What competence is is competence—my listing them or not, they are the law. As we know, there are certain areas where member states and the Commission disagree about competence, which is one of the reasons we insist on signing a lot of agreements where we are told the Commission thinks there is no need for the member states to do. But the law is the law.

Q40 Michael Connarty: I hope our Governments are coming from a different point of view.

Lord Livingston of Parkhead: Believe me, it was 28 to none on one agreement recently where the EU member states absolutely said, “We are all going to sign it individually because we believe there was mixed competence in there and therefore we need to do it”.

Q41 Michael Connarty: I am going to press you on the question, because you have still not answered it. Will you list these competences for Parliament to see and for the people to see, or will they in fact lie in this vague assurance you are giving everyone? People then have to search out these competences. That is not what people want. That is why I am saying the credibility of the agreement relies upon its transparency.

Lord Livingston of Parkhead: The legal competences are what they are. We will not get them from the Commission because, as I said, there are certain things they disagree with. There may indeed be some things—not to do with this agreement but just generally—

where the European Court of Justice will finally opine on who is right about some of the competences because the Commission and the member states have been fighting. The legal position on where competence lies is the legal position. I mean, I guess what we can do is supply you with our “This is what we believe is a competence of member states in a number of areas.” That is the nearest I can get to it.

Michael Connarty: After the agreement, when we have this living agreement—

Lord Livingston of Parkhead: It does not get changed by the agreement.

Michael Connarty: I am interested in what is there after the agreement as much as what is in the agreement.

Lord Livingston of Parkhead: But as I am saying, competence does not get changed. As long as we sign the agreement, competence does not get changed by the signing of the agreement.

Q42 Chair: I think at this point, I would simply make an observation, which is that this is an extremely complex area. Mr Connarty has asked, and many of us, I am sure, would agree that we would like as much clarity as possible, and a list of competences would be highly desirable, to say the least. Having said that, we recognise that at this stage of the discussion this is the first time we have been here, and it may well be that we have to ask you back because, as this progresses, and in the light of the importance that is attached to this agreement, and the question of secrecy, the lack of transparency and all the things that we discussed at the very beginning, and also the fact that, for example, Professor Simon Hix of London University has an operation called VoteWatch, issues may remain. That has been a matter of considerable interest to us in relation to voting arrangements that go on in the Council of Ministers. He has tables to show who has voted where and when and how, and actually the question of majority voting is quite often subsumed by consensus, because what they do is they know what the outcome is going to be. What we do know from his conclusions is that of those proposals that are put forward, despite the fact that there is some consensus at the end of the day, the reality is that the original proposals do go through, because they are driven by Commission.

That raises some very important questions, so I think at this juncture we can move on to the next subject matter, but I would just like to put it on record that we are the first Committee, certainly in the House of Commons, that has really looked at this in detail. I rather hope that other committees, such as the Business Committee, will take an interest in this as well, so that we can have a proper analysis of the position as we move forward. We are grateful to you at this juncture for what have you said so far, but we will be evaluating that in the light of our concerns. I think the next thing I can suggest is that Mr Henry Smith asks the next question, which is related to the latest round of negotiations.

Q43 Henry Smith: Thank you, Chairman. Thank you, Lord Livingston, and welcome. In respect to the latest round of negotiations that took place in Arlington, Virginia, between 19 and 23 May, what is your assessment of the progress made in those?

Lord Livingston of Parkhead: It is not surprising that we are getting towards the crunchier end of things. The first round went very smoothly. To be fair, it should be recognised that it is a year since we started this, and we have made a lot of progress. If I can look first at

tariffs—and I may incorporate some of the things that happened before because they got discussed at this round in Virginia—I think the EU put a good offer and the US put a poor offer on tariffs and goods. There is some degree, I understand, of US acceptance of this, and they sort of said, “Well, it was our first offer. What do you expect? We will put a better offer next time. We will get higher than where the EU is.” I think the EU felt that was not the basis upon which one should operate.

Also on tariffs, the US put forward a tariff offer on services, which was a surprise because that was not meant to happen until the next round. It was not a great offer but at least it was an offer in some ways. I think they were just trying to get on the front foot, and the EU will have to consider how it responds to that. We are making progress on tariffs, and I believe that if we get an agreement, we will remove the vast majority of tariffs. I think the debate will be: 90-per cent of tariffs? While they are not absolutely enormous in trade with the US, there are some areas, such as sports goods, where I think they have a 25% tariff. There are some areas where it would do some good.

The second area is in terms of regulatory coherence. There are further discussions about how they are going to be achieved. The areas that I understand achieved some progress were automotives and pharmaceuticals, which are two very important areas for the UK. The area that was not discussed at all was financial services, which is also an important area for the UK. There was some progress on that. The message that came back was the lead negotiators were in upbeat mood about progress made. I will send you a more detailed version; I have a draft, so you will get very early next week the read-out from this, so I will give you the details. From what we see about it, I would describe it as some progress, but the next two are going to be very important that we keep moving on. They have started to attempt some of the difficult stuff but I will give you a listing of all the things that happened. We have had a 40 or 50-page report back. We are condensing it to give you the headlines on what went on.

Q44 Henry Smith: Chairman, if I may just follow on from that, and thank you for that, with the official line being that it was an upbeat round of negotiations, what is your prediction for progress from here, particularly in light of the fact that we have US congressional mid-term elections taking place in November this year, and then fairly shortly after that the run-up to the 2016 presidential elections. Do you see a final draft being agreed before the US presidential election period? Do you see possible difficulties due to changes in congressional seats or Senate seats after those mid-term elections, and also what is your assessment of the congressional Trade Priorities Act, and, since that lapsed in 2007, whether you think that will be able to streamline the process on the US side?

