HOUSE OF LORDS

Select Committee on the European Union

Sub-Committee on EU Goods

Corrected oral evidence: Beyond tariffs: facilitating UK-EU trade in manufactured goods

Monday 6 July 2020

10 am

Watch the meeting

Members present: Baroness Verma (The Chair); Lord Berkeley; Baroness Chalker of Wallasey; Lord Faulkner of Worcester; Lord Inglewood; Baroness Kramer; Lord Lamont of Lerwick; Lord Lilley; Lord Russell of Liverpool; Lord Shipley; Lord Turnbull.

Evidence Session No. 5 Heard in Public Questions 54 – 62

Witnesses

I. **Shanker Singham**, Chief Executive Officer, Competere; **Dr Anna Jerzewska**, Independent Customs and Trade Consultant, UN International Trade Centre; **Professor Michael Ambühl**, Professor of Negotiation and Conflict Management, ETH Zürich.

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Examination of witnesses

Shanker Singham, Dr Anna Jerzewska and Professor Michael Ambühl.

Q54 **The Chair:** Good morning. I welcome colleagues to this evidence session of our inquiry, "Beyond tariffs: facilitating future UK-EU trade in manufactured goods". It is great to welcome our three guests this morning: Mr Shanker Singham, Dr Anna Jerzewska and Professor Michael Ambühl. The session is live and an hour long. It is being broadcast. You will be given a transcript afterwards, and if there are any corrections to be made it would be great if you could send them back to us as soon as possible.

You have had sight of all the questions beforehand. Colleagues will come in with supplementaries, and I ask colleagues and our guests to keep their questions and responses as sharp and as to the point as possible, given that it is just an hour-long session. If witnesses would like to start the session with a very brief opening statement, I think my colleagues would appreciate that.

Shanker Singham: I am the CEO of Competere, which is a trade consultancy. I have done trade and competition regulatory work over the last 28 years, which includes being an adviser to the US Trade Representative and to the UK Trade Secretary. I do not know if you would like me to make a few comments about the general theme. If that would be appropriate, I would be happy to do that now.

The Chair: It would be useful for us to have it throughout the session because of the brevity of the time.

Dr Anna Jerzewska: I am an associate fellow of the UK Trade Policy Observatory. I am an independent consultant in customs and trade facilitation for a number of private and public sector clients. I am based between London and Geneva.

Professor Michael Ambühl: I am a professor of negotiation and conflict management at the Swiss institute of technology, ETH Zurich. Prior to that, I was in the Swiss diplomatic service for over 30 years. I was State Secretary in the Foreign Ministry and later State Secretary in the Finance Ministry. The State Secretary in Switzerland is the non-political civil service head of a ministry, comparable to a Permanent Secretary in the UK. Among others, I was the Swiss chief negotiator for the so-called Bilateral II package between Switzerland and the European Union. I am honoured to have been invited to give evidence to your Committee.

Q55 **The Chair:** I will ask the first question, starting with you, professor. How significant are non-tariff barriers as a potential obstacle to UK-EU trade? What lessons can be drawn from other trade agreements, or the Swiss experience, on how to reduce the impact of non-tariff barriers?

Professor Michael Ambühl: This is a very important question, and I am sure it will have to be resolved in due course between the European Union and the UK. I believe there are some comparisons between the

Swiss and UK systems, but there are also aspects that we do not have in common. The first is the size—you are big and we are small. The second, you have an imperial history and we have one as a landlocked country.

The third, the institutional set-up: you have been a member of the European Union and are now divorced, and we have never been in. We are comparable in that: firstly, we have a certain sovereignty reflex; secondly, we have a free trade spirit; and, thirdly, both the UK and Switzerland want to have a good relationship with their most important partner, that being the European Union. Having said that, the Swiss case might not be a model for the UK. Nevertheless, it is an example that shows that problems are solvable.

To save time and not to go into detail, I have sent out to you, through Jennifer, a short brief about the Swiss model. You will see from that the aspects I deem most important. I am of course happy to answer all your questions regarding this. In a nutshell, the trade question is also very important in the Swiss case, and we have resolved it in quite a rational way. I am happy to give more concrete answers later in the session.

Shanker Singham: Non-tariff barriers between the UK and the EU fall into various categories. There are the traditional customs trade facilitation issues. There is also a whole suite of behind-the-border barriers such as regulatory barriers and market distortions. A modern free trade agreement—we hope that the UK-EU agreement will be a modern free trade agreement—will deal with things such as the good regulatory practice chapter, the regulatory co-ordination chapter and the competition chapter.

With respect to differences in regulation, there are two issues the Committee should think about. The first is the cost of regulatory divergence—in other words, the cost of having different regulations in place. The second is the cost of having anti-competitive regulation or market distortions in both the UK and the EU markets.

