

Committee on the Future Relationship with the European Union

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

Wednesday 10 June 2020

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Members present: Hilary Benn (Chair); Joanna Cherry; Sally-Ann Hart; Antony Higginbotham; Dr Rupa Huq; Stephen Kinnock; Nigel Mills; Nicola Richards; Mr Barry Sheerman; Jane Stevenson; Matt Vickers; Dr Jamie Wallis; Dr Philippa Whitford.

Questions 336 - 388

Witnesses

I: Professor Catherine Barnard, Professor of European Union and Labour Law, University of Cambridge; Dr Anna Jerzewska, Independent Customs and Trade Consultant, UN; Sam Lowe, Senior Research Fellow, Centre for European Reform.

Examination of witnesses

Witnesses: Professor Catherine Barnard, Dr Anna Jerzewska and Sam Lowe.

Q336 **Chair:** Good morning. Can I begin by welcoming our witnesses to our Select Committee today? Could I ask you to introduce yourselves for the record?

Sam Lowe: I am Sam Lowe, senior research fellow at the Centre for European Reform.

Professor Barnard: I am Catherine Barnard, professor of EU law at the University of Cambridge and senior fellow at UK in Changing Europe.

Dr Jerzewska: I am Anna Jerzewska, associate fellow at the UKTPO and an independent consultant for a number of organisations and companies.

Q337 **Chair:** You are all most welcome. Thank you for giving up your valuable time today. Can I begin with a question to you, Sam Lowe? The Government say that they are only asking for things that the EU has already given to other third countries in other agreements. Is that your assessment of what the Government are asking for in all areas?

Sam Lowe: No. It is broadly true to say that the UK is asking for things the EU has offered elsewhere. In fact, you can point to provisions that have been literally copied and pasted from other EU free trade agreements. However, in certain specific areas the UK is asking more of the EU than the EU has offered in earlier agreements.

To give a couple of examples, one of the areas is mutual recognition of professional qualifications. The UK is asking for a framework that would actually work, other than the previous EU agreements. Also on, for example, rules of origin—unfortunately you have two of us on today who like talking about that—the UK is asking for the EU to do more than it has done in previous agreements when it comes to accepting inputs from foreign countries as being local to the UK for the purpose of qualifying for tariff-free treatment under the EU-UK free trade agreement.

Q338 **Chair:** Can I ask you about the ability to go into the EU to provide services? That is something that the UK side has also asked for. Does that replicate what has happened in other agreements.

Sam Lowe: We are talking about the temporary movement of service providers. This could be someone moving to deliver a contract for, say, six months or for an intra-corporate transferee or the like. The interesting thing here is the UK has increased its ambition relative to the UK's position within EU trade agreements in the past. To give an example, the UK is saying that, for intra-corporate transferees, the UK and EU should agree that they could be able to move for up to five years. The normal EU offer here is up to three years. Interestingly, in past EU agreements the UK lodged reservations and was not covered by these provisions.



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In other areas, such as the temporary movement of a contractual services provider or an independent professional, the UK has increased its offer to the EU average. The UK is also offering to recognise the category of investor, which is something the UK has not done in the past.

The point I would make here is that perhaps on intra-corporate transferees it is asking for a bit more than the EU normally offers. The interesting thing is the UK is actually lifting its ambition to that of the EU's. Before, in previous EU free trade agreements, I think because of discussions over competence and whether immigration policy should be dealt with by an EU trade agreement and the like, the UK tended to try to exclude itself from all these provisions on the temporary movement of people.

Q339 Chair: That is very helpful. Catherine Barnard, can I begin by asking you about paragraph 131 of the political declaration? It goes into the question of state aid dispute resolution that other members of the Committee are going to explore in further questions. It said that, should a dispute raise a question of interpretation of provisions or concepts of Union law, the arbitral panel should refer the question to the Court of Justice for a binding ruling as regards the interpretation of Union law. How does that wording, which both parties signed up to back in October, in your view square with the Government's position that they will not accept rulings of the European Court of Justice?

Professor Barnard: Paragraph 131 is part of the political declaration. The political declaration in and of itself is not legally binding, albeit that it is cross-referred to in the withdrawal agreement. Yes, you are absolutely right. If you look, the EU's ask in its draft FTA is that there should be references to the Court of Justice for interpretation of EU law. This is something the EU feels strongly about. You see it also in the Swiss framework agreement, which has not been concluded because the Swiss have reservations on this point. The argument is that the EU system is an autonomous system and only the Court of Justice can rule upon it. The UK, in its ask, makes no reference at all to the language of the Court of Justice or indeed references to it.

However, there are two caveats I would like to make. That takes us back to the withdrawal agreement. That is the Article 50 text, which came into force when we left the EU on 31 January. First, the remedies provisions, the so-called dispute resolution provisions, in the withdrawal agreement text include this point—that there would be reference to the Court of Justice on the interpretation of EU law. In the EU ask in the FTA, you see an almost word-for-word replication of the dispute resolution provisions from the withdrawal agreement being replicated in the FTA.

The other point to bear in mind is the Northern Ireland protocol. In the Northern Ireland protocol, the provisions on state aids, Article 10 specifically, mean that there will be references from the courts in the UK to the Court of Justice on questions of EU state aid law. The Northern



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Ireland protocol, as you know, will continue to apply in the UK, even if we leave the EU without a free trade deal at the end of the year.

Q340 **Chair:** That is very clear and helpful. Looking at the position of both sides on the question of state aids, where probably the difference is expressed most sharply, what would a dispute resolution system that both sides might in the end be able to live with look like?

Professor Barnard: My first point starts again with the Northern Ireland protocol. One thing I would like to emphasise is, although it is the Northern Ireland-Ireland protocol, the state aid provisions apply to any UK measures that have an impact on Northern Ireland that have an effect on interstate trade. George Peretz has written well on this. He uses the example of the furlough scheme. He says that, if the furlough scheme had been introduced after transition, it would have to be notified because of its effect on interstate trade, which is a pretty low threshold. There is already a continued involvement of the EU institutions via the mechanism of the state aid provisions in Article 10 of the protocol.

More generally on state aids, the question is what would be a good dispute resolution mechanism. In the past, the UK has been very robust on ensuring that state aid is properly notified. We have not been in difficulty with the EU. Now of course we want to have more flexibility, because the EU state-aid regime is not perfect and of course, in the hope of helping the red wall seats, it is really important that there should be the possibility for the UK to invest money. There needs to be some sort of enforcement mechanism, which would probably involve an independent body, like the Competition and Markets Authority, taking a view on the compatibility of state aid.

For the EU, it is really important that the UK has something fairly robust in place. They are worried about free riders, the UK being a free rider. By that I mean the UK saying, "France and Germany have to comply with state aid rules. We can do our own thing and therefore attract companies to the UK". That is very good for the UK economy, of course, but the EU will not accept that. It will want some proper robust provisions on state aids, much more robust than you find in the Canada agreement, which is essentially what we are offering. Remember that Canada is thousands of miles away, not 26 miles away. That is what the EU is worried about. It is worried about the UK being a free rider.

Q341 **Chair:** Is it the case that the UK Government have not yet set out in detail what state aid provisions they would propose to apply to the UK?

Professor Barnard: Yes. We are not getting much clarity on that point at all, and particularly the role of the Competition and Markets Authority.

Q342 **Chair:** That is very helpful, thank you. Anna Jerzewska, are we ready at the borders for what happens on 1 January, whether there is a deal or not a deal?



Dr Jerzewska: We do not really know what is going to happen at the border on 1 January. We know some things. There is a lot that we know. We know what general provisions will apply. We know that there will be import and export declarations. We know that there will be a proper customs border. We do not know how this border will function. We have tariffs, which is a big improvement on the last Brexit deadline, when I think the UK tariffs came out a couple of weeks ahead of the planned Brexit day. We have tariffs now, over six months in advance, which is great.

We obviously do not know whether there will be a deal, but we do not have the border operating model, which is something the business community is waiting for. In terms of border readiness, one of the issues here is the fact that there are a lot of different actors that need to be ready. HMRC, Border Force and companies all need to be ready, as do customs brokers, freight forwarders and port authorities. We also have certain places where this readiness will cause more of an issue than in other places. We have our ro-ro ports—roll-on roll-off ports—where the readiness aspect is much more complicated than in other types of ports, because of time constraints and lack of space. These ports have special requirements and there is a need for more prep and more testing to be done by the UK authorities and port authorities.

To summarise all this, we are not ready and we are not entirely sure what we need to be ready for.

Q343 **Chair:** How worried are you that there will be difficulties come 1 January, given what you have just said?

Dr Jerzewska: In terms of what needs to happen on a high level, there needs to be a security declaration and an import declaration. We know more or less how these kinds of high-level procedures work. The question is in terms of the first couple of days or weeks. It is all about logistics, especially given how much of our trade with the EU happens through ro-ro ports and trucks moving from the EU to the UK and the other way round.

If we look at what the UK proposed in the text, there is a special provision in the UK draft on ro-ro ports because the UK recognises the special status of these ports and special conditions that these ports have. If you think of a truck running off a ferry, it is enough, if one or two trucks do not have the right paperwork or have to stop for checks, for the flow of traffic to stop. There is literally no time or space for further examinations and checks.

I am happy to talk about this in more detail. I am aware of time constraints. The biggest part here is the border operating model. That is one of the things we need to have in order to start preparing for the practical aspects of day one.



