



Select Committee on the European Union

International Agreements Sub-Committee

Oral evidence: UK-US trade negotiations

Wednesday 8 July 2020

4 pm

Members present: Lord Goldsmith (The Chair); Lord Foster of Bath; Lord Fraser of Corriegarh; Lord Gold; Lord Kerr of Kinlochard; Lord Lansley; Baroness Liddell of Coatdyke; Lord Morris of Aberavon; Lord Oates; Lord Robathan; The Earl of Sandwich; Lord Watts.

Evidence Session No. 3

Virtual Proceeding

Questions 24 - 34

Witnesses

[I](#): Sabina Ciofu, Head of EU and Trade Policy, techUK; Ziyang David Fan, Head of Digital Trade, World Economic Forum; Jimena Sotelo, Project Lead, Digital Trade, World Economic Forum.

Examination of witnesses

Sabina Ciofu, Ziyang David Fan and Jimena Sotelo.

Q24 **The Chair:** Thank you all very much indeed for being here. We really appreciate the help you are going to give us in our inquiry into the proposed US trade deal. This session is not being broadcast but it is being recorded and transcribed, so we will take a very careful note of everything that you all say to us. You will have the opportunity to review that before it is finalised. Members may declare relevant interests before they ask questions. Questions will be asked by all the members of the Committee at different points, not necessarily on every topic. They may be directed to one of you specifically, but if you would like to say something relevant, please indicate that. We look forward very much to hearing what you have to say.

Let me ask you to help us a bit by summarising what digital trade encompasses. What does it mean beyond e-commerce? What benefits can UK businesses and consumers gain from international trade provisions in this area? You may think that is a very basic question, but it would help us enormously to have an answer.

Sabina Ciofu: Good afternoon, everyone. I am the head of EU and trade policy at techUK, which, as you will surely know, is the largest trade association of tech businesses in the UK. That includes tech manufacturers, internet platforms, consumer electronics and software applications. We have about 850 companies in the membership. I am here speaking on behalf of techUK and our members.

Digital trade is the cross-border transfer of data, products and services over the internet. Businesses transfer data for all kinds of reasons—to improve their operations, for instance. Consumers and businesses use the internet to buy services, buy products through e-commerce platforms, and access digital goods, such as music. That is the best definition we have of digital trade so far, but I would welcome input by my colleagues from WEF.

In terms of how it benefits UK and US businesses and consumers, this is a real opportunity, simply because the UK and the US are leading exporters of digitally enabled services. When consumers buy online, they tend to buy from each other. They are also leading innovators. We have a shared interest in making the tech companies scale up, grow and be able to export. This is a key opportunity for the UK to join a club of countries that have modern digital trade chapters in trade agreements, which the EU, unfortunately, cannot claim to have global leadership in. We are very keen and excited about this opportunity to see modern digital trade provisions in a trade agreement with the US.

The Chair: It is very refreshing to have enthusiasm about this. Ms Sotelo and Mr Fan, you are invited to add to the definition or modify it.

Ziyang David Fan: We share the enthusiasm. Good afternoon. I am the head of digital trade at the World Economic Forum. On behalf of the

forum, we thank you for the invitation today. As a quick background, the World Economic Forum is the international organisation for public and private co-operation. We are an independent and impartial organisation, headquartered in Geneva, Switzerland. My colleague Jimena and I are based in the San Francisco, California office of the forum, where, three years ago, the forum set up the Centre for the Fourth Industrial Revolution to address technology governance and maximise the benefit of science and emerging technologies for society, such as artificial intelligence, blockchain, coding and digital trade. We are very glad and honoured to speak here today. As a quick disclaimer, our views expressed here today do not necessarily reflect the views of the forum, its members or partners.

On digital trade, at the outset when folks talk about trade people often think about tariffs. They think about containers and manufactured goods. Those are super-important, but what is often missing from the conversation is digital trade, which is the fastest growing part of international trade in the past decade. It is quite a broad concept. Digital trade is goods and services that can be delivered either digitally or physically. I will give you some examples.

When you talk about digital goods, think about whether you are downloading an e-book from, say, an EU e-commerce website. That is digital trade. On the same website, you could purchase a physical book that is delivered to you. That is also considered digital trade. When we come to services, the definitions are even broader. When you travel overseas and use your Visa credit card, that is digital trade. When you book a listing on Airbnb, that is also digital trade. There is creative content, legal services or what we are doing right now, remote work via Zoom. That could also be considered digital trade, so it is quite a broad concept.

