

International Trade Committee

Oral evidence: UK trade options beyond 2019, HC 817-ii

Tuesday 13 December 2016

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Members present: Angus Brendan MacNeil (Chair); Liam Byrne; James Cleverly; Mr Nigel Evans; Marcus Fysh; Mr Ranil Jayawardena; Sir Edward Leigh; Chris Leslie; Shabana Mahmood; Toby Perkins; Sir Desmond Swayne.

Questions 106-204

Witnesses

[I:](#) Roderick Abbott, former Deputy Director-General, World Trade Organisation and European Commission Directorate-General for Trade, and Dr Federico Ortino, The Dickson Poon School of Law, King's College, London.

[II:](#) Peter Ungphakorn, former Senior Information Officer, World Trade Organisation Secretariat, and Professor Fiona Smith, School of Law, University of Warwick.

Examination of witnesses

Roderick Abbott and Dr Federico Ortino.

Q106 **Chair:** Could I ask the witnesses, please, to state their names and organisations for the record, starting on my left?

Roderick Abbott: I am Roderick Abbott. I was a senior trade policy official and trade negotiator at the European Union Commission in Brussels and then at the WTO in Geneva. I am now retired. My experience has been largely in Europe but 25% of my career was here in London.

Dr Ortino: I am Federico Ortino. I am a reader in international economic law at King's College London. I mainly teach and research in international economic law, mainly the law of the World Trade Organisation and foreign investment.

Q107 **Chair:** Thank you very much. Can I ask you both: is it legally and practically possible for a permanent new UK-EU trade agreement to be negotiated between the triggering of Article 50 in March 2017 and Brexit taking effect in 2019? I am also mindful of the words of Michel Barnier, who said it will be an 18-month negotiation, from which he appeared to be dictating the pace of the negotiations, if not the terms of the negotiations as yet.

Roderick Abbott: This raises the question of what is within Article 50 and the withdrawal exercise as a whole. As it is at the moment, nothing can be negotiated and the formal position, which the Commission has stated, is that they cannot negotiate between the EU and a member state about future trade relations until the member state has left. That is the formal position.

There is not anything in Article 50 that excludes any subject. It is very open, very non-explicit, so I think that it is possible that if you get into a political situation where both sides—the EU and the UK—want to talk about trade during the Article 50 process, it is possible. That would be a political decision rather than following the formal statement of views that the Commission has made. So I would say it is possible. You might have a view on whether it is legally possible.

Dr Ortino: Article 50 does recognise that the withdrawal agreement may take into account the framework of the future relationship the UK will have with the EU, so there is an implied recognition of at least some sort of idea within that context.

Q108 **Chair:** The two-year period wasn't originally envisaged to be a trade negotiation period. It was meant to be a disentangling period.

Dr Ortino: Yes, exactly, so it may likely be that that framework agreement, whatever it is, is not a detailed draft of a text. In a sense, Article 50 does not preclude that such a framework, or even a little bit



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more elaborate agreement, may not be discussed during Article 50 talks. Under EU law that would have to come under a different set of competences. If such agreement went beyond a framework agreement, it would have to come under different procedures and a different competence entrusted to the EU, not particularly based on Article 50.

Q109 Chair: There is a difficulty for a permanent agreement. Is there a possibility for a transitional agreement, or are we facing going to WTO rules and perhaps a cliff edge, which I think is the term the Prime Minister used at a talk she gave a few weeks ago?

Roderick Abbott: That is precisely the point. If you don't have the beginnings of a trade deal—it might be more framework than detail—during Article 50 you do have a cliff edge, because you have done nothing at the time when the Article 50 process is finished. That is what I would regard as a cliff edge. It is precisely about avoiding that, which I think would be in the UK's interest but also in the EU's interest, because if you come to a cliff edge with nothing agreed on trade, you have a hiatus for the exports of both sides to each other. It is not the case that you cannot trade at all, because as you said, you would be trading under WTO rules, but you would not be trading in the way you were before. In other words, free trade with no barriers—the easy version of free trade.

It is exactly that, the cliff edge danger, that makes me think that you might have a political decision, which is in the interests of both sides, to start discussing trade early.

Q110 Chair: This inquiry at the moment is about looking at UK trade options post-2019. We have an EEA potential, an FTA potential, a currency union, a transitional deal, perhaps a permanent deal. We have WTO—or we have maybe WTO if schedules were not agreed at WTO-minus. Do you have any preferences at all, or do you see any major pros and cons with these, perhaps, six options?

Roderick Abbott: I have some preferences, but in the analysis I would break it down to two options basically. One would be a free trade option, probably a free trade area rather than customs union, and I can explain that.

Chair: I meant to say “customs union” and not “currency union”.

Roderick Abbott: I noticed, but that is fine. That is one basic idea.

Chair: I was testing those around me, of course.

Roderick Abbott: One thing is free trade, and that is goods and services, but then you get into single market questions. The other main option would be trading under the rules of the WTO. The main point about that is that you have no preferential access anywhere. The WTO rules govern your relationships with every other WTO member, in the sense that you are not discriminated against in the way you are treated. You are treated the same as everybody else, but that means there is



nothing preferential in it. The key thing about the free trade area or the customs union is that you are in an exceptional position. You are getting an exception from the general MFN rule.

Dr Ortino: It is a question that is difficult to answer, in part because one has to decide what one wants, so if I am a believer in total free trade I would give you one answer. If I think that I want to maintain sovereignty over certain issues I would give a different answer. The options you have are a variety of options, and I tend to agree that perhaps to make it even more basic the options are two: have a preferential agreement or not, basically. Then if you don't have anything you revert to the default regime, which is the WTO one that exists.

If you have a trade agreement, that could have a different shape. In fact, I would probably break it down into two options. You have a ready-made option, which is the EEA—joining the FTA and possibly staying within or joining the EEA. It is ready-made in the sense that you take the whole package. That is the option. There is very little that you negotiate. It is there. Then you have the tailor-made agreement, which you make as you want: if you want a customs union you add to it; if you want exclusive sectors you may do that with some limitations. The default regime will impose certain conditions, but once you comply with those—and this is Article 24 of GATT and Article 5 of GATS—you are pretty much free to choose the package you want, technically. Then it depends on what the Government, and I suspect Parliament, decides to go for.

Q111 **Marcus Fysh:** Following on from that, how complicated does a preferential trade agreement with the EU, as a framework agreement at the end of Article 50 negotiations, need to be to mean that it could allow the UK to prefer terms with the EU under Article 24, and then potentially have further time, if further time was necessary, to create more detailed agreements on particular sectors, for example, that needed something different from what we broadly have at the moment?

Roderick Abbott: In my opinion, you have a range of options from a fairly limited free trade area of a classical kind, right through to a very complicated thing. A typical example of that is the Canadian agreement, which isn't yet in force but which developed into, I think, 20 or 25 different chapters, mostly elaborating on the basic deal. You have a range of options.

If you want a really quick deal that maintains a certain degree of free trade, I would say that can be done fairly quickly because you are not moving from a WTO position into a free trade area. You are moving from what was a customs union and you are really continuing what you had before, so relatively there is not much you need to discuss between the two sides. I think that could be done very quickly. You would have to have free trade in goods, which would be the basic Article 24 rule plus acceptance of GATS. The elephant in the room is the services side, where in a classical deal you would not yet have single market access, and that is where you might get into trouble.



Just staying with the idea of the free trade area, you can go much wider. You can go as wide as the agreements with Korea or Singapore or Canada, but you don't have to do that. I would say that can be built in a second stage if you want to be ambitious. What we have heard so far is that the United Kingdom has always been in favour of ambitious free trade agreements, so probably in the long run they would want to be ambitious. If you wanted the quick deal because of the two-year period—and it even might be less—you can do it on a very skeleton basis, but maintaining the essential free trade.

Q112 Marcus Fysh: You mentioned the services element, which may not be covered by the WTO agreement. What is potentially different from what we have access to at the moment? Which are the services that would fall out of the basket, and how important are those to our economy?

Roderick Abbott: You have two agreements. You have the GATT itself—GATT 1994 is the evolved description of that, which is after the Uruguay round in 1995—and you have the GATS, which is the treaty on services. These are two treaties. On your question about which services are covered, the GATS agreement itself is a matter of principles and disciplines. It replicates the GATT itself by saying you have to have MFN treatment and national treatment of other members of the GATS, and I think the membership of GATS and GATT is identical. I have not checked on that.

It covers the whole of the services area, but it doesn't have anything on access, so your question as to which drop out is premature. We are not yet into that kind of question. That comes when you are looking at a single market. If you accept the GATS—and all members have accepted the GATS when they came into WTO—you are only getting principles and disciplines and, even when you have got the protocols on things like telecommunications and financial services, it is still a matter of conduct and how you handle the services in that area rather than access.

Q113 Chair: Mr Abbott, looking at your experience in these matters over a number of years, how long might it take to finalise a long-term UK-EU trade and investment deal? What do you think are the political and economic legal implications of negotiations taking place after Brexit?

Roderick Abbott: How long would it take?

Chair: Long-term. I think for the short term the Foreign Secretary said that 18 months is ample time, but I am looking at the longer term.

Roderick Abbott: Again, it is a question of what type of agreement you are looking for. If you are looking for the long-term agreement, I would say that is probably an ambitious one. I cannot tell you how long that would take, because I think it depends on how ambitious and how gradual you want to be. I would simply say, don't assume that it would take seven years, which is what they always say about Canada. I don't think seven years is correct. I think it was probably much less than that and the rest of it was what they call legal scrubbing.



Dr Ortino: There were some critical issues but they did the deal, yes.

Roderick Abbott: It depends on your ambition for the long-term agreement. What we normally would say is that it is more a question of how many people you need in the team. There is also, apart from the type of agreement you are after, the question of resources.

Q114 **Chair:** That is important, given the size of the various Departments. Could you give me a feel for team size and for timing—just ballpark—before I move on?

Roderick Abbott: I would say based on my experience, if you are doing a free trade area with Korea, with Singapore, with Vietnam, or in the earlier days with Mexico and Chile—people like that—a team of, say, 20 or 25 people would be ample, and you would then have a series of leaders in different segments of the negotiation. If you are getting more ambitious, more evolved, more complicated, like say Canada or even TTIP—obviously TTIP is even more complicated—you may rise up to, say, 50 people. You simply have to cover in your team all the chapters that you are dealing with.

That is for the numbers. What would be the average time? I think Korea took three or four years, but I am not sure. Some of that was preliminary to negotiation and some of that was real negotiation, and then you have a period of sweeping up afterwards. I would have thought for Korea three or four years was probably about the time it took. Singapore may have been easier. Vietnam was perhaps also easier because they were following patterns by then.

Q115 **Sir Edward Leigh:** I know you have sort of answered this, sorry, but what I cannot understand is this. On day one of Brexit it is not like any other free trade deal, because we have exactly the same laws, directives, regulations, everything, as the EU. Surely it is just a question of political will, isn't it? You are a technical negotiator. Am I missing some technical negotiating blockage to this, given that we are on—it is rather a cliché—a completely level playing field. Do you understand what I am saying?

Roderick Abbott: Yes.

Sir Edward Leigh: Why don't you just do it immediately, if you want to? I know you cannot comment on the politics of it.

Roderick Abbott: No, I don't want to talk about the politics of it. That is right. You are in a special situation where you have been in a free trade, customs union relationship—no barriers, no rules of origin, no problems over compliance with all the regulations—for 40 years. The continuity argument would suggest that it would be easy to do. That is why I said that if you went for a skeleton free trade area of goods and services, that is relatively easy. The problem is if you want on top of that good access, if not full access, to the single market, there you are getting into the trouble, because it is technically difficult to work out how to do that given the linkage with the control of borders and migration. There you may find



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that your continuity argument, which is absolutely correct, may be conditioned on making a deal on the single market part. You may get a conditional link between the two. But I agree with you, on its face the continuity of free trade, as we have had it for 40 years, is not really an issue that has to be very much discussed. Of course, there is the question of whether both sides want to do that.