Sam Lowe: I wanted to quickly emphasise that, from a preparedness point of view, due to the nature of the future relationship that is on the table, most of these questions apply whether there is a free trade agreement or not. Lots of the information that is currently missing needs to be provided regardless. I would echo Anna's call for a business preparedness model and the like. It would be very useful to see that soon.

Q344 **Antony Higginbotham:** Sam, these questions are probably going to be pivoted towards you, but if anyone else wants to come in, just say. On the legal texts, did anything come out of the publications of both the EU and the UK side that surprised you or did not quite marry up with the negotiating positions that have been published?

Sam Lowe: It is a good question. It is complicated, in that both the texts point to different interpretations of the political declaration. Obviously, we are now in a moment where both sides are saying, "The other is rowing back on what they initially committed to". I am not sure that is entirely fair. It is more that both sides have slightly different interpretations of what they agreed to.

In terms of what surprised me, I think some things were mentioned in my opening statement. I was very intrigued by the UK's proposal on mutual recognition of professional qualifications. I should say that is because it is actually good; it would work. That differentiates it from the EU's current agreement with Canada or Japan, where they largely just agreed to create a framework for continued discussion to try to incentivise the relevant certification bodies based in their territories to talk with each other and recognise each other's qualifications. If you look at EU-Canada, nothing has been done. I thought architects had been done, but I found out that is not true.

The UK is proposing that, upon a person asking a certification body based in the relevant EU member state to recognise their qualification, the default is that member state body should do so, subject to an aptitude test. That would work quite well. Where this differs from current single market status is that temporary recognition would disappear. You would no longer be able to have your qualification temporarily recognised for cross-border trade. It is quite ambitious. It is good and the UK should be making ambitious asks in this space.

One thing that surprises me slightly is that the UK has decided not to talk about procurement at all in these negotiations. The reason I find that slightly odd is that, in the UK's other negotiations, with the US and Japan, it has been identified as one of the UK's number one objectives. Why do we want to talk about procurement with Japan and the US but not with the EU? I find that slightly surprising.

The other thing that positively surprised me was the UK's offer on mode 4 services, so the temporary movement of people to deliver services, in that it was actually quite ambitious. There is still a bit more detail that



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needs to be filled in, specifically around the approved list of activities for short-term business visits, but it is good and positive.

In terms of other areas, the UK's ask on mutual recognition of conformity assessment is in line with what the EU has done with other countries, such as Australia, the US, Canada and New Zealand, if you mash them all together. The EU is viewing this slightly differently with the UK, in that it has a concern that lots of the EU's testing industry will remain offshore if it agrees to this, because the UK currently does so much of it.

To clarify for the Committee, mutual recognition of conformity assessment is where notified bodies are recognised by the EU. Notified bodies are bodies that can certify products have been produced to EU standards in foreign territories. The EU does this with other countries but it is a bit unsure about it in this instance.

Q345 Antony Higginbotham: If you look at both legal texts in isolation from each other, are both sides aiming for something that is very ambitious, or is it broadly in line with international agreements that we have had to date, with little pockets of ambition here and there?

Sam Lowe: The EU and the UK have a shared vision of the landing zone, which is a free trade agreement. Free trade agreements have limits on what they can deliver so what they can do and what they cannot. In that sense, both the UK and the EU share an understanding. There are then minor issues—I suppose they are minor in the grand scheme of things—where the UK and EU have a different vision of how certain provisions should be applied and what they should be able to do. The UK wants to push them to their limits in some areas and maybe the EU does not want to, and wants to in others.

The core areas of disagreement, however, are the ones that are in the headlines every day. It is about the level playing field, fish, the Court of Justice and the structure of the agreement. Where does the trade agreement fit into the wider relationship? Does it sit underneath a broader governance framework? My feeling is that if—and this is a big “if”—those headline issues can be resolved, the differences between the UK and the EU are fairly minor when it comes to the substance of the free trade agreement and can probably be resolved.

Q346 Antony Higginbotham: One of those big disagreements that you touched on was fisheries. Are there any other comprehensive free trade agreements anywhere in the world that would have fisheries included to the extent that the EU is asking for, or that the UK is asking for?

Sam Lowe: I am going to caveat this. We can talk about fisheries to a degree, but if you really want to do a deep dive you are going to have to bring in the specialists. In terms of other agreements, the comparable countries we are looking at are Norway and Iceland. The UK is saying it wants to be more like Norway, have yearly negotiation rounds and the



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like, and the EU is saying, "We want everything to stay the same as now". Neither position is sustainable if we want to achieve a deal.

My hope is that there is a compromise to be found here, in that surely there is a middle ground between negotiating every year and never negotiating again. Could you do it every five years or every 10 years? Is there something that could be seen as a win for both parties. Fundamentally, when it comes down to it, I think there is an understanding that there needs to be an agreement on fish. We share a lot of fishing stocks. We are surrounded by other people's territories and there needs to be an agreement, but of course this is a very contentious issue.

The further point I would make on fish is that I think it is slightly misunderstood in the British debate. We focus nearly exclusively on the offshore fishermen, who are largely just concerned with quota share. We pay very little attention to the onshore industry or the fish farms, which are much more reliant on sales to the EU. If you think about fish that is landed in the UK, 80% of it is exported. About two-thirds of that goes to the EU. If there are tariffs, and additionally maybe more of a problem is the new regulatory controls, it will cause a problem for the fishing industry. It is in the fishing industry's interest for a deal to be reached, even if it is a slight compromise on the opening position.

Q347 **Antony Higginbotham:** You just touched on it. One thing we have heard from Michel Barnier, I think on most times he has spoken about fisheries, is that it would be technically impossible to negotiate on an annual basis. Do you know why that would be technically impossible? I appreciate why it is suboptimal for them, but are there technical limitations?

Sam Lowe: I am unsure. I doubt it. I would agree with you on suboptimal.

Professor Barnard: My understanding is the reason why Michel Barnier says they cannot do it on an annual basis is because, with Norway, they do it on an annual basis but there are only 12 stocks. With the UK, it seems to be nearer 100. I think it is about 97 stocks and that is what they are worried about.

Q348 **Antony Higginbotham:** "Technically impossible" really just means "resource-intensive". You would need more negotiators to do that.

Professor Barnard: Absolutely, yes. At the moment, the EU is coming from a perspective of essentially status quo, whereas the UK wants a total rethink, and indeed quite a fundamental rethink, throwing away the current CFP—common fisheries policy—approach and introducing a new approach based on zonal attachment. All that requires quite a lot of rethinking. The UK also says, rightly, "Norway does an annual negotiation so why can we not?"

Q349 **Antony Higginbotham:** That is helpful. I have one final one, probably



for you, Sam. We have spoken about the agreement being broadly based on precedent from the UK perspective. Are there any drawbacks or advantages to essentially using that model to pick and choose? Does it limit the ambition? Does it result in something that is broadly the same as everyone else but we could have gone for something different?

Sam Lowe: I question the UK's narrative on this because, as I discussed already, we can point to examples where, in practice, the UK is asking for more in certain areas or it needs to be approached differently because of proximity. Anna mentioned roll-on roll-off freight. That is something that is really a proximity issue and is not relevant to Japan. The timeframe means that the agreement is largely going to be based on precedent, because the only way you can do this quickly is if you pull provision from elsewhere. It is going to be too difficult to negotiate otherwise.

My preference would be for the UK to acknowledge that this is in fact a unique agreement and that there is a need for ambition within the constraints of what a free trade agreement can and cannot deliver, rather than pursue the media narrative of "We are not asking for much so why are they asking us to do X, Y and Z?" That is unhelpful. We should be aiming for an ambitious agreement and it is in our interest to do so.

Q350 **Nigel Mills:** Sam, you seemed a bit more optimistic that a compromise could be found than probably we would be reading in Mr Frost's and Mr Barnier's statements. Do you think there are any areas where both sides are deliberately bidding high, knowing there will have to be some compromise on that when we finally get round to the final stage of negotiations?

Sam Lowe: My view here is that currently Michel Barnier and David Frost are both constrained by their mandates and unable to compromise in order to deliver an agreement. In order for there to be progress, there would need to be a political intervention at the highest level on both sides. My suspicion is that is not going to happen this time; that will probably happen later in the year. If that is the case, if it is decided that the UK and the EU really want a deal, I think you can map a route through.

To give some examples, on level playing field, the EU's ask on state aid is a bit much and is too intrusive, in that it is asking the UK to continue to abide by EU state aid law indefinitely into the future. The question for me here is if the EU can achieve its objective of preventing free riders and so-called unfair competition via another route. My feeling is yes, if the ask on state aid was rolled back to something more equivalent to their ask on labour and environment, where you are looking more at the impact and non-regression, and the UK's ask to maintain an effective state aid regime but not necessarily exactly the same. If the EU was able to retain the ability to unilaterally reinsert tariffs on an interim basis if it suspects the UK is undermining it via state aid, prior to a dispute settlement assessing the question once and for all, that is a way through.



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Of course, the UK is going to have to budge as well. It is going to have to accept that level playing field provisions can be enforceable under dispute settlement, which currently it is saying it does not want. I would make a note that the UK is going to have to accept that in its negotiation with the US anyway. In a way, if you are going to concede to the US, it is not so bad to concede to the EU either.

I would also say that, while this sounds controversial, on the basis that the EU rolls back its ask on state aid, all that is actually being agreed is that there is the possibility that tariffs will be reapplied in future if there is a breach of these commitments. The decision from the UK is whether to accept tariffs now, because there is no agreement, or tariffs in the future in the unlikely event that the UK attempts to undermine the EU via its labour, environment or state aid policies. There is a way through there and it could be manageable.