In our view, digital trade also means digitising trade, so using digital technologies to make trade more efficient and inclusive. It is particularly important today where the Covid pandemic has restricted a lot of our physical movement. That is another example.

To recap on what we have seen in the past decade, the economy and the digital economy are merging, or the lines are blurring. We believe that the trade and digital trade line will also blur. In future, trade and digital trade could be very similar concepts.

Going on to the opportunities for the UK, Sabina is in a much better position to speak on that. From our view, from the global perspective, we see it as a tremendous opportunity. The UK is a leader. It is the world's second largest service exporter. We are talking about financial, legal, creative content and everything in between. For example, my wife is a big fan of "The Great British Bake Off". That is trade. E-commerce is big. Emerging technologies could also be a very important aspect if we get the rules right.

In conclusion, if we can get the digital trade rules right, we can benefit consumers, improve efficiency for businesses and grow the economy.

The Chair: Ms Sotelo, you were invited to add to that if you want to.

Jimena Sotelo: My colleagues have covered it just right. To take the opportunity to introduce myself, I am project lead of digital trade at the World Economic Forum.

Q25 **Lord Foster of Bath:** It is lovely to have you with us. Can I just recommend "MasterChef" to Mrs Fan, rather than "Bake Off"?

We know that the US has done a number of other trade deals. It has renegotiated the deal with Canada and Mexico. It has had the mini-deal with Japan. I wonder whether you think those deals give us an accurate guide to the sorts of things that the US will be looking for in its trade deal with us. Should we also be looking at other deals, such as the digital economy partnership agreement with New Zealand, Chile and Singapore?

Jimena Sotelo: The US's recent deal with Mexico and Canada, the USMCA, and the mini-deal with Japan are agreements where we see binding provisions in a number of areas, including, for instance, on not imposing customs duties on electronic transmissions, free data flows across borders, including of personal information when needed to conduct business, no data localisation requirements and no mandatory disclosure of source code, to name just a few. It is reasonable to expect the US to try to include these provisions in an agreement with the UK. It is a good negotiating base to take into account.

Regarding your other question, we also see recent agreements such as DEPA, the digital economy partnership agreement signed between Chile, Singapore and New Zealand. This agreement includes binding provisions in the areas I have just mentioned. On top of that, it adds a number of provisions on co-operation. This is very important. Regulatory co-operation, especially in digital trade, is key to ensuring that market access commitments can be translated into business opportunities, because, as we were saying, in digital trade we are not dealing with tariffs; we are dealing more with the broader measures that might affect market access opportunities.

In DEPA, we see a number of provisions for co-operation—for instance, on online consumer protection, SMEs and open data, as well as competition policy. Those areas are all key to ensuring market access and consumer welfare.

Lord Foster of Bath: I share your optimism about the benefits the UK can get from a trade deal in the digital area, but there are some concerns. One is in relation to the protection of IP. You will be well aware that in the US-Mexico-Canada deal, despite it being contentious, they kept the safe harbour provisions, which make it very difficult, for instance, to check on liability for harm on an online platform and to go after violations and IP infringements. Do you have thoughts about whether we can do anything to prevent the US insisting on having a safe

harbour provision in our own trade deal? Does it not matter quite as much as I think it does?

Sabina Ciofu: We, at techUK, support the inclusion of the principle of limited liability in the UK's trade agreements. It has been a massive enabler of innovation and allowed SMEs to grow online. This principle is entrenched in the E-commerce Directive that is currently being reviewed at EU level. There are several discussions, not only here but in the US, on how to deal with online harms, illegal content, disinformation and various other issues.

We would like the principle of limited liability to stay but to have a channel of conversation for how we deal with all these issues that are a challenge, not only for us but for Governments around the world. Intermediary liability has been for a very long time a success story of internet regulation and is currently under review in a number of jurisdictions. The way to go about that is to create a channel of communication on these issues with our trading partners.

Lord Foster of Bath: I am really sorry to interrupt. I have no idea what you mean by "channel of communication". Article 19.17 of the US-Mexico-Canada trade deal introduces the safe harbour provisions that exist in the US. Those safe harbour provisions would make it almost impossible for the UK, for example, to introduce the planned online harms legislation. How does a channel of communication get us round that?

