HOUSE OF COMMONS

# International Trade Committee

## Oral evidence: Continuing Application of EU Trade Agreements, HC 520-ii

Wednesday 15 November 2017

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Watch the meeting

Members present: Angus Brendan MacNeil (Chair); Mr Nigel Evans; Mr Ranil Jayawardena; Mr Chris Leslie; Emma Little Pengelly; Julia Lopez; Faisal Rashid; Keith Vaz; Catherine West; Matt Western.

Questions 1 - 84

### Witnesses

I: Philippe De Baere, International Trade Lawyer, Van Bael & Bellis, and Andrew Hood, Barrister and EU Law Expert, Dechert.

II: Dr Michael Gasiorek, Economist, UK Trade Policy Observatory, University of Sussex.

### Examination of witnesses

Witnesses: Philippe De Baere and Andrew Hood.

Q1 **Chair:** Good morning. Can I ask the panel, please, to introduce themselves for the record? Just name, rank and serial number will do fine.

***Philippe de Baere:*** Good morning. I am Philippe De Baere. I am a Brussels-based trade lawyer with the law firm of Van Bael & Bellis.

***Andrew Hood:*** I am Andrew Hood. I am a lawyer based in the UK with the firm of Dechert.

Q2 **Chair:** Thank you very much. To kick matters off this morning, what are the possible legal mechanisms whereby the UK might be able to achieve grandfathering of the European Union’s free trade agreements?

***Philippe De Baere:*** It is a difficult, but obviously interesting, question. First of all, we have to consider what can be understood under the notion of grandfathering. Grandfathering, meaning that the existing treaties just continue to apply to the UK after leaving the Union without there being any need for renegotiation or agreement by the other party to the agreement, is, I think impossible. That would not be an option that can be based on any legal provisions of public international law.

There are other ways of doing that, which are not, strictly speaking, grandfathering. For instance, one could consider the possibility of the UK acceding to the existing agreements, whereby the agreements would become an agreement, for instance, between the EU27, the UK and, let's say, Korea. The problem with that is that it would obviously require acceptance by the EU27 and, in the example here, Korea, and would probably also need to go through the whole conclusion and ratification process again in the EU, which means that we would have to go before all the national Parliaments, which would obviously be, again, very time consuming and difficult to realise and conclude in a very short period of time.

Another solution, which probably is more realistic, would be to agree on having the scope of application of the existing agreements extended to the UK during, for instance, a transitional period during which further negotiations could take place to come to a freestanding agreement between the UK and the third country. For instance, in a transitional agreement after Brexit, it could be agreed that the existing FTA will apply to a customs union, if there is a customs union during the transitional period, between the UK and the EU27.

A straightforward cut-and-paste approach, whereby the UK would simply say to the existing FTA partners, "We will replicate—cut and paste—the existing provisions" in an agreement, let's say, between Korea and the UK, would in my view be theoretically possible but practically would be quite complicated because replication of the provisions of the existing agreement, for instance, with Korea would not necessarily guarantee the same outcome for Korea as they have now.

Q3 **Chair:** From evidence we have heard here previously, it also might not guarantee the same outcome for the UK given that parts of the provisions might say that the automotive sector needed 55% rule of origin within it and, therefore, a cut and paste would mean it was a charter for Korean exports to come into the UK but not for the UK to—

***Philippe De Baere:*** You are absolutely right. One plus one would not amount to the same outcome here as we have in the EU-Korea FTA. As I sometimes use as a description, it is not because you have access to the halves of a football pitch that you can play a football game. It is not the same being able to play on each side of the pitch as having the possibility of playing across the whole pitch. That would be, somewhat, the situation. For Korea, having a replication of the provisions just in an agreement between Korea and the UK in order to guarantee the same outcome they would need a very clear view on what would be the post-Brexit relationship between the EU and the UK.

To give the example of car components, let's take the example of the Japanese manufacturer in the UK. If there is an agreement that gives duty-free access for car components to the UK, he can use these in his factory and then ship the cars to the European Union because they are Community goods, they are in free circulation; there is no duty to be paid. If there is no free movement between the UK and the EU27, it would mean that to have the same access these Japanese manufacturers would need to construct a new factory on the continent. That would not be the same as just having free access from his factory in the UK.

Q4 **Chair:** Mr Hood, do you have a take on this?

***Andrew Hood:*** No, I agree with what Mr De Baere has said, particularly in relation to the trilateral approach, which is the EU, UK and a third country rolling over a particular agreement. It raises a number of problems, or issues, for the European Union, so the likelihood is that you are looking at a UK bilateral arrangement with that third country and I think you would need that, just taking one step back, because most of these agreements, if not all of them, apply to the geographical scope of the European Union. Of course, when the UK leaves the EU, which is the premise of the Trade Bill as well, we will need those third country agreements to be extended or applied in some way.

The likelihood is that you are looking at bilateral arrangements. There are lots of different technical ways of doing that and it brings lots of issues, as we have heard, but one technically easy way is to say these agreements apply mutatis mutandis to the United Kingdom as if to the EU, with some sort of mechanism within that to resolve any issues that arise. It raises lots of problems. It is an easier way timewise and conceptually, but it does raise lots of issues down the line.

Q5 **Chair:** When the UK leaves the EU, we will not be trading with the EU27 on such good terms as we have at present.

***Andrew Hood:*** That is the presumption.

Q6 **Chair:** Our trade is going to be down from the high at the moment given barriers and whatever. With these agreements, what is the best way to approach them? Will trade be dipping as a result of this, with 63 countries to add to the 27 already that we have difficulties with?

***Andrew Hood:*** If they are not in place when the UK leaves the EU, and if there was no arrangement with those countries on a bilateral basis, which, as I said, is the most likely requirement, then there are lots of ways of doing that: you try to do a cut-and-paste job; you can have an exchange of letters that have a schedule amending the specifics of those agreements; or you try to have a whole new agreement in place. If you do not have one of those arrangements in place at the point of leaving, then, as you say, there will be other trading arrangements—the WTO and other international agreements that are in place that shape that relationship and that trading capacity—but I think you end up in a worse place because those agreements are in place in a large part to help facilitate trade and we all benefit from it. If we are not a party to those agreements with those third countries, trade will be impacted accordingly.

Q7 **Chair:** This is my final question for the moment before we go to Nigel Evans. If we have a hard Brexit and crash out in March 2019, tariffs will go up with 27 countries. If we do not have agreements with these others, tariffs will go up with 63 more countries. Is it possible that the UK would have increased tariffs and increased trade barriers with 90 countries?

***Andrew Hood:*** Yes. You will have both the trade barriers that exist because we no longer have a trade agreement or arrangement with those countries and we, therefore, fall back on to what is being loosely called WTO terms, but the international framework that otherwise exists. It is not just the tariffs but the non-tariff barriers that certainly most of my clients are as concerned about, if not more concerned about, than the tariffs themselves, which is around how you deliver goods and receive goods and the paperwork that is involved around that, as well as things like rules of origin and other issues that impact significantly on the way they produce products and the way they export and the markets that they are trying to trade with.

**Chair:** I am sure we will find good news later.

**Mr Evans:** It is not all doom and gloom, is it?

**Chair:** It seems to be.

Q8 **Mr Evans:** Unless you are Scottish. We had Liam Fox here recently and he believes that the countries that already have these trade deals with the European Union are keen to do trade deals with the UK. If we have this two-year transitional period, that gives us a buffer zone in order to be able to get all those in place properly. As I understand it, within the transition period you are able to negotiate trade deals, which we are not able to do now. There is a lot of scoping going on currently. However, there seems to me to be an absolute desire for these countries to want to sign up to these trade deals with the UK.

***Philippe De Baere:*** I think that you are right that there is an interest, even a strong interest, from the existing FTA partners to have an agreement with the UK. The question is whether they will be happy with just the replication of the existing deal. Secondly, even if they agree on replication of an existing deal, the agreements have to be renegotiated anyway because large parts of the existing agreements are not immediately transposable as such.

Q9 **Mr Evans:** Like what?

***Philippe De Baere:*** We have, for instance, schedules on services that are related for different member states. We have the scope of territorial application of the agreement.

Q10 **Mr Evans:** Sorry, can we just stop so I can understand that? Let’s say Korea has a deal with the EU but it differs between individual states.

***Philippe De Baere:*** For instance, in services, you can have reservations in your schedule for the services. If Korea negotiates and says, "I give free access to insurance services in the Korean market" you will then find in the schedule a number of reservations whereby individual member states say, "Yes, but not for life insurance" or, "Not for public health insurance" and this is done on an individual country basis. We may have the UK saying in the reservations that Korean companies cannot offer health insurance in the UK, for example. If Korea was negotiating that, they obviously look at the overall package of all the member states, because they have given access to their market and then they look at what they have received in the European Union. If you now cut only the UK out of there, this is a substantive change in the balance of obligations between the parties because it may not be worth having just—

Q11 **Mr Evans:** It strikes me, though, that if you cut and paste all the reservations in the schedules for the United Kingdom, wherever they happen to be, they are going to be no worse off than they currently are, are they?

