



The Select Committee on the European Union

External Affairs and Internal Market Sub-Committees

Corrected oral evidence: Brexit: future trade between the UK and the EU

Thursday 8 September 2016

11.30 am

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Members present (External Affairs Sub-Committee): Rt Hon the Baroness Armstrong of Hill Top (Chairman)¹; Lord Balfe; Lord Dubs; Lord Risby; Lord Stirrup KG GCB AFC; Baroness Suttie; Baroness Symons of Vernham Dean; Lord Triesman

Members present (Internal Market Sub-Committee): Lord Whitty (Chairman); Lord Aberdare; Baroness Donaghy; Lord German; Lord Green of Hurstpierpoint; Lord Lansley; Lord Liddle; Lord Mawson; Baroness Noakes; Baroness Randerson; Lord Rees of Ludlow; Lord Wei

Evidence Session No. 2

Heard in Public

Questions 11 - 19

Witnesses

Dr Markus Gehring, Lecturer, Faculty of Law, Cambridge University, Mr Raoul Ruparel, Co-Director, Open Europe, and Mr Luis González García, Associate Member, Matrix Chambers.

¹ Baroness Armstrong of Hill Top was chairing in place of Baroness Morris of Bolton, who was unable to attend the meeting.



Examination of witnesses

Dr Markus Gehring, Mr Raoul Ruparel and Mr Luis González García.

Baroness Armstrong of Hill Top took the Chair

Q11 The Chairman: I welcome our three visitors for this session. I am chairing it because our normal Chair is not well this morning, so I hope you will just run with me; I do not normally chair these sessions. We are very grateful to you for coming in. We are trying to learn at a fairly fast rate so that we can discharge our responsibilities for holding the Government to account on how they are approaching the negotiations both with the EU and with the rest of the world, in a sense, on the new status that we have to seek to achieve. You bring some important experience and we have had a look at some of the work that you have already done, so thank you for that. Thank you for spending time with us this morning. We may lose members, but that is not about you; it is simply that there are other issues going on in the House that members need to go to, so I hope you do not feel affronted that people are getting up and leaving. I am not sure that too many people need to, but there is other business on the Floor.

We wanted to start with you, Mr García. Is it okay if I call you that?

Mr Luis González García: That is fine.

The Chairman: As I said, we have read one of the articles that you have written and we wondered if you would talk us through the practicalities of negotiating a free trade agreement with the EU. As you heard, we looked in the previous session at the whole issue of the WTO and the different relationship that we will need to negotiate with it, but the relationship with the EU in any of those other negotiations and the stand that we take are going to be very important. Could you elaborate further on precisely what we will need to negotiate with the EU, and on the order or process of what we need to do for any FTA to be agreed and to take effect?

Mr Luis González García: The negotiation process with the EU has four phases. The first phase is the planning. The planning phase, or the pre-negotiation strategic planning, requires the Government to engage in consultations with three big sectors. The first is the public sector, or the relevant government and department offices, bodies and agencies that may be affected by the negotiation of a free trade agreement and/or are responsible for the policy item that would be subject to the negotiation. The second element is the consultation process with the private sector, which is an extremely important aspect of the planning of the negotiation. As a trade negotiator, the first thing you need to do is to absorb information—statistics, information about supply chains—from the industry, listening to consumers associations, importers and exporters, farmers associations, industries, universities and science. It is hard work and a tremendous and complex exercise. Once you get that information, the third element is Parliament. Normally, trading countries engage with



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Parliament, especially in 21st century free trade agreements where there is more transparency. Before, there was not that much transparency and governments would just negotiate in a very confidential manner.

With those three elements, once the Government have absorbed all the information, they define their negotiating objectives. Once they define their negotiating objectives, they need to conduct analysis of the economic, legal and political implications of the trade model they want to propose to the other side. When the Government have established their negotiating objectives in the particular circumstances of the UK and EU negotiation, they will be in a position to decide when to trigger Article 50.

Then we go to the second phase of the negotiation, which is the negotiation of the guidelines that will be adopted by the Council. On trade issues, there are two important elements. One is the WTO. Negotiation of the UK's WTO status would form part of the guidelines. The second aspect is guidelines as to what should be covered by reference to the word "framework", the future framework. That is extremely relevant and would need to be clarified in the guidelines, and assuming that the Council agrees that the framework includes the negotiation and conclusion of a free trade agreement, it should be covered by Article 50, and in my opinion it is. That is one negotiation.

