



Environmental Audit Committee

Oral evidence: The Transatlantic Trade and Investment Partnership, HC 857

Wednesday 11 February 2015

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Written evidence from witnesses:

- The Government

Watch the meeting

Members present: Joan Walley (Chair), Peter Aldous, Martin Caton, Mark Lazarowicz, Caroline Lucas, Dr Matthew Offord, Mrs Caroline Spelman, Simon Wright

Questions 42–117

Witnesses: **David Henig**, Assistant Director, ITEC Trade Policy, Department for Business, Innovation and Skills, **Matt Hinde**, Head of Europe Unit, Department of Energy and Climate Change, **Andrew Coop**, Legal Adviser, Europe and International Trade, Department for Business, Innovation and Skills, and **Paul Walters**, Joint Head, Trade Policy Unit, Department for International Development, gave evidence.

Q42 Chair: Thank you very much to our witnesses this afternoon. I think we have a good array of representation from different Government Departments on this most complex issue. I think you will be aware that we have already had one evidence session and we are doing a fairly rapid inquiry into the Transatlantic Trade and Investment Partnership. We are grateful to you for coming along this afternoon. We are not expecting a division until 4 o'clock, so hopefully we will be able to get through the business. The acoustics in this room are very poor, so I would ask you to be as clear as you can in answering questions both to myself and my colleagues.

I think that other Select Committees have carried out inquiries into TTIP, perhaps concentrating on the economic aspects of things. It is interesting. This is almost two years, I think, to the day when the negotiations were first reopened, but our focus is whether or not there is any possible downward pressure on environmental standards and the potential for trade diversion away from developing countries. That is a concern we have. That is a concern that witnesses to our inquiry so far have raised with us. I would like a perspective from each of the Departments as to whether or not you can show how the TTIP negotiations are not

having economic gains so that that trumps everything else. I do not know whether or not you have a lead official who would like to speak first of all. Mr Walters?

Paul Walters: Good afternoon, everybody. I am Paul Walters. I am head of the Joint Trade Policy Unit in the Department for Business. Shall I let my colleagues introduce themselves?

Chair: By all means.

David Henig: I am David Henig. I lead the UK Department for Business, Innovation and Skills work on regulatory coherence within the Transatlantic Trade and Investment Partnership.

Andrew Coop: Good afternoon. I am Andrew Coop and I am a legal adviser in the Department for Business. I lead on advising on EU and international trade law.

Matt Hinde: Good afternoon. I am Matt Hinde. I am the head of European Strategy for the Department of Energy and Climate Change, and TTIP and the energy aspects are within my remit.

Chair: Back to you then, Mr Walters.

Paul Walters: We are very pleased to have this opportunity because regulations and work on the environment and also work on development are key pillars of our work on trade policy. I can talk to the development aspects, and perhaps we could go on to that, but maybe we should start with the environmental regulations and the issues you have set out there. Maybe my colleague David could kick off on that.

Q43 Chair: Yes, because the concern we have is it is all very well to say, “All out for the economy,” but what about the sustainable goals—going through the SDGs as well, but the concerns we have about sustainable development and environmental protection? How are we making sure that that is not being completely undermined?

David Henig: I think we recognised this right from the start of the TTIP negotiations. The first round of negotiations was in July 2013, and in our preparation for that, one of the things we realised that was very important was that it must be clear that environmental and other regulatory standards would not be lowered as a result of TTIP. I recall a senior official saying that in a meeting in July 2013. This message has been repeated by numerous others since then, ranging from President Obama, President Juncker, the Trade Commissioner, Cecilia Malmström, UK Ministers, and many others. I think that is the first and important thing.

Q44 Chair: Can I just drill down on that? To say something is one thing, but to do it is another. Is there a set of memoranda or guidance notes from Ministers that give you the tools to be able to make that assessment of how it is not being dumbed down in terms of environmental protection and sustainable development safeguards?

David Henig: We do not have those memoranda beyond the statements that have been made in public, but those have been clear. If you look at the draft texts that have come out in some areas—for example, earlier this week, there was a draft text published on what is

called horizontal regulatory coherence, which was clear that there would be no lowering of standards—

Q45 Chair: Can I just stop you then? If you are looking at whether or not standards are being lowered or not, then presumably you need to know what the starting point is to know what the current standards are. How is that audited in terms of knowing what the starting point is and being able to ensure that there is no dilution of standards of one kind or another?

David Henig: In each of the sectors that are looking at this, they are not looking at making changes to standards. What they are looking at is where there are areas where there appears to be a rough equivalence between EU and US standards. For example, it is thought that that may be the case in many areas around the automotive sector. There are a number of areas in food and drink. For example, we can draw on past experience, where in 2012 there was an agreement on organic food between the EU and the US that brought mutual recognition for the vast bulk of organic produce, not entirely everything. That is the starting point. There is no starting point that says, “Here is a detailed measure of where we think the standards are.” Both sides are looking at where they are now.

In the case of the automotive sector, which is the most advanced, an independent study has been commissioned to look in detail and provide the data on equivalence. I am not aware of such a detailed study being carried out in other sectors, though there are proposals. The UK Government does not take part directly in negotiations. The Commission and the US Trade Representative take part in the negotiations. At the point where there are some details of the proposed regulatory coherence we will have a chance to look at those. We have already identified areas where we think they may be possible. We are also discussing with the Commission and others what level of scrutiny such regulatory changes would need to go through, both within the TTIP agreement that is made and then beyond in what is called the living agreement. I think those are the main bits.

Q46 Chair: I do not feel very clear in my own mind about how you can make sure you have the high standards of environmental protection in the trade deals that will come about as a result of this without having anything to substantiate how those safeguards are in place and who you are talking to to ensure that is there in the regulatory regime or the new procedures that will come in. For example, have you been guided by the Natural Capital Committee on that? I do not understand how you are framing the negotiations from the perspective of protection of the environment.

David Henig: To be clear, at the moment, there are no specific proposals as of yet within TTIP that say, “We are going to mutually recognise in these areas,” or, “We are going to declare equivalence in these areas,” or, “We are going to harmonise in these areas.” At a point where there are specific proposals, then clearly we will need to look carefully at how those are taken forward. I would suggest the Commission are the ones who will need to provide the evidence of their own to say why they have taken these approaches and then it will be up to member states and, hopefully, though I am not sure how they will consult, other organisations to scrutinise those agreements in different sectors. There are no proposals at this stage.

Q47 Chair: No. Because it is a process and we are party to that process here in the UK, I would have expected there would be some overarching guidance as to how these concerns would be embedded in the work of those pursuing the negotiations on behalf of the UK.