Lord Livingston of Parkhead: I think the intent is that agreement within 2015 is still right. We had talked about first half; I think that would be ambitious, but that would be amazing because that would be two years since we started, which, given the scale of it, would be incredible. There is a trade-off, of course, between time and level of ambition. We can do something unambitious reasonably quickly. I think we are still on track to do it in 2015, but, again, it is one of these things. Getting the easy stuff done is the easy bit. I think until we really start. The sixth and seventh negotiation rounds are July and September. I think the mid-terms, unless they produce some very odd results, will help because we are at the other side of them. I think being the other side of them does us no harm at all. People

maybe can then act in a less short-term political way on certain aspects. There is still the political will and, from what I have seen, it is still entirely feasible to get an agreement, subject to all the detailed stuff being done, in 2015.

Q45 Henry Smith: Finally, from your perspective, do you have faith and confidence in the bipartisan congressional Trade Priorities Act being able to be useful in this process? For example, I will not mention any names but I was with some US Congressmen a couple of months ago, and certainly with an eye to their re-election in their various districts and states, there are some vested interests with certain industries, so I agree with you that post mid-terms is probably better, but I am just wondering about that particular bipartisan piece of legislation in Congress.

Lord Livingston of Parkhead: If you listened to a number of people, you would have no faith at all in it, but I think there is reason to be more positive. A lot of people are more positive. The interesting question is will they get it for TPP. From a US point of view, they find TTIP less concerning because it does not have quite the difference. The EU and the US are similar. If you look at TPP, there is a real mixture of countries, and quite a lot of concerns are expressed about labour rights, etc; it is the other way round. We will have to see whether it is got for TPP. So far, we still expect it to be got and the advice from the Administration in America is, yes, it will be achieved. As you say, we are going to have to wait until after the elections and hopefully things will be easier then.

Q46 Mike Thornton: We have just been hearing about the American side. On the EU side, we are looking for an appointment for a new Commission. What are your feelings on how that is going to affect the negotiations?

Lord Livingston of Parkhead: The simple answer is I do not know. I know you asked about the Commission, but first of all, on Parliament, we have to remember, despite some movements, we still have, I think, a Parliament that is pro it. The MEPs—it is a bloc. There are some concerns.

Q47 Chair: You mean the European People's Party? The centre of gravity of the new Parliament.

Lord Livingston of Parkhead: Yes, I meant if you look at the general pro an agreement, there is still a majority in the Parliament, but there will be concerns about individual parts of it. I think that is quite clear, and various things have happened that will cause concern. The notion of saying that an ambitious agreement with the US is in our interests is, I think, will be received positively. I was in Spain, for instance, on Friday and they were extremely positive about getting a deal done, and Spain has historically not been as pro free trade as certainly they were talking about in relation to this agreement. In terms of the Commission, I suppose it depends who is in which post. I think Commissioner De Gucht has been a real proponent of free trade, and what we obviously want to do is to have somebody who has that same strong sense of the benefits of free trade and what it can do, but I probably know as little as you about the way that might turn out.

Q48 Mike Thornton: So it is a matter of your considered opinion now—I think what is very valuable to the Committee on something like this is what you think might happen is as much as what—

Lord Livingston of Parkhead: It is unknowable who might end up in the trade position. As we know, apparently there are some discussions about who may head the Commission—apparently—so I think, shall we say, a lot of things stem from there. If it is somebody who recognises the benefit of free trade, I do not think that will be a problem, but Commissioner De Gucht has put a huge amount of effort into this. The biggest question might be what happens if there is a big delay, because that is possible as well. Because if you have got effectively a Commission that has not changed, but is going to change, that may be an issue, and that could be a possibility from what I understand of the process if we do not get an agreement.

Q49 Geraint Davies: Could I make the point to you that a delay might be in all our interests? Surely what we are seeing here is a hurtling ahead with this free-trade agreement at a time of political change both in the United States and Europe. This is an agreement behind closed doors, which is going to fundamentally shift power from sovereign states and democratically elected Governments to multinational companies who are able to sue sovereign states. The idea that it is going to be great if we hurtle ahead and finish this all off in the deadlines prescribed is surely something to be frightened of, not to praise.

Lord Livingston of Parkhead: No, I disagree with you. I do not recognise it as power being transferred. I see there being huge benefits to consumers and businesses and our economies and to employment at a time when, whilst the UK economy, thanks to the policies put in, is doing very well, across Europe there are obviously challenges, and I think free trade has been a big benefit. I am a great believer in free trade. You might have a different view, but I am a great believer in free trade, and pursuing this agreement will be very good. We have to make sure it is the right agreement, and there is certainly no intention to pursue the wrong agreement. I suspect you may be referring to ISDS. It applies to ISDS as much as anything else.

Q50 Geraint Davies: As an economist, I know all about the benefits and comparative advantage in free trade. I am not against free trade but what we are talking about here in terms of what is happening is the shift in power between multinational companies and sovereign states behind closed doors. I am just concerned. This is a very fundamental change that will end with the position where multinational companies can sue individual sovereign states, some of which will have less turnover than the multinational concerned. It appears that, as a Minister, you are saying, “Oh well, we want lots of trade.” I agree with trade, and free trade, but this is not really free trade. It is sort of trade agreements behind closed doors and we will end up with a situation, because of your haste and of others in your seat, in which we cannot turn back the clock and democratically elected states will be under the cosh from very big companies.

Lord Livingston of Parkhead: I disagree with your characterisation. It will not be transferring powers to multinational corporations. In fact the EU, as you will know, have put out a discussion document on ISDS. You will also know there is a huge number of these sort of clauses around the world already. I actually think there is an opportunity to

create a new style of ISDS clause that is, first of all, transparent; the UK has been pushing for transparency on ISDS clauses that provide appropriate but not excessive protection for companies of all sizes from discriminatory action by countries. For example, I think if a country nationalises your assets without any compensation, it is reasonable that investors can expect protection—Repsol in Argentina, for instance. We are trying to create an ISDS clause, and the only ISDS clause the UK would support would be one that is fair and balanced, and it is a new generation of it that does appropriate protection but also it really only provides companies with a means of taking action rather than some new legal rights. So that is what we are pursuing, not your description.

