



European Scrutiny Committee

Oral evidence: Transatlantic Trade and Investment Partnership, HC 1084

Thursday 26 February 2015

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Members present: Sir William Cash (Chair); Andrew Bingham; Geraint Davies; Kelvin Hopkins; Jacob Rees-Mogg

Questions [1-76]

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

Q1 Chair: Lord Livingston, when we last saw you, in June last year, we had quite a useful exchange, but it was obvious that a lot of matters had to be allowed to evolve, including your getting further into the saddle so that you would be in a better position to answer the questions the Committee wants to ask.

I will ask the first question, which is about the progress and negotiations in the Dissolution period. The ninth round of the TTIP negotiations will take place in the United States in April, including a specific EU-US SME workshop. It is expected that negotiations will now intensify, leading up to the summer, and of course we have a general election in between. What will your role be in representing UK interests in the negotiations during the Dissolution of Parliament?

Lord Livingston: We are still to get the exact rules on purdah, but certainly I would attend any EU meetings during that period. One of the advantages of being in the Lords is that one is more available to do these things. I know, for instance, that there is an informal trade meeting in Latvia, which I will attend—actually, that is before Dissolution, but I will attend any other meetings that it is necessary to attend. We will continue to respond directly to EU matters. What will be more difficult is to make public statements and comments regarding what is progressing, but certainly the communication and the role as a Minister will continue in that period.

Q2 Chair: So you will be continuing, irrespective of the Dissolution of Parliament?

Lord Livingston: Yes.

Q3 Chair: On what basis would that be?

Lord Livingston: I will remain a Minister and I will continue at BIS/FCO. For instance, if there was an EU Council meeting held, I would attend on behalf of the UK.

Chair: Okay, thank you very much.

Q4 Geraint Davies: Can you remind us what your projected timeline is for the conclusion of CETA and TTIP? Do you think you will get them sorted out before the American elections get going?

Lord Livingston: CETA and TTIP?

Q5 Geraint Davies: Well, TTIP. When do you aim to conclude TTIP?

Lord Livingston: The aim that was expressed by the Prime Ministers of various EU countries was to get an agreement in principle by the end of 2015. That is an ambitious target, but if one does not go for it, one will certainly not achieve it. That is the ambition set; we will have to see how it progresses and whether it goes into 2016. Unfortunately, with trade agreements it is very difficult to tell. To reach this stage in, effectively, less than two years is a lot quicker than some of the other trade agreements. There are going to be two additional rounds—rounds 9 and 10—before the summer, and I think those will be pretty critical, particularly round 10, in deciding the overall pace of progress. I would love to have a crystal ball and be able to tell you the exact timing of it, but that is the aim.

Q6 Geraint Davies: Okay, thank you for that. So if possible, we are trying to get it done within 2015, which is fairly difficult.

Lord Livingston: It is a stretch.

Q7 Geraint Davies: In terms of other time frames, it is of course possible for us to opt out of the EU altogether—some people propose a referendum on that—and indeed the ECHR. Can you remind us how long we would be bound into TTIP for, should we sign it?

Lord Livingston: Issues like that will have to be established. I don't think it is clear. It depends on—

Q8 Geraint Davies: I put it to you that the answer to that question is 20 years, and that is based on the energy charter. I put it to you that signing such a deal, certainly within a year, would be a breach of the doctrine of continuing sovereignty. We are in a position where we can pass legislation to breach even the Magna Carta, but you are talking about signing

something within the next year that would bind future Governments for 20 years, and you do not seem to be even aware of that.

Lord Livingston: The energy charter treaty, if I am right, was done well before Lisbon, and since then competence has moved to the EU. It is a lot less clear what happens when the EU is the key signatory on the trade agreement and one is no longer part of the EU. The notification—

Q9 Geraint Davies: Sorry, but the 20 years is in CETA, and 20 years is what is down in the draft TTIP. Are you saying that you did not know that and that you are willing to sign something off in the next year that will bind the hands of many future Governments for 20 years?

Lord Livingston: No, I am saying that this is an agreement between the EU and the US or Canada. I do not agree with you that it is clear and straightforward what would happen with EU agreements of any variety in the event of an exit from the EU. That would have to be negotiated to understand what would happen. Notification is quite different from the fact that you will no longer be part of the organisation that is a key signatory to it. I do not agree with you that it is clear and straightforward.

Q10 Geraint Davies: To be clear on this answer, what you are saying is that even though this agreement would bind us for 20 years, in the event that we left the EU, we would be relinquished from our obligations, the arbitration, the suing and all the rest of it that is embraced in TTIP provisions on ISDS.

Lord Livingston: That is not what I said.

Q11 Geraint Davies: So we would not be free from that?

Lord Livingston: I said I think it is unclear. The nature and the terms of any exit from the EU—it does not just apply to this; it applies to a whole load of our EU obligations and relationships, where how that exit would be done remains very unclear. That would absolutely be part of a negotiation. In the meantime, the UK is, and it is this Government's aim to seek to continue, in the reformed EU and to continue to negotiate agreements as part of that.

Q12 Geraint Davies: I think we all hope that we are going to continue in the EU and that it continues to reform and improve—some of us may not. Let us assume for a moment that we are in the EU; the concern is that we are bound for 20 years in an agreement where judgments may have been made by arbitration panels that may chill the regulatory regime in the future. Just to be clear: you are happy within the next year to sign up to something that would tie our hands for 20 years.

Lord Livingston: I was quite clear on the EU point. I think that the terms—

Geraint Davies: I understand the EU point.

Lord Livingston: The answer is not 20 years. However, we do sign investment treaties and we signed investment treaties prior to Lisbon that bind the UK for 20 years, and you gave notification if you wished to exit it. This is no different from anything else.

Q13 Chair: Could I intervene at this stage? We could have an argument that went on for a whole day on the interpretation, but it would be useful if you wrote to us on that point, in response to what Mr Davies has said; then we will have an opportunity to look at the exchanges. Legal questions arise here of which I would suggest you can have different interpretations, but on which you cannot—certainly in a session of this kind—come to a conclusion.

Lord Livingston: May I add one thing, Chair? The other point on all types of relationship with the EU is that even if we reached an agreement with the US during the course of the next 12 months, the process of ratification would take a number of years beyond that, so it would be highly unlikely that TTIP would get final ratification this side of a referendum.

Q14 Geraint Davies: That leads me on to the next question. In that case can you remind us of the time frame for tying up CETA, the Canadian free trade agreement?

Lord Livingston: It is going through and starting the process of legal scrubbing just now. That will take some time. Legal scrubbing is normally about—what, six months?

Paul Griffiths: Six months.

Lord Livingston: Translation is in the order of 12 to 18 months. Then it has to be ratified by each individual Parliament—the EU has said it will be a mixed agreement—so we are some number of years away from the overall adoption. There may be some interim, on tariffs for example, put in now. For all the stages that go through, we have written out—I would be very happy to give you that; I may even have submitted it last time—how long it will take for each of the processes. The ratification process will not be complete for at least two years.

Paul Griffiths: Something like that.

Q15 Geraint Davies: And you are certain that it will be a mixed agreement that will need ratification?

Lord Livingston: Certainly the comments from the EU today are that it is a mixed agreement.

Q16 Geraint Davies: You were talking a moment ago about TTIP being confirmed conceivably within a year. Obviously CETA pre-dates that and now you are saying that that will take two years, so by implication TTIP will take three years. Is that right?

Lord Livingston: Absolutely, yes.

Q17 Geraint Davies: Okay, now we are clear; it is not one year, but three years.