Then the Council will establish timelines and working groups. The second phase of the negotiation is the negotiation of the mandate of the Commission. The Commission will negotiate with the UK what should be included in the free trade agreement. In practice, the negotiation of those working groups takes a long time, exchanging ideas of what should be included in the FTA. Obviously it is a different negotiation. Time is ticking, so I would not look at how long it took the US and the EU to agree on the mandates, or Canada; this is very different. It is the second negotiation.

The third negotiation is the actual negotiation of the text, the substance of what would be included in the FTA once the Commission sends the recommendation to the Council, and the Council agrees and issues its mandate. Once the Council issues its mandate, the technical negotiation starts. The last aspect of the negotiation, which is a very complicated one, especially with the EU, is that there is very likely to be a mixed agreement, so at the end of the technical negotiation you need to engage with or negotiate with the legal services of the Commission. That, in my experience, is a long process; it is not easy. Then, when you have dealt with the legal services, it needs to be approved by the European Parliament and the Council. That is a different aspect, because there is also a political negotiation and you might have to go back and revisit some issues that had been agreed from the technical side. Once it is agreed, if it is a mixed agreement, all the other 27 national parliaments will have to approve the FTA.

Q12 The Chairman: Very straightforward. It has never been done before, so we do not know how much will need to be done before the two years are up. What do you think are the main challenges facing the UK? I ask the



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other two witnesses to come in when they want to. Because we have such a tight amount of time, we are trying to be fairly direct.

Mr Luis González García: From a trade negotiator perspective, on the technical side—I am not going to deal with the political side—I envisage challenges on agricultural goods. It should be straightforward. I see no problem with zero tariffs in agricultural goods and fisheries, but in fisheries I see a challenge with market access and fishing rights. That is the challenge in agricultural goods. In industrial goods I see no problem. I do not see why there should be barriers or obstacles in the automotive industry, which would be a sensitive area; I do not see why that should be a complex issue. In industrial goods, I see no problem. In services, trading services, full access to the EU market is probably a very sensitive issue. Apart from that, it really depends whether the two sides want to include dispute settlement in the investment chapter. If they take that out, as they did in the Ukraine-EU FTA, things would be easier on the continent. As we know, CETA and the TTIP dispute settlement on investment protection, even in this country, is an extremely sensitive issue. If that is excluded, considering the fact that the UK has BITs—bilateral investment treaties—with most of the eastern European countries, it will remove one of the biggest challenges in the negotiation of an FTA.

Mr Raoul Ruparel: You cited the time issue, Chairman. It will be important to try to get some feeling up front of how long this will take. I think it will probably take more than two years, so there needs to be some idea of the willingness either to extend the Article 50 period or to consider some kind of transitional period after those two years. That is the biggest technical risk, from my perspective, and the UK should endeavour to get a clearer position from the EU on that up front. On content, I echo the points on services. That will clearly be the most difficult sector, particularly financial services, as there is no precedent for third-country access to the Single Market in financial services and other services.

Dr Markus Gehring: I am struggling to summarise what we teach in a graduate law course during an entire year in a five-minute statement, so I invite you all, or your staff, to follow the EU external relations course that is offered across the UK in many universities. It is a very complicated area, because on many of these technical details we have jurisprudence by the Court of Justice, so the Commission is not only bound by the political will of the Member States and driven by what might be in the best interests of the European Union; there are also legal limits as to how far the Commission can go in certain areas that the Commission will have to observe, or it will have to amend the treaties in order to accommodate such a new agreement with a former Member State. That is an entirely different kettle of fish. Renegotiating the foundational treaties of the EU is no small feat; some commentators have said it is virtually impossible.