Q51 Geraint Davies: Just so we are clear here, the example you have just picked is to say it would put barriers in the way of democratically elected Governments to renationalise industries. Obviously we may have different views across the floor about what should be the balance between the private and public sector; that well might change over time and people might say one has gone too far, etc. With different Governments, it goes back and forth a bit, but what you have just said is about the power of private enterprise to draw a line, so that there is only one-way travel in this and that is to travel away from nationalised and not the other way.

Lord Livingston of Parkhead: That is not what I said. Sorry to correct you but that is not what I said. It is compensation for nationalisation.

Geraint Davies: Exactly, yes.

Lord Livingston of Parkhead: No, but that is not stopping nationalisation; it is compensation. Certainly if you are talking about a company's assets being nationalised without compensation, that gives the company a right to seek compensation. If you believe that is wrong, that is clearly your view, but I think we also have other routes to seek compensation. It does not stop any Government action; if, however, there is no compensation for nationalisation, then it seeks compensation. I think in our society that would be a fair and reasonable thing.

Q52 Geraint Davies: So if we wanted to renationalise the water industry or the rail industry in Britain, and there was a democratic mandate to do that, obviously within a free democracy there would be a pressure to compensate investors anyway, would there not? Do we need someone coming along with a great big cosh saying "Do not do this or will take you to the cleaners", because this is where we are moving it to, is it not?

Lord Livingston of Parkhead: It is uncompensated ex-appropriation. If you try to nationalise it, if you are paying a fair amount, these clauses will not cover it. This is compensation.

Q53 Jacob Rees-Mogg: It would be against the common law and the Convention on Human Rights anyway. It does not change that.

Lord Livingston of Parkhead: Yes, all this allows is saying that a company who suffers who does not receive compensation for such an event does not just have to rely on the

laws. The laws in the UK are quite clear on this issue. I suspect the laws of some other countries might be somewhat less clear. It provides compensation. To put it into context, the UK has about 90 of these agreements already. We have had two cases ever brought against the UK, and the success rate is zero for two.

Q54 Geraint Davies: But the power is already with the companies versus the people. Take the example of the Royal Mail. It has been sold off and now it is worth much more. What is the power of the people to recover that money for the state? What this is about is moving the power again towards the private sector away from the people as represented by the state.

Lord Livingston of Parkhead: I am sorry; it is not.

Chair: I think we have covered that one pretty comprehensively. I would just add the fact that you were formally the CEO of British Telecom. That was denationalised in 1983, just as I came in the House of Commons. I think we will now move on.

Q55 Chris Kelly: Mr Smith mentioned the timing of the elections in the United States. As a result of the Fixed-term Parliaments Act we know that we have a general election in the UK on 7 May next year. Bearing that in mind, there is some speculation that there will be a drive to conclude a deal in the first half of next year. Is there a risk that the dissolution period will mean that the UK Government is in a weaker negotiating position, and that there will also be no opportunity for parliamentary scrutiny, including by this Committee?

Lord Livingston of Parkhead: Certainly as a Minister, one of the advantages—there are not many of them—of being in the Lords as opposed to the Commons is I do not have to spend time in constituencies, so I will be a very active Minister to the date of the election. You will find me spending any and all necessary time in order to carry on putting the UK position as well. Of course, there are officials doing so. What we have certainly done during any recesses is to write to the Chairmen of both Committees, and also to the Shadow Secretary of State and to a number of other people, to keep them up to date on such matters. The timetable will not be driven, of course, exclusively by the UK. There are a lot of other people involved. We will continue to be fully involved both at an official level and, in my case, at ministerial level. After the election, hopefully I can carry on being involved at ministerial level but there has to be the right result of the election and the Prime Minister still wanting me to carry on in the role.

Q56 Chair: A broader question: how robust are your estimates of the potential economic benefits of TTIP to the UK itself? I say that with some interest because I have recently written a book, as it happens, about John Bright, who was my great grandfather's cousin, who initiated the first ever free trade commercial agreement in 1861, negotiated by Richard Cobden, which by common consent achieved an enormous amount in terms of free trade. It was the first free trade agreement ever, I believe. I would just like you to be able tell us now, in the 21st century, what you think the benefits of the TTIP to the United Kingdom would be likely to be.

Lord Livingston of Parkhead: It is delightful to have a Chairman with free trade in his genes. You will all have seen the estimates that have been put forward regarding what an ambitious agreement could be worth. However, that requires an ambitious agreement and there are a lot of assumptions behind it. You could debate whether it will be more or it

will be less, and, truth be told, until we actually get the agreements we do not know. But the sort of areas we have looked at, at a sectorial level, that we think will see significant benefits are, for instance, the motor vehicle industry, where coherence of standards will make it a lot easier to produce vehicles. I have mentioned pharmaceuticals as well. If we could get coherence of standards in terms of not have to do testing twice—the same testing in two different labs—just because there was no recognition, and things like that, that would help. Removing tariffs would help significantly.

I think the benefits are very substantial. I have to be absolutely frank and say the £10 billion is based on a lot of assumptions. It could be significantly one way—maybe it could even be the other—but the benefits of two of the three largest trading blocs is very important, very worthwhile and will present a great opportunity. I go around the country a lot. In the last couple of weeks I have been to Liverpool, Durham, Newcastle, Nottingham, and Swindon; I am going to Northern Ireland and Glasgow. I speak to a lot of small companies, and they are very interested in it because they get very frustrated at their inability to trade at times through tariff and non-tariff barriers. Opening up Government markets, if it can be achieved, is going to be very important. There are a number of areas where the UK can benefit; the financial services, if we could get good agreement, would help a lot. I cannot tell you the exact number until—well, I will never be able to tell you, but the assumptions will rather depend on the agreement reached. There have been estimates saying that it will be worth, across the EU, in excess of €100 billion per annum. It will take time to build up to that but that is the sort of scale of the value. Certainly I think it is going to be very substantial whatever, and a prize worth pursuing.

