

European Scrutiny Committee

Oral evidence: [Parliamentary Scrutiny of EU Trade Deal: Canada/EU Comprehensive Economic and Trade Agreement \(CETA\)](#), HC 792

Wednesday 26 October 2016

Ordered by the House of Commons to be published on 28 October 2016.

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Members present: Sir William Cash (Chair); Geraint Davies; Richard Drax; Peter Grant; Kate Hoey; Stephen Kinnock; Mr Jacob Rees-Mogg; Kelly Tolhurst; Andrew Turner

Questions 1-46

Witness

[I](#): Rt Hon Dr Liam Fox MP, Secretary of State for International Trade

Examination of witness

Witness: Rt Hon Dr Liam Fox MP.

Q1 Chair: I will start with an opening statement, because we need to get this on the record. Trade deals have been the subject of fierce legal and public debate in recent months. There have been public demonstrations about CETA on the street, given concerns over its investment provisions and implications for labour and environmental standards. It has been debated by Parliaments across the EU, and it has been referred to some of the European Union's highest courts, such as the German Constitutional Court. The European Court of Justice is considering the EU-Singapore FTA in parallel, which will have implications for all EU trade deals, including CETA.

The Committee recommended, I think I can say with some prescience, an urgent debate for CETA on the Floor of the House on 7 September. As you acknowledge, and thank you, your decision to agree to the provisional application of CETA—even though it is in practice unlikely to take effect until next year—and to the conclusion of CETA itself constitutes an override of our scrutiny reserve resolution. I know you understand that. Overriding scrutiny on an agreement of such evident legal and political importance, given our Standing Orders, before MPs have had an opportunity to debate its content and implications for the UK is a serious matter. For these reasons, we have requested an urgent evidence session. Thank you for coming.

The first question that I want to put to you is this: CETA has major implications for the UK, as I have just indicated, both while we remain a member of the EU and after the UK leaves the EU. You have stated that you “welcome a full debate either later this year or early in 2017”, but this would come after the Government have already confirmed their agreement to its provisional application. Is such a debate not too late to be effective?

I would just add one or two quick questions with it. When will the debate be? Will it be on the Floor of the House, which we recommended on 7 September? Could you give some idea as to how this unsatisfactory situation has developed, given the fact that you, your advisers and UKRep must have been in on discussions at an earlier stage? What troubles me and others is the extent to which it appears that perhaps there was an element of bouncing going on, as a result of which we are in the situation we are in now. Would you be kind enough to answer?

Dr Fox: Thank you very much, Chair. If I may, I will begin by reciprocating with a short statement, which I hope will clarify all the points, in fact, you have just raised.

First of all, thank you for the invitation to appear before the Committee, which, as you know, I was very keen to accept. I welcome the



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opportunity to discuss CETA scrutiny. It is a good trade deal for the UK, which will promote jobs and growth and help our businesses to develop and strengthen trade links with Canada. It will increase our ability to access Canadian goods, services and procurement markets. It is estimated that the deal will be worth as much as £1.3 billion per annum to the UK while we are still a member of the European Union.

Now, it is also clear, from the week's press coverage, that for the UK to have been seen as in any way blocking the agreement of CETA would have left us in a very difficult position in relation to other member states, but of course especially to the Canadians. I think this approach has been vindicated by events. For these reasons I believe that, however reluctantly, the scrutiny override was in the UK's national interest.

I would of course have preferred, as you indicated, Chair, to have been in the same place as the Committee, and for this not to have been necessary. As you well know, I very much believe in the democratic process and the importance of transparency. As the Committee knows, I have long been one of those Members who have been very supportive of the scrutiny process.

I am sorry that the timescales meant that it was not possible to have a debate before decisions needed to be made on CETA in the Council. This was down to the parliamentary calendar and the timescale set for us. However, I therefore reinforce my commitment to the Committee today to hold such a debate. I am very happy to have that debate on the Floor of the House. Our officials are already working with business managers to identify a date, most likely, we understand, in November, but the Committee will understand that that is for the business managers.

If I can point out why we have got to where we are in the process, if—and it is certainly very much an “if”—as we hope, the CETA agreement is signed, potentially, tomorrow, this will free the way for those areas of the agreement that fall solely within EU competence to be implemented, subject to the European Parliament's approval. However, this does not apply to those areas of the agreement that are within member states' competence.

Committee members will understand that these areas of the CETA agreement will still require full ratification by the UK and other member states. Parliament retains its right to object to the full agreement and can block full ratification. As such, the process undertaken has not impinged upon member states' competence or on this Committee's right to further scrutiny in the future, prior to full ratification.