For example, there could be an interest in the UK to have a Swiss model for dispute settlement. The Swiss model is that notionally you have a



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market issue that arises in the Swiss-EU relationship that is first decided by the Court of Justice and then that decision by the Court of Justice goes to a joint committee—a committee between Swiss officials and Commission officials—which decides how the issue has to be viewed in the bilateral relationship between the EU and Switzerland. The practice over the last 10 years has shown that Commission officials are very reluctant; it is basically impossible for the Swiss side to get any change negotiated in the joint committee, because the Commission officials feel legally bound by the definitive judgment of the Court of Justice.

The issue of dispute settlement and who can access it is going to be a huge area for negotiation. Might competition rules apply? We said that with industrial goods there should be no problems, but the Canada-EU agreement, for example, includes a provision that none of the parties is allowed to lower their taxes so significantly as to attract investments purely on the ground of very low taxes. In many of the modern FTAs, which are not aimed at integration of national economies, there are very technical rules that try to prevent gaming the system, as it were, and really try to establish a level playing field.

Q13 Lord Liddle: This question is on the relationship between the withdrawal treaty and the FTA. Lord Kerr gave evidence to the main Committee on Monday, and he stressed the importance in Article 50 of the clause that talks about the framework for the future relationship as setting out, or potentially agreeing, the framework for the future economic relationship between the EU and Britain with the possibility that the kind of hard detail of the FTA would be agreed at a later date. What do you think about what could be included in those framework principles that would later determine what was in the FTA?

Mr Luis González García: In my opinion, the broad reference to a framework includes the negotiation of a comprehensive free trade agreement. It makes sense in its logic that the negotiators of Article 50, if they wanted just to narrow the scope of what can be negotiated under Article 50, could have set guidelines or principles, but the framework is broad enough to include the future trade rules. That, I think, is a sensible interpretation considering that you withdraw, but at the same time you have to give stability and certainty to the businesses, investors and consumers of Europe. In the spirit and objective of Article 50, I would say definitely that you need clear, permanent and predictable rules for the future relationship between the two sides. That definitely would need to include trade.

Lord Liddle: Does that mean that you think we could have an FTA agreed within the two-year timeframe of Article 50? That is what I do not quite understand.

Mr Luis González García: The two-year timeframe is not very realistic. I think it is highly unlikely that in two years you can negotiate it because, as I mentioned before, there are three phases. Once Article 50 is triggered there are three phases: negotiating the guidelines, negotiating



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the mandate—that might take a long time—and then negotiating the substantive issues. That is why it is difficult in the two-year timeframe, but, as my colleagues said, they need to agree on an extension to the two-year deadline.

Dr Markus Gehring: I agree with my colleague that it would be desirable, if that were agreeable to the European side. The information we have received in recent weeks seems to agree with Lord Kerr. You can probably establish a programme of negotiation and the broad outline of what a free trade agreement with the then former member state looks like, but it is not very realistic either to use Article 50 as a legal basis for such an agreement or to hope to conclude those negotiations within the two years. The Commission is firmly of the view that first you leave and then you negotiate the future relationship. It would be very difficult for the UK to convince the Commission otherwise.

Mr Raoul Ruparel: I think there is leeway in Article 50 to negotiate as much as Mr García suggested. The Commission has its view. I think the Member States have a slightly different view. Ultimately, the mandate will be tasked by the member states, and if they set a wide and broad mandate the Commission will have to fulfil it, so I think there is scope there. Looking at this from a political perspective, from the UK's negotiating approach, there is a clear advantage for the UK in trying to keep the withdrawal agreement and the trade agreement as linked as possible. The types of areas where the UK has significant leverage in these negotiations—foreign policy, security, contributions to the EU budget, what we do on immigration—are both a constraint and an area of leverage, but a lot of those areas will tend to be grouped in the withdrawal agreement. If we negotiate that on a narrow basis, when it comes to negotiating the trade agreements, because the EU is going to be a much larger trading block the leverage will be more skewed in its favour, so keeping the two linked will be vital for the UK in maximising its leverage in the negotiations.

Mr Luis González García: I am not entirely sure that the Commission's position is that first you exit and then you negotiate an FTA. That was the Trade Commissioner's view and she has not repeated it since the interview at the BBC. The President of the Commission has never said anything like that. It is quite telling that she has kept very quiet about the position she gave in an interview back in June.