Q57 Chair: Certainly focusing on the UK as such—because many people look at it as the EU, and there are those who take an EU view about all this, but there are some of us also who take a much more specific view about the benefits to the United Kingdom out of this—do you think that in the context of that part of the discussion we had earlier, which was about the majority voting arrangements that could apply, and leaving aside the question of whether the whole agreement could ultimately be vetoed at the end of the day, when you are dealing with majority voting—and this is the thing that concerns this Committee quite a lot, as we move through all the other areas of majority voting—as a result of combined voting between certain countries, perhaps in this context, given the incredible power of Germany in the economic sphere in the European Union, there could be an outcome in which the United Kingdom could find that, notwithstanding the apparent benefits, by majority voting in certain sectors we could end up finding that there was a block vote driven by those in the eurozone, for example, largely dominated by Germany, which could produce consequences, for example, in the vehicle industry? Could you just give us a general picture of how you see that side of things?

Lord Livingston of Parkhead: There are a couple of points here. First of all, it does require the UK's approval of this agreement, and it needs to be unanimous in the Council. The concept of some sort of majority that will override the UK I do not recognise as an eventuality. Of course, there will be to and fro on the discussion. We have a particular view, for instance, on geographic indicators, and the Greeks might have another one, and we will have to see where that lands. Things that we would be very happy to put in the

agreements, the French, for instance, might not, regarding cultural products. We already win all the Oscars in the UK. I think it is a challenge.

On the assumption of an ambitious agreement, it is worth £10 billion to the UK per annum. Now we can debate whether that is the right assumption or whatever, but it is substantial. As a major trading nation I think we are bound to benefit. It is interesting: we did an agreement with South Korea, which was less ambitious, and the UK's exports to South Korea have almost doubled since we have done that. A chunk of that was oil. Even if you exclude oil, it is about a 40% increase and we now have a trade surplus to South Korea, so there are real positive signs.

I believe, as a strong trading nation, particularly with a close relationship with America, which is our largest single trading partner, that the UK would benefit particularly from an agreement. What we have to make sure, of course, is that the things that are important to us are in there, and we continue to push strongly for that. Not being in there—we would have to decide what that means and that would be an issue more with the Americans than our EU colleagues. I do not find as I go round the EU—and I speak to a lot of the trade Ministers—that this is like some of the other areas in the EU, where fundamentally we disagree. There are one or two countries that, frankly, would like to tone down the whole thing, because they do not want agriculture in or they do not want cultural products in or they want to exclude things for which they think their industries are not as prepared. But for the very most part I find an enthusiasm for this agreement and for a wide-ranging and ambitious agreement among the member states. I do not think we are as at odds with the other member states as we might be on other subject matters.

Chair: You have been very clear on that.

Q58 Geraint Davies: You have mentioned the benefits of free trade. I was just wondering what you thought the impact would be on tax, in particular where multinationals choose to pay their tax. You will be aware that there is a move towards people wanting tax to be paid where economic activity occurs as opposed to the optimal place for multinationals to pay tax so they minimise their tax. I was wondering how you thought there would be new distortions or changes to the way that multinationals behave to minimise their tax with the introduction of these new trading schemes.

Lord Livingston of Parkhead: Is there a particular area you think, as a result of having greater free trade between two countries, there would be greater distortion? Clearly, the Government has made it clear that we would like to see international efforts to ensure that companies do pay taxes and pay a fair share of taxes in the countries they make operations. As a result of this agreement, and I am trying to understand the particular point that you are worried about within that, do you think that somehow—

Q59 Geraint Davies: The idea of having the free trade agreement, quite understandably, is to have a much more liberal and free movement within that, without barriers from Governments making it difficult for companies to trade and maximise profit. I am wondering if that would also open up a situation where they can move around in such ways as to minimise tax. How does that square with our wanting people like Amazon or Costa, or whoever it is, when they make money in a certain sovereign state—we believe, or I believe,

they should pay money for the economic value that is being added to the profit that is made as opposed to where they can minimise tax.

Lord Livingston of Parkhead: I absolutely agree, and I think the Americans would agree as well regarding that. I do not think this trade agreement will impact that very strong view from the Americans, and I think Europeans would share your view that people should do it. The problem we have, which is not a trade issue, is how you execute that particular issue.

Q60 Geraint Davies: Okay, so what is your projection then? You said that you project this £10 billion extra trade or whatever for Britain. What is your current projection for increase in tax take as a result of this trade for Britain?

Lord Livingston of Parkhead: As I said, I do not see the tax issues you referred to being affected by this trade agreement.

Q61 Geraint Davies: So there will be £10 billion more trade and no more tax? Is that what you are saying?

Lord Livingston of Parkhead: You mean the benefit to the economy as a result of people making a profit? I do not know, within the £10 billion, how much the tax on that will be. There is a detailed document that goes through that aspect—

Q62 Geraint Davies: Surely there should be working in the Government to work out what the impact is on UK plc, and they have not done so.

Lord Livingston of Parkhead: We would be happy to—

Chair: I am glad you have asked that question, and it is now on the record, and the answer is there as well.

Geraint Davies: He does not know the answer.

Q63 Michael Connarty: I just want to throw the Minister a small lifeline. Caterpillar at the moment is perplexing the US because in fact they claim that they are now headquartered and have an active unit in Switzerland. In fact, it is quite clear that it is just a sign on a wall and a few people who move bits of paper around, and they are desperate to get the tax from that. Now it is interesting that the EU has a relationship with Switzerland where they now have to declare, and they have a rule about paying taxes, and it is affecting, to the benefit of the UK and other countries. It would be interesting to know if this deal actually would start to look seriously at this question, because it is one that is causing concern for the US.

