



HOUSE OF LORDS

Select Committee on the European Union

International Agreements Sub-Committee

Oral evidence: UK-US trade negotiations

Thursday 16 July 2020

3 pm

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

Evidence Session No. 4

Virtual Proceeding

Questions 35 – 53

Witness

I Marjorie Chorlins, Senior Vice-President for European Affairs, US Chamber of Commerce.

Examination of witness

Marjorie Chorlins.

Q35 **The Chair:** Good afternoon. This is a meeting of the International Agreements Sub-Committee of the House of Lords as part of our inquiry into the proposed free trade agreement between the United Kingdom and the United States. This afternoon we have the benefit of taking evidence from Ms Marjorie Chorlins, former US trade negotiator and senior vice-president of the US Chamber of Commerce. Thank you very much for being with us.

Marjorie Chorlins: It is my pleasure.

The Chair: As you can tell, this session is being broadcast. A transcript will be taken and you will have the opportunity to review it before it is finalised. You should also note that certain Members might declare interests prior to asking questions, but those will be brief. I will start the questions and then other members of the Committee will pick them up. We look forward very much indeed to your answers. We are planning to go until about 4.30 pm, as long as that suits your diary.

Let me start by asking a rather general question. Could you explain how the US Government consult with and involve US businesses across sectors in developing their trade objectives, and as trade negotiations progress? Those may be two different things, how they start and how they progress, but we are very interested in both.

Marjorie Chorlins: Thank you very much to members of the sub-committee for inviting me to join you today. I can say with great certitude that I very much wish we were doing this in person, as it might suggest that we were enjoying different circumstances. In any event, I am grateful for the opportunity to share with you my views representing the US Chamber of Commerce.

The US Chamber set up the US-UK Business Council in the wake of the 2016 referendum vote in order to provide our member companies with a platform for engaging with elected officials like you on issues related to the UK's departure from the European Union, the structure of its future relationship with the EU and, of course, the relationship and the new agreement between the US and the UK.

In response to your question, let me start with this. The Trade Act of 1974 requires the US Government to consult with business and labour in the formation of trade policy. It is not a mandate to "consider" heeding our inputs; rather, it is a requirement. The 1974 Trade Act created the trade advisory system. This includes the President's Advisory Committee on Trade Policy and Negotiations, which bears the unwieldy acronym of ACTPN. That typically includes CEOs, labour leaders and trade association heads. The Act also created a network of industry trade advisory committees that represent discrete sectors and their analogues for both agriculture and labour. All this makes perfect sense, of course, because how could you expect trade negotiators to write a rule—for example, a

rule of origin for the manufacture of a particular product—without direct knowledge of how that product is made?

In addition to that advisory structure, trade negotiating objectives for new trade agreements are set out in law; they are reflected in the bipartisan Congressional Trade Priorities and Accountability Act of 2015, which contains the current iteration of what is known as the trade promotion authority, or TPA. TPA bridges the constitutional powers of the Congress on the one hand, which has the authority to regulate foreign commerce, with the authority of the Executive, which has the authority to negotiate treaties with foreign Governments.

In addition to establishing the consultation and procedural rules, TPA includes very distinct negotiating objectives. There was substantial private sector input into the legislative process that led to the 2015 Act. In fact, the latest version of the TPA was negotiated in an extraordinarily bipartisan fashion, and it enjoys strong support from both business and agriculture.

The Chair: That is very helpful indeed as a background to what we are here to discuss. I will move straight over to Lord Robathan to pick up on some more of the detail, and a particular point, given that you have just talked about a bipartisan approach at certain stages. I think he wants to raise with you questions about the presidential election.

Q36 **Lord Robathan:** Ms Chorlins, it will not have escaped your notice, any more than it has ours, that there is a presidential election in less than four months' time. Currently of course, Joe Biden appears to be ahead, although of course none of us knows quite what will happen. Although both sides are currently committed to a comprehensive free trade agreement, do you think the priorities for the United States might change if Joe Biden becomes President? You mentioned the trade promotion authority, which many of us are unfamiliar with. After what you said about bipartisanship, if the trade promotion authority runs out before a deal is done, might there be a change of approach in the new TPA?

Marjorie Chorlins: American objectives for any sort of trade agreement with the UK will not change with a change in Administration. As I said, and you noted, support for these objectives, and for this negotiation, is bipartisan. The negotiating objectives are established in law. In fact, they reflect the shared objectives and goals of what was then a Republican Congress and a Democratic President. The current Administration's own declared objectives specifically reiterate a commitment to the objectives that were set for it. Neither the Trump Administration nor the team for the presumptive Democratic nominee Joe Biden have commented on the next version of TPA.

The important point to underscore is that these negotiations enjoy strong bipartisan support, and indeed bicameral support, perhaps more so than any other trade initiative currently under way in the United States.

Lord Robathan: That is very helpful, thank you.

The Chair: Before I move to the next questioner, may I ask you this? You talked about the next TPA. When is that due? Is it due as a result of a requirement or will it depend on what is sought by the Executive?

Marjorie Chorlins: The current grant of trade promotion authority runs out on June 30, 2021. For a US-UK agreement to be considered under the current grant of trade promotion authority, we would likely have to complete the negotiations by early April of 2021, to allow for the congressionally mandated timelines to run, and allow for a vote.

The Chair: I turn to Lord Gold for the next question, please.

Q37 **Lord Gold:** I wanted to explore with you what we might learn from recent trade deals the US has entered into. There is the renegotiated deal with Mexico and Canada and mini-deals with Japan. Do they provide an accurate guide to the sorts of provisions that the US is seeking in negotiations with us? More particularly, I suppose, what more do you think US businesses would like to see negotiated as and when we get into this together?

Marjorie Chorlins: As regards the USMCA, the US-Mexico-Canada agreement, and the mini-deal with Japan, these are generally poor guides as to what the US Government, let alone industry, would like to see in negotiations with the UK. The USMCA is sui generis. It is a new trade agreement with our two largest export markets with which we have enjoyed a robust trade agreement for nearly a quarter of a century. Despite some rhetoric, the prospect of not having a deal with those trading partners was so potentially disruptive that failure was just not an option.