Dr Ortino: It is probably important to state this. In the framework of the EU, the approach of the creation of this internal single market is one where every member will adhere to the doctrine. They are key in the free movement. When you leave that area and enter into a free trade agreement, or within the WTO, you enter a different setting. It becomes a bargaining approach: what can you give me in exchange for what I can give you? This is the fundamental difference between the EU as it is today—the internal market—and everything outside. Although I agree that regulatory-wise we share rules and regulations so far, when Brexit happens, it is a change of product and the UK does not stay in the single market. Then it is all up for grabs. The EU does not have to grant anything beyond what it has committed in the WTO, and at that point it is about what they want in exchange for what the UK is to get.

Chair: Thank you, an important point indeed.

Q116 **Mr Ranil Jayawardena:** We have been straying into the questions I want to ask. For the record, some people have been conflating access to the single market with membership of it. Would you, Dr Ortino, be able to explain that in a nutshell, so that it is very easy for everyone to understand, so that that will not happen again?

Dr Ortino: Yes. I would argue that every country of the WTO, every member of the WTO has access to the single market, meaning they can export products and services based on the commitments that you find in the WTO, so that is very simple. When you think of being part of or being a member of the single market, that is a different thing. It is not just being able to export your products to it or your services. It is actually being part of a construct that is, in terms of level of integration, as deep as it gets without actually having a state. So that is the difference.

If you want to go back to the options, some have suggested that an EEA state has almost complete access to the single market. One cannot technically say. The distinction is somehow artificial. Are they a member of the single market? Possibly not, because there are certain areas from which they are excluded and so forth, so they are not officially a member. In fact, they cannot really participate in the legislative processes within the EU, so I would say that even that model is a model not of membership but of greater access—perhaps the greatest access—to the single market.

Q117 **Mr Ranil Jayawardena:** To follow up on that, the Chairman referred to the customs union a moment ago, which again I would argue is another form of access while not necessarily having what you have talked about



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as membership of something akin to a state. With respect to trading goods, could you put on the record the difference, as you see it, between a customs union and a free trade agreement?

Roderick Abbott: Do you want to do that?

Dr Ortino: Yes, sure. Perhaps I will use a double-tier definition of the two terms that are probably the most relevant. The free trade agreement is an agreement between at least two customs territories to eliminate tariffs to a substantial extent and other restrictions to trade. We are still talking about trade restrictions. The customs union is an FTA in a free trade area with a common external tariff. That is it.

Mr Ranil Jayawardena: Mr Abbott, do you want to come in on that?

Roderick Abbott: I agree with that, and I would put it slightly differently. If you start with the things in common, both a customs union and a free trade area provide you with free trade between the parties. They also have in common that they have exceptional treatment among WTO members, because everyone else just has MFN. That is what they have in common. What is different is that with a customs union you lose a bit of your trade sovereignty. You are subject to a common external tariff on goods. You are subject to common regulations relative to third countries. That is part of a customs union. The EU is just a classical example of that. The difference then is that with a free trade area you can set your own tariffs to third countries and you can have any regulation that you like vis-à-vis third countries. That is the big main difference between the two.

Q118 **Mr Ranil Jayawardena:** I am very pleased you strayed into that, because the picture is beginning to emerge that one of the crucial requirements is that for the United Kingdom to be viable for trade deals with the rest of the world, it needs to be out of a customs union, as you say, because of the common external tariff. Do you agree with that analysis?

Roderick Abbott: I said that I think that the fundamental thing is free trade, and it is a free trade area, not a customs union. Although people have been talking about whether one can stay in the customs union, I believe that is not possible, because on Brexit day plus one the EU, under its rules, will be applying a common external tariff to the UK.

Q119 **Mr Ranil Jayawardena:** Just to pick up on Dr Ortino's point a moment ago, so that your words are on the record, you would agree that access to the single market would allow us still to be outside the customs union, for the reasons you have given—that a free trade area requires us not to be part of a customs union but would allow us to trade and, therefore, have access to it?

Roderick Abbott: Yes. I don't think they are actually linked. You are outside the customs union, and I think that is inevitable. In actual fact, on Brexit day plus one you are outside the single market as well. Then



you have to make your deal. The deal I see is a free trade area of whatever framework kind, or more ambitious, plus the best access you can get to the single market without actually being a member of that, because membership of the single market is restricted to EU countries—plus, if you like, EEA countries. But I agree with what you said that that is not completely clear. That is membership, and you are not going to get membership but you will get the closest association to it you can.

Q120 Mr Ranil Jayawardena: If there is no UK-EU trade deal in goods or services, could you explain how the EU-WTO obligations could help the UK's ability to trade with the EU?

Roderick Abbott: If you do not have the deal, as you say, you are going to trade with the EU and the rest of the world under WTO rules, MFN duties and so on. If you come to what that means in terms of obligations and rights vis-à-vis the EU, it doesn't amount to much, because you are in WTO. You have the same obligations and the same rights as everybody. Originally I said the thing about WTO is that it is non-preferential. If you ask how that helps, I think the answer is that it doesn't help you at all for your relationship with the EU. You have to fashion that through the negotiation and make the trade deal you can. If you ask how this affects your relations with third countries, then again you have a basic framework for your relationship with all third countries.

Q121 Mr Ranil Jayawardena: Surely the EU cannot penalise us because of their obligations under the WTO.

Roderick Abbott: I don't think there is any question of penalising. I think they are simply going to apply their normal relationship with third countries.

Q122 Mr Ranil Jayawardena: Are suggestions that the EU will punish the United Kingdom wrong?

Roderick Abbott: That is politics.

Mr Ranil Jayawardena: To be fair, just to pick up on this point, you have said that they would have to adhere to WTO rules. Therefore, we know what the tariffs would be. There can be no punishment.

Roderick Abbott: They would treat the UK like every other WTO member, yes.

Mr Ranil Jayawardena: Yes. Do you agree with that as well, Dr Ortino?

Dr Ortino: Yes. In a sense it is better than nothing, for sure. In the WTO there are certain rules and principles that grant rights to WTO members as well as obligations, so the UK will be able to rely on those rights vis-à-vis the rest of the EU. There will be areas where WTO cannot help, and one could argue that in those areas the EU is free to do whatever it wants.



Roderick Abbott: It is a low-level relationship, in other words, in the WTO. It is not preferential in any way.

Q123 **Mr Ranil Jayawardena:** But at least it provides a baseline, and it prevents punishment, which is the suggestion that some—

Roderick Abbott: Yes, you cannot be discriminated against.

Q124 **Mr Ranil Jayawardena:** What would be the particular impact, as you see it, of the loss of passporting rights for financial services and, in your view and judgment, how could we best avoid any negative impact?

Roderick Abbott: You are linking CETA and passporting in the financial services area. I will admit I am not a very big services expert, but it seems to me that the linkage between CETA and passporting—and this is perhaps artificial—has developed within the financial services area as a way of promoting the financial service structure that exists in London throughout the EU. The passporting is designed to allow firms that are registered in London in particular to operate throughout the EU. When you leave the EU there is going to be an impact on that, but I don't think the linkage is with CETA. It is simply whether you will have the same possibilities of passporting as you had before. Here you are going to face questions about whether you can do this if you are a non-EU country or whether you can only do it if your firms that are registered in London have to be registered in France or in the Netherlands or somewhere else. There are those sorts of questions involved. I don't think the CETA linkage is that important.

Dr Ortino: We go back to this question: what is the single market as it is? It is not a state, so clearly it is not a single market, technically speaking, but it is as good as it gets. In terms of the level of integration of the economies, passporting rights are one of the many ways in which the EU has tried to integrate the 28 member states deeply. It affords the right on the condition of a firm providing financial services to provide those services cross-border without the need of a specific authorisation in the host state. It is not an absolute right. There are procedures to comply with and there are criteria to be met, all provided by the single market directives. There are several, and again I am not a specialist.

If you move away from this bundle of rights, which includes passporting rights, and you are back in the world or WTO, or even CETA for that matter, you go back a long way. There are certain rights under the GATS limited to certain sectors, but they don't go as far as what the single market has achieved.

Q125 **Mr Ranil Jayawardena:** How could you best avoid those negative impacts?

Dr Ortino: How can you avoid them? You can't.

Roderick Abbott: When you are a non-EU country.



Q126 **Marcus Fysh:** Can I clarify that within the context of potentially deregulating and getting more efficiency globally in our services trade? Services make up 80% of our economy, and there is a lot of inefficiency in services around the world generally. If we stay within that acquis of directives that govern services, by having access to the single market that means we have to observe them throughout the world. That takes away that opportunity to seek those efficiencies by what we might do with our own regulation of our service industries.

Dr Ortino: Let me understand. Not being part of the single market as it is, there is a chance for the UK to regulate its services in a better way?

Marcus Fysh: In a different way.

Dr Ortino: In a different way?

Marcus Fysh: Potentially, yes.

Dr Ortino: There is a difference between saying 80% of our economy is based on services, which is true, and the trade relations, which do not reflect the same percentage.

Roderick Abbott: The exports.

Dr Ortino: The export world. I think when you are looking at the export regime, the trade regime, you could have the most liberal service industry—unregulated, efficient, whatever you want—but if the receiving states say, “No, you can’t enter”, there is nothing you can do. What you need to be able to export your services is that the host state opens up to your services. At the moment in the single market, it is not an absolute single market but it is as good as it gets. If you step away from that, even the most advanced FTA with Korea or with Canada just gives you a little bit more than what the WTO provides. It is not massively more. It takes a lot of time because it is a way to inch away those restrictions that are in place. They have accomplished a lot. There is a plurilateral discussion sideline of the WTO on the liberalisation of trading services, which includes financial services, and so there is a push towards liberalisation of trading services.

Roderick Abbott: Let me put the same point but slightly differently. What the single market is, I believe, is the ultimate area of free and fair competition with no real barriers. It is a competition construct. If you compare that with the WTO, there really aren’t any competition rules in the WTO at all. If you are looking at that relationship, you have a hell of a lot in the single market but nothing much in WTO. As Federico has said, you get a little bit more than WTO through a Korean or a Canadian free trade agreement, but basically you are miles away from anything that is a real free competition, free of barriers. That is the relationship.

Q127 **Chair:** So we move from competition to bargaining, in a sense.



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Roderick Abbott: Yes. If I understand it right, this is the essential reason why the single market was created.

Q128 **Mr Nigel Evans:** I just want us to get a better understanding about the World Trade Organisation ourselves. We understand that last week the Government opened discussions with other members of the WTO, putting in place a separate UK schedule of concessions and commitments. What is that all about, and can it be achieved in the timescale before we leave the European Union in the spring of 2019?

Roderick Abbott: To take the last point first, there is no timetable for this. You have to do it after you have left the EU, because you are no longer covered by the EU's tariff and services commitment that covers all member states. What is involved is extracting from the EU collective commitments to what you want for the UK, but there is no timetable. You don't have to do any of this before the end of Article 50.

I would recommend that you prepare it so that you can go into this procedure very quickly afterwards, because that way you control the process. The process involves presenting your commitments to everybody else. You then have a consultation and a negotiation in certain cases where there are rights and where trade is damaged and so on.

Q129 **Mr Nigel Evans:** Who is "everybody else"?