David Henig: As I say, the guidance is in the form of those high-level statements. There is no detail.

Chair: There is no guidance, okay.

David Henig: To go through each sector in turn, there are thousands of pages of regulation and many of them will not be in any way affected by TTIP.

Q48 Chair: But many of them will, and the concern is that those that will be affected will be watered down.

David Henig: Yes, we are aware of that concern. What we should be clear about is that there are frequently concerns about a race to the bottom, for example, in trade agreements or even when the single market was set up or when the new members came in. There is not a lot of evidence for it. On previous occasions when it has been cited, sometimes there is indeed a suggestion of the opposite occurring, which is known in academic circles as the California effect. There is over time a gradual levelling up to those that have the highest standards, named obviously after California, which frequently has higher environmental standards than anywhere else in the US, and frequently other states and then the US Federal Government follow suit. At this stage, with that overall guidance and with the knowledge of past examples, we do not believe there is a serious risk, but obviously we will scrutinise proposals carefully.

Q49 Chair: When the Government tells us in its written submission that people have expressed concerns that TTIP will lower environmental standards and we should be clear that this will not be the case, the actual means by which the Government is seeking to ensure that will not be the case have not been specified?

David Henig: That is correct.

Q50 Chair: Thank you. Moving on to the issue of transparency, there is a lot of concern about this across the UK and, indeed, in the Parliament here as well. What is the process whereby there will be consultation in terms of people who wish to comment on all of this? Are there proposals for consultation with civil society, the general public or here in Parliament?

David Henig: I should say we already have a quite extensive programme of consultation. We meet with stakeholders from businesses, trade unions, non-governmental organisations and so on, on a frequent basis.

Q51 Chair: Are there routine meetings that take place? Is there a structure for that or are they ad hoc meetings?

David Henig: There are relatively routine meetings that take place at official level. Ministers and the Secretary of State also have meetings that are more ad hoc. We are also looking at what more we can do with regard to transparency and releasing information about these meetings and we hope to make an announcement soon on that.

Q52 Chair: An announcement soon on what specifically?

David Henig: In terms of what more information we can provide about the consultation that we already have done and what we will be doing going forward.

Q53 Chair: You will appreciate the concern, won't you, in that there appears to be an anti-regulatory agenda? In a way, that also gets manifested in how the negotiations for this are going forward. Therefore, those who do have an interest in this would wish to be involved in one way or another.

David Henig: Absolutely. As I would have gone on to say, there have been three parliamentary debates and there have obviously been a number of inquiries looking at TTIP. There will doubtless continue to be a lot of scrutiny going forwards. It is worth saying that we hear the concerns about a deregulatory agenda. This is not something that we believe to be the case, that TTIP is pushing forward a deregulatory agenda. It is not something that I have heard mentioned from our colleagues in other member states. We understand this is a concern and we need to address this concern, but it is not something that we believe to be the case.

Paul Walters: Across all of our trade negotiations, TTIP is just one of the many trade negotiations we are involved with. It is hugely important that we are constantly dialoguing with a full range of stakeholders. We recognise that we have a very important responsibility and very important opportunity to balance the various interests that go into a complex trade deal like this one.

Q54 Chair: Just share with us who those stakeholders are.

Paul Walters: Business, consumer groups, trade unions.

Q55 Chair: Is that at the TUC level with the trade unions?

Paul Walters: Yes.

Q56 Chair: What is the current state of play in terms of their concerns, if any, about it?

Paul Walters: We have a full range of views that are expressed. It is something that provides incredibly valuable information for us that we are then able to feed in through our Ministers at the European level.

Q57 Chair: Has this been raised at the Green Economy Council?

Paul Walters: I do not know the answer to that.

David Henig: I am afraid I do not know.

Paul Walters: Sorry, we can check that point, but I do not actually know.¹

Q58 Mrs Spelman: There seem to be conflicting views about whether a TTIP agreement could help or harm low-income countries. For example, our own House of Lords EU Committee inquiry found prospective changes in tariffs could harm low-income countries. How can the economic and commercial interests of the EU and the US be reconciled with the development needs of low-income countries? I think that is one for Mr Walters.

¹ **Note by witness:** We think that our established mechanisms—the regular official meetings with stakeholders supplemented by more ad hoc meetings by Ministers—provide plenty of opportunities for both sides to express their views and therefore have no immediate plans to raise TTIP with the Green Economy Council.

Paul Walters: Yes, thank you for asking that. This is an issue that is close to our heart. You will be aware that the UK Government has a joint trade policy unit that includes experts from the Department for Business, the Department for International Development, which is my home Department where I come from, and also the Foreign Office. We have commissioned research in this area and we see the risks, but we also see the opportunities in TTIP. One of the advantages of having a joint team that looks across the spectrum of trade negotiations that we have is we have a unique opportunity among many of the European member states to be able to balance the interests of the UK and also development as well.

The work we commissioned through Sussex University and other colleagues identified four potential channels that could create opportunities for developing countries but could also create risks. You have mentioned trade diversion and clearly that is the area of greatest risk. It is close to my heart because I have spent quite considerable time in Cambodia, Pakistan and Bangladesh, and seen the transformation that export-led industries have created in those economies. The study came up and said there is a potential risk for some of these countries, that there would be an erosion in their tariff preferences through a lowering of EU/US tariffs, but the feeling was that, irrespective of those tariff erosions, there was a difference in the kind of goods that US companies and Bangladeshi and Pakistani companies are competing in and, even with that erosion of the preferences, Bangladeshi and Pakistani companies would still have a competitive advantage. It was not expected that there would be large trade diversion.

The other channels that could offset the potential small trade diversion are obviously the boost to global growth of a deal and the indirect impact that could have on demands for imports from developing countries. One of the most exciting areas for us is looking at the issue of standards. For a company in Bangladesh that is currently having to meet two sets of standards to export to the US market and to the European market, there may be potential for a reduction in those compliance costs if they only have to satisfy one of those sets of regulations. We are still at a very early stage in thinking through those possibilities, but the opportunity is there.

Then the final area is the US and the EU have very different procedures for their preferential arrangements for developing countries. Again, we are at the beginning of thinking about this, but I think it creates a real opportunity for us to simplify and for us to be talking to the US about how we can offer a better package of support for LDCs. Of course, on the UK side, we are providing over £1 billion a year of aid for trade; the kind of aid that helps developing countries take advantage of trade preferences. We recognise the risks. We are trying our best to understand those risks, but I think, taken within the whole, there are a number of offsetting positive developments that are also associated with this negotiation.