Only those provisions that we consider fall within European Union competence have been included in the decision on provisional application. This means that certain key provisions that the UK regards as member states' competences are not being provisionally applied, including portfolio investment and aspects of sustainable development. As noted, these will need to go through the full ratification process.

I would like to thank the Committee for consideration and granting of the



conditional waiver for signature. In the case of CETA, the Commission and Presidency decided to separate out the decisions on signature, provisional application and conclusion, but treat them as a package. This meant that, though showing our support for all three decisions was not legally necessary, the UK would have been accused of blocking the deal had we not expressed support for all three decisions. I hope, therefore, you will understand that it was necessary to enact the scrutiny override, to allow the UK Government to act in what we perceive to be the national interest. It was a political and national, rather than a legal, imperative.

I acknowledge that the timing of this process has been far from ideal. Since the decisions were published in July, there was little engagement with the Commission on provisional application until September in Council, with a hard deadline of 27 October to sign the deal. These timescales have meant that it has not been possible to allow the level of dialogue that I certainly would have liked. I hope it is clear from engagement with the Committee on the number of letters that we have exchanged, Chair, that the Government recognise that CETA is important, as is engaging with Parliament on this. I look forward to engaging with you further on this issue and to the debate in Parliament.

If I may, I will just add two things. If it is helpful to the Committee, I will write with the next steps for CETA, as soon as it becomes clear to us exactly what those are, in whatever timescale that may be. It might also be helpful for the Committee to note that, subsequent to the Prime Minister's announcement to the House on Monday in her Council statement that there will be a series of debates in the House of Commons leading up to our agreement on Brexit, it is the intention to have a full-scale parliamentary debate on the Floor of the House on international trade in its wider sense, and not simply on the CETA agreement. It is extremely important that Parliament as a whole, on the Floor and in government time, gets an opportunity to debate the wider issues concerned.

Q2 Kate Hoey: You mentioned it might be signed tomorrow. What have the Walloons been offered?

Dr Fox: There are, I understand, to be further negotiations later today, to persuade the various elements under the Belgian constitution that their Government might give agreement. Clearly, we are not party to what those negotiations are at the present time.

Q3 Kate Hoey: But we will know eventually, will we?

Dr Fox: We hope to know exactly what the reservations are. They are generally on the issues that have been raised politically in other countries. We believe that it would be to the huge benefit of Belgian as well as other European and Canadian citizens to see this agreement through.

Q4 Kate Hoey: Is it absolutely definite now? Is there anything that would stop the Government's final political endorsement of CETA? Is it now inevitable?



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Dr Fox: The areas that are within EU competence would go ahead if we get the current phase completed, but the areas that are reserved to national Parliaments will still be for discussion. It will be for all national Parliaments to fully ratify the agreement, before the full agreement comes into effect.

Q5 **Kate Hoey:** Originally, we asked whether it was the EU or the member states that were responsible for triggering the provisional application. Can you clarify where the power to trigger and to terminate the provisional application lies?

Dr Fox: The provisional application is dependent on the Council's agreement, and then the agreement of the European Parliament.

Q6 **Kate Hoey:** When we leave the European Union, will we still be able to get a deal with Canada separately, and quite quickly, I would hope?

Dr Fox: The Government's priority at the moment is to ensure that we carry forward our obligations for trade liberalisation. Therefore, it is in our interest to get this CETA deal. As I said, we estimate it is worth £1.3 billion per annum to the UK while we are still in the European Union. What happens when we leave the European Union is subject to a whole range of options, which I have no doubt that the Committee will want to explore, not only today but further.

Q7 **Kate Hoey:** You were obviously a supporter of Leave, as many of us were here. Is there anything now that has happened since you have been appointed to your really important position that has in any way made you think, "Perhaps I was wrong"?

Dr Fox: That may be tempting on a number of issues, but not on this specific one

Q8 **Peter Grant:** Good afternoon, Secretary of State. Could I ask first of all if you would be willing to provide me separately a statement as to what will change in UK trade law as a matter of EU competence and what are the things that are still under consideration? The public who are concerned about this are not going to understand what parts of the treaty are now irrevocable, and which parts we can still consider.

I want to go back to your repeated use of the phrase "within EU competence". My understanding is that anything within EU competence still has to be agreed by the relevant Ministers of each of the 28 member states. Is it not the case that it was open for you, or for any of your European partner Ministers, to go along there last week and say, "I am sorry. This is important, but parliamentary democracy is also important. My Parliament has not had a chance to debate this. As a Minister who believes in parliamentary democracy, I am not able to commit my Government and my Parliament to this for another few weeks."