***Philippe De Baere:*** They could be; for instance, if there are reservations entered by the UK that Korea accepts because they had a good deal with France.

***Andrew Hood:*** Yes, because if a particular country has done a deal with all of the EU because 50% of their trade is with France, or Germany or wherever, for them the important point was to access that market, to which they also give a lot of concessions for access to their market. If the UK is a much smaller market for them—

Q12 **Mr Evans:** Andrew, can I just reverse that then? This deal done between Canada and the European Union, I understand one of the major reasons they wanted to do it was because of the United Kingdom. All of a sudden they are going to look at what they are left with, with the European Union, and say, "We're not really happy with that".

***Andrew Hood:*** Two things. First, you are absolutely right. The example you have given goes both ways. We are not here to paint doom and gloom but to help you form your position.

Yes, it can go both ways—Canada is a good example; there may not be so many other examples—and that then impacts upon the negotiation with those particular countries. With those where there is a balance of trade in favour of the UK, of course, I am sure they will be very keen to ensure there is no gap at the point of the UK's departure. Those where we are in a different position, where we are more the demander, have more negotiating leverage on their side as we enter into those discussions. Yes, it does go both ways.

***Philippe De Baere:*** On that point, I am not saying that there would not be an interest in having a cut and paste, I am just saying that it is very difficult to do it in practice. You cannot just copy/paste the agreement. All the provisions will have to be gone through. For instance, in the agreement with Korea there is a reference to the protection of geographical indications of origin, which are identified by reference to the EU legislation on geographical indications of origin, which, after Brexit, will no longer apply. There has to be a substitute in the agreement for that. There are numerous examples of that.

To come back to a previous remark, during the transition period we will be able to negotiate, yes, but it is not sure that the agreements continue to apply during the transition period without there being some active drafting and protocols added to the agreements. During the transition period, the UK will no longer be a member of the EU and I understand that you will no longer be part of the single market. In most of the free trade agreements, the scope of application refers to the territory where the provisions of the Treaty on the Functioning of the European Union apply.

**Chair:** Of course, we are not sure if we have a transition period at all. It has not been agreed to yet by the EU27.

Q13 **Mr Jayawardena:** I believe the Commonwealth Secretariat gave evidence to the Committee back in February and they were talking about how if the UK did not secure grandfathering rights with Commonwealth nations such as lovely countries like Mauritius and the Seychelles for existing EU trade agreements, then it would make tax hikes impact exporters in those jurisdictions. Do you not think that that puts the UK in an advantageous position with regard to rolling over these rights going forward?

***Andrew Hood:*** I am not sure I entirely understand the point.

Q14 **Mr Jayawardena:** The point is that those countries want to be able to continue to have a good and free relationship as far as possible because it is in their interests. You have been talking about the challenges with regard to the EU relationship, but there are huge opportunities for those countries to continue to sell into the UK market, which would be hampered if there is not a relationship. Indeed, the president of the Board of Trade did say, as Mr Evans has referenced, that there have been very good discussions and informal agreement that the process of grandfathering should continue at full speed.

***Andrew Hood:*** In all of this there is some interest in countries on the other side who will want to have as much continuity in trade as possible, but the question is: what is their interest in doing so and where does the balance lie? In some cases, that may lie in agreeing to a rollover with all the technical changes that may have to come with that. In others they may say, "We would also quite like to just look at these one or two areas". In others, it may be a more wholesale change they would like to see. I am not privy to the conversations the Secretary of State has had. I do know there are some delegations, who I have spoken to, who are looking for some changes in the relationship, not simply to roll it over. Yes, certainly some will have an interest. I have no doubt of that.

Q15 **Mr Jayawardena:** If we can put a man on the moon, surely we can arrange free trade between two countries. Do you not agree that simple changes to the current treaty framework could be very quick and straightforward if there is the will to do that, which we have just discussed, relative to negotiating completely new FTAs?

***Philippe De Baere:*** I must say that obviously there is an interest. The UK is an important market, it is an important country, but countries, and certainly the kinds of countries where you have a real trade interest, will want to optimise their benefits.

Q16 **Chair:** That is a renegotiation.

***Philippe De Baere:*** Yes, that is a renegotiation.

Q17 **Mr Jayawardena:** To clarify that point, that is a change to the current treaty framework rather than a brand new FTA that you are advocating there?

***Philippe De Baere:*** You cannot just roll over existing FTAs. There will always have to be some form of renegotiation.

Q18 **Mr Jayawardena:** But it is not brand new; we can start from this?

***Philippe De Baere:*** You will look at the points where you have a real trade interest and where you think that some changes are necessary because the tax is inappropriate or because the balance of concessions has been completely overturned. A very obvious example is our tariff rate quotas where there will be a discussion.

Q19 **Mr Jayawardena:** One final point, Chairman, thank you—you have been very generous. Can I can seek your guidance? Come 29 March 2019, would it be better, in your view, for the UK to have 63 FTAs on the broad terms of the current EU FTAs or would it be better for us to focus on perhaps a handful of new FTAs that we would have the time to negotiate, albeit that those would be negotiated to actually hugely benefit the UK because they would be totally brand new and in the UK's interest?

***Philippe De Baere:*** In my view, the most important thing is to maintain the trading opportunities immediately after Brexit. That would imply that the existing free trade agreements continue to apply during the transitional period, which would give you more time to select the ones that are of real interest to you and that you then renegotiate and adapt to your own best interests.

***Andrew Hood:*** I would reinforce that to say what every company we have spoken to emphasised in this whole process, whether it is on these third country FTAs or the Brexit process as a whole, is as much continuity and certainty as possible.

There are a whole range of different ways, which is what I think you are getting at, of how one can look at these trade agreements. Some you might, frankly, do a bit more rough and readily, where there is a small trading balance, a small interest. Others where there is a bigger interest at stake or the partner is slightly more strident in what they want in terms of renegotiation you may have to invest more energy in. That is a matter for the Secretary of State and his limited resources.

**Chair:** Certainly, this is not going to be a simple matter, with the amount of time we have spent on it already. To add to that, I have three colleagues showing interest. First, Catherine West and Faisal Rashid, then Julia Lopez. If you would keep your questions and answers brief, I would be grateful.

Q20 **Catherine West:** It is about the resources point. What is the cost to the public purse of this multiplied and with the possibility of a falling out without a deal? What is the immediate cost? We need to understand. Referring back to the democratic mandate for this whole process, people were never told, "You can have this but you might have less of something else". What I want to understand is given that in two years' time we will have had more austerity, people have to be willing to have a whole lot more money, instead of being spent on doctors and nurses, being spent on—what? What is the actual estimated cost to the public purse of the backroom costs of putting in the scaffolding or keeping the scaffolding in place? What is the backroom cost to the public purse?

***Andrew Hood:*** If I understand the question, it is around the cost to the state of negotiating. For the actual agreements the cost will depend on where they end up and, of course, the different trade flows that are in place at the time. You have a later witness who may be able to help with that.

**Catherine West:** I am talking about the mechanics of government.

**Chair:** As lawyers, it might be difficult to—

Q21 **Catherine West:** The Government cannot tell us, or will not tell us, in the House of Commons, so I do not expect you to be a miracle worker, but as an elected representative I want to be able to tell people, "This is the outcome of that choice. It does mean that in other areas the cake, which is the public purse, will have to be skewed towards these priorities".

**Chair:** Is there any ballpark figure on all this?

***Andrew Hood:*** I spent 13 years in government as a government lawyer, so I am conscious of the strain on my colleagues who are currently doing their best to deliver on the Government's agenda and the decision of the referendum. Inevitably, it is going to be a strain and things are stretched. I have no more information than you are privy to, in fact no doubt a lot less, about the figures required in relation to additional trade negotiators, additional lawyers, and additional personnel in different parts of the world to negotiate these things, but inevitably there will need to be more personnel doing this.

For the trade negotiations themselves, first, we have not done a full negotiation for a generation—I think the Secretary of State made that point in his evidence—so there is a learning curve and a training cost as well as a resourcing cost to get the experience and expertise in. There are also, frankly, the sheer numbers of doing this. We are talking at the moment about "grandfathering" of existing trade agreements, which, as we have been talking about, can draw on resources to greater or lesser extents, but certainly, inevitably, any future trade agreements are going to have a huge draw on personnel, both within the Department for International Trade as a hub, but also in each different sector that is covered. It will take an enormous resource pull, simply to understand where our markets are and what our interests are, at least in the first instance as we do the first generation of these trade deals. The negotiations themselves can involve 20, 30, 40, 50 people at any given time, depending on the issues being discussed. Part of the negotiating approach and tactic is to take those issues away and refer back to Ministers or others making the key decisions. Inevitably, there is going to be a cost that comes with that. That is a policy decision that the country made and that the Government and Parliament are now grappling with.