Q59 Mrs Spelman: How do you see the TTIP agreement working together with the universal sustainable development goals, specifically the goal aimed at eliminating hunger and extreme poverty?

Paul Walters: It is a very exciting year for development and trade. There are four major conferences this year: the Sustainable Development Goals conference in New York in September is very important; the Financing for Development conference that is going to be hosted in Addis Ababa in July; then we have the Climate Change conference in Paris;

and then it finishes with the WTO Ministerial in Kenya. It is a fantastic opportunity for trade and development and we see trade being weaved through all of those four conferences. Trade is going to be a very important part of the non-aid financing for development or the non-aid means of implementation that will help deliver the sustainable development goals. Some of these issues that I mentioned—the standards issues and the simplification of rules of origin—are some of the next generation of trade reforms that are going to help the developing countries. We very much see them working as a whole and we are working very closely with partners across Government to maximise the opportunities.

Q60 Mrs Spelman: DfID has recognised the potential impacts can cut a bit both ways. If it is negative, and you have mentioned the loss of most favoured nation status, those companies that lose would look to be compensated. Do you think mitigation would be expected of the DfID budget? In other words, would it come from the existing budget within DfID if we found ourselves in a position of needing to compensate or mitigate the impacts of TTIP, or would we look at levying an extra tax on EU/US trade to cover it?

Paul Walters: I think I mentioned already we provide £1 billion a year supporting aid for trade. I think our provision is at the cutting edge of helping developing countries like Bangladesh make the very best of the opportunities that are provided to them. I think there is much more we can do, working with our partners in Europe and working with multilateral organisations like the World Bank, to improve the effectiveness and the targeting of that support to stay ahead of these types of developments. It is a fast-changing agenda with lots of exciting opportunities and it is a challenge that I and the team relish in helping countries make the best of the opportunities and to mitigate potential risks to their export businesses.

Q61 Mrs Spelman: Then especially, of course, in front of this Committee, to what extent does the TTIP agreement provide an opportunity for enhancing environmental regulations in third countries?

Paul Walters: Looking far into the future, by having these conversations between two major trading partners we have a real opportunity to set the standard for the rest of the world. I think there are opportunities to bring up regulatory standards in the developing world and across the world, but this is looking way beyond currently where we are with the negotiations.

Q62 Mrs Spelman: If the TTIP agreement results in the lowering of environmental standards in the EU and the US, what is it that any of you could do to help prevent this?

David Henig: As I say, there is no intention that it will lower standards. I think there would be considerable opposition to any lowering of standards. To your question, “What could we do to prevent it?”, clearly there is a process that any agreement has to go through, through the European Parliament, the Council of Ministers and, in the event, as we expect it to be, a mixed agreement, a vote in Parliament. There will be the opportunities there should this agreement not uphold the environmental and other standards that we expect it to.

Q63 Caroline Lucas: Sorry for being a few moments late. I apologise if you have already covered this, but I wanted to probe a little bit more about this idea that somehow DfID

budgets are going to be able to mitigate for losses that developing countries suffer. There are studies suggesting that Guinea, for example, could lose around 7% in terms of reduction in per capita income, which is not insignificant. That is the figure for Guinea, but there are plenty more for Ghana, Côte d'Ivoire, Ethiopia and so on. First, have the calculations been done so there is an amount of money that is in people's minds to know what level of compensation we are talking about? Also, if we are talking about to some extent a diversion of aid that might otherwise have gone elsewhere in those countries, how do we know we are not taking from some of the poorest in those countries and compensating people who, were it not for this trade diversion and so forth, would not necessarily need it?

Paul Walters: Let me be absolutely clear, I am not talking about compensating here. There is no compensating that is happening. This is about using DfID's current provision of aid for trade, which puts us among one of the best supporters of this type of aid in the world, and using that kind of support to make sure that countries take the opportunities that are presented to them.

Q64 Caroline Lucas: Let us take Guinea, for example. I do not even know if British aid goes to Guinea, but if they are going to face a per capita reduction in income of 7%, what practically would you do with that trade for aid budget? Is there someone calculating what that would mean and, therefore, how much money would have to come out of the aid for trade?

Paul Walters: No, we are not doing that. It is not as mechanical as that.

Q65 Caroline Lucas: I appreciate it sounds mechanical, but the opposite of mechanical to what I am hearing sounds rather vague. Okay, there will be a little bit more aid for trade money, but that is a very substantial loss in per capita income. How do we know that is not going to leave those people worse off? Rather than just saying, "There are lots of exciting opportunities out there," how do we know that the opportunities out there are suitable for the people who have lost out of this?

Paul Walters: I would use the word "dynamic". I think it is a dynamic situation. TTIP is not the only trade negotiation that is happening. There is also the Doha development round that we hope that we are making progress on. Just last week, we had the signalling on the LDC services waiver. There are a whole range of trade policies that are being made simultaneously to this.

Q66 Caroline Lucas: But Doha itself could have negative impacts on some people in some poorer countries. Just because it is dynamic and because there are other forces out there, does not make me feel any more confident about my person in Guinea who is facing a loss of 7% in their income.

Paul Walters: It would mean that it makes it very difficult to identify a certain loss and wish to compensate for that loss. There are various dynamics, and I think the best thing we can do with aid is to make sure that any given country that is going to experience changes in their trading environment is able to respond to those challenges as best it can. It is having a strong focus on economic development, making sure that economies can take advantage of the opportunities that are presented, and any potential risks. It is a dynamic situation across a range of preferences. If we were to get into a situation where we were mechanically trying to compensate for one part of the picture, it might leave countries at a

disadvantage because they are not able to flexibly respond to all of the challenges they face.

Q67 Caroline Lucas: Just to be clear, I am not advocating mechanicalness per se, but I am advocating something that looks a little bit more specifically at the particular modelling about what is likely to happen, however many forces you are looking at in terms of the impact on people and, therefore, knowing that the level of support we can give is commensurate to the loss they might have experienced.

Paul Walters: You are highlighting some very big challenges that DfID face on a day-to-day basis, trying to get the best use out of our aid budget. We are very careful in the way in which we spend our aid budget, trying to identify the highest possible returns for British taxpayers' money, and we take all of these considerations into account.

Q68 Mrs Spelman: Just one last point on this theme. Because of the history of our country, we had a lot of preferential trade agreements with former colonies that are no longer colonies. One of the consequences of liberalisation has been that a lot of these former countries have suffered as a consequence. If we take the liberalisation of trade in bananas, for example, then the Windward Islands in the Caribbean have lost a significant preferential trade arrangement. We are in a subtly different position here in terms of our moral responsibility than quite a lot of EU member states. We are looking for a reassurance from DfID in particular that you have the impact of this clearly in your mind as you go into these negotiations.