In a number of studies that I have already shared with the clerks of the Committee, including one that I did with the CBR, we looked at the impact of behind-the-border regulatory barriers. Those distortions tend to have much more significant impacts on the output of countries and on international trade. If you look at a two-country system, the border barriers in the study that we produced typically give rise to an 11% reduction in global output, whereas behind-the-border barriers were more of the order of magnitude of 37%. This is borne out by OECD and other statistics, which show the potential for an increase of 5% to 7% of GDP for developed countries and 10% to 12% for developing countries in the case of regulatory reform.

Regulatory issues are incredibly important. Both the UK and the EU in their negotiating mandates have suggested that they will argue for a good regulatory practice chapter, a regulatory co-ordination chapter and a significant competition chapter to deal with these things.

I note also that in 28 years of advising companies in this area, including two stints as head of practice for two large global law firms, customs issues tend to occupy perhaps 5% to 10% of complaints about barriers, customs and trade facilitation. Regulatory issues and other domestic distortions tend to occupy the vast majority of complaints that people have. You need to bear all those in mind as you think about how to reduce barriers. A good free trade agreement will try to work on both reducing the regulatory divergence cost and ensuring that both parties are moving towards more pro-competitive regulation and the resolution of behind-the-border issues.

The Chair: The pandemic has thrown a lot of new challenges into the negotiations. From your own observations, do you think that will lead towards even greater regulatory alignment than you would have perceived perhaps six months or a year ago, or will the divergence issues remain? Will Covid have a much greater negative impact? It would be interesting to hear from you on that.

Shanker Singham: The impact of Covid will increase the need for private sector economic growth and wealth creation, for the UK and for countries all over the world. The problem is that Governments will be very heavily indebted at the time we come out of the pandemic. Anything that generates economic activity will be at a premium. That will increase the need for the UK to have its own pro-competitive regulatory system. It makes the anti-competitive regulation docket that I talked about much more important. It will make it more important for the UK to do everything in its power to ensure that its regulatory system is as pro-competitive as possible.

The costs of not having a regulatory system that is based on a pro-competitive system are very significant at any time, Covid or not, but certainly when we come out of Covid those costs will be very difficult to bear for an economy that is trying to recover. It will increase the competition among countries. Different countries will come out of this at different times. A lot of global capital on the balance sheets of companies is on the sidelines. There will be a feverish competition for that capital. Countries and customs territories that are able to present themselves as a really good investment target will do disproportionately well as we come out of this.

Lord Berkeley: Mr Ambühl, is the unwillingness of the Swiss Government to accept the European Court of Justice as a final appeals body adversely affecting the negotiation between Switzerland and the EU on trade?

Professor Michael Ambühl: The Swiss Government has not rejected the role of the European Court of Justice. I personally—this is my personal opinion—would not consider a role in a future institutional agreement for the European Court of Justice. In the mandate with the United Kingdom, Brussels has proposed the same set-up for dispute settlement. There is a very interesting parallel between the London-Brussels negotiation and the Bern-Brussels negotiation. I am sure it will

be important to compare notes of the negotiations. You are right, Lord Berkeley. Negotiations about the institutional agreement between Switzerland and the European Union have not concluded yet.

The Chair: Before I ask Lord Lamont to ask his supplementary, may I turn to Dr Jerzewska—apologies for that pronunciation, Anna—to respond to my question?

Dr Anna Jerzewska: That is not a problem. Please just call me Anna. That is absolutely fine. I completely understand that my surname is difficult to pronounce.

I agree with what has been said to date. Non-tariff barriers are an issue for a developing country or a country like the UK. Non-tariff barriers are much more of an issue than tariffs. For comparison, a tariff is a cost that cannot be recovered and is a cost to the bottom line of a company. Equally, it is a one-off cost.

As Mr Singham outlined, there are so many different types of non-tariff barriers, whether border or behind-the-border barriers, and they require investment of both time and additional cost. If you have a good that is subject to SPS measures and you need to provide a health certificate, the company first needs to know that the certificate is required. It needs to obtain that certificate and that certificate needs to be correct. It is the same with other types of non-tariff barriers such as product regulation. All this requires a company to know and understand what it needs to do to export internationally.

I will make one more point. Free trade agreements and trade deals in general do not remove non-tariff barriers entirely. Again as Mr Singham said, they can offer simplifications and relaxations. They can do different things to ease the non-tariff barriers vis-à-vis a country that trades purely on WTO rules. However, they will never get rid of all non-tariff barriers. They are not designed to do so. They are designed to increase co-operation and deal with tariffs. Within that co-operation there is scope for some activity, but in reality, compared to what we have now, whatever or not we agree with the EU we will have more non-tariff barriers than we have now.