Is it the case that you could have done that, and that you chose not to do that, as, indeed, any of the other 27 Ministers could have done?

Dr Fox: There has been an exchange between my colleague Lord Price and the relevant Lords Committee, and also with this Committee. We



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have had an exchange on the reservations that there have been. As I said, it will be up to Parliament, ultimately, for full ratification of the treaty. But I am very happy to set out exactly what has been agreed, and what will be provisional application for member states, if that is helpful.

Q9 Peter Grant: But, for the parts that are within EU competence, you have signed the United Kingdom up to that irreversibly, without waiting for Parliament to express an opinion. Is that correct?

Dr Fox: Yes, because the view was that the treaty was worth a great deal in terms of jobs, investment and prosperity, and that to delay it unnecessarily would put those things at risk.

Q10 Peter Grant: You regard parliamentary democracy as an unnecessary delay. Is it not for Parliament?

Dr Fox: No, I take exception to that, because I think that we have had a discussion on that. If it had not been for the United Kingdom Government, along with some other Governments, there would not be member state responsibilities on this. It would have been entirely within EU competence, which is not what we wanted to see. We were aware that within a number of areas, while there was a large degree of cross-party support for a number of elements in CETA, there were reservations in a number of areas, which we decided had to be kept separately, including things such as investment protection.

Q11 Mr Turner: The agenda of the Council intended to authorise CETA, ahead of the EU-Canada Summit, would have been known by UKRep and your Department for some time. Could you not have anticipated that CETA would have been of such political interest that a debate was necessary?

Dr Fox: It was not so much that, but the House was not sitting for a lot of the time, as Mr Turner will remember, and we would have had to get agreement from the business managers to have a debate in that time. I have always been very relaxed about having a debate, as I am very relaxed about having a wider debate, because I think there is a need to push the case for free trade and to push back against some of those more retrenching elements that in my view would be acting against the economic wellbeing of the people of Europe, including this country. I have been very relaxed about holding a debate. I am relaxed about holding a debate on CETA, TTIP or any other element of free trade. But I am afraid it was not possible, given the very short constraints.

To go back to the comments I made, it was not really until the Council in September that there was any clarity about what elements were going to be retained for the national Parliaments to decide later on and which ones were under EU competence. Had that gap been longer, or the proposed signing been later, it would have given us more options than were available.

Q12 Geraint Davies: You probably know that there were two debates of



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Parliament, on a Thursday afternoon last November, and the November before, where there was cross-party unanimity that there should be scrutiny of these trade agreements before they went forward. It seems to me that you have said, despite that, because there was a deadline and there was not time in the calendar, there was not time for that debate, when Parliament had said on two occasions it wanted that debate. How do you explain that?

Dr Fox: The Commission did not accept that there was going to be a mixed agreement until July and still wanted the whole agreement provisionally applied. Discussions on what could and what could not, or should and should not, be applied did not take place until September. The UK Government argued strongly for a mixed agreement in that, and we made it very clear that, because we wanted a mixed agreement, that meant that the UK Parliament, as a whole, would have a right about whether that whole agreement would ever come into effect.

- Q13 **Geraint Davies:** I asked a question about why we did not have a parliamentary debate, but we have moved on to a mixed agreement. As you are talking about that now, the big concern is about the investment court system, which has been renamed, but, as you know, concerns the ability of transnational companies to sue democratically elected governments, if they pass laws that might impinge on their future profit. What I want to know is the clarity on this. Assuming Wallonia is pressurised into signing this, given that you have signed it, are you saying that those powers would apply or would not apply in Britain now? Are you giving us an undertaking that they would not apply?

Dr Fox: Yes.

- Q14 **Geraint Davies:** Secondly, on the point you made about ratification of national Governments, my understanding is that there is no assurance that national Governments will have the right to ratify until the outcome of the Singapore trade deal court case, which will not end until next year. Therefore, would it not have been better for Britain not to sign, until we had a cast-iron guarantee that we had the right to ratify, which may be taken away in that court case?

Dr Fox: If it is helpful, I can explain how the investment protection evolved in this.

- Q15 **Geraint Davies:** It is not how it evolved. I am just wondering: does it apply or does it not? I think you are saying it does not apply, now.

Dr Fox: In terms of provisional application, it does not apply, because in the UK Government's view this was an element that the UK Parliament would want to be satisfied with before the UK ratified the agreement finally.

