

# International Trade Committee

## Oral evidence: UK trade negotiations: trade strategy and scrutiny, HC 233

Wednesday 10 June 2020

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Members present: Angus Brendan MacNeil (Chair); Robert Courts; Mark Garnier; Sir Mark Hendrick; Mark Menzies; Taiwo Owatemi; Martin Vickers; Matt Western.

Questions 25 - 48

### Witnesses

[II](#): Dr Brigid Fowler, Senior Researcher, Hansard Society; Nick Dearden, Director, Global Justice Now; and James Kane, Associate—trade policy, Institute for Government.



## Examination of witnesses

Witnesses: Dr Brigid Fowler, James Kane and Nick Dearden.

Q25 **Chair:** We will move now to our second panel. Can I ask Brigid, James and Nick to introduce themselves?

**Dr Fowler:** Good afternoon, I am Brigid Fowler. I am a senior researcher at the Hansard Society.

**Nick Dearden:** My name is Nick Dearden. I am the director of Global Justice Now. We are a social justice non-governmental organisation.

**James Kane:** Good afternoon. My name is James Kane. I am an associate at the Institute for Government.

**Chair:** Great, thanks very much. Mark Menzies, when you are unmuted we will let you loose.

Q26 **Mark Menzies:** I am unmuted and now loose, Chair. This is to all three of our witnesses. How suitable are the current arrangements for the parliamentary scrutiny of free trade agreements? One of the things to think about is the strengths and weaknesses of the Constitutional Reform and Governance Act.

**Dr Fowler:** When you mention current arrangements for parliamentary scrutiny of FTAs, the initial thing to say is that obviously what those arrangements are is not currently certain. That is precisely what is at issue and, as the Committee will well know, has been at issue for over 18 months, getting on for two years now. There has been much discussion about this but things have not, in my understanding, settled down into a clear prospectus about what exactly is going to happen. In particular, it would be useful if, when the Secretary of State appears, as I understand it, fairly shortly, she could clarify the extent to which the Government adhere to the positions that their predecessors had set out with respect to things like having a debate before the start of negotiations. Obviously, that ship has somewhat sailed in the case of the US.

On the suitability or usefulness of the Constitutional Reform and Governance Act, the key thing is what exactly it is that Parliament, your Committee or the Commons wants to achieve in this process. What is its objective? That being said, if its objective is anything more than the most perfunctory of roles, the CRAG Act is not really up to much at the moment.

**James Kane:** I was going to say what Brigid just said. It depends very much on what you want to achieve. If you are looking for a very strong form of scrutiny, in the manner of the US Congress or perhaps the European Parliament, then clearly the current arrangements are not suitable. On the other hand, if you want a Government and Executive that are lean, nimble and able to sign free trade agreements very quickly and make concessions, which might be unpopular concessions, in order to



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get those agreements, then you could make an argument that the current arrangements are very suitable indeed. They are certainly much weaker than we see in most other major trading partners around the world. About the only comparable one is Canada, which, similar to the UK, counts treaties as a prerogative question so they can be ratified in theory without parliamentary debate.

To sum it up, it does really depend on what you want this parliamentary scrutiny to do. If you are looking for a very aggressive parliamentary scrutiny, almost a parliamentary control of trade negotiations, then you are going to need something much stronger in terms of both controls ex ante, so in the mandate-setting process, and ex post in terms of ratification and so on. If you are content to effectively leave a great deal to the discretion of the Executive, then the current system seems broadly reasonable.

**Nick Dearden:** I have been talking about the inadequacy of some of these systems for a very long time now. Long-standing Committee members are probably sick of the sight of me.

I am taking the Command Paper as our starting point, but I agree with Brigid. We do not really know what the status of that is. It was issued in the last Parliament and it talks about the necessity of setting up a proper scrutiny Committee, but that has not been implemented in any way yet. Like Brigid, I am unsure what the status of that is.

If you just look at that Command Paper—which is the best thing we have to go on—as to how this will work, there are huge problems and it does not really go much beyond CRAG. It is voluntary, and I think that is a huge problem. Some of this should be statutory. If these are good ideas, why not make it statutory?

Even in terms of what is there on a voluntary basis, it is completely insufficient. At the moment, Members of Parliament cannot vote on any objectives or mandates, or properly guide the negotiating objectives of a Government. Members of Parliament are not guaranteed a debate on a signed deal. They could get a vote, if they are lucky, on a signed deal, but they cannot stop the deal. One of the things I loved, re-reading the Command Paper today, was that the Government said they will always aim to implement a deal before ratification, so in any case, if you are lucky enough to get a debate, you are discussing something that has already been implemented.

Trade deals are still negotiated in secret. I would argue there is almost a presumption of secrecy as opposed to a presumption of transparency, which I have previously argued before the Committee is something we would like to see. You, as Members of Parliament, have no right to see the negotiating texts, or really any texts, any more than we do. There is a possibility the Government would grant the scrutiny Committee mentioned in the Command Paper some sight of those texts, on the basis you sign confidentiality agreements, but again we have no evidence of



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that at the moment. Devolved Administrations get no more than a regular discussion. There is not sufficient information anyway, in terms of the impact assessments and so on, to have a reasoned discussion and to be able to hold the Government to account.

I would just say that five parliamentary Committees, including yourselves or your predecessors on the International Trade Committee, have said this is inadequate. The International Trade Committee has said it is insufficient. The House of Lords Constitution Committee has said it is anachronistic and completely inadequate. There is a Lords amendment, which obviously passed in the last Parliament, to improve this greatly, and all sign of that has been dropped from the new Trade Bill.