As regards the impact of these non-tariff barriers and what happens at the border, the more divergence there is and the more checks there are, the more issues there will be at the border.

The Chair: Lord Lamont, did you want to come in with your supplementary?

Q56 **Lord Lamont of Lerwick:** I would like to ask Shanker Singham about safety issues. Quite a number of our witnesses from different sectors—particularly pharmaceuticals, chemicals and aerospace—have been concerned about safety regulations. This has led to arguments being put for involvement in various agencies within the European Union. Of course, this is difficult to reconcile with Brexit. How could these issues be

tackled in the negotiations?

Shanker Singham: I come back to my initial statement. There are two costs that you are worried about when you are looking at a trade agreement. You cannot look at the UK-EU trade agreement in a vacuum. You have to look at it in comparison with the rest of UK trade policy. That includes the US deal, the Australia and New Zealand CPTPP accession, and what the UK does in the WTO.

There are two costs here that you need to think about. The first is the regulatory divergence cost. When some of your witnesses have focused on that issue, they might have said, "We want to be in the particular European regulatory body so we can minimise that divergence cost". That is certainly achieved by remaining in that regulatory body, but the price you pay for that is that you may have limited say in the direction of travel of those regulations in that particular sector. Those regulations may not be as pro-competitive as you would like them to be for creating wealth, for creating economic activity and for growing your own industry.

It may be better for you to have a different approach. Companies should ask themselves what they want the global system of regulation to look like. They may say, "We're better off improving our own regulatory system". That will be a determination based on the regulatory system in the EU at the time. If they perceive it to be significantly anti-competitive, if they complain about it, the better approach would be to try to improve their own regulatory system, improve the regulatory system in good regulatory practice, competition and investment chapters in other trade agreements with other countries, work with the WTO to achieve the same sorts of goals, and try to minimise the inevitable divergence cost with your EU partner through things like mutual recognition agreements.

Mutual recognition agreements operate at three different levels as regards conformity assessments, and even underlying product regulation. The EU has dealt with underlying product regulation in the case of CETA and the New Zealand meat products agreement, for example. It is possible to do these things. It is possible to agree this with the EU. However, it is a very different approach from saying, "We just want to be in a particular regulatory body". The best position will differ from sector to sector and company to company. That is the corporate position.

As the UK Government, you also have to think about UK consumers and what is best for them and for UK foreign policy interests. Trade agreements and trade policy are not just about your business or commercial interests. They are also part of your foreign policy. You have those things to think about as well.

You put all that into the mix and you come up with a plan about what you want to do. Significantly, as regards the UK-EU deal, if you try to remain in a European regulatory body, you will have to pay a price for that. You also have to ask yourself how much control we would have in that regulatory body, and how much would we be able to move the direction of travel of regulation.

Q57 **Baroness Kramer:** May we turn to the slightly narrower topic of rules of origin? My questions are really directed at Dr Jerzewska and Mr Singham, and I would like you to approach them from two slightly different angles.

First, could you give me your opinion on the key differences between the UK and the EU negotiating positions on rules of origin? I am particularly interested in diagonal cumulation. Do you think that some common is ground appearing there? Secondly, how important is an agreement on rules of origin for UK industry? Could you address that from two angles: first, that of large companies; and, secondly, that of small companies. I am rather confused as to whether small companies faced with rules of origin will simply not export, or will just pay the tariff.

Dr Anna Jerzewska: I will try to condense this answer. In talking about the differences between the UK and EU approach to rules of origin, it is good to understand what the UK is trying to do. One of the key issues for the UK is to try to maintain the flexibility of supply chains as much as possible. That means maintaining flexibility by being able to purchase input and components from third countries, use them in the manufacturing process and export them under a trade agreement.

At the moment, the UK is able to do that through its membership of the EU and the EU network of free trade agreements. For example, you can purchase parts and components from Canada, manufacture your product in the UK and sell it to Germany without any problems. The other way round, a German manufacturer can purchase parts and components in the UK and sell the final product to Canada. After the end of this year, that will no longer be possible. Even if we had a rollover agreement with Canada, which we do not have, that would still not be possible. One of the key focuses for the UK is to try to minimise the impact and prevent the negative effects of that.

The way to do that is through cumulation. That is all about allowing countries to use inputs and components from third party countries and treat them as if they originated in their own country for the purpose of exports under a trade deal with their trade partner.

In general, the UK had two ways of using cumulation. The first option that the UK had—and still has—was to stay within the pan-Euro-Mediterranean cumulation zone, which is an existing cumulation zone. There are 23 parties within that agreement and they cumulate origin together among themselves.