I mentioned fish earlier. There are some other areas more to do with structure, where the EU wants more of an association agreement type structure and the UK just wants individual agreements. This is probably an area where the UK will have to budge. The EU really does not want to replicate the issue it has with the Swiss, where it has multiple separate agreements with their own means of dispute resolution that it is currently trying to resolve.

I am talking about compromise, but I do not think it is something Michel Barnier and David Frost can solve by themselves. I think it is going to require a decision to be taken by the Prime Minister and the leaders of the EU member states.

Q351 Nigel Mills: Is it your expectation that Michel Barnier and Mr Frost could hammer out a compromise and then go back with a proposal for approval by their bosses, or would the bosses have to give them permission to hammer out a proposal first? It seems quite unlikely in the near future, especially given what the Fisheries Ministers around the EU said the other week, that there is going to be much public movement without a deal being at least on the horizon.

Sam Lowe: My expectation is that David Frost and Michel Barnier would need to be given permission by the politicians to compromise. Until they have given that permission, they are largely just left shouting past each other and writing angry letters to each other.

Q352 Nigel Mills: Is that the experience of what happened in the autumn? It looked a bit more like a deal was reached and then approval was sought for it, rather than getting approval to change the negotiating mandate, negotiating it and then going back and getting it signed off. It looked like we shortcut that a bit.

Sam Lowe: I do not expect the negotiating mandates to change. I just expect that at some point, if a deal is to be reached, Michel Barnier and David Frost will be given permission to explore alternative routes to



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deliver on their respective mandates and be given a bit more flexibility. If you think back to the Northern Ireland compromise last year, that occurred after discussion between the Prime Minister and the Taoiseach, Leo Varadkar. That is how it came about and it is of course a compromise. The EU conceded, in that it accepted that—*[Inaudible]*—in that it could be rejected by politicians in Northern Ireland. The British Prime Minister accepted that there was de facto going to be a regulatory and customs border between Great Britain and Northern Ireland. It was messy.

Will there be a deal? I am on the optimistic side of things and I have been throughout. I have never been someone who thought it would all fall apart. Maybe that is a flaw. I am maybe a bit too optimistic, but I still think there is quite a large possibility of a deal at the end, later on in the year, although I expect there to be fireworks in the coming months.

Q353 Nigel Mills: I always like to ask the percentage chances of a deal. Are you more confident than Mr Gove's 66%, or are you less confident than that?

Sam Lowe: I will say I am 70% confident that there will be a deal.

Q354 Nigel Mills: Is that the same for the other witnesses? Are they going to be more or less confident than that? Professor Barnard, are you 70% confident?

Professor Barnard: I have been wrong on so many things, so I would not nip down to William Hill on this. I think there will be a deal because, ultimately, there is so much interest on both sides in having some sort of deal. It is not just about goods; it is about services and law enforcement. There are really major issues that are of fundamental importance to both sides. Eventually it will be in both sides' interest to come up with some arrangement.

My concern is, if we leave with no deal at all, the atmosphere between the two sides will be pretty toxic for months, possibly years, ahead. Eventually, we will get back to the negotiation table because geography matters and we need to have some sort of arrangement. Trading purely on WTO terms really is not good enough for an advanced economy like the UK. Virtually no proper western state trades purely on WTO terms. There is even talk about doing an Australia. Australia has facilitation agreements with the EU, so it is not just pure WTO terms, and of course Australia is on the other side of the world. Calais is 26 miles away.

Dr Jerzewska: I am also fairly optimistic that there will be a deal. The question for me is when this deal will be reached. Given what we have seen so far and what we know about the EU and how deals are usually reached, it is very likely that it will be reached in the last hour and at the last moment. That still gives us a deal, but the problem here is implementing this deal. If we even look at what happened last year, the Northern Ireland protocol is a very good example of the difference



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between reaching a high-level deal, in terms of a political agreement in theory, and implementing this deal in practice and making sure everyone is ready to do what they need to do to get this deal implemented. That might be the problem with this deal as well.

The UK has very clearly stated that it will not extend the transition period, despite businesses, various associations and Scotland, Wales and Northern Ireland coming out with a statement that an implementation or extension period is what they would like to see. Whenever there is a deal that changes what is happening at the border or anything else that is quite significant for business operators, there is usually a period for this deal to be read, understood and then implemented. That is normal. That happens with every free trade agreement. That happens when customs legislation is changed. This deal might not have this.

The problem for me is what happens if the deal is reached in September or October. There are further changes to the text and then the detail, the actual text of the agreement, which is what companies, agents, operators and other actors need, is published very late, towards the end of the year and companies need to literally apply this overnight. It is not only companies but also HMRC and so on. The question is when this deal will be reached and what happens once it is reached. At the end of the day, it is how it is implemented that will make a difference, in terms of whether it is successful.

Q355 Mr Sheerman: Can I carry through with Dr Jerzewska for a moment? I As a new boy on this Committee, I have been doing quite a lot of delving into the detail. I think she represents a skill and expertise that is going to be in very short supply as we go forward, whatever the declaration is. There are a lot manufacturing companies in my constituency. Huddersfield is a big manufacturing town. The complexity of understanding how you export and import, what the rules are and how you do it is usually done by a whole brokerage of advisers with specialist skills. Are there enough of these people to meet the challenge we are going to have when we leave the European Union?

Dr Jerzewska: The simple answer here is no. A slightly longer answer is that, even before Brexit, even before the referendum, there has been a short supply of these people. Customs has always been one of these skills that has been lacking in the UK. I think it is related to the fact that we do not have a customs degree as other countries do. We have never had enough people with customs knowledge for all the positions and requirements we have.

What normally tends to happen, or I should probably say what should happen, is that, if a company like you mentioned, a manufacturer, wants to export, it has someone in-house who is able to understand customs and customs compliance and is able to collect the data that the company needs to export or import. They need to be able to speak to a customs broker, because anecdotal evidence suggests it is above 90% of companies that do not submit customs declarations themselves. That is



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because of the difficulty with that and the time-consuming nature of these processes, as well as the fact that you need special software for that. It is often cheaper and quicker to hire a customs broker. You also need a freight forwarder to get the goods from A to B.

You have an in-house expertise, a team that looks at and collects this data and a team that manages customs compliance, so the whole record-keeping requirement. You then have customs brokers and freight forwarders who provide customs services. They also need training and expertise. This is where the 50,000 additional people that we have been reading about come in, in terms of the fact that we need to train more or less 50,000 people.

Q356 **Mr Sheerman:** Are they being trained at the moment? I understood several thousand are being trained by the Government. Are they being trained?

Dr Jerzewska: Yes. I think the number in HMRC's Customs Academy is around 1,000 people. When you look at training in other countries, that is actually a good number. That is a realistic number of what you can train in a couple of months and how many people you can actually train. There is an expectation of training 50,000 people within a year. We do not have 50,000 people interested in a career in customs, strangely enough. That was not a very realistic expectation.

The thing with customs, logistics and international trade is that there is only so much you can learn through an online course. It is one of these areas where it is incredibly contextual. It depends on experience. You can work in customs for 10, 15, 20 years and you are still learning new things because of how many areas and elements are involved. If you look at a simple international transaction, we are not even talking about moving something particular restricted requiring export controls and things like that, the WCO—the World Customs Organization—estimates that it takes about 30 different parties, 40 different documents and 200 different data elements that are often repeatedly entered into different documents. It is a massive transaction that involves many different fields.

For a customs broker, Border Force agent or someone, it is not enough for them to finish a course and understand the basics. They need to be able to look at a customs declaration and have their eye trained enough to be able to say, "That does not fit. Something is wrong here. This drug should be inspected because there is something that does not quite fit here".

Q357 **Mr Sheerman:** Dr Jerzewska, I do not know if you are cheering me up about this. You are making me less optimistic than I was. Can I switch to Professor Barnard for a moment, if you do not mind? I think Professor Barnard has seen reports of the conversation and questions we had with Michel Barnier. I do not know if she would agree with me. I have known Barnier for a long time over the years and he is the ultimate professional. He is everything. He has been the Minister of Finance in France and has



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done agriculture and fisheries. He is the most knowledgeable person in Europe, in my view. Against him, we have a team that has changed all the time over the last few years. Ministers have changed. Leading negotiators have changed. Is this an unfair competition, Professor Barnard? Is he too wily for us?

Professor Barnard: He is certainly an extraordinary politician. On the UK side, we have had a lot to learn because of course we have not negotiated trade agreements since before we joined the EU. That said, the UK civil servants who are doing a lot of the legwork have themselves been intensively trained in recent months. A lot of it is actually about learning the detail of what the other trade agreements say and having a deep understanding of EU law, which they already do. Yes, of course the EU are well known to be tough negotiators. Likewise, the US and the Chinese are tough negotiators. That is a good reason why you do not see trade agreements between those three big players. That said, there is a mutual interest for both sides to come to some sort of a trade agreement, and the UK is learning fast.

Q358 **Mr Sheerman:** Could you help me with one last thing? That is the political declaration. At the heart of the problem at the moment, it seems to me that Barnier and the EU are saying, "You came, we had this high-level agreement and you are now setting that aside. You are using weasel words, in terms of a more formal document, to negotiate it for something that was not envisaged in the draft political declaration". How valid is that?

Professor Barnard: There are issues here, because it was not just Theresa May's Government that has been involved in the political declaration. It was also renewed at the time when Boris Johnson signed up to the Article 50 text. It is, however, a political declaration, not a legal one, even though Article 184 of the withdrawal agreement makes express cross-reference to the text of the political declaration. It says the UK has signed up to making best endeavours to deliver on the political declaration. It gives the EU a stick to beat the UK with because they say, "You signed up to it, not just under Theresa May but also under Boris Johnson. You knew what you were signing up to". It presents something of a problem. That said, it is political and the UK could also run the argument that the EU's ask may be differing somewhat from the political declaration, but it gives them a stick to beat us with.