It is not just NGOs that are calling for this. We built a coalition of businesses, including the CBI, the International Chamber of Commerce, trade unions, academics and former Members of the European Parliament, all of whom have said that this is not fit for purpose to conduct a transparent and accountable trade policy in the modern era.

**Q27 Taiwo Owatemi:** My question is directed at all the members of the panel, starting with Nick. In your view, are the Government living up to their commitment to ensure that the trade policy scrutiny and engagement is inclusive, meaningful and transparent? If not, what steps do you think they should be taking?

**Nick Dearden:** I would argue certainly not. Over the last six months I have had a little bit more involvement in the shortcomings of the process. We have been trying to wrestle some information about the preliminary trade talks that have happened at an information tribunal and have been unsuccessful so far, although the tribunal still has not reported yet. I was definitely disappointed that the Government barrister, from what I could tell, really said in his summing up that freedom of information does not apply to trade talks. He came about as close to saying that as is possible without actually saying it.

We are in a situation now where there have been six rounds of preparatory talks with the United States, just one potential trade partner. There has now been one round of formal negotiations with the United States. I do not think there is any adequate process for you to be able to scrutinise those talks to date, despite the fact that the US stakeholders' assembly—which is very large, much bigger than our trade consultation body, as it has hundreds of members—has already been sent papers from the United States Administration about its negotiating strategy. I believe that you, as MPs, have not been sent anything like that yet. The Secretary of State's report back to the House on the first formal round was little more than a list of the standard chapters that appear in a trade deal and did not really say any more than, "Everything is on the table, and the meetings are positive and constructive."

This really is not adequate. It is not adequate because modern trade deals, contemporary trade deals, cover so many different aspects of



society, so many different aspects of the economy. It is not just about tariffs. This is about obviously food standards, it is about how we can regulate public services, how we regulate investment in this country, Government procurement, medicine prices and on and on and on; big, big areas of public policy for which Parliament would traditionally have a really defined and important role in holding the Executive to account. It just does not exist here at the moment.

**Dr Fowler:** I would repeat the point about what exactly are the Government's commitments, because we have not really had a definitive statement from this Government and from Liz Truss about how exactly the Government propose to take this forward. An obvious example one could point to is the fact that the negotiations with the US have now formally started and there has not been a debate in the Commons. When the previous Committee reported, the argument between the Committee and the Government was about whether any such debate should be held on a substantive motion, whereas now we are at the stage where there has not been a debate at all. It is possible that is to do with the disruption to parliamentary business because of coronavirus, but it would be helpful to get it clarified whether or not that was the problem or whether it is now the Government's position that they are going to be opening FTA negotiations without having any kind of Commons debate. That would be one issue to pursue.

**James Kane:** First of all, I would agree with Brigid that we do not really know what commitments the present Government feel themselves bound to. We have the Command Paper from February last year that has some clear commitments in it, such as to publish an outline approach, which the Government have done, and to allow your Committee access to negotiators' private briefings, texts and so on, which you will be better placed than I to comment on.

In terms of transparency, it is a mixed bag. There have definitely been some improvements there. If we look at the proportion of freedom of information requests that DIT has granted in full, it has gone up from 30% in 2017 to 42% last year. Some improvement but still a minority and still well below the figure of 56%, which is the average for Whitehall Departments.

There is some positive movement. They have fulfilled some of the specific commitments they made around publishing outline approaches with impact assessments, but I agree with the other panellists that there is much more that could be done.

**Chair:** Thank you. There are some good points there, and perhaps some points Taiwo Owatemi might want to follow up with the Secretary of State when we hope to have her in front of the Committee on 24 June. It has not been confirmed yet by DIT, but we would expect that to happen.

Q28 **Sir Mark Hendrick:** Yes, I hope that is the case with the Secretary of State, because I know that, since she returned from the United States,



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she has had meetings with other groups in and around Parliament, one of which I was present at. I said how much the Committee was looking forward to her. It is interesting, following on from what Nick was saying earlier, that it has been discussed with everybody else except the Committee that is supposed to be overseeing that work. That is particularly relevant given that in the Government's 2017 White Paper they committed, "to continue to respect the role of Parliament, and the importance of the business and the wider stakeholder community in preparing for and giving effect to an independent UK trade policy." The implication that Parliament should continue to scrutinise was in that White Paper, but we have seen little of the Secretary of State's willingness to come forward.

Leaving that aside, my question is to Brigid particularly. It concerns the debate that took place in Parliament on 21 February 2019 about the free trade agreements with the US, Australia and New Zealand, and possible accession to the CPTPP at some stage in the future. I know, Brigid, you have been quite strong in saying how the debate was pursued. Could you say a little bit about your reservations and criticisms of the way that general debate took place and its relevance to whether or not we go into a CPTPP and whether or not Parliament will be involved to any degree?

**Dr Fowler:** If you were taking a glass half full view, you could say it was a good thing that there was a House of Commons debate on those prospective negotiations at all. If you were taking more of a glass half empty view, obviously it was only a general debate, so it was on a neutral motion and there was no opportunity for the House to actually express a view. Obviously, a single debate on four potential negotiations is quite a lot to fit in. If I remember rightly, it was also timed rather randomly. It was poorly attended and it did not seem to be particularly connected to anything very much in terms of the negotiating process. I do not think it really added a great deal, although it was better for it to have happened than not at all. Obviously, that is now getting on for 18 months ago as well.

Q29 **Sir Mark Hendrick:** In terms of its relevance now, how much of a goer do you think it is?

**Dr Fowler:** As I understand it, the launch of negotiations with Japan is seen as a stepping stone to eventual accession to CPTPP, but I would not be able to comment on the technicalities of that on the actual trade side.