However, to use the pan-Euro-Mediterranean cumulation zone you have to fulfil two conditions, which is where the problems start for the UK. The first condition is that you have to have a bilateral agreement with other members that you want to cumulate with. That means that within that group of pan-Euro-Mediterranean countries there is a network of bilateral agreements between countries. You need to have that to cumulate. It is not just about the UK accessing this agreement; it is also about the UK signing bilateral agreements with all the members of that agreement.

The other condition is even more problematic for the UK. Within this agreement, all trade agreements, deals and bilateral agreements have to have identical rules of origin. From the UK's perspective, if it was to go for that option, there is nothing to negotiate. It is a take-it-or-leave-it agreement whereby you just have to sign up to the existing rules of origin and you have no flexibility, which again can cause problems from the UK's perspective. This pan-Euro-Mediterranean agreement is due for an upgrade, but it has not been upgraded yet. It is a bit of an old-fashioned agreement in some senses, and one that can be financially problematic for some industries.

The alternative that the UK decided to go with on cumulation is signing a bespoke rules of origin agreement with the EU. That has some advantages, because you can agree a slightly more modern approach on the way certificates of origin work and so on. However, the UK is mainly trying to introduce a newer type of cumulation, which the EU calls extended cumulation, and other countries in the world such as the US call either third party cumulation or cross-cumulation. It is an existing provision, but one that has not been used all that much. It has not been used in the way that the UK wants to use it. It would mean that both the UK and the EU are able to use inputs from third countries and still consider them as originating. Depending on which type of agreement you use, either cross-cumulation or extended cumulation, it can have a lot of benefits. The UK has already been trying to do this in the rollover and continuity agreements that it has signed. Several of them included this type of cumulation.

This type of cumulation would help in supply chain flexibility, but it is very unlikely that the EU will agree to that provision. It is just not very likely to happen, for a number of reasons which I can come back to in a second. In the draft FTA text proposed by the UK and the EU, the EU text does not have much on rules of origin other than the standard provisions. There are no product-specific rules of origin. It is just the general conditions at the moment. There is nothing really there.

I would imagine that the EU's perspective on rules of origin is pretty traditional, with a possible preference for PEM, but that has not been confirmed. As far as I know, the EU has not responded officially to the UK's proposal for this extended cross-cumulation. As I mentioned, it is very unlikely that it will agree to it. It is not that it is not possible; it is more that the position it would leave the EU in would be a precedent.

For SMEs and large companies, rules of origin are an integral part of the trade agreement. They determine whether you can use the trade agreement. As regards the difference in how large companies approach it versus small companies, I guess there are two things here. One is that large companies typically have more products. The tracking of origin becomes more complicated just because of more tariff lines and more products going backwards and forwards. Smaller companies might have fewer products to deal with.

Also, rules of origin are one area of customs where companies need to have someone monitoring the rules of origin and helping them with them. Larger companies are able to have a customs team; smaller companies perhaps not so much. Smaller companies cannot necessarily afford consultants or additional external help to help them with determining rules of origin and providing origin certificates. I guess there are two sides to that, but rules of origin will be a burden for both larger companies and small companies. Depending on the product type, the burden is smaller or larger. I will stop there, but I am happy to come back to you on any of these points.

The Chair: Before I turn to Mr Singham, we have a number of questions to get through and I am mindful of the time. If our witnesses feel that they want to elaborate on the questions later on, the Committee would be very grateful to receive that in writing.

Shanker Singham: What the UK has asked for in its proposals is essentially more liberal, more open rules of origin. Obviously it has asked for diagonal cumulation. There is another aspect to this that is more to do with product-specific rules of origin, and it is whether it allows things like substantial transformational change in tariff classification to give originating status to a particular product. In a number of sectors, the UK is asking for more of a reliance on things like substantial transformational change in tariff classification.

With respect to diagonal or full cumulation, clearly the UK wants a system where it can originate both in the UK-EU dimension and in the dimension of origination with respect to the third country FTA. If you want to cumulate between the UK-EU FTA and the third country FTA from a UK perspective, you would have to mirror: both the UK and the EU would have to have the same rules of origin in respect to that third party.

There is a bit of a problem here, because different countries are adopting different rules of origin. We have seen in the USMCA[1], for example, especially in the auto sector, that rules of origin have become much more restrictive than they were previously. In the auto sector, local content rules also apply. Those local content rules in the USMCA have been raised to about 70% to 75%. It will be quite difficult in the auto supply chain for the UK to have open rules of origin with the EU and to try to make a rule of origin agreement with the US. That is very specific to some products that have local content rules.

This will be a very difficult area of the negotiation, because the EU seems to be seeking much more closed rules of origin. It probably does not want the UK to become a manufacturing hub for multiple countries and for the EU. This is one reason why it has also said that it does not want to do mutual recognition of conformity assessment: because it does not want the UK to export conformity assessment into the EU. So I would expect this to be quite a challenging area.