Lord Livingston of Parkhead: I do not think there is a tax chapter, is there?

Michael Connarty: If Switzerland sign up to a deal with the EU, they should sign up to the deal as part of this trade agreement, and therefore Caterpillar can no longer squirrel away its profits, which are made clearly by its production and contracts in the US, by having an office in Switzerland, which I think we are trying to stop.

Lord Livingston of Parkhead: I remain sympathetic about exactly the point you are making, and that is the position of the British Government. I think it is the position of the

American Government. It is not in this trade agreement or impacted by this trade agreement. However, a different subject for a different day is how the OECD countries get the outcome to which you referred. I think we can all describe it. It is ensuring that the tax laws are clear enough and applicable enough that they work, but it is not a trade matter. I do not think anybody in this room would disagree with you as a principle, but it is not in this agreement.

Chair: Lord Livingston, there is considerable interest in this tax question, and you have gathered it from at least two members of this Committee. I would simply say this: that I think it might be simpler, rather than go through the whole of this hypothetical question at this stage, if you could get some advice from your advisers and just give us a short note on the question of any tax implications that could arise from this. That is really a simple way of setting the scene for any future discussions, because we now want to move on to other matters relating to the historic Commonwealth trading partners.

Q64 Michael Connarty: Can I just précis it by saying that it is quite clear in the comments made and the analysis that there is quite a lot of speculation about whether free trade agreements ever deliver the benefits? I notice that some of the evidence submitted made some comments about it potentially maybe only making available another month's basic GDP growth for the US, and it might therefore not be quite the great benefit that everyone claims it is when we set out. I am sure you will have read the reports and therefore will know you are hoping, by 2027, that people will see great benefits, but you are asking people in 2015 to give away quite a few rights, so I think that balance has to be struck. But it is quite clear in the analysis that was done by the Bertelsmann Stiftung institute in Germany: they analysed this trade deal to have caused yet more damage to the UK's former Commonwealth partners, in fact ones we have agreements with. I see from the figures in the analysis that it could damage Canada by a drop of 9.5% in GDP. It could damage Australia, where my family all now live, by a fall of 7.4%, so it is not all winners. I will come on to others in a moment, but is this not something that is a cause for concern? The trade deals will also damage Mexico, obviously, who is beside the US, and generally lots of other people that we already have trade agreements with will become diminished. It is talking about a diminishing demand for the A8 countries—the new countries of the EU—because the attraction of this agreement will be such that it will draw trade into the US and EU, without necessarily benefiting even those peripheral parts of the EU but certainly damaging our former Commonwealth countries, which I do not really believe the people of the UK want to see.

Lord Livingston of Parkhead: First of all, take the EU peripheral countries, or the newer countries, as I prefer to call them. They are among the most enthusiastic for TTIP, so we must leave them to judge for themselves. In terms of agreements with others, we are trying to negotiate, or just have negotiated, trade agreements with a number of the countries you just mentioned. First of all, we do not agree—officials have said this to me repeatedly—with the basis of the Bertelsmann report. They just do not agree with it. I know the report exists, but they just do not agree with it. Also, we would hope that TTIP would become a model for a wider group. Canada, for instance: Canada is obviously part of NAFTA. CETA is very close; I do not know whether this Bertelsmann report was pre-CETA. I suspect it was. The CETA agreement is worth substantial amounts of money to the Canadian economy, as it is to the British and European economies, so Canada is going to get a significant uplift.

I think Australia and New Zealand is an interesting area. Currently, the UK and the EU do not have deep trade agreements, and I think that is something that should go on the agenda. We have to remember that at the same time Australia, and I think New Zealand as well, is involved in TPP. Australia certainly is, and in fact Australia and New Zealand probably have, between themselves, the deepest trade agreement—something that rivals the single market in terms of the depth. They are forming their own trade agreement with the US. One of my concerns is that actually Europe and Australia and New Zealand should have their own agreements.

Everyone is forming trade agreements, and what we must do is, first of all, try to get more like-minded countries over time into that. I think Canada, the Pacific Alliance—the Pacific Alliance, as you know, is Mexico, Chile, Peru and Columbia, and hopefully some of the countries like Australia, over time, if you form the right basis, you can add them in. I think that will be very effective. It will lead to a growth in the overall trade and the creation in some industries—because it will only be some industries—of effectively a global standard. We will also help a lot of countries, and we think a number of countries will benefit from this agreement over and above the EU and the US.

Q65 Michael Connarty: To continue, I am turning to more worrying issues for countries that cannot necessarily defend themselves. I have a particular view, as people on this Committee and elsewhere know, that the exploitation of the African, Caribbean and Pacific countries by what is basically continuing global capital has not been to their advantage, but the EU has seen some benefits, or is given some benefits from the agreements in the ACP countries.

But before that, I notice that the report says that the biggest advantages to these countries that are not high-earning, high-spending countries at the moment would be if there was a genuine liberalisation in food. But it says that the big protectionist barriers are usually associated with extremely strong special interests. The US Department of Agriculture has sounded a note of caution about doing anything that might damage these special interests in the US. The countries I noticed there were concerns expressed about are Pakistan, Cambodia, Bangladesh on garments and footwear, Ghana on fish, Nigeria on light oils. How much are you liaising with colleagues in the Department for International Development about the potential impact of TTIP on these countries? What guarantees—it is a minor part, a small part, but important—are there that the ACP agreements will not be breached by the interests of the US in negotiating for the advantage of their interest groups? We know this about the banana problem, where the US basically control people at such a level they can hardly make a living out of growing the traditional banana, because of controls by the US. We do not do that and we try to help these people. What is happening in the dialogue with DFID to make sure that we do not sell these people down the river to the benefit of what are already very rich countries?