Q30 **Sir Mark Hendrick:** I think it is pretty clear that the Japanese, while they may have discussions and negotiations to some extent, are very much waiting to see the outcome of our negotiations and discussions with the European Union. I do not think the outlook looks particularly good unless we can get a decent trade deal, whatever that might be, with the EU. The UK Government seem to think there is going to be a rollover in the nature of the agreement with the EU.

**Dr Fowler:** Yes. This is going to be an issue with all of the UK's negotiations with extra-European partners. They are going to be closely



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related to the negotiations with the EU. As I understand it, that is exactly what the Government intend. There is this idea about somehow playing off different partners against each other, which obviously adds to the complexity of the situation.

**Q31 Sir Mark Hendrick:** What concerns me is that the November elections in the United States could lead, if President Trump is re-elected, to him insisting we do not have a good EU trade relationship and that our focus is very much towards a US trade deal at the expense of anything with the EU. That will not help our relations with the likes of Japan and the CPTPP deal that we are after as well.

**Dr Fowler:** Yes. Obviously, as Sam Lowe was discussing in the previous panel, the negotiations with the States are going to be tough under any circumstances, but I think particularly so at the moment.

**Q32 Mark Garnier:** Brigid, perhaps I could carry on with these questions. I am particularly interested in your expertise in terms of the legislative process and how we go about, not strictly negotiating the deals, but how Parliament and Members of Parliament contribute to that. I want to get back to both of these debates, the CPTPP one and then obviously what is going on in Japan. You talked about the glass being half full, being optimistic and all the rest of it, but do you think Parliament is getting enough of an opportunity to scrutinise these deals and the Government's policy? Is this a healthy environment for us to be doing trade deals?

**Dr Fowler:** I would say no at the moment. I take the Government's point that there can be a value, and sometimes a necessity, in keeping some things private when a negotiation is underway. However, I think the presumption needs to be in favour of transparency. The environment for trying to do trade negotiations at the moment is not very conducive, let us put it that way. The risk is that the Government foster suspicion. By not being open, the risk is that they foster suspicion and it may be worth considering already whether, even with only one round completed with the States, the Government are getting out there with a clear, positive narrative and are winning the argument on the US negotiations. My sense is, if anything, there has been a resiling or a move backwards from some of the positions that the previous Government had started to take in terms of transparency. My sense is things are probably going backwards.

**Q33 Mark Garnier:** That is very interesting. Nick, I would be very interested in your point of view about the transparency of all of this. The way it is going to work at the moment is we might have the odd debate in Parliament about the broad principles of the trade deal, and the next thing that happens is this Committee gets a chance to have a look at it but actually we end up having a signed deal. In the interests of the wider interested parties, such as your organisation, you may feel we have entered into a deal without any wider debate other than what people can get in in the odd op-ed in the broadsheet newspapers. Do you think we are going down the wrong route here or the right one?



**Nick Dearden:** I would very much agree with that. That is exactly what I am concerned about as well. If you look at the amount of interest there is, especially in the US deal, in the public, in the media and so on, you really end up with a situation where either you get a trade deal through in the end, but in the teeth of very fierce opposition and a lot of discontent about it, or it gets derailed, in the way that the TTIP deal between the EU and the US got derailed because of the suspicions that the transparency allowed to grow across European society around what was in that deal.

There is a trade expert and former civil servant called David Henig, with whom I have many disagreements on all matters of trade policy, but the thing we agree on a lot is that you have to have a transparent public debate around these things, both because trade deals are so big nowadays and because, if you want to end up getting a trade deal done that has public assent, you need far more transparency. His view is definitely that we are at the far end of the spectrum in terms of secrecy, rather than transparency.

I was looking earlier at some of the powers the European Scrutiny Committee has. I do not believe those powers are sufficient either. If you look at the way that countries like Denmark are able to hold their Executives to account in terms of EU legislation and so on, they have more power. Still the European Scrutiny Committee has significantly more powers than any Committee in Parliament at the moment to look at treaties or trade deals. We need clearly set out instructions for Government Departments about how they must do things in relation to the European Scrutiny Committee. It had a significant staff body, much bigger than your staff body, including an office in Brussels that was the eyes and ears of Parliament, or so it called itself, and the Scrutiny Reserve, which imposed a real discipline on Ministers. These things do not exist for trade policy at the moment and yet—as public concern shows, I think—trade policy can affect massive areas of public policy in the same way that EU legislation would have done in the past.

Q34 **Mark Garnier:** Out of interest, how does that compare with other countries? If you did a rating where one is perfectly transparent and 10 is North Korea, where would we fit, do you think, in that ranking of transparency and the ability of Parliament to scrutinise trade deals?

**Nick Dearden:** We have not done a ranking of every country in the world, but we have definitely done quite a serious comparison with the two blocs or countries with which we are in priority trade negotiations at the moment, the EU and the US. We are way behind the EU and the US in terms of the mandated process for discussing and ratifying trade deals. Some of it is in our previous written evidence.

With the EU, we have public consultations that are absolutely mandated based on scoping exercises that have to be done in specific ways. The Council sets a mandate that has to go back to national Parliaments sometimes—such as in the Danish case—if that mandate changes, but



certainly the European Parliament. The Commission is mandated to keep Parliament informed immediately. There are precedents now on all MEPC documents. After signing, the European Parliament and the Council must both give consent. For some agreements it needs to go to 40 Parliaments, including regional Parliaments. There is a formal civil society dialogue. Even the EU Ombudsman says, "That is not sufficient, we need more." None of that exists at the moment, and it really is at Government discretion how much is released to Parliament and what role both Parliament and civil society are allowed to play.

**Q35 Mark Garnier:** Basically, a summary is that we are negotiating with two of these big countries, and both of them have much, much more substantial transparency and legislative processes to allow these trade deals to go through than we do in the UK, and that is, broadly speaking, a bad thing?