Sam Lowe: To the question before about the competence of UK officials, the point I would like to reiterate is that technical competence is not the issue in these negotiations right now. The issue is that their political instruction does not accommodate a compromise. If and when the political instruction allows for it, I have full confidence that the UK negotiators will be able to make it happen. It is true from the last time round that the EU wrote most of the withdrawal agreement. That is true. If you look at the UK proposal for the future relationship, it is largely copied and pasted from EU free trade agreement texts, so obviously we are starting at a disadvantage. I have confidence that, given the correct



instruction, or given accommodating instruction, the UK negotiators and officials will be able to deliver.

Q359 Stephen Kinnock: Thank you very much indeed for this very useful briefing. My first question is probably to you, Professor Barnard. You mentioned Article 10 of the Northern Ireland protocol. Specifically in the context of state aids, I am wondering the extent to which you think Article 10 is influencing the EU's position. The United Kingdom makes the point around sovereignty and says, "We cannot allow the EU to have this oversight role on state aid because that would be a violation of principles of sovereignty and of the political mandate that was given by the British people through the referendum and subsequent general elections". The EU will look at Article 10 of the Northern Ireland protocol and say, "That principle of sovereignty has already been given away", because Article 10 clearly states that the European Court of Justice will have an ongoing role in state aid oversight, even in the circumstances where there is no deal between the EU and the UK. Obviously it is a legal issue, but I wondered whether you could give an assessment of the extent to which the legal importance of Article 10 of the Northern Ireland protocol is influencing the entire position of the EU on this vexed state aids issue.

Professor Barnard: I broadly agree with quite a lot of what you have said. If you look at the language of Article 10 of the protocol, it does not say on its face that there will be a role for the Court of Justice. It just says that the provisions of Union law listed in annex 5 to the protocol shall apply to the United Kingdom in respect of measures that affect that trade between Northern Ireland and the Union that is subject to this protocol. This is quite typical of the protocol. It seems to me that the protocol is something of an exercise in smoke and mirrors. What you see on the face of the protocol is not quite what you get. It is only if you start to dig deeper that you start to realise the full implications of what has been signed up to.

It is only when you go to annex 5 of the protocol that you see the full extent of what the UK has committed itself to. Even though the UK has said it only applies in respect of goods and electricity, "goods" is a rather weasel term. A lot of freight transport is about the transport of goods, but there is the services dimension to it as well. People are actually doing the deliveries. You begin to see the full scope and potential of the protocol. As I said earlier, Article 10 applies to any UK measure, so measures taken in Westminster, not just measures taken by the Northern Ireland Assembly, that have an effect on Northern Ireland and an effect on interstate trade with the EU, primarily with the Republic.

You could actually say Article 10 is a Trojan horse. It really is quite a significant provision and I suspect the full implications of it are only just now beginning to be realised. Of course then the EU can say, "You have agreed to Court of Justice jurisdiction over state aids in respect of Northern Ireland and stuff coming out of Westminster as well. Why are you objecting to a more general jurisdiction of the Court of Justice?"



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Q360 **Stephen Kinnock:** You agree that is probably influencing the mindset of the EU negotiating team simply because the principle of sovereignty in this case has already been sacrificed.

Professor Barnard: I would say that. I would also remind you that, even leaving aside Article 10, EU competition law more generally has extraterritorial effect. Companies outside the EU will still be bound by EU competition law if the effect of the agreement has effect within the EU. That is why you have big companies like Google and so forth that are being subject to investigation by the European Commission.

Q361 **Stephen Kinnock:** How would you assess the risk of the United Kingdom potentially planning to ignore aspects of the Northern Ireland protocol? Do you think that is a realistic possibility? If so, would that be a violation of the duty of sincere co-operation?

Professor Barnard: Yes. Also, of course, it would be in breach of the withdrawal agreement more generally, which is an international treaty that we have signed up to. Given that the UK wants to negotiate other international agreements with all sorts of other trading partners, to be seen to be disregarding the Northern Ireland protocol would suggest that our word cannot be trusted.

Q362 **Stephen Kinnock:** The reputational impact on the UK would be massive. Do you think it would affect things like our sovereign debt ratings?

Professor Barnard: I am not in a position to comment on that.

Q363 **Stephen Kinnock:** Sam, I wanted to touch on something you were talking about earlier, mutual recognition of professional qualifications. It seems that around 320 financial services firms have already moved parts of their operation to different European centres due to the uncertainty caused around Brexit. On top of that, of course, the Government are introducing new immigration legislation with a points-based system. Could you say a bit about how you see this new legislation meshing together with the negotiations and what you think needs to be in place, in terms of our new immigration laws, by 31 October, in the context of these future relationship negotiations? That is with a particular focus on what you were saying there around mutual recognition, but also issues around being able to rapidly do short-term business trips and all the other things that are so vital to many of the big financial services companies.

Sam Lowe: I am going to have to start by apologising and saying I cannot go into depth on the UK's new immigration policy. I can talk about movement of people in the context of services because that is where I feel I am qualified to discuss it. There is a more general problem when it comes to free trade agreements and temporary movement of people to deliver services. The commitments are often negotiated by trade agreements, within an FTA text, and then it is left to a very different Department to implement them, in this case the UK Home Office. You often encounter problems in which you may have agreed something in a



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trade agreement but in practice it never actually happens. There needs to be co-ordination between the UK's generic immigration policy and what is agreed, in this case, in the trade agreement with the EU.

There are still some questions when it comes to, for example, your point about short-term business visits. This is something that will be covered in an EU-UK trade agreement. We are not sure yet of the UK's offer as to what specific activities could be covered by those provisions, so what you can actually do in those circumstances. The EU has a fairly standard list. I cannot remember the exact number of activities, but you can find it in the EU agreement. The question is if the UK is going to want to expand on that or not. This can be things like going for a meeting, or perhaps you are going to do some market research or something else, and just saying what can be covered by the provisions on temporary movement. Determining that is important for British services companies.

Q364 Stephen Kinnock: One of the most visible aspects of whether the deal that has been done works is whether people, from 1 or 2 January 2021, will be able to travel for business reasons. The reputational impact could be quite severe if that does not work, because that is so visible and tangible. Are you able to give an assessment of the extent to which this could have an impact, both reputational but also in financial and economic terms?

Sam Lowe: On the reputational side, I always question that slightly. I am never too sure how much what a country does with a specific other country impacts its relationships with others, so going back to the question you asked Catherine. The one issue with the Northern Ireland protocol would be the relationship with the US. How the UK treats Northern Ireland matters for the trade agreement with the US because there is quite a big Irish constituency in Congress.

More generally, what can we say about day one? Under either a free trade agreement or without a free trade agreement, freedom of movement will end. It will become more difficult for a person to personally trade services across the EU. In terms of services more generally, even under a free trade agreement it will become more difficult to sell services directly from the UK into the EU. Generally speaking, the EU's approach to services, in the absence of a country being in the single market, is to make it fairly easy to establish a company within the EU to deliver a service, but to make it quite difficult to sell a service into the EU from outside.

In terms of complications, even if the UK proposal is accepted, it will still become more difficult to have your qualification recognised across the EU. You will have to register that you want your qualification to be recognised and then it will potentially be subject to an aptitude test. As it stands now, you can essentially fly in and fly out temporarily, using your home qualification. That is subject to terms and conditions because the EU single market in services is developing. It is not complete, but,



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crudely speaking, that is the case. Selling services of all kinds will become more difficult on 1 January, with or without a trade agreement.

Q365 Stephen Kinnock: I have a quick question for Dr Jerzewska. Why do we not just copy the French system for haulage and getting trucks through the system? That is where they do online paperwork. They get a barcode and the barcode marries up the lorry with the goods in the lorry. Why does the UK not just replicate the French system?

Dr Jerzewska: I think the intention is to do something similar. I do not know if you are asking about replicating as in the UK developing a similar system, with green and orange lanes and paperwork done while the goods are on board.

Stephen Kinnock: The full replication of all aspects.

Dr Jerzewska: That is the intention. If you look at the proposal, especially the part on roll-on roll-off traffic, it is the intention to have a system similar to what the French have and all paperwork to be submitted in advance, before goods roll on the ferry and are on board, clearance done as quickly as possible on the other side and risk-assessed while the goods are still on board. There is an intention to develop it. I am not really sure why this has not happened yet and why the system is not fully developed yet.

Once we get the border operating model, which I understand is coming fairly soon, we will understand what the UK's proposal is, in terms of how it wants to manage traffic. The technical specs of that system are quite interesting. At the end of the day, it obviously needs to bring together various types of data: data about the vehicle, the truck, the driver and the cargo. It also needs to be able to communicate with domestic systems. In the UK's case, that would be HMRC systems, such as CHIEF, and other systems used in international trade. It needs to be able to do all that. We are expecting some information on that fairly soon.

Q366 Matt Vickers: Sam, this is for you, going back to mutual recognition of qualifications. How would you characterise the UK's ask, and what are the sticking points around that on mutual recognition of qualifications?