It is also the case that some features of the USMCA, for example as regards automotive products, reflect the unique nature of the North American trading relationship. Auto trading has benefited from free trade provisions for even longer, dating back to a 1965 US-Canada auto pact. These rules are somewhat unique to the USMCA, frankly, and would not be workable in the context of other trade agreements.

Having said that, there are some features of the USMCA that we think are good guides for what should be considered in a US-UK negotiation. Chief among these would be a very robust digital trade chapter, rules governing technical barriers to trade, and sanitary and phytosanitary rules. We think those are the best models that have been negotiated and that they should be emulated elsewhere. It is important to recognise that the Japan mini-deal is just that; it is a mini-deal. It is limited to some agricultural market access, limited US tariff cuts and the USMCA's digital trade chapter. However, it falls short of the kind of comprehensive deal that the American business community would like to see with the UK.

We have consistently, as you may know, called for a single undertaking: a high-standard comprehensive agreement. A few years ago, the US-UK Business Council issued our priorities concerning the US-UK negotiations. We recently updated those priorities. Last fall we also issued a paper on

our priorities for trade in services. I would be more than happy to share with the Sub-Committee both of those papers, because they go into some detail about the priorities in various sectors, as well as setting out the horizontal priorities that we are looking for.

The Chair: Thank you for that. I will take you up on that invitation, if I may, and I look forward to seeing that. Lord Gold, do you want to ask anything further? If not, I will go to Lord Watts, who wants to ask a supplementary.

Lord Gold: No, that was very helpful. Thank you very much indeed.

The Chair: Lord Watts.

Q38 **Lord Watts:** The trade deals with Mexico and Japan seem to have gone well, but there have been problems with the Canadian deal. What are the sticking points in the Canadian deal? Why has it been more difficult to negotiate with Canada?

Marjorie Chorlins: To be clear, the US-Mexico-Canada agreement deals with all three countries together. Obviously, there are unique circumstances concerning trade between the US and Mexico on the one hand and the US and Canada on the other. To the extent that you might see differences between us, they have to do, perhaps, with longstanding irritants in our bilateral trade. The agreement itself involves all three countries.

The Chair: On a slightly different topic, Lord Foster of Bath.

Q39 **Lord Foster of Bath:** It is great to have you with us, Ms Chorlins. May I apologise for a rather lengthy introduction? I want to set the scene and my question follows on from earlier questions. You will be aware that one of the most successful industries in the UK is our creative and cultural sector, where for years we have been punching above our weight. In our current trade agreements within the EU there is provision for significant cultural exemptions, which help to protect those creative industries. Indeed, an EU trade deal with a third party always gives individual members a veto in areas related to culture and the audio-visual sector if there is a threat to cultural or linguistic diversity.

Looking at some of the recent US trade deals, and in particular the USMCA, it appears that the trading partners conceded very sweeping relaxations on cultural exemptions, so that, for instance, digital and electronic trade is opened up. This appears to have narrowed the trading partners' ability to manage their traditional creative industries.

In those areas, do you think the US is looking for similar concessions from us, for example to enable it to increase the amount of US TV programming provided on our screens? If so, might this undermine our current rules, which require our public service broadcasters to have high levels of UK content? Might it undermine the public funding of the BBC?

In particular, would the scheme currently in place to require all platforms to give a higher prominence to public service broadcasters be prevented?

I am interested in whether you think that the US will push us in those areas and whether the cultural exemptions that we currently enjoy will be able to be continued in a US-UK trade deal.

Marjorie Chorlins: That is a very detailed question on what I realise is a very sensitive subject. Indeed, as you note, some of our trading partners have pressed very aggressively to retain those cultural and audio-visual exemptions to effective competition, if you will. It is our view that a trade agreement should be as comprehensive as possible, but it is a negotiation, and there will be limits and red lines, as it were, that negotiators will have to sort out.

In the case of USMCA, the trade negotiators made a considered decision, based on a balancing of equities, that it was desirable to forego those exemptions they might traditionally have sought. Clearly, this is a decision for the UK Government. Frankly, the intent is not to somehow undermine the importance of UK cultural programming for both audio and visual productions. Indeed, I have to tell you from the perspective of someone sitting on this side of the Atlantic that we are big fans of BritBox here. We are watching your programming with great interest and rapidly running out of choices as a result of the pandemic. I encourage you to continue in that regard. Clearly, this will be the subject of negotiation.

Lord Foster of Bath: Thank you.

The Chair: Before we move to the next questioner, should we be worried in this country about an impact on the BBC, which is what Lord Foster raised with you, as a result of a new deal with the US?

Marjorie Chorlins: I would like to think that the answer is no. Again, I think British negotiators will be very firm in their clarifications of your red lines. It will be subject to negotiation. The intent here again is not to undermine Britain's current circumstances as regards audio and visual presentations, but rather to ensure that there is open opportunity for fair competition. The intent is by no means to undermine the BBC.

The Chair: You have already said that you would like to see more of it coming across.

Q40 **The Earl of Sandwich:** Good afternoon. I have a process question about Congress. Then I have a "why are we doing this?" question, which should lead into the following question from Lord Kerr. First, you know better than any of us that there will be a process in the US Congress, as there will be here, after the negotiators have agreed the text. That process may well give rise to changes in the text, as has happened in other agreements. In your judgment, what are Congress's priority areas in deals such as this? For example, might there be more intense interest in Congress in agricultural provisions rather than in pharmaceuticals? This is rather a free-for-all question.

Marjorie Chorlins: No, on the contrary. Thank you very much for the question. I mentioned earlier the TPA negotiating objectives. We think that the goals of the US Congress in these US-UK negotiations are very

aply represented in those negotiating objectives. TPA contains very strict rules under which Congress will vote on legislation, which would reflect all the necessary changes to US law so as to implement a trade agreement. These procedures protect the implementing Bill from any amendment, so that there is no situation where a piece of legislation being considered under the TPA can be subject to amendment. There are also time constraints for consideration, and it requires a simple majority vote from both Houses of Congress.

There is a strong consensus in the US on agricultural trade goals. Past US FTAs have led to the elimination of roughly 99% of agricultural tariff lines—indeed, 100% in some cases. The negotiations have also yielded strong provisions on sanitary and phytosanitary regulations that are completely consistent with the WTO SPS agreement, to which Britain is already a party.