Sabina Ciofu: The USMCA provisions are one way to look at it. In Europe, we have the E-commerce Directive and limited liability for intermediaries. We have been very supportive of that as an industry, because it allowed a lot of services to grow and provide additional services in the online economy. Including that principle in a trade agreement will not limit the ability of the UK to regulate domestically. We are asking that the limited liability principle is included in a trade agreement, but that does not stop the UK Government from regulating on online harms and other issues it deems necessary. It is worth noting the difference between the provisions in USMCA and the E-commerce Directive that we have in Europe.

Lord Foster of Bath: I know others want to come in, so I will be very quick. I do not understand, in the global digital world in which we live, how we could introduce online harms legislation in the UK that would have any effect if, when looking at US providers and platforms for instance, we can take no action. That is where a lot of the current concerns about IP exist. It would be a very limited online harms protection if it was UK platforms only.

The Chair: That is a clear statement, Lord Foster. Ms Ciofu, if you want to comment on it, please do. You have said what you want to say. I do not know if Mr Fan wants to add to it. Otherwise we will move on, recognising the strength with which Lord Foster has expressed that view.

Ziyang David Fan: First, even in the US, this issue is quite controversial. Secondly, in the past 10 years, the tech companies have come a long way in addressing these issues. This issue is not completely resolved at all, but it is being addressed. Thirdly, we should also think about the SMEs. It is not just the big tech companies that have these issues. They would have an impact on the small websites, so to speak. Overall, I agree with Ms Ciofu on all her points.

The Chair: We will obviously have to consider this further. I am grateful to you for your answers.

Q26 **Baroness Liddell of Coatdyke:** As you know, the UK is negotiating in parallel with the EU and the US. Any deal with one could have an impact on the other. One area where there is divergence between the EU and the US relates to how to manage data flows and ensure privacy protections. Could you briefly explain the nature of the different approaches and what you think are the right provisions to help businesses across sectors?

Ziyang David Fan: It is quite a complicated topic, but I will do my best. When it comes to different approaches, at a very high level, privacy is a fundamental human right for the EU. There is a set of laws and regulations for it, for example GDPR, as many of us have heard. The EU takes the ex-ante approach: "This is the law and you have to follow it". On the other side, in the US, there is no one comprehensive federal regulation on privacy. It is a patchwork of rules and regulations focused on sectors such as the financial sector, or demographics such as children. It is also at the state level. Where I live, in California, we have our own Consumer Privacy Act.

The US approach is more ex-post: "We will let you do a thing, but if you screw up we will come back to you and fine you". For example, the Federal Trade Commission—the FTC—would fine tech companies. At a high level, that is the different approach. Of course, there are complaints about both approaches. For the EU approach, the cost of compliance is brought up. For the US, there is a lack of coherence and we have seen some scandals with tech companies recently.

Countries or regions will always tend to have different approaches, but that is not the end of the world. For the UK, a smart digital trade agreement will build in transfer mechanisms, so that different approaches are compatible. That is the key, whether it is binding corporate rules, standard contract clauses or adequacy decisions, for example. Basically, you build bridges with a specific state and encourage the transfer mechanisms, so that one approach can talk to the other approach. For example, in the USMCA there are specific mentions of the OECD privacy framework and the Asia-Pacific Economic Cooperation privacy framework. Those are some examples.

When we think about data protection, we should think not just about the protection of personal information but about why we care. It is because of trust. We need people to trust each other. We need consumers and business to trust each other. Some of the other provisions, such as

consumer online protection clauses, which are usually part of digital trade agreements, are just as important to build that trust.

The Chair: I think we will come back to some of those questions. Lord Lansley, for example, may ask you that. The Earl of Sandwich will come in at this point with a question about specific examples of different models and how they can fit together.

Q27 **The Earl of Sandwich:** I must say to Mr Fan that “compatible” is a very comforting word to hear; it carries me through to the next question. I want to home in on Japan. We have touched on the fact that they have trade agreements with the US, the EU and Canada. How have they handled the requirements for data protection? Key is how the UK can follow those models. Does the EU-Japan agreement on data protection show that the UK can remain compliant with the general data protection regulation—the GDPR—of the EU in a US deal?

Jimena Sotelo: The examples of both Japan and Canada can be replicated. These countries have signed agreements with both the US and the EU. In the agreements, they respect the data approach of each jurisdiction. This means that in agreements that involve the US there are commitments and binding provisions on free data flow across borders, including of personal information.