Roderick Abbott: The other WTO members—this is a WTO process—including the EU. They are all members as well. I think this is a manageable process because, in my experience of it over 40 years, it is basically a pragmatic, businesslike and non-political type of operation, where you are presenting your commitments and you are facing other people who might say that damages you, and then you have to deal with it.

You started by saying that they have started to present things in Geneva. I have not heard that they have actually presented anything, but what I have heard is Liam Fox talking about replicating the common external tariff, which is the customs tariff element, and the commitments. If you are going to replicate that, you have a ready-made argument to say to everyone else in the WTO that nothing has really changed. You are replicating the whole of the tariff and the classifications and things that go with it, and then the commitments, and you are going to argue to all third countries what has changed. That is where I would say the quicker you can do that and use that argument, the more you will control the process, which is presumably in the UK's interest.

I don't know how far you want to go into detail. There are devils in the details, and the famous thing is the tariff rate quota.

Q130 **Mr Nigel Evans:** Can you say a little about the devil in the detail then, please?

Chair: Particularly about that devil.



Roderick Abbott: No details?

Mr Nigel Evans: Just the devil.

Roderick Abbott: The tariff rate quota, TRQ, is in the EU tariff and is a commitment to import either at zero or at a low duty within a range of 50,000 tonnes, let's say. Beyond that you apply your ordinary duty, which may be a lot higher, and usually on agriculture it is. That is your TRQ commitment. When you are the UK trying to extract from that EU commitment its own schedule, you have to look at the trade, and at what has actually happened. If you had 50,000 tonnes actually imported, how much of that went to the EU and how much of that went to the UK? This is not rocket science. This is really just high school mathematical people with calculators, calculating over three years the data you have and what the shares are. If you then follow that exactly, or even being slightly generous—you can add a little bit on both sides—you should not get into major trouble. I say "should not" because there is always something that goes wrong.

The basic division of the spoils, if you want to call it that, is not a complicated thing, and it is going to be a discussion between the UK and EU to begin with and then be presented—perhaps on both sides, because the EU commitment will be changing as well—to the rest of the world.

Q131 **Mr Nigel Evans:** Then the certification of amended schedules is basically everybody agreeing what has been agreed?

Roderick Abbott: At the end of the process this is what you do. The process is called modification and rectification of the schedules, and I remind you that it is tariffs on the one side and services on the other, so you have two sides. We are really only talking about goods at the moment. At the end of the process you have gone through consultation, and negotiation if you have to, and you have reached agreement. Then you have it certified, and that is a kind of legal process where it is certified that that change is now formal.

Again, there is a devil in this, which is that there is a provision in the GATT process—because it all goes back to the beginning—where if you cannot get agreement with another country, you, the UK in this case, are free to make the change you want or to replicate the commitment as you want, and the other side can then react to that. There is a provision so that in the case of disagreement you still move forward. It is not a question of a veto, or of you being blocked, or of your rights in the WTO being affected at all. As I said, it is businesslike, it is pragmatic and it is aiming at an equivalent level of concessions to what you had before.

Q132 **Mr Nigel Evans:** Can I ask Dr Ortino about this process of the establishment of separate United Kingdom schedules? Is that a legal thing or is it more of a political thing?

Dr Ortino: I think it is both. The way it is is the way you see it, and—this affects everything—the clearer the law the less political it is. The law in



this case is not so clear, so it may be political as well. I have heard the argument that Dr Fox has put forward on the basis of what that the replication, the mirroring of the current EU schedule, will facilitate. There is a good legal argument that as long as we stay as close as the current things are, there should not be any complaint coming from other WTO members, so the certification may be quite smooth. In fact, you present what you intend to do. If three months go by they are certified. But again, this is where maybe other member states—other members of the WTO—may raise concerns. As Roderick mentioned, you can still go ahead and have your tariffs, because it is the prerogative of every member to trade according to its own schedule of commitments or, in fact, its own arrangements. It is for other members that argue that the behaviour of the UK is in violation of whatever obligations the UK has taken under the WTO to bring a complaint.

Q133 Chris Leslie: This is quite interesting. This is probably one of the first legislative consequences that we are going to see here before the two-year period is gone through. The Secretary of State said he was going to produce the schedule of concessions and have them comparable to the EU schedule as far as possible. Presumably then we rubber-stamp them in Parliament in some sort of statutory instrument, because they are a legal device that is then submitted to the WTO. Just to drill into these, they are basically lists of bound tariffs, the maximums and so forth, that would apply to farmers, to car manufacturers—

Roderick Abbott: Everybody.

Chris Leslie: —but also to services as well?

Roderick Abbott: In a separate schedule, yes.

Q134 Chris Leslie: At some point, just to pique everybody's interest, probably within the next—who knows—six months or so as we are leading up to the two-year period, Parliament is going to have a schedule of all the proposed tariffs and arrangements that we would have from UK trade externally.

Roderick Abbott: I would say one thing, which is that you are in the area of unilateral action by the UK. You are not in negotiation here, so you can obviously do that when you are ready. As far as the timing goes, you need to prepare this for the day of the Article 50 end. That is the cliff edge date. For example, you need to have your tariffs somehow in place, which will need legislation of some kind, and then the commitments will follow after that, because they don't have to be done earlier. You have a preparatory stage, which I would hope would be during the Article 50 process, like I was saying earlier, and then you have action, but it is unilateral. You don't have to be reaching agreement.

Q135 Chris Leslie: No, I understand that. I think this is the British sort of stance to the WTO being asserted. As a Member of Parliament, if I have a car manufacturer or a pharmaceutical company or a farmer who takes issue with the current tariff arrangement that we adopt—obviously



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currently through the EU—it would not be unreasonable for them to write to me say, “Mr Leslie, I see that you are going to be considering shortly the tariff on pharmaceutical products or cars for export. Would you mind awfully raising in Parliament that we would prefer it to be at 3% rather than at the 5% currently?” We could expect that kind of meddling.

Roderick Abbott: I am sure you can expect anything of that kind either way. You may have people who want more protection, and therefore want the tariff higher, and you may have people who want less protection, for example cheap food. These are the two examples that we hear about.

Q136 **Chris Leslie:** What would you say are most likely to be the areas of contention in the current list of schedule of concessions that the EU has? If we just transpose these across to the British opening gambit, where would you speculate that British industry is likely to be most interested?

Roderick Abbott: Bear in mind that the average industrial tariff of the EU is 3% to 4%. At that level, no one really has a big problem in going over that tariff. It is not a big barrier any more. It is the non-tariff barriers that are counting. You may find people who say, “On cars the tariff is 10%. I would like that to be less because I would like better access on my exports back into the EU” or “I would like it to be more”—you may find the people who want cheaper food will go for that. I think that is a question within the UK legislative discussion. It is for you to decide. As I said, it is unilateral.

Dr Ortino: Two points. That shows one thing on the Article 50 saga that is currently involving the relationship with Government. I would suggest you may not have to do anything, because if the idea is simply rectification by the UK as a member of the WTO, or with the current schedules, you should not open anything. That is just a very formalistic sort of scribbling of papers. If you want to reopen Pandora’s box, then you are out of the rectification route and you go into the modification route, which will entail having to agree with the 160-plus members of the WTO, depending on how far you want to modify the current schedule.

That illustrates another point—that if you do that, you have to understand that deciding on offensive and defensive, in terms of trade, is a big issue. This is perhaps what the UK is struggling with most, because it hasn’t really had a trade policy for the last 40 years. Should it be open to competition from the outside? Should it not? Should we increase barriers? You will have reciprocal and opposite demands depending on whether you are an exporter or an importer.

Q137 **Chris Leslie:** Just out of curiosity, I have been trying, during the evidence session, to download an Excel of the full EU schedule of concessions, the bound tariffs, so I can get a sense of—

Roderick Abbott: The schedule? Not the tariff, the schedule?

Chris Leslie: Yes. It is impossible to do.



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Roderick Abbott: Very difficult.

Chris Leslie: It seems to be incredibly long because there are so many different products.

Roderick Abbott: It is very difficult.

Q138 **Chris Leslie:** Just give us a sense of what kind of documentation, as legislators, we may feel duty-bound to have some scrutiny over, given that this is now going to be our responsibility for the first time in 40 years. What are we talking about as a schedule?

Roderick Abbott: In the classification you have 97 chapters at four digit level—at four digit level I am getting into the detail. If you go to six digits and eight digits you are going into thousands of subheadings. The tariff is like that. It is manageable, but it is resource-intensive. The pattern is set, but you have all the detail in it. If you then convert that into the schedule, it is just as bad and you have amendments in the schedule that have nothing really to do with the tariff element. They are to do with changes of classification and changes in the harmonised system every few years. That is a kind of rectification process, because nobody wants to actually change things but they are trying to establish what the right equivalent is. I have the same problem as you trying to download the EU schedule.

Q139 **Chair:** Just to be clear, are the tariff-free quotas at the moment—I think this hits the point about law and politics—owned by the EU or some entity centrally, or are they owned by the member states? If the tariff-free quotas are divided afterwards, do the member states have equal rights, or is it the gift of the EU to give this to a departing member state?

Roderick Abbott: The EU runs a common commercial policy, so it does not run a policy for each member state. If it has a TRQ as its commitment to the outside or its obligation, whichever way it is, it is an EU thing. With the UK leaving, you can then divide it up for the UK and the rest.

Q140 **Chair:** You say you can. Is it a legal process or is it a political process? I am seeing a potential bargaining chip here that could—

Roderick Abbott: I would say that to begin with it is a kind of calculation of where the trade actually went. You can say, “So much went to Italy, so much went to France” in terms of establishing the shares of where the trade went, but in terms of the EU’s commitment, after the UK has left it will be an EU one. It will be an EU figure.

Dr Ortino: Just for clarification—perhaps a way to avoid answering—both tariff quota rates and subsidy commitments mainly deal with agricultural products.

Q141 **Sir Edward Leigh:** I know civil servants always want to complicate things, but this is quite simple. It is in our interests just to transpose the schedules exactly the same—they may be thousands of words long—to



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the nearest word absolutely straight into our law, because that will help the free trade agreement. Maybe in time we would want to have a different schedule on cars or something, but we are just talking about the next two years. That is in our interest and that is the simplest and best we could do, is it?

Dr Ortino: There is just one point. The tariff-rate quotas are liberalising, so if you take the whole lot everyone will be happy because everyone will be able to export to the UK, at either a lower or zero tariff rate, the same big amount that the EU has granted everyone. So everyone will be happy; no one will complain. Maybe British farmers may complain—with the subsidies commitment you cannot do that. The subsidies are basically a commitment that the EU, including the UK, has given to WTO members, saying, “We will not give more than X amount of money to our farmers”.

Q142 **Sir Edward Leigh:** What is wrong with that for the time being? What is wrong with that?

Dr Ortino: The problem is that with the UK using the same quantitative amount in its own schedule, everyone else will say, “You can’t provide that subsidy to your farmers, because we have only given it to the entire EU”. The UK would have to reduce it, and unless it eliminates it to zero not everybody will be happy with it. If you want to make sure no one complains, you eliminate it and say you will not provide any subsidies to any agricultural production. Then you may have a problem internally.

Q143 **Sir Edward Leigh:** Or you could do it pro rata.

Roderick Abbott: You just have to work it out basically—get the calculator out.

Sir Edward Leigh: Yes, get the calculus and work it out so that our farmers are under no advantage. It is not difficult, is it? I mean you are a trade negotiator, with your calculus.

Roderick Abbott: The subsidy part of it can be quite difficult. I think the tariff part is not.

Q144 **Chair:** It is not legally not clear, the point you made earlier, Dr Ortino, that—

Dr Ortino: When it is not legally clear it is not clear. Actually, I will not answer, and I will ask my colleagues who come later to answer the question. They are more competent.