**Catherine West:** That was not an answer in terms of the amount of money, but is it the sort of thing we might see in a Budget line next week? We are talking about something that is not that far away. It is perhaps in one year's time.

**Chair:** I think we are looking for an economist rather than a legal expert for that.

Q22 **Faisal Rashid:** Thank you very much for the answers to Nigel's question, which was about the replication and the copy/pasting thing. How I understand it is that obviously there are lots of FTAs with other countries through the EU, and copy/pasting some FTAs might not be favourable to the UK because they have been done purely for the EU. By renegotiating, it might benefit the UK in some cases. I understand that, so that is very useful. Obviously, we cannot negotiate at this point in time, but we will be negotiating in the transitional period. How do you see the UK's best fit in the transitional period? What would be the ideal situation to be in when we go into the transitional period?

***Philippe De Baere:*** It is obviously very unclear at the moment what the EU will be willing to consider. If you assume that once the transitional period starts you are no longer an EU member state and that the Treaty on the Functioning of the European Union no longer applies to the UK, then the legal provisions say that the FTAs will no longer apply to the UK.

Q23 **Faisal Rashid:** So we will be part of the WTO?

***Philippe De Baere:*** You will be part of the WTO. That, obviously, should not be the purpose because the cost of not having the FTAs in place would be horrendous. It would immediately mean that a lot of imports into the UK and exports from the UK—it is not only imports, but also your exports—would be subject to trade barriers and duties. That should be avoided and that can be avoided if, during a transitional period, the UK would remain in the customs union with the European Union. The European Union will insist on having the application of the common commercial policy to the customs union because otherwise the risk of trade diversion is too big, but it should be possible to obtain the approval during the transitional period to negotiate either the amendment of the existing FTAs or new FTAs.

Q24 **Faisal Rashid:** You can continue along with the same provisions in that?

***Philippe De Baere:*** What you should also do now, with the agreements that are under negotiation, is that there should be a separate protocol attached to these agreements or negotiated for the existing agreements providing for the provisional application to a customs union between the UK and the EU during the transitional period. Obviously, it is not comparable but such kinds of protocols were routinely added in relation to San Marino and Andorra, which also have customs unions with the European Union without being member states, so that they benefit from the free trade agreements that are being concluded. During a provisional transitional period, we can imagine that with the existing FTA partners to the agreements there is a protocol added for the continuing provisional application during the transitional period to the customs union between the UK and the EU27, agreement from the EU that during this transitional period the UK is free to negotiate its FTAs, which will come into force at the end of the transitional period, and then you have time to negotiate something that is in your best interests.

Q25 **Faisal Rashid:** Do you think the Government will achieve that? Is two years enough?

***Philippe De Baere:*** I think two years is very short. It is a very short period, so you will need to concentrate on the number of strategically important FTAs. You cannot waste time negotiating with countries where you have no significant trade interest.

Q26 **Julia Lopez:** The UK is a large and important market within the context of the EU as a trading bloc. If you withdraw access to that market from an existing FTA, will the other partner want to renegotiate their relationship with the EU27 that remain?

***Andrew Hood:*** That may well be the case, yes. That is in their purview as to whether they choose to do so. Of course, the EU remains a significant trading bloc in its own right anyway, but as we have heard earlier, that can vary from trading country to trading country, so that is in their purview to do so. I think that they would need to renegotiate it because effectively the agreement remains between the EU and that third country, but there are provisions under international law, around the Vienna Convention on the Law of Treaties, that if the change in the relationship is so dramatic, that can impact on the operation of the treaty. I do not think we are likely to be in that situation, subject to a case-by-case analysis, but ultimately it becomes a matter for the third country to decide with the EU.

Q27 **Julia Lopez:** Yes. The point is it may not be straightforward to grandfather, but equally the EU27 might be left with the same situation, because you are taking away a large market upon which an FTA was based.

***Philippe De Baere:*** Yes, but it is different because the EU is a separate entity under public international law. It has legal personality. It is the EU that continues to exist, as such, so it would be required that the other FTA partner invokes the provisions of the Vienna Convention on the Law of Treaties, of which its applicability to the community and to the European Union is not clear also under public international law, and then argue there has been a substantial change in circumstances that would require a renegotiation. In theory it is possible, but in practice I have not heard, until now, of any country that has addressed this kind of question, to leave the European Union.

***Andrew Hood:*** There are the legalities of this and there is the realities of this, which is those countries want to remain trading partners. That relationship is more fundamental than the specific legal point, which may not be in their longer-term interests either if they cannot renegotiate to an acceptable position.

Q28 **Julia Lopez:** But the withdrawal of a large market like the UK changes the calculation of how beneficial an FTA is to some of those countries.

***Andrew Hood:*** Absolutely. It may well do, yes.

**Chair:** But as you say, there are the legalities and the practicalities to be weighed up by either side.

Q29 **Matt Western:** Essentially, that would mean that there would be a renegotiation of some form maybe between the EU and, say, Korea if the UK comes out, because you are essentially dealing with a slightly different entity. The question would be: where is the priority then for Korea in terms of the renegotiation and how much time is needed? I would have imagined they would want to do a quick renegotiation with Europe ahead of the UK. Would that be the case?

***Philippe De Baere:*** It would be a renegotiation with the European Union, but the advantage for the European Union would be that as long as there is no new agreement or change in the provisions of the agreement, the existing agreement continues to apply. There are obviously regular sessions now with Korea. We have the negotiations to modernise the agreement. The issue could be raised in there, but as I said, until now, I have not heard of any third country raising this issue with the European Union.

In the context of existing agreements, obviously for agreements to be negotiated in the future, the position of the European Union is weakened after the exit of the UK.

Q30 **Chair:** Before moving to Emma Little Pengelly, just picking up on a point from Matt Western, if the legalities were invoked over the practicalities and, say, South Korea wanted to renegotiate with the EU, would that be a further detriment to the UK because the EU priorities are bigger? Would they deal with the EU before they would get around to dealing with the UK or would they do it simultaneously?

***Andrew Hood:*** I do not think the reality ends up being quite so hierarchical because these countries have multiple negotiations going on at different times depending on where their particular market interest is, a change of political circumstances, whatever it may be. I do not think that that would change the dynamic dramatically.

Q31 **Chair:** You would not be waiting in a queue, as it were?

***Andrew Hood:*** Not necessarily, but the key thing for all of these countries is they are going to want to know what the UK's relationship and trading relationship is with the EU, because that will impact significantly on the scope they have to negotiate with the UK in the future. There are two building blocks. One is the UK's relationship with the EU and one is the UK's position with the WTO. That will effectively shape what the third country agreements end up looking like and the scope of the negotiation there. Most countries will want to know—and there may be a slight distinction between existing countries with existing agreements and new agreements—what the UK's trade policy is going to be and they will want to look at what the final outcome is with the EU.

Q32 **Emma Little Pengelly:** I want to ask a question in relation to the tariff rate quotas, but I guess this is in the context of what you have said in relation to the renegotiation issue. You have indicated there are going to be differences in relation to the FTAs. Some will be, from a lawyer's point of view, technicalities, some will be about schedules, but you are saying some will be more substantive, potentially, in that they change the overall, "Was this a good deal? Was this a bad deal?" from the countries' perspectives. I agree absolutely with Julia that it has to be inevitable then that that is also the case with the existing EU27 deals. In fact, when you talk about two years being very short, if that applies here, it applies there. Their process of getting that agreed, which is to agree with all 27 of the individual countries, is arguably considerably more protracted than it would be for the United Kingdom for any changes in the FTAs.

In that context, the Secretary of State was before the Committee just last week and when he was asked about the EU27, he said that there is no indication internationally that there are any concerns from those partners on the FTAs. The Secretary of State seemed to indicate to this

Committee that that was also the case in relation to what we call grandfathering, which may be some form of cut and paste with technical and other amendments to make sure it is fit for purpose at—as the Secretary of State has mentioned—two seconds after midnight on leaving day.

From that point of view, particularly because he did raise that the tariff rate quota issue is where a little bit more complication comes in, but he indicated that he is hearing very positive things about people's willingness, similar to what you have indicated with the EU27 FTAs. Are you saying to the Committee that you are picking up that some of those existing FTAs are indicating more substantive problems with the grandfathering of those FTAs?

***Andrew Hood:*** I do not think anyone has been privy to the Secretary of State's conversations with those countries. He has given his evidence to the Committee. I am conscious of that as a sort of conceptual point, which is there may be some with a very strong interest to continue; there may be some who see this as a good opportunity to renegotiate. If you are that third country, first, there may be different interests at play simply because of the trading relationship they have with the UK versus the other 27, but also because the UK has to do a lot of agreements and if you are looking for an opportunity to better your deal, now is the time to do it.