On pharmaceuticals and intellectual property more broadly, it is our sense that the US and UK share an interest and a desire to set high international norms for the protection of innovation and the work of creative artists. We would like to see that reflected in a high-quality IP chapter. I do not think it is a question of congressional interest in one sector over another, but rather the interests on both of these, as well as broader interests, which are probably shared in the UK.

The Earl of Sandwich: That is a very helpful overview. Before I move on to my next question, Lord Morris wants to say something.

Lord Morris of Aberavon: May I be specific? Which agricultural provisions are Congress likely to be interested in? Are there likely to be sticking points?

Marjorie Churlins: I assume that each of you has some sort of agricultural interest in your respective constituencies. Certainly in this country, every member of Congress and every Senator has some sort of agricultural interest in his or her constituency. These tend to be complex issues, and sometimes controversial, in a trade negotiation. It is hard for me to tell you which provisions might be of more interest. Some members of Congress have more cornfields in their state; others have more cattlemen. It depends on the unique circumstances of a particular member of Congress. Overall, the key is that they are looking for fair market access that is open to the greatest degree possible.

Q41 **The Earl of Sandwich:** That is a very helpful overview, thank you. Moving on, given that the UK-EU deal is still a very long way off, and that all the evidence shows that a UK-US agreement would have to take account of the final EU position, is it possible that US negotiators are expecting to influence the EU deal directly, especially on services—we have seen messages going across the Commission only this week—otherwise, there would be no point negotiating?

Marjorie Chorlins: If I understand your question correctly, it is whether the US is looking to influence its relationship with Europe by dint of its negotiations with the UK.

The Earl of Sandwich: That was an add-on, yes.

Marjorie Chorlins: I think our negotiators are proceeding in a very constructive manner with the UK right now. For some time now there has been an attempt to strengthen the ties between the US and Europe. Those discussions have not been going particularly well. I think it is fair to say that we are looking at the US-UK negotiations on themselves. It is also fair to say, of course, that a lot of US investment into the UK was done with an eye towards the UK being a springboard into the single market.

The Earl of Sandwich: Absolutely.

Marjorie Chorlins: Obviously, that will go away when the UK exits the single market at the end of this year. For that reason, we are hoping that the UK-EU negotiations will allow for continued trade and investment flows as well as flows of data, people and capital, with as little friction as possible, so that the relationships and supply chains that have been built up over the years can continue to function with as little friction as possible.

The Earl of Sandwich: Thank you.

The Chair: The issue of the UK-EU-US is to be taken a little further by Lord Kerr.

Q42 **Lord Kerr of Kinlochard:** I would like to explore the interaction between the two sets of negotiations. The Chamber of Commerce has argued that it would be preferable for the UK to do a deal with the EU first before negotiating with the United States. You have argued that our deal with the European Union should be as comprehensive and as deep as possible. You suggested that divergence for divergence's sake must be avoided; I am quoting from your April paper. You have said that the further apart the UK and the EU are after these negotiations, the higher the costs and red tape for companies and consumers. Do I take it from that that the American business community in Britain would not want a no-deal Brexit? If there were to be an autumn EU-UK deal, how much would its content affect what the US side would like to see in a US-UK deal?

Marjorie Chorlins: The answer to the first part of your question is quite simple. The American business community is very eager—I cannot underscore that enough—to see the UK and the EU negotiate their future relationship. The concept of the UK leaving the single market and customs union at the end of the year without its new relationship with the EU laid out would be very problematic for our member companies, regardless of sector. It is our fervent hope that the negotiations will conclude before the end of the year. I realise that an extension of the status quo is not permitted under UK law, but if that is what it takes to

ensure that we do not end up in the most disruptive circumstances, we would hope that that course would be considered.

As regards how the negotiation between the UK and the EU might affect what we would like to see in a US-UK deal, we would like to see both these deals concluded quickly, and to be ambitious in their scope. We think it is important for these agreements to be compatible with one another, to the extent that that is possible, so that our interlinked economies can benefit from a more integrated transatlantic marketplace. Also, by concluding a high-standard agreement between the US and the UK, we can, together with our friends in Europe, advance much-needed reforms for the global trading system. All that, of course, would help our respective economies to recover from the current pandemic and associated downturn.

I mentioned a minute ago that of course American companies are heavily invested in the UK. The supply chains that have been built up over the years between the UK and Europe are critically important. This is especially important for sectors such as pharmaceuticals, chemicals and automotives, where products typically cross the Channel several times before they find their way into the hands of the end user. From our perspective, any unnecessary delays at the border will add cost and complexity at a time when neither the UK nor the EU economy can afford them.

It remains to be seen how the terms of a UK-EU deal might affect the breadth or the opportunities for closer US-UK ties. There are certainly many areas where the US business community would like to ensure that the future UK-EU relationship does not add new and unnecessary regulatory barriers. In the chemical and medical device sectors, for example, a diversion from the European regulatory regime would add significant compliance costs. That, of course, would be especially true if the UK were to develop its own independent regulatory scheme for this sector, and for others, where companies could be required to produce products to three separate standards: i.e. the UK, the US and Europe.

For services companies, we see greater leeway between the US and the UK, since the UK is effectively seeking a looser relationship with the EU in the future. We see an opportunity for a strong US-UK deal that facilitates digital trade and data flows, that encourages regulatory co-operation for financial and professional services, for example, and that recognises professional qualifications, again to encourage greater two-way trade and investment across the services sector. This is obviously very important, since services play such an outsized role in both your economy and ours.

Lord Kerr of Kinlochard: May I press you a little as the Chamber of Commerce? It represents the American business community here in this country, and as you say in many cases represents businesses that have seen this country as a springboard into the general European market. Are you sure that what you are saying is representative of American business back home, in general?

Take the question of regulatory alignment. You have been very clear in your April and May public statements that the closer the UK stays in regulatory alignment with the EU, the happier you are. Convince me that that is the view of companies in Chicago or Los Angeles as well as American companies in London.

Marjorie Chorlins: Many of the companies that you are referring to are major American corporations, but they have significant investments in the UK. American companies have invested something on the order of \$760 billion into the UK. We are talking about companies with a shared interest in wanting to leverage that investment to continue to trade with the EU. We also have \$270 billion in two-way trade in goods and services, so, yes, there is an interest in wanting to grow that trade.