Chair: We will keep that on hold then.

Q145 **Mr Nigel Evans:** I was in Uruguay recently. They export so much beef to the European Union. After so many thousand tonnes a higher tariff kicks in. Are you talking about the fact that Britain would then have to work out how much Uruguayan beef coming into the EU comes into Britain, and that would be our schedule?

Roderick Abbott: Yes.



Dr Ortino: That is the tariff-rate quota. The easiest solution for the UK is to give access to every WTO member at the same amount that the EU is giving at the moment. They may not want to do that. That is Roderick's idea. You try to find out what is the UK's share and maybe give a bit more—or maybe wait for members to complain and then give a bit more.

Roderick Abbott: You have a negotiating interest and you have a policy interest. I am afraid you cannot—

Q146 **James Cleverly:** I want to talk about dispute resolution—I know it was touched upon a little bit earlier. With regard to the World Trade Organisation, how effective is the dispute resolution mechanism, and could you do a little compare and contrast with the ECJ, for example, as a dispute resolution mechanism?

Roderick Abbott: If you take that comparison, the WTO isn't the same thing at all as the ECJ. The ECJ is a whole jurisdiction and it is clear there that they make legal rulings and so on. The WTO system has judicial elements and it has political and practical elements. You don't have judges. You have an appellate body that has some judicial experience, and they produce rulings on interpretation of the WTO law. If you are making a comparison with the ECJ you are really comparing apples and oranges. You are not comparing like with like.

How effective is the WTO process? I would say it is a lot more effective now than it used to be, because we tightened it up in the WTO in 1995. We had a disputes settlement understanding, a new process. What used to happen was that you had a complainant in a defendant country and the defendant could effectively block the outcome. Now you don't have that, because we have reversed the test of proof. Now you have to have an outcome unless everybody else disagrees. Does it work? There are still one or two cases that are well known where you could argue it hasn't really worked. The basic one is what I would call Airbus versus Boeing, which is actually EU versus the United States on aircraft. That is an ongoing thing that has not yet finally been resolved and will have to be resolved through bilateral negotiation, in my opinion.

Everything else that I am aware of has gone through the process, been appealed, or whatever. The results of that are always accepted, because you are only told to come into compliance with the rules. You are then not told how you do that, so you are still left with your own decision on how to do it. In other words, your sovereignty is not affected. You can come into compliance anywhere you like. I don't know where we are at the moment. We have had 400 or 450 disputes in the last 20 years and most of those have been resolved one way or another. Some of them were withdrawn, some of them have gone through the process and there was nothing to be done, and some of them have led to compliance.

Chair: When you can comply the other side can comply as it likes as well.



Roderick Abbott: Exactly.

Dr Ortino: I understand your Brexit political mandate here, which is quite complicated, but I understand the point to do with foreign judges or international tribunals telling countries what to do. In theory, there is no difference. The appellate body of the WTO may tell any WTO member that they cannot have a regulation that prohibits GMO products, because it does not comply with the SPS agreement because the scientific evidence is not clearly there.

I think the difference with the ECJ, with the European Court, is simply that the European Union is a much deeper integration project and it touches on many more things. It is probably even more visible than the WTO is but, in theory, there is no difference. Whether it is a panel decision or an appellate body decision or any other decision of an international tribunal, it may have the effect of telling a country that that certain behaviour is not complying with a specific international obligation.

Roderick Abbott: That is right.

Q147 **James Cleverly:** You mentioned the point about foreign judges, and it is a bit of an emotive point. One of the things that we see a lot of is that people make comments about structures and institutions that have never been fully explained to the British people. There is a concern about foreign judges imposing a very different attitude of very un-British decisions on the British people. But ultimately you are suggesting there are going to be judge-like creatures in the international sphere making decisions that we might not like whatever happens.

Roderick Abbott: Yes.

Dr Ortino: For example, CETA, the free trade agreement with Canada, even has an investor-state dispute settlement that does not really exist in the EU, so there are certain provisions there that in fact go even beyond what the current single market does. But it is a combination. It is not just the procedure itself, it is the substance. There is a provision that requires compensation in case of expropriation. The European treaties don't have it. To that obligation you have an attachment of a dispute settlement mechanism. You may have a tribunal with three members sitting somewhere in Washington or Geneva that tells a country that some measure constitutes an indirect obligation and you should compensate investors for it. It is more about the substance and what the substance says at the international level, and the fact that the substance is often implemented and enforced via dispute mechanisms.

Roderick Abbott: None of this on investment is yet in force; this is all under discussion. But to come back to WTO, what the appellate body with the judicial experience will tell you is that you are right or you are wrong in terms of WTO law and what the rules are. It will leave you the sovereignty to decide what to do about it.



Q148 Marcus Fysh: I want to talk about public procurement. This slightly goes back to a point we were discussing earlier about the schedules within the WTO. I want to ask about what the impact would be on public procurement for Britain outside of the EU. What are the EU coverage schedules, if there are any, within the agreement on public procurement that is in place with the WTO? Within that, what is the general split between the goods side and the services side of procurement generally, and how does the EU's schedule look within that? What would be the issues with us redesigning it, like we would have for all the other schedules?

Roderick Abbott: Again, this is between us, because it is a practical and a legal thing. I am with you in the sense that the membership of the Government procurement agreement is a mystery. The EU and all its member states are associated and committed to the Government procurement agreement. The EU has done all the necessary things. It has produced lists of entities, as we call them, who are the people who accept the disciplines, and in those there is a UK list that has been submitted, like for everybody else. There are some mysterious elements about whether the UK ratified this. I think that can be resolved. There is no doubt that the EU and member states are part of, are party to, the Government procurement agreement.

The next thing is, "What does that do?" The Government procurement agreement is mostly about procedures, disciplines, how you deal with tendering documents, how you avoid discrimination between one country and another in its tendering and so on. You have some quantifiable elements that are to do with coverage of the system, where it kicks in—below that, you do not apply it—and those kinds of things. It is mainly procedural.

I do not think Brexit has any urgent impact on the Government procurement agreement, although in the long run, because you are outside of the EU, you will have to do some repair work in terms of repeating your commitment to the agreement and repeating your entity list, whatever it is. It is not in the schedule. It is a separate agreement.

Marcus Fysh: Do you have any comment, Dr Ortino?

Dr Ortino: Not really. There is a technical issue of transposing the Government procurement agreement on to the UK once Brexit happens. This is an issue where I would suspect that legally it may be unclear but the solution can be found.

Also, substantially, I do not think this would be a controversial point. I do not see a problem of other members of the WTO complaining that now the UK considers itself bound by the GPA, according to the specific UK schedule that the EU has prepared on behalf of the UK.

Roderick Abbott: It is the continuity argument again. You are not proposing any change to what you did before.



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Q149 **Marcus Fysh:** Indeed. My point about the split between goods and services was to ask whether there is a great difference between how that looks from a European perspective and how it looks from a UK perspective, given how much our economy is about services.

Dr Ortino: In terms of transposing, the only problem you have is with the schedule on goods, because of tariff-rate quotas and the subsidy commitments. The EU current schedules are member state-specific so it would be easy to transpose them. Equally, on the GPA, the schedules are not difficult to divide out. They just apply across the board. In fact, all the British national entities and public entities that are covered by it are specifically listed country by country already.

Roderick Abbott: I would have to look and see whether, in the procedure part of it, there is a difference between goods and services. I think it is all about how you treat tenders and treating every other country that is involved in tendering the same. I think it is for goods and services. I would have to look at that, but I think there is no distinction in procedure.

Q150 **Shabana Mahmood:** I want to ask you a few questions about the practicalities of the negotiations with other countries outside the EU for our trade agreements. When do you think we can get started in negotiations with countries outside the EU?

Roderick Abbott: The formal position is that you cannot start negotiating until you are out. That is clear. That said, obviously you can start talking to people as long as they are prepared to talk to you. They know what the current rules are, so at the moment they will engage up to a certain point and then beyond that they will say, "We can't go any further". You may get expressions of good will and friendship—it could be former Commonwealth links or whatever—but you will not get beyond a certain point until you are out.

Again, there is all sorts of preparation you can do. At the level of officials, if you find a partner—it could be Australia or Canada, "friendly" countries as it were—you may well be able to engage a little bit on general principles, such as, "Would you be willing to continue the agreement that you had with the EU with the UK?", or that kind of thing. Of course, Australia does not have one, so you are talking of Mexico, Chile, South Africa and a whole raft of African countries, but you could perhaps put this idea of continuity forward and see what people say, as part of the preparation.

Q151 **Shabana Mahmood:** Presumably, friendly or not, Commonwealth background or not, if I was not in the EU I would want to see what kind of deal Britain got to see how desperate or confident they are before I wanted to show them my hand. Do you think that is fair?

Roderick Abbott: Generally speaking, that is what people think will be important for third countries. It is because the dynamics of their trade with the UK are very different to the dynamics with the EU. It is a



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question of the composition of it and where your real trade is: is it goods, is it services? Of course, behind it all is the overarching question of how attractive your market is. The UK market is much smaller than the EU one, so you have a problem of being less attractive, which you can get around by other factors like, as I say, continuity and that kind of thing.

- Q152 **Shabana Mahmood:** That is helpful. In earlier questions when you talked about staffing and resources for the Brexit deal, you very helpfully said that if you are looking at Korea or Singapore you are looking at 20 to 25 people on that kind of a deal, and if you are looking at Canada or TTIP scale, it is probably upwards of 50. Could you possibly put a figure, in rounded terms, of overall resources for one of those smaller deals? Are we talking £5 million? Could you also maybe give a figure for a bigger deal, Canada or TTIP style?

Roderick Abbott: Are you talking budget money?

Shabana Mahmood: Yes.

Roderick Abbott: No, I am not going to put a figure on it, because you would have to ask the Department of International Trade, as you did already in your last session. I cannot guess on that, because they control the money and they control recruitment as well. It is a resource question.

- Q153 **Shabana Mahmood:** From your own experience of what has happened with other deals, is it possible to give a ballpark figure?

Roderick Abbott: I was never aware of what it cost. Budget matters in the EU are somewhere else. I am only a trade person.

- Q154 **Shabana Mahmood:** How many agreements is it realistic to try to negotiate at the same time?

Roderick Abbott: How long is a piece of string? You can do as many as you have the resources and the budget for. There is no answer to that.

- Q155 **Shabana Mahmood:** It is a question of resources and budget.

Roderick Abbott: Let me think about the EU practice. We have a series of ongoing things. At the beginning, you meet two or three times in a year, at intervals, and in those preliminary stages you can run a whole series of things. You can have India here, you can have Malaysia over there, you can have Vietnam somewhere else, and they are all roughly going in parallel. I have no idea how many there have been in parallel if you take the last 10 years, I just know there have been a lot of them done. At some point they either take off and happen or they go dead.

Dr Ortino: I would only add perhaps what I mentioned before. If the aim is to take an existing EU FTA with a third country and try to have that as the agreement with the UK and that third country, this may take X amount of effort. If you open it up to a new agreement or you want to have an FTA with a completely new third country the problem will take some time, not particularly because of technicalities but because you



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have to agree yourself what you are prepared to offer and what you are prepared to accept in exchange. This is why negotiations take time. You have this meeting, you negotiate, and you go back to the capital and try to see whether you can live with that agreement or not. That will take time, particularly because of the UK's position as having to somehow construct a trade policy. That may initially take quite a bit of time.

Roderick Abbott: You are constantly having to adjust your objectives in the light of the reaction you get from the other side.

Shabana Mahmood: Thank you. That is helpful.