Paul Walters: We are as well placed as we can be. The DfID team is sitting right at the heart of the trade policy unit that is considering these issues. Across Europe, we are one of the countries that are best placed to be thinking through these issues.

Q69 Chair: Taking up Caroline's point there, what is the Foreign and Commonwealth Office's input into this process, bearing in mind the concerns that she had, for example, about the Windward Islands and what happens to trade of bananas?

Paul Walters: The good news is that, after five years of there being a joint DfID/BIS team, the Foreign Office has joined our team in the last couple of months. We work extremely closely with the Foreign Office.

Q70 Peter Aldous: I wanted to look at what you call the regulatory framework from an environmental perspective, two very different frameworks from the US and the EU, and how they are going to work together without compromising what has been built up over here over many years. Just to kick off, has the Government assessed what impacts TTIP could have on specific environmental standards in the UK and the EU?

David Henig: No.

Q71 Peter Aldous: It has not?

David Henig: In the sense, if I return to the previous answer, that we are not looking at a lowering of standards. Equally, it should be said that, whereas we are very proud of our EU standards in many areas, in some other areas we can see that US standards can be higher. There is a mixed picture.

Q72 Peter Aldous: Do you have some examples of this?

David Henig: There is an interesting study that we could send through, which compares a whole range of regulatory areas between the EU and the US. It finds that, on balance, the picture that the EU is more precautionary and the US is more science-based is a generalisation that does not particularly hold.

Q73 Chair: I think everybody would agree with you on that.

David Henig: For example, the US is seen as having greater precaution on sulphur dioxide from—

Q74 Peter Aldous: You are saying there is more precaution?

David Henig: Yes, in the US with regard to sulphur dioxide, as an example. With regard to air pollution, the US in this study is seen as being more precautionary than the EU.

Q75 Peter Aldous: Are you just plucking out isolated examples, or are you finding that across the patch?

David Henig: This is the major study that has looked across the range. There are an increasing range of studies coming out in different subjects and we try to stay up to date with all of them. As I said earlier, in the absence of specific proposals at this stage, I do not feel that it is a good idea for us to do a very specific look at absolutely every possible change. We are looking in general at all the studies that come out. We are clear that in some areas, like chemicals, there is absolutely no doubt that the EU has a more precautionary approach than the US and that there is going to be no movement in that area. In other areas, we wait to see specific proposals, which we can then evaluate. In the meantime, we try to stay up to date with all the analysis that is coming out both from formal channels and also from academics.

Q76 Peter Aldous: You mentioned various studies going on. One of them that we are waiting for is the sustainability impact assessment, which the Commission has committed to produce so as to look at TTIP's potential environmental impacts. When do we anticipate that being produced and what input have the Government had into that particular assessment?

David Henig: The latest we hear is that the study will not be produced until towards the end of this year. I believe that some officials have had dealings with the team that is putting together the sustainability impact assessment.

Q77 Chair: Which ones?

David Henig: Officials from within the Department for Business. I myself have not, but I believe they have been having conversations. I know they are travelling extensively and taking input into their report.

Q78 Peter Aldous: We are not at the heart of producing this assessment, just on the periphery?

David Henig: I do not think we are at the heart of it. There is a team that is working very hard, which is working on behalf of the Commission, and we are just one of the groups who will input into it.

Q79 Peter Aldous: Would you be able to get us a little bit more information about the extent of that involvement?

David Henig: Yes, of course.²

Q80 Chair: Just before we leave that point, the contribution the UK is having towards the production of that report, can you go back to the timeframe of all of this? I understood that the momentum is important if TTIP is going to go ahead because of the timing in respect of the US elections. Can you, for the benefit of the Committee, map out how a report produced, as in reply to Mr Aldous' question, at the end of December tallies with the progress it needs if it is to go through before the US presidential elections?

David Henig: The most recent statement from the Trade Commissioner said that she was looking towards putting in place a skeleton agreement—I think that was the exact phrase—by the end of this year; making substantial progress this year towards a skeleton agreement. There are a lot of details still to be put in place and the UK Government is certainly also ambitious. We want to see as much progress as possible by the end of this year, and we are also aware of the delays that could come into play because of the US presidential election.

Q81 Chair: When would something have to be signed off by if it is not going to get caught up in the—

David Henig: What we have to look at, though, is that there is a process of reaching a political agreement. There are a lot of details that need to be put in place between now and that period.

Q82 Chair: To put in place a political agreement in advance of the technical aspects of it being sorted through?

David Henig: No, that is not quite what I said. If we look at what has happened with Canada—do you want to say further, Paul?

Paul Walters: Yes. With Canada, there was a political agreement on the main chapters and then there was some fine-tuning that happened over the course. It took 12 months in the Canada case and now we are at the stage where the legal aspects are being looked at.

Chair: Yes. I think Dr Offord will be referring to the Canadian agreement later.

Q83 Peter Aldous: What role do you anticipate the assessment playing as far as the EU's negotiating position is concerned? You must be doing it for particular reasons.

David Henig: Yes. This is a standard process that will provide an awful lot of information about the impact of TTIP and doubtless it will be used as input into the EU's position in

² **Note by witness:** BIS officials have supported efforts by the Commission to improve the measurement and understanding of the impact of non-tariff measures through further research, including through the PRONTO (productivity non-tariff measures and openness) project. This has led to contact with a number of researchers including from ECORYS, the company conducting the SIA for the Commission, who are one of the partners in the PRONTO project. The following link provides more details about PRONTO:

<http://www.dagliano.unimi.it/productivity-non-tariff-measures-and-openness/>

A BIS official was a member of the policy panel at a PRONTO workshop in September 2014 and two others were also present at this workshop at which members of ECORYS were also present.

the negotiations. Short of having seen what the team is likely to come up with, I am not sure of exactly the detail on how this will be put to use, but clearly it will be a significant document and a significant part of—

Q84 Peter Aldous: Is there a concern that, if we will only have a skeleton agreement by the end of this year, it may mean that its role may not be as important and influential as we might have hoped?

David Henig: The danger in all of this is that we are playing a little bit of a game of speculation as to what might happen. How much progress are we able to make on some of the areas of regulatory coherence? How much will be left to a living agreement? What will be in this report? We will hopefully know more in the next three or six months about both the contents of the overall TTIP agreement and the contents of the sustainability impact assessment and hopefully, as we move towards more of an end game, those will work together towards getting a high-quality agreement. I am slightly nervous about speculating too much on the contents of either of these items.