We will need to strike a balance between the regulatory co-operation that exists with the EU on the one hand and the opportunity for regulatory co-operation with the US on the other. For example, there are greater opportunities for closer regulatory co-operation between the US and the UK in new technologies. There are areas where we do not currently have a regulatory regime but where we have the opportunity to create those regulations in a consensus way.

Lord Kerr of Kinlochard: I understand the argument. May I raise something completely different? I would like to ask about China. Article 32.10 of the USMCA says that it is nullified if any of the three countries—the United States, Canada or Mexico—strikes a trade deal with a third country that one of the three parties has determined to be a non-market economy.

It is generally thought that this was introduced by the United States with China in mind. When he was in London the other day, Secretary Mnuchin confirmed that the United States would be introducing this clause, which he called the “poison pill clause”, into all future trade deals, including with the UK. Can you explain a little of the thinking behind that? Is it United States policy to force countries such as Britain to pick between one of the two great global economic regimes? We can have closer trade relations with the United States or with China, but we cannot have both. Is that what the United States is saying?

Marjorie Chorlins: I will not try to speak on behalf of the US Government on this topic. What I will say is that American and British companies alike share concerns about the unfair trade practices utilised by China—the restrictions that we face doing business in China, as well as China’s practices in third countries. There is no doubt that from the business community’s perspective there is a strong benefit if the US and the UK can work together to update global trade rules that will allow us to deal with the constraints—or the challenges, frankly—which a non-market economy such as China represents.

Lord Kerr of Kinlochard: I entirely agree, and it is right that we should try to work together, but Secretary Mnuchin said that as a *sine qua non*, in an agreement with the US, we would have to agree that if we did a

trade deal with China, the US-UK deal would fall.

The Chair: I am not an expert in Article 32.10 of the USMCA at all, but I am not sure that is the effect of it.

Lord Kerr of Kinlochard: Let us ask our witness.

Chair: She has also made it clear that she is not speaking for the US Government, and we need to respect that.

Marjorie Chorlins: I am not an expert on the intricacies of the USMCA, since my focus is on European relations. Setting aside what the Administration might be suggesting, or what the Secretary might have said, it is our view that it is important for American companies and British companies alike to be able to do business with China, as well as between our two countries. The question is how to deal with China's practices that create an anti-competitive environment for our businesses as well as yours. From our perspective, that is the key issue at hand. I would like to think that it is not a question of choosing between one market or the other.

The Chair: Let us go then, please, to Lord Morris of Aberavon.

Q43 **Lord Morris of Aberavon:** May I take up your point about the existing investment of the US in the UK, which is considerable? Some years ago, I was heavily involved in inward investment. On that basis, may I ask you specifically which business sectors would see the greatest opportunity in an FTA? As the converse to that, which business sectors might be anxious about greater competition or other threats if an FTA is concluded? Could you be specific on those matters? I would be very grateful to hear your views.

Marjorie Chorlins: I appreciate the question, Lord Morris. As an executive with a trade association that represents a broad cross-section of industries, I suspect that you would be well served to speak as well with sector-specific organisations to drill down deeply into their specific priorities and where they see themselves benefiting most specifically, or where they are most concerned.

I can tell you in general that this is an opportunity, from our members' perspective, for our two Governments to negotiate a deal that eliminates the remaining tariffs between us and establishes wide-ranging regulatory co-operation mechanisms across all sectors—mechanisms that allow for meaningful stakeholder consultation. Reducing or eliminating two-way barriers to trade and investment across the board is important, especially for small and medium-sized companies. These are the firms that naturally have the hardest time dealing with the costs and complexities of doing business across international borders. A well-designed agreement could benefit them, again regardless of sector.

We talked a minute ago about the fact that working together gives us an opportunity to address the challenges that we both face in a rapidly changing global economy. There is an opportunity for the US and the UK

to work together to remove trade barriers for critical materials, such as medicine and medical equipment, and other products to support public health. This sector provides distinct opportunities.

We also continue together to have the largest share of financial services globally. Here is an opportunity for the US and the UK to set global standards that will promote efficient capital markets, including in sustainable finance. That would also enhance the ability of both economies to raise capital.

Some high-level priorities that cut across sectors, and where the benefits would be very clear, are: removing tariffs on all goods, including automotive products; eliminating agricultural tariffs; promoting effective regulatory co-operation to address emerging technologies, which I mentioned just a minute ago; enhancing opportunities for ongoing regulatory co-operation in financial services—again, broadly because we are talking about an issue that affects every sector; and ensuring that we have modern rules that allow for the free flow of data to encourage digital trade.

As I said, the May report that we issued talks specifically about some of the opportunities that different sectors see in these negotiations, and rather than citing them to you directly from the report, I would be happy to share the report with you.

Lord Morris of Aberavon: Thank you very much. I very much welcome the last part of your answer, which was very helpful. I know that you do not speak for the United States Government, or for particular companies, but can you give us a steer on which are likely to be the sticking points?

Marjorie Chorlins: In any negotiation, of course there will be shared objectives, and there will also be red lines. It is hard for me to walk through each of the sectors and tell you where I see those sticking points. However, if you look at past negotiations which the US has undertaken—and which the EU has undertaken, with the UK's participation—sticking points often arise in agriculture.

There is no question that that will be an area of some contention. It is just the nature of the sector. Anywhere we have the opportunity to improve regulatory co-operation between us, and to minimise the friction, will be an opportunity. To the extent that we are not able to do that, that will be a challenge. It is only case by case or sector by sector that we could drill down or I could tell you where there might be particular challenges. Again, if you look at the priorities we have set out, in particular in the paper on services trade, you will see the objectives that we are looking for in these negotiations. From that, you can discern fairly quickly, when you think about the objectives from the UK's perspective, where the friction points might be.

Lord Morris of Aberavon: You mentioned agriculture specifically, which I am very concerned with. Would we be expected to lower our sanitary and environmental standards? Will that be one of the aims?

Marjorie Chorlins: It is never the objective from our perspective to see any country lower its standards. In fact, I do not think that any Government is looking to lower their health and safety standards. The US has no interest in seeing that. American companies have no interest in seeing the UK lower its health and safety standards. The question is to what extent those standards are based on sound science and are truly risk-based in their construction. To the extent that those standards do not meet those thresholds, we should look at that.