Do you agree that CETA could basically be a Trojan horse for multinational companies to use ISDS to sue democratically elected Governments? The example I use, obviously, is a bilateral trade agreement between Singapore and Australia. Philip Morris has established a shell company in Singapore to sue to the Australian Government, and presumably it could do the same thing through CETA to sue us. Everybody is worried about TTIP intimidating Governments, when really the wolves are coming through the back door through CETA, aren't they?

Lord Livingston: I think it is Hong Kong, not Singapore. No, I would not agree because the ISDS clause in CETA is a much tighter ISDS clause, which represents far more the state of the art of a modern ISDS clause, by, for instance, taking out some of the rights that companies have such as the definition of fair and equal treatment treaty shopping, which is effectively what you are referring to; that is being narrowed significantly, and the courts are excluding frivolous claims. So actually, the ISDS clause in CETA represents a big improvement.

One important thing to understand, because ISDS clauses have been presented as if they are something new, is that the UK has 94 ISDS clauses, excluding the energy charter treaty. Those 94 clauses, in total, have been in existence for 2,000 years and the UK has never lost a case. Some of those clauses are not perfect.

Chair: We are going to come to ISDS clauses.

Lord Livingston: Sorry, I was being asked about it. The answer to the question is no. You asked whether this would be a Trojan horse and I have explained why the answer is no.

Q18 Geraint Davies: So we are clear, the answer is no. I am asking whether they can inflict this ISDS on us before TTIP arrives and, surely, the answer is yes; but you are saying that it is no.

Lord Livingston: I am saying there are already 90-odd ISDS agreements that, in fact, are less good from a state point of view than CETA. CETA is a big improvement and represents a modern clause that balances rightly the protection regarding discriminatory treatment against a company versus ensuring that Governments have a very clear right to regulate in the public interest. If Philip Morris et al wanted to try to treaty shop in another state—and they might—there are already 90-odd agreements to do that with. CETA would not be the one they would choose. Ignoring the fact that Philip Morris's claim is in

advance of CETA, the CETA clause represents a far better, more modern clause, and it is the one that should be the state of the art.

Q19 Chair: Could I make a point with respect to what I asked you to do, which is write to us about the matters that I was talking about earlier, in terms of the EU jurisdictional question? When you do that, would you also be good enough to address Mr Davies' question about leaving the EU? In that context—if that were something that might happen—you would naturally need also to look at the fact that, if this were to be done under, say, article 50, you would have a negotiating period and there would be a question about whether you would use article 50, because you might not. Without getting too hypothetical about it, it would be useful to have a framework within which, in answer to Mr Davies' question, we get an analysis of how you think the situation will pan out in legal terms. Obviously, you cannot make a prediction at this stage about what would happen in practice.

Lord Livingston: I think it would be helpful if the Clerk of the Committee could give us the exact points to which you wish us to respond. This is one of those—

Chair: As I said, this is such a huge issue—

Lord Livingston: It is indeed.

Chair: —it could go on forever. We will ask our legal adviser to prepare a question that will enable you to write to us.

Lord Livingston: I would be very happy to do so.

Q20 Geraint Davies: You mentioned that there would be what is called fair and equitable treatment in these arbitrations, but that is at the discretion of the arbitrator, isn't it? It is quite flexible; it is not like a court of law. We are subject to what a future arbitrator happens to think, according to the system of rules that we decide, which will then carry forward for 20 years.

Lord Livingston: The definition is narrow on what does and does not represent fair and equitable treatment within CETA. They have clarified that to give less flexibility to the arbitrators.

Q21 Geraint Davies: Can I read out a question to which the Clerk and others want an answer? What are the issues at stake in the reference seeking the formal opinion of the Court of Justice in respect of the partnership and co-operation agreement with Singapore, and how might that court case affect TTIP?

Lord Livingston: That question has not yet been put to the Court, I believe. The EU has talked about it, but it hasn't yet addressed the question of competence. The question is: would the Singapore agreement be a mixed agreement? We shall see whether the Commission puts that question forward, but it has argued that Singapore should not be a mixed agreement. The member states in the Council have argued that it should be. The Commission has also said publicly that it expects TTIP to be a mixed agreement. The answer is that we do not know what the Court judgment will be, but the EU has said publicly that it expects TTIP to be a mixed agreement. In that sense, it has already made a comment, and it seems to be distinguishing Singapore from the US agreement.

Q22 Geraint Davies: I wanted to ask about the health issue. I know that you have leaked something to the press ahead of this meeting, as you did with the Scottish Parliament—

Lord Livingston: Sorry, can I—

Geraint Davies: We are clear—

Lord Livingston: No, no. Can I just—

Geraint Davies: We are clear. Have you—

Chair: Let the witness answer the question.

Lord Livingston: No, I have not leaked anything to the press.

Q23 Geraint Davies: So these news stories appearing about the status of the NHS in terms of TTIP have coincidentally come out today—

Lord Livingston: Mr Davies, I have not leaked anything to any member of the press.

Q24 Geraint Davies: So you haven't put anything out ahead of this meeting, as in fact happened before the meeting before the Scottish Parliament?

Lord Livingston: And the thing I put out before the meeting in Scotland? What is it that I leaked to the press? I have not leaked anything to the press on any occasion, and I object to that statement.

Geraint Davies: Okay. Let's move on to the substantive question.

Q25 Chair: Before we do, we happen to have here a BBC News Scotland politics—

Lord Livingston: I read it about half an hour ago.

Chair: I'm not taking a position on this because I don't know what the answer is, but Geraint Davies is entitled to ask the question. I am simply asking whether or not, in relation to this, you are saying, "Not me, guv. Nothing to do with me. That is something that just happened somehow."

Lord Livingston: No. I am saying it was complete news to me. I have not leaked it; I was not involved. CETA is already there. I asked and apparently it is a very early draft of the EU thing, but actually, the latest state of the art is CETA. As you may note, the only quotes in it are from Unite. I find the whole premise of the question objectionable. I am happy to answer what is the issue, but please I ask you to withdraw that unfounded accusation, because it is completely without foundation.

Q26 Geraint Davies: There was a presumption. We were handed this at the start of the meeting, it is in the media—

Lord Livingston: I got it about the same time.

Q27 Geraint Davies: You are saying that you had nothing to do with it, and that it was only put out by Unite before the meeting.

Lord Livingston: I don't know who it has come from, but the only quote is from Unite.

Q28 Chair: We don't either. I was just asking.

Lord Livingston: I am not accusing you of leaking it. I trust that you would not make the same accusation of me.

Geraint Davies: Fair enough.

Lord Livingston: I am more than happy to answer a question.

Q29 Geraint Davies: Perhaps I will ask a more substantive question than media hearsay.

Lord Livingston: That would be appreciated. I am not here in a political role.

Q30 Geraint Davies: I understand. Let's talk about the substantive issue and that is whether the health service is protected, both within CETA and TTIP. Do you agree that the bilateral arrangement with Finland has a much more copper-bottomed protection of the health service, in so far as it protects all health and social care, whether public or private, from the trade agreement? Do you agree that is something that we should embrace in TTIP and CETA, because compared with that, we are at risk?

Lord Livingston: Let's take a step back and look first at what everyone has said about this. We will start, unusually, with the US. The US has said that public services *[Interruption.]*

Geraint Davies: Bless you.

Lord Livingston: Sorry.

Geraint Davies: I said "Bless you" to Mr Rees-Mogg, who sneezed—infected by TTIP.

Lord Livingston: I thought you were commending my answer. I appreciated it. That man can use the health service. The US has said that public services are not part of the trade agreement so they are happy to state that public services will not be part of TTIP. That is the US statement. The previous EU Commissioner—and then I'll quote current EU Commissioner—said, "The NHS is exempt. The NHS has always been exempt. This is just used in your country for political purposes." That was the Belgian Trade Commissioner. The Swedish Trade Commissioner has written a very full letter to me, which I hope the Committee has got—if not, I will be happy to give it to you—and which makes the position on the NHS very clear. I will quote what she says. "Member states do not have to open public health services to competition from private providers, nor do they

have to outsource services to private providers. Member states are free to change their policies and bring outsourced services back into the public sector.” If you have not seen the letter, I am happy to let you do so. The UK Government have also made it clear.