- Q16 **Geraint Davies:** So we are very clear about this, you are giving a guarantee today that the investment court system will not apply until the UK Parliament ratifies the agreement, and the UK Parliament will have the right to ratify it as well.



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Dr Fox: Yes. Chair, it will be helpful, I think, if I explain this. One of the reasons that the UK Government wanted this to be exempted from the provisional application was that there was a narrowed scope for investors to bring ISDS, first of all by reiterating and clarifying the right of government to regulate, by precluding offshore companies from bringing claims and by introducing the “loser pays”. They were the first elements.

There was a further development on that, which was that the Canadians agreed to introduce some of the TTIP measures, which went even further on the ICS, as Mr Davies says. There are elements that we have to think about as a Parliament on that. It removes the rights of the EU Governments and investors to appoint arbitrators. The arbitrators are pre-selected by parties. The areas that we will want to consider are whether the rules on conflicts of interest and the lower retainer fees will produce the cadre of candidates we want, and whether the concept of the tribunals will add extra delay. These are the very issues why the Government sought that this would not be provisionally applied. It is controversial. There is not cross-party support. It was only appropriate that that was retained for national Parliaments.

Q17 **Geraint Davies:** To be crystal clear, the arbitration court will not apply. Given we have given tax concessions and planning relaxation for fracking, for instance, if a future Government comes in and reverses that, in the interests of our Paris obligations, that fracking company will not have the power to sue the British Government through an arbitration court. Are you giving that cast-iron guarantee?

Dr Fox: This part of the agreement has not yet been ratified. That is up for the UK Parliament to decide.

Geraint Davies: So it might happen, but it has not yet.

Q18 **Kelly Tolhurst:** Welcome, Secretary of State. The Government have noted the importance of improving the transparency and public accountability of trade negotiations. What arrangements have you or will you put in place to facilitate effective parliamentary scrutiny of trade negotiations, particularly, obviously, in the light of the substantive override of scrutiny of CETA?

Dr Fox: The processes in terms of EU trade negotiations are set out and are followed. The question that comes from the point raised by Ms Hoey is that we will be entering into a new period. Post-EU, it will not be part of EU scrutiny, in terms of what the United Kingdom does in terms of trade agreements. It will be for the House of Commons to determine, I would imagine, along with the International Trade Committee, how that will operate. There is in the interim, of course, the whole question of what we do in terms of free trade agreements where there are countries with which the EU already has those free trade agreements, and the process by which we will approach that.

Q19 **Kelly Tolhurst:** There is nothing in particular that you have had thoughts of on how that could work.



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Dr Fox: Clearly, the House of Commons will want to look at how trade agreements were discussed by this Committee, which remains the senior committee looking at this area of policy. But, as we leave the European Union, there will be whole new areas of British trade policy to be examined, and it will be a question for the House as to how it takes the rules that applied here and applies them to future trade negotiations that are completely outside the EU.

Q20 **Chair:** Did you hear you say "the senior committee"? It is not senior to us.

Dr Fox: No, I said this Committee is.

Chair: Good. I just wanted to be quite sure about that.

Dr Fox: Chair, here I am trying to butter you up, and you are missing the point.

Chair: Not at all. I am just making it quite clear that we are the European Scrutiny Committee. That is a very important committee, which is being elected this afternoon.

Dr Fox: The point I was making, Chair, is that the experience of this Committee will be very valuable to those committees that will be looking at scrutiny when we actually leave the European Union.

Chair: I am so glad you said that. That is really good of you. Thank you very much indeed.

Q21 **Peter Grant:** My recollection is that this deal has taken seven years to get to this stage, or something like that. Can you appreciate why so many people, who are not necessarily against this deal but just a bit concerned about it, find it hard to understand why something that has taken seven years to this stage could not be kept waiting for another two or three weeks, to allow a two-hour debate in the House of Commons, so that Parliament could decide whether or not it was a good deal, rather than the Government?

Dr Fox: Yes. Different trade agreements have been negotiated in very different times. This has been a very long one, despite the fact that, as the Commissioner said, if you cannot do a trade deal with Canada, who can you do a trade deal with? It does point out the difficulty of doing a trade deal with a very large number of partners, with all the complications that that brings both at a national and, as we have discovered, a sub-national level. It is still our hope that we can do that.

It is worth pointing out that NAFTA was agreed in about 14 months. It is possible to bring trade deals to fruition in a much shorter time, when, first of all, there is very high-level energy applied to that, and also when there is a clear agreement on what the common ground is between the partners.