Q156 **Sir Edward Leigh:** A lot of us are very enthusiastic, not only for world free trade but for building up the old links with the Commonwealth. Before 1972, what was the situation with Australia, New Zealand and Canada? We had free trade? What happened?

Roderick Abbott: With Canada there is an EU agreement that is not yet completely out of the thing, although if it gets through the European Parliament it will provisionally apply soon. With Australia and New Zealand at the moment there is no EU agreement. They have begun what we call scoping, which is a preparatory period, because we now realise that we will lose out in the Asian market if we are not in free trade with somebody. We tried to with the ASEAN countries, but that has been splintered off into individual countries. We are doing something with Japan. We have done something with Korea. With China, we only have a discussion going about investment. The range of people that we have agreements with is not so much in the Commonwealth. We have an agreement with South Africa and we have an agreement with Canada, we hope, but the others are elsewhere. The classical three are Mexico, Chile and South Africa, and they have been followed by Korea, Singapore and so on.

Q157 **Sir Edward Leigh:** Perhaps you can't answer this. I was just asking whether you can remember. Historically, before 1972, before we entered the EU, presumably we were in a free trade agreement with Canada, Australia and New Zealand, were we? I don't know.

Roderick Abbott: No.

Q158 **Sir Edward Leigh:** We were not? How did it work, just quickly?

Chair: Preference systems. There were imperial preference systems.

Roderick Abbott: You had a Commonwealth but the preference element of that had largely disappeared. If you go right back to 1932, which was an Ottawa conference, this was the beginning of Commonwealth preference. It was affected by the creation of GATT in 1948 after the war, and the preference element had largely disappeared.

Dr Ortino: In fact that was one of the goals of the GATT, to eliminate those very preferences.



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Q159 **Sir Edward Leigh:** Again, this may be difficult for you to comment on, but presumably post-Brexit there would be no political bar to moving as rapidly as possible to some sort of agreement with the likes of Australia, Canada and New Zealand—friendly nations. Are there hugely complicated technical reasons or agricultural reasons why it might take longer?

Roderick Abbott: No. If you are engaging with a country with which the EU did not have an agreement you are entitled to do anything you want, subject to the timing, as we have said.

Q160 **Sir Edward Leigh:** What about America? Do you have any thoughts on America?

Roderick Abbott: Do I have thoughts about Trump? I certainly do.

Sir Edward Leigh: The difficulty of it?

Roderick Abbott: At the moment it is either in the icebox or it is somewhere in hibernation until they see what a new Administration is going to do. I do not myself think it was anywhere near being completed. There was an awful lot still that had not yet been agreed, at the level of officials as well as at the level of Ministers. If it does come out of the process of Trump and his new trade policy, there will still be a lot to do. Of course, what has been happening with CETA, and the whole question of how easy it is for the EU to negotiate free trade agreements in the light of decision-making internally and so on, is going to affect it as well.

Q161 **James Cleverly:** The UK has not done a bilateral trade agreement for well over 40 years.

Roderick Abbott: Correct.

James Cleverly: We are going to have to get used to the give and take that comes with the negotiation of those kinds of trade deals. I have been given the beady eye by the Chairman, so I am going to have to rattle through this, but could you explain quickly some of the big things that we might have to give concessions on in terms of convergence of product standards, anti-dumping and so on, the kind of elements that might fall? These are things that we have not discussed in British politics for a very long time.

Roderick Abbott: I said “correct” because there have been no bilateral trade agreements, but there have been bilateral investment treaties. There is some experience, but in an area that is alongside trade rather than trade. The other experience that the UK has is of shadowing the work that we do in Brussels. When you are the negotiator you meet the other side face to face, but you report back constantly to all the member states in committees. There is some element of experience there. I know lots of people who have played this kind of role in the British Government. That kind of thing is not zero. You have a certain amount of resource.



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If you are asking what the typical content of a free trade agreement is, if you went back a few years you could look at, say, Chile and Mexico and see what chapters they had. They were basically about trading goods, and they had to have trade in services added later because it became part of the international rulebook. If you look more recently, Korea is a model, but it is already quite a complicated model, I would say. You go back to what I was saying about a skeleton thing—a framework—which is just free trade in goods and acceptance of GATT. That is the most skeletal arrangement.

You mentioned SPS or TBT. These are standard agreements in WTO that the UK already observes. There is no necessity to have something in a free trade agreement on that unless you are being very ambitious and carrying that into WTO-plus.

Q162 James Cleverly: WTO gives an off-the-shelf framework for a lot of those elements that would need to be—

Roderick Abbott: Yes. The other part of free trade in goods, tariff-free, is “free of restrictive regulations of commerce”, which is 1948 speak for non-tariff barriers.

Dr Ortino: An FTA tries to liberalise tariffs or eliminate tariffs on goods. It replicates most of the substantive rules on anti-dumping, subsidies, TBT, technical standards and SPS, and in areas here and there tries to move forward, maybe with additional comment and notification of certain new regulations in financial services, which is WTO-plus, or GATS in services. It tries maybe to add a few additional sectors with fewer restrictions and reservations than the WTO. That is usually the standard frame. In each of those areas, the parties try to go a little bit beyond. The main, immediate gain of an FTA is the reduction of tariffs. That is the immediate gain you get.

Roderick Abbott: If you can get a reduction in non-tariff barriers, you are doing very well. That is much more complicated.

Q163 Sir Desmond Swayne: What grandfather rights can we expect with respect to the 44 agreements that the European Union has made with the 60 other financial—

Roderick Abbott: I would say none. I will ask the lawyer to comment, but my reason is that these agreements are between the EU and member states and a third country. The acquired rights belong to the EU and member states and the third country. As soon as the UK is not an EU member state, it has no acquired rights. I would say I am afraid there is no *acquis* there that could help you. On the other hand, you may be able to play the continuity card.

Dr Ortino: The legal question specifically has not been answered. This is somewhat a novel issue because the UK and each EU member is a signatory of most of those FTAs so technically they are party to the agreement, but on the other hand the agreements are constructed as



bilateral between the third party, and the EU and the member states. There are certain territorial applications that indicate the application as a member of the EU.

The legal argument can be made. It is not totally prevented in the sense that you can argue that the UK may still use their FTA as binding vis-à-vis the third country, not as a trilateral treaty but having two bilateral treaties. It would be the third country with the EU 27 and the third country with the UK, based on the exact text, which may have to be adapted, particularly when it comes to the same areas of the schedules—tariff-rate quotas, subsidy commitments—that the EU shares. For the rest, you can divide the commitments according to the member states. This is a possibility. Outside this possibility, there are no grandfather rights unless you then sit down and agree a new treaty.

Roderick Abbott: Once again, we are in uncharted territory. Nothing like this has ever happened before. You do not really get guidance from within the EU or within the WTO, frankly. We are doing our best.

Chair: Thank you very much for the guidance you have provided to us this morning. It has been much appreciated by the Committee that you have taken the time to share your expertise with us. Thank you, both Mr Abbott and Dr Ortino, for that. We appreciate it very much.

Examination of witnesses

Peter Ungphakorn and Professor Fiona Smith.

Q164 **Chair:** Can I ask the panellists to provide their names and organisations for the record, please, starting on my left?

Professor Smith: My name is Professor Fiona Smith. I am from the University of Warwick School of Law. My expertise is in international economic law, particularly international agricultural trade.

Peter Ungphakorn: My name is Peter Ungphakorn. I am a former information officer at the World Trade Organisation secretariat. I covered agriculture, intellectual property, SPS and WTO in general.

Q165 **Chair:** Thank you very much. I should say that yesterday we met informally at the OECD and I told them that I kept some sheep but not enough, hence I need a second job.

The question I want to open with is: why is agriculture particularly problematic as regards establishing new UK-specific WTO schedules? As I said, I keep sheep and I sell lamb as well, if you want to put it that way.

Professor Smith: Shall I start from the legal point of view? It has been said already, so I will not dwell on it, that the EU has a common commercial policy. From the legal side, this means that we do not have a schedule, and that includes agriculture. We would need to start from



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scratch in the UK, working out exactly what it is our schedule should contain.

The main difference when we are thinking about scheduling in agriculture is that agriculture schedules include both tariff levels and subsidy levels. That is export subsidies—subsidies paid on the export of agricultural products—and also subsidies that we give to our farmers here for various reasons. At the moment, those are the subsidies that come out of the common agricultural policy. We would have to make provision for tariff-rate quotas. That is commonly found in the schedule as well. Then we would also have to work out what exact levels we are currently subsidising. It is quite a complex issue.

Export subsidies are probably not going to be an issue going forward, because there was agreement in 2015 in the WTO in the Nairobi ministerial meeting that export subsidies would be phased out. Hopefully in the next few years we will see an end to those.

Peter Ungphakorn: Agriculture is particularly political in trade issues. If you just look at the statistics the amount of agricultural trade is not particularly large compared to trade as a whole, but because there are farmers involved, there is food security involved and so on, it is particularly political and therefore particularly difficult to negotiate.

Q166 **Toby Perkins:** Can you explain how the EU's tariff quotas have been arrived at? What UK interest should the Government seek to protect specifically when negotiating quotas?

Professor Smith: Just to elaborate on quite a lot of what was said in the previous panel, it is important to understand the source of the tariff-rate quotas. That is something we have not got into yet this morning. Basically, there are historical tariff-rate quotas. These are things that the United Kingdom had prior to entering the EU. The classic in agriculture would be New Zealand butter. There is that one, and then that gets carried forward into the UK's membership of the EU. That gets absorbed and also becomes part of the tariff-rate quota that the EU has in the WTO. That is source number one.

The second source of the tariff-rate quota is that when the WTO came online in 1995, there was a lot more complex regulation of agriculture than had previously taken place under the GATT. What happened was that a series of non-tariff barriers were used in agriculture and under the new rules, those had to be converted into tariffs, because tariffs are a lot more transparent. As part of that tariffication process, some of these tariffs were extremely high. The classic example is the Japanese rice tariff of over 1,000% that is commonly referred to. There is a minimum access commitment whereby there has to be a set amount of access. That is done through this tariff-rate quota. That is a legal requirement in the agricultural agreement by tariff-rate quota. That is the second kind.



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The third kind of tariff-rate quota is a compensation tariff-rate quota. As a colleague has previously said, if for some reason there is litigation in the WTO dispute settlement and for some reason the EU is unsuccessful, then there are two routes as a result of that. One is to change the regulation, so their regulation has to be brought in line, but if that cannot be done for whatever reason then compensation in the form of better access to offset the problem can be given. That is commonly done through tariff-rate quotas.

Another source of tariff-rate quotas is through EU expansion. Certainly when we look at when Bulgaria and Romania joined, New Zealand did expand its tariff-rate quota access into the EU at that time. The final one is the tariff-rate quotas negotiated as part of these preferential trade agreements.

There are four sources, and only one of those is a legal requirement under WTO—the minimum access requirement following conversation. That will make the whole picture more complex when we are trying to unravel the tariff-rate quota.

Peter Ungphakorn: I would add two things. One is that the reason why the tariffication process—the conversion of import restrictions into tariffs—led to very high tariffs and, therefore, the need for tariff-rate quotas is because these are exactly the products that are the most sensitive and where there is a lot of pressure to be protectionist in importing countries. Therefore the tariffs were high. There was also pressure from exporting countries to go through to get into those markets in some way, which is why they have managed to negotiate these quotas for lower tariffs.

I believe you have this document, the list of tariff quotas. If you look through it, you will see a number of instances where Australia and New Zealand appear as specific countries having access. Referring to one of the questions earlier on, I am not sure, but it seems to me that the reason why Australia and New Zealand have so many portions of tariff quotas is precisely because of the relationship before the UK joined the EU in the WTO and in GATT.