Sam Lowe: I would characterise the UK's ask as being ambitious. I have previously recommended that the UK makes an ambitious ask in this space, so I think that is a good thing. The reason I think it is ambitious is, as I stated earlier, it goes beyond what the EU has agreed with other trade agreement partners such as Canada and Japan. They have just agreed to essentially instigate a dialogue that will hopefully then encourage the qualification bodies to discuss with each other and hopefully recognise each other's qualifications. It begins the process, rather than provides a specific framework for actually delivering it.

The reason it might be difficult is not necessarily around EU intransigence. It actually points to the difficulties the EU has negotiating in this space with third countries, and it is an issue of competence. Within



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the EU, qualifications are not necessarily handed out by the EU. They are not even necessarily handed out by individual member state Governments. They are often handed out by private bodies that have been given the permission to do so by the relevant Government. You are starting to dive down through layers of competence.

It is quite difficult for the EU to negotiate with third countries and tell all these relevant bodies they have to do X, Y and Z. For many of these bodies, say architects or engineers, you often find that they can be quite protectionist: "Why would we want a qualification to be able to be granted by someone else further away? It means that people will not come and ask us to do it". It creates this problem. However, the caveat I would give is that the EU has managed to resolve this issue within the EU and EEA. To my mind, that points to there being the possibility of the approach the British have asked for being successful, but it could be quite difficult.

Q367 Matt Vickers: More generally on services, how does the UK ask contrast with that in CETA on services generally?

Sam Lowe: It is quite similar, although, if you start to look in different areas, you can find some differences. On some aspects of financial services, it is literally copied and pasted from CETA. There are some interesting bits on financial services to do with the arbitration discussion group body in that they want a specific one for financial services and they want it to be very large. That is slightly different from what you would see in, say, Canada and Japan where regulatory co-operation is built in and the regulated dialogue is instated. Financial services having its own arbitration dispute settlement process is slightly odd. My view there is that the UK is trying to get that in place within the trade agreement with the hope that it can expand its remits for the equivalence discussions. That is my suspicion; I do not have any confirmation on that.

Yes, if you look through, you can find some differences. On movement of people, as I mentioned earlier, the UK is actually making a more ambitious ask than it has done in the past on intra-corporate transfers. It is asking for five years rather than three for certain specialists, and that goes a bit beyond.

The EU is constrained in some areas on services in that, if it grants the UK certain privileges, it will then have to unilaterally offer them to Canada, Japan and South Korea. However, I really would like to state that this only applied in a few specific instances because those provisions are so severely caveated that you really cannot generalise. For example, on the temporary movement of people, it does not apply to length of stay, so the UK and EU could agree on intra-corporate transfer for five years even though the EU has only agreed three years with Japan and that would be fine. There are lots of people saying the EU cannot do any more on services because it has to give it to everyone else. That is not true but in a few specific instances that could come into play.



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Q368 **Matt Vickers:** Moving on to fisheries, what useful and relevant precedents exist that could be applied and how likely are they to be applied?

Professor Barnard: By far, the best precedent for the UK is the Norway agreement because obviously there is a commonality of interest, a commonality of fish stock and also it is a coastal state. That is where you see the annual negotiation, which is what the UK is asking for.

Q369 **Matt Vickers:** The EU's draft text would allow one party to suspend parts of the agreement on goods if fisheries obligations are not met. How typical is that in the EU's fisheries agreements?

Professor Barnard: I cannot generalise on that specific point but it is part of a general approach by the EU. The EU sees this agreement as one big house with an overarching roof, which is the dispute resolution mechanism. Of course, from its point of view, it is a much more favourable approach because it means, if there is a breach in respect of fisheries, retaliatory mechanisms can be applied right across the agreement, not just in respect of fisheries, whereas the UK wants a much smaller house with a smaller roof where the dispute resolution provisions apply to that smaller house. Then there are a dozen or so separate agreements each with their own mechanism for dispute resolution in them. In the case of fisheries, that is one of those separate agreements and it has its own dispute resolution provision in it.

Q370 **Joanna Cherry:** Good morning to our witnesses. Thank you for coming to help us this morning. I am afraid I am going to go back to our old friend, the Court of Justice of the European Union, or *bête noire*, depending on your point of view. I want to direct my questions at Professor Barnard. We heard earlier, Professor, in answers to questions from the Chair that, in relation to the withdrawal agreement, Title III, Article 167, the United Kingdom agreed, in relation to dispute resolution, that there should be a reference to the Court of Justice on matters of EU law. We heard from the questions from Stephen Kinnock that there is a similar provision in the Northern Ireland protocol; you explained that it has been quite well hidden away in it but that it is there in relation to state aids. We see a big contrast in the approach of the legal texts for the future relationship between the UK and the EU whereby the UK is very keen for there to be no role whatsoever for the Court of Justice of the European Union. Is there a middle way here?

Professor Barnard: In respect of the withdrawal agreement, you are of course absolutely right. We have talked about Article 10 of the Northern Ireland protocol, which relies on the standard mechanism for access to the Court of Justice. You will also recall that, under part 2 of the withdrawal agreement, there is also, for eight years after the withdrawal agreement comes into effect, the possibility of a reference to the Court of Justice in respect of citizens' rights issues. Thirdly, under the withdrawal agreement there is the provision that you mention that allows for dispute resolution where the dispute resolution requires an interpretation of the



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issue of EU law, and there is a role for the European Court of Justice. Despite all the protests that the European Court of Justice's role has been turned off, I am afraid that this is absolutely not correct, and the ECJ will continue to have an important role under the withdrawal agreement.

Let us move on to the future trade agreement. What the EU has done is essentially cut and paste the text on the dispute resolution mechanism from the withdrawal agreement and applied it to the proposed draft free trade agreement. Therefore, inevitably, there is pushback from the UK. What the UK has asked for is something that looks very similar to the Canadian agreement; indeed, the headings are the same and indeed there is no role for the Court of Justice either.

You then inevitably ask, "What about a landing zone? Is there anywhere between the two?" One possible landing zone is clearly that, in the areas mentioned, there might still be some sort of role for the Court of Justice in respect of state aids because it has already been conceded in the Northern Ireland protocol, which will continue operating. The other possibility is you have more of a significant role for the UK courts, both in the UK as a whole and of course in the devolved regions as well. The reputation of these courts is highly respected and therefore there is an argument that, if there is good trust in the courts for enforcing the provisions in the agreement, that might be a way forward.

Ultimately, the UK will say, "This is an international agreement and it is not standard in international agreements to have a role for the European Court of Justice". This bullet will have to be bitten, and part of the problem is the presentation. The presentation has been that the role of the Court of Justice will be turned off once we leave transition. That is not the case for the reasons that I have just given.

Q371 Joanna Cherry: You talked there about there being a more significant role for domestic courts and the legal systems of the United Kingdom. What would that look like?

Professor Barnard: You could try to run an argument—although, as I say, this is an international agreement, not an EU agreement, so the principles of direct effect and so forth have been turned off—that, if, for example, a French trader is objecting to what is going on at the border and argues it is in breach, national courts should have some role in trying to enforce that as opposed to the case going to the European Court of Justice. I emphasise that, because the view is that this is an entirely different beast—an international agreement that is state to state rather than private party to private party—the only other way is to see whether there might be some imaginative role of allowing the French Government to approach the British courts, but it is hard to see how that would happen. The bottom line is that it is quite difficult to find a really good landing zone.

Q372 Joanna Cherry: No matter what happens in relation to the future agreements, the United Kingdom has already agreed, under the withdrawal agreement and the protocol, for an indefinite and ongoing role



for the Court of Justice of the European Union.

Professor Barnard: In respect of state aid so long as the Northern Ireland protocol remains in force, and that takes us into the area of consent and whether there is a decision not to apply it. In respect of part 2 and citizens' rights, the argument is that the Court of Justice will definitely have a role for eight years and indeed there is an obligation to interpret all of the part 2 provisions in light of the Court of Justice case law. Also, remember that the part 2 provisions will apply for many decades to come because they will apply to the last EU national born in the UK at the end of transition.

Q373 **Joanna Cherry:** What about Article 167 of Title III?

Professor Barnard: If there are any other breaches of the withdrawal agreement, the first port of call is consultation, the second port of call is an arbitral panel, and only then, if there is uncertainty about the EU text and what EU law means, will there be a role for the European Court of Justice. We could say that the role of the withdrawal agreement would diminish in importance going forward except in those specific areas, namely citizens' rights and the Northern Ireland protocol.

Sam Lowe: In terms of the landing zone, it is important to state that the UK has already conceded the point on the Court of Justice, as we have discussed already. In terms of a way through, it is also important to acknowledge that disputes between the UK and the EU will be subject to an independent body and it will only be on questions of EU law that the Court of Justice comes into play. One of the ways of minimising the intrusion of the Court of Justice is to ensure that it is only in the very rare case that it is a question of EU law that is subject to interpretation.

In terms of the level playing field, if we moved away from the EU's current approach, particularly on state aid, which is very prescriptive and says that you need to have EU law applying in the UK, and you moved more to a focus on effect, looking at what the actual impact of the UK's decisions on state aid is and how they affect the competitiveness of the UK, you could create a scenario where, while the European Court of Justice is lingering, it is only in a very rare instance that it would actually have any practical say over disputes between the UK and the EU. It could be largely pushed out of the trade space and it would probably linger more in issues around data-sharing, to do with justice, home affairs and the like.

Q374 **Joanna Cherry:** Can I just go back to you, Professor Barnard? We have also heard that there is quite a logjam between the UK and the EU in these negotiations over the EU's requirement that any law enforcement agreement is conditional on not just the UK's adherence to the European Convention on Human Rights but also on making sure that UK domestic law allows people living in the UK to invoke the convention in their own domestic courts. My impression is, from the questioning of Michael Gove on this, that the reason the UK does not want to sign up to this is



because of the Conservative Party's commitment to "update the Human Rights Act". Of course, the Human Rights Act is the legislation that gives British citizens the ability to invoke the European Convention on Human Rights in their own domestic courts. Do you think this is primarily a political or a legal dispute?