Q22 **Peter Grant:** With respect, Secretary of State, you have not actually answered the main point of my question, which is: how do you explain to the 17 million people, not including myself, who voted to leave because



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they wanted to restore parliamentary sovereignty, as they saw it, that a deal that has taken so long to get to this stage could not be held up for another few weeks, to allow parliamentary sovereignty to be exercised? It is not for me, because I did not vote to leave. How do you explain to 17 million people who thought that, by voting to leave, they were going to enhance parliamentary democracy that a three-week delay is going to scupper a deal that has taken seven years to get here?

Dr Fox: We have not left yet.

Q23 **Stephen Kinnock:** Welcome, Secretary of State. Following up on that question in terms of the time and complexity around the CETA deal, do you not think that that will reflect on our ability to secure a free trade deal? Given the difficulties that are being experienced now, do you not think that the same would apply to the UK in spades?

Dr Fox: Well, as I said, if you look at other major treaties, the example I gave being NAFTA, it was negotiated in a much smaller time. There are a whole range of different possible deals for the UK. There is the ability to adopt, whether in a complete or a transitional form, the free trade agreements that the European Union already has. In my view, it would be to our mutual advantage to consider those, along with the European Union, to ensure that there is no distortion of market, in which case that could be done in a relatively short time.

When it comes to the negotiation of free trade agreements where there is no agreement with the European Union at all at the present time, that would very much be a case-by-case basis, and I think would be very much on the basis of how much commonality we already had. I can think of some countries where that might be less and some countries where that might be more. I think that the time would be very variable.

We will want to consider, as we look at those: the market value; where we have already sufficient commonality to be able to proceed on a shorter timescale; and where there might be strategic objectives, for the country. There are a number of variables to be taken into account.

Q24 **Richard Drax:** Secretary of State, good afternoon. Before I ask my question, I have an observation. From the time you have been doing your job—for which many congratulations for getting—is it your view that, now we have decided to leave, what our European allies and future trading partners need is solidarity of purpose from this country, and that all those who continue to undermine that do our country a great disservice and make your job much harder?

Dr Fox: As to the European Union partners in terms of trade, I think it is to the advantage of all the citizens of the European Union—and I do not regard the Governments as being the prime movers in that, in terms of importance—to have greater trade liberalisation; to have the removal of customs costs; and to be able to get wider access to procurement deals in other countries. That is in all their advantages. I think that those who put politics ahead of prosperity might want to think twice.



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Q25 **Richard Drax:** Highly irresponsible, perhaps.

Dr Fox: Chair, that is what in a court would be called “leading the witness”.

Q26 **Richard Drax:** I accept. What public consultations have you run on on-going and future trade negotiations? What measures are you taking to ensure that all UK stakeholders’ views are taken into account in these trade negotiations?

Dr Fox: To be clear, we are not entitled to undertake trade negotiations while we are part of the European Union. We take our obligations to that seriously, under Common Commercial Policy and under our duty of sincere co-operation with that. We are, however, quite reasonably entitled to hold discussions about further liberalisation. We are also entitled to hold discussions about our WTO position, and it is reasonable for us to scope out future agreements. For example, we are looking, with a number of other countries in trade working groups, at how impediments to global free trade might be reduced in the future.

I hope that the debates that we will enter into in the House of Commons, ahead of our negotiations following our triggering of Article 50, will open up this whole debate. Trade debate is an area where we have really not taken sufficient cognisance either of parliamentary or public opinion in recent times. I very much welcome a widespread public debate, in Parliament, beyond and in our media, about why it is necessary to have further trade liberalisation if we are to be able to spread prosperity, not least to developing countries.

Q27 **Chair:** Of course, at the moment, there are not even parallel trade negotiations between the EU and Australia. For practical purposes, there is a lot of legal attention being paid to this question, as a matter of common sense. There is also a matter of whether the view taken by the European Commission, both artificial and formalistic, ignores the fact, if that is the case, that common sense actually dictates that you have some degree of discussion, albeit informal, to clear the ground, in order to be able to make sense of the subsequent negotiations themselves. Is that not right?

Dr Fox: It makes sense for all parties to take down the political temperature, to stop adopting positions of ultra-legality and to get to where we actually might be able to improve the prosperity of our citizens who elect us. That requires us to co-operate where we can and to understand that there are third-party interests in market access, including in areas where the EU already has free trade agreements, and that if we work together then we will not end up introducing, unintentionally or otherwise, trade impediments that do not exist at the present time, which can only harm the prosperity of our own people.