All of them have stated publicly that publicly funded health services are not included. The reason they have made the statement is because of the exclusions we already have, which I believe are actually wider than the words “NHS”. I will read the reservation in CETA, because as I said CETA represents the state of the art. “The EU reserves the right to adopt or maintain any measure with regard to the provision of all health services which receive public funding or state support in any form.” We can then go on further and further. That is very wide; and actually it is wider than using the words “NHS”, because we have things such as the military health service—would that be part of the NHS?—and other health services provided by the Government but not directly through the NHS. The NHS is going to have regional forms, as was announced yesterday. Scotland, of course, has a different NHS. I think that is very copper-bottomed.

Q31 Geraint Davies: No, but would you not agree that there is some ambiguity here? Because we have a mixed system in Britain; namely, there is a mixture of public and private provision. Indeed, the latest coalition legislation enables more private provision in hospitals than had been the case. The issue is then for case law and judges to say, “Okay, where the Government have already opened up a service to competition—cataracts or whatever it happens to be—should we allow TTIP into that?” That judge might, not unreasonably, say yes. That nature of that opens up the health service to TTIP competition. Would you not agree?

Lord Livingston: No.

Q32 Geraint Davies: You wouldn’t agree. That is amazing.

Lord Livingston: No, because it says the words “in any form”.

Q33 Geraint Davies: So what I have just said will never happen? A judge will not make that judgment about case law?

Lord Livingston: The wording is, “in any form”. Also, there are additional reservations beyond that. Understand that we have had GATS now for 20 years, which has similar wording. Have we ever had a problem with that?

Q34 Geraint Davies: It is like saying you have never died and you never will die. Obviously, we may not have had a problem, but that does not mean there will not ever be a problem. There are intrinsic reasons to suspect there will be such a problem.

Lord Livingston: I will ask this as a rhetorical question. The EU trade commissioner, her chief negotiator, who has made very similar statements, and her predecessor have all been extremely strong on this point. Again, you can read the letter. I assume you are not accusing her of lying—

Q35 Geraint Davies: Wanting something to happen does not mean it is going to happen.

Lord Livingston: She said—her letter is very clear—the NHS will not be impacted by it. Her letter is very clear, as were her predecessor’s statements. I assume that they, having done trade agreements for many years, are reasonably on top of what they do. I appreciate you might not trust a Conservative Minister making statements, but this is a Swedish commissioner. Her predecessor was Belgian, and her chief negotiator is Spanish. They have all made clear statements. The reservations are drafted widely to make sure that, irrespective of whether it is in part put into the private sector or not, “in any form” covers a wide range of things.

In times when we felt that there might be an issue—there was a question about privately funded ambulances—the UK has added a reservation. We added a reservation on publicly funded ambulances, for example. I am not sure we actually needed it, but it shows that we have done that.

Chair: I think we have covered this comprehensively. You have the answer from the witness, Mr Davies. It may be that there will be a continuing argument about this, but we cannot resolve it at this meeting, because we have heard a very clear statement from the Minister. I think we now have to move on, otherwise we will be here all morning on this one subject.

Q36 Kelvin Hopkins: Discussions continue about the—I will say “alleged”—potential economic benefits of the agreement and its impact on other countries, particularly the UK’s historic Commonwealth trading partners and developing countries, as well as China. Taking each of those points in turn, you co-signed a letter with other trade Ministers to the new trade commissioner in the EU stating that TTIP “will add over €100 billion to EU GDP”. Yet, during questioning, you told the Business Committee that you were “reminded of the JK Galbraith comment that the only purpose of economic forecasts is to make astrology look respectable”. JK Galbraith is a great hero of mine. Do you regret signing up to such an unequivocal statement in that letter?

Lord Livingston: I think I was the last person of the 14 to sign it. I would have preferred the wording “up to”. It could be more, because it excludes the dynamic benefits that could arise from a trade agreement. The benefits would be substantial, in my view. It would be positive not only for the UK and the EU, but around the world. There has been, for example, our trade agreement with South Korea. We have seen a doubling of exports since that time. A chunk of that is oil, but still we have seen a very strong increase in exports, which has to be good for the UK. So I think we will see substantial benefits. I believe, although others might have a different view, that free trade does enhance prosperity. That is what economics tends to say. If we do not believe it, we should stop the single market and every other trade agreement immediately.

So I do not regret it, although I wish that the words “up to” were in there. I quoted JK Galbraith because people should not be saying, “It is definitely £10 billion. It is not going to be £12 billion and it is not going to be £8 billion”, not least because we do not know the final agreement. Of course, it is an estimate and a forecast—of course it is. But will it be unreservedly a positive thing for the UK? I strongly believe that to be the case.

Q37 Chair: Could I remind you of something, before Kelvin comes on to the next question? I am just going to quote from what you said at the last session we had in June, which I am sure you have looked at again. We were discussing this question and you said: “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.”

You then came on to the question of opening up Government markets. You say, “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.” Have you any reason to revise that?

Lord Livingston: No, I think it was a fine statement and it is remarkably similar. It is a big number. I do not want to say that you can land on a pin.

Q38 Kelvin Hopkins: But “up to” could mean somewhere between nought and €100 billion.

Lord Livingston: I think it would be very material. Actually, I think it could be more once you take dynamic economic benefits into account, because none of the studies do that.

Q39 Kelvin Hopkins: There are serious people who take a different view. One of those is the Bertelsmann Foundation, which concluded that in the event of a far-reaching deal—so-called deep liberalisation—Canada, Mexico and Australia could suffer GDP losses ranging from 7% to 10%. That is an estimate by a respected institute. Clearly, these Commonwealth countries—well, Mexico is not Commonwealth—are going to be badly affected.

Lord Livingston: Bertelsmann also came up with a figure far greater than the equivalent of £10 billion annually for the UK, from my recollection of its survey. They think that there might be a bigger impact on some of these other nations. However, I do not think that they were taking it against, for instance, having CETA in place. Bear in mind what we are doing; if we, for instance, were to reduce tariffs, we would bring them down to pretty much similar levels in CETA.

The other thing I would like to see over time is Canada and Mexico joining these agreements. It is an opportunity for them to take advantage of. Of course, if you effectively have, subject to some restrictions, a free market between the EU and the US, some other countries that might have supplied in—let’s say because they were tariff-free in the first place—might be negatively impacted.

But that will be offset—I am not sure the Bertelsmann study actually covered this issue—by a wider growth in the economy. If you see a growth in the US and EU economies, which represent together a large proportion of the economic powerhouse of the world, that will pull everyone up. Canada and Mexico have a particularly close

relationship, of course, because of NAFTA. It is probably best to wait until we get TTIP done, but I would like to see, over time, Canada joining it, Mexico joining it and the Pacific alliance countries of Chile, Peru and Panama joining it. Having a high level of standards and a free trading bloc will be in everyone's strong interests.

Q40 Kelvin Hopkins: Setting aside these relatively richer countries, you told the Business, Innovation and Skills Committee that you saw TTIP as a “real opportunity for developing nations”. Yet, the Bertelsmann Foundation's research suggests that all of the developing world, all of southern and central America, all of Africa, all of Russia and all of China will suffer GDP losses as a result of this agreement. Would having all of those in the agreement help them as well? It would make the whole thing meaningless, I would have thought.