Professor Barnard: Inevitably, it is both. The preamble to the law enforcement draft text refers to the UN's declaration on human rights; it does not refer to the European Convention on Human Rights. It is worth bearing in mind that what the UK wants under the law enforcement provisions includes something that looks rather like the Norwegian-Icelandic agreement on surrender of individuals. The preamble of those texts actually refer to the European Convention on Human Rights and not the UN declaration. It is quite clear that the UK is doing its level best to ringfence or keep the European Convention on Human Rights out of the text. In contrast, the EU document is quite clear that the expectation is that the UK will comply with the European Convention and, in the case of the EU, it will carry on complying with the charter of fundamental rights.

It clearly is a big issue for the UK and for the EU. Is there a way forward? One possibility is to say that both sides agree to uphold and respect human rights and, if the UK decides to withdraw from the European convention and terminate the Human Rights Act at the same time, that would give the EU the chance to terminate its commitment to any provisions on law enforcement and surrender. That would be one of the consequences of taking the sovereign decision to terminate the Human Rights Act. A more generous approach for the UK would be to say, "Does the UK carry on respecting human rights in a more holistic way?", i.e. not just through the vehicle of the convention but through the vehicle of the common law read in conjunction with various international agreements. That might be enough but I suspect the EU would not be happy with that as they would not think it was a concrete enough commitment.

Q375 **Joanna Cherry:** The European Union have used the words "abrogating domestic law". What they are worried about there is that the United Kingdom could stay signed up to the convention but it could alter the Human Rights Act in such a way that it would be more difficult for British citizens to enforce their convention rights. That is the concern, is it not?

Professor Barnard: Yes, that is absolutely the concern but the counterargument is that it is in both sides' interests to have a document on surrender of citizens where there are serious criminal matters at stake. Of course, there needs to be human rights protection on both sides but, if the UK decides to abrogate that protection, which of course a democratically elected Parliament can do, the agreement is terminated on that point.

Q376 **Chair:** Sam Lowe, you said that the question of what law was being discussed would depend on whether it was EU law or other law. Is a way forward not, on the UK side, to say, "Here is our law. This is what we will apply, so in the dispute resolution mechanism, if there is any dispute



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about what our law says, that is a matter for our courts and not for the European Court of Justice”?

Sam Lowe: To a point. Let us be clear: issues around subsidies are dealt with via trade agreements and they are dealt with within the WTO context as well. It is about proving harm. It is about saying, “You have taken a measure that has, crudely speaking, given your companies an unfair competitive advantage over ours and it has caused X amount of harm, so we want to be able to retaliate and put in place tariffs until you change your approach”. In a sense, if—and this is a big “if” because the EU ask would have to change—we have moved away from talking about whether the UK is applying EU law on state aid and whether it is actually abiding by that, and we have moved to a situation where we are discussing what the UK has done on state aid and whether it has caused any unfair consequences vis-à-vis the trade relationship with the UK, you move away from a situation in which the Court of Justice needs to be involved at all.

Of course, what I am discussing here would be quite a big shift on the EU’s part but it would also be a shift on the UK’s part, because I am still discussing a model under which these issues—not just state aid, but environment and labour—can be dealt with via dispute settlement and can lead to the temporary suspension or permanent suspension of preferences under the trade agreement.

Chair: That is very helpful and I shall return to that at the very end.

Q377 **Dr Huq:** I was pleased to hear, if I understood correctly, both Sam Lowe and Professor Barnard say that there are some reasons to be cheerful out of all this, despite the frosty exchanges of snippy letters that we have seen. Michel Barnier was a bit downbeat/defiant about what it means to be a third country when he spoke to us informally.

These questions are for Professor Barnard. What are the EU precedents for length of time between reaching agreement, ratification and entry into force for this type of thing? We know this is unprecedented but just as a guide.

Professor Barnard: Before I directly tackle that question, the other point that is worth bearing in mind is that, even once an agreement has been reached, it is likely that an agreement of this breadth and depth would be what is called a mixed agreement, so it has to be ratified not just by the EU, which would include the European Parliament, but also the national and regional Parliaments as well. That is one of the reasons why Michel Barnier is now saying that any agreement has to be reached by 31 October, to give time for the agreement to go through all the national and regional Parliaments, assuming they do not have problems with the agreement. Of course, it also has to go through the UK Parliament and it will have to be implemented, so there needs to be time in Westminster.

Dr Huq: It will be easier than last time, certainly, with the current



parliamentary composition.

Professor Barnard: Exactly, but it all still takes time, which is why we cannot go on until 31 December. That window is needed for all of that to occur, and that is not to mention any of the points that Anna has made about the companies themselves needing to adapt in the light of changing circumstances. There is a possibility of provisional application of EU agreements. Indeed, the Canadian CETA is subject to provisional application and it is primarily the areas of exclusive competence of the EU that will be allowed to be applied.

Q378 **Dr Huq:** These things usually take years and years, and this has been sped up or fast-tracked.

Professor Barnard: The negotiations certainly have been sped up. Normally, these trade agreements take, on average, about 48 months and we are trying to do it in about six months. That is why, going back to Sam's point, by definition there has to be a lot of cut and paste. There is no time to renegotiate something bespoke.

Dr Jerzewska: I completely agree with what Catherine said. Not only are the negotiations sped up but it is virtually unprecedented for an agreement of this size and magnitude to be implemented overnight. That just does not ever happen. That is just not realistic. The length of time in which the agreement is there but is not implemented varies. As Catherine has said, it depends on what happens with the agreement. Even if the agreement does not require ratification from member states, there is also a question of the legal aspects of ratifying the agreement including something as simple as the legal scrubbing of the agreement, where we check whether the agreement is consistent with other elements of law and so on. What the UK and the EU are trying to do to negotiate the agreement and have it implemented by 1 January is unprecedented.

Sam Lowe: I completely agree with Anna on the implementation side. I have written in the past about there being a need for an actual implementation period of some sort so as to provide businesses with more time with the text on the table and for business and Government to actually bring into place the measures to allow it to succeed.

However, on the time taken to negotiate, I am cautious about looking at precedent. A lot of the time you hear that EU-Canada took seven years. There was no technical reason for it to have taken seven years. It took that long because both the EU and Canada had to wait until they had the domestic political environment necessary to concede on the issues that they needed to in order to get it over the line. They were just waiting to concede on agricultural issues for the most part, and the catalyst that allowed them to do it was Trump. Suddenly the EU and Canada could say, "Look, we are upholding the international order and this deal is a good representation of that".



You can negotiate an agreement quickly. The withdrawal agreement was proof of that. It is unusual and it does require taking shortcuts, which can come back to bite you later, but the really big problem is on the implementation side because, even if we reach an agreement, if we move from the relationship that exists now to this future relationship overnight on 1 January, it will look on the ground as if we had left without one. I would hope that that is not something that either party would necessarily want if they have just spent so much political capital on actually getting something signed.

Professor Barnard: To add to that, we have heard lots of discussion about the extension of the transition period for that very reason so as to create a window of time for the adaptation of the ports, businesses, logistics companies and so forth. We know it seems unlikely, at the moment at least, that there will be a request for an extension to the transition in accordance with Article 132 of the withdrawal agreement, not least because the UK Government have made so clear that they do not want to have an extension of the transition.

Let us assume that an agreement is reached before the end of the year and that ratification takes place. The question then is whether you can add on to any free trade agreement an implementation period of the kind that Sam has been talking about. Lots of trade agreements have adaptation periods and transition periods put on the front of them. It is very hard to go from 0 to 60, or in this case from 60 to 30, overnight. At the moment, neither draft text contains anything about the phasing out of the existing arrangement but they should really think about that if it is going to actually work on 1 January or, more realistically, perhaps 1 January 2022, so that there is at least a year to try to adapt to the new circumstances.

Q379 **Dr Huq:** We seem to be in an era where people have retreated internationally with this pandemic. It could have been a thing where people acted together. I know Gordon Brown has been asking for that. If a comprehensive agreement is not reached in time and negotiations carry on along sectoral lines, would there be any kind of scope for bilateral arrangements by sector, thinking of something like trade or transport? We are talking about air bridges and things with airports and planes coming in. Would that be at all possible?

Professor Barnard: In respect of bilateral agreements, the real problem for EU member states is that areas such as goods in particular are areas of what is called exclusive competence of the EU, which means that only the EU can negotiate in this field. Therefore, you cannot have bilateral arrangements between Germany and the UK. That is quite difficult and, even if you look at areas that are on the margins of EU competence, particularly issues around justice and home affairs, the member states have shown very little appetite to try to get some sort of bilateral arrangement with the UK because they prefer to act as the 27 rather



than acting on a one-to-one basis. All of this might be different if there is no trade agreement by the end of the year.

The other point I want to make is that, when it looked like we were heading towards a no-deal Brexit last year, the EU produced a number of preparedness notices and a number of unilateral concessions to the UK, particularly over things like road haulage, where it wanted to ensure that road haulage would continue from the UK into mainland Europe. However, they were unilateral concessions; they were not bilateral negotiations on a sector-by-sector basis. Now, it may be that the EU would be prepared to make those unilateral concessions in the event of a no-deal Brexit on 1 January but it is by no means clear.