At the end of the day, we need to stay focused on the regulatory objective, which is to ensure that we put safe food on tables and safe products into the marketplace. The standards by which we achieve those safe outcomes may differ, but the real focus needs to be on the regulatory outcomes. We sometimes refer to differences in product standards as the tyranny of small differences, because the standards themselves may differ ever so slightly, but at the end of the day the regulatory objective is the same. That is where we need to focus our attention.

The Chair: You are well aware that this is a very sensitive issue and what might happen there.

Marjorie Chorlins: Indeed.

The Chair: Lord Robathan, you wanted to pick up on the question of what sticking points there might be. Ms Chorlins has dealt with that.

Q44 **Lord Robathan:** May I put it slightly differently? Ms Chorlins, you have been extremely positive about the desire of the United States, and indeed of US companies, to get a trade deal, which I find very positive. To go a little further on agriculture, I know that you cannot give the specifics, as you have said, but could you say what the view of the American agricultural producers, the farmers, is of the debate that we are having, a lot of it pretty nonsensical, about things like chlorinated chicken and welfare standards for animals?

Marjorie Chorlins: Here again I am not speaking on behalf of the farmers, because I do not represent them—

Lord Robathan: It is very difficult.

Marjorie Chorlins: Indeed, because different segments of the agricultural industry have discrete objectives. The debate which the UK is having on questions relating to chlorinated chicken is not new. We saw the same debate unfold during the negotiations for the Transatlantic Trade and Investment Partnership. We know that some of the robust opposition to those negotiations came out of the UK due precisely to these concerns.

These are not new issues. We will have differences of opinion over how we get to the desired regulatory outcome. Again, at the end of the day, the idea is to put safe food on people's tables. The standards by which we achieve that outcome can vary, and indeed often do, but these are

challenges that may be overcome—or may not. The key here is to think about the end user, the consumer. The consumer should be given the choice about what products or services he or she would like to partake of. In this instance, I think the goal is to open agricultural trade as much as we can, and to give consumers precisely that choice. The intent again is not to see anyone's standards lowered, because that is not in our interests, nor is it in the interests of British farmers to lower their standards to sell into the US market or elsewhere.

Lord Robathan: I think you have given a fairly sensible but dare I say it opaque answer. Thank you very much for that. I would not expect you to give the total details, but I found that helpful. Thank you.

The Chair: I will move to Lord Oates, who wants to raise a different topic.

Q45 **Lord Oates:** I should declare my interests as a director of the Center for Countering Digital Hate and vice-chair of the All-Party Parliamentary Group on Data Analytics.

May I turn to the issue of digital trade? We heard from the World Economic Forum and techUK on the topic of digital trade between the UK and the US. We discussed some of the features that tech companies said they would like to see in a deal, including source code protection and no data localisation requirements. What do you see as existing barriers to digital trade that could be removed in a new trade deal? What might be the one key provision in any trade deal that would allow tech companies to significantly increase digital trade?

Marjorie Chorlins: We need to start by ensuring that we understand and perhaps expand our definition of a tech company. Typically, when we think of a tech company, we think of Google or Microsoft or Facebook, but in fact companies in the medical devices and pharmaceuticals sector are also tech companies, because the data and digital technologies they use are key to how they innovate and deliver new products and healthcare solutions, and indeed how they operate their businesses.

The same is true for financial services, retail, logistics, transportation and the manufacturing sector. Frankly, every company today is a tech company. With the diffusion of technologies such as cloud computing, the industrial Internet of Things and Artificial Intelligence, the whole economy is digitising at a head-spinningly rapid pace. As a result, high-standard digital trade rules are of interest to every sector of the economy.

Digital trade rules are less about removing barriers to trade and more about preventing them from being erected in the first place. Trade in digital services and goods has flourished, but efforts to control that growth, often through localisation requirements, present the real threat. From this perspective, companies will conduct digitally enabled business across the Atlantic when markets are open and there is legal certainty.

Honestly, there is no one provision that will guarantee this. You rightly point to the protections for source code and a ban on data localisation

requirements. Those are critical provisions, given the challenges that both our companies face in markets where data localisation or forced technology transfer requirements are in place. I would add that a provision guaranteeing an affirmative right for companies—again, in all sectors of the economy—to transfer data across borders is fundamental, given that the free flow of data is just as significant today as the free flow of capital. We also need to see non-discriminatory treatment of digital products such as software.

Both of our countries have a competitive advantage when it comes to digital trade. This is essential in today's global economy. Comprehensive and high-standard digital trade provisions are necessary to secure that advantage. That is why we would like to see the two countries negotiate an ambitious rule book.

Q46 Lord Oates: May I take up the non-discrimination issue that you have just raised? You said in the May paper that tax policy measures should not discriminate against digital services. You suggested that the UK's proposed digital service tax would do so. You also said that a better solution would require international co-ordination, and you referenced the OECD.

Do you recognise, first, that tax policy measures need to recognise that there are unique aspects of digital trade if host Governments are to protect their revenue sources? Secondly, you will be aware that in June the US Treasury Secretary wrote to the Chancellor of the Exchequer and three other European Finance Ministers effectively suspending the OECD talks on digital tax. In those circumstances, would your members accept that without the prospect of an international agreement, which is preferential, national Governments will have to come up with their own solutions?

Marjorie Chorlins: It is obviously a sensitive subject. There is no question that we need to update international tax rules to take account of the digitalisation of the global economy. That is a given. The question is how you go about doing that. As you rightly note, from the Chamber's perspective the right venue for that is a multilateral setting such as the OECD. Those negotiations are very challenging, because there are a lot of core definitional issues that have to be wrestled with. These are things that you do not accomplish overnight, so of course these negotiations will take some time.

I do not necessarily agree with the premise that individual countries should forge ahead with their unilateral taxes in the absence of a multilateral solution. Any time you see a proliferation of unilateral measures, you end up creating more complexity and more cost in the international system, and that, frankly, is in no one's interest. I recognise that there is a perception that companies need to pay their "fair share". There is no question that companies have an obligation to pay taxes, and our members meet that obligation. The question is how you define where those obligations reside. It is our view that if you end up with a series of

unilateral measures, it becomes that much more difficult to sort out. We would like to see a multilateral solution in the OECD.