Lord Livingston: Bertelsmann was saying that there may be some trade diversion. I actually think that the trade diversion from developing countries will be pretty small, because the products they make are not the same products that are usually exchanged between the US and the EU. Motor vehicles, for example, are not necessarily a big export from Africa. Commodities and the like are, so I think that there will be very little trade diversion.

What the Bertelsmann study did not include in its analysis is the positive impact that would result from rising GDP and the positive benefits from being able to sell to a single standard, rather than having to produce to multiple standards. Bear in mind that a lot of Africa has quite small companies. They are the ones who have the greatest difficulty in meeting multiple standards. Other studies have said that there will be a small diversion, which is negative, and then positives because of GDP. We believe that.

I stress that you do not take TTIP on its own. We are also trying to pursue multilateral and plurilateral agreements. For instance, the EU has recently concluded or nearly concluded EPAs with a lot of these countries, which give them tariff-free access into the EU. Also, under this Government, we have become the second largest provider of aid in the world—DFID provides about £1 billion to sub-Saharan Africa in assisting with improved trade. That sort of assistance will way offset any negative impacts from TTIP. The TTIP impacts will be very small in diversion and that should be positive in terms of the opportunities it presents.

Q41 Kelvin Hopkins: Well, some of the figures listed for African countries suggest that a bit of aid will not make much difference. In the most extreme case, Guinea would lose 7.4% of its GDP. I will come to another question. What is your assessment of how—

Lord Livingston: I have not quoted Bertelsmann in terms of the gains to European—

Q42 Kelvin Hopkins: Yes, but several African countries—all substantial losses.

Lord Livingston: Yes, but they have much higher gains to Europe and I have not quoted that because I am not sure that it is the best study in the world. Carry on.

Q43 Kelvin Hopkins: Okay, but you did specifically say that it would be an opportunity for developing countries, which it is clearly not; it is negative. What is your assessment of how TTIP will affect trade relations with China and possibly with Russia?

Lord Livingston: Russia trade relations at the moment probably have some other issues, which will be more front and central. So, let's talk about China. Again, we do not see this as an exclusion. In fact, we are progressing a bilateral investment treaty with China. We have written or are just about to write to the Scrutiny Committee about progress on that. Is that right?

Paul Griffiths: We can do.

Lord Livingston: We can update on that. We have said that we would like to pursue a free trade agreement with China. The UK has been at the forefront of saying that. I have been in China making such statements with the Prime Minister. We think that one should pursue multiple paths, as well as Japan for example. We have a Japanese free trade agreement, which could well happen in the same time or even sooner than TTIP. That does not tend to get any focus, but it could be worth substantially for the UK.

The UK will pursue: on one side, the deepening and widening of the single market; and on the other side, a series of bilateral EU trade relationships, plurilateral things such as TISA, trading green goods, which are really important, and multilateral via the WTO. One should try to progress in as many areas as possible because trade will add to the prosperity of the countries that open up their markets. There have certainly been plenty of studies to show that that is the case. I think that the World Bank said that countries that have liberalised and opened their markets grew at three times the scale of those that did not.

Q44 Kelvin Hopkins: My final question really, but just as an aside: Bertelsmann estimates that Japan, which you mentioned, would lose 5.9% of its GDP. I think that they would be quite annoyed about that.

Lord Livingston: It is interesting. I went to Japan, which, by the way is doing TPP as well as potentially an EU agreement. I was there a couple of months ago and not one single person in Japan mentioned their concern about that. They were very interested in the completion of TPP and a free trade agreement with the EU that they thought would benefit their economy tremendously. It is the aim of Abe to have the vast majority of Japanese trade under free trade agreements; certainly, the Japanese Government are signing up for free trade.

Q45 Kelvin Hopkins: Perhaps they had not seen the Bertelsmann report.

Lord Livingston: Or perhaps they don't believe it.

Q46 Kelvin Hopkins: My final question: is it realistic to expect TTIP to deliver “substantive regulatory convergence” given the inherent difficulty of the subject and the position of individual US states? If so, would substantive regulatory convergence mean a dilution in EU consumer protection?

Lord Livingston: In answer to the second question, no. Again, the Commissioner has been very clear that they will not sacrifice high standards. There has been a statement that I have heard from some people outside this room that, “Convergence means a race to the bottom.” Yet, the single market did not lead to lower standards; it actually led to a single high standard. There may even be some discussion about whether it led to too many standards, but it was certainly a push up, not a push down.

In answer to the earlier part of your question, it will be difficult. This is not easy. If it were easy, we would be doing it quicker. However, we are seeing progress in a number of areas. There will be some areas, such as bulk chemicals, on which we are not going to make progress. The reach of the EU regulations is so different to that of the US regulations and the thesis behind them, so we are not going to get convergence. In other areas, such as the testing of pharmaceuticals or what is in the car industry, we can make a lot of progress. It is going to be different by sector. Over time, when new regulations come up, we must ensure that they are not different just because.

I will give you a little example, which comes from a small business that makes electrical products. The EU and the US have a different rule about the colour of wires inside the products. The practical effect of that is that the company has to make two different products. It is not that the red wire is more secure than the blue wire. The other problem is that the US tests individual components outside the product, while the EU does it inside. The net result is that in the US, the same product is 15% to 20% higher. There is no reason for the difference; they just came from different backgrounds.

I think there is a real opportunity to help small businesses in particular, but it is not going to be easy. I absolutely share the comment about it not being easy, but most things that are easy are less worth doing than things that are hard, to misquote somebody.

Q47 Kelvin Hopkins: We could debate these things for a long time. I have one final question. I do not mean in any way to impugn your sincerity, which is obvious, but you had a distinguished career in business as the chief executive officer of a major corporation. Is your view of all this coloured to an extent by the fact that you come from the corporate world, rather than from the consumer world, the public sector or wherever?

Lord Livingston: I come from a world where I sold to a lot of consumers, so I think quite hard about consumers. I had 12 million of them at BT. I was at Dixons for a long time, and I had a lot of them there. I actually am pretty close to consumers, and I spend a lot of time with small businesses, so I am pretty close to what they say and do.

Am I pro-free trade, from my background? Yes, I am, because I traded in 170 countries and I saw the problems. I saw the fact that consumers did not get the choice they wanted because of unnecessary barriers to trade. Does my past experience have an impact on me? It probably does, but, in much the same way, virtually my whole family are medics and they have an influence on me as well. I am called Lord Livingston of Parkhead not just because Glasgow Celtic play at Parkhead, but because my dad was a GP in Parkhead

for 40 years. Your background, of course, causes some impact, but I have seen how small businesses, consumers and large businesses produce and receive sub-optimal outcomes because of the lack of free trade. I have seen that they would benefit from more free trade, rather than less.

Q48 Kelvin Hopkins: What about protecting workers' rights in those countries?

Lord Livingston: I had over 100,000 employees. I have a very good relationship with the CWU, which did very well when I was the CEO of BT. I believe very strongly in workers' rights and support.

US workers may have some different rules, but they will not be affected. We will not cause a change in US worker rights, and the US will not cause a change in European workers' rights. There are many countries in Europe that would like to change their pay rates to American pay rates, but workers' rights are not going to be affected on either side of the Atlantic. We have a different view. Bear in mind that we have a slightly different view to other parts of Europe about the way that workers' rights can affect employment levels. Perhaps that is why the UK has one of the lowest levels of unemployment in Europe.

Q49 Chair: I would like to come in on this. We are dealing with a question we have asked about substantive regulatory convergence. In the United States, you have the commercial rights clauses. In the single market, you have arrangements that are bound in within the EU, in respect of the internal market; we have financial services; and we have the problem, which I think lies at the root of this, that in order to make any changes in EU law you must have unanimity, unless everybody is prepared to work together, which would be unanimity, and it could be done by agreement. When Peter Mandelson was Trade Commissioner a few years ago, he said that he thought over-regulation represented something of the order of 4% of GDP over the whole of Europe, and there have been studies from the IEA and others to demonstrate that the over-regulation in the UK that comes from the EU could represent something of the order of £6 billion a year. I think the British Chambers of Commerce has given figures of that kind.

