

Select Committee on the European Union

Uncorrected oral evidence Brexit: Scrutiny of Brexit negotiations

Monday 29 January 2018

2.35 pm

Members present: Lord Boswell of Aynho (The Chairman); Baroness Armstrong of Hill Top; Baroness Brown of Cambridge; Baroness Browning; Lord Crisp; Lord Cromwell; Lord Jay of Ewelme; Baroness Falkner of Margravine; Earl of Kinnoull; Lord Liddle; Baroness Neville-Rolfe; Lord Selkirk of Douglas; Baroness Suttie; Baroness Verma; Lord Whitty; Baroness Wilcox.

Evidence Session No. 1

Heard in Public

Questions 1 - 14

Witness

I: Rt Hon David Davis MP, Secretary of State, Department for Exiting the European Union.

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Examination of witness

David Davis MP.

Q1 **The Chairman:** Good afternoon, Secretary of State.

David Davis MP: It is nice to be here, Lord Chairman. I hope that this time I will not have to do the shuttle run down to the Commons and back.

The Chairman: We are always understanding.

David Davis MP: I had not done that since I was a rugby player, so I was a bit puffed last time.

The Chairman: We all have our occasional fitness problems, but you are very welcome. You know the form well. This is a public evidence session. A transcript will be prepared, which we will make sure is exchanged with you. I should say that I have heard in the last five minutes that the European Council has now agreed its negotiating guidelines. I would be distressed if I was ahead of you on that.

David Davis MP: I was told that by the press outside.

The Chairman: It will not arise immediately, but it may do during our discussion. We are genuinely in the business of taking stock of what has been agreed so far and of looking forward to phase 2 and how that is to be proceeded with. Unless you want to say anything to us to start with, we will kick off with questions, if we may—I know that your time is restricted. I would like to start by looking retrospectively at the December phase 1 agreement between the UK and the EU. The first question is a simple status one: is the December phase 1 agreement binding or is it contingent on a wider agreement to be determined?

David Davis MP: There are two answers to that. Number one is that, in and of itself, the report is just a joint report, but it will be converted into text, which will be incorporated in a withdrawal treaty. In due course, when we sign up to it—I say “when”; I hope not “if”—that will be binding. Of course, as the European Union always insists, nothing is agreed until everything is agreed. The same applies here.

The Chairman: My first supplementary question is determined by inference from what you have just said. Is it your view that both sides have adhered fully to the spirit and substance of the agreement and subsequent discussions and that there has been no rowing back?

David Davis MP: No, there has been no rowing back. You will sometimes get differences of interpretation and tightness of interpretation of one sort or another. Various members of your Committee will be very aware of that process—I am looking at Lord Jay. That is to be expected, but we both intend to make this work.

The Chairman: I have related questions on how this works. Can you say a bit more—you may not be able to at this stage—on the process and

timescales for converting the December agreement into a final, legally binding text?

Secondly, at what point do you expect formally to ratify the withdrawal agreement? I know that it is all subject to the caveat that you have just given us about the EU's doctrine and to parallel negotiations on phase 2, but how is it looking to you?

David Davis MP: My officials were in Brussels last week and the week before, beginning to scope things out, whether the implementation period, the text or, indeed, aspects of the Northern Ireland arrangements, so a whole series of things are already under way. The expectation is that we will conclude the implementation period by the March Council, which I think is 22 March. We aim to conclude by then. It is not guaranteed, but it is, I think, likely.

At the 22 March Council, there will be a new set of guidelines on the future relationship. We will start negotiations on that at that point or immediately thereafter. That will run to the latter part of the year. Mr Barnier has said that he hopes to conclude by October—autumn this year. We are also seeking to deal with the future relationship and the withdrawal agreement in parallel. That might push it a little later, because we will not want to sign a withdrawal agreement until we have the substance of the future relationship ironed out as well. The last quarter of the year is about when we are aiming at.

There are two elements of the ratification. It will come back to the United Kingdom. There will then first be a vote on the deal—we have said that both Houses will have a vote. Subsequently, there will be a withdrawal agreement and implementation Bill, which will put that into law. I guess that that counts as ratification for our side. On their side, it will go to the European Parliament and to the Council. It will be subject to QMV, because it relates to Article 50. The second bit, the future relationship, is very likely to be a mixed agreement and could take considerably longer. I am planning my visit to the Walloon Parliament already.

The Chairman: Thank you.

David Davis MP: It took time for that one to get through.

The Chairman: Yes, I am reflecting on it.