[1] The United States–Mexico–Canada Agreement

The UK's approach is definitely to try to integrate across the supply chain so that you do not have a situation whereby something that you may be doing right now with the EU 27 that does not create an issue for you suddenly becomes an issue once you are out of the EU and you have a free trade agreement with the EU, and even though you are just doing things back and forth between the UK and the EU you are now violating the rule of origin provisions of the FTA and therefore you cannot claim the preference.

I would add a couple of very quick points. For tariffs that are very low, and typically below 5%, the usual practice around the world is a significant number of traders, as you suggested in your question, do not even bother with the rule of origin procedures. They just pay the MFN tariff rate. In Australia and New Zealand, in the ANZCERTA agreement, the Australian Productivity Commission recommended that you have no nuisance duties because rule of origin formalities are so difficult that many traders would not bother with them anyway.

You might accept a situation whereby for very low tariffs people are probably not going to bother with rule of origin certifications. But in other areas, where tariffs are higher, this will be a big problem, and I think it will be a problem in the auto sector in particular.

Lord Inglewood: What strikes me is just how complex it all is. The devil lies in the detail. Having said that, trying to simplify it a bit, it has been put to us that it might be in the interests of the country to join the Regional Convention on Pan-Euro-Mediterranean preferential rules of origin. If you look at that possibility, which in your view is preferable? I suspect this question is principally for Anna Jerzewska, but it may also be for the other witnesses. Would it be preferable to join the PEM or to try to work out a series of bilateral options with other people? In reality, is it appropriate to say that you have a choice between the pan-Euro-Mediterranean arrangements and rules and negotiating bespoke cumulations across the piece?

Dr Anna Jerzewska: This is not an easy question to answer. In reality, as I explained, the UK is going for something more ambitious at the moment with this new type of cumulation. If it was possible to achieve it—and I do not think it is—that would be a good option. However, the EU might not agree to it. I should probably point out here that it is not necessarily because the EU does not want to allow us to have that. It is more that this cumulation has never been used in the way the UK wants to use it. We are not even certain that it is WTO compatible and that it would be legal, in WTO terms, to do what the UK is suggesting. We are not certain, because it has never been questioned. That type of cumulation has been used for only one or two specific products in a trade agreement so far. It is quite unlikely that this will happen.

If that does not happen, the UK has two options, as you mentioned: to join PEM or negotiate bilaterally. The problem with PEM is that, given where the goods come into the EU and what types of customs data we are collecting across the EU, it is quite difficult to measure how much UK

companies use it. We know some general points. We know, for example, that in some sectors it is more helpful than in others. We know that for textiles and potentially auto companies, PEM is more of a plus than for other companies. As far as I understand it, food and drink companies are on PEM because they are slightly older and they can be quite restrictive.

We do not have clear data on how many UK companies use PEM. As a result, it is quite difficult to judge whether PEM is a good option. I would say that having PEM and some sort of cumulation is better than having no cumulation whatever in the region. With PEM you cannot negotiate anything else, so I guess that is the balance here between having a system of regional cumulation and being able to modify the existing rules of origin.

An important point to add, and I have mentioned this already, is that PEM is due for an upgrade. It has been due for an upgrade for quite a while. It has not been updated yet, but the proposed changes to PEM, if or once they happen, will result in a completely different agreement. More flexibility is planned and the rules of border will be modernised. There are additional provisions within cumulation. Once PEM is upgraded, which hopefully will happen at some point soon, it will be much more beneficial for the UK to be in PEM.

Lastly, I have not seen anything from the UK Government that suggests that the UK is still interested in PEM. However, PEM can be a last-minute decision, because if the rules of origin rules prove too difficult, and at some point the UK decides that it would be beneficial to stay within PEM, there is nothing to negotiate. I do not feel that this topic has been explored properly or that the UK Government have looked into the benefits and disadvantages of PEM. It is not a straightforward answer. I know companies that use PEM and those that could use PEM and choose not to. Again, it is quite difficult to estimate exactly the benefits and disadvantages of PEM.

Q58 **Lord Lilley:** I want to ask Shanker Singham in particular what forms of regulatory co-operation there should be between the UK and the EU to facilitate UK-EU trade.

Shanker Singham: It goes back to what I said earlier about managing the divergence cost of regulatory co-operation, as well as trying to ensure that you have a pro-competitive regulatory system and that preferably your trading partner also has a pro-competitive trading system. There are various chapters that you would want to see in an agreement. Fortunately, both the UK and the EU in their negotiating mandates have suggested that they would want to see these chapters, and in both of their texts these chapters exist.

First, you would want to have a strong good regulatory practice chapter that deals with how regulations are promulgated in both jurisdictions. It is not only about transparency and cost-benefit analysis, and all those things. It is about integrating the most recent thinking from bodies such as the OECD. The OECD has produced a regulatory toolkit and a

competition assessment on new regulations to integrate things like the International Competition Network's work on competition assessment for regulations, and you would want to include all this in the GRP chapter.