The real situation is surely this: if you sit there making agreements with all the other member states, and you are representing an EU position and have to deal with the United States, against that background, if you come up with agreements that you are going to amend that or bring convergence and regulatory burdens, you will have to face the fact that you have to get that through the EU legal framework. It may be one thing to negotiate on behalf of the EU, but the bottom line is that you will have to get every member state to agree to any changes in the regulatory burden in order to achieve the changes of the *acquis communautaire*. Do you have any thoughts on that? We all recognise it is very difficult, but do you regard that as near to impossible? The regulatory burden, frankly, has not gone down; it has been going exponentially up over the past 20 years.

Lord Livingston: I have some sympathy with your comment on the regulatory burden, both national and EU-wise. The COMPETE principles that came out were excellent, seeking to force the EU to consider independently the regulatory burden, do proper impact assessments and provide exclusions for small businesses and the like. There

is some very good work going on there. Bear in mind that every country—I will ask Paul to add to this—will have to agree to a mixed agreement, so you will need, for all the changes involved, unanimity.

Chair: With unanimity.

Lord Livingston: Yes. Unanimity is going to be needed, whatever. I am not sure that all the changes are necessarily going to require changes to the acquis in total, but you will actually require unanimity for the agreement anyway. Paul, do you want to add anything to that?

Chair: Yes, I am very interested to hear what you say.

Paul Griffiths: I can add to that. There are a number of components of this agenda. Part of it is around mutual recognition of existing standards. Some of that will not require changes to regulation as such. Some of it is around removing duplications of inspections. More of this is on co-operation of regulators and, again, that is a component that does not require a change in the law. A final component on top of that is the future-looking provisions, where we can do more to ensure there is not an unnecessary divergence of regulations, while maintaining high standards. That is particularly important in sectors of the economy where there is rapid technological change. For example, in autonomous vehicles, we want to avoid two different sets of regulations being created, not for any particular safety reason but because we have two systems across the Atlantic that do not look at how each other is doing things.

Chair: Could I add one final point? I recommend that you read an extremely interesting article by Roland Vaubel, professor of economics at the University of Mannheim, where he describes the mechanics of regulatory law making in Europe as regulatory collusion. I am not going into it now but I strongly recommend you look at it, because it is very interesting and bears in on the manner in which the voting arrangements are done through the Council of Ministers.

We have recently taken evidence from Simon Hix of VoteWatch to understand how to make the changes. I am sure I am not telling you something you don't know, but I am putting it on the record. It is about the manner in which consensus is arrived at. Who gets the advantage, say Germany or France or others, depends on the manner in which those arrangements are entered into. It is not just on the voting system, because that is effectively supplanted by the consensus, because they know what the outcome is going to be. I have just put that on the record. I am sure you are aware of it, but it is something that could bear in on whether you achieve your objectives.

We must move on to transparency and access to information, unless Mr Geraint Davies would like to ask one last question.

Q50 Geraint Davies: If I may, I have a couple of quick supplementaries. On the first set of questions, you have said that the advantage of TTIP is free trade, bringing big economies together and helping the world, but would you not agree that there is a case to be made that it is more free trade among the rich nations and a blockade against the developing

nations, which will face not only tariffs but also barriers of standards? The econometrics we have heard suggests that TTIP is basically a barrier against the developing nations. You caricatured developing nations as being interested in commodities, when their real interest, of course, is in added value and more advanced products to get more profit, isn't it?

Lord Livingston: I said that one of the major exports at the moment is commodities, which is true. By the way, I was in Ghana just a few days ago visiting an excellent example of added value in fruit that I am sure would like to sell into the US as they do across Europe, but there are different rules in the US so they cannot do it. A British company that employs hundreds of people—if you buy your pre-packaged fruit in Asda or Waitrose, it comes from this factory in Ghana, which is one of the few pieces of added value that goes on in Ghana. You are absolutely right that you would like to see more, but you are absolutely wrong—no, I don't agree—when you talk about a blockade. The EU has a number of asymmetrical agreements with developing countries that effectively allow them tariff-free access to the EU without corresponding arrangements on our side, so actually there is a big reach-out from the EU to provide tariff-free access.

We see ourselves continuing to push in other areas, particularly in aid for trade, by helping to improve, in particular, intra-African trade and to get away from subsistence. I will possibly end up agreeing with the Committee on things like food subsidies and the impact that has on Africa. That, unfortunately, is not within the remit of this study, but it is perhaps the biggest problem. The EU has been very active and proactive in trying to effectively create a close to tariff-free situation for these countries. It should be commended for that.

Q51 Geraint Davies: On standards, we obviously understand the case for harmonisation that you put in terms of wires and all the rest of it, but the problem, moving forward, is how to change the mechanisms that the Chair referred to if there is innovation—for example, a better way of doing the wires. Will we not basically be hamstrung by the regime in years to come? Secondly, how will we adapt to quite powerful interests in relation to things like chlorinated chicken, GM products and nanotechnology—things that may threaten our public health in the future? How do you see the regime emerging to protect us from lower standards in new products that are yet to occur?

Lord Livingston: The EU's regulatory regime, whether you like it or not, will remain in process. I will come back to chlorinated chicken, which is one of the myths put around about TTIP. What we are trying to do with the EU mechanism is to have regulatory co-operation and discussions to ensure that, as new changes come, they are consistent—unless, of course, we are in a position where the EU and the US fundamentally disagree about the scale—and that we do not have unnecessary divergence.

On chlorinated chicken, which usually goes together with hormone-fed beef, the EU Commissioner has made entirely clear that while the US allows that, the EU will not and it will therefore not come into the EU. It is an example of where we just have different rules. We could have a long discussion about GM more generally and about the EU position, where different countries are adopting different positions, but it is not TTIP that will change the EU's position on that.

Chair: We are not going to get on to GM this morning, I can assure you.

Lord Livingston: We do not have quite enough time for that.

Chair: We will move on to transparency and access to information.

Q52 Andrew Bingham: Ironically, for something that many people think sounds dry, I have had quite a few constituents talk to me about TTIP. Apart from ISDS, transparency is the thing they have expressed most concern about. There seems to have been some increased emphasis on transparency, particularly following the publication of the mandate last October and the further release of new tech papers this year. What do you propose to deposit in Parliament for formal scrutiny for the remainder of the negotiation process? How will you make that information available to Members from the start of the new Parliament on 8 May until this Committee has been appointed? I think that this Committee tends to appointed quite late compared with a lot of others. It could be as late as September—I think it was last time.

Lord Livingston: On transparency generally, the EU would make the point that this has been the most transparent trade agreement ever. Others would say that it has not been transparent enough. Both of those statements have truth in them. Sometimes people talk about it all being done in secret. These—this is the reason that I asked to have my prop—are the documents that the EU has released publicly on the negotiations.

Geraint Davies: That is not much, considering the complexity, is it? It is just a prop for you.

Lord Livingston: Actually, it is rather a lot.

Jacob Rees-Mogg: *Hansard* finds it difficult to record props. I think it is worth saying that there are three—

Lord Livingston: Three lever arch files-worth. Thank you Mr Rees-Mogg for clarifying that. “He held up three lever arch files”—*Hansard* does not normally have stage directions. Since Cecilia Malmström, the new Commissioner came in, she has made a lot of steps in improving transparency. One of these folders is what she has released since she has come in. She has announced some very substantial changes to improve transparency, particularly for MEPs. However, that is in relation to MEPs and we are seeking to have the same access for MPs as MEPs.