Paul Walters: We would share your concern that a report that is too late to make a difference is not worth doing. We very much share that concern.

Q85 Peter Aldous: Have you made those concerns known? Has the Government made those concerns known to the EU?

Paul Walters: We are working on a much more flexible basis. We would be encouraging the negotiators to be working with the reporters in advance of the release. We hope that the first the negotiators hear about the SIA is not once it is published. We hope that there is much more of an interactive process that will happen between now and the end of the year and equally, as we mentioned, the actual ambitions for closing the detail; even after the political detail there is often a lot of technical detail and then a lot of legal detail. At the moment, we feel there is sufficient time for this important study to be influential. Should we get to the point where we fear that that is not going to be the case then we would have to take more action.

Q86 Peter Aldous: The stated ambition of TTIP is “to reduce the cost of differences in regulations and standards by promoting greater compatibility, transparency and co-operation”. What does the Government see as the major barrier between the EU and US regulatory systems with regard to environmental standards?

David Henig: That is quite a broad question. What we would say is the main barrier at the moment is that co-operation between the two systems is—I would think “haphazard” is probably the word I would use. Right from the start of the process, do regulators talk to regulators at the start of the process about what specific measures they are planning to take? Well, they might do sometimes. They may not do on other occasions. They may be putting forward proposals that are aiming to do the same thing but in completely different ways. Do they share scientific data? Sometimes, but not always. Do they provide the opportunity for effective consultations that can draw on previous experiences? Sometimes, but not always. There is a whole amount of process improvements that can be taken throughout the whole process, which means that we aim much more towards consistency where the two sides are doing similar things, which they are in many cases. For example, I have already mentioned emissions or car emissions where both sides have taken a lot of

steps in the last 20 or 30 years, just quite different ones in terms of what steps they have undertaken.

In terms of specific barriers, clearly you are dealing with two very different political systems: the role of the states in the United States and what powers they have as compared to what powers the federal level has; within the EU, obviously the role of member states as against the role of the Commission. Inevitably, in each case these may get more complex, but in the best examples we do see there is co-operation in many cases. It is just not routine enough. You will probably go on to ask me an example of where there is co-operation so I can think of one, which was lead paint in toys a few years ago. There was a scare about that. The EU and the US worked very hard together and brought their standards up to date in a fairly co-ordinated way.

Q87 Peter Aldous: You are confident one would be able to bridge this gap rather than there being what you might describe as a great gulf fixed between the two regimes?

David Henig: I think the overall intention in TTIP is that you get a much more routine regulatory co-operation. I am sure there will remain issues. I should also mention the fact that we also think that stakeholders, in terms of businesses but also NGOs and trade unions, have a significant role to play in this as well. In both systems you have a significant amount of stakeholder input, so again that should be able to help rather than be an issue.

Q88 Peter Aldous: For my final question I was going to look at the contrasting regimes regarding the precautionary principle in the EU and the risk management approach in the US, but you have rather shattered my illusions on that perhaps. There is one particular issue of the US system in that a lot of US companies often seek redress in the courts. Is this greater rush to litigation something that has been featured in the discussions from an EU perspective?

David Henig: Only to a limited degree and it can work both ways. For example, we heard of a case in the United States where someone sued an automotive manufacturer claiming that they did not have the level of safety equipment that a European car had. Therefore, in that way that helped to push standards up in the United States. We are certainly aware of the different legal cultures. We have not been able to get a lot of evidence on how that would affect this process of regulatory co-operation, but certainly it is something that will need to be factored in.

Q89 Peter Aldous: You are going to gather that evidence?

David Henig: Yes.

Andrew Coop: I am happy to add a little bit to that. The US does have a different litigation culture to the one we have here, in the same way the UK has in some ways a different litigation culture to other member states of the EU. In the time that the single market has been operating, we have not seen that much bleed-across from the litigation cultures of the UK to the other EU member states. There has been some, of course, in some important areas, but we should not assume, because we have a free trade agreement, that our litigation cultures are going to harmonise. I do not think there is much evidence for that.

Q90 Mark Lazarowicz: On these same points, do you consider there is any risk of a downward pressure on environmental standards, as that is what we are concerned with, as a

result of trying to seek regulatory coherence in those areas where it would appear the US has a lower standard than the EU? Is there no risk at all of a downward pressure on our regulatory system under the EU?

David Henig: I should be careful. Of course there is a risk that we are keen to guard against. To be clear, I have seen virtually no material at all from any source, whether it be business or the Commission or the US Government, which suggests lowering of regulatory standards. Clearly, where there are areas where there are differences in standards, chemicals being the example, we have been clear so far that we will not accept a lowering of standards. We will monitor the information that comes back from the negotiations to make sure that that is carried through, but at this stage I have not seen proposals.

Q91 Mark Lazarowicz: Is there an acceptance within the EU, and indeed perhaps in the USA as well, that if there are areas where there are concerns, that those areas would be excluded from TTIP? Is that possible? Is that something that is envisaged as one way to deal with that issue if it does arise?

David Henig: I am not sure I would use the word “excluded”. For example, chemicals is not excluded.

Mark Lazarowicz: Perhaps take that example to start with.

David Henig: Chemicals is not excluded, but there is a clear acceptance that REACH is not going to be changed as a result of TTIP. There are some other areas within the chemical sector where some regulatory co-operation is possible. Chemicals per se is not being excluded, but REACH is clearly so different from its US counterpart that there will not be discussions primarily about how REACH operates.

Q92 Mark Lazarowicz: That would mean a US product would have to comply with REACH no matter what TTIP says if it was obviously to be exported to Europe. Is that the case?

David Henig: That is the case across the whole range. We have not talked very much about food standards, but it is very much the case there. Products must meet the standards of the EU. Where we can have some form of mutual recognition then they only need to meet one set of standards, either of the US or the EU. There are cases already and we hope there will be more cases where that is the case, but that will certainly not be the case within REACH.

Q93 Mark Lazarowicz: I was going to ask about food standards. It is another area where there are concerns about EU standards. Some areas certainly appear to be higher and certainly different from the US approach. I am trying to get my head around this. On the one hand, you are saying that the EU higher regulations would not be weakened by TTIP. On the other hand, isn't TTIP about trying to have regulatory coherence so regulations in broad terms apply across both sides of the Atlantic? How are those two objectives consistent if you are not going to exclude them from TTIP?