The challenge for the UK is that the EU is quite new to this. Many other trade agreements around the world have had good regulatory practice chapters in them, but the EU has not had one. In fact, the first regulatory co-operation chapter was in the EU-Japan agreement; as I say, in many other trade agreements around the world there have already been regulatory co-operation chapters.

The issue of domestic regulation has been very much on the table in other agreements around the world. Even in the NAFTA agreement in 1994, the investment chapter contained disciplines on actions tantamount to expropriation. It covered regulatory takings to some degree. It dealt with regulatory barrier costs. That agreement was 25 years old before it was renegotiated. It will be a challenge to get a lot of this into the UK-EU FTA, but certainly you would want disciplines. The EU has said that it wants disciplines on the level playing field and so on, which I think opens the door to having this kind of GRP chapter in place.

The other relevant chapters are the regulatory co-ordination chapter, where essentially there is a joint committee between both parties that will look at regulations so that neither party is surprised by a particular set of regulations coming out of the other jurisdiction. It would not necessarily be a violation of the agreement.

However, there would be a forum for a discussion about best regulatory practice. I think that is the intention of both parties. If you were to do this again, without the history that we have had in the negotiations, because both sets of regulations are identical on day one you would want to have as much recognition across the board as you could. You would want a divergence management mechanism based on concepts that both parties have agreed in the OECD and in other fora. That would say essentially that if one party diverges from the other on regulation, they will not lose recognition, provided that they satisfied the good regulatory practice chapter and they are not doing something that is anti-competitive or violates trade rules, or has a damaging effect on trade.

At the moment, I think we are beyond that and we need to look at other ways of ensuring that regulatory divergence costs are mitigated while at the same time retaining the autonomy and freedom to have a better set of regulations ourselves. I would certainly look to the work that has already been done in the OECD, the ICOM and other bodies on the subject of regulation. You would hope that the UK and the EU could integrate a lot of that work into the trade agreement.

Q59 **Lord Lilley:** Professor Ambühl, what works particularly well in the Swiss arrangements with the EU and, indeed, are there any warning lights from its experience that we should take into account?

Professor Michael Ambühl: Out of the 25 agreements, and you have received a list from me, five are trade related, which is exactly the subject we are dealing with here. I would say that these five agreements cover three areas of co-ordination with the European Union. The first is tariff related. We have a free trade agreement on industrial products. It is an old one that dates from 1973. By the way, that is the exact date on which the UK joined the European Union. It was linked historically. Only then could we have this free trade agreement. We have two other trade-related agreements, one on agriculture and agricultural products, where we have a reduction in tariffs on cheese and wine and other selected areas. We also have one on processed agricultural products such as chocolate and biscuits. That is the tariff-related area.

We have a free trade zone with the European Union and with the other EEA members, but we are not in a customs union. That was an important issue in the UK-EU divorce negotiations, especially regarding Northern Ireland. As we are not in a customs union, we were able to conclude quite a few free trade agreements with third parties like China and Indonesia, and there is one in the offing with India.

A second area is product-rules related. We have taken over the majority of product rules unilaterally into Swiss law, which makes us very similar to the European Union on product rules. We have done all this unilaterally, with the possibility of exceptions. If I may, I would say that for us it was a bit more difficult than for the UK, because you do not need to adopt anything; you just need to keep what you already have with the EU. I think this would be a very smart move.

In addition, we have also adopted the Cassis de Dijon principle unilaterally. That means we accept unilaterally rules that have been put on to the market in an EU member country, and we are allowed to make exceptions. It puts the whole trade system on the same footing.

There is a third area which I believe also functions quite well. It is the control-related one: border controls. We have customs facilitations that function very well. To give you an example, we have 24,000 trucks per day crossing the Swiss-EU border. This truck question, in my opinion, should be solvable for the UK and the European Union, too. Trade wise, we have €1 billion per day of goods crossing the border. This seems solvable to us. Another area is the MRA, which has already been mentioned by the two other witnesses and the Committee. It is of course very important to have only one clearance or one assessment of conformity, be it in Switzerland or the European Union.

All in all, these things are functioning quite well. What is interesting to me from more of a macro perspective, because I am not an expert in these trade rules of origin and other questions, is that unilateralism, contrary to what one might think, is a good tool in this area for having a level playing field with a big partner.

The crucial question and difficulty, to my understanding, in our current negotiations with the European Union is what you do if you have a

dispute—how you go about this and what the dispute settlement mechanisms are. That was Lord Berkeley's previously asked question.

The Chair: Professor, can you very briefly describe the Cassis de Dijon principle?