Chair: That will please Mr Davies to no end.

Geraint Davies: I want all those folders.

Lord Livingston: In addition to that, we would like to see further documents made available to the Chair of the Scrutiny Committee. One thing we would like to do is discuss with the Chair—if he is willing before Dissolution—some proposals to increase the ability of this Committee to have access raised to a level of things similar to those that will go to the top officials and so on. We would like to discuss that process.

That is different from what you were asking about the laying of documents before Parliament, by which they become available to everybody. The things that will be available to everyone are what the EU makes available to all the public in the 28 nations. What they are trying to do and what we have pressed them to do is make available to the public those things that would not harm the negotiating position. It is not unreasonable in the interests of the citizens of the EU not to release things that, for instance, set out our bottom line position.

We will get a lot more released from the EU. Of course, we will continue to write to the Committee with updates and the like, and to participate in public debates. There will continue to be press conferences after each round, and public consultations and all that. I think that you will see a big step up in the level of transparency. It is interesting that we talk about a lot of the clauses and so on. The other thing we have is that CETA has been published. CETA, for a lot of this, represents the state of the art. People have a lot of the wording and can decide whether they like it or not. I know that there is still a thing about this still being secret, but there have been some major steps forward since we last met.

Q53 Andrew Bingham: And there were some warm words from the Department on 16 February. Are you saying that we MPs will have the same level of access as MEPs?

Lord Livingston: That is the position that we are seeking to achieve.

Q54 Andrew Bingham: Returning to the other question, what about from 8 May until this Committee gets reformed? How are we going to deal with that? There will be 650 MPs, some of whom will be new. It is a difficult time.

Lord Livingston: We will continue to write to the Chair of the Committee, although we will not know who that is.

Q55 Chair: There won't be one until—

Lord Livingston: The documents can be picked up by the Committee when it is formed. We will not stop and say that there is no Committee. That is my understanding, but I will defer to Paul if he has anything to add. We will continue to write as if the Committee exists, so that there is not a gap in documentation—the documents continue to come to the Committee, and they have it during that period.

Paul Griffiths: I think we will just follow the normal procedures in this in writing and you can pick up the documents when the new Committee is formed.

Q56 Chair: I think the short answer is, first of all, it would be appreciated if now you would write specifically stating what you have just said as a proposal to the Committee, because then at least it is on the record in a coherent form. The second thing relates to the

continuation in the vacuum between this Committee and the next Committee. I think it would be very important—if I can address my remarks to the official here, Mr Griffiths—that things are done in a manner which will enable the Clerks and the advisers to be monitoring this as it goes through. I can assure you that when I took over and when I was elected as Chairman of this Committee, we were presented, as Andrew Bingham was saying, in September that year, with a pile of documents. It was, if I can also put this on record, nearly a foot high.

It is very important, when the documents have been fed through, to make sure that they are done in an organised manner, with an indexing system to enable the incoming Chairman to be able to get a clear picture. So on the front of it one would hope we would have bullet points, summaries, updated so that the whole thing is a coherent whole, and also make sure that information is available to all Members, because nothing can be published by the Committee until the new Committee is appointed. So if we get that on the record then you can deal with that in the letter.

Lord Livingston: I am happy to do that.

Q57 Geraint Davies: Obviously, you have helpfully explained that there has been no access for MEPs. You would like to see it for MPs. In terms of the actual agreement that is being done by negotiators, my understanding is that the European Parliament will have to vote yes or no, and then it is ratified by state Parliaments. Do you think that the European Parliament should have the opportunity to make any amendments or suggestions when it considers the deal, or do you think that would be inappropriate?

Lord Livingston: In fact, even before the European Parliament, the Council has to approve it before it gets to that stage.

Geraint Davies: It happens then, yes.

Lord Livingston: I think that the US has the same issue, and this is why they go for a fast-track authority. The problem when one negotiates a trade agreement as a whole and someone says “You know, something, I like their tariff cuts—I don’t want ours”, you cannot pick it apart. That being said, because each section is done over time and there are some draft texts sometimes published, etc.—certainly there is information that comes out—people do have a chance to input through the process. I do not think suddenly there is nothing and then—ta-dah! Your draft proposals are put forward, and things like that. So there is a very active process and I certainly have met with a number of MEPs, and I know the Commissioner spends a lot of time with MEPs. So I think there is a lot of interaction. I think the answer to your question is it is right that you say you either take it or you don’t take it.

Geraint Davies: But do you think—given that there is going to be opening of transparency, as you have said, for MEPs and MPs: should there be a process where we can engage and make suggestions, so that in the dynamics those are taken on board by a different route, rather than those suddenly emerging on the final day—yes or no, take it or leave it—and then it is slightly imperfect?

Lord Livingston: I think that is a natural process, and not just for MPs and MEPs. That is why there are consultations, for instance, on a number of things; but you cannot guarantee, of course, that all suggestions will be taken on board, not least because they may be entirely contradictory to each other. That will be the process of getting ongoing feedback from all interested parties—from NGOs, from small businesses, consumer groups, MPs and MEPs, etc.

Q58 Chair: One last point on the mechanics and process. When I said all Members I meant all Members of Parliament, not just of this Committee. For practical purposes, you are the current Minister and we do not know what the outcome of the general election is going to be. Because of the necessity to maintain a continuum—the process is continuing in any event—it is necessary to present information to the Committee, or to the Committee Clerks, in the meantime in the coherent form that I just mentioned. When I say all Members, I mean all Members of Parliament, so it should go into the Library of the House of Commons—as long as we get that. You can put all this into the letter that you write to us. It is worth reflecting, and I think Mr Griffiths will be able to assist in that respect. This is, in a sense, between officials in the absence of having an elected Committee. I just wanted to get that on the record.

Q59 Jacob Rees-Mogg: Thank you, Minister, for coming in. It is much harder to be an effective scrutineer of something that one thinks is fundamentally important and urgent, and wants the Government to get on with and push through. I am a believer in unilateral free trade, so the faster we get this done the better. That is why Mr Davies's question was probably more pointed and effective than the soft ones that I am going to serve up.

I want to come on to the investor-state dispute settlement issues, partly because I think there is a lot of misinformation around concerning them, some of which you mentioned in your earlier answers. There is a discussion between the Commission and member states about the inclusion of those clauses in TTIP and the extent to which you will be willing to publish the UK Government's contribution to the process at the same time as it is submitted to the Commission, rather than after the event, so the position on these regrettably controversial issues—particularly things such as frivolous claims and when a state may have to pay costs or compensation—can be considered by this Committee and other people.

Lord Livingston: In terms of the process, there wasn't a separate UK Government submission into the consultation. We, of course, contribute via the Council and give our views and feedback on ISDS in general. CETA reflects a number of those contributions. What we wish to see is an ISDS clause that has the right sort of balance, and also we are very in favour of UNCITRAL transparency. When people talk about secret agreements, it is nonsense, because both the US and EU have already moved on from there.

The Government's view is that what was agreed in CETA has gone a long way to making the necessary improvements to ISDS, but there is probably still some work to be looked at—for instance, how the panel of arbitrators is decided, whether there should be an appellate mechanism and issues such as that. We will discuss with the EU their views on the comments. I don't know whether Paul wishes to add anything to that.

Paul Griffiths: There are ongoing discussions with the EU about potential further reforms to the mechanism. We do that regularly.

Lord Livingston: There is not going to be a formal response to the EU.