Q33 **Emma Little Pengelly:** Specifically on that issue, because you said there is a difference between the legalities and practicalities of this, one of the big differences for the EU in terms of post-Brexit is that no country is indicating that they want to change any of this. Ergo, all of the context seems to be that they do not want to cause complications. Likewise, presumably for us, we are looking across a number of these agreements, but for those countries this has to be on the agenda; there has to be discussion and dialogue about whether there are substantive problems with those.

From your point of view of looking at this from a global perspective, are there any indications out there at all in terms of those existing that there is a conversation saying, "We do want a negotiation very early"? Because what we are hearing and what we have heard so far is that that is simply not the case. That is what the Department is telling us, "Everybody is willing". The key thing to a renegotiation is the willingness of the partners to ensure the practicalities are seamless, likewise, as you have indicated just a few moments ago, in terms of the EU27.

***Philippe De Baere:*** I am fully aware, but there is a fundamental difference between the position of the EU and the position of the UK after Brexit. After Brexit, the EU remains a full party to the existing agreements. After Brexit, the UK no longer has an agreement, so they need to come to a new agreement, which implies a negotiation. That is a fundamental difference.

Q34 **Emma Little Pengelly:** But it implies a negotiation depending on the willingness of each of the partners, so in a sense—

***Philippe De Baere:*** No. You will have to go to the third party, to the country FTA party, and say, "Look, I am interested in negotiating or in rolling over an existing FTA" and the other party will have to say, "Yes, we are also interested, but".

***Andrew Hood:*** It is the "but" that is important here because I am sure all countries will be interested in talking and looking to have an agreement with the UK after it leaves the EU and to ensure continuity of trade. The question is the "but". I am sure they are willing to do so and I am almost certain they would have said so to the Secretary of State. The question is what is that? Is there a "but"? If so, what is it? Is it about getting slightly better quotas than they might otherwise have on frozen chickens into the UK or is it about changing the entire structure? That is a different question and that comes down to what those trade flows are and what the interests are.

Q35 **Emma Little Pengelly:** I do think it comes down to the definition of negotiation or renegotiation in that situation. Yes, there has to be a new agreement and I suppose the question is—and I think this is critical—are there any indications internationally that people are going to use the opportunity, the fact that an agreement is severed, that there needs to be a new agreement? Are those other third parties going to use that opportunity as a renegotiation point to push the sectoral or particular interests that they have? Whereas all of the indications that I have heard thus far is that there is not any indication they are going to do that. They are going to say, "Look, we will work with you because we want this deal. We also want the renegotiation in an environment where we can get these issues properly discussed". I think this point is quite a critical one.

***Andrew Hood:*** Certainly, I have heard from some delegations that they are looking to change the substance of the arrangements or the agreement in place.

**Emma Little Pengelly:** Quickly, on the point of departure?

***Andrew Hood:*** Quickly, at the point of the departure, because there are some key areas or sectors or issues that they want to see addressed, if possible. The UK will have a choice as to whether they agree to that or accept it and there will be a choice for the other side to make, if the UK is not prepared to accept it, whether they roll over, whether they agree to the points or whether they do not agree to continue the trade agreement. I certainly heard what one would expect, because each country is analysing, yes, they are keen to engage and, yes, I am sure they are keen to have a trade agreement, but they will need to make a decision on whether that is in their interests and if there are specific demands. I have heard that some have specific demands that go beyond where they currently are.

Q36 **Emma Little Pengelly:** Very briefly, just in relation specifically to the tariff rate quotas, there seems to be an indication that there is a methodology that has been agreed. From your perspective, do you anticipate that this could become a significant difficulty or a problem or legally is this something that you believe will be overcome relatively easily?

***Philippe De Baere:*** On the issue of tariff rate quotas, the precedent is not very encouraging. We saw the proposal to use the same methodology that is currently considered for tariff rate quotas and FTAs to be applied to tariff rate quotas in the context of the WTO. We saw this letter from six of our trading partners coming forward and saying that this was not acceptable, that they wanted to renegotiate the tariff rate quotas. I do not know in the context of the free trade agreements if there have been already these kind of approaches, but it is likely to happen. Countries will try to maximise the benefits. It is what they should do.

Q37 **Mr Leslie:** I have a lot of alarm bells ringing in my ears about this whole expectation that things can be simply cut and pasted and grandfathered and everything will be fine. The Department for International Trade, who are responsible for this, had a previous Minister, Lord Price, who tweeted out, quite famously, "All have agreed to roll over". That was his statement. In fact, the current Minister of State, Greg Hands, then retweeted it, saying #FactsMatter. I am slightly worried that we have a bit of naivety within our Government Department. My question is quite simply—there are not any actual legal agreements signed, sealed, done, to roll over. That is question one. That is my understanding, but I do not know whether that is yours.

***Andrew Hood:*** Yes. Strictly speaking, the UK is still a member of the EU, so it could not agree on that basis. Not only is there a duty of law and co-operation where, in theory, the UK cannot go off and negotiate agreements, though I think there is a reality check with those agreements that exist and new ones, but we also remain a part of the EU so, therefore, our ability to conclude one of those agreements would not be possible.

Q38 **Mr Leslie:** If they have not all rolled over, there is a big job of work to be done to get to the state of rolling over—still to be done to get the negotiations, the agreements. I think it is quite important for you to articulate the effort and the time involved in doing that, because I am really worried that we have a Department that is operating under this sort of naive state in which everything is going to be simple and can be done if not before the transitional period easily within the two-year period. In your legal experience, can you just articulate how this is not just a simple matter?

***Philippe De Baere:*** As we know, in Article 2.1 of the Treaty on the Functioning of the European Union, the UK is precluded from engaging in trade negotiations before it exits the EU. That does not mean obviously from a pragmatic viewpoint, although there are some lawyers taking an extreme view that you cannot talk to the—

Q39 **Faisal Rashid:** You can have discussions but not renegotiation?

***Philippe De Baere:*** You have discussions but not renegotiation, correct.

**Faisal Rashid:** And those discussions, I am sure, must be happening.

***Philippe De Baere:*** That means that there cannot be a binding commitment to roll over existing FTAs. As I was trying to say, if you want to roll over the FTAs, there will need to be a revisiting of the text of the agreements, which can be a cleaning up of the references to EU, replacing references to EU legislation to UK legislation and so on. There will also need to be renegotiation of tariff rate quotas, of certain commitments that are there because they are just not transposable to the UK alone. That requires an international negotiation, which takes time because you will have to consult with your industries whether that is acceptable, what they want to give, what the interests are. That takes time. It is not something that you can do in a back room of the Foreign Office. You will have to go out to the industry concerned.

Most importantly, no third country in its right mind will negotiate and conclude a deal without knowing what will be the trade relationship between the UK and the EU. It makes a big difference for Japan whether they can ship their cars from the UK to the EU duty free or whether they will have to pay an import duty. That will affect enormously the kind of concession they want to accept, for example, for car components.

Q40 **Mr Leslie:** The rolling-over process of these existing FTAs cannot realistically happen in the sequence until we have the existing trade deal with the EU done and all these non-EU FTAs will have to come subsequent to that, because they will not be able to do them until we know what our relationship is with the EU.

***Philippe De Baere:*** For a rollover with the same benefits for Japan or for Korea, we would need to see a rollover agreement of a bilateral agreement between the UK and Korea. We would need to see an agreement between the UK and the EU, then we would try to bilateralise the benefits among the three. For instance, we would probably have to see on diagonal cumulation provisions for rules of origin that the Japanese origin in the car produced in the UK is also considered as preferential origin in the agreement between the UK and the EU. In order to maintain the same level of benefits for Japan and for Korea that they have now with the EU28, you would need to have this kind of trilateral triangular construction.

***Andrew Hood:*** None of this is impossible, but it is an enormous task. It may well, therefore, be that, as we have talked about, there are different ways of trying to maintain that relationship between the UK and that third country and some may be much better than others. It may be that you take a Rolls-Royce gold-plated approach to some of the big trade deals, but the smaller ones, where there is a much smaller balance of trade, you try to roll over in a very loose sense as easily as possible and then establish some mechanisms to pick up the issues in the future. But it is an enormous task in all of this, partly because it is not about doing deals in the back room of the Foreign Office, it is understanding what the impact is on the industry.

There is also just the technical side of things. A lot of these trade agreements are around establishing a web of co-operation and different organisations that speak to each other and conformity assessments and discussions with respective parties. All of that for the moment is the EU, so if you have an issue with pharmaceuticals, the discussions are between the European Medicines Agency and agency of X country. What is the UK's position going to be with respect to its own medical agency? You multiply that out across the board and there is a big technical task in the agreements themselves; there is a technical task in understanding the impact on the industries; there is the technical task of just the institutional framework to help facilitate these things.