I am aware of a letter that Secretary Mnuchin wrote to the Chancellor and the other three Finance Ministers. There are different ways to interpret that letter, I think, as to whether it is a wholesale suspension of the negotiations or setting aside a part of the negotiations and focusing instead on another part.

At the end of the day, we need to see that negotiation concluded, and we need to see an effective international agreement on the proper terms for taxation in a digitalised international economy.

Lord Oates: I think we all agree that that needs to be resolved at international level, if possible. You have described tackling this as a critical issue. The Treasury Secretary referred to it in his letter to Finance Ministers as a distraction, and he did not give the impression that there was any particular intention of coming back to this. In that circumstance, do you think that the pressure of unilateral agreements might be the only way to get the United States Government back to the table to negotiate a proper international agreement?

Marjorie Chorlins: I think it is fair to say that the launch of the recent Section 301 investigation against digital taxes that are being considered, or indeed undertaken, in a number of countries, reflects a view on the part of the Administration that this is not a constructive way to go about setting this policy.

Do I think that the proliferation of unilateral measures will bring the US back to the table? I will not speculate on that, but I will say that that proliferation of taxes would add a lot of friction into the system at precisely the time when we want to be promoting global trade and investment. We need to see greater economic activity to promote the recovery of the UK, Europe and the US. The introduction of a spaghetti bowl of unilateral measures, frankly, would run counter to that objective.

The Chair: Lord Foster has a slightly connected question.

Q47 **Lord Foster of Bath:** Continuing on the issue of digital trade, I was really pleased to see that in the Chamber's objectives you have a section on the important issue of protecting intellectual property. As we discussed with witnesses last week, the US's safe harbour provisions would surely make it difficult for right holders who want to tackle online infringement of their IP.

We also discussed the way in which the safe harbour provisions would make it very difficult for the UK, if it was included as part of the deal, to introduce legislation on online harms. I say that on the very day our regulator has launched a consultation paper on that very issue. There are certainly real concerns that if we had imposed on us as part of the deal the safe harbour provisions that were imposed in the Mexico-Canada deal, it would present serious difficulties for us. What is your view on that issue? Do you see any benefits to businesses of including a safe harbour

provision in the US-UK trade agreement?

Marjorie Chorlins: Both the US and the UK already have appropriate copyright safe harbour frameworks in our respective laws, so we start from that premise. I would also observe that creative works, inventions and brands are a significant comparative advantage for both our economies. The US and UK economies sit in the number one and two positions on an annual international IP index put out by the US Chamber of Commerce. That reflects our countries' shared commitment as global leaders in IP protection and enforcement.

As with the broader enforcement of IP rights, the UK, as you say, provides strong models for right holders who are seeking redress for online infringement. There is no intent to undermine those strong protections. If anything, the ideal copyright safe harbour text would be high level and represent broadly the goals of our different systems.

The Chair: We now move to healthcare and pharma. Lord Lansley has a question.

Q48 **Lord Lansley:** Thank you very much, Ms Chorlins, for being with us. Last week, as you heard, we took evidence from witnesses, two of whom were particularly expert on healthcare issues. Could you tell us what United States businesses' objectives are in relation to healthcare, or indeed to pharmaceutical and medical device markets? Could you focus particularly on what they are looking for that is different from the way in which they can access UK markets at present?

Marjorie Chorlins: The UK Government has, rightly, judged life sciences as a strategic industry for the growth of the economy and its future competitiveness. Judging by the size of American companies' investments in the UK, I would say that they strongly agree with that objective. It is very important that, as the US and UK negotiate a trade deal, those policies support the life sciences sector, with a focus on obtaining the highest IP protections and encouraging future research and regulatory co-operation.

A strong commitment to ongoing co-operation between our regulators is essential for both the pharmaceutical and the medical device sectors. An enhanced regulatory framework would reduce the need for duplicative or unnecessary testing. It would spur increased investment and innovation. This is especially important when you think about our countries' shared competitive advantage in these sectors. It would also provide greater access to the best available medicines and medical devices for our citizens.

Let me give you a particularly pertinent example. It would be extraordinarily helpful if the US Food and Drug Administration and the UK's Medicines and Healthcare products Regulatory Agency were able to co-operate and to recognise each other's regulatory decisions, for example to approve a potential Covid-19 vaccine. That would expedite its availability in both countries.

Another significant challenge that our companies have historically faced in the UK is the lack of a clear and transparent process for the pricing and reimbursement of new treatments and medical devices. I imagine that people pricked up their ears when I said that. I want to be very clear that our members remain fully committed to the agreement with the UK to limit increases in drug prices.

That is not what I am speaking to here. There is a challenge that is brought home by some proprietary research that was undertaken by the US Chamber's Innovation Access Barometer, which looks at policies across all G20 economies that inhibit innovation and undermine these ecosystems. We would like to see more transparency in the process for pricing and reimbursement, including the provision of an appeals process for prices that may not reflect the value of the investment and innovation that a new drug or new medical device represents.

According to our members, the UK has lagged behind somewhat, certainly behind other European markets, in adopting new and innovative medicines and technologies. We would like to think that an agreement like this would in some way help to alleviate that issue, allowing UK patients access to the most modern medicines and medical technologies.

Frankly, it is due to our leadership as protectors of intellectual property that our respective life sciences, and other innovative sectors, are as strong as they are. A US-UK agreement that built on those strengths would be a terrific opportunity for us to influence global IP rights. We could use our shared strengths to ensure that we set the highest possible standards.

Another priority that our members have flagged for us, especially in light of the pandemic, is e-health and the sharing of clinical health data. Our members feel that a future US-UK agreement should promote the sharing of data and test results both between companies and between our Governments in order to encourage the development of new medical products and to measure the effectiveness of various treatments as they are being developed. This can be done while adequately protecting patient privacy.

I think that gives you an idea of some of the changes that we think would assist in the pharmaceutical and medical device sector.

Lord Lansley: Thank you very much. That was very interesting. Much of what you say may have its individual merits, but of course we have to look at this in the context of the coming debate in this country about the negotiations. If one takes the Government's statements at face value, they seem to suggest that healthcare and pharmaceuticals and the sharing of health data are effectively not in the negotiations. It is a "healthcare is not on the table" kind of argument. If the United Kingdom Government were to say that pharmaceutical pricing and healthcare are just not in the deal, to what extent is that a deal breaker from the point of view of US negotiators?