**Nick Dearden:** Correct, yes.

**Mark Garnier:** Fantastic.

**Chair:** Robert Courts is waiting patiently. He has unmuted his microphone, as the true broadcasting professional he seems to be.

**Q36 Robert Courts:** I never thought I would be called that, but thank you.

I would like to ask the panel's opinion on what we should be doing within this Committee. What should we be doing within the wider scrutiny framework that we have already discussed in order to scrutinise free trade agreements?

**James Kane:** The first thing that the Institute for Government has said in the past when we have been talking about this kind of thing is that an excessive comparison with the role of Parliaments in Europe, in the EU and in the US is perhaps not entirely appropriate, given that those are both systems with a strong separation of powers. The analysis of their Legislature's relationship with the Executive when negotiating trade agreements is essentially one of principal and agent. You have a Legislature that is ultimately in command and is directing the Executive on what to do when it comes to trade agreements.

In the UK, although Parliament is, of course, ultimately sovereign, the Executive and the Legislature are fused. That very formal mechanism, not just for scrutinising Government action but for controlling it and directing it in particular ways, is perhaps not so appropriate in the UK constitutional set-up.

For that reason, what we have consistently recommended is that the Committee and the wider Parliament concentrate on scrutinising Government action and debating, rather than perhaps formally voting on, motions around what is often called the mandate—the term, again, is not entirely appropriate in the UK context—and in making sure that the Committee examines negotiating texts, has access to those negotiating



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texts, and has a general awareness of the direction in which negotiations are moving so they can advise the Government on how to proceed.

I think it is very important to highlight the fact that there is a common misunderstanding that parliamentary scrutiny of trade negotiations and scrutiny by the public as a whole is a hindrance to negotiators. In fact, it is quite the opposite. Parliament and the Government have a strong common interest in parliamentary involvement in trade negotiations, because ultimately it does not benefit the Government at all if it negotiates a trade agreement that Parliament then finds some way to reject. That possibility is often called involuntary defection, and it really is a negotiator's nightmare and is something the Committee should be doing everything it can to help the Government avoid.

**Dr Fowler:** One useful thing that could be done is to get a public, written document between the Government and Parliament, the Commons or your Committee. Some kind of public, written understanding of what information the Government are going to provide and when. Not all the information has to be public. You could reach an understanding that some information is going to be provided in confidence, but some kind of public understanding would be helpful in terms of imparting some certainty to this whole process for everybody who is interested in it. One of the issues has been the amount of time and effort that can be wasted simply arguing over who is going to publish what and when. It would be a much better and more efficient way of going about things if there was some kind of overarching document that set it out so everybody knew where they were.

Something else I would mention is the timings of, in particular, a complete text of a prospective agreement. There is a trade-off. If the Committee or Parliament had been very closely sighted all the way through and had seen a lot of texts, then obviously the premium on seeing the final text is less because it will be less of a surprise. If you have not seen so much during the negotiations, then obviously it is more important for the Committee or Committees to have a lot of time, or more time, to see a complete text, and ideally before it is signed.

I know this is something the Government tend to resist. Their view is very much that Parliament really kicks in after a treaty is signed. I think it is important, if at all possible, to get sight of a text before signature because, as we all know, once a thing is signed the UK is then committed to a certain extent. If you then discover that you have problems, it becomes much more difficult to change, much more embarrassing politically. Clarifying what you are going to get sight of in good time before signature would also be useful.

**Robert Courts:** That is very helpful.

**Nick Dearden:** First, a priority for me would be pushing for greater statutory powers over scrutiny and accountability for trade deals. Obviously, the Trade Bill is going through Parliament at the moment.



There is still nothing in there that really improves the process. Over the last few years, MPs of all parties have agreed they need more scrutiny and accountability powers. The question was always what the best mechanism to do that was. During the signing of the Withdrawal Bill, many felt it was too difficult a situation. Now it is not, and the negotiations have begun, so for me that is a priority.

Failing that, I think questioning Ministers over objectives and—

**Chair:** Nick, I am sorry. Can I just jump in for a second and make sure that Robert Courts does not have to go to vote?

**Robert Courts:** I do, yes. I thought I would wait until the end of this question.

**Chair:** As long as you have time. We will have the evidence down anyway, so make the call yourself.

**Robert Courts:** Thank you.

**Nick Dearden:** I think questioning Ministers on their objectives, how those objectives are going in the negotiations and, as Brigid says, getting your hands on as many of the papers and texts as possible will give you a clearer idea. Clearly, the UK is not going to get everything it wants in this trade deal. It may well be, even in confidential sessions, that you want to ask, “What is your bottom line?” on some of this stuff and really try to find out the things that people care about, which I think are out there. “How are the negotiations going on those issues, and what might you have to give in to?” Whether that be in open or secret sessions, I think it would be extremely useful.

**Robert Courts:** May I ask one or two other questions and then, if the Committee would forgive me, I will head off and vote, allowing the witnesses to give their answers?

**Chair:** Yes. I am not sure when the bell went and how much time you have, but carry on.

Q37 **Robert Courts:** Thank you. Could I ask Brigid and James whether they could give their opinion on the House of Lords European Union Committee, which has established an International Agreements Committee to scrutinise international trade negotiations and agreements? What should we be doing, or rather what should the Commons be doing, to respond to that?

I also want to ask Dr Fowler how this Committee should be working with other Commons Committees to scrutinise free trade agreements.

I hope you will forgive my discourtesy in nipping off to vote while you answer those questions.