On the contrary side, in Japan, the EU and CETA, the comprehensive economic and trade agreement between the EU and Canada, there are no provisions or commitments on free data flows. In those cases the data flows are unlocked thanks to adequacy decisions by the European Commission that basically recognise the level of data protection of the other jurisdictions as equivalent to that provided under the GDPR.

Since the UK was part of the EU and was compliant with GDPR, it is reasonable to expect to reach the level of an adequacy decision. That will be the easiest way to unlock data flows for companies, so they do not have to provide any additional safeguards when data moves across borders. By having this adequacy decision that is basically at the state-to-state level, the issue should be solved. When it comes to data with the US, it is worth considering whether the UK is still concerned about privacy and whether it is worth extending the US-EU privacy shield or a similar mechanism.

Sabina Ciofu: It is important to note here that 75% of UK data flows are with the European Union. Our main partner for digital trade is the EU, and there is hardly any way to compensate for that in the absence of an adequacy decision, so that is of utmost priority.

I agree with my colleague that there is Japan and Canada to look at. Canada has a partial adequacy decision only for commercial actors; Japan has a full one. However, in trade, geography is important. We will have to look very carefully at what that adequacy decision for the UK will look like and what can be done with data flows in other trade agreements, within the limitations of that adequacy decision. Yes, in principle they can be

replicated. It depends on how that negotiation goes and how adequacy is decided. A lot of factors are still a bit up in the air.

On 16 July, next week, there will be an important decision from the European Court of Justice on standard contractual clauses and whether they are a valid transfer mechanism. That decision could have implications for the Privacy Shield. I agree with Jimena that we will need an onward transfer mechanism in order to comply with adequacy and have data flows in a free trade agreement with the US. That depends on whether the Privacy Shield survives the court ruling. There are multiple questions at the same time on data governance and the choices the UK makes going forward.

To reply to Ziyang, on data, whether it is interoperability or harmonisation and the adequacy system, it seems that the UK will stick to the GDPR and have its own adequacy system. From that point of view, it seems that it will continue to be an EU model and potentially, in the longer term, look at how it can tweak the GDPR while remaining in an adequacy framework in such a way as to make the system easier for business and reduce compliance costs.

The Chair: You said at one point in that answer that, in trade, geography is important. I suppose, rather foolishly, I had thought that the one place it might not be that important is in digital trade. You are telling me that that is not right. I do not understand.

Sabina Ciofu: That is a very fair point. You would think it matters less, and it does matter less, but we depend here on what the Commission will write in that adequacy decision. It is likely to be a different one than Japan and a different one than Canada. They are all different from each other and they all have their own strings attached. We need to look at that document when it comes out, and we hope it is a positive adequacy decision, to see how we can work with that to include data flows in other trade agreements.

The Chair: The point behind my question was to ask whether you were telling us that the fact that we are close to some potential markets means that they are more significant, even in digital trade.

Sabina Ciofu: Yes. Probably the best answer here is the volume of data flows we have with the EU compared with the rest of the world. That is the main reason why we depend on that adequacy decision. It is important to note that the adequacy decision is actually very important for SMEs. Most large companies have already created their own standard contractual clauses or have secured other transfer mechanisms. They have put those in place regardless of where the adequacy decision process may go. That is really important for SMEs, because that creates legal certainty and allows them to transfer data across borders.

Ziyang David Fan: Digital trade did not come out of thin air. It has built up from physical trade throughout the years. When it comes to commerce and trade law, it is still B2B—business to business. It takes years and

decades to build those relationships, but the internet has opened many doors, especially for small and medium enterprises. Before, only the big players could participate in international trade, whereas now anyone with a website or who can get on Etsy can start selling things and do international trade.

The Chair: Both you and Ms Ciofu have been emphasising the position in relation to SMEs, so that is very helpful for us.

Q28 **Lord Lansley:** We touched on the sensitivities about particular kinds of data, for example financial or healthcare data. I wonder if our witnesses would recognise that there is a case in the negotiations for the UK to have provisions restricting the flow of data, for example NHS healthcare data or financial data.

Sabina Ciofu: I am happy to share a few thoughts on this. There is very clear guidance from NHS Digital regarding healthcare data. It can only be hosted in the UK, the European Economic Area and countries deemed adequate by the European Union. For now, that is basically where UK healthcare data can be stored and processed. That remains the same, regardless of this trade agreement.