Q41 **Keith Vaz:** Just a very quick question about the level of legal expertise in the Government Legal Service. Do you think, Mr Hood, since you worked there for 15 years, that there is that expertise in there that can negotiate these deals or will the Government have to buy in a lot of this support?

***Andrew Hood:*** They are already buying in some support, if you like. Obviously, I have declared my strong interest. I think across the board on Brexit the legal teams have been quite impressive in upscaling their resourcing and the skills. The trade area is the most difficult because, as I think has been said by many over the time, we have not negotiated a full trade deal for the best part of a generation. Of course, our first and last trade deal is with those who know our trading position best and that is with the EU. There is a huge task there to be done. That is about training existing people and it is around bringing in skills and experience. Personally, I think there are a lot of good people in the civil service and the legal service who are able to do that.

The UK, as a negotiating partner, has an awful lot of negotiating experience. We have done a lot of it in the EU on a multilateral basis. We do it in the UN around conclusions and we do it bilaterally. There is a lot of negotiating experience there, it is just about translating it and making it trade specific.

Q42 **Chair:** I take that as a vote of confidence in your legal colleagues?

***Andrew Hood:*** Of course.

**Chair:** Of course, what else? Hopefully we will finish this session in about 15 minutes. Julia Lopez, moving it on.

Q43 **Julia Lopez:** If I may just continue the last discussion, you touched upon the issue of tariff quotas and how this might be a problem in simply grandfathering a UK deal, but again, does that not also apply to the EU with the existing FTAs? I have heard that the EU is potentially looking at taking out the UK share from the tariff quotas and a lot of FTA partners are very unhappy about this. Their ability to export the current quotas to the EU will be reduced because the numbers will go down. Again, how is the EU going to avoid any renegotiation of its existing FTAs?

***Philippe De Baere:*** You have a very good point there. As I said, the difference between the UK and EU is that the EU will have the agreement in place, so it can afford not to do anything unless the FTA partner comes to the EU and says, "Sorry, this has upset the balance of commitments and rights and obligations here, so we want to negotiate". For the UK, it is the UK who has to go to the FTA country and renegotiate an agreement or roll over an agreement, so there is a difference in the position there. If the UK does not do anything or the FTA country does not agree, you do not have an agreement, while with the EU there is an existing agreement.

The problem is precisely the tariff rate quotas, as you point out, because in the agreement they are obviously covering also the UK market, so if they are unchanged, then the remaining European market, EU27, will have to absorb the totality of the quota. That is where there is an incentive for the EU at that moment to go to the third country, to the FTA partner, and say, "We would like to reduce this quota and, in the context of your negotiations with the UK, we will divide the share of the existing quota", but that is not a winning proposition. At that moment, the FTA partner may well say, "Yes, but then we need something else".

Q44 **Julia Lopez:** That will lead to a series of renegotiations.

***Philippe De Baere:*** Yes, but the fall-back there is that the EU can just say, "Look, we accept the tariff rate quota as it is and we take it within the whole EU27".

Q45 **Julia Lopez:** That might create political problems.

***Philippe De Baere:*** That may create certain political problems in the industry.

Q46 **Julia Lopez:** It is not risk-free for the EU either is my point.

***Philippe De Baere:*** It is not risk-free, no.

***Andrew Hood:*** You are right. The point that Mr De Baere was making at the very beginning was we are all focusing on the assumption that the UK will come out of the EU third country agreements and have a separate bilateral agreement. That is by far the most likely and I think that raises the problems or the issues that you flag up for the EU, but in negotiation terms they have a number of options available to them in terms of addressing that.

Another option that was raised at the beginning that raises lots of other separate issues is that one way of potentially squaring that circle is to say, "We, all three parties—the UK, the EU and third country—will extend the application of this agreement not only to the EU, but to the EU and the UK and in all parts of the treaty where you read 'European Medicines Agency' also read 'and relevant UK authority'," or something like that, so that you could have a package deal, if you like, which may address some of those. I do not think that is, as far as I am aware, really being discussed as the next step forward. The likelihood, as we have been talking about, is the UK-third country bilateral agreements. That would then, as you say, raise other issues that the EU will have to address or may have to address with the third countries, depending upon the respective interests there.

Q47 **Julia Lopez:** I will move on to dispute resolution. What issues do you think might arise around the grandfathering of dispute resolution arrangements in trade agreements? Do you think that the ECJ may continue to have a role in this regard? If not, what do you think the alternative might be?

***Philippe De Baere:*** At the moment there are very few agreements that foresee a role for the European Court of Justice. The only one that comes to mind is the association agreement with Ukraine, whereby the agreement states that in case there is a dispute relating to the imputation of a provision of EU law, then the dispute settlement body foreseen by the agreement itself, which is a state to state panel, that arbitration panel or that dispute settlement body should ask a question to the European Court of Justice on the correct interpretation of European law. In the large majority of FTAs, the dispute settlement mechanism does not involve the European Court of Justice, so that could just be changed by having now it is each party appoints a number of arbitrators or adjudicators. Obviously, you would have to change the EU adjudicators to UK adjudicators, but otherwise the system, in my view, could continue as it is.

***Andrew Hood:*** I agree. The other example I can think of is Moldova, which I think the Government put in its own papers, but again in the scenario where the UK has a bilateral agreement with a third country, the idea that the UK and South Korea or Canada would rely upon the CJEU as an arbitrator, even if the CJEU had power to do so—and it does not—then I think that is inconceivable. What you are then looking at is whatever specific arrangements are in place between the EU and that third country, which is that they take a whole different form. A lot of it is building this web of relationships between joint committees at official level and at ministerial level, and ultimately some form of arbitration, sometimes as between states. There is sometimes a different mechanism put in place for investors, so private companies investing into a particular state where they are concerned about the actions taken by that state. Those could simply—not simply—be mapped across in any UK third country bilateral agreement.

Q48 **Faisal Rashid:** I know time is short, so a very quick question. What distinct legal issues are there in relation to grandfathering EU trade agreements that are in the process of getting agreed, like Japan, and some that are already implemented but not fully implemented, like Canada?

***Philippe De Baere:*** I do not know what the precise content of the negotiations between Japan and the EU is and to what extent the Brexit hypothesis is taken into account in the text of the agreement. I believe that it would be wise to foresee in the EU/Japan agreement an additional protocol that foresees the continuing provision and application of the agreement to the UK after Brexit until a separate agreement between Japan and the UK is concluded. I think that would be wise for the UK negotiators and for the EU to have this kind of text in there. I think Japan should be interested, obviously, because they have an interest in having the UK and EU have market access there.

For CETA, the agreement with Canada, this agreement has been concluded. It has not yet been ratified. There may still be a possibility to make adjustments in the form also of an additional protocol, but that would again then have to go through the whole conclusion process, Council, Commission, Parliament, and then where countries that have ratified it already also have to ratify it. It is still possible, but it would take time, yes.

Q49 **Faisal Rashid:** I understand the UK has not ratified it yet, so if we do not do it, is there any implication for the UK?

***Andrew Hood:*** There are two different issues here. One is how that agreement foresees a Brexit arrangement, the Brexit effect, and, as Mr De Baere was saying, there are ways of trying to foresee that and they may try to include that. Otherwise it gets addressed as any other bilateral agreement would be, as we have been discussing today.

There is a second element, which is how does that then affect its impact in domestic law? There I think the Trade Bill foresees those scenarios. It foresees that any Bill or any agreement that has been signed by the EU—so if it is not fully in force, but any Bill that has been signed by the EU—the relevant provisions would be mapped across into UK law. There are then questions about the implementation of that, which I think are picked up in the Bill.

**Chair:** Thank you. To start to bring this first session to a conclusion, Emma Little Pengelly.

Q50 **Emma Little Pengelly:** I just want to ask about the sequence. I know you have touched on this a number of times, but it does seem to be a bit of a peculiar thing in that any member state leaving the European Union is prohibited from negotiating, yet at the point of leaving potentially would have no trade deals with third countries, for example. In terms of that sequence, I suppose the question is: when is a negotiation a negotiation? Is it your sense that those discussions or conversations with a purpose potentially could be relatively advanced by that stage or do you think that people will really look at the letter of the law here and have general conversations, but the transitional period is really where those renegotiations will take place?

***Andrew Hood:*** If they are looking at the letter of law, the EU could already be creating legal difficulties for the UK because of the nature of the discussions that are being had, both with existing partners but also potentially future partners where the EU does not have a deal. Absent Brexit and the UK's impending departure from the EU, the sorts of discussions the Secretary of State and others have been having I think would cause real problems, understandably, for the EU. We would have the same view if the German Ministers were going off and doing the same discussions.