Q28 **Mr Rees-Mogg:** As a follow-up to that question, you may have noticed that the head of the WTO has said that he is going to do everything he conceivably can to make sure that our transition is smooth and that our membership of the WTO is put back to a full footing properly, and so on



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and so forth. He said that today, so I think it fits in exactly with your view.

Coming back to the question at hand, if mixed agreements and the proposal for a two-track approach can be stopped by the Walloons, is it likely that in future the EU will simply negotiate the bits where it has sole competence and leave the areas that have mixed competence or nation-state competence to be dealt with subsequently?

Dr Fox: This, of course, was the issue here, where the Council decided that there were elements where there was sufficient reservation by the peoples and their Parliaments across Europe that it could not simply be EU competence. There had to be mixed application here. I do not see a huge difference in that. What I can see is that, in the future, given the experience of CETA, there will be a tendency for the Commission to want to have greater EU competence here, and less ability for there to be mixed provision. That will be a democratic issue to be addressed in the European Union, perhaps less so for the United Kingdom, as we will be leaving. But it will certainly be a major issue in the future.

Q29 **Mr Rees-Mogg:** Will that be an extension of EU competence to cover areas that are currently member state competence, or will it be a narrower type of agreement?

Dr Fox: Frankly, it is impossible for me to say. Following CETA, I think there will be a number of political tensions on how that process may go forward in the future. Those who want to see greater trade liberalisation may be asking whether the current process is too lengthy, and whether there are too many possible impediments in that. Against that will be ranged the very understandable nature of nation states to want to have ultimate control over what happens, including potentially through mixed agreements.

Q30 **Mr Rees-Mogg:** What is your legal view of existing mixed agreements when we leave? There seems to be some dispute among lawyers as to whether, as we are individually signatories to them, they simply continue, or whether they need to be carried over in a new form. What is the current thinking of your Department on those?

Dr Fox: As I might expect, Chair, Mr Rees-Mogg would not ask a question unless he knew the answer to it. Of course, he is quite right that there is a range of opinion on that. If I may, Chair, when we have greater clarity, I will write to the Committee about that. That is something that not only the Committee is concerned about, but, if we have not completely ratified by the time we leave the European Union, the legal status of that is something that we all have a great deal of interest in. Where there is genuine legal discussion, when I do have clarification on that, I will very happily write to the Committee as soon as possible.

Q31 **Chair:** Of course, we have our own specialist legal adviser, who will be looking at these issues as well. This is an important issue that Mr Rees-Mogg has raised. It will be partly legal, partly political.



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In relation to what has been going on in Wallonia and also in Belgium, I heard yesterday that actually some of the discussion is a little artificial. There was a reference—it might have been on the *Today* programme—by somebody who comes from there, who said that a lot of it goes much deeper and there is some length and depth of political struggle going on within that part of the world. In other words, it is not just technical questions. It is also a deep sense of independence, which the Wallonians are insisting on.

It is said that Belgium has derailed CETA for the time being. First of all, could you bring us up to date as to, if you have any immediate information as of today, what is going on there? Are there any other member states where their constitutional arrangements, as far as you are aware, might allow a minority within that member state to derail other agreements, particularly, for example, any future agreement between the UK and the EU?

Dr Fox: No, Chair, I am not aware of any other states where that applies. It is certainly correct that there were tensions, politically and in terms of identity, inside Belgium. They clearly have a particular constitutional arrangement. I much prefer things to operate at the nation-state basis. It is quite difficult for nation states to negotiate a position when they are not necessarily able to deliver for that nation state in these negotiations. My understanding is that, about five minutes ago now, a further round of talks was taking place. They were still hoping to reach agreement, but I am not sure there was a very great deal of optimism around that next round.

Q32 **Chair:** As I pointed out to the Prime Minister when she came back from the EU summit, I was at a conference in Bratislava only last week. We had the chairman of the European Parliament Committee on Budgets saying the EU requires an electric shock. Now, that seemed to me to suggest that they are more than aware of the difficulties that do exist in that institution. It is now reported that Romania and Bulgaria only agreed to sign CETA if they got visa-free travel to Canada. Now, what kind of precedent does that set for a future UK-EU trade deal? It sounds to me as if there are quite a few issues that might emerge from the woodwork.

Dr Fox: There are two separate elements there, Chair. Of course, the UK's agreement, in terms of disaggregation with the European Union, is not a free-trade agreement as such, but is dependent on QMV through the Council. It is therefore not subject to the same sort of veto as we have seen here. That sort of procedure would only be undertaken were we to leave the European Union after our Article 50 period without any agreement whatsoever and to seek a new FTA from outside.