Marjorie Chorlins: As I said, both the pharmaceutical and medical devices sectors are strengths for the US and the UK, and there is an opportunity for us to build on those strengths. I do not think—correct me if I am wrong—that I have heard UK negotiators suggest that these sectors are off the table for negotiation. We have heard the admonitions regarding pricing, and as I mentioned a minute ago that is not what we are talking about in our objectives. We are also very mindful of the concerns about a potential impact on the National Health Service. Again, I have heard Secretary of State Liz Truss and other members of the Government speak to that.

The objective here is not to undermine the National Health Service. The objective is to ensure that we can provide British consumers and patients with the most innovative technologies and pharmaceuticals that are available. If you look at medical devices, for example, we understand that the UK is likely to follow the EU Medical Device Regulation and continue to accept the CE mark, even for a potentially limited time period.

We think there is an opportunity for the UK to explore the bringing of those innovative medical devices to UK consumers more quickly. New medical devices often receive their clearance or approval in the US before the EU grants its CE mark. This means that patients in the US often have access to those innovative medical devices sooner. Post the transition period, the UK could consider approving medical devices for use in the US without relying solely on the CE mark. A number of other markets base their own country registration and approval process on the process utilised by the US FDA. The UK could consider accepting medical devices that have received clearance or approval from the US FDA as well as those that have received the EU's CE mark. Here again is an example of not fundamentally altering the system, but, rather, creating an opportunity for broader access.

Lord Lansley: That is a very interesting point, particularly given that in the European system in recent years the MHRA has undertaken 40% of the most complex authorisations for medical devices for the whole of Europe, and it is a pretty significant actor in this regulatory field.

May I raise one particular point? You included in your own expression of the objectives in this area the aim that patients should have access to medicines. I quite understand that, but of course that quite often brings one to the issue of the evaluation by our National Institute for Health and Care Excellence—NICE. NICE not only has a health technology assessment methodology but applies a threshold for its evaluations, which becomes a decision as to whether the NHS should provide such a medicine or not. Is that what your businesses are talking about?

Marjorie Chorlins: Our companies are saying that the somewhat strict UK processes mean that the country is slow in adopting new treatments. It does not mean that it does not adopt them, but, rather, it is slow. Indeed, every new medicine that is recommended by NICE for use by the NHS is used to treat perhaps 21 or so patients in the UK, compared to

100 in countries such as France or Germany. It is the speed with which the process is undertaken as opposed to the process itself.

Lord Lansley: Thank you very much.

The Chair: Before I come to Baroness Liddell, may I make one declaration of interest myself? I know that Baroness Liddell will raise the issue of investor-state dispute settlement provisions, among other things. I need to make it clear that I am a partner in an international law firm that does a lot of investor arbitration cases. Indeed, I have spoken personally in favour of it in the past.

Q49 **Baroness Liddell of Coatdyke:** As Lord Goldsmith said, I am interested in the whole area of investor-state dispute settlement provisions. It came up in our discussions last week, as Lord Lansley mentioned, but it has also come through strongly in the written submissions of witnesses that the risks of such provisions outweigh the benefits.

What value might the ISDS mechanism add to a trade deal, particularly given that the provisions were originally introduced in countries where the legal and judicial structures are not as robust as they are in the United Kingdom, and where they cannot be appealed?

Marjorie Chorlins: Here, again, I hark back to the TTIP negotiations and the intense opposition in some quarters to the inclusion of an ISDS provision in that negotiation. Again, as we all know, the US-UK relationship is grounded very heavily in investment, even more so than in trade. I disagree with the premise that the risks outweigh the benefits. The UK, like the US, has never lost an ISDS case. Very few—two or perhaps three cases—have been brought against the UK. British companies have brought upwards of 40 cases against various trading partners.

As I understand it, the UK has more than 90 investment agreements, nearly all of which contain an ISDS provision. I take your point that we each have robust systems in our own countries, but international leadership requires us to lead by example. It would be difficult for us to ask others to sign up to robust investment obligations and ISDS if we ourselves were not willing to do so.

I think the criticism of ISDS is somewhat misguided. It is in fact a mechanism for arbitration. Any real debate about these issues should be focused on the investment obligations that are agreed to in an agreement. The arbitration process, which is based on those agreed-upon obligations, is effectively sound, but poorly drafted obligations can lead to poor arbitration outcomes.

In the case of the US, the Government updated their obligations in both their 2004 and 2012 model bilateral investment treaties—BITs—to address these hypothetical concerns. The US, as I said, along with the UK, has never lost an investor dispute against it. However, the US did not fundamentally alter the dispute settlement process itself. There are nearly 3,000 investment agreements across the world that do not include

what I would describe as government-friendly clarifications which the US has made to its own obligations. Just to summarise, I think the premise that the risks outweigh the benefits is not a correct starting point.

- Q50 **The Chair:** I will ask you one last question and then look to members of the Committee who have other topics they want to raise with you. On the point you have just raised, you will be aware that some European countries are moving towards a form of permanent court to determine such disputes. Do you have any view about that? Would you or your members welcome that? Are you neutral on it at the moment or against it?

Marjorie Chorlins: We have not taken an official position on the provision the Europeans have adopted and are looking to incorporate into some of their trade agreements. For us, again, the key point is the fact that ISDS has worked well. Governments, certainly our Government and your Government, have not lost any cases. The rationale for creating an alternate mechanism is not very clear to us. It seems to me that a lot of the motivation that drove the EU to develop that alternative was political pressure generated by public opposition. I would argue that it has less to do with the substance of the mechanism and more to do with that political imperative.

- Q51 **The Chair:** May I raise a different topic? Barriers to doing business in the US might arise at the sub-federal level in relation to safety standards or product compliance requirements or recognition of professional qualifications. Could any steps be taken through these free trade agreement negotiations to tackle some of those barriers?

Marjorie Chorlins: This is a tough issue to address, but to the extent that these barriers exist, I do not think they are true "trade" barriers, in the sense that US companies and professional services providers face those same challenges when they are operating across state lines.