When it comes to financial data, our position has always been that trade agreements should not have special provisions for financial data. This situation comes from 2008 and the financial crisis. When Lehman Brothers went bankrupt, authorities did not really have access to the 26,000 servers that were located across different jurisdictions. There was a matter of regulatory access to data there that led to special provisions for financial data in trade agreements.

In the US and the UK, domestic legislation following the financial crisis, so the Dodd-Frank Act in the US and the Banking Act 2009 in the UK, set provisions for large financial institutions to ensure that, in case of bankruptcy, there is an orderly unwinding of business so that regulators have access to the information they need. It shows that it is in the remit of domestic regulation to ensure that regulatory access to data is ensured.

For the financial sector, having special provisions on data, which sometimes means data localisation—sometimes financial institutions need to set up a data centre in a specific jurisdiction—is costly. That reduces their competitiveness. Recent studies show that such provisions reduce the availability of financial services for developing countries as well. There are multiple consequences of having special provisions for financial data in trade agreements.

For the UK specifically, it is really important that we do not think of financial data differently than other categories of data. We have a thriving financial services sector and a growing fintech sector, so it is really important that we treat financial data as any other category of data and do not have special carve-outs for it that decrease the competitiveness of our industry.

The Chair: That is very clear. Thank you.

Lord Lansley: On the healthcare data side, is a difference drawn between identifiable data relating to patients and big data that can be derived from the healthcare system as a whole, with non-identifiable anonymised data? There is an interest from the research side, and indeed from the commercial point of view, in the use of that big data. Is NHS data available across borders globally when it is big data, rather than personalised data?

Sabina Ciofu: I need to check. I am not a healthcare expert, but we have healthcare experts in techUK, so I will come back on that in writing.

Ziyang David Fan: If I can chime in, I cannot speak specifically about the UK, but I know that in healthcare data folks are exploring the approach of a federated data model, which is exactly what you said. The actual data, the specific details, will stay in-country, but they will be fed into a model, for example for artificial intelligence analysis. The data stays, but it would be synthesised and then feed into a bigger model for research and analysis. That way, the personal information would stay, but you can reap the benefit, so to speak. For example, if it is a rare disease, you need to do the genome sequencing, so you still benefit from that.

Lord Lansley: Is that distinction reflected in any of the free trade agreements that we might refer to, or is it still in development really?

Ziyang David Fan: To my knowledge, it is not to that level of detail. I have a quick word on data localisation. Generally, we should recognise the importance of healthcare, financial and personal data. We need to safeguard them. At the same time, we should think about the policy objective we are trying to achieve. The common understanding is that, if we keep the data locally, that would make it more secure. An assumption is that, if you keep it here, it is safer than elsewhere. In today's world, that assumption is not always correct, just like keeping your money under your mattress is not always safest.

We need to safeguard the data when it is moved, not where it is located. That is the key because there are lots of benefits, as you said, in research for the Covid situation for example. We have seen that we need real-time data to track the virus, to do the genome sequencing, and to come up with the diagnosis and cure. There are lots of benefits. It is the same on the financial side, as Sabina just said. Especially as the UK, as one of the world's largest financial hubs, is a leader in fintech, allowing that kind of flexibility will be beneficial for UK businesses.

Q29 **Lord Watts:** We have received submissions arguing that any UK-US deal will need to include protections for source codes and algorithms. Can you explain briefly the issues that relate to this matter and who might be affected by it?

Jimena Sotelo: It is important to first acknowledge that many companies rely on source codes and algorithms to differentiate from the

competition and base their business models on them. These are not just tech or software development companies, especially since there are opportunities to customise the source code and make it relevant to specific client expectations. Many companies in a wide range of industries, from e-commerce platforms and airlines to any traditional manufacturing company using, for instance, algorithms for more efficient storage use or shipping routes, are benefiting from having these intellectual property assets. That is the first point I wanted to make. This would benefit not just software developers but a wide range of industries.

Secondly, companies, in both the UK and the US, are interested in having these protections. Thirdly, as mentioned in recent trade agreements, USMCA, CPTPP and DEPA, we see provisions that prohibit the disclosure of source code, including algorithms. It provides within the agreement that there is no mandatory disclosure of this source code as a requirement to conduct business or to import or export.