Q60 Jacob Rees-Mogg: So there is not going to be a document that we can scrutinise. My view on it is that there is a lot of misunderstanding about the ISDS clauses. They are perfectly rational, and they basically give the protection to foreign companies that national companies have, and they don't affect regulation. But that is not the perception. The perception is that they will allow aggressive foreign companies to completely change the law of the land. The more open the Government can be about the positions it is taking, any red lines that it may have and any improvements that it is getting from CETA, it may be very helpful in assuaging this public disquiet. However much I think these things are perfectly reasonable, all of us are getting letters saying that people are very worried about this particular aspect of TTIP. I wonder whether even greater openness would be helpful and, beyond that, a real push by the Government to explain what the effect of the ISDS clauses are and why people can be comforted.

Lord Livingston: I certainly have sympathy with your comment that people have concerns partially because they are being misinformed. I think that some institute said that the well-informed but ill-minded are misleading the ill-informed but well-minded on this. We have tried—clearly not enough—to make it clear what ISDS should have. Maybe we should write to the Committee to say how we think CETA has improved matters, and some of the issues that we can consider going forward. If you will excuse us, we don't write our bottom-line positions on everything, because clearly that would not be in the interests of people, but we do take the view that ISDS cannot override a Government's right to regulate. It is about discriminatory treatment and compensation where there is discriminatory treatment. The fact that the UK legal system is strong and that as a Government we do not tend to nationalise without compensation, for example, is the reason we have not lost a single case on ISDS in all this time and, speaking to quite a few other western European countries, neither have they. We do think there are improvements and we should go through, within CETA, some of the things that we want to look at beyond. I will happily submit a letter to the Committee setting out some of those improvements and how it can be done.

We do not believe that ISDS clauses are something UK people need to fear, partially because they are not new. It appears to be the only concern is because people fear the US. As was pointed out by Mr Davies, already US companies, if they so wish, can effectively treaty shop, so having a better agreement is in everyone's interest. It should also be remembered that EU companies have initiated a lot more actions than US companies. Some people do like to demonise the US, but that is not a view that I take.

Q61 Jacob Rees-Mogg: I prefer to demonise the EU.

Lord Livingston: Sometimes both. I would be happy to write setting out how CETA has made significant improvements to the clause. As one of the biggest investors round the world, it does benefit UK companies of all sizes.

Q62 Jacob Rees-Mogg: My concern is that the misunderstandings here risk derailing the whole treaty. This seems to be the one area that may most threaten ratification, both in the European Parliament and potentially in national Parliaments.

Lord Livingston: That is right. There have been some steps forward. It is interesting that some of the countries that are supposedly most against ISDS are the ones that have the most ISDS agreements with other EU members, which is an interesting point. They have sought to rely on it but don't want the US to have it. We are seeing a bit of change in the understanding.

Paul Griffiths: We have already done a leaflet on ISDS which we have shared with all Members of Parliament. I am happy to send that over again straight away.

Q63 Geraint Davies: I should say that the genesis of our questions, and the difference between me and Jacob Rees-Mogg, is that I do support trade—so we are clear on that—but not blindly going in and opening ourselves up to all sorts of liabilities. On that, may I ask, in simple terms: given that the EU and the US have mature and established legal frameworks, with company law, contract law and so on, why do we need ISDS at all? Couldn't we just do without it?

Lord Livingston: First, this is not unique in having supranational decision making. We do sign up to other things—the European Court of Justice was mentioned—and we also have state aid rules, so this is not peculiar. Secondly, the US already has ISDS clauses with a number of EU countries; they could be better, and this would supplant them. Thirdly, we are talking about 28 states on one side and 50 US states on the other. You can get a lot of variation in the implementation and discrimination against local, national and international companies, within these states—I mean sovereign states as well as states of the US.

I have two final points. If we can get the right sort of agreement, that could become the template for agreements around the world. Carrying on the wrong sort of agreement is more harmful. In getting a modernised ISDS we are not starting with a clean sheet paper, but with 3,000 ISDS clauses around the world, excluding the energy charter treaty, which is huge.

Finally, I think a conversation that says, “We trust the US legal system and the US should trust all 28 member states of the EU,” but when negotiating an agreement with Brazil or China we say, “We don't trust you,” is going to be a much shorter conversation. The right thing is to have the right level of agreement and then to take it to other countries. That is the long answer, but that is the reason I believe it.

Q64 Geraint Davies: That is very helpful. Obviously, some of that answer was about how we already have ISDS and so on. I understand that, but it is still the case that we have established legal systems that are open to daylight—we can see what is happening; it is not arbitration behind closed doors.

Secondly, there is the right of appeal. There is no right of appeal for this arbitration. Thirdly, once the ISDS is decided, it will be given to a regime of arbitration. It is thought that it will be the ICSID system, but it could be another one—it could be the football rules or the rugby rules; there are different systems of rules—and the arbitration will make precedents that could, as I said at the start of this hearing, go on for 20 years, which could lead to regulatory chill. Do you think that it should be in open court? Do you think that there should be a right to appeal? I still do not quite understand why we need ISDS at all. You mentioned that some exist in the world, but that does not mean we should create a supranational one.

Lord Livingston: We have plenty of supranational bodies. It acts as a good back-stop of investment protection between very large bodies. I would expect—I know that the Canadians take this view—very substantially increased investment on both sides of the Atlantic as a result of the agreement with the US. I think the UK would benefit from it even more so. That is the reason we need it.

On the courts, neither the US nor the EU want to have anything other than the transparency protocols put into the trial protocols. This notion of the secret court actually does apply to the old agreement, but it is a good example of why we need improved agreements today. In terms of the appointment of arbitrators, CETA said that one arbitrator could be appointed by a plaintiff and one by a defendant, if those are the right legal terms, and one arbitrator could then be appointed independently. I think that is right.

In terms of an appeals mechanism, we should investigate how that could or should work. I am pleased that you are asking what I think is the right question, which is, “How can we improve this clause?” rather than saying, “Well, we don’t like ISDS full stop.” Questioning the mechanism of appointment, the appeals process and the transparency—which, by the way, I understand will allow third parties to contribute to the case by putting in papers and the like—is the right thing to make sure that we get the right balance when creating a gold standard.

You referred to regulatory chill. I repeat: there are 3,000 ISDS clauses already in the world and 90 already in the UK, plus the energy charter treaty. I do not know if you can remember a piece of legislation in this House or, indeed, in the House of Lords—you are way more experienced parliamentarians than I am—that did not progress because of one of these ISDS clauses.

Q65 Geraint Davies: We are just worried about the future. The idea, for argument’s sake, is that a Labour Government came in and took over public ownership of a rail franchise, then ISDS kicked in and the Government were fined for the future, prospective, profits on exponential passenger rises in an arbitration court, behind closed doors and without the right of appeal. Having been stung for billions of pounds, we would then not nationalise anything else. We would not be able to get out of this straitjacket for 20 years. These are big stakes,

and I think you are sort of taking this very lightly and saying, “Well, we’ve got a few ISDSs around, so don’t worry.” I don’t think that that is good enough.

Lord Livingston: Mr Davies, you keep on talking about secret courts. Nobody is suggesting that either CETA or TTIP should be secret. UK domestic contractual law tends to be our protection. We have had many things where we have moved back and forward on privatisation. There have occasionally been some domestic claims about that, which, from recollection, have usually been lost. The UK legal system offers many, many protections; this is a back-stop. The fact that we have not lost a claim after all this time should start to tell you that there is a body of evidence. We can make it better still, in order to clarify what discriminatory treatment is. Certainly, if you nationalise something without any compensation, and change the domestic law to say that nobody was allowed compensation—

Geraint Davies: We would not do that.

Lord Livingston: To be fair, some NGOs have said to me that this is their frustration with ISDS. One of them said to me, “It would stop us taking back the energy industry that we gave away in the first place.” Some of your characterisations are not ones that I would recognise.