For the purposes of this issue, the US Constitution does two things. On the one hand it provides for federal pre-emption, to address interstate commerce needs, but on the other, it leaves to the states issues for which complete control by the federal government simply is not necessary. You will see different qualification requirements, for example, across different states.

I do not think that a trade agreement between the US and the UK will override those constitutional prerogatives. They are meant to separate and balance the powers between the federal government on the one hand and the states on the other. What can be achieved here in a systemic way is somewhat limited, but we should consider talking about further specific concerns at the state level to see how they might be addressed.

The Chair: Thank you very much.

- Q52 **Lord Watts:** I am sorry to take our guest back to the issue of digital taxes, but I want to try to clarify the position. It seems to me that we would both prefer to have an international agreement, but if America's

position is that it will block that, and the only alternative is national agreements, what do the Administration, and your organisation, think is a way of resolving this issue, because it is a massive issue not just in UK but throughout Europe?

Marjorie Chorlins: I am not sure I agree with the premise that the US Government are looking to block an agreement at the international level. Setting aside what is in Secretary Mnuchin's letter, and depending, I guess, on how you would interpret that, I think there is still a strong desire to find a solution at a multilateral level. Indeed, the fact that the US trade representative has launched Section 301 investigations against unilateral measures could be seen as evidence that the US believes that a multilateral approach is the better one.

I do not see this as having to be a choice, an either/or. Countries need to come together and come up with a solution that addresses the very real issue of the need to adjust the international tax rules, given the digitisation of the global economy, but to do so in a way that is consistent for all countries. Candidly, the idea of facing different tax regimes across multiple countries is not so bad, although, yes, there are significant challenges and costs associated with compliance when facing different tax regimes across multiple countries. Frankly, it is not as efficient. I would argue that it undermines our collective drive to promote economic growth, which is sorely needed across the board.

Lord Watts: I would absolutely agree with that. Can you articulate what the problem is? What does the American Administration object to now in the negotiations on an international agreement? I am not sure that any grounds have ever been given for the decision not to continue to negotiate for a system that will introduce an international agreement.

Marjorie Chorlins: Again, Lord Watts, I cannot speak on behalf of the Administration. I am not sure I could tell you what their specific concerns are. This is a highly complex topic. I am not looking to excuse the fact that the letter was written, or that we are in a position where the negotiations have hit a bit of a bump in the road, but I think that these are complex issues.

I am certainly not a tax expert, so I could not possibly begin to tell you the specifics of what might be at issue here. I do know that developing a shared understanding and shared definitions on these critical issues is quite difficult to achieve. We saw this a few years ago, of course, on the question of base erosion and profit-shifting. It took a fair amount of time with the OECD negotiations to come to an agreement there, and I think we are looking at a similar situation here.

A key point about a unilateral digital services tax is that it is fundamentally discriminatory. France, for example, professes that its tax is not intended to discriminate, but, practically speaking, the way it has been crafted specifically targets American firms. I think the key is that a tax such as this, if it will be applied, should be applied broadly and not discriminate against American companies.

Q53 Lord Oates: Could I turn to the issue of climate change and the environment? Despite the potential for FTAs to drive action to tackle the climate emergency, in practice they have, more often than not, constrained the policy space for action on the environment. I know that the current US Administration is unlikely to be particularly amenable to action through trade agreements in this regard, but given that there may be a change of Administration, what is your organisation's attitude to including in trade agreements issues such as those raised in an Economist Intelligence Unit and International Chamber of Commerce report? It suggested the removal of tariff and non-tariff barriers on environmental goods and services, explicit limits on fossil fuel subsidies, border adjustment of carbon taxes, and approval of non-discriminatory renewable energy subsidies, among others. Would your organisation have any in-principle objections to using a trade agreement in that progressive manner?

The Chair: That is a very big question to ask you right at the end of the session and of which you have had no notice, but if you can give Lord Oates any help at all, I am sure it will be appreciated.

Marjorie Chorlins: Thank you for that observation. I will try to be brief. This is a very complex topic and you have packed in a number of elements, so I am not sure I will be able to address them all. Let me start by saying that the Chamber and the current Trump Administration do not necessarily see eye to eye on all issues related to environmental rules. In fact, we have a fairly robust set of sustainability principles, and of course these are issues that matter to companies of all stripes.

Lowering not just duties but also non-tariff barriers on environmental goods or services are extremely important. We would certainly like to see more of that, not least because, certainly our country and I think the UK, has some competitive advantages in this area.

When you delve into more specific issues such as a carbon border tax, the situation gets a little more complicated. The key is to remind ourselves that trade agreements are fundamentally about eliminating barriers and setting rigorous rules to allow for the free flow of goods and services and capital and data and people. It is hard in a trade negotiation, in my view, to try to achieve multiple objectives that go far beyond the remit of trade negotiators.

I am not suggesting that these issues are not important; on the contrary, they are. Congress has identified the environment as a significant issue to be addressed. The question is how far you can use a trade negotiation to address the concerns that you articulate, and whether there are other mechanisms that we can use, again in a collaborative and co-operative way, to achieve our shared objectives on sustainability and protecting the environment.

The Chair: Ms Chorlins, thank you very much indeed. You have had to deal with a huge array of different topics—agri-food, tax, now climate change, which you perhaps were not expecting, pharma, healthcare, all

those things—and you have done it, if I may so, in a way that is very helpful to the Committee. You have been very diplomatic. I am sorry that you may have found yourself put in the position of a proxy for the US Government. We have had some difficulty persuading the US Administration that they ought to talk directly to us, as opposed to following their general principle, which is that ambassadors do not talk to committees like ours, apparently. Thank you very much indeed. The Committee is very grateful to you for what you have done.

Marjorie Chorlins: It has been a privilege and a pleasure to share this part of the day with you. I would simply say that to the extent that the sub-committee has additional questions, if you would like to delve deeper on any of the topics that we have addressed this afternoon, as I said earlier I am happy to share not only our position papers—some of you have seen them—on our priorities, both broadly and for the services sector, but some answers in writing.

The Chair: Given how hard we have pressed you, that is a particularly generous offer.

Marjorie Chorlins: I am happy to do it.

The Chair: Thank you, Ms Chorlins. The Committee will go in private session now, so we bid you goodbye.