We all agree that this makes sense, considering that companies often rely on trade secrets as the IP form to protect their source code. They usually opt for this form of IP because it allows them to protect the source code for an indefinite period. With copyright, you get only around 70 years of protection, with patents 20 years, but this is a low-cost mechanism that allows them to protect their invention, the source code, for longer.

The risk there is that if the trade secret is revealed, the company loses its competitive advantage. This is why recent agreements have been very clear in including these provisions: to preserve the IP form of the trade secrets on which several companies rely to protect their intellectual property.

Lord Watts: How could we get an agreement with the USA that differed from our agreement with Europe over these same issues? It seems to me that most of our trade is still with Europe and it would have to comply with European legislation.

Sabina Ciofu: The EU has similar provisions on source codes, algorithms and encryption keys in its trade agreements. This is an issue that a lot of the western world agrees on. It is a matter of including it in trade agreements to keep making the point. That helps countries that conclude bilateral trade agreements with such provisions to make the case for it in plurilateral agreements, for instance at the WTO, where there is a negotiation on e-commerce going on. This is on the table and there are a lot more diverging views there than there will ever be between the EU, the UK and the US on these issues.

The Chair: To use a peculiarly British metaphor, the source codes and algorithms are the crown jewels as far as tech companies are concerned.

Jimena Sotelo: The provisions in both US-centred and EU-centred agreements include exceptions when it comes to investigation or enforcement.

The Chair: That is understood.

Q30 **Lord Oates:** I should perhaps declare my interest as a director of the Center for Countering Digital Hate. Regrettably, a significant amount of trade is in monetised hate, digital hate and misinformation. The question I want to ask is in the field of artificial intelligence. As you will be aware, the UK and US objectives include support for emerging technologies such as AI and using blockchain in new fields. I wondered if you would like to comment on what you think is needed, if anything, in a trade deal to support these emerging technologies.

Sabina Ciofu: On AI, the first thing we can do is to establish that channel of regulatory co-operation with our trading partners. It is not only on AI; it is on AI, fintech and emerging technologies. Because technology moves so quickly and everyone is looking at the same issues or concerns, having that forum of regulatory co-operation is really important. Committing parties to having that conversation in the trade agreement is key on AI and other emerging technologies.

Secondly, the UK can break new ground by opening government data and committing parties to opening government data for AI applications in a machine-readable format. That allows companies on both sides to access this data and develop products and services from it. That is a more novel provision in digital trade agreements, but definitely would benefit the SME AI sector and the more innovative smaller applications in the UK.

I would by no means pretend to be a blockchain expert. However, we have had three major revolutions in trade. We have had the container, which reduced the cost of transportation. We have had the ICT revolution, which reduced the cost of communication. Now, potentially, blockchain could reduce the cost of information. It is important to note that you can use blockchain to track paperwork that travels with a product, for instance. That cost of information is sometimes three times higher than the cost of transportation. It is really costly and blockchain could provide an alternative that would make trade easier and cheaper.

We are in the very early stages of talking about blockchain. It is hard to see it coming into trade agreements very soon, simply because there will be domestic regulatory conversations to be had first. We are in the very early stages of that conversation, but there is definitely huge potential for blockchain to be a technology that helps digital trade.

Ziyang David Fan: Our centre focuses on emerging technology. We have nine teams on everything from artificial intelligence to blockchain and autonomous vehicles. When comes to Governments, I will say three words: interoperability, neutrality and conditionality.

First, on interoperability, technologies, especially emerging technologies, evolve so quickly. Because it is a new area, there are many variations in approach. I mentioned compatibility before. As policymakers, we can make sure they can talk to each other and encourage that. That is important.

Secondly, on tech neutrality, policymakers or Governments in general should not be in a position of picking one technology over another, like back in the days of VHS versus Betamax. We should just let the market decide in the newer space in blockchain, whether it is Hyperledger or Ethereum. Neutrality is important.

Thirdly, what I mean by conditionality is that we need to build, and more quickly, the underlying conditions for those emerging technologies to thrive. We talk about AI and blockchain, but closing the digital divide and building a more digital enabling environment is very important, especially in trade.

On AI, I agree with Sabina's comments. In the recent DEPA, the digital economy partnership agreement among Singapore, Chile and New Zealand, they have a module on emerging technologies. They mention the ethical use of AI. That is very important, to make sure, to the points you have made, Lord Oates, that new technologies do not discriminate and treat everyone fairly. That is very important. A trade agreement has a role to play in that.