Q14 **Lord Triesman:** In your sequence of events, Mr García, you said that it would be very important to specify what should be included in the FTAs. Are there issues or sectors that you think can be readily accommodated in FTAs, and are there sectors that you think would not normally be included in FTAs? Do you feel that there is a boilerplate of standard terms from EU FTAs that we could export into any that we were thinking of developing ourselves, given the patterns of trade that the UK follows?

Mr Luis González García: Yes. There are aspects of FTAs that are common to most agreements, so you would find it very easy to agree on



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market access, agricultural and industrial goods, rules of origin, customs procedures, customs facilitation and co-operation. You would agree to investment protection, leaving aside the arbitration and dispute resolution aspect. On services, you have telecommunications and e-commerce. Obviously you can expand it to other areas. You have cross-border services and you have to negotiate modes 1, 2, 3 and 4. Mode 4 includes movement or presence of natural persons—businessmen, skilled or lower-skilled workers. You would also include government procurement as one of the issues in the FTA, as well as competition, intellectual property rights and geographical indications. Land transportation, maritime transportation and air transportation can be included in the treaties in FTAs. In EU comprehensive FTAs, the 21st century EU agreements, you would have to include sustainable development, human rights, environmental protection and labour rights, because that is EU trade practice. Those are issues that the EU always negotiates in its FTAs.

Lord Triesman: Is there anything that you think would not commonly be in an FTA but which might be pursued by the United Kingdom?

Mr Luis González García: In the negotiation of an FTA you can include many things that are related to trade. I have seen FTAs that included issues such as access to the Rome statute of the International Criminal Court or anti-corruption provisions—anything that could provide co-operation, transparency and due process. There are many elements; it depends on the objectives of the negotiation. The EU negotiates three different FTAs: FTAs with a political dimension; FTAs with a developmental dimension, such as FTAs with the Caribbean countries or with central America; and FTAs for security and political reasons, such as the ENP—the European Neighbourhood Policy—with all the former Soviet countries. They are different FTAs. There are FTAs with an economic objective, such as with Canada, Mexico, Chile and obviously the United States. You have different elements. There is also the fact that some FTAs form part of a global agreement; the EU negotiates a global agreement, a political co-operation agreement and part of it is an FTA. In some cases it is just the FTA and there is no political co-operation or scientific co-operation in the FTA, and there are no security aspects in the FTA. There is a lot of creativity in the negotiation of an FTA.

Dr Markus Gehring: Let us be honest: the current *acquis* of EU rules is normally much broader, so your right not to be discriminated against on the basis of your language would not normally be included in an FTA. We have seen in Canada that some mild form of mutual recognition of qualifications, which might be very important for UK universities, for example, is included, but that is the first time to my knowledge. There are quite a few areas of the existing EU *acquis* that I have not seen in any FTA in a bilateral relationship but which might be important for the UK. Certain forms of linguistic rights might be interesting for UK companies that do not necessarily operate in Romania.



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Q15 **Baroness Noakes:** We have mentioned a couple of times the free trade agreement with Canada, and people have looked at that as a potential model for the UK. Would you comment on what market access would be like under the CETA versus access to the internal market, and what the impact would be on particular sectors in the UK?

Mr Raoul Ruparel: There is no doubt that it is the most comprehensive agreement the EU has sought to strike, but, as was hinted at, it still falls some way short of the *acquis* and the Single Market as it is. It includes relatively good access in terms of industrial goods and scrapping 100% of tariffs, albeit over a number of years. It involves a relatively good reduction of tariffs in agricultural goods, although some exclusions apply in poultry and certain other specific agricultural goods. It includes, as was hinted at, some mention of professional qualifications, although it is nowhere near as advanced as in the EU, but even the EU falls short of its aims in that area. It is fairly good on opening up public procurement markets at all levels in Canada and in the EU, although there are some restrictions on certain provinces in Canada.

On areas such as services it is fairly limited. It provides some rights of establishment, and the ability to set up subsidiaries and entities in the EU, but it is far short, particularly in financial services, of providing a passport and being able to provide a service from your home base in the UK, for example. In all other areas of services it is relatively limited, and there are hundreds of pages of restrictions on the services that are not opened up. Although it is a comprehensive agreement, it would be a big change for the UK, particularly on the services side. On the goods side, if you had phasing in over time, there would be a significant change over time, but if we presumed that the rules were applied from the get-go, there would be a change but not as big as in services. It is a starting point if you are looking at what type of agreement framework to use, a comprehensive living agreement. It is a modern agreement in that sense and I would consider it preferable to some of the piecemeal bilateral deals we have seen before, but in content the UK would probably be aiming a lot higher.