To conclude, the idea of having lots of bilateral arrangements seems rather unlikely on a sectoral basis.

Q380 Dr Huq: Michael Gove and people like that consistently say that there would be no transition and that they were elected on the basis of getting Brexit done. Could the transition period be extended after 1 July? What kind of options would there be in terms of time, and would any of these options involve more payments? They also always say that it stops us paying out. Can you just dispel a few myths there? People in Ealing and Acton see that we are heading for a no-trade deal; maybe we should call it a no-trade deal rather than no deal, because there was the Boris Johnson deal. What are your thoughts on those things?

Professor Barnard: In respect of extending the transition, the easiest way to do it is under Article 132, which is a decision of the Joint Committee to extend by one or two years. The EU has made it clear that it is open and ready to welcome that. The problem is that it looks like we really are going to have to ask for it and the UK Government have clearly said that they will not ask. It looks increasingly likely that the window for doing that is closing, given that the last Joint Committee meeting seems to be 12 June, so it may not happen.

That raises the question of what happens if we get to October, the deal is making some progress but there still needs to be more time to sort the agreement out and then to also get it through the national and regional Parliaments, which is the time-consuming bit. Can you get an extension outside the scope of Article 132? There is quite a lot of disagreement here. The bottom line is that it will be difficult. Some people say that you can use Article 50, which was the legal basis for the divorce text that led to the withdrawal agreement and Article 132. Can you use Article 50 again to amend Article 132 and allow for a later request for an extension to the transition? International lawyers say that you can. Under the Vienna convention, you can amend an existing agreement. A lot of EU lawyers say that you cannot because Article 50 was turned off on 31 January 2020.

Other people say, "Let us do it via some sort of international agreement between states", so essentially beyond EU law. The problem is that it



would be extending EU law and the EU needs a legal basis for that, which takes us to Articles 207 and 217, which are likely legal bases of the treaty. Since it is likely to be a mixed agreement, it requires ratification and you are therefore stuck in the same spiral. Other people ask whether you can use the Joint Committee itself to amend the withdrawal agreement and thus amend Article 132. In fact, the Joint Committee can amend the withdrawal agreement but in fact it cannot amend Article 132.

The long and the short of it is that it is really difficult to do after the end of June. That said, if there is a strong political will, eventually the lawyers might find a legal way, but at the moment there is no obvious way of doing it.

Sam Lowe: I would like to emphasise Catherine's last point. It is a political point. It is very difficult to see a scenario in which every EU member state, the Commission, the Council and the UK want to find more time and they settle for the lawyers saying, "No, you cannot do it". The more interesting question for EU lawyers is, "If you were asked to do it, how would you go about it?" Of course, they do not want to answer that just yet.

If it does prove impossible, in terms of alternative implementation periods, I think it would be possible, at least in the area of goods, to extend the single market for goods membership and customs union membership for a period of time under the exclusive competence of the EU, so it would not necessarily require member-state sign-off. Think of the Northern Ireland protocol but for the whole of the UK for a period of time—not the whole protocol but just the bits related to goods. That, in and of itself, could alleviate problems at the border for a period of time while businesses are preparing.

Of course, all of these options are much more difficult than simply saying, "Can we extend the transition period now?" to which the EU would say, "Yes".

Q381 Dr Whitford: Can I come to Anna, please? This is still very much around implementation and the challenge of getting a deal at the last minute, even in October, and it being active on 1 January. Obviously, we know that the current Prime Minister's aim is much nearer what would have been called the harder end of Brexit, or a more limited free trade deal or no deal. Both yourself and Sam referred to not huge differences between facing a no-trade deal and what is actually being negotiated. Could there not be more preparations done at the moment? There will be customs declarations, et cetera, and there will be the need for infrastructure and staff to deal with these things. Is it not that the Government could actually put out more advice right now to business?

Dr Jerzewska: To very quickly add to what Sam just said about the implementation period, for border customs purposes, it does not need to be long. It can be a couple of months.



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Moving on to your question, yes and no. In the customs co-operation and trade facilitation part of the UK draft text, the UK proposal actually indicates that the UK wants to have a much higher degree of customs co-operation than you would normally have under an FTA. There are interesting elements of that proposal that indicate that the UK actually wants to move towards what Norway and Sweden have. There is one element in particular that is very reminiscent of what Norway and Sweden did back in the 1960s, which, over time, led to joint customs offices and a very high level of co-operation and data-sharing and function-sharing that saves money for both Norway and Sweden. That is one element. If, potentially, the UK was interested in that level of co-operation, a deal might lead to something different going forward, not as of day one but eventually. There are signs that the UK is interested in something like that.

In terms of preparing right now, there are two things here. One is, yes, companies, customs brokers and other relevant actors can prepare. For a lot of the companies that I have spoken to, 2020 was the year where they were going to prepare. In the last few years, some obviously have prepared already or have been trying to prepare but, for a lot of companies, the ongoing Brexit negotiations over the last four years came with a lot of uncertainty and they are not actually able to spend time following all the developments and the discussion and they just want to know what the outcome will be. A lot of the companies left the preparation work for 2020, and we obviously know that they now have other priorities with COVID. With what is happening right now, companies are struggling to survive. They are not necessarily thinking of January 2021; they are thinking about making it to the next month and they are thinking about their employees. That is one of the reasons why companies cannot really prepare as much as they potentially planned to prepare in 2020.

The last thing is what I have already mentioned in terms of the border operating model. I hear this a lot: "We know what is going to happen. We know what a customs declaration looks like. Why can companies not prepare?" Even if you look at the Northern Ireland protocol, you have a high-level agreement, high-level formalities and then you have the actual operating model. Where do you submit this declaration? Where do you wait in Calais? Do you wait for a pre-booked ferry or can you take any ferry? If you are waiting 20 hours, can you leave your goods or your truck unattended? Is it secure enough? What is the car park like? These kinds of operating details are needed for companies to be able to prepare, and that will come with the border operating model, which we are due at some point. We now have tariffs. We do not have details in the agreement in terms of rules of origin and whether companies would be able, if there was an agreement, to profit from preferential rates or not. That is still to come. We are gradually moving towards a place where companies can start thinking about what it actually means to them from an operational perspective. The high level is known but the detail is still very much needed.



Q382 Dr Whitford: Having an implementation period, which would in essence not be extending the transition and would therefore save face to some extent, would perhaps be a compromise. I remember the Federation of Small Businesses talking about exporting to the EU being like the nursery of exporting for small and medium-sized companies because it is so simple. We now will have 150,000 to 200,000 companies having to deal with customs declarations, and possibly even tariffs, that they have never dealt with because they have never exported outside the EU. Do you think that will create a barrier for companies in the future who have not yet exported or who step back from exporting or indeed new companies in the future, as there is not that easy putting your toe in the water of exporting to the EU?

Dr Jerzewska: Definitely. A lot of it is around education and access to education around customs, which will be particularly difficult for small and medium-sized companies, for the sole reason that it is an investment. For a lot of smaller companies that I speak to, it is not even the question of not being able to understand customs but rather just where you begin with international trade. There are resources that companies can use, such as Chambers of Commerce and other organisations, to get some help. There are obviously consultancies where you are charged for that help, but you can still get that help. Under this situation, customs brokers and freight forwarders are also able to provide help, provided that we have enough of them. That might very well be an issue for companies initially in terms of learning how to submit these documents in the short term.

One other thing we have noticed as well is that, on the EU side, companies are switching to local suppliers. Again, it is not because it is not possible—it is obviously possible to trade with a customs border in between—but it is more about whether you want to deal with that and the additional cost that it might entail.

Q383 Dr Whitford: Obviously, it is the additional cost and complexity, particularly for quite small businesses. The majority of the UK economy, and certainly the Scottish economy, is made up of small and medium-sized enterprises. Employing your own customs advisers or staff is a big chunk, with the additional time and complexity.

One of the other areas of concern I have heard from businesses, and particularly at the moment care homes that are obviously very topical, is that they have not employed non-EU staff before and therefore have no experience of sponsoring visas. Now, if they want to recruit EU staff, they will have to go through that process with the Home Office. While we are focusing a lot on customs declarations, do you think there is enough recognition of the impact of loss of freedom of movement, whether it is recruiting staff or understanding, when one of your staff members has to go to Europe, whether that will count as a business visit or whether you need a visa for them? Those are two big areas.



Dr Jerzewska: Somebody else will probably want to come in on immigration but I have two points on what you said. In terms of customs as well as non-customs issues, we will eventually get there and smaller companies will eventually get there. With time, there will definitely be more sources of information and advice available. Markets will adjust at some point. The biggest impact is the short-term adjustment period, which is why the implementation period would be helpful.

On your second point, there are a number of areas that businesses, particularly small and medium-sized businesses, have not even begun to take into consideration, like the famous issue of pallets that came out on the customs side. There are a number of areas where we have not realised that this will be an issue. Again, this is why the first couple of months will be crucial.

Q384 **Dr Whitford:** You mentioned COVID and the lack of bandwidth of small companies. Tariffs that may be relatively small on industrial goods could be over 50% or 60% on agricultural goods, and therefore you are talking about farmers or very small agricultural product companies facing all of these complexities and then possibly even tariffs. Do you think the time lost to COVID just makes this impossible? Even the stockpiles that were there for a non-trade deal in the past, around drugs and things, have probably been used up. Does that not again give cover to the Government to accept that six months of this year have been lost already to COVID and that companies need the time to get ready?