We have a project in Latin America using blockchain to facilitate trade single windows. It is very early stage, as Sabina said. For blockchain in trade agreements, we need to go back to basics. Before blockchain, we need paperless trading. Trade is still such a paper-heavy process. You need hundreds of pages to move a container. Paperless trading includes electronic signatures and electronic transactions. Those are all components of recent digital trade agreements, USMCA et cetera. We need to build that in and then we can let new technologies flourish.

Lord Oates: Following from that, you made the point that we have to move first to paperless. Is there anything that we should be looking at in the FTA, with regard to the use of AI and blockchain specifically, in enabling trade across sectors, for example by improving customs procedures?

Ziyang David Fan: Yes. There are the couple of sections I mentioned: paperless trade, electronic transactions, electronic authentication, electronic signatures. Those are all provisions that exist in some current digital trade agreements. We should include them in the UK-US one to lay the groundwork for new technologies.

Jimena Sotelo: In DEPA, there is an article on paperless trade. They commit to connect the trade single windows using data exchange mechanisms. They do not mention blockchain specifically. Again, that reinforces the idea of having agreements that are technology neutral. In a way, they focus on the need for interconnection between the trade single windows, without referring to a specific technology. That could be useful.

Q31 **Lord Morris of Aberavon:** What can we learn from the agreements that either have been made or are being negotiated? Will they improve our position? Do they strength our negotiating position with the United

States?

Ziyang David Fan: I can share some high-level thoughts. I understand that the UK is and will be negotiating several trade agreements. The UK-EU negotiating text is a good example when it comes to digital trade. There is a lot of language in there that could be referenced for the US-UK trade negotiation as well. As I recall, there is language about using a risk-based approach, relying on industry standards and considering the core principles of what I just mentioned, interoperability and neutrality. The technology and digital trade part of the UK-EU negotiation could be a good reference.

Because the US and the UK are two major players in the world, this agreement's digital trade chapter could well serve as the precedent for many future digital trade agreements, so it is very important. It is an opportunity for the UK to be a leader in this space.

The Chair: Let me just follow on, with a slightly different tack. It is interesting that we are conducting this very useful session entirely digitally, because of Covid-19. It has showed some of us how useful these services can be. Can you give some insight? What do you think a trade deal could do that would support industries embracing digital? Let me take two specific examples: telemedicine and online healthcare.

Ziyang David Fan: Remote work is not a new issue. We have been talking about it for years. Look at what is happening right now. Even years ago, we talked about the possibility of remote work. Coupled with the ability of artificial intelligence and assisted translation, it could open a lot of opportunities for workers around the world. At the same time, there are a lot of those freelancer websites—Upwork and Fiverr, to name a couple. They allow a lot of independent workers to reach all parts of the world. There is opportunity for UK workers and businesses to embrace more opportunities around the world, so I agree.

On healthcare issues, I will refer to my colleague, Jimena.

Jimena Sotelo: To add to Ziyang's comment, it is also very important to see how the composition of services exports has changed in recent decades as we see increased internet penetration. For instance, in 1990, the share of other commercial services—that is, excluding transportation and travel—was only a third of global services exports. Today, other commercial services account for more than half services exports globally. That shows the tremendous opportunities we see in new services sectors that were not able to be traded before. Healthcare is one of those, where we did not conceive of the possibility of having healthcare services across borders.

To unlock trade opportunities in some sectors, trade deals can embrace regulatory co-operation. In healthcare, the challenge is around the acceptance of licences, which are regulated domestically. Mutual recognition agreements can unlock the potential for cross-border delivery of healthcare services. It is a good example to show that, even if all the

conditions are in place and there could be market access for providing those services online, we still need to co-operate when it comes to regulations. On the licences issue, for instance, we have seen a rise in telemedicine in the Covid-19 pandemic, but locally. There is an opportunity there, especially considering that, even before the crisis, numbers showed that only half the countries in the world had the number of healthcare workers to cover the basic needs of their own populations.

The Chair: That is a striking statistic, I have to say.

Q32 **Lord Kerr of Kinlochard:** I have a quick question about tax and how to tax the provision of cross-border technology services. The Americans have walked out of the OECD discussions. Does that kill off the idea, the good idea, I thought, of a multilateral solution? Does it mean the US will try, in the bilateral negotiation with us, to kill off our digital service tax? Should we cave in to such suggestions? The IEA, which does not like the digital services tax, said in evidence to us that we should give in and that this would encourage the US negotiators to be more receptive to UK priorities. As an ex-negotiator, I think that is a little naive. What do our witnesses think?