Baroness Noakes: Could I clarify that? You said there would be a big impact in services. If we strip out financial services, how big an impact would there be, given that the EU is not actually a perfect internal market for services?

Mr Raoul Ruparel: That is an important point. The Single Market in services is far from as effective as the UK would like or has pushed for over the past decade or so. In my understanding, there are certain sectors, as may have been mentioned in the previous session, such as aviation where there is fairly good integration, but there are also more precedents for non-EU countries having access to Single European Sky and the European Common Aviation Area (ECAA). There are more precedents for agreement on that. In areas such as broadcasting, there is reportedly very good access for broadcasters, and services provided across borders.



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Looking at professional services, the services tend to be provided on the ground more than passported from a home base, so that would mean maintaining free movement of people to provide those services on the ground, and maybe recognition of the qualifications and the skills of those people, and the ability to open subsidiaries. There seems to be a tendency in a lot of the professional services to provide the service more via subsidiaries and local companies in countries. The reasons may be to do with accessing local markets and trust relative to a local partnership, but my understanding, particularly in areas such as accountancy or the big four, is that they tend to provide via subsidiaries and local companies rather than a passport, as it were, from London.

In a number of other areas, we know that there are many protected professions across the EU. In that sense, it is not necessarily easy to be a professional in the UK and provide that service across countries. In some countries—Germany, for example—the protected professions extend to being a butcher, a baker and all kinds of things that we might not consider a protected profession. The opportunity cost in services, beyond financial services and certain things such as aviation and broadcasting, is much lower, and as was hinted at there needs to be wider consultation on exactly how deep that will go, but financial services are a very large sector.

Baroness Noakes: Would either of you like to add anything?

Mr Luis González García: It is going to be a unique negotiation. From a trade negotiation perspective, it is unprecedented because the whole idea of a free trade agreement negotiation is to start from the status quo and then go forward for integration. It can be simple integration, very limited integration or deep integration. The question is how much I am going to open my market to your country, to your businesses. This is going to be a negotiation where the offensive position of the UK in many aspects is to maintain the status quo and in other aspects to go backwards; this is unique in negotiations. One of the reasons why FTAs are very complex and difficult and take a lot of time is that it is not only about the negotiations. It is not only about access and opening your sensitive sectors. It is about regulations; it is about the other country modifying its regulations or complying with your regulations, or harmonising our legislation. That is a very sensitive issue, from a legal perspective and a political aspect. That is why we see difficulties in the negotiation between the US and the EU; it is about regulation, and no one wants to give up their legal framework. In this instance, that is not the case, because the UK adopts EU legislation—it is part of EU law—so on the most complex issue of the negotiation, which is regulation, it is the same regulation. It is a unique negotiation.

I would not use CETA as our starting point. In many aspects, it is very innovative and it would be useful, but in other aspects I would look to an FTA with the Caribbean states, for example, where the UK would give access to midwives, doctors, nurses, engineers, fashion models, et



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cetera. Part of the work of a trade negotiator is to look at what you have negotiated in other agreements and take the bits that would accommodate your interests and the interests of the other side. That is why I would not say, "Okay, CETA, and from there we begin the negotiation".

The Chairman: I think you have led us into the next area that we wanted to look at, which is the relationship between free movement and an FTA.

Q16 **Lord Liddle:** You say that most free trade agreements do not offer full access in services, and that in a lot of sectors, under the existing Single Market, setting up subsidiaries is as important as passporting. That raises the question of free movement. If you have a single company with subsidiaries, are there precedents for including free movement rights within FTAs? The other thing, I suppose, is that if we want full access to the Single Market, our EU partners might say that we should still be paying into the budget. Is there any precedent within FTAs for budgetary contributions?