Professor Smith: Can I follow up very quickly? This is following on from questions that were raised by the Committee earlier. It is true that these quotas can be split and it is true that obviously a calculator will be used, but there is a legal test that will be used as well once the numbers have been crunched. I think it is important that the Committee is aware of that.

It is not about volumes of trade. It will not be a question of, “This is how much trade is coming into the UK. This is how much trade is coming into the EU”. It is not done on that basis. It is done on the basis of: have the conditions of competition changed? In other words, one thing that is going to be really important, I think, is that if an agricultural product comes into an EU country at the moment through a tariff-rate quota, it



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can then freely circulate around the EU. If those quotas are split and the UK gets the benefit of the quota, that product will only gain access to the UK and will not be allowed to freely circulate through the EU unless the UK has gone further and negotiated that preferential access with the EU. Although the volumes coming in as against the EU and the UK may be the same under the tariff-rate quota, the conditions of competition for that product are different as far as the exporting state is concerned. There is an issue there.

Q167 Chair: Australia and New Zealand on cheddar cheese, which is an example you have given here, may want most of that quota to be with the EU rather than the UK, because it gives them access to a bigger market.

Professor Smith: Yes. Remember as well that it is going to be about integrated supply chains. If you are exporting raw milk, the milk is coming in but then it is not just going to supermarkets for people to drink, it is going to be put into other processing products. That processing may be done in other parts of the EU. It is a question of what is coming in and what is going to be done with it as to whether the country decides that the conditions of competition are being changed because it cannot get access to those other markets.

Q168 Chris Leslie: Just to bring this to light for a non-agricultural specialist, can you give us some examples of food products that are part of an integrated value chain that end up going across Europe? Is it that you sprinkle a bit of cheese on something in Britain and then it goes across to France or wherever? Does this happen often on food?

Peter Ungphakorn: In theory, yes. I do not know the details, but you could imagine. The WTO schedules on agriculture include processed food products, cakes and bread and so on. You have sugar, fat, wheat and so on, and surely that is crossing borders. If you make a cake in Britain, the flour, the fat and the sugar may not necessarily all come from Britain.

Professor Smith: I can give you an example of the North American free trade agreement, which might be helpful because it may cause problems for us going forward. Basically, if you think about a meat labelled in the US as a product of America, you imagine in your head that that is okay because the cow was raised in America, slaughtered in America, processed in America and then put into the supermarket. That is not the case.

What is very common with that sort of product is that there may be artificial insemination. The semen may come from Canada. The artificial insemination may be done in one part of the US. The cow may be fattened back up in Canada. The slaughtering may be done back in the US because it is cheaper, or even in Mexico. Then the meat may be shipped back into America, packaged, to be moved back into Mexico because it is cheaper in terms of the plastics, to be moved back again



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into the US and then labelled "Product of the US" because the final processing element is done in the US.

Q169 **Toby Perkins:** Would that be the same in terms of quotas that land in the EU that then become components of products they sell to us if we are outside of that?

Professor Smith: Yes. Once the product is in the EU, the way the single market works is that it is free of tariffs as it moves around, but it is a regulatory union as well. As our colleagues said earlier, it is very deeply integrated. There are common standards in terms of hygiene and food safety throughout the EU, which means that the product does not need to be checked at the border. That reduces costs and also means that these integrated supply chains can happen in agriculture.

Q170 **Toby Perkins:** It is an interesting element that I do not think has been widely publicised before.

Turning to the specific countries that have an interest in exporting to the UK under TRQs, which major countries would you say would have that interest, and what are the major product groups that will be involved?

Peter Ungphakorn: All the TRQs will be subject to negotiation, some with more difficulty than others. The fact that they are TRQs, as I said before, means that they are sensitive, and those are the products that will have more or less hard bargaining of some kind.

Which countries? First, all the countries that have access to a TRQ at the moment. There is also a separate sheet; I do not know if you have received this one. On one side it says "Mutton and lamb". On the other it says "High-quality beef". If you look at the one on mutton and lamb, you will see that there is 283,000 tonnes-plus duty-free quota for mutton and lamb into the EU. Then there is a list of countries and the shares that they have there. Some of those are already WTO members. That left-hand half of the page is the present EU certified schedule, which is for the old EU 15. On the right you have the current quota, which is not certified in the WTO but is the EU regulation. Basically all those countries listed there will want to negotiate a share of this lamb and mutton tariff.

If you look at the tariff, whether you look at the scheduled tariff or the regulation tariff, it is nearly 300,000 tonnes. Almost all of that goes to New Zealand. In terms of how you then share that, the proportion that you split for UK for lamb may be different from the proportion that you do for the UK versus the EU, if you get what I mean. New Zealand may say, "The UK is a more important market to us than Romania is. Therefore, we would like a larger proportion of our 228,000-tonne quota to go to the UK".

There is an additional complication here. This is UK-EU trade. Last year, the UK imported 7,000 tonnes of lamb and mutton from the EU and sold 75,000 tonnes to the EU. If there is a free trade agreement of some kind between the UK and the EU, this will not be a problem. The problem is



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whether you know there is going to be a free trade agreement of some kind with the EU. At the end of March 2019, if you still do not have a free trade agreement and you are not sure whether you are going to have free trade with the EU or not, you will want to have your schedule sorted out so that you know what you are going to be able to export.

Q171 Sir Edward Leigh: Just on that point, I think you are suggesting that it is not in their interest because we have a massive balance of trade surplus on mutton and lamb, but equally there are things like wine where they have a huge surplus. There is the basis for a deal, obviously.

Peter Ungphakorn: There is always a basis for a deal, but that is not the point I am making. The point I am making is that if you want to continue to export 75,000 tonnes of lamb to the EU duty-free, which you might, how can you get it in there when the tariff quota is allocated between all these countries and only 200 tonnes is left for others? Where does the UK fit into those others? That is why the negotiation over the tariff quota then becomes more complicated. You want to add a certain amount that would allow for UK-EU trade on both sides. That is the complication. It is not who has the greater interest in exporting to who.

Q172 Chair: With the UK leaving the EU, are we then making a greater demand on the EU's tariff-rate quota to export into that?

Peter Ungphakorn: If it does not have a free trade agreement of some kind with the EU, it would want to negotiate a modification of the EU's schedule to allow 75,000 tonnes, or whatever it is, to continue to be exported duty-free to the EU, and vice versa. The French or Irish farmers who want to export lamb into the UK would also want an expansion of whatever the UK proportion of the EU's schedule is.

There is an idea that says, "Let's just take the numbers. If it was 75,000 tonnes last year, or you take an average over the last three years, we will just use that as the additional quota for the UK into the EU or the EU into the UK". The problem is that if you look at the use of quotas on the right of that page, they are not always filled. The amount of trade is not the same as the size of the quota. New Zealand had a 228,000-tonne quota for access to the EU but they only used 143,000. Sorry; the lamb one is up to August, so they may fill it at the end. On the other side of the page you have the beef quota, and you will see that some of those are not filled for the whole year.

Chair: Turkey exported nothing despite having quotas.

Q173 Marcus Fysh: Just a very quick question. My understanding is that the EU has not updated its TRQs overall with the WTO for some time. To what extent does that create a reasonable amount of pressure to reach a deal on a revised number that can be wrapped up at the same time as we are doing our own negotiations of these TRQs?

Peter Ungphakorn: To me, it means you have to be really careful how you negotiate. The fact that the EU itself does not have certified



schedules for the last three enlargements, I think it is, and is still able to trade means that there have been negotiations behind the scenes. You can see the results of those negotiations in these regulations—commission implementing regulation X, Y or Z. Those are the de facto schedules, if you like. In order to do that without creating disruption and without other countries having a problem with the way the UK is trading, it would have to make sure that they are all on board somehow. It is not foolproof. There is a case where China objected to a change in the EU's schedule, and there is a dispute going on on that.

Professor Smith: What is important to know is that the schedule is just the list that is with the WTO at the moment. That should be what is legally binding on the EU, but the reality is that the EU is trading, as you see, in a very different way. Then the question that would be unclear is exactly what the EU's legal commitments are under the WTO rules at the moment and what it is that the UK will get the benefit of. The trouble is that if the UK pushes to trade on the Council regulations, the list that we have, that will require the EU to update its schedule completely to include the EU 28 plus the UK. It will require it to update its schedule, which will require the EU to then negotiate with all the rest of the WTO and may slow down the whole process. It is a very difficult diplomatic line to walk.

Going back to the point that was raised about just reproducing the schedule going forward—Dr Fox has talked about reproducing the schedule—that is a tricky one, because it is clear that the EU is trading in a very different way from the schedule that is listed in the WTO. Just being clear, the reproduction of the schedule may not be as straightforward, as a legal issue, as perhaps—

Peter Ungphakorn: Yes. Basically, you need to know what the schedule is to be able to reproduce it.

Q174 **Toby Perkins:** To an extent, it explains an example of a country, New Zealand, outside the EU that has a hugely disproportionate quota for lamb because of its importance to them. Obviously they have been able to achieve that. Can you explain, from the perspective of the UK, how New Zealand has been able to do that? They have been able to carry on exporting lamb to the EU even though they are not members. How have they been able to do that? What lessons are there for us to learn in terms of areas we might like to get additional quotas, or an additional share of quotas, from?

Peter Ungphakorn: It depends on your political process, on the various lobby groups. I would add something to a question Mr Leslie asked earlier, which is in a way relevant to this. Remember that schedules are binding ceilings. You asked what happens if somebody says, "Can we lower the duty to 3%?" The simple answer is, "Don't touch the schedules; just reduce your tariffs" because you are allowed to reduce your applied tariffs below the schedules. Similarly with TRQs, it really depends on what people in your domestic process are demanding.



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Q175 **Toby Perkins:** What issues are there regarding quotas in respect of countries to which the UK exports agricultural products?

Chair: Yes, export TRQs are interesting.

Professor Smith: Going back to my original list, it is the question of whether the tariff-rate quota that the UK currently has benefit of is negotiated as part of a bilateral deal or a preferential trade agreement with the EU. An example would be Canada, the CETA. There is a preferential tariff quota for beef—not for poultry but for beef—in the CETA, but that is definitely, as it stands, a tariff quota that exists between the EU and Canada, so it is a question of whether we could take the benefit of it. As Dr Ortino said, that is a legally opaque area.

Peter Ungphakorn: For example, if you wanted to split the UK and EU portions of, say, a tariff quota for a product in the US, to export to the US, I think it would probably be simpler than the exercise of splitting the EU's tariff-rate quotas between the UK and the EU.

Q176 **Chris Leslie:** We have to get these schedules and quotas sorted out by the beginning of April 2019, otherwise there is a big unknown. Working back, reversing from that, what would you suggest would be the prudent point at which we need to start the phases of the negotiation? Should it have been four years ago or should it be today? Explain your sense of the negotiation from now for the two-year period we have. Is it possible?

Professor Smith: To me the negotiation of the tariff-rate quotas is part of the initial scheduling, because you would put into your schedule that you wanted these quotas. If you want to reproduce the sort of tariff-free access that you have with other countries, you would put it into your schedule as soon as possible.

Peter Ungphakorn: Yes. If you are counting back, you should already be talking so that when you have a document, whether you submit it unilaterally or whether it has been certified by other WTO members or not, you have one that causes the minimum problems. You need to find out between now and that moment, which is the end of March 2019, what other countries are likely to find acceptable as well as what the UK would like to do. If the UK were to do it unilaterally and simply say, "This is what we are going to do" without talking to anybody else, then you might be in for some surprises as countries raise objections. When I say people raise objections, it is not just China or Australia or the US, it is also France, Germany, Ireland, Spain.