**Chair:** Absolutely. We will gather the evidence from those questions as you sprint off, and that is understood.

**Robert Courts:** Thank you very much.



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**Dr Fowler:** With the establishment of the House of Lords International Agreements Committee, I am afraid the Lords have got ahead of you on this one. The Commons is looking a little behind the curve. One key issue to think about is whether or not the Commons wishes to do something about treaty scrutiny in general, which is what the Lords have done, or whether you wish to focus specifically on the negotiation of FTAs and trade treaties because they obviously have potentially different implications for the kinds of structures you might set up and the kind of staffing resources you might need.

Let's just think about FTA negotiations for the moment. If you want to do serious scrutiny of FTA negotiations as they are going along, there are several potential institutional models you might think about. You could simply stay as you are and say this is something that your Committee is going to do in its current format alongside its wider scrutiny responsibilities for the Department.

**Chair:** That is the favoured situation at the moment, which is why we would argue that we are actually ahead of the Lords.

**Dr Fowler:** I think the point about the Lords is that it is about treaties, full stop. It is not just trade agreements.

**Chair:** It is, yes.

**Dr Fowler:** In terms of what your Committee does, it is partly a question of your time and resources and how much else of what DIT is up to that you want to spend your time looking at. I have to say I was very pleased to hear that you were doing this session today, because I had been concerned that, like other Commons Committees, your entire attention had been taken away, quite understandably, by the Covid crisis. It is good to see you coming back to this.

**Chair:** We can multitask here.

**Dr Fowler:** If you were going to take on scrutiny of negotiations, just your Committee, obviously that might squeeze out other areas of DIT's work that you might want to look at.

The other thing to bear in mind, as was mentioned, is co-operation with other Committees. I think it is important, because of the extremely wide-ranging nature of contemporary FTAs, as Nick was saying, to build in co-operation with other Committees if possible. Obviously, other Committees will very definitely have an interest. One thing to think about here is the Brexit Committee, or what used to be the Brexit Committee. Because the negotiations with the EU cover such a wide waterfront, they effectively operate as a sort of umbrella Committee. When you are thinking about the negotiations with the US or another potential FTA partner, obviously the EFRA Committee has an interest, the Welsh Affairs Committee is going to have an interest any time lamb comes up, the Scottish Affairs Committee is going to have an interest as soon as fisheries come in, and



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the Home Affairs Committee will have an interest if free movement provisions or immigration provisions come in.

There are various different ways you might want to work with other Committees. You could have a Committee like the Committees on Arms Export Controls, where you get several members from different Committees together. You could form a sub-committee of your Committee and use the guesting provisions, and invite colleagues from other Committees to come and participate. Or you could have a sort of rapporteur system, whereby somebody on the EFRA Committee is designated to keep in touch with what you are doing and to feed information in both directions on trade negotiations. There are several different ways of doing it, but I think that would be something important to try to build in.

**Chair:** By the way, I think we are making some sort of parliamentary history at the moment. We have not suspended for a Division because we have enough remote members to remain quorate. Had we had virtual voting, we could all have voted quite happily without wasting anybody's time. Normally, your time now would have been wasted with us suspending the Committee. One of the happy accidents of the current scenario is that, perhaps for the first time, a Committee has not been suspended for a Commons vote.

**James Kane:** It is interesting to reflect on the naming of the two Committees, the House of Lords International Agreements Committee and the Commons International Trade Committee. It seems rather that the House of Lords has chosen to focus on the form, that is an international agreement, and the Commons has chosen to focus on the content. Both of those are valuable. The advantage of the Lords' approach is it goes beyond international trade agreements, which seem to have sensitised the public and Parliament to the questions that these international agreements that have far-reaching domestic consequences raise, but those important domestic implications are not limited to trade agreements. You can think of even some of the agreements that the Government have signed recently as they sought to roll over EU agreements, such as on nuclear safeguards, that they signed in consequence of leaving Euratom. Those are things on which it would be valuable in the future to have more parliamentary scrutiny than we have had in the past.

On the other hand, as far as your Committee goes, as Mr Lee-Makiyama was saying earlier, there are large areas of trade policy that are not about international trade agreements. I am thinking particularly of the UK's WTO tariff regime that was released just a few weeks ago. That is something that, if it comes into effect at the end of this year, will have enormous implications for the domestic economy, yet the power sits with the Treasury to make that tariff with an affirmative procedure statutory instrument in the first instance, and then to amend it subsequently by a negative procedure statutory instrument. That strikes me as a very weak



degree of scrutiny to have for something with such enormous implications for the domestic economy, and it is something that the International Trade Committee could well focus on.

**Q38 Chair:** A question that has been thrown up among our colleagues is: what should be the purpose and the focus of our scrutiny of free trade agreements? What exactly should we be looking out for? There is going to be so much in there. Are we are looking for the politically sensitive things? Are we looking for the economically impactful things? Are we going to be looking for the black swan that is hanging around in there that is obviously very difficult to spot—the unintended consequences, if you like? Or the socially responsible thing, the thing that is affecting other countries? There are myriad things, and perhaps all three of you might come down somewhere different, which in itself is interesting.

**Nick Dearden:** All trade deals, as I think Sam Lowe said in the last session, are going to have losers as well as winners. They are going to affect different bits of the economy and different bits of society in different ways. I do not think we have been honest enough about that in the history of trade, and we need to be honest about it if we want people to broadly assent to trade deals, but also if we want to put measures in place to make sure that the benefits of trade deals are spread across society. It may well be that a certain industry loses out from a trade deal. What are we going to do to help people retrain or reskill, or to create investment in the area where a factory or economic sector, or whatever it may be, loses out?