Mr Luis González García: On the question of free movement of persons, the short answer is no. Under an FTA you cannot include free movement of people. The EU would not be able to negotiate free movement of people in an FTA. Why? Because it can negotiate only what is included in the Common Commercial Policy (CCP). Not only that, it must take into account the objectives and principles of the EU External Action Service. Free movement of people is not included in the CCP or in the EU External Action Service. That is why it would be outside the scope of an FTA, and there are no precedents; there is no FTA where free movement of people is negotiated. On the budget issue, there is one precedent: for example, the agreements that the EU negotiates with potential members of the EU, countries that are in the process of seeking membership of the EU. A good recent example is Ukraine. It is an FTA within a global political agreement. In the FTA part of the agreement, there is no budget, but in the agreement signed between the EU and Ukraine there is an obligation for Ukraine to contribute to the budget of the EU. Why? It is for two reasons. Ukraine is interested in European funds and in European programmes, so if the UK is interested in continuing, for example, the Erasmus programme, you have to contribute. That is part of the deal. If you want to be part of EU funds, you have to contribute to the budget, but these are different kinds of contributions. It is the same thing with all the other European agencies providing funds and programmes; you have to contribute to those programmes.

Dr Markus Gehring: In an ideal world and with the agreement of European partners, a lot of things would be possible. The WTO GATS agreement itself includes Mode 4, as we said, which includes the physical movement of people. If you liberalise architectural services, you allow an architect to come to the United States and work on a project knowing that once their services are no longer required they go back to the



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country they came from. Very few countries in the world have liberalised Mode 4. It is normally under a lot of restrictions. I think the most liberal GATS schedule is that of the United States of America, and if you have tried to work in the United States or provide services there, you know what the restrictions are. A lot of thought should be invested in participating in regulatory agencies. There are now quite a few EU regulatory agencies that the UK also benefits from at the moment. Recreating all those agencies in the United Kingdom would easily eat up a chunk of the budget that seems to be overly generously allocated already. There would be precedent to accept not having any governance input into those agencies but just using them for their decision-making power and paying for that kind of service, so that would be another level of contribution.

Baroness Symons of Vernham Dean: I have a quick question. You mentioned the Erasmus arrangements. This has been one of the main focuses of a tremendous amount of anxiety among our academic community. You said that if the UK wanted to continue with Erasmus, we would have to contribute to the EU budget. Would that be negotiated only as part of a comprehensive agreement, or could one put it to one side and make a discrete agreement around something like the Erasmus arrangements? I raise it simply because we raise it constantly on the Floor of the House and clearly our colleagues in the academic world are seriously concerned.

Mr Luis González García: Yes, you can put it aside. You do not need to sign an FTA and you do not need to sign a global political comprehensive agreement to have access to Erasmus. That is independent.

Baroness Symons of Vernham Dean: Thank you.

Mr Luis González García: In all the other European agencies, most cases are done by bilateral agreement. There is a huge list. You choose the programme that you like and you sign a bilateral protocol.

I want to clarify that there are two different issues: the free movement of persons as a principle of EU law and the internal market, and Mode 4 on supply. They are completely different things.

Q17 **Lord Whitty:** Can you take us a bit further on the disputes resolution process in FTAs? At the moment we have the ECJ and the incorporation of EU law to be enforced by national courts. The smallest company or an individual can enforce it that way. This has not been the case in most FTAs, as I understand it, and the prospect of its being there to some extent in the TTIP has caused, shall we say, some political controversy. Do we have a model for disputes resolution of an FTA for the UK and the EU that allows access but would not run into those political difficulties?

The Chairman: In five minutes.



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Dr Markus Gehring: The dispute settlement clauses in FTAs are as diverse as the FTAs themselves. The standard model is very similar to the WTO. You normally have a panel. It is a state-to-state process.

Lord Whitty: Only states can apply.