Q177 **Chair:** The thing that is occurring to me suddenly now is that with the tariff-rate quotas, the TRQs, I was initially thinking we were looking for some of the EU's to be allocated to us, but we are also looking for some quota to go into their market as well, tariff-free, which is perhaps the surprise in my mind. It brings into play the import-export dimension of this. We have tariff-rate quotas coming in, we have tariff-rate quotas going out, which were the ones I thought about first, we have the export quotas and where we could export to tariff-free, and of course that



interplays with the EU. Going back to the earlier panel, when they talked about the legal side and how much of a rules-based framework there was around this, and how much there isn't, and how that leaves political bargaining chips, where do you see that space being? Is it political or is it legal?

Professor Smith: I think it is going to be a political space. One of things to point out as well is that it is not just the volume in the tariff-rate quota that you might want to think about; it is the type of product that is coming in on the tariff-rate quota. One of the interesting things about CETA, the Canada-EU free trade agreement is—I have the stats here—they have agreed this very large tariff-rate quota on pork coming in from Canada, which is up to 12,000 tonnes a year, and it is going to rise, and it is wonderful. All that pork has to come in subject to the EU's food safety and health regulations, so it cannot be hormone-treated, it has to be kept in certain animal welfare conditions. So because of the relationship that Canada has with America and Mexico in the NAFTA, it cannot guarantee that any of its meat coming into the EU is hormone free, because one of the requirements in the NAFTA is that there is the free movement of the animals, and the US does not segregate its hormone-treated meat from its non-hormone-treated meat, which has caused a dispute in the WTO before.

Chair: Danish pig farmers are going to be happy on that one.

Professor Smith: Yes, they may be enjoying that. At the moment the EU has very tight regulations on exactly the sort of meat to import, and I think if the UK is going to go down this route of tariff-rate quotas it might want to think not only about volume but about the quality of what it wants to come in; those two things go very closely together.

Q178 **Sir Desmond Swayne:** Can you give us a brief exposition of the "aggregate measurement of support" coloured boxes?

Peter Ungphakorn: We agreed that I would give you the simple answer and Fiona will give you the legal answer. The simple answer is that there are a number of types of domestic support, ways that Governments can support farmers. Some of them "distort" trade, which means that they have an impact on prices and on production—on quantities produced. If you think of milk lakes and butter mountains and wine lakes and so on, they are the result of overproduction encouraged by artificially raised prices.

If support to farmers is given in a way that affects prices and production, then it goes in the amber box. The colours are related to traffic lights. Red is stop; we don't really have that in the agriculture agreement of the WTO except that if you exceed your limits you have to stop anyway. That is conceptually where the red light is. The amber box means slow down. Under the WTO agreement from 1995, there was a period when countries reduced the amount of trade-distorting domestic support; they gave the aggregate measurement of support.



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Alternatively, there are certain types of support that do not affect prices and production, and they are allowed without limit. They are the green box, and there is a huge list of potential programmes that could do that, including environmental protection, R&D, and that kind of stuff.

In between, there is the blue box. The blue box is basically the amber box. It is trade-distorting, it affects prices and production, but there are conditions attached—in the EU sometimes called “set-aside”—where you agree to limit the amount of production so that the risk of overproduction is reduced.

Professor Smith: Thinking about the exemptions, a classic example is that our common agricultural policy currently contains two forms of payments to farmers. One is a direct payment that is paid to the farmer dependent on the land that they occupy. The second form is what is called the rural payment that is given to the farmer to maintain the countryside—to increase biodiversity, maybe plant trees round the edge of the land, and the EU has notified these as exempt, so as green box.

Under the reform in 2013, there are some questions about the direct payments. There is now a greening requirement in order to receive the direct payments. That means that the farmers have to undertake certain crop rotation and sustainable land practices in order to receive the payment. The EU notified this as green box, but there is a question, because you have to be a farmer in order to get it. If you are a farmer you are producing, which means it is tied to production. There is a question about whether that is the case. Secondly, rural payments are just about the husbandry of the land, they are not tied to production, so they are probably going to be exempt.

On the legal side, the amber box was only available from 1995, and the idea in the agricultural agreement is that the amber box will be reduced to production-specific subsidies like giving money to a Welsh hill farmer because they are vulnerable. So you are giving them to the farmer to produce the sheep. That is a production-specific subsidy. They are historic. The EU still has them; it does not use them as much. The UK needs access to that but it may not get it. There is no right for it to have amber-box subsidies, so there is a question of whether it can just stick with its green-box subsidies, and that is it.

Q179 **Sir Desmond Swayne:** How much do we subsidise agriculture, and what scope does that give us to negotiate lower permissible domestic agricultural support?

Professor Smith: I don't have the figures on that, but I can tell you that we do participate in the common agricultural policy, so our farmers are entitled to direct payments if they meet the criteria, and they are entitled to rural payments.

Peter Ungphakorn: I don't know the exact figures either, but I would say that if there is a problem with agricultural subsidies in negotiating the



UK schedules, then that is a signal that there is a serious problem. The EU uses only 8.2% of its entitlement on trade-distorting subsidies and there is huge room for manoeuvrability. I have used the word that it is eminently “fudgeable”. If people were going to haggle over the 90% of space that is not being used at the moment, that means there is a huge amount of ill will in the negotiations. I sincerely hope we never reach that point.

Q180 Chair: Can you explain how the WTO Agreement on the Application of Sanitary and Phytosanitary Measures affects trade in agricultural products?

Peter Ungphakorn: In very simple terms, the so-called SPS agreement is designed to clarify whether a particular measure on food safety, animal health or plant health is reasonable or whether it is an excuse to be protectionist. In the past, when there was foot and mouth disease in the UK, and the French farmers said they did not want any product coming from the UK, the SPS agreement would try to sort out whether there was reasonable justification for that or not.

There are two principles for this. One is to use agreed international standards, and the SPS agreement refers to three sets of standards: Codex Alimentarius, which deals with food; the World Animal Health Organisation, for animal health obviously; and the International Plant Protection Convention. They are the standards set, as the WTO is not a standard setter. If you apply the standards of those three organisations, you are probably safe in WTO terms. The second criterion is if you do not use those, then you have to have some kind of scientific evidence to support what you are doing.

Q181 Chair: After Brexit presumably happens, will the UK, under WTO rules, be able to do anything, if it wants to, about GMO products—genetically modified organisms—or hormone-fed beef, for example?

Peter Ungphakorn: It could. It could set its own standards, but it would need to either apply an existing international standard—and I don’t think there is one on GMOs—or else provide the scientific evidence to show that there is a danger. On hormones in beef, the EU was never able to show, to prove to the dispute settlement process in the WTO, that there was scientific justification for this. The alternative was what Fiona mentioned earlier, which was compensation, so a larger quota, or an additional tariff quota, was given to the US and Canada and various others.

Q182 Chair: It is more likely post-Brexit that GMOs and hormone-fed beef could be potentially under UK management?

Peter Ungphakorn: It would be up to the UK.

Professor Smith: Yes, it would be up to the UK, because at the moment we work on the precautionary principle. The EU’s food safety legislation, including the issues on hormones, is based on a precautionary approach.



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In other words, it is better to restrict trade in these products rather than experience potential bad health effects. The precautionary principle is not something that all countries, for example the US, adopt. It led to a large dispute between the US and the EU about on what basis you could regulate.

There would be nothing to stop the UK from lowering its threshold and working on an assessment level that is lower. If that level was different to the international standards, it would have to have a risk assessment. If it was in any way different, it would have to have a risk assessment and show that the reason it was implementing this standard that was lower than the EU's was because scientific risk indicated that there was a risk.

Q183 **Chair:** So consumers really should not see any change at all.

Professor Smith: It probably will not change at all. Domestically, UK consumers would probably be uncomfortable with a change that may be—

Q184 **Chair:** Can I ask you about something that would change? If we will no longer be party to the common agricultural policy, what would that mean for trade in agricultural products in the UK, or for UK producers, I should say?

Professor Smith: In not being part of the CAP on trade, the main change would be that there would no longer be an entitlement to the direct payments and the rural payments. That would be the main change.

Q185 **Chair:** Norway and Switzerland are able to provide higher levels of domestic support to their agricultural sectors than the EU does, so might there be some benefits to, say, the Welsh hill farmers that you mentioned?

Professor Smith: They are able to supply higher levels for two reasons. One is, as you rightly say, that trade and agricultural products per se are not part of the Norwegian model. There has been some agreement on processed products that there would be reciprocal arrangements—on tariffs, anyway, but not in relation to subsidies. Norway provides a certain type of product-specific support, which again was allowed in 1995. It is historic, and the UK could not necessarily just go ahead and have those sorts of large levels of product-specific support without getting that through the WTO. I think it is legally uncertain.

Q186 **Sir Edward Leigh:** Can I interrupt there?

Professor Smith: Yes.

Sir Edward Leigh: In the first place, it is not realistic that we are going to want to increase subsidies. There is no political will. I am not saying it is a good thing or a bad thing, representing an agricultural constituency, but it is far more likely that we are going to reduce subsidies, isn't it, to below what are generally available in the EU?



Professor Smith: That would be a political choice.

Sir Edward Leigh: That would be a political decision, but it is very unlikely they are going to increase subsidies.

Q187 **Chair:** If I can add to Sir Edward's point, on the graph that you provided us, 8.2% of the allowable band is taken by the EU. Presumably the UK is in that sort of area, but Norway has taken about 85.3% of its allowable band of support to agriculture, so there could be more if the political will was there.

Professor Smith: I would say that it is because Norway was never part of the EU negotiation on its permitted level of production support. That is why it is allowed the level that it has and that is why it uses as much as it does. If the UK wanted to go alone, there is no reason why it couldn't change, but you are not entitled to a specific level of support; you have to calculate it.

Chair: You could argue that Norway has a big oil fund to keep farmers happy as well.

Peter Ungphakorn: If you have 90% freedom of manoeuvre on subsidies, politically you may or may not want to raise subsidies or reduce them after Brexit, but within the WTO context you still have the ability to raise subsidies if you want to. There has been discussion of, for example, if you are going to lower your tariffs on agricultural products so that consumers can have cheaper food, would you then want to compensate the Welsh hill farmers by giving them some more subsidies so that they can survive in the face of competition from lower tariffs?

Q188 **Chair:** An argument you could then employ is having food security going forward so you don't have a World War II convoy situation again?

Peter Ungphakorn: It depends. My point is that there is freedom of manoeuvre on subsidies.

Q189 **James Cleverly:** We have been talking very much about the impact that subsidies would have on the relationship, but there is some non-subsidy help that, stepping out of things like the CAP, we would be able to do. I have a lot of arable farmers; they are up in arms over the three-crop rule. Outside the EU we could just say, "Scrap the three-crop rule". It does not change their product offering at all but massively reduces their cost base because they are not having to go through the cost implications of that. How would something like that—and I know I am asking you to speculate—impact on some of the things we have just discussed and our relationship with EU on market access?

Professor Smith: One of the things to think about is that for the UK farmers, certainly you could do that. You could say, "We are not going to have direct payments at all; we are just going to have payments that are based on looking after the rural environment, so rural payments. That is the only form of subsidy we are going to have", and that would be fine. I don't think it is going to necessarily be a question of how it would affect



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trade with the EU. The form of subsidy the UK decides on, if it decides to have any, is not going to be an issue necessarily for trade with the EU. Where it becomes an issue with the EU is in the amount of the allowed subsidy that the EU had in the WTO, and if the UK wants access to that. If in the future it decided to subsidise farmers just because there was a food crisis—let's say there was a shortage of supply and food could not be got from elsewhere—would it have leeway within the WTO to do that? That is where the trade element comes in. I think whether or not we subsidise our farmers in one way rather than another, as far as the EU is concerned, is not an issue. It would not affect the products going in and out of the EU.