David Henig: The consistency is that we believe there are many examples where there is an equal level of safety but just simply different procedures. We often hear the automotive sector being mentioned but, in fact, there are many areas within food and drink where there are considerable checks and regulations on both sides; they are just different. The

question is: if one looks at those in detail, can it be demonstrated that those produce effectively the same outcomes and, therefore, one can have mutual recognition? Again, I draw upon the 2012 organic food agreement where, with only one or two minor exceptions, it was recognised that the standards were so similar that they could be mutually recognised. There are other areas. There are areas in other industries; engineering has been mentioned by some and some talking about cosmetics. There are a number of sectors where it should be possible to make progress because we have fairly similar regulations.

Q94 Mark Lazarowicz: Your position is, apart from chemicals, there is no major area where there is a substantial difference in regulatory standards?

David Henig: The other areas that have been mentioned as being specifically excluded by the negotiators on the EU side have been in the food space—beef treated with growth hormones and genetically modified food, for example. They do not envisage the EU processes changing with regard to those areas.

Q95 Mark Lazarowicz: They will be excluded from TTIP. Any imports from the US would still have to comply with the regulations there?

David Henig: Yes, that is correct.

Q96 Mark Lazarowicz: I suppose that is dealing with existing regulatory arrangements, but there is also a concern that, if future regulatory requirements are implemented in both the EU and the USA and the agreements are discussed, there will certainly be a chill factor applying to new regulations whereby, to try to ensure that it was possible for both sides to comply, there would be a tendency to go to a lowest common denominator standard. Is there not a real risk that would exist?

David Henig: The setting of regulations is a complex procedure on both sides of the Atlantic, involving numerous stakeholders. We do not see that the exercise of greater discussion between the two sides enshrining consultation with a wide group of stakeholders should have that effect. There is no reason that we can see why there would be a regulatory chill as a result of ensuring that regulatory co-operation took place. One would look more optimistically and hope that what we could find is that both sides would look at what would be the most effective measures and both follow similar measures such that we both took the most appropriate measures, while also allowing companies to only have to meet one set of standards in the EU and the US. That may not be possible in all cases, clearly.

Q97 Mark Lazarowicz: That is obviously a good objective. One of the concerns is also that I think there is to be a regulatory co-operation council, which is to oversee the implementation of environmental regulations in both the EU and the US. Is there not a risk that that body will inevitably be focused on trade concerns, wishing to liberalise trade or free trade or whatever, and that effectively negotiations will be primarily the province of trade officials, whereas the environmental concerns will not be felt so highly in that discussion? Inevitably, if the people leading them are the trade side, it will not be the environmental concerns that are top of their mind.

David Henig: Absolutely, and I think that is an important point. What we have been looking at in terms of the regulatory co-operation body and suggesting to the European Commission is that this becomes very much a body driven by stakeholder input such that whereas businesses, and particularly small and medium enterprises who find barriers the most difficult to overcome, should be able to raise their concerns and their suggestions. Equally, it should be possible for NGOs, trade union groups and others also to raise their suggestions of saying, “This side is doing something that appears to be more effective,” in the EU or the US, “Why don’t we try to have both sides following that lead?” If we do that and if then the trade people who are absolutely looking to remove barriers but also are driven by the quality of the inputs they get and have to respond to those and talk about how they are maintaining standards as well as facilitating trade, then it seems to me you can get a balance between both encouraging trade, while maintaining and, indeed, encouraging high standards of protection.

Andrew Coop: Can I add a little bit to that if that is all right? A regulatory co-operation council is going to involve exchanges of ideas on regulatory best practice among, as David says, a wide range of stakeholders. In some areas, we should not assume that this is necessarily going to lead to a dilution of regulation. In some areas—for example, in enforcement—US regulators are in some respects seen to be much tougher than the EU regulators. There are certainly some areas where, stuck between facing up to the US regulator or the EU regulator, big companies will choose to comply with the EU regulator because they are that much more scared of the US regulator. It could be that in some areas, if we exchange ideas with the US, we decide that the US has a more effective approach to enforcement. On the other hand, they could equally well be influenced by our ideas. There will be an exchange of ideas, but I do not think we can say it will necessarily lead to dilution or to less effective enforcement.

Q98 Mark Lazarowicz: There is a difference in the sense that when the EU develops a regulatory framework—okay, there are various officials, working parties and all the rest of it within the Commission—at a fairly early stage there is a very transparent process in terms of the Commission, the council, the European Parliament, and stakeholders have an involvement there. It will not be the same kind of thing in a regulatory co-operation council, will it; not with that kind of transparent stakeholder involvement in the same way? What can you do to ensure it does have some kind of transparency?

David Henig: The proposals are, in fact, to have a transparency there in which you would have an annual report setting out what submissions have been received and what recommendations have been made about taking work forward. That process will not come in place of existing democratic processes. The existing processes the Commission has to follow in rule making and the US has to follow in rule making will remain. Yes, I would very much welcome a transparent process because we think that that is probably the best way to achieve both the removal of barriers but also a high level of protection.

Q99 Mark Lazarowicz: What specific representations has the UK made, presumably through the EU, to ensure that kind of transparency and stakeholder involvement is there in the regulations and implemented?

David Henig: We take part in very regular meetings. There are regular meetings at ministerial level and official level. There are technical meetings that consider individual elements of text. For example, in terms of the text that has recently been published on

regulatory coherence, we have taken part in a number of technical meetings this year where we have raised points similar to the one I have just mentioned.

Q100 Martin Caton: The EU Commission's TTIP assessment states that emissions will rise as a result of an agreement. Knowing this, why does the Government's written evidence to us suggest that the agreement will be compatible with emissions reduction targets?

Matt Hinde: As Lord Livingston noted in his written evidence, the environmental impacts of trade liberalisation are complex. While some of the studies do say that, and the EU study did, the estimates are relatively small—3,000 to 4,000 metric tons—and they will be overtaken by regional and national emissions-limiting levels. They are fundamentally coming down to increased economic growth.

The other issue, as far as I understand it, is that modelling study was looking at the economic benefits of trade, not about the policy impacts on emissions. Fundamentally, if you are looking at the EU system, for example, what will drive down emissions is the 2020 greenhouse gas target, the emissions trading system and the 2030 targets. Likewise in the States, it will be the policy measures undertaken under President Obama's package that will drive down emissions.

Q101 Martin Caton: TTIP has, or it looks like it has, a slight negative effect, but that is going to be compensated for by other measures, is it?

Matt Hinde: Yes.

Q102 Martin Caton: The EU is pushing for the United States to overturn its ban on oil exports. Is there a danger that, once the infrastructure is built to process US fossil fuel, it will be difficult to turn it off to meet tightening carbon budgets in 15 or 20 years?