Lord Livingston of Parkhead: There is no intention to sell anyone down the river. First of all, the EU is currently negotiating economic partnership agreements with a very large number of countries, where the developing, less developed countries effectively get very favourable asymmetrical treatment, i.e. they can maintain a lot of their tariffs, but on the other side they get tariff-free access to the EU. So, you know, the EU is doing a lot.

Michael Connarty: I commend them for it.

Lord Livingston of Parkhead: Yes, as do I. I would also say, again not for these agreements, that the protectionism over food, both in the EU and the US, has been harmful for these countries. It is not something that is going to be solved by TTIP, but TTIP is not the problem either. I have a lot of sympathy and I think these countries would benefit from free trade as most countries have risen in economic standards. I mentioned South Korea earlier. I believe it was the third poorest country in the world in the 1950s. I think more rather than less free trade will assist, hence the EPAs, and that is what we are trying to negotiate.

I think the study showed that there was some increased risk of diversion, and there is, but it was pretty low because the nature of what they did, what was required, the wages, etc, were pretty competitive, so they did not really see that happening. What they did comment on, and we think there is some risk that the higher standards—effectively a new global standard—come in as a result of TTIP, and this really goes the opposite way to some of your questions you were asking before; you were very concerned about lower standards, but there is a risk that actually with the level of standards this might create, some of these countries may struggle to manufacture to some of these standards. I guess you have to balance that up in your own mind. Would you prefer lower standards for consumers in the EU to allow these countries to be able to export, or do we maintain or even increase our standards as part of a regulatory coherence process that might make it difficult for some of these countries to export? That is an issue. We want to see these countries be able to export and grow and, on the other side, having very high standards. There is a conflict between some of these issues.

Ultimately what the EU and the US can look at is what measures, if there is a country that is harmed, could be taken, but by the same token, look at all the benefits that would come to these countries. If there is a single set of standards that makes it easier for them to sell to both the EU and the US, that will present many opportunities. Also, we must remember the multilateral agreements that were agreed in Bali, which, it is estimated, could be worth \$100 billion a year, most of which is in exactly the developing countries. There is a lot going on that will help them in terms of free trade and free trade promotion. With the growth in Africa—seven of the top 10 high-growth countries in the world are in Africa—hopefully, by the time we get to the agreement with some of these, one of the things is a number of them will no longer be less developed countries; they will be intermediate and beyond.

Q66 Michael Connarty: Can I make a comment? I will come down, always, on the side of higher standards for labour and health and safety. My speeches in the House of Commons, and work on the international agreements that I hope to get to audit the supply chains of UK companies, will testify to that. I certainly do not think we should be looking for a cheap road that penalises people in safety, or in terms of labour standards.

Lord Livingston of Parkhead: That is certainly not the intention of TTIP.

Michael Connarty: We should make access available for people, when it is quite clear that their country, and the whole of the population, do not benefit from the world trade that is generated within their country. That is particularly so for places like Bangladesh, where people are now suing some of the biggest companies in the US because of the standards that they found acceptable when looking for products.

Q67 Kelvin Hopkins: Can I support what you said at the beginning of the meeting, Chairman, that we need a second meeting? There are so many questions that I have so far not had a chance to ask, pursuing issues on behalf of employment, worker interest, trade union interest, and so on, and a view from the left. Before I have to leave, unfortunately, I should say that there is an excellent book in the House of Commons Library which analyses the recent burgeoning of free trade in the last few decades. It suggests that world growth has actually been lower, unemployment has been higher and instability has been increased, as a result of free trade and globalisation. This is a view that will not be shared by many of my colleagues around the table, but this is a view—a legitimate one, I think—that ought to be addressed. This is going in precisely the opposite direction. I am profoundly sceptical about the whole idea. If we have a second meeting, I want to pursue these issues in detail.

Lord Livingston of Parkhead: Mr Chairman, I am more than happy to stay much longer, to answer all the questions. Please do not go on my account. I am happy to take all the questions.

Chair: He will have to go, but I will say that as the thing progresses, there may well be a reason, which you would like to take up, to come back and talk to us again.

Lord Livingston of Parkhead: I am very happy to update the Committee.

Chair: It will be a very good idea, because the most important thing about these Committee meetings is that we do actually get somewhere. We are getting somewhere, but at the same time there are outstanding questions which have yet to be resolved.

Lord Livingston of Parkhead: Perhaps if Mr Hopkins wants to send any written questions, we can send a response.

Chair: Now, Jacob Rees-Mogg. We are now moving on to investor state dispute settlements.

Q68 Jacob Rees-Mogg: To some extent, we already covered it earlier. I wonder if I can summarise my understanding of what you have said, and then you can correct me if I have got the wrong end of the stick. Essentially, the ISDS, to the extent that it is included in the agreement, does very little more than give the benefit of extending the protections that UK residents would have to the residents of the country that is at party to the trade agreement. If the Government expropriates property, or changes policy midway through a contracting period—or even through a tendering period, when companies have had costs—they may be able to recoup costs that they have had.

Lord Livingston of Parkhead: Actually, it gives an alternative route to take action. These companies would still be resident and would still have a right of action under contract law, for instance. What it does do is give an international court. It is not a new right that they did not previously have. A better way of describing it is that it is a new method of taking action.

Q69 Jacob Rees-Mogg: Thank you; that is very helpful. From a UK perspective, it is no real extension of rights at all. It is simply a simplification for overseas parties to use them.

But, in return, it is quite helpful for UK companies who may have an action in the United States, which would similarly be bound by this part of the agreement.