Q190 Sir Edward Leigh: Can I ask about New Zealand, very quickly? I know it is getting late. They have abolished all their agricultural subsidies, but there is this deal on butter, isn't there, with New Zealand butter coming into the EU? If we are trying to do a free trade deal with New Zealand, presumably that would affect the negotiations, wouldn't it, because they have abolished all their subsidies? How do you think that would work? Would they say, "You are still subsidising your agriculture, and therefore it makes it difficult for us to have a free trade deal on agriculture"? I don't know. How would it work, do you think?

Peter Ungphakorn: It depends whether you are talking about negotiating a free trade agreement with them or just negotiating WTO schedules. If it is negotiating WTO schedules, then the UK can say, "We would like to stay as close as possible to what we have at the moment", which may still involve some tough negotiations. However, if it is a free trade agreement, I don't think we know. I think it really depends on them and how they would respond. I have said before that I think there are three huge unknowns here, one of which is slightly less unknown than before, and that is what the UK's policy is going to be on all issues. Another unknown is what the EU's policy and its reaction to the UK will be, and the third is how other countries will respond to that. Basically, on those other two, we don't know.

Professor Smith: Can I come back to an important point for colleagues and the panel to be aware of, which is that direct payments over time, because they are paid to the landowner, are capitalised into the value of the land. That is something that would need to be unravelled, going forward, if direct payments are no longer part of the farmer's income.

Q191 Chair: It will affect land prices, then.

Professor Smith: Yes.

Q192 James Cleverly: It might also affect any financial instruments that are geared against that land value.

Professor Smith: Yes.

Q193 Chair: Fascinating. That is a fascinating point. On the customs union, what do you feel are the advantages and disadvantages for UK



agriculture if we are in a customs union or not in a customs union?

Professor Smith: It would be a question of the customs union that you had. The EU is a customs union; clearly it is not envisaged that we remain in the customs union. What we are thinking about is the UK having a customs union with the EU, which would be akin to the Turkey-EU situation.

The advantages would be that you would have a common external tariff. Products would move freely within the customs union once they had paid that tariff, so that would be good. The difficulty with the Turkey-EU relationship is that it is not a regulatory union. In other words, the products still need to be checked at the border as they move between Turkey and the EU for the fact that they conform with certain standards, so it increases costs. It is only an external tariff. It is not a regulatory union and it is not a deeply integrated arrangement.

Q194 **Chair:** You would still have the checks internally.

Professor Smith: Yes. You would still have to check, so although the product would come in free, it would still have to be checked that it met the right standards, and agriculture is not included in the Turkish arrangement.

Q195 **Chair:** That brings us to the capacity point. The UK currently does some 34 million border checks a year; it has capacity for 100 million. According to the *Financial Times*, it might have to do 234 million. If you are checking, say, live shellfish having to go through and there is a delay there, you have destroyed the value.

Professor Smith: Yes, and of course it is more complex on land borders, which the UK has between Northern Ireland and Ireland.

Peter Ungphakorn: If I might just add this, the benefits are as Fiona said; there are additional downsides as well. While it is more difficult to negotiate a free trade agreement, it is not impossible, but it is more difficult to negotiate a free trade agreement with non-EU countries. Secondly, you would not have the freedom to set your own tariffs. If, for example, you said oranges have a very high tariff because the EU tariff on oranges is designed to protect Mediterranean producers, and you said British consumers should have cheaper oranges, in a customs union you could not do that.

Chair: The customs union, just to absolutely clarify, is for stuff coming in, but the border still remains intra the customs union? Fascinating. Okay. I see.

Professor Smith: Can I raise one point on the models, as a point of clarification from the previous panel? The EEA model and the Swiss model have become so complex that the EU is introducing a governance model on top of them, which will be overseen by the European Commission. The level of integration and the sorts of the structures they are putting in



place on the EEA and the Swiss model are becoming closer to the sort of governance structures that we have seen in the EU.

- Q196 **Chair:** CETA eliminates many of the duties—just about all of the duties—on the agricultural and food sectors. First, does that tell us anything about the possibilities for the UK for concluding such a deal with the EU? Secondly, do border checks still remain, with stuff being checked coming in, despite the duties being eliminated? Are there still customs checks continuing, or would there be within CETA?

Peter Ungphakorn: Within the EEA?

Chair: With CETA agricultural products coming in.

Peter Ungphakorn: I'm sorry, I have not looked very closely at CETA.

- Q197 **Chair:** If Canadian agricultural products come in post the CETA agreement, they will be coming in with tariffs eliminated on most of them. Will there still be customs checks within that, do you know?

Professor Smith: Yes, because CETA is a free trade area and not a customs union, so one of the big things you would have to check is the rules of origin. It has to be a Canadian product coming into the UK or the EU, so you would have to check that it is Canadian, and it is very tricky because of all the issues to do with Canada's membership of other free trade agreements like the NAFTA.

- Q198 **Chair:** Does the CETA elimination from the customs duties give us any model for a UK-EU agreement in the future?

Professor Smith: There are always possibilities for using previous deals as a basis for current deals for the UK going forward. The liberalisation, the removal of tariffs, looks very impressive on CETA but in fact, when you look at the products coming in, they are going to be less because of the hygiene requirements, the hormone-free requirements and the GMO-free requirements that the EU has.

Peter Ungphakorn: Dairy is very sensitive for Canada. Within CETA dairy is not particularly liberalised, whereas you might or might not want a more liberal relationship with the EU on dairy.

- Q199 **Chair:** Canada wants to protect their own dairy sector?

Peter Ungphakorn: Canada is very protectionist on dairy.

Mr Nigel Evans: I just think everyone is protectionist on dairy, from what I can make out.

Peter Ungphakorn: Probably, yes

- Q200 **Mr Nigel Evans:** Looking at some of the stats, we import 27% of our foodstuffs from the European Union and we export less than that to them. Would you, using Edward's simplistic rule, say there would seem to be some form of benefit for keeping the current trading relationships that



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we have between the EU and the UK, as it currently is, post-Brexit?

Peter Ungphakorn: Yes.

Sir Edward Leigh: Yes. That is good enough.

Mr Nigel Evans: Thank you.

Q201 **James Cleverly:** I will be really quick, and I would be grateful if you would as well. Some of the advocates for Brexit—and I declare an interest, myself being one of them—suggested that our stepping out of things like the common agricultural policy would enable us to move in much more of a trade liberalisation direction, particularly with agricultural products from the developing world. Am I bonkers? What are the advantages and disadvantages, of that? How practical is that? Again, I am getting looks from the Chairman. I know that is a massive question, but you could distil it down to the main points.

Professor Smith: Why don't I just say that unilateral liberalisation of tariffs is going to be tricky? You have to think about food crises and food security, irrespective of origin and where they come from. The problem, if you eliminate your tariffs and all your subsidies on agriculture, is that you expose UK agriculture to the freedom of the market, which may or may not be a good thing, depending on your perspective. You would then be dependent on trade in agricultural products from perhaps former Commonwealth countries and other African countries.

The difficulty you would have then is you would have to think about the quality of the products coming in. The quality of those products would require extra cost for those countries in order to overcome those types of barriers. That is very expensive for them, and you may not get the right quality. If you do not have enough food from those sources, you will have to get it from elsewhere. If you manage to overcome all those hurdles, so you get those countries exporting to you at the right level of hygiene, if you are dependent on that produce, and there is a problem with the crop or the livestock that year, you will become food-insecure. The problem with that is that the lead time in agricultural products is different from every other product in the fact that once a planting decision has been made or the cattle have been inseminated, there is always a lead time that cannot be shrunk.

Q202 **James Cleverly:** One of the points that I have made historically is that the nature of the products coming out of developing markets tends not to be core-to-survival type products: coffee, chocolate, bananas, a lot of soft fruit, that kind of stuff. The grains and bulky protein type products tend not to be products that we import from the developing world in significant quantities anyway. You mentioned about how CETA gave differential protectionist or liberalisation attitudes towards different product mixes. Could we, without hampering our food security or undermining our domestic food production, be much more liberal in the importation of some of these very important products from the developing world? Coffee and chocolate alone would make a massive



difference to large parts of the developing world.

Professor Smith: Just a couple of things on that. A lot of these come into the EU through preferential agreements anyway. The Everything But Arms initiative is the most important, which does give duty-free access to a lot of countries, particularly the sorts of the countries you are talking about.

The other problem to think about is that if you want to go beyond that and increase the volumes, you need to think about genetically modified crops, because it may well be that in increasing the volumes you are looking at crops that have been treated in some way with GM or some sort of hormone or whatever. GM coffee would be the classic example. It sounds like a wonderful idea, but I think it would probably have to be looked into both in terms of domestic food security and also in terms of the exact standards and whether you are exporting a lot of standards to those countries that increase their costs, which makes them uncompetitive elsewhere. It is a very complicated question.

Peter Ungphakorn: May I make four quick points from what I have seen from in and around the WTO?

First, I am told by friends who have been to the Caribbean that there are people there who are terrified of Brexit, and their main concern is what happens to sugar and bananas. I have no idea what is going to happen to sugar and bananas, but it is a fact that it is something that is interesting for them.

Secondly, on liberalising agriculture, New Zealand did it. From a protected sector to a liberalised sector, they managed to do it, but there was a huge amount of adjustment in between. Farmers went out of business, others came in; there was a lot of reorganisation. The question is, a bit like Brexit: are you willing to take the pain in order to reach whatever destination you are going to get to that may or may not be better?

Thirdly, in terms of international negotiations, once you are liberalised you lose a bargaining chip. There is what Martin Wolf, a long time ago, called something like the false logic of negotiations; in other words, when you lower your barriers you are benefiting yourself first but you describe it as a concession to others. If you are already liberalised and you have got rid of your subsidies and your tariffs, what is your bargaining chip in trying to get other people to lower their subsidies and tariffs?

Finally, there are two groups of developing countries. There are the former colonies, the ACP countries, which have preferences. They are terrified about what they call the erosion of preferences. Their products are coming in duty-free or with low duty and the normal tariff is high. If the normal tariff goes down, then the margin of preference goes down. That is one side of the coin. The other side of the coin is that there are a lot of Latin American countries—for example Ecuador—who will say “We



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are poorer than you, Mauritius. How come we don't have preferences in the EU?", and they have been banging on the door to get access to these preferences. The interests of developing countries, as regards preferences, are split.

- Q203 **Chair:** Just on what you were saying about sugar, I have met with Tate & Lyle, who are looking forward to a sort of world market purchasing of sugar outwith the EU restrictions. Where they see an advantage, clearly there are those from perhaps former Commonwealth countries or former colonies of EU member states, who are, as you say, terrified by this.

The final point from me is that I would like to know about the tariffs on beef—lamb and beef are produced in my constituency—frozen fish and frozen shellfish, as well as live shellfish. Are these within the schedules you have given us here, or is there a rough ballpark as to what my crofters and fishermen can look to suffer?

Peter Ungphakorn: Fish are in the schedules but they are not defined as agricultural products in the WTO, presumably for political reasons, nor are forestry products. But you will see from the top of this list that there are some fish products that do have TRQs as well, so they may also be negotiated.

- Q204 **Chair:** It is possible that live shellfish could face customs checks and face tariffs going to Europe in future?

Peter Ungphakorn: Yes. If there are customs barriers between them, yes.

Professor Smith: Just to be clear, if you were subsidising fishing in some way, it would be regulated very differently from the way that we have been describing agriculture here.

Chair: Panel, thank you very much for your time. Time is going on. You have been fantastic in the expertise you have shared with us. We appreciate it very much and we might come back to you at some point.