Matt Hinde: We do not see that as a particular problem. Either way, the EU and the US will require significant amounts, although decreasing amounts, of oil and gas for the foreseeable future irrespective of the climate targets.

Q103 Martin Caton: We do have to wean ourselves off fossil fuels, don't we?

Matt Hinde: Absolutely, but if you look at estimations up until 2040, and they are still estimations, the estimations are that there will still be a significant amount of gas in the system alongside renewables and nuclear. In terms of oil exports, I think I would come back to the point that what will drive down emissions are policy remedies to that. The impact of more oil going on to the global market may have a slight impact on the price, but it will not be significant given its global market. It is the internal policy measures within the States and within the EU that will control the emissions.

Q104 Dr Offord: In response to the EU consultation, there has been a significant amount of opposition raised to the investor-state dispute settlement. Of those responses, there were about 150,000, a third were from the UK. Do you think there is a legitimate concern about the ISDS?

Andrew Coop: Yes. ISDS is a complex problem. It is never going to be easily explained politically. It is never going to be easily understood and there are some legitimate concerns about it and about the way it has been operated in the past. We are fully aware of the cases

that have been brought to ISDS tribunals and the results of those cases and of the fact that the UK has had many bilateral investment treaties for a long time and is both a capital exporter and a capital importer. We are well abreast of legal developments and certainly some of the public concerns are quite understandable. Some of them are also, we think, based on a misapprehension of what effects ISDS in the TTIP context would have. We do not accept everything that has been said, but, yes, there is certainly some validity to the concerns.

Q105 Dr Offord: What about with regard to the ISDS environmental regulation? Are there any specific concerns around that?

Andrew Coop: Some ISDS cases have been brought in relation to some environmental steps in Canada and other contexts. We have looked carefully at the ISDS provisions that have been included in CETA, in the Canadian free trade agreement. Of course, the question of whether ISDS provisions would be included in TTIP, and certainly not what the drafting would be, has not yet been determined. Based on what is in the EU/Canada free trade agreement, we think it is very unlikely that a successful challenge could be brought to an environmental regulation of the kind that the EU would enact or which the UK would want.

Q106 Dr Offord: In the past couple of months, both the German and French Governments have made complaints about the ISDS. They have been raising issues about national sovereignty, which is something we often raise in this country as well. Why do you think they are airing these concerns now? Why did they not raise them before?

Andrew Coop: I think that is probably the result of increasing political pressure in those countries. It may be because there has been greater awareness of controversial cases such as the Philip Morris case brought against Australia and some of the Vattenfall cases and so on.

Q107 Dr Offord: Do you think we could still have TTIP without the ISDS?

Andrew Coop: I think that question has both political and legal answers. Politically, I would defer to my colleagues here. Legally, it would be possible. There are free trade agreements, of course, without investment protection provisions. I understand the political answer is that it would lead to a less ambitious and perhaps less effective deal overall, but the others may have comments.

Q108 Caroline Lucas: It has been explained to us that in some legal regimes we do not necessarily have confidence in them and, therefore, you would want this parallel stronger legal settlement system, but if we are dealing with the EU and the US then where is the risk? Which countries are we worried about that are not going to deliver on their legal responsibilities?

Andrew Coop: Some nine EU member states already have bilateral investment treaties with the United States. I think the understanding is that if TTIP included investment protection, then these bilateral investment treaties would be terminated and replaced with the EU-level investment protection provisions. With respect to those nine countries, and clearly the UK is not one, there would be an advantage because the terms in which those nine older-style bilateral investment treaties are framed are in some or probably all cases

much more investor friendly than anything we would expect to see in TTIP. There are fewer safeguards on the Government's right to regulate. Concepts like indirect expropriation and fair and equitable treatment are expressed in much more absolute terms, which gives the investor greater rights or perhaps a greater chance of success in bringing a claim. For those nine EU member states, there is definitely a potential legal benefit or a reduction of legal risk in renegotiating a newer-style provision within TTIP.

Q109 Chair: To go back to your response to Dr Offord just now about why it had been so late in the day but nonetheless there had been concerns from France and from Germany, you suggested because of greater awareness. Would you expect those concerns that were raised to have been raised justifiably?

Andrew Coop: This perhaps goes back to my answer to the first question. The political concern is certainly understandable, but, at the same time, if you look at the facts of those cases, most of them, certainly the cases where the claimants have been successful—and that is quite different from bringing a claim, of course—it is pretty hard to find cases where the Government has done something or has behaved in a way that the UK Government would commonly behave. I can certainly see there is some public concern, as there is about a lot of other legal provisions that impose restrictions on Government, such as the Human Rights Act. There is public concern about that as well. If you look at the facts of the cases and when people have looked at the facts of the cases, I think some of that concern can be diluted.

Q110 Mark Lazarowicz: Just on this point, is there not ironically a risk that ISDS between the US and the EU—well, other companies outside the EU and the US could raise actions under this procedure, presumably. Anyway, is it not something that would in practice be rarely used but if it was used the consequences might be so politically difficult that it would not be enforced on either side? For example, if there was some situation where a US company took the EU to court and was ordered millions and millions of pounds of compensation, that is going to cause a lot of political problems. Conversely, on the other side, if an EU company were to take the US Government to court and were to be awarded millions and millions of dollars in compensation, is there not a political risk that that might be enforced on either side? Are there not some quite serious difficulties in the way ISDS is meant to work in practice, if it was ever used?

Andrew Coop: Yes, it is an interesting question and it depends very much on the facts of the case. There are some cases—for example, the Philip Morris claim against Australia—that are politically controversial for good reason, but which have not caused great political difficulties as between the US Government and Australia or between the Hong Kong Government and Australia. The Philip Morris case against Australia is brought under the Hong Kong-Australia BIT by a US company or a company with a US parent. Yes, I can see there is some potential controversy, but submitting an investor-state claim to an independent tribunal also has the potential to depoliticise it, as opposed to the investor complaining directly to the host Government or perhaps suing the host Government in the host Government's own courts.

Q111 Caroline Lucas: I wanted to come in on something that you said earlier about, based on what we know of CETA, you thought it was unlikely there would be a negative impact on environmental regulation.

Andrew Coop: Yes.

Caroline Lucas: How much have you taken into account the chilling effect there; rather than just looking at a concrete effect that might have happened—the positive things that we want to happen that have not happened through chilling?

Andrew Coop: We certainly have thought about the chilling effect. It is hard to prove a negative and it is hard to prove that there would never be any chilling effect, whether from CETA or TTIP or from all the other legal responsibilities the Government has. The Government has to take a lot of things into account, including its responsibilities under the Human Rights Act, under EU law and under international treaties like free trade agreements, when it makes regulations and it does not generally act in such a way as to breach its international responsibilities. In that sense, domestic and international law has a restraining effect on Government, which is what it is there to do. That is not quite the chilling effect you are talking about, but it is related to it.