Some of those kinds of equity and justice questions—obviously that is what I am going to say, being from Global Justice Now—are what I would like the Committee to think about. That comes to the heart of what people are really anxious about at the moment, which is clearly food standards and the impact, potentially, of industrially farmed agricultural production from the US on farmers' livelihoods here, on the type of food we eat here, on consumer rights here, and so on and so forth. For me these are all absolutely critical. Up to this point they have been overlooked, because there has been a rhetoric that trade deals are just good. They are just going to be good for everybody. They are good for growth, they are good for jobs, they are good for our economy; what is not to like about them? That is just not how trade deals work.

The bigger picture today is there is clearly an awful lot of concern in the world around the impact of trade deals. Look at some of the stuff that is coming out of the US and the stuff that Trump is saying around trade deals all the time. He is clearly tapping into a perceived injustice for many people in American society around trade deals. For me, that really requires us thinking much, much more cleverly about how we do trade. If we want open markets, there are going to have to be all sorts of other policies put in place to protect people from the potential consequences.

**Chair:** I will move to the other two, but it might be music to the ears of my colleagues, if Preston benefits and Fylde is badly impacted, that we



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look and see how Fylde can be subsidised and helped, or vice versa, to get out of the difficulty that could be momentarily created. The trite point I am making springs from the serious point you were making, that we have to look at the winners and losers in this. I see you nodding.

**Dr Fowler:** I agree with a lot of what Nick said. This question about what exactly you are trying to achieve through parliamentary scrutiny is the one we keep coming back to. One objective would be to help the Government in a way to negotiate agreements that suit the UK's interests and that project whatever international objectives the UK has identified, whether that is in terms of foreign policy or in terms of promoting international environmental standards, labour standards or whatever it is, to spot potential bear traps, as it were, potential bugbears in a text before it gets signed, to think about who might be negatively affected and to help the Government think about any domestic mitigating measures that might be needed. There are all those issues about helping the Government to get good agreements for the UK that are going to be sustainable.

There is also the legitimacy question. This is what is often discussed in terms of where Parliament comes in, that by having some kind of visible parliamentary approval process for the scrutiny and approval process you help to confer legitimacy on treaties and international agreements. Thereby, it is hoped that you help to make them more popularly accepted and sustainable. There are several different things that you might be aiming to do.

**James Kane:** You asked what the Committee should be looking out for in trade agreements. I think it will also be important for the Committee to look out for things that are not in trade agreements. One of the features of trade negotiations that is less talked about is the fact that countries very often do side deals. If we think about some of the most controversial issues that we hear about in the debate on an FTA with the US, like chlorinated chicken and hormone-treated beef, there is no way that the words "chlorinated chicken" will ever feature in any FTA. It simply does not happen. FTAs set general principles; they set out frameworks for recognising equivalents of regulations.

If the UK does decide to reform its regulations on chlorinated chicken under pressure from the US, it will appear as a purely domestic piece of legislation. We have seen it happen in the past. For instance, back in 2013 the European Commission decided to legalise the use not of chlorine but of lactic acid for washing beef carcasses in Commission Regulation 101/2013. This appeared as a purely domestic piece of legislation, but in fact it is generally thought that it was done because the Canadian Government asked for it and CETA was being negotiated at the time. It will be really important to keep an eye out not just for what is in the text, but for what is being negotiated in the margins of the room.

**Chair:** That is fascinating.



Q39 **Mark Menzies:** Just for the record, Chair, Sir Mark and I are next door neighbours, and I include a tiny bit of Preston in my constituency, so anything that benefits Preston is fine by me.

**Chair:** I am always happy to take a geography lesson about England.

**Mark Menzies:** That is fine. This is to all three panel members. What are the key points during the free trade agreement negotiation process that we should focus on when scrutinising the negotiations?

**Dr Fowler:** That is exactly the right question. You need to think of this as a process, and what you are trying to achieve will dictate when you need to intervene. Obviously, the first stage is the opening of negotiations and the setting out of some kind of initial Government position. If the Committee, the Commons or Parliament want to influence the very basic UK Government position, obviously before that even gets agreed at Government level is the time to try to intervene. In the case of the US, that ship has sailed, but that is not to say that it would be impossible for Parliament to have more of a role as future negotiations are opened. There is that stage in the process.

Then there is during negotiations in terms of getting information, getting texts. Then, as I mentioned earlier, there is the signature stage, where I think it is important, if possible, to try to make sure people are happy before a treaty gets signed, simply because of the difficulties that can arise if you discover that you have a problem and the thing is already signed.

Those stages are all significantly more upstream, as it were, than the stages in which Parliament currently gets involved in the treaty process under the default UK system, which, all other things being equal, only happens after a treaty is signed and you get into passing legislation and then consent to ratification under the CRAG Act. There are a lot of moving things upstream that could usefully be done.

**Nick Dearden:** I would agree on those three, of course. That is how we divide the categories, I suppose, of when you can get involved. On the first one, that is absolutely right. If the mandate is wrong and the negotiating objectives are wrong and not what you want, then the whole thing is going to end up as something you do not want.

I have to say on this that the UK negotiating objectives could have been much, much clearer in terms of what strategy the Government wanted to go down. If you compare it with the US negotiating mandate, I do not like much that is in it, but it is 20 pages and it is very, very clear what they want. You cannot really fault them for being shy about saying what they want in their negotiating objective. Yet from the British Government, very, very little. "We want low tariffs, we are not going to damage the NHS and we are not going to damage food standards" is all we have heard. I think people are really suspicious because that is not a negotiating strategy. That first step is really important. As I said before, I



think Parliament should have a vote on that, because that is the only way, really, to hold the Government's feet to the fire.

The negotiating stages and how you can scrutinise those stages absolutely relies upon you having access to the documents and having access to the Ministers to question them, because virtually no country ever gets everything it wants in a trade deal. What finally comes out is going to be different from the negotiating objectives to some degree.