Sabina Ciofu: We have been very supportive of the OECD process, like every tech industry body on the planet except the US. The only real solution to this issue is a multilateral one, simply because every single digital services tax is considered by the US to be a tariff and that leads to trade disputes. There are current investigations under Section 301 against the UK, France and a couple of other countries when it comes to their DSTs.

The US has not withdrawn per se from the OECD negotiations. I would see it more as a pause. It is still very involved in that process. The OECD negotiations are being negotiated under two pillars. Pillar 1 is looking at how to split tax revenues among countries, and pillar 2 is looking at a global minimum corporate tax threshold. The US has paused its involvement in the pillar 1 negotiations, so it continues negotiations under pillar 2 at the technical level.

This should be seen in the context of the US election. We are likely to see more co-operation from the US under the OECD framework after the election, probably regardless of who wins. It is a bit of a pause. We are not going to see the progress which the OECD intended to see in October at the G20 Finance Ministers meeting, but I think it will be picked up afterwards. There is literally no other solution to it, except for multiple trade disputes that are in the interest of no one.

Lord Kerr of Kinlochard: I hear what you say about the American election result. Supposing President Trump is re-elected and the Americans stay away, or stay in only to the extent that you have described, what happens? Does it work if the Americans do not fully co-operate?

Sabina Ciofu: No. After all, an OECD agreement without the US does not really mean much. There definitely needs to be an agreement with the US on board for it to be commercially meaningful.

When it comes to the UK-US FTA, the US has made it very clear that it wants DST gone. It made it very clear that it wants that withdrawn. The US tech trade association—the ITI—has also asked for the withdrawal of the UK DST for a trade agreement to happen. We do not know how the UK intends to negotiate or whether DST is on the table, but the US position on this is very clear. In its view, in exchange for a free trade deal, DST will have to go.

Ziyang David Fan: We support a multilateral approach as well. This also requires a higher-level, bigger discussion. The problem is that the current tax rules are written for the age of physical goods, in which it matters where the company is headquartered. In the digital age, it is a different story. This will require a much broader discussion as well.

Q33 **Lord Morris of Aberavon:** Could you give us some idea of where a trade deal would support more industries embracing digital, for example telemedicine and online healthcare? Is there anything to be learned there?

The Chair: To some extent that has been covered. If you would like to add to that, please do.

Jimena Sotelo: When it comes to telemedicine, the market access commitments will be dealt with in an additional trade chapter. In any case, that will require a negotiation in services, considering the different modes of supply, if that helps.

Q34 **The Chair:** We are coming to the end of our session. We have a moment or two if any of our witnesses wanted to leave us with a particular thought. It has been a very useful session. You have given us a lot of information. At least for me, you have demystified some of it, to some extent, and I am very grateful for that.

Sabina Ciofu: I will leave with the message that I started with. This is really a great opportunity for setting digital trade standards, joining a community of countries that have shared values and views on digital issues and allowing the UK tech sector, especially SMEs, to export and have closer relations with markets around the world. This is definitely a market that our companies have looked at for ever and have invested in. That relationship will only help them grow further and innovate. I will leave you with that thought. It is a great opportunity.

The Chair: Mr Fan, you agreed with that before.

Ziyang David Fan: Yes, we were enthusiastic before we started and we still are to the end. It is a tremendous opportunity in digital trade for the UK. We talk about interoperability, which is important, so compatibility in standards or transfer mechanisms. We talk about building trust. We should let data free flow with trust. That is important, as is building trust

for online protection. To buck the trend of digital protectionism, the UK has long been a proud trading nation. The country can use this moment to press the reset button and become a leader in digital trade for centuries to come. It is a pleasure to be here.

The Chair: That is a very encouraging final message.

Jimena Sotelo: I echo my colleagues' interventions. Provisions on co-operation could help, especially with participation of SMEs in the digital economy.

The Chair: The point is underlined, which is helpful. Thank you very much indeed to the three of you. I feel like saying, "Thank you for coming so far". In one sense you have, at least in the case of some of you. You have helped us enormously and I thank you very much indeed for that. As far as you are concerned, that concludes this session. I thank you very warmly for your contributions.