The UK has had over 90 BITs in force with countries worldwide for a long time and some of those countries now have big investors in the UK. For example, we have a BIT with India, which has some big investments in the UK. Again, that BIT is in terms much more investor friendly than we would ever expect to see in TTIP. Other EU countries have had a total of something like 1,400 BITs in place with other countries, and during all this time, these EU countries have introduced, between them, some very tough environmental regulations; certainly environmental regulations as tough as anywhere else in the world. It does not seem that BITs as a whole across the EU have had much of a chilling effect that we have been able to ascertain.

As to whether a BIT with the United States might have a chilling effect, again it depends very much on framing the investment protection provisions in the right way that gives sufficient latitude to Government that it is clear that Government can regulate along the lines that, say, the UK and EU Governments usually do. We are confident that CETA achieves that result and that will certainly be in the forefront of the negotiating plan with TTIP and we have no reason to think that the US does not agree with that approach. In fact, the US upgraded their model bilateral investment treaty to take these sorts of concerns into account and they are some way ahead of the EU on that front.

Q112 Dr Offord: In response to Mr Coop's assertion, Mr Hinde, you have declined to answer whether we should continue to have the ISDS or if the British Government is still committed. Would you like to clarify your feelings on that?

David Henig: I did not want to add anything at that point. What I can say is what Lord Livingston said in response in the BIS Select Committee, which was that he thinks it is important, given that we are a major investor in the US. The US Government thinks it is important and it would be difficult to see a comprehensive agreement without it. We have to look at the totality of the agreement. We certainly think that the right—and he stresses the word “right”—ISDS clause it will be a much better agreement. That was the evidence that Lord Livingston has previously given.

Q113 Dr Offord: Thank you. That is very helpful and very useful. If we continue to understand that we are going to have an ISDS, do we need international arbitration

considering, in light of Mr Lazarowicz's question, that both the EU and the US have a very transparent and credible legal system? That would be a question for you, Mr Coop.

Andrew Coop: Right, it is a fair question. If you have investment protection provisions, and I suppose you can distinguish between investment protection provisions that say things like, "The Government will not expropriate investments and the Government will not submit investors to unfair and inequitable treatment," that is the guarantee you have in a treaty. Then you have the question of what remedy an investor should have if a Government breaches that treaty. ISDS provisions give an investor the right to bring a claim before an international tribunal if they believe their rights have been infringed. If you do not have an investor-state mechanism, then you do not have any immediately obvious way for an investor to bring a claim against a Government. An investor cannot bring a claim against a Government under TTIP, for example, in a UK court unless the Government makes special provision for those rights under TTIP to be enforced directly in a UK court. Generally, rights provided under treaties are not directly enforceable in the UK courts, so there has to be some tribunal for them in which they can bring a case if the investment protection provisions are going to have any meaning.

Q114 Dr Offord: You also mentioned CETA. Are there any lessons that we can learn from that, particularly in regards to TTIP?

Andrew Coop: Yes, I think there are two principal lessons. The first is that Canada has been a party to NAFTA for quite a long time and some of the most interesting investor-state cases have been brought under NAFTA. Despite that experience, Canada was still keen to have investment protection provisions with the EU, which I think says something.

Secondly, CETA is the most up-to-date investment protection agreement that the EU has drafted. The changes in it from the UK's older style BITs are absolutely key to understanding the approach we would want to have in TTIP. Those changes include changes to the definitions of fair and equitable treatment. It is clear that, unless the Government has acted in a manifestly arbitrary way or targeted discrimination in a company, only in that situation will a company have a claim. There is a change also to the definition of "indirect expropriation". Again, if the Government has passed a new environmental regulation, it is explicitly clear from CETA that, unless the investor shows that is manifestly excessive or unreasonable—and we struggle to find examples of recent EU environmental regulation in that category—they will not have a substantive claim. Those sorts of changes to the drafting, and there are others, are key to the approach to TTIP.

Q115 Caroline Lucas: I have a last question to Mr Coop. I think you have been very careful in how you have expressed the fact that some of the concerns around the ISDS are perhaps misplaced, but I think you have also said that some of it is legitimate. Yet when we have tried to probe you about where the legitimate bits of concern are, I cannot find where you think they are because you have said it does not look like there is likely to be much environmental chilling effect and if you look at CETA it is not undermining other environmental regulations or the right to regulate. Where would you locate the legitimate concern about the ISDS?

Andrew Coop: It is not usually the perspective from which I am asked to come at this, but I am happy to try to suggest an example. Perhaps one place to start would be claims brought against the Governments of developing countries. I am only talking hypothetically

here, but if you imagine a situation in which the Government of a developing country, perhaps it is a Government of questionable democratic legitimacy, signs up to a bilateral investment treaty and perhaps it is subsequently replaced by a different Government, possibly with a better democratic remit, maybe with different aims and objectives, and the incoming Government questions some of the guarantees given to foreign investors by the outgoing Government. Then you can immediately see that there is a potential for problems there because an investor can bring a claim based on a guarantee given to the investor by the outgoing Government, which may not have been a particularly democratic one but which signed the BIT. There is a good example and, no doubt, if you look through the case record you may find those sorts of cases.

Paul Walters: The key point is, going back to the way in which Lord Livingston characterised it, it is about having the right ISDS. If you have the wrong ISDS, I think there is a lot that we could be concerned about.

Q116 Caroline Lucas: Does Australia have the wrong one? Is that why there is a case being brought against it by Philip Morris?

Andrew Coop: Bringing a case and succeeding in a case are different. Philip Morris give the impression of being a fairly litigious company and I would not be particularly surprised if an EU country introduced plain tobacco packaging and Philip Morris brought a case against it under a BIT or under some other legal instrument such as the Human Rights Act. That is possible. As for whether the Philip Morris claim will succeed, most commentators do not agree that the Philip Morris claim is likely to succeed. Philip Morris has already brought a claim against Australia under Australian constitutional law. That case has already been dismissed by Australia's highest court.

Q117 Caroline Lucas: But if it does go through, then we have reason to be more alarmed?

Andrew Coop: I have often thought about whether that would be the best possible outcome for investment law people or whether it would be their worst nightmare. It is certainly a case that we are monitoring with interest.

Chair: Unless any of my colleagues have any further questions, I will bring the proceedings to a close. Can I thank each of you for coming along this afternoon and helping us with our inquiry? Thank you very much indeed.