Very, very finally, as Brigid says, it is almost too late but, of course, it is worth having the debate and the vote at the end, I believe, because that is the key way that you can hold the Government to account and hold their feet to the fire, that at the end of the day you could reject this if you needed to.

**James Kane:** I agree very much with Nick and Brigid, and with Nick particularly on the mandate, where I think there is a need for considerably more scrutiny. If you look at the negotiating objectives that the Government have set out for their FTA with the US, first of all we can see they are called public negotiating objectives, which implies that there are also some private ones. It would be very interesting for your Committee to know what those are.

They are very short. Nick said the US mandate is 20 pages long. The EU mandate with Australia is also 20 pages long. I do not know what is special about the number 20. But the UK mandate is four, so it is much shorter. Large parts of it, quite frankly, can only be described as banalities, things like, "Expand opportunities for UK financial services."

The most interesting feature of EU mandates is how often they say that the negotiators shall not do something, "Shall not do anything that would prejudice the application of the precautionary principle", "Shall not prejudice the two sides' right to regulate." Apart from putting the NHS on the table, it is very hard to see anything in this mandate that the Government are saying they will not do, and I think that is definitely something to which the Committee ought to apply some scrutiny.

Q40 **Mark Menzies:** That is great. Just supplementary to that, and again this is to all three of you, the Government are committed to providing this Committee with appropriate access to confidential negotiating documents. What would you consider to be appropriate, and which key documents should we be focusing on?

**Chair:** You have about 30 seconds each.

**Dr Fowler:** I would probably say take more advice from people who have actually done the negotiations about the extent to which providing texts, and particularly public texts, can cause a problem. Also, build in lesson learning on the Government, the Committee and Parliament as you go along about what documentation or publication has helped or caused a problem. There is a lot of learning to be done.



**Nick Dearden:** Given that what you are allowed to see you will only be allowed to see in confidence, I do not see why you cannot see everything, all the negotiating texts. One small problem, which I will just raise before the end, is the Government have signed a letter with the US saying they will keep all negotiating documents, at least originating from the US side, secret for five years after the deal is signed. That could be a big problem, and I think it would be really interesting to find out what the Minister's response to that is.

**James Kane:** I think, as a bare minimum, you should see anything that the US negotiators see.

Q41 **Chair:** Just before I go to the next point, I want to pick up on something that Brigid Fowler said about signing trade deals and then regretting afterwards—sign in haste and repent at leisure. Has that happened often, and is there a famous case of somebody doing that?

**Dr Fowler:** The case that is always mentioned is the case of Wallonia. That is an interesting one because that was before it was even signed. The regional Parliament would not even let the Government sign the thing. It was an interesting case where they had some ex ante power.

There is a whole list of treaties to which the US has signed up and the Senate has never ratified. When you go on to their website there is a whole great long list of them, famous cases where the US has failed to ratify treaties. That is a somewhat different system, where you have the separation of powers, and it is very much built in that the Senate might well do that.

Q42 **Chair:** Some persons in the Senate woke up and thought, "This is a very bad idea, put the brakes on"?

**Dr Fowler:** In a parliamentary system like the UK, if you were to end up with a position whereby the Government had negotiated a treaty that they then could not get through domestically, something has gone very badly wrong in those circumstances. I would offer the example of the Withdrawal Agreement, the original Withdrawal Agreement, which was a bit of a lesson in how not to go about negotiating an international treaty that you can get through at home, I am afraid. There are some famous cases.

Q43 **Chair:** Just before we move to Mark Garnier, I want to ask a question about the formal powers that this Committee should seek in relation to the scrutiny of free trade agreements. Where are we undertooled, if you like? We have a fair idea ourselves, but you are our witnesses and we are gathering evidence from you. We cannot give evidence ourselves.

**James Kane:** The obvious answer is that the UK Parliament has next to no powers to stop a trade agreement being ratified and implemented. The procedures under CRAG are extremely weak. The House of Commons can delay the ratification of a treaty, but there is no yes or no vote. There is the requirement to implement treaties through domestic legislation,



but if you look at an awful lot of the contents of a typical free trade agreement, Parliament has already really sought the pass on that because the centre of a free trade agreement is tariff reductions, and the Government can do that by a negative statutory instrument under section 9 of the Taxation (Cross-border Trade) Act 2018. Even on things like regulation, the Government already have powers under secondary legislation to do something like authorise chlorinated chicken. That has been done with amendments to the relevant EU regulation, which have already been made using the correcting power.

The typical locus for parliamentary scrutiny of trade agreements in most countries is that Parliament has some control at the end of the process, so the Government keep talking to it throughout the process so as to avoid the situation that you were just talking about, that it rejects the—

**Chair:** Wallonia.

**James Kane:** Exactly, or the anti-counterfeiting trade agreement would be a good example as well. But since the UK Parliament has such limited powers to reject a trade agreement at the end, the incentives for the Executive to engage with it are perforce limited.

**Dr Fowler:** I would agree with that. On the issue of what James called involuntary defection and the weak powers at the end, you could make a case that, in a parliamentary system like ours, that risk or that threat is not really real because the Government will always have a majority and they will always be able to get through whatever they want. You can make that argument, but I would say that there is still value in terms of transparency and legitimacy to having some kind of debate and vote at the end.

Q44 **Chair:** Is there value also for negotiators, who are in a room quite divorced from the situation, to go back and look at a *Hansard* text to see what is flying from the Members from Cleethorpes, Fylde, Preston, Na h-Eileanan an Iar, London or wherever, and they can turn around and use that as a negotiating lever?