Dr Markus Gehring: If your small or medium-sized company has direct access to the Government and can easily sway the entire United Kingdom to take on, say, the United States or the EU in a small matter where it feels it was not well treated by the trading partner, that is great. Most small and medium-sized companies that I know do not have that level of access. I think Piet Eeckhout mentioned Airbus. There was the famous Fujifilm case where Fuji and Kodak were battling, or Airbus and Boeing were battling, in the WTO because they could convince their Government that it was in their political and economic interest to fight the case. Some countries have streamlined that, including the EU, and the US. If you make a complaint about mistreatment in another trading partner, the US has a domestic law that facilitates that kind of process, and if the US wins the WTO dispute at the end, part of the proceeds or the gain from the retaliation could flow back to the company. It is normally a much more difficult process, and usually companies prefer the WTO process because some of the FTAs just have the first phase; they do not have an appellate body. There is no mention of retaliation at the end, so you do not get compensation if you win the case. Most would prefer the WTO dispute settlement where you can even get carousel sanctions; you change the sanctions every three months in order to convince the trading partner to bring their laws and their administrative practices in line with WTO law.

You could look at a model like the EFTA court. There could be a UK-EU court. The UK is a country that prides itself on its very stable and secure legal system, so it might be something that the UK negotiators want to explore. A joint court between EU judges and UK judges to administer the new comprehensive relationship could be possible. Some of those court arrangements have run into EU law problems, because the Court of Justice has said that not even the Strasbourg court should be above the Court of Justice in Luxembourg. The creativity may run into slight difficulties on the EU law side rather than what is possible in an ideal world.

Mr Luis González García: We need to look at dispute resolution and at the rights of businesses, investors and consumers faced with regulations and measures that may be affected by the measures adopted by the other side, the EU in this case, without the European law framework. I would say that we need to look at an FTA. There are a lot of dispute resolution provisions in each chapter, so it really depends. For example, if we are talking about an importer or an exporter, in the chapter on customs procedures there are rights for importers to file, and the treaty provides for the right to challenge and appeal the decision by an impartial, neutral administrative tribunal, in quasi-judicial or judicial proceedings. If it is competition, there is another chapter; if it is IP rights,



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there is another recourse for small and medium-sized enterprises; and if it is investment, there is another set of provisions that deal with the rights. Let us not forget that FTAs provide better rights to businesses, not fewer rights. They do not go backwards; they go forwards. An FTA gives more rights to businesses and investors, whether they are small importers, consumers or IP rights holders, et cetera.

Markus was talking about the big picture of interstate dispute resolution, but there are many mechanisms. As a trade negotiator and having implemented an FTA with the European Union, I know that the process is very simple. There is constant communication between the ministries of the two countries—the international departments and the trade departments dealing with the issues on a daily basis—where many of your concerns are going to be resolved. One of the good things about an FTA is that it provides for an additional forum where the state will call the other state to say that they have an issue. That is why you will see sub-committees, committees, working groups and subgroups in FTAs; it is all about exchanging and trying to resolve all the issues, because there are plenty of technical issues.

The Chairman: We are going to be training a lot more lawyers.

Mr Raoul Ruparel: Can I add one point to build on the UK/EU court point? We have to bear in mind the withdrawal agreement. There will be lots of horizontal issues where previously ECJ jurisdiction applied and there will be need for arbitration, on security co-operation and things like that. A big court—some version of institution-building—and more advanced arbitration, given the depth and breadth of the agreement likely between the UK and the EU, will probably be needed.

Q18 **Lord Risby:** I want to come on to an extremely difficult area. You said, Mr García, that regulation on the TTIP discussions has been a huge issue. Equally, we heard in our previous session that many parts or elements of the Single Market were very open and liberal, so there is a mixed picture despite what public opinion might be. In that context, to what extent do you think that, if there is an EU-UK FTA agreement, the level to which the goods and services provided by this country would be subject to a broad EU set of regulation?

Mr Luis González García: A great deal. This is a very important aspect that needs to be clarified by the Government at the negotiating table with the EU. I imagine that in the negotiation the EU is going to ask, “You want access to financial services. Which of my directives are you going to implement and replicate in your law?” That is a decision for the UK Government, because it is an open economy and one of the most liberal economies in the world, and due to the convergence of legislation in the application of EU law I can see that as a problem. In financial services or in services in general, the easiest thing would be for the UK to adopt the EU law; in that way, the level of access to EU services would be greater. Obviously, the more integration you want and the more you want to be in the Single Market, the more locked into EU law you would be. That is a



policy decision, because more integration or fuller access to the Single Market means less flexibility in negotiation with third countries.