Baroness Neville-Rolfe: Secretary of State, you seem to have confirmed that everything is dependent on everything else. Does that mean that we only pay once we have a satisfactory trade agreement? This feels important for our negotiating position on that vital agreement.

David Davis MP: The Prime Minister said that the financial settlement is conditional on a future deal. It is quite complicated, because we cannot start the ratification process on the future agreement until we are a third country, which will be the end of March 2019. The ratification will run on and we will already be into the process of payment to some extent, but if

for some reason it fell apart, the whole deal would be questioned. That is the point.

Baroness Neville-Rolfe: So payments would be linked with progress.

David Davis MP: The whole thing is that nothing is agreed until everything is agreed.

The Chairman: Just to clarify the point, you said, rightly, that that is a European Union doctrine, but presumably it applies to us as well.

David Davis MP: It would be an unwise negotiating strategy for them to have that doctrine and for us not to have it.

The Chairman: Thank you. That is helpful. At this point, we will pass on to specific issues connected with the island of Ireland, to which some of our members are about to go on a mission.

Q2 **Lord Jay of Ewelme:** Welcome, Secretary of State. A number of Committee members are going to Ireland tonight for talks in Dublin tomorrow, followed by Belfast, Londonderry and the border. We are, of course, sorry to miss Second Reading of the withdrawal Bill in the Lords.

David Davis MP: I can see the regret written all over you.

Lord Jay of Ewelme: But there we are. In advance of that, it would be helpful if you could say a bit about what you think the implications of the December agreement are for Ireland and Northern Ireland and the relationship between them. One thing that has always puzzled me is that the agreement says that, in the absence of any solution, the UK will retain “full alignment” with the EU in sectors that support north-south co-operation, the all-island economy and the Good Friday agreement. It is never quite clear what that means in practice.

David Davis MP: I will answer your question in detail, but the first thing to say is that the aim is not that; the aim is to have a future agreement that is a comprehensive free trade agreement and a customs agreement that goes with it—a minimalist, frictionless customs arrangement. That would be the easiest way to have an invisible border, with no hard border at the interface of Northern Ireland and the Republic of Ireland.

If that does not happen, the second option is to seek explicit arrangements with the Irish Government.

The third option is, as you say, full alignment. There was a change of words in the negotiation, as became apparent when the Irish Government publicised them. Full alignment is really about alignment of regulatory outcomes. This relates particularly to the north-south arrangements. In the north-south arrangements—I will have to test my memory a little—there are half a dozen specific areas, one of which is agriculture, which is the most important. Another one is the environment, which in this context basically means waterways. Another is transport, which in this

context means road and rail. In each of those areas, we would seek alignment of outcomes.

Take agriculture. When we depart—I am talking 10 years hence, not now—as you well know, because I have bored this Committee before with the cracked record, “We’ll be at the same place as everybody else in the European Union”, there may be different arrangements in respect of regulation, but there will be no point in us seeking to reduce animal welfare or the safety of the foods being consumed by citizens in the north or the south of the island. So I see no problem there in the alignment of outcomes.

Similarly, on issues of transport, I see no issue with us doing anything other than seeking high safety levels and high-quality outcomes in environmental emission standards and so on. Similarly, with respect to waterways, we are not going to pollute the waterways. So I do not see that being an issue.

The all-island element raises a different set of interpretations. The way I see it, there are some areas with significant all-island issues. The most obvious one is the single energy market. We will seek to make sure that that continues to function as effectively as it does now, for reasons both of capacity—the north is slightly in deficit—and of seasonal smoothing out so there is no more capacity than is necessary.

As I say, those are the three contingencies. The best contingency is the first one. I expect—I think there is a very high probability now—that on the electricity issue, for example, we will seek to make the interconnectors of the continent work. That will be the same issue. We will seek to keep our mutual markets going in agriculture. You know better than most, Lord Chairman, that the levels of tariff in agriculture are much higher than anywhere else, so we want a free market there.

With that comes a big regulatory issue. We think we can do a better, more efficient, job of regulation, but it will not be aimed at reducing standards. That is the basic concept, if that is helpful.

Lord Jay of Ewelme: That is very helpful indeed. I will follow up a little on your last point. You talked about a customs agreement or a customs union, and the Irish Government are talking about that. That is really my question: what will the difference be between a customs agreement of the sort that you have been talking about and the customs union? How different and how far apart would they be? That is what I find difficult to understand.

David Davis MP: In practical terms, each is conditional on the other. In the event that we get a comprehensive free trade agreement, we hope to make that absolutely tariff-free right across the board. In that event, a stop for tariff collection is not necessary. That gives rise to the question: what else do you need to stop for? Do you need to stop for regulatory inspection?