**Dr Fowler:** In theory, yes. That is a classic move to say, "I would love to give you that, but Congress will never wear it", or, "My Legislature will never wear it." As I say, the potential issue in the UK is whether that is a credible threat if you have a Government that enjoys a large and fairly compliant majority. Does your negotiating partner think, "That is not a credible threat; they will vote for anything"? That is a domestic political issue.

Q45 **Chair:** A large Conservative majority is contrary to the UK's interests? Sorry, I could not resist that.

**Dr Fowler:** Those are your words, Chairman, not mine. On grounds of transparency and legitimacy, there can be good grounds for bringing forward some form of approval motion, for example, so that everybody knows the House has seen it, the House has signed off on it and the



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Government can go ahead feeling fairly confident that they have that domestic support.

**Chair:** Sorry, I could not resist that one. I apologise to my Conservative colleagues as well.

**Nick Dearden:** I agree with the vote at the end and also the vote at the beginning on the mandate, like I said, but also access to texts, which I just do not think you have at the moment in sufficient enough quality or quantity to be able to really scrutinise properly. You could also look at setting down a proper framework for impact assessments, consultations, and so on. An impact assessment could be anything, really. The kind of headline growth figure that is often produced around trade deals is pretty meaningless. What does it actually mean when you dig down into different parts of the country? What does it mean for different sectors? What does it mean for the environment? What does it mean for food standards, consumer rights or whatever it may be?

Those systems are very well developed in both the European Union and the United States. I think we could develop those systems much, much better here. That might be something the Committee wanted to look at, too.

**Chair:** Again bringing this session to a close is Mark Garnier, unless there are any other pressing questions from any other member. It is five to five. Unmute, Mark Garnier. My lip-reading skills have not reached their zenith yet. I think you are saying, "Vote SNP" or something, but I would not want to put words in your mouth.

**Mark Garnier:** I was, that is exactly what I was saying, Chair. Absolutely, vote SNP. You cannot get enough of them. My apologies for being away for the last half an hour as we do the parliamentary conga around Westminster Hall.

**Chair:** That is understandable.

Q46 **Mark Garnier:** Could I start with James, just picking up on that last piece about the fact that we do not have any ongoing dialogue between Parliament and about trade negotiation as a concept? Given the absence of that, what do you think we should be doing in this International Trade Committee in terms of trying to develop that dialogue, and what should our output be in terms of informing the wider population?

**James Kane:** I would say there is a lacuna around formulating a strategic vision for the UK's trade policy. That is partly a problem with the Government, that they have not published a full trade strategy, but it is also something that the Committee could do some really valuable work examining with witnesses from academia and from business where the UK should really be concentrating its efforts, both in terms of bilateral trade policy, trade agreements, and so on, and also autonomous trade policy. What should the UK be doing in terms of its trade remedies regime? How protectionist should it be on purely domestic issues, like the tariffs we charge countries that we do not have a free trade agreement



with? Those are areas where there is a real gap in the public debate, which is almost obsessively focused on trade agreements at the expense of other aspects of trade policy that are at least equally important to the domestic economy and society.

**Q47 Mark Garnier:** Nick, you came up with a long list a few minutes ago about what we should be looking at in terms of things like impact assessments and how it affects different parts of the country and all the rest of it. Do you think a Committee like this could ever come up with all of that stuff? Is it something that is beyond the capability of a Select Committee, or should we try to do that?

**Nick Dearden:** It is very difficult. As I was saying earlier, if you look at the European Scrutiny Committee, the staff they had and the powers they had, it was much greater. Of course, they had an awful lot to look at, but it seems to me that what you are looking at is no less important for people. We have got over the days when nobody was interested in trade deals. I think, yes, a beefed-up system is something well worth fighting for on this. One of the problems with trade deals is they affect so many different areas, and so much of it is very complex. It can be very, very hard to get to grips with. You need some real specialist experts to help you on that.

For example, this goes way beyond just the process of negotiating a trade deal. We know the British Government are very, very interested in negotiating on digital commerce and e-commerce. They very much see that as the future for this country and something where we could develop our expertise. That opens up a huge can of worms in trade terms, because you start talking about all sorts of policies and disciplines that could have major impacts on our rights online, on our rights to intellectual property, and all sorts of other issues. Those kinds of issues are deep and complex. It is very worth looking at. It is very important to look at, but it is going to take some getting your head around. I really think that the more expertise you can build around this Committee and the more support you can get, the better the job you will be able to do.

**Q48 Mark Garnier:** Brigid, you have a bit of experience in working with Select Committees. Do you think we stand any chance of getting the expertise we need?

**Dr Fowler:** I would very much back up what Nick has been saying about thinking about the resource implications of all of this. There is obviously a risk, particularly if the Committee goes in for a bit of a fight with the Government about getting lots of texts and then does not have the time or the skills to understand what on earth you have been given. That is a risk for the Committee, and obviously the Committee will need to talk with other Committees, and with the Clerks and other authorities about resourcing on the staff side. My understanding, purely anecdotally, is that there is quite a competition, both with Government and with the private sector, for people who understand trade matters at the moment, and



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there is a bit of a fight for good people, so you may have a challenge on that front.

**Chair:** Thank you very much. Talking of good people, I think we have had good people here in our panel this afternoon, and we thank you very much. I also thank my colleagues for returning after their conga line. I do not know if any of my colleagues who were away have any pressing questions they would like to ask, or maybe they could write. No, that is fine. Thank you very much all for your afternoon. I wish you a good day. I have certainly enjoyed it and have a lot to think about, particularly in the volume of stuff that could come to us and the capability of understanding it, but also the culpability if you miss anything that could be thrown your way. Thank you all very much, and with that we will conclude.