It is in the interests, quite clearly, following this experience, of all concerned, so as to minimise any sort of economic, trade and political disruption, to ensure that is done with the minimal of fuss and it is done though that QMV process by Council, rather than being negotiated from outside, as CETA was.



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Q33 Peter Grant: The Committee has often expressed its disquiet at the failure of the Government to engage properly with the scrutiny process in relation to trade and sometimes on other matters. Just to give one example, members of some member Parliaments in the EU have had six months to go into a private meeting room and access the full confidential documents on TTIP. Members of this Parliament have had that facility for about two or three weeks. Why did it take so long in the UK, when some other countries were able to give their elected representatives so much earlier access to those documents?

Dr Fox: I am very glad that we have now set the precedent for the TTIP reading room, and I hope everyone is taking advantage of that. It is something that I hope sets a precedent for us. When we are looking to further and future trade agreements, I would like to see the precedent of the TTIP reading room and the transparency that that brings adopted. It is a good innovation for us. It would be nice if we had had it brought earlier. I would like to see it utilised in any further agreements that we have.

Q34 Peter Grant: I notice, Secretary of State, you have not told me why it took so long in the UK compared to elsewhere, but we will let that one lie. You will be aware that one of your predecessors in the Government, Anna Soubry, in the House of Commons on 10 December 2015, gave an assurance to the Chamber about TTIP, and said, "TTIP is not a secret negotiation. It is there for everybody to read on the internet." Clearly, it was not all there for everybody to read. "When it has concluded, it will be for this chamber to ratify it." Would you not accept that those words may now be seen by some as being in bad faith, given that a very similar agreement with Canada rather than with the US has been significantly endorsed, without having come anywhere near the Chamber in the House of Commons?

Dr Fox: She was referring to TTIP. We, as you correctly say, have the TTIP reading room and the ability for Members to access classified documents, which, incidentally, I would point out is already afforded to MEPs, which is why I think it is something that should be afforded to MPs as well. I do not think she can be taken as being in bad faith, when what she promised was ultimately carried out.

Q35 Peter Grant: So it was important that it should happen for TTIP, but it did not matter to apply the same standard of scrutiny to CETA.

Dr Fox: We are at a very different stage. In terms of TTIP, these negotiations are still fully under way. It is helpful that we have a process now where MPs are able to scrutinise it more than we have been able to do in previous agreements, including CETA. I hope that is an advance that we build upon. I hope it is a precedent that we will use for further agreements. It is certainly one that, as Trade Secretary, I would like to see as a precedent for any future agreements, whether still inside the European Union or beyond our membership of the European Union.

Q36 Peter Grant: Is it fair to say that CETA is at so much of a different stage



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that, for significant parts of CETA, it is now too late? Even if Parliament resolves not to support it for some reason, regarding the parts that were within ministerial discretion to agree or not to agree at the EU Council, those horses have gone, and at best we can only close the stable door and keep some of the horses back.

Dr Fox: We still have the ability to reject the entire CETA treaty, should Parliament wish to do so. That is the ultimate power that Parliament has, and it is right that it is so.

Q37 **Chair:** As Dr Faustus said, "Slowly, slowly go the horses of the night." It is true, and I am sure you would accept, that the ratification will be the final moment when in fact we are able to say yes or no. That is basically the position, is it not?

Dr Fox: Indeed, Chair, but it is as yet undetermined when that point will come.

Q38 **Geraint Davies:** Secretary of State, you said earlier that the investor court system certainly would not apply now. Just for clarity about the future and your view, during the Brexit campaign, I think you and others said that the UK should leave the EU as we did not want to be subject to a "foreign court". If we were to sign up for the investor court system, we would be signing up for separate arbitration courts. I am unclear from your previous answer: I think what you said was that it will not apply now, because of the mixed agreement. But are you in principle in favour of signing up for the ICS system, which would give powers to the transnational companies to sue us, under a future trade deal with Canada, whether it is CETA or us?

Dr Fox: Yes, within some of the reservations we have already set out, such as, for example, the clarification on the Government's right to regulate and looking at some of the elements of ICS that have not yet been fully resolved. The Government will still want to push on with some clarification of that. But it is very important that Governments have a clearly set out, clarified and reiterated right to regulate.

Q39 **Geraint Davies:** Would you not accept that there is obviously multi-billion pound trade with Canada and the US, and we do it under the auspices of public law and contract law, which are mature laws that work well and protect investors as well as the wider public interest? Why can we not just continue on that basis?