Professor Michael Ambühl: I will try to be very brief. It is the principle whereby if a product in member country A has been put on to the market, it is automatically accepted as a product in member country B. That goes back to a judgment of the European Court of Justice on Cassis de Dijon. It is a fundamental and important principle for the functioning of the single market.

Q60 **Lord Russell of Liverpool:** Mr Singham, why is the EU so reluctant to offer the mutual recognition of conformity when it has done so with other countries? Do you think this could be against WTO law?

Shanker Singham: As I said before, there are three different levels that we need to think about with mutual recognition. The first is conformity assessment. We referred to this in the discussion on product testing and so forth. There are other levels on standards and underlying product regulation. Conformity assessment is the most basic form of MRA.

You are right to point out that the EU has done this for a number of other countries. The EU's position with respect to the negotiations right now is that it rejects the UK's desire to have mutual recognition of conformity assessment. First, it is important to note that we are still in a negotiation between the UK and the EU. That negotiation is not just in this area but in many areas, and they all have an effect on this area.

The EU has done the most advanced form of mutual recognition on product regulation in CETA and with New Zealand on meat products. This is not a new concept. Having mutual recognition on product regulation is important, because it reduces significantly the number of physical checks. For New Zealand meat products, for example, physical checks are down from 100% to 2% because of that agreement.

As regards WTO compatibility on what the EU is refusing to do, there is no WTO obligation that you could rely on, and win a case on, to grant mutual recognition agreements, but certainly granting them where possible is strongly encouraged by the TBT agreement—the Agreement on Technical Barriers to Trade. Even on technical regulation, which, remember, is the most advanced form of mutual recognition, Article 2.7 of the TPT says that members should give proper consideration to requests for granting of equivalence.

Conformity assessment is dealt with in Article 5, which says that parties should ensure that conformity assessment processes are not more burdensome than necessary and do not constitute barriers to trade. Members should ensure that results of conformity assessments in other bodies are accepted where possible. In the TBT agreement, there is an understanding that parties would want to engage in prior consultations. This is what normally happens—not in the EU-UK context—and they

would normally have discussions about the different product rules. In this particular case, where the product rules are identical on day one, if not a violation of the law—the TBT agreement—certainly the EU's position, refusing even conformity assessments for mutual recognition, is against the spirit of the WTO agreement.

Q61 **Baroness Chalker of Wallasey:** Could I ask both Dr Jerzewska and Shanker Singham what the EU-UK agreement should cover as regards customs trade facilitation? Is the Government's new phased approach to import customs procedures from the EU compatible with WTO/WCO rules?

Dr Anna Jerzewska: I will start with the last question, because it can be dealt with more quickly. I will try to keep it brief, in the interests of time.

I am not a lawyer, but I do not think the question of WTO compatibility will pose a problem for six months. If it was a permanent solution, it might be different, but for six months I do not think we will have any problems.

On your first question about what the EU and the UK have signed, I have three very quick points. First, the EU text in the draft FTA text is pretty standard. It is what you would expect to see in an agreement and what you see in agreements with Japan, the Ukraine and other EU FTAs. The UK's proposal is quite ambitious. The UK is definitely seeking closer co-operation on customs and trade facilitation. That is a good idea.

There are two very interesting provisions in the UK draft text that have gone largely unnoticed and slipped under the radar. One is on law reports and the other is a pilot for data exchange. These are very interesting and could lead to quite good, and closer, customs co-operation. Perhaps in time, it could be quite similar to what Norway and Sweden have. The pilot which the UK is proposing is very reminiscent of what Norway and Sweden did back in the 1960s. That is a very good proposal from the UK's perspective.

I would like to see progress on two points. The first is safety and security declarations. These are pre-notification declarations. Before the goods even approach the border, you have to notify the authorities. These are not customs authorities. This is a separate process. You notify them within a certain amount of time. These safety and security declarations, as the name suggests, are all about state security and have been introduced by countries around the world in the aftermath of 9/11. They are all to do with smuggling, terrorism, and safety and security of the supply chain.

There is an agreement between the EU, Switzerland and Norway, which have formed a safety and security zone whereby these declarations are not necessary. You still do them when goods are imported from the outside, but you do not have to do them between the parties. I do not understand why the UK Government did not request that, and they did not suggest that the UK should sign a similar agreement, especially as it

will partly meet the derogation principle for the Northern Irish border. For me, an agreement between the EU and the UK would be a good step forward. It has nothing to do with customs or regulation and product standards and so on. It is a completely separate topic.

Lastly, nothing that the UK and the EU agree on trade facilitation and customs and will put in the trade agreement in the next five and a half months will have an impact on trade facilitation equal to what the UK does domestically. The FTAs are not necessarily there for the purpose of trade facilitation. You do not need an FTA to facilitate trade. What is already in the bulk of these proposals can be built on later and can be worked on further under a joint committee between the two as regards customs and trade facilitation.