Lord Livingston of Parkhead: Yes. In an ideal world, you would never use an ISDS clause because, first of all, the country does not end up breaking its agreements. Even when it does, you can rely on due legal process in that country. There may be some ISDS clauses out there that perhaps do give more rights. The ISDS clause that we would agree to in the UK would be one that effectively is merely that: no new rights; it just gives an ability to take action, for our companies and for the US companies.

Q70 Jacob Rees-Mogg: To go back to Mr Davies' point on nationalisation, if a Government came in and decided, in this country, to nationalise a whole swathe of industries, as far as I am aware there is no example in British history of a company being nationalised without compensation, except in the case of bankruptcy.

Lord Livingston of Parkhead: Maybe there is something in war; I do not know.

Jacob Rees-Mogg: There has been the commandeering of assets, but even those have had compensation paid.

Lord Livingston of Parkhead: I was thinking of enemy combatant companies.

Jacob Rees-Mogg: They have had their property expropriated, if we have been at war with them, I believe.

Lord Livingston of Parkhead: Yes. We are not proposing a system in the UK that is done without compensation, and particularly is not done on a discriminatory basis against foreign companies, even if there is a move to nationalism. I hope that we are not living in that country.

Q71 Michael Connarty: I certainly would not want to see a situation where that happened. You have to have fair distribution of resources. Court judgments are often not necessarily based upon value, but based upon prejudice. I do not like the idea about being settled in court; I think it should be done by negotiation.

I will turn to the existing ISDS settlements that worry people who are in countries where they have seen negative effects. For example, Philip Morris are suing Uruguay and Australia at the moment, under the ISDS mechanism, for putting health warnings on plain packaging on the cigarette packets. I watched my father die of cancer, smoking cigarettes. He was a 60-a-day man. Anything that stamps out that addiction would be positive for me. Suing does it beautifully. I have recently been to Australia. Yes; you pick up a pack of cigarettes, and it is frightening to see what they put on the front of it. To be sued by a company because they say the policy of that Government is damaging their profit margin is surely something we are never going to see in this agreement. Philip Morris are a US-based company.

Lord Livingston of Parkhead: They are a US-based company, and they have had to do quite a lot of treaty shopping. I believe they are taking the action on a Hong Kong-Australia investment treaty. I have two things to say. I am not a legal expert, but there have been occasions in the past when companies or individuals have taken legal action that is not, perhaps, well-founded. Let us see whether Philip Morris actually have any

success with it. In any event, this is what I mean about making sure it is a new-style ISDS clause that absolutely would not allow a successful action. Of course, you cannot stop an action, because anyone can take an action. People get sued for not keeping out aliens, or whatever; you get some very strange legal actions, in many countries.

To be very clear, we would not support an ISDS clause that stopped sensible public health policies being taken. It is actually not the ISDS clause itself; it must be the investment agreement underlying it. As I said, the ISDS clause does not give a new right. It is the right to actually enforce the agreement that already exists. That should be what the ISDS clause seeks to do, and that is what we are aiming for. The question is, therefore: does TTIP give that right? I have not met with or spoken to anyone in the EU who would think that it would be right to sign an agreement that would take away our power for such things.

It has got to be remembered that we do have 90 of these old agreements already. As I said, Philip Morris do treaty shopping to try to find—the fact they have not come direct says something, and people do treaty shopping. I do not know that we do not have an agreement going back in the past that somebody thinks they might have a better chance on. It is interesting, as I said, that in all this time there have only ever been two actions against the UK, and both of them failed. I absolutely share your opinion. It would be no intent, and I have never smoked myself, either.

Q72 Geraint Davies: On the very important point Michael Connarty made, on Monday, in the health debate, I have suggested the Government could consider a 20% tax on fizzy drinks. That is not a new idea. I also mention the need for targeting fructose, as opposed to glucose, at source and as an ingredient which is causing liver and heart problems, etc, and indeed targeting palm oil. There is emerging evidence, particularly in America, about this causing premature death, obesity and all the rest of it. These companies come along, and make all their money by putting salt, sugar and fat into processed food, and then putting a few jingles and a bit of packaging around them. If a benevolent Government suddenly says that, “We want to protect the public from early death, and massive cost to the NHS by taxing”, then surely this would undermine their profitability and they could take an action in the way that Philip Morris did in the case that Michael Connarty mentioned. What defences will we have against Governments who want to undermine profit out of killing people—which we hopefully do—and say, ‘Hold on; we came into the agreement on the presumption that we would make this profit. If we do what we did in America, and it leads to a lot of health costs and death, we will lose out. We want compensation for that’?”

Lord Livingston of Parkhead: I do not think there is anything that we will do that will cause that to be allowed. For a start, I do not think Government is seeking to reduce the profits to do that. I think they are seeking to improve public health.

Q73 Geraint Davies: Yes, but the impact would be to reduce profit.

Lord Livingston of Parkhead: It could have the impact of reducing the profit of any soft drink provider. If it is not in a discriminatory way—if it is affecting all companies—I do not think there is anything in TTIP, and certainly anything in an ISDS clause, that would

prevent the Government from doing that. There would be exclusions about public health and issues like that.

Q74 Geraint Davies: It would be discriminatory. It would be discriminative against companies that are making money out of killing people.

Lord Livingston of Parkhead: Yes, but if you said, “Right, we are only going to do it against American companies”, they would not unreasonably have a point. Remember: we do have many companies who make soft drinks. For those of us who live in Scotland, we have a very fine soft drink company, which I believe is actually more popular than darker soft drinks in America. If the Government takes action and it is non-discriminatory, there is nothing that we see within TTIP, that is being discussed, that would cause an issue in that. Edward, is there anything you want to add to that?

Edward Barker: Yes. As you say, the intention is to learn from the mistakes in some other financial investment treaties out in the world that are very loosely defined and that give imaginative lawyers scope to bring cases. We are looking for this to be a very well-defined ISDS clause that does not give scope for that.