I think there is already a reality check as opposed to a strictly legal approach that is being taken. When does a negotiation become a negotiation? When the lawyers and the courts adjudicate, so if you get it there, but no one is taking these issues to court or raising legal concerns. It is probably a sensible approach, which is a discussion between both sides around what one wants to have in place at the time of the UK's departure. There are obviously a lot of politics around this, but as experts we can say the EU wants to have a strong trading partner in the UK and vice versa. It is not in the EU's interests to see the UK not be in a position to roll over these agreements or grandfather them, whatever term we are using, at the point of the UK's departure.

That is why, understandably, I do not think there has been huge consternation about the fact that these discussions are happening with a view to their taking effect one or two seconds after midnight. Similarly, I think it is a more sensitive discussion where the EU may be in negotiations with countries or where third country agreements do not already exist. That is why we hear the sort of rhetoric around the US deal and others as discussions rather than negotiations. I think that is, quite frankly, a quite sensible tonal approach taken by both sides on this, which is trying to advance sensible conversations and looking with an eye to their future long-term trading relationship.

***Philippe De Baere:*** I fully agree. I think that there is no interest in the EU to create an additional problem by starting infringement procedures against the UK on this issue as long as the UK does not come out and say, "We have negotiated a binding agreement with country X". That would be a provocation, but as long as we describe it as discussions, scoping and so on, I think everybody will behave in a very responsible and pragmatic way.

Q51 **Emma Little Pengelly:** Clearly, that rule in relation to negotiation is a disadvantage to any country looking to leave the European Union, although hopefully pragmatically discussions will effectively deal with some of the challenges that that puts in place. In terms of the Article 50 issue, was that a deliberate consideration not to allow for pre-leave negotiation for free trade deals with any of the EU28 or was this an oversight, effectively, at that time?

***Andrew Hood:*** You will have to ask some of the authors of Article 50 in this building, but I do not think Article 50 was envisaged for countries like the UK leaving; it was envisaged for a slightly different purpose. The reality of the EU—I spent three years negotiating on behalf of the UK there—is it is pretty pragmatic, despite what we hear in the press. As a general rule, you do not want 27 or 28 countries going off and having separate trade discussions, which are properly the purview of the EU. That is what we want, as a trading bloc, the EU to be doing to have the most impact. That is in the member states' interest and that is what they have decided is in their interests.

On Article 50, first, obviously we are in untested territory; secondly, I am sure the EU is hoping that this is the first and last case where it is used, but I think generally the pragmatic approach seems to apply, which is making sure that both sides can be as ready as possible, politics and negotiations aside, on a bilateral level for the impact of the UK leaving the EU.

Q52 **Matt Western:** A very simple question. What you have been saying this morning has been very enlightening. In your experience, given the complexity and the sequencing that you have described repeatedly throughout this morning, will it take roughly five years to recreate some sort of FTA with these countries or five to 10 years or longer?

***Philippe De Baere:*** Again, it is a very difficult question. If you look at the deal with the EU, the definitive trade arrangement with the EU, which is deep and comprehensive, as the terminology goes, I think we have to take into account at least five years. That is a strict minimum, not only the negotiations, also the ratification by the member states. It will be very complicated. For agreements with third countries, if you look at the US, normally negotiations conducted with third countries by the US take between one and a half and two years.

Given the pre-existence of FTAs between the EU and these third countries, probably the UK should be able to finalise the agreements with its main markets. Negotiate 63 agreements at the same time, no, but if you concentrate on the more important ones, I think that can be done within two years, in the transition period of two years. The agreement with the EU is the big issue. That will require at least five years, in my opinion.

***Andrew Hood:*** It is also a slightly difficult question to answer, which is probably why you asked it.

**Matt Western:** You are experts. I do mean that genuinely; you know a lot more about it than the rest of us.

***Andrew Hood:*** It partly depends on what the UK's objectives are. Assuming we can somehow capture all 63 agreements on Brexit day and they exist and what we want to do is renegotiate them or tailor them to the UK-specific scenario after it leaves the EU, first, there is a question about what the UK's trading relationship with the EU is like, which will impact on what the future is, so that is one, two years, however long that may take to finalise. Secondly, there is understanding what we want from those agreements. For some, that may be very obvious and others it may not be.

Although we have talked about the macro level and the specifics, if you look at CETA, for example, just flicking through it, you can stop and pause and there are specific arrangements around the provision of wild rice in Ontario or the services exceptions for second-year embalmers in Nova Scotia. These things matter in different constituencies and in different sectors. It is a piece of string question and it also depends on the resources that are there that we have talked about before.

**Chair:** Thank you very much, gentlemen. It seems that there will be no problem at all if any other country makes demands so long as the UK rolls over and agrees to them. I cannot see any political problems there at all, he said sarcastically. Thank you very much for your time this morning, thanks for your expertise and thanks for increasing our knowledge as a Committee.

## Examination of witness

Witness: Dr Michael Gasiorek.

Q53 **Chair:** Thank you very much. Can I ask the witness to give name, rank and serial number for the record, please?

***Dr Gasiorek:*** I am Michael Gasiorek from the University of Sussex and UK Trade Policy Observatory. I am a trade economist.

**Chair:** Thank you very much for coming this morning. Matt Western, you wanted to kick this part off.

Q54 **Matt Western:** Yes, thank you, Chair. Can you outline what free trade agreements the EU has and say how they may affect the UK?

***Dr Gasiorek:*** In the figures that are bandied about, we have been talking about more than 60 free trade agreements that the EU has or, sorry, free trade agreements with more than 60 countries. My latest calculation of this is that there are 67 countries that the EU has free trade agreements with. Those countries account for approximately between 15% and 17% of UK trade with the world. It depends which year you take. If you take on average the past three years, it is about 16% to 17% of UK exports and UK imports that go to and from those 67 countries. They are reasonably substantial as a group, as a trading partner with the UK.

Q55 **Matt Western:** We have been talking a lot about priorities. Given the task ahead, what sort of priorities should we be seeking? In terms of grandfathering, where would you see the priorities?

***Dr Gasiorek:*** The priorities in terms of with which countries we should be seeking to grandfather?

**Matt Western:** Of the EU FTAs.

***Dr Gasiorek:*** Of the EU FTAs, yes. It depends on what the UK objectives are. If the UK objectives are primarily to do with the aggregate economic impact on the UK economy, then clearly the UK will want to focus on those countries that it trades with most, the ones that are economically the most important. The ones that typically come up as being the most significant trading partners are going to be Switzerland, Norway, Canada—if you include Canada as one of the countries with which we have an agreement or the EU has an agreement—Turkey, South Africa, South Korea. Those are the main trading partners. From an overall aggregate economic point of view, those are the ones that you might think the UK would wish to focus on.

There are other possible objectives that the UK might have. It might have, for example, objectives with regard to its policy for developing countries and it might choose to think about trading relationships with particular developing countries and free trade with developing countries to show that it is a being a good citizen in the exercise of its new trade policy. It might wish to, therefore, for strictly non-UK economic objectives focus on other countries.

Equally, you might think that from a strategic point of view, as is well known and as we saw in the earlier evidence, from a trade negotiating point of view, the UK does not have a lot of expertise. It has less expertise in bilateral trade negotiations. In that context, it is not obvious that you want to do your first negotiations with the countries that are most important to you. You might want to cut your teeth on some other countries first.

Q56 **Chair:** Our understanding or our brief has given us 63 countries. It is now up to 67. Might this increase more? We are looking at a moving target, are we?

***Dr Gasiorek:*** Without comparing the list, it is hard to say. We compiled this list. I was working on this about two or three weeks ago and we came up with a list of 67 countries.

**Chair:** Fair enough.

Q57 **Mr Evans:** On the back of Matt's question and on the back of your answer, the Commonwealth does not really feature prominently and certainly has not in the past. We turned our backs on the Commonwealth when we joined the European Union. A New Zealand MP told me recently that 70% of their trade used to come here and then we basically turned our backs on them. He said, "But funnily enough, it is the best thing you could have done for us because now we trade with the rest of the world". What potential is there with the Commonwealth?

***Dr Gasiorek:*** Clearly, there is a lot of potential. I should also very slightly qualify the statistics I gave earlier. They are focusing on trading goods. If you add trading goods and services, then some of the

Commonwealth countries such as, for example, Australia become slightly more important in terms of the total value of trade with the UK. Clearly, there is potential for trade with those countries, but the current levels of trade with the Commonwealth countries, other than Canada, is lower down the list. For example, on trading goods, I think Australia figures 14th or 20th in imports and exports in terms of the share of trade with the UK. It is not particularly important for the UK. It is potentially more important for Australia. That is possible.

Q58 **Mr Evans:** The Commonwealth is lower down because their economies are not as developed?

***Dr Gasiorek:*** Not so much. Some of them may not be as developed, but partly it might be distance, partly just to do with economic size.