Goods moving as seamlessly as they can in the situation are all about what the UK Government will do with trade facilitation in the next five and a half months. We are talking about provisions for the future, but we do not have a border-operating model, and we do not have an IT system to operate that border. There are a lot of things that we do not have yet. For the next five and a half months, the biggest impact on trade facilitation will not be the UK-EU negotiations but what the UK Government choose to do domestically.

Shanker Singham: I know we are out of time, but I would add a couple of very quick points. I think phasing is a WTO violation, and trading partners will be concerned about it if they are not satisfied that there is legal certainty as to the six-month period. If it feels as though it will carry on, I think the UK Government will have problems on the WTO side of things.

I have shared with the Committee a UK-EU model agreement, which includes chapter 3 on customs and trade facilitation. Some of the things in that model agreement have been picked up by the UK in its proposal. Some things are quite significant, as Anna just mentioned, particularly the integrated single window-type approach, which is what happens at the Swedish-Norwegian border. That should be pursued. Better customs co-operation between the UK and certain obvious EU states—France and the Eurotunnel and the ro-ro Dover-Calais route—will be very important. There are some other things that you would want to see.

A point to make about the single window that it is not just about IT systems being compatible; it is about agencies working together. HMRC, Defra, the Home Office and the Border Force all need to work much more comprehensively together. There has been some suggestion about a ministry for the border that would bring these agencies together. I think that would be quite a good idea.

With respect to safety and security, my view is that one of the reasons why the Swiss are in that safety and security zone, and it is an important point, is that the Swiss voluntarily signed up to EU regulations. If the UK is not going to do that, particularly in the SPS area, it will want a higher degree of autonomy. I will leave it there.

Q62 **Lord Faulkner of Worcester:** We are almost out of time, so I will confine my questions to the professor and ask him specifically about the Swiss experience. First, when Switzerland negotiated an agreement on dismantling technical barriers to trade in some key product categories, did it have to take on any relevant EU legislation and oversight in return?

Professor Michael Ambühl: As I said before, we have unilaterally and voluntarily accepted, to a large degree, the product standards of the European Union. This of course facilitated the conclusion of an MRA. This is very important. This MRA now covers about two-thirds of our trade with the European Union.

In addition, in the same direction, we unilaterally apply the Cassis de Dijon principle. This unilateral application of EU standards and ideas also allows us to deviate where necessary. We do not need to negotiate this. In addition, we do not put Swiss producers and industries in a situation where they have to have two standards in their production: a Swiss standard and an EU standard.

All in all, we believe this is a good system. I do not think that the European Union wanted to give us this system on a bilateral basis, certainly not on the Cassis de Dijon principle, which you can get only when you are a member state.

Lord Faulkner of Worcester: That is a very helpful answer. What advice would you offer the British negotiating team based on your own great experience of being in the negotiations, from the point of view of the Swiss Government?

Professor Michael Ambühl: I do not think I am in a position to give advice to colleagues in London, firstly, because they are very professional, and, secondly, because they have been in the European Union for nearly 50 years, so they know much better than I do how the European Union negotiates with third parties.

Lord Faulkner of Worcester: We have not been leading before, though. This is a new situation for us.

Professor Michael Ambühl: Correct. I can only answer this from my own experience teaching at the university. I do not pretend that this is advice that I would give to professional colleagues, but I would say that number one in a negotiation, and in general, is that it is very important to have a coherent line, especially if you are the weaker side. From a negotiation point of view, if you are not big you have to be very coherent, because you only have the force of the argument on your side.

Secondly, I believe I know very well that our European Union friends do not like what they call cherry picking. That is fair enough. The only question is what is considered to be cherry picking. You should avoid giving the impression that you want to cherry pick. You have to have a balanced result at the end of the day so that everybody can say, "We have a good deal".

Thirdly, in my experience, if a situation reaches an impasse, which can often arise in negotiations of course, it is up to the party that has a bigger interest in having a conclusion to come forward with proposals. Saying, "Okay, the ball is now in your court. Please make new proposals", is not a good system. It is better to make your own proposals. If I may say as an observer looking at the Brexit negotiations, it was only when your Prime Minister came forward in October 2019 with a concrete proposal on how to solve the backstop, the Northern Ireland problem, that the Council accepted the proposals within four days and you could go ahead with the so-called divorce agreement.

The Chair: Thank you to our witnesses this morning. It has been a very helpful session. Of course, we ran out of time and I am sure we could have had many more questions to our witnesses. May I thank our witnesses for coming to join us this morning? Once you have seen the transcript, could you check that there are no corrections to be made and send it back to us if there are? I now ask the witnesses to leave us so that we can go on to our next session.