Chair: We really must try to move on a bit. You can ask this last question, and then we will come to Jacob Rees-Mogg.

Q66 Geraint Davies: The general point is that in Britain, domestic litigation—it is a long-established system created by great minds over the years—is a balance between the demands of sovereignty and commercial necessity. We have a mature system. The concern here is that we jump prematurely into this arbitration situation. You mentioned fair and equitable treatment, but this, to a certain extent, is subject to the discretion of the arbitrators, then we’ll carry on for ever. I press you on this fundamental point: don’t you think it is worth pursuing the option of having free trade within the context of our established legal system—not having these strange ISDS things without appeals or proper transparency—with discretion, and using the established system of law to ensure fair trade, not reinventing all the prospective threats to our sovereignty and the public purse?

Lord Livingston: I think I answered really fully on why I thought it was an assistance. I do not know why you keep using the terms “secret” or “non-transparent”, when we keep saying that the clauses will have transparency provisions in them, as they do in CETA. I agree with you that some of the 90 that we have to date are not transparent enough—that is why we want to improve them—but we have had them for a long time. They have acted as a back-stop in the case of the UK’s legal system. Of course, we have more than one legal system in the UK; I should correct that.

Chair: That point has been well covered. Jacob Rees-Mogg.

Q67 Jacob Rees-Mogg: I just wanted to add that this is basically a red herring. Regarding European companies, this is all covered by the Court of Justice of the European Union, which, if the Government behaved unfairly to a French company, as against a UK company, would not only rule, but rule as UK law—as, effectively, our highest court—and most of these concerns about unfair treatment would be covered by the Human Rights Act, so the idea that there is this great departure is simply false. I told you I would ask you soft questions, so the question is: do you agree, Minister?

Lord Livingston: I think that was penetrative and very knowledgeable. You are absolutely right: there are many other extraterritorial sources, beyond the domestic courts, where people could sue if they were being treated unfairly. In some of the cases raised, people have gone suing domestically, in the ECJ, and in various areas, so your comment is entirely on point.

Q68 Geraint Davies: With respect, there is no right to appeal from ISDS to the ECJ. This is just not true.

Lord Livingston: In many of the types of situation being referred to, ex-ISDS, you can go to the ECJ and seek the same sort of clearance—the same sort of right to restitution.

Q69 Geraint Davies: You cannot overturn the ISDS. The ECJ cannot—

Lord Livingston: That is not the point being made.

Geraint Davies: Well, that was the insinuation.

Q70 Chair: There is a final point on this before we come back to the SME issue. Of course, you are here, but this is an EU operation, because ultimately this is decided by the EU as a whole. There is the unanimity side of that, because if you cannot get unanimity, there is no TTIP. You cannot control the EU. To ask you a broad question, how far would you regard your negotiating position on behalf of the UK as reflecting the kind of consensus and agreement that is emerging in the EU as we speak, and that has been evolving since June, when we last had you here?

Lord Livingston: We benefit from having a very proactive position on trade. We are seen as being one of the leaders. We have like-minded groups that we spend a lot of time with on trade, and have a very effective position. I met the Commissioner again only a couple of weeks ago. For the very most part, we find that—“pushing at an open door” is probably the wrong phrase—there is a very close meeting of minds on trade issues. Would we have required audiovisual exclusion? No, we would not. That is the one that I can think of. The Americans already export all their Oscars to us so we do not really need additional protection from American products. That is the only one that I can think of. GIs are not such a big issue for us because things such as Scotch whisky are already protected.

In terms of the EU fighting for the sorts of interest that the UK would have in public procurement, financial services and the motor industry—we are, of course, the second largest producer of cars in Europe, which many people forget—we have found very much a meeting of minds. The officials here do an excellent job in interacting with the EU. I genuinely struggle to think of things on TTIP or CETA where the EU has had a fundamentally different position from us. We have slight things on CETA around mode 4—certain exclusions—but that is about it.

Q71 Chair: In a nutshell, without being over-enthusiastic about the role that you play, generally speaking, are the views that you express being assimilated, understood and pretty much accepted in the whole EU? In other words, are you noticing a vast amount of resistance from the other 27 member states?

Lord Livingston: Certainly not from the Commission. I find that the Commission's views are very much aligned with us and actually the vast majority of the member states as well.

Q72 Chair: That is why the unanimity issue is rather important. You had in mind all the time that you were going to have to end up with unanimity.

Lord Livingston: All the states will have to consider. Some states will certainly be less happy than the UK about some things regarding being a free trade nation. I have no doubt that the subject of geographical indicators will be an issue for some countries and they will have to balance it up with all the other benefits. What is quite interesting is that we tend to think of the Scandinavian countries and the Dutch as being very pro, but Spain, Portugal and the Baltic states have been some of the strongest proponents in terms of pushing this agreement. The UK is not, in the slightest, isolated in these matters.

Q73 Geraint Davies: What is your assessment of the impact that the ISDS clauses might have on SMEs in particular? Slightly separately, have you any view on the impact that TTIP might have on Greece? Can you first answer the question about ISDS clauses. Do you think that they are particularly problematic for SMEs?

Lord Livingston: No, I don't. SMEs directly utilise ISDS clauses but, more importantly, where ISDS clauses help SMEs is that they provide a protection in terms of discriminatory behaviour against non-local companies. Often, SMEs have less lobbying power in a foreign Government, as much as we try to help—UK SMEs in particular. They will benefit. Generally, TTIP will be the first agreement with a special SME chapter because we recognise that this should be a big benefit for SMEs. I think that the next negotiating round has an SME event to try to flesh that out.

Q74 Geraint Davies: As a general rule, would you agree that big companies, in some sense, like red tape—they have huge departments of lawyers and all the rest of it—because it

forms a barrier to entry for small companies, which might be a couple of people in a room, innovating? They do not want to penetrate this harmonised red tape that TTIP could become.

Lord Livingston: No, I don't recognise that. Big companies hate red tape, though I think they are more able to cope with it. Small companies can't cope with it, so they just don't export. I was at a food and drink exhibition, where a very small food company said that with different sized bottles it could not sell to the US. A big food manufacturer said it also had a problem, but the answer is to have one production line for the US and seven others for the rest of the EU, which is costly but doable. That is just not doable for SMEs.

There was a survey that said it cost an SME 10 times as much per employee to institute an EU regulation as it did a big company. The same is true when you look at regulations generally. That does not mean big companies like red tape; they hate it as much because it makes their life difficult, it just does not make it absolutely impossible.

Q75 Chair: The final question was on Greece.

Lord Livingston: TTIP could really help Greece create a more competitive economy in terms of allowing them to export. Whether the current Greek Government see it that way is an issue. That comes under the category of too early to tell. Greece's solution will have to be the competitiveness of its ongoing economy. It has made a lot of progress up until now and hopefully they will progress that. Free trade in all its forms will help a competitive Greece.

Q76 Chair: I think that has covered as much as we can for today. It would be helpful, due to the Dissolution, if you could let us have your written follow-ups by the end of next week, Friday 7 March, so that we can consider and report on them before Dissolution. I think you know what the follow-ups are because we have put them. You can look at the transcript and just go through them. We have a function to perform. We are constrained by the date of Dissolution, so we need them by 7 March.

Paul Griffiths: We can certainly write by then. There are number of things that we are considering, as the negotiations are live. The earlier we rise, the earlier we will be in that consideration process.

Lord Livingston: We will try our best and will communicate in the meantime.

Geraint Davies: You have the whole weekend.

Lord Livingston: I will be in China trying to promote British trade from Saturday, so my whole weekend has already been taken.

Chair: I am sure Mr Griffiths and the officials can pick up while you are away. On that happy note, thank you for coming.