Q59 **Mr Evans:** As a matter of interest, your title of UK Trade Policy Observatory, is that a new thing since Brexit was voted on?

***Dr Gasiorek:*** Yes. It was established three days after the Brexit referendum, I think.

Q60 **Mr Evans:** Another job created. George Osborne got that one wrong.

Getting back on to the subject of grandfathering rights, you heard the evidence just given. Can you just say how important this process is going to be? Do you see the desire on behalf of these 67 countries to want to trade with Britain? Canada gets mentioned. One of the reasons why they wanted to do that deal with the EU is that Britain was an important element for them. Do you see it as all doom and gloom or do you see there being great potential?

**Chair:** Cheer us up.

***Dr Gasiorek:*** Let me try to steer a middle path through that question. Trade agreements are normally about liberalising trade. That is what countries like to try to do because that is generally a good thing. What we are now going to need to negotiate with the EU—let me start with that—is really unusual because what this is is a negotiation about how to increase trade barriers. Their existing free trade agreements or the EU's existing free trade agreements were clearly done in the spirit of liberalising trade, so all parties do not wish to go down the route of increasing trade barriers between the UK and these free trade area countries. In principle, it is reasonable to assume that these countries will want to continue free trade arrangements with the UK as they have had up until now through the agreements with the EU.

Having said that, and as the earlier discussions this morning showed, there clearly may be reasons why certain countries in certain circumstances may choose to say, "We would like to do a bit of renegotiation here. Although in principle, yes, we do want to have free trade with you, this gives us an opportunity to say the balance of interests has changed somewhat and we would like to think about renegotiating certain aspects of that".

Q61 **Mr Evans:** That might not be a bad thing for the UK as well. There may be things outside the EU we might now want to do differently.

***Dr Gasiorek:*** Indeed, and in terms of this rolling over discussion debate I think there is a certain lack of clarity here as to whether we are talking about a long-term, permanent rolling over or whether we are talking about just rolling over for the transition period and then after that transition period the UK's position might be that we want to renegotiate all or some of these free trade agreements.

If I was one of these free trade area partner countries and the UK came to me and said, "We would like to roll over with you but in two years' time we might choose to renegotiate", I might be a little bit concerned about what the UK wishes to renegotiate. I might think that if I know there is going to be renegotiation down the line, when am I in a stronger bargaining position: in two years' time when the UK is completely free to renegotiate or now when the UK is in a slightly trickier position? It might bring forward that desire to renegotiate something with the UK now. Equally, for the UK there may be a desire to renegotiate for the UK's interests. All of that is possible but hugely complicated.

Q62 **Mr Evans:** As far as, as we heard this morning, these schedules exist in these FTAs with 67 countries, does the United Kingdom have a lot of derogations or reservations within those schedules?

***Dr Gasiorek:*** Frankly, I do not know. If it does it would be with regard to services and it may have some derogations in services. I do not know if it does or does not, but that is something that clearly one would hope that DIT is looking into and checking out. This kind of picks up on one of the questions earlier about the level of resources required and how much all this would cost. I do not have an answer to that question. I have absolutely no idea how much it would cost, but if you just take the EU-Korea agreement, I believe it is 1,400 pages long, one agreement. How long would it take? How many people need to read that? How many lawyers need to look at that? How much do you need just to think about what needs to be done to grandfather that agreement?

In order to keep business as usual, which is what the Government have said they would like—they would like access for the FTA partner countries' exports to the UK and for the UK exporters to have the same levels of access as they had before—strictly speaking, it would require grandfathering all of those agreements, all 63 or 67, whatever number we finally come up with. Each one of those is potentially quite long. In practice, there are some agreements that matter much more than others, the ones that I mentioned earlier. But even those, there is a lot of work to be done just to think about what needs to be done technically in order to roll them over, to grandfather them.

Q63 **Matt Western:** The example you gave that was 1,400 pages long was what?

***Dr Gasiorek:*** The EU-Korea free trade agreement.

Q64 **Keith Vaz:** Very quickly, how long have the EU negotiations with India been stalled for?

***Dr Gasiorek:*** Since about 2007, 2008.

**Keith Vaz:** So, for nine years?

***Dr Gasiorek:*** A long time.

Q65 **Keith Vaz:** Is this a big opportunity for us to just go ahead and start negotiating with India?

***Dr Gasiorek:*** It is an opportunity to try to start to go ahead. The difficulty is that the reason, as I understand it, that those negotiations are stalled is what both sides want from the other party the other party does not want to give. For example, the EU would like liberalisation of various service sectors, financial services and legal services. The Indian side would like greater—

Q66 **Keith Vaz:** But can the fact that it has stalled enable us to then proceed and have our own negotiations?

***Dr Gasiorek:*** It enables the UK to try to proceed. There is a general point here that some people think or would argue that the UK can be more nimble in those sorts of negotiations. It is not as constrained by getting agreement across 27 member states and, therefore, it might be easier for the UK to agree an agreement with India, for example. There may be some truth in that. On the flip side, clearly the EU market is much larger and, therefore, much more attractive for India than the UK market; therefore, the EU has more negotiating power than the UK. So, the balance of those two is hard to determine.

Q67 **Chair:** One of your areas of expertise seems to be rules of origin and you have written that rules of origin are likely to turn out to be hugely important in the grandfathering process. Why is that so?

***Dr Gasiorek:*** There are two elements to my answer to that question. The first is, if I can briefly say, why we need rules of origin, and then why they matter. Why we need rules of origin is wherever you are offering some partner preferential access, if you are offering some partner better access into your market, you need to make sure that the goods coming from that partner are genuinely from that partner and not some other countries trying to send them via that partner country, trying to cheat the system, as it were. You need rules of origin to prove these goods that have been granted preferential access genuinely originate from that country. Wherever you have these preferential differences you need rules of origin.

In the context of the UK with the EU, if we had a customs union arrangement with the EU we would not need rules of origin. If we had crashed out or if there was no deal we would not need rules of origin. The rules of origin apply in the event that we sign a free trade agreement with the EU, which is what the Government have stated in some form or other is its desired option.

The reason that they, therefore, matter is even if we signed a free trade agreement with the EU, and suppose hypothetically we grandfather or roll over an agreement between the EU and Korea, that does not give Korean producers the same degree of access to the EU as they had before because currently a Korean producer can send an intermediate input, which is used by a UK firm, in a good that is then exported to the EU and they can use as much of that Korean input as they like.

If you have a rule of origin that says you have to have at least 50% UK value added in that good but you are buying lots of intermediates from Korea and possibly other countries as well, you may exceed that 50% limit and, therefore, you can no longer get preferential access to the EU market.

Q68 **Chair:** In the example you have given, is it a mechanism to allow the EU to trade directly, to enforce Korea's trade to be direct to the EU as opposed to Korea trading with the EU via the UK?

***Dr Gasiorek:*** It may have that consequence, yes. That is not necessarily its objective but it may have that consequence, and it protects all parties in the free trade agreement equally. If the EU wants to export to the UK it would have to prove that it has whatever it is, 50% EU value is added in that, so it protects all parties. The point is that even if you rolled over the agreements overcoming the technical issues that were discussed earlier, in the context of a free trade agreement with the EU it is unlikely to be the case that EU, UK and Korean producers in that trilateral example have the same degree of access as they had to each other's markets than they had before because the rules of origin constrain that.

Q69 **Faisal Rashid:** Where EU free trade agreements are renegotiated with the UK as a party in its own right, what offensive interests are the counterparties likely to have and what approaches could the UK take in response?

***Dr Gasiorek:*** When you say the offensive interest do you mean the interest of the free trade area partner countries?

**Faisal Rashid:** Yes.

***Dr Gasiorek:*** That is a broad question. It will vary enormously or is likely to vary enormously according to the FTA partner country and what they are exporting to the UK. For countries, again going back to the earlier discussion, where tariff rate quotas are important that might be one of their offensive interests. For a country such as Korea, with clearly vehicle trade between the UK and the EU and trade in intermediate groups, which links into my discussion about rules of origin, those might be their offensive interests.

The main point is, and this goes back to the very first question really, in attempting to grandfather those agreements it may well be the case that countries have certain strategic offensive interests either promoting particular industries, wanting more access to the UK market, or feeling that they granted too much in the existing agreement, maybe too much of, if you like, a defensive interest there, but there may be a desire to change the balance of the agreement.

Q70 **Faisal Rashid:** What would the UK's approach be on that?

***Dr Gasiorek:*** In preparation for that, you undertake consultations with those countries. You get a sense of the extent to which those issues may arise or may not arise. Partly that will be hard because negotiators for the other parties may not wish to be transparent on that. Partly it is because, again as has been discussed, what their objectives might be will also critically depend on what they think will be the final arrangement between the UK and the EU. This is going back to the Japan example earlier. It is very hard to say a priori what it will be, but clearly from the UK's position, as well as preparing its own position it is sensible to think about what the objectives might be from the other side.