Dr Markus Gehring: Sometimes the EU allows for equivalence. If you have equivalent standards that are equally stringent and you do not like, say, the EU ETS on climate change—an area I know quite well—and you would rather have a carbon tax, but the overall price of carbon between the two systems was similar, there could be an equivalence negotiation. You can see that in other areas. Even the Technical Barriers to Trade (TBT) and the Sanitary and Phytosanitary Measures (SPS) agreements, the standards agreements on trade and goods in the WTO, favour international standards over unilateral standards. Of course, the closer you get to the EU Single Market, the more there will be demand on the EU side to follow the EU standards to the letter. Politically, that is very difficult, because sometimes you do not have political input into how the standards are made. You have heard or read what the Norwegian Foreign Minister said; you have to phone your friends in Helsinki and Stockholm to get into the 15th annexe the little issue that is really important for Norway. It is a very uncomfortable situation, and more often than not partner countries that are in the EU will say, “Actually, we have our own little battles to fight in these standard negotiations, so we cannot also take care of your aspects”.

Mr Raoul Ruparel: It is worth mentioning that in a number of free trade agreements the EU tries to export its products, standards and rules of origin. In CETA, Canada has to sign up to EU standards and rules of origin. The rules of origin were discussed in the previous session, but basically they are about proving where a product is manufactured and if it is sufficiently manufactured in your own country. There are accumulation rules on how much of other products from outside is brought in and whether the tariffs have been paid on that and what-not. Those are rules that you have to meet, and that will be an additional administrative burden for businesses and goods exporters.

On services, the equivalence side is quite limited and specific. I will speak on financial services, an area I know better. For example, certain regulations have equivalence and third-country access built in; MiFID II and MiFIR, which is coming up, are well documented and can give pretty wide access if you meet the equivalence standards, which is a political not a technical decision. That can allow you to have passport-like rights in applying investment services. Equally, the capital requirements directive does not have any third-country equivalent, so you cannot passport in your banking services. In that case, if you want to apply those services, you have to deal with all the local authorisation and local rules and regulations. How the rules and regulations you have to meet on services will work is a patchwork.

The Chairman: We are running out of time, but I want to broaden us out from the EU and ask Lord Stirrup to put his question.

Q19 **Lord Stirrup:** Some people have suggested that legally the UK could



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remain a party to existing EU free trade agreements even after it had left the Union, so they would become agreements between the EU plus one and a third party. Is that a credible path? What would the third parties be likely to think about it, and would it be in the UK's interests to follow that?

Dr Markus Gehring: I think members have seen the blog that I wrote in March. Not much has changed from my point of view since I wrote that. There are four or five aspects that make a simplified version of, "We are a party to these free trade treaties", and some are more complicated. The first aspect is that some FTAs, or some trade agreements, are just concluded by the EU, so there would be no access to the UK. Even some of the mixed agreements specify that the application of the agreement is really restricted to EU Member States, which then makes it very difficult just to partake in those agreements. Of course, if your Article 50 negotiations result in some form of understanding on the 50 or so FTAs that the EU has concluded, everything is fine and you can continue as before. Even if that is not the case, there is the added problem that either the EU or the third-country partner would probably have a right to request some form of renegotiation. I tried to explain that in the sense the EU negotiated as a customs union with the internal market at its heart. If the UK can no longer participate in the EU internal market, in my view it can no longer fulfil a good chunk of those free trade obligations, and that triggers the renegotiation. Some partner countries might not have an interest in renegotiation but you still have the EU at the table. The EU could take the very drastic step of either withdrawing or terminating those kinds of agreements, if the partner still lets the UK as a non-EU member state participate in that relationship.

Lord Stirrup: It is an approach that could be pursued under the Article 50 renegotiation.

Dr Markus Gehring: That would be my advice, yes.

The Chairman: We have not covered everything. If there are things that you would like to contribute and you have not had the opportunity to do so today, please write and the secretariat will make sure we hear about them. We are sorry that we have had to squeeze everything so much, but we are, as I said, trying very quickly to get a fairly comprehensive view and understanding of things so that we are then able to deal with the Government more effectively. Thank you enormously for coming. I thank colleagues too, because you have had a long session this morning; Larry and I appreciate that. Thank you very much indeed.