Dr Jerzewska: COVID has definitely had a massive impact on companies. That is a no-brainer. Companies need that time to prepare. Even before COVID, I was of the opinion that an implementation period would be very helpful, even from the UK's perspective just to make it work, as I mentioned before. As you said, there are various costs. There are costs that companies need to invest now, such as in training, staff and any prep work, and there are potentially tariffs later on, depending on whether or not we have a deal; tariffs are not a given at this point. As we discussed, the panel is quite hopeful in terms of the possibility of a deal so perhaps tariffs could be avoided. However, the upfront costs and ongoing management, maintenance and compliance costs will definitely be quite big. Anything that can be done to minimise the initial impact would be helpful, including the implementation period, definitely.

Q385 **Dr Whitford:** I wonder if Catherine or Sam want to comment on the issue of small businesses having to suddenly deal with sponsoring visas with the Home Office.

Professor Barnard: I would like to make two points. The first point is that what is striking about both the EU and the UK texts is that it is about services; it is not about mobility. It is about short-term movement—albeit “short-term” could be quite long for ICT folk, for example—but general mobility or free movement as we knew it is really just not touched upon in the texts. Specifically, the EU text has a section on mobility of natural persons but it is very thin indeed and it envisages the possibility of visas



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anyway. In respect of the UK provisions of mobility of natural persons—the broadest equivalent to free movement—again, there is almost nothing there at all. It is all about temporary service provision. In respect of temporary service provision, the EU text says very clearly upfront that the provisions on services are without prejudice to national rules on visas. All of this will require a very different mindset.

On the specific point about bringing in new care home staff, we know that there is a new immigration policy that was launched in outline in February of this year. We know that the new immigration policy for the UK has somewhat relaxed the educational qualifications needed to be able to come to the UK and it has reduced the salary levels but it still does not really help care homes, because salary levels there are not the £25,000 that is envisaged but somewhere between £15,000 and £20,000. This will make it very difficult indeed to bring these people in unless there are exceptions to the regime when the detail of the immigration policy is fully published.

The problem is that we are introducing a brand-new immigration regime that, in the best of times, would require a significant run-in and adaptation period as people get to learn the commitments. If you get it wrong, there can be criminal penalties, so it is really serious and the fines are huge. The detail of that policy has not been provided at all and we are doing it at a time of COVID. There will be some real issues going forward. The only cushion that we have, of course, is that the EU nationals who were here before the end of the calendar year will be able to acquire EU settled status so that will give some protection.

Dr Whitford: That will also be a problem on the island of Ireland in that it is not yet clear whether the common travel area would apply to EU citizens in the Republic who might be asked to come to Northern Ireland or Scotland to fix a computer, because they are not necessarily Irish citizens but have remained there as EU citizens. Everything we are talking about just gets more complicated when you get to Ireland.

Sam Lowe: I want to just add to Anna's point about customs preparedness. One thing that concerns me slightly is that, if you look at the UK's current language as to how it will enforce checks at the borders and what will be required upon import, and also looking at the global tariffs, it all seems to be predicated on the idea that there will be an agreement with the EU. In fact, you could make the point that some of the things that the UK is saying, whereby in the previous no-deal circumstances we would have had mitigation measures but now we will not, are designed to create leverage so as to achieve an agreement with the EU. I am just not convinced that they survive contact with reality if there is no trade agreement at the end of the year. We will have unilateral mitigation measures thrown at the business community very late in the day if that is the case, and we could even see another change to the tariff schedule.



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When you also take into account COVID-19 and just remove all the politics from it, which is obviously very difficult to do, asking businesses to prepare for a fundamental change to their trading relationships at the same time as dealing with the economic fallout of COVID-19 is very irresponsible. We should be extending the transition solely for the reason that they should not have to think about Brexit right now. It should not be on their mind. We should not even be discussing it. There are more important things to discuss and that should be left to a later time.

Q386 Chair: I have a couple of final questions, first to you, Catherine Barnard. You have made it quite clear that Article 10 gives the EU locus in any state aid decisions because it is hard to think of a state aid that would not potentially have implications for Northern Ireland and therefore trade with the EU. If that is the case, why does the EU need anything else above and beyond what Article 10 already provides them with in respect of state aid?

Professor Barnard: You make a fair point but, if the state aid that the UK wants to give is, for example, giving a large tranche of money to the north-east of England to try to help businesses there, the effect on Northern Ireland and the effect on state trade will be very small. I am more thinking about national schemes like the furlough scheme, which will benefit the UK as a whole but will also affect Northern Ireland. Northern Irish business and Northern Ireland manufacturing will benefit from the furlough scheme and therefore that has an interstate trade element that also affects Northern Irish goods.

Post transition, something like the furlough scheme would still need to be notified because of the effect on Northern Ireland manufacturers and thus Northern Ireland goods and therefore affect interstate trade. Any state aid that is given to a declining region in the rest of the UK might not be caught by that process of analysis. Therefore, the concern then is the UK would be helping its businesses to the detriment of the interests of France and Germany. Of course, the UK says, "That is the whole point of leaving; we want to have that flexibility", but the EU is very worried about that because therefore UK businesses will have a competitive advantage over French and German businesses.

Q387 Chair: Anna Jerzewska, do you think diagonal cumulation, which is the UK proposal, is something that the EU side will be prepared to accept?

Dr Jerzewska: That is a great topic to discuss nine minutes before the end. I think that is on purpose to limit me from talking too long about this. I am assuming you are talking about the additional ask on cumulation from the UK.

Chair: Indeed.

Dr Jerzewska: There are two issues here. The short answer is that the EU would be reluctant to say yes to this. That is not the EU's way. The EU is quite reluctant in terms of this type of cumulation when it came to



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previous talks, even though it does include it in its own trade agreements on a very limited scale. The question here is applying it across the board and applying it to the degree that the UK is now asking for.

There are two reasons why the EU might be reluctant to say yes to this on top of what I just said. One is that the EU invested years in developing its own regional cumulation system, the pan-European-Mediterranean cumulation system, where countries within that system have invested in negotiating trade agreements with each other so that they can use that cumulation system. That is the wider European system. That system is badly due for an upgrade but the EU are heavily invested in that system. For the EU to say, "We are going to make a massive exception for the UK and start a different type of cumulation within the region", would be quite unusual.

There is also a small problem of whether that type of cumulation is WTO-compatible. I am not a lawyer but you could potentially argue that giving preferences to a country that you do not have an agreement with directly or that is not part of that agreement might potentially not be WTO-compatible. So far, this has not been challenged because it has never been used to the degree that the UK is now suggesting. The only other time when this type of cumulation has been used across the board was in the UK's role in continuation agreements that have not yet been implemented.

Again, I do not think the EU would want to be in that position. Personally, I think that is an interesting way to go with rules of origin; a sort of equivalence of rules of origin or mutual recognition of rules of origin. From a theoretical perspective, I would like to see that happen at some point but I think the EU will be very reluctant to say yes to that.

Q388 Chair: Reflecting on the evidence that you have given today, a lot of our questions have been about how one reconciles the red lines of the two parties. On the one hand, the UK says, "We are not accepting the jurisdiction of the European Court of Justice and we are not signing up to new EU rules that we will have to implement in UK legislation", while the EU says, "Of course, we must, above everything else, protect the integrity of the single market and the customs union". Is there a way of reaching an agreement—I think you alluded to this, Sam Lowe, in your answer a little while ago—where the EU side says to the UK, "Alright, let's start from where we are, which is alignment, because de facto you are aligned with our rules. We are prepared to reach an agreement in which, as long as you choose to stay aligned—and that is your sovereign decision—we are prepared to give you this degree of access. If we feel that you are moving away from our rules in a way that either undermines what we regard as a level playing field or gives you an unfair competitive advantage or subsidises your companies to enable you to get one over on us on the way in which you trade, we reserve the right to vary the degree of access that we give you"?

It suffers from the great disadvantage that it is not the most stable basis



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for an agreement but you could describe it as a grand equivalence deal that would enable the two parties to go forward. It would then mean that the UK in future would have to decide, "If we are going to move away, we know there is going to be a consequence here for our access to the market. Is that something that we want to do or not?" Depending on the other benefits the UK thinks it might get from moving away, it could take a decision accordingly. Could this be the place where the two parties end up?

Sam Lowe: I do not think you need to go as grand as you have suggested in that we should actually be clear that the level playing field asks do not apply to lots of things. On environment and labour, they only apply to environment and labour provisions that impact upon the competitiveness of industry. We are not talking about, say, food standards; we are talking about the Industrial Emissions Directive, so it is quite specific. What the EU has proposed on environment and labour is already quite similar to what you have laid out: "We start from this baseline and, if you regress below it, we want the ability to withdraw concessions within the context of the broader free trade agreement". On state aid, it has obviously gone further. I think the compromise is in that space. Let us look at the impact of our existing regulations and, if there is a moment in which the EU suspects harm or there is eventually proof of harm, tariffs could be re-imposed as a result.

In practice, I do not see this being a big problem because the UK is quite a highly regulated economy. I do not see there being that much of a desire to scrap the Industrial Emissions Directive and the like. It is more of a theological issue with some possible practical consequences in the area of state aid but, to be honest, in the COVID-19 world, the taps are fully turned on when it comes to state aid anyway.

To conclude, I think there is a way through. It is in the ballpark of what you suggested but it perhaps does not need to be as grand. It could be more narrow.

Chair: Thank you. That is a very helpful answer. The record will show whether the word "theological" has yet appeared in the considerations of the Select Committee since we were originally established.

On behalf of all of our colleagues, your evidence today has been incredibly helpful and useful. You can tell the degree of interest there has been. We are very grateful to you for giving up your time to assist us in our work.