Q75 Geraint Davies: On the specific example of a tax on fructose, as an ingredient into processed food or sugary drinks, would that be something that a clever lawyer could demand compensation for? You would have thought it would be, would you not?

Lord Livingston of Parkhead: Certainly not under the ISDS clause. As I said before, the ISDS clause we are looking to put in would not give new rights. It would be about how you actually pursue your rights. If you do not have rights under existing UK law to impact that, then you cannot. The ISDS does not create it. The ISDS clause that is being proposed is about a mechanism to take action, effectively, when you cannot appropriately rely on an independent legal court that will treat your claim appropriately. You need an underlying cause of action, so I do not see it being applicable in these cases. As I said, we have 90 agreements already with ISDS clauses that I do not think are as good. Philip Morris has also put a claim under the Human Rights Act. Are we going to disband the Human Rights Act because there has been a claim under it?

Michael Connarty: No, hopefully not.

Lord Livingston of Parkhead: That is unfortunately what is being suggested here: because they have put a claim under the Human Rights Act, we do not disband that, but, yes, we should stop an ISDS because they have put a claim under it. Speculative claims will happen, particularly from clever lawyers. I do not see how a tax on a soft drink will enable a claim. As I said, we have 90 agreements and we have put tax on a number of “bads”, as it were—non-good items. We have not had a successful claim against any of the other 90 agreements we have got with ISDS clauses.

Q76 Geraint Davies: Would this require harmonisation? I know the Chair does not agree with harmonisation, and I can imagine why. But if one country in the EU decided to discriminate, as it were, against something—they did not happen to want to import

American-cloned meat, for example, or they wanted to tax it, or whatever—would that be a case that the lawyers could go to court on?

Lord Livingston of Parkhead: The agreement has made it clear that a number of food safety standards in Europe would not be negatively impacted. We would not accept chlorine-washed chicken, for instance, to take that as an example.

Geraint Davies: I was talking about cloned meat.

Lord Livingston of Parkhead: Yes, but I am giving another example. If the EU says, “We are going to accept cloned meat”, then blocks one country’s meat, for no reason other than it just does, there are a whole load of ways you can claim for that sort of discriminatory treatment, such as under GATT, etc. Actually, we have made it very clear that we are not going to reduce food safety standards in the EU as a result of this.

By the way, the Americans are also worried about EU food safety. It is interesting. I hear complaints on both sides about food safety standards, and both sides seem to think the other one has much lower standards than they do. Both cannot be right. If it is not in the agreement that you should accept a particular type of food—that is why I used the chlorine-washed chicken, because I know it has been discussed at some length—then you cannot make a claim against it, because it is not in the agreement. If we agreed to take something, for example to allow imports of non-GM American corn, and we are very happy to take it and then we just decide to block it, people could take action. That is not down to ISDS; that is down to the fact that we have not kept up our treaty obligations.

Q77 Michael Connarty: Given you say that we have due legal process, as was pointed out, then why have it at all?

Lord Livingston of Parkhead: There is an argument as to why you do not say, ‘Look; the UK is fine. We can sit here and we have due legal process; nobody has to worry.’ You can put an argument. It may be that the US does not have confidence forever that the UK can rely on the fact that there will not be people who want to come in and expropriate their assets for no compensation.

Maybe there are some in different parties who might take some views—not yourself, but there may be some—and therefore do not trust the outcome. There may be UK companies who feel that they are exposed, for instance, at a state level. In certain states, being a British company may not give them quite the same protection as they would have if they were a native company. Therefore, they need protection and would not have access to a fair, non-discriminatory legal system to go and take the action. That is the argument as to why.

Q78 Chair: The last question I would like to put is a very broad one. It is do with any potential sticking points that you think you are up against, and the extent to which those could have particular impacts on the UK. That is the final point.

Lord Livingston of Parkhead: It is all very easy; there is no problem at all. No—from a UK point of view, we tend to want as many things in the agreement as possible, because as a free-trading nation we think it will help us and benefit our people. That would include

certain other things that people want to remove, or do not want in. Financial services are certainly an issue. Procurement, particularly at state level in the US, is a challenge. The EU has much more open procurement than the US has, so we definitely want to open up their public procurement markets. That is very important; we have to pursue that. These are two of the big sticking points.

Then, we have the challenge from the other side. Some other countries in the EU might have different priorities. I talked about cultural exception before. Geographical indicators—we are reasonably comfortable with the state of play with the US, where things like Scotch whisky are protected. As I mentioned earlier, some European colleagues would like parmesan to only come from Parma, whereas we do not take the view that cheddar can only come from Cheddar. We think West Country cheddar should only come from the West Country, and Scotch whisky is different from whiskey. We accept that apparently they make whiskey elsewhere. They spell it differently but they make it elsewhere.

Edward Barker: The agricultural issues would be difficult, across the piece.

Lord Livingston of Parkhead: We will be pushing for more, rather than less, on agriculture. Going back to the comments about developing-world countries, we have always been more open in our culture.

Q79 Chair: Thank you very much. I would like to wrap up by saying that, as I understand it, the next rounds are going to be in July and September. Then, after that, we are talking late autumn, really. In the context of the fact that we are coming up for a general election, there are the presidential elections and there are a whole range of Congress questions, it would be perhaps a good idea if we could pencil in something in the late autumn, so you can give us an update. At the same time, hopefully by then we can have a response to our Committee's report, which will involve greater engagement with departmental Select Committees, which is what we are recommending. They themselves are having rapporteurs who will specialise in certain aspects of it. One way or another, I hope that we will be able to come back to you by the late autumn. If you would be good enough to come along, we can carry on this conversation.

Lord Livingston of Parkhead: I am more than happy to. In the meantime, we will both write to you and clarify some of the outstanding points. We will also continue to keep you updated as matters hopefully progress.

Chair: Thank you very much.