Q71 **Catherine West:** You are a trading expert but you are an economist as well. I was wondering what your view is of the period in which all this is physically and mechanically being done. What will happen to the sterling?

***Dr Gasiorek:*** Crystal ball gazing is a hard game so I do not know.

**Catherine West:** That is what economists specialise in.

***Dr Gasiorek:*** Possibly. A lot will depend on how much confidence the "markets" have that the UK is moving forward in a very positive and realistic fashion in terms of renegotiating and dealing with its relationships both with the EU and non-EU member states. The longer the current state of uncertainty persists the greater is likely to be the impact on sterling.

Q72 **Catherine West:** How low do you think it can get?

***Dr Gasiorek:*** I would not wish to speculate. I do not know.

Q73 **Chair:** An attempt to draw you on the question was made and it was resisted. Can I move to look at EFTA countries and the particular issues that can be posed by attempting to grandfather the agreements that the EU has with members of EFTA, the European Free Trade Association, Switzerland, et cetera?

***Dr Gasiorek:*** Other than the considerations I have already outlined, general considerations to do with rules of origin and grandfathering and renegotiating agreements, I do not think there is anything specific other than one issue to do with the EFTA countries. Clearly, the big difference between our trade or our agreements with Korea and Canada and the EFTA countries is mobility of labour. Currently, we have free mobility of labour between the UK and the EFTA member states. That will no longer be the case. That is something the UK may wish to try to seek to negotiate something on.

Q74 **Chair:** That is not a problem for people who are domiciled in Switzerland, I understand, from the UK because their right to live in Switzerland is predicated on the UK being in the EEA, not the EU, so that is a knock-on effect.

***Dr Gasiorek:*** Correct. That is my understanding.

Q75 **Julia Lopez:** To what extent is grandfathering the EU FTAs likely to bind the UK to the EU's regulatory model, do you think?

***Dr Gasiorek:*** When we talk about regulations I think it is important to distinguish between mutual recognition of standards and mutual recognition of conformity assessment, ie that the good has been produced to the right standards and so on. Typically, in most of the EU's free trade agreements there is very little of either of those, mutual recognition of standards or even harmonisation standards, and very little mutual recognition of conformity assessment.

Once again, if I go back to the EU-Korea example, that agreement was unusual. It was pretty much the first agreement that had some very specific chapters on a bit of mutual recognition of standards and a bit of mutual recognition of the conformity assessment standard, and that was for consumer products, vehicles, pharmaceuticals and I think chemicals.

To the extent that that agreement called for mutual recognition of standards, which was true for vehicles although those are not EU standards, they are UNECE standards, and it is true for chemicals where they are the EU standard, that agreement essentially calls for harmonisation of those standards. If the UK rolls over the EU-Korea agreement, it does not stop it from agreeing to harmonise or mutually recognise different standards with different countries such as the United States. Technically, legally I do not think it stops it. I am not a lawyer but I do not think legally it does, but it hugely complicates it.

Imagine you now allow for different standard goods coming in from America into the UK, different standards to those that are acceptable for the EU market, then there will clearly be concerns about whether those goods end up being then re-exported or used as an intermediate and then exported to the EU market. Therefore, there would need to be some controls in place for that, so it hugely complicates it. It does not bind the UK legally, but it complicates things enormously.

Q76 **Faisal Rashid:** That is where the rule of origin comes in, doesn't it?

***Dr Gasiorek:*** Then rules of origin may come into play as well. What all of these things show, if I can put it this way, is that both with regard to rules of origin and with regard to what we have just said about regulations and standards, what you might think is purely bilateral between the UK and Korea that we just need to grandfather—we can replicate, we can cut and paste, we can sort out the technical issues and trade will take place on the same basis as before—is probably not the case. It is much more complicated now.

Q77 **Julia Lopez:** On that note, how relevant are FTAs to trade? Do you think we are moving with technology to a situation where some of these things are not going to be able to be controlled by Government and perhaps nor should they be?

***Dr Gasiorek:*** I think FTAs are still highly relevant for trade and they are relevant in several dimensions. The most obvious and most direct dimension in which they are relevant is that they reduce tariff barriers. They reduce barriers to trade across various sectors. In some sectors that might be very unimportant because the average tariffs may be extremely low. In other sectors the tariffs are potentially quite high. Again, the example that is often touted—I will stay with EU-Korea—is that EU tariffs on cars are around 10%. If we did not grandfather that agreement and we suddenly had tariffs on trade between the EU and Korea in vehicles, which is a big part of what we trade with Korea at 10%, that matters.

Tariffs matter but also all the co-operation and co-ordination on all the other issues between the countries—be this co-ordination of information with regard to standards, regulations, IP protection, all those other things—matter. Then in the deeper agreements, such as the Korea agreement, such as CETA, you might get liberalisation of those non-tariff measures or liberalisation of other sectors such as the services sectors or certain services sectors, which again greatly enhance the possibility of trade between those countries and between them and their partner countries. Yes, I think free trade agreements are still highly relevant.

Q78 **Matt Western:** Correct me if I am wrong, but I believe there are something like 760-odd non-FTA trade agreements or trade-related treaties that the EU has. In terms of grandfathering, what is the risk if we do not grandfather some of those across?

***Dr Gasiorek:*** I am not by any means an expert on those 760 agreements. I do not know what they all are. Clearly, there are other agreements out there such as mutual recognition agreements on conformity assessment. For example, I know that the EU has signed agreements with about seven or eight countries that allow for mutual recognition of the testing and certification bodies for standards and so on. That is about seven or eight agreements. I do not know what is in the other 760 agreements but clearly, to the extent that they matter for generating trade between countries, then not grandfathering them could cause a problem.

There is a separate issue that has not been raised, which is not strictly, if I may slightly go sideways here, to do with regulations. There are a couple of other clauses in both the Korea and Canada agreements that might matter when thinking about grandfathering. This applies in particular to services and investment liberalisation where there are what is called “most favoured nation” clauses or MFN clauses. In the EU-Korea agreement there is liberalisation of certain service sectors and there is a clause in there that says if either the EU or Korea in a subsequent agreement with another country offer better access to services, they also have to offer that to Korea or to the EU respectively. That is called the most favoured nation clause.

Now imagine that the UK and the EU sign a very deep and comprehensive free trade agreement that involves lots and lots of liberalisation of service sectors, more than in the existing agreement. I am not a lawyer so you could check with lawyers, but my understanding is that if the EU agreed that with the UK and the UK agreed that with the EU, they would also have to offer that in those service sectors to Korea and to Canada and that may constrain what you can negotiate. It is another example of how what you think is bilateral may turn out to be trilateral.

Q79 **Chair:** Fascinating. Just to round up, you started by saying there were 67 countries that cover about 15% to 17% of trade. Has any modelling been done to the effect of what consequences there might be of bringing in WTO standards to what those percentages might be then and is it possible to do that modelling at this stage?

***Dr Gasiorek:*** Yes, it is possible to do that modelling. There are various ways that can be done. As is well known, the Government are undertaking their analysis of 57 or 58 sectors. I imagine that part of that analysis involves doing some formal modelling and in the type of formal model that they are probably using it should be possible to make that sort of assessment. There are other ways those assessments can be made. In fact, we are working on a model at the UKTPO at Sussex that would enable addressing those sorts of questions. So, yes, it is possible to have a look at what orders of magnitude in terms of impact might be involved from those sorts of changes.

Q80 **Chair:** It is always risky to ask somebody to think with their guts, but your gut feeling for that 15% to 17%, if it became WTO and if no rollover or grandfathering was to happen, what would happen to that 15% to 17%?

***Dr Gasiorek:*** My gut feeling is that the aggregate impacts are probably not going to be huge, not going to be very substantial, but there may be certain sectors that may be more affected. It will be distributional effects.

Q81 **Mr Evans:** Have you done a paper on the impact of WTO if no trade deal is done with the EU?

***Dr Gasiorek:*** No, but we are working on related issues. I am saying that this sort of modelling is certainly possible.

Q82 **Chair:** When you say small, would you say it is a percentage point or less than a percentage point?

***Dr Gasiorek:*** Of the value of trade?

**Chair:** Yes.

***Dr Gasiorek:*** I would say it is more.

Q83 **Chair:** It is more than a percentage point?

***Dr Gasiorek:*** Yes.

Q84 **Chair:** Roughly?

***Dr Gasiorek:*** I would not wish to speculate.

**Chair:** Fair enough. I have maybe taken this as far as we need to go this morning. Can I thank you very much as well as the other panel for coming in, sharing your expertise and increasing our knowledge? It is very much appreciated. Thank you.

***Dr Gasiorek:*** Thank you very much.