Dr Fox: There would be a simpler basis for a bilateral deal with a country that had very similar legal processes to our own, for example. It is more complicated when you have 28 members in that. But I would also point out that we are willing to co-operate in areas like the International Criminal Court, where we are satisfied with the processes and how that works, and the wider gain for the pooling of sovereignty.

Q40 **Geraint Davies:** But you are aware that the very nature of the arbitration panel is to enable investor powers to be primary and to trump other considerations, like the environment and public health. What you



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seem to be doing is running around trying to provide some assurances in those areas. Those assurances, which are already established in public law, that would be lost. You seem to be willing to trade those away for a very marginal gain in trade.

Dr Fox: These are areas that I look forward to debating in the wider debate. On areas of public concern, one of them being the National Health Service, I can only quote what Commissioner Malmström has herself said on this. This is TTIP she is referring to, which is, again, similar, using the ICS. "Nothing in TTIP would affect how the NHS in the UK operates at the moment and nothing in TTIP would prevent a Government from reversing policy as regards the involvement of private operators in the NHS." I think that is the concern. There is nothing, according to the Commissioner and the lawyers, that would actually be reversed by this.

Q41 **Geraint Davies:** What would be the downside of just removing ICS?

Dr Fox: Where is the process of arbitration? There has to be a process of arbitration.

Q42 **Geraint Davies:** The courts. We have public courts and contract law. Most of our trade is outside the EU. It is with America and Canada already.

Dr Fox: I would simply say that, clearly, an agreement with a country that has a similar court system and a similar legal system to our own is an easier thing to achieve than an agreement between a much, much wider range of countries, who may not have similar legal systems.

Geraint Davies: They do. It is Europe.

Dr Fox: I go no further in that, in terms of future implications.

Q43 **Stephen Kinnock:** On this issue of the scope of future trade deals and trade defence instruments, last month you said, "We must turn our backs on [those] that tell us, 'It's okay; you can protect bits of your industry, bits of your economy and no one will notice.' It is untrue. Protectionism has always ended in tears. We must be unreconstructed, unapologetic free traders." On the issue of our potential future trading relationship with China, and in the context of steel, 80% of the Chinese steel industry is state-owned, and the rest benefits from direct and indirect subsidies. Do you think it will be possible for the United Kingdom to trade with China on a free and fair basis? If not, what sort of trade defence instruments will you be putting in place?

Dr Fox: It is not possible to operate without trade defence, and having trade defence does not mean turning your back on free trade. Free trade has to be open, but not leaving ourselves defenceless. But Mr Kinnock is absolutely right that we will require to legislate prior to leaving the European Union, in order to provide ourselves with trade defence from day one when we leave the European Union. That is something that we will have to bring legislation to the House of Commons for. There will need to be a debate on what that trade defence apparatus looks like.



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Q44 **Chair:** Of course, the first free trade agreement in the world was, in fact, the British-French commercial treaty of 1860, which was negotiated by Cobden and Bright, and Chevalier. That is the sort of basis on which we are, as I understand it, hoping to proceed, that we have greater free trade arrangements that are fair to everybody.

Dr Fox: The Anglo-French treaty, to be fair, was sabotaged by a range of protectionist interests early on in its life.

Q45 **Chair:** In due course. I want to ask one last question. I am grateful to you for coming. Given the Commission's attempts to limit member states' involvement in trade agreements, and given the possibility that deals like CETA will need to be untangled for Brexit, is it not necessary to ensure that the legal provisions are absolutely clear where the EU has exercised its competence and where the UK has exercised competence? Could you answer that?

Dr Fox: It is, Chair. As I said in answer to Mr Rees-Mogg, as soon as we have greater ability to clarify that, we will make that available to the Committee, as, indeed, I would wish to make that to the House of Commons.

Q46 **Chair:** We very much welcome that undertaking, because there are going to be other people and many other Committees who are interested in all this. No doubt you will be appearing in front of those as well. We have, as you quite rightly said, built up a lot of expertise over a long period of time. You have had some very searching questions this afternoon, which I hope the public will find of interest, as well as the answers that you have given. We welcome your undertaking to set out for us those areas where the EU has exclusive competence, and where member states have competence.

On that note, I would simply say that I know that you have to get to a Cabinet committee. I think we have managed to get through all the questions in a reasonable amount of time. Thank you very much for coming. We are most grateful.

Dr Fox: Thank you, Chair. Can I just reiterate that I will write to the Committee on the next steps for CETA, when those become clear to us? I will write whenever we have legal advice on what will happen if we leave the European Union before ratification, where we have mixed application. Am I correct in that?

Chair: Yes, thank you very much indeed.