We aim to get mutual equivalence recognition across the board. Again, as you will know, there are quite a lot of mutual recognition treaties; there is one with Canada, one with Australia, one with Japan now, and a number of others. So we will seek to move that from the border. We will seek to use techniques that others use more than we do, such as authorised economic operator arrangements. An authorised economic operator—HMRC in our case, and the relevant body in the other 27—recognises the business and then carries out an audit, not necessarily at the border but at the warehouse, or, indeed, an audit of electronic data and so on. We use electronic pre-notification, for example. There is a whole series of things of that nature.

At the end of it all, there is one issue that you cannot sidestep, rules of origin, because obviously the European countries would not want, let us say for the sake of argument, far-eastern electronics to come here without them. So we will have to have some rules of origin. Every free trade agreement has them, generally; from memory, the Canadian one requires 60% Canadian content in cars, for example. So you have to have that, and it is quite complex. But, again, that is also susceptible to authorised economic operators, to checking away from the border, and all of that sort of stuff.

I cannot remember whether, when you chaired the last meeting, Lord Chairman, I told you about my Canadian visit. I will not bore you again if I did.

Baroness Falkner of Margravine: It is the transcript from the Commons session last week.

David Davis MP: There we are. You will see from that. I did that, because I know that particular border very well.

Lord Jay of Ewelme: I have one final question. You talked about a frictionless border and no hard border, which a number of us—I certainly do—see as absolutely essential, otherwise the risks are considerable.

David Davis MP: Not just for Northern Ireland; we are trying to get a frictionless border everywhere.

Lord Jay of Ewelme: Indeed. But do you see getting a frictionless border as an end in itself?

David Davis MP: Yes.

Lord Jay of Ewelme: In other words, that is so important that, whatever happens, you will succeed in doing that.

David Davis MP: Yes. That is exactly right. We see it as an end in itself, for the Belfast process and the protection of all the elements of the Belfast agreement. Also, just as an aside, the same mechanisms that we would use north-south would also be very helpful for the Republic of Ireland east-west, because a very large component of its economy is dependent on us. It is the most dependent economy on us that there is.

Saying that it is a moral duty is a bit high-falutin', but I see it as an important part of our aim to ensure that we facilitate that, too.

Baroness Suttie: Turning to alignment, do the EU and the Irish Government agree on which sectors will need to be aligned?

David Davis MP: The words are as they are in the joint report. We will see when we come to put it in the text, but I think we are in a similar position.

The Chairman: Secretary of State, may I ask one thing arising from what you said about the alignment of regulatory outcomes, which you mentioned a number of times? Let us suppose that a situation arises some way down the track. It may be that Her Majesty's Government take a view on alignment, or on the relevance of it, that is the view of the EU or the Irish Republic. It could even be that the Irish Government take the same view but that a third party, maybe a disaffected trade or otherwise, takes a different view. If a dispute arises, some way down the track, not in an implementation review, who will be responsible for adjudicating that?

David Davis MP: This is yet to be negotiated, of course, but the aim here is to put arbitration procedures in place, again modelled on other free trade agreements. The typical outcome is that each side nominates one member of a panel, and there is a third member. You make that agreement and you have that structure for each sector. Let us say for the sake of argument that we start subsidising cars—to pick something thoroughly implausible so that it cannot be made into a story—or some other product. We cannot get into the position which the Swiss have found themselves in whereby every trade treaty falls because of the breach of one. We want to make it specific, limited, ideally temporary, so that no dispute, no objection from one side to the other, is damaging to the whole relationship but is confined and hopefully leads to some sort of agreement, because that is quite important. The aim is to stay friends, not make enemies.

The Chairman: A simple, final point before we move on. It can be sector by sector, according to the particular case. It does not have to be a complete agreement.

David Davis MP: In those terms, yes, because what is the implication of regulatory divergence between, say, the trade in chemicals and the trade in electronics? There might be one, but there might not be one. That is what we are aiming for. We have to see whether the European Union is up for that, but that is in a number of the treaties that it has already signed up to. That is why I sometimes talk about my CETA plus-plus-plus. The CETA bit is some of the structures.

The Chairman: Thank you. We will move on.

Q3 **The Earl of Kinnoull:** Good afternoon, Secretary of State. Our understanding on the Committee has been that the Government and the

Commission together have agreed that Article 50 will provide the legal basis for the transition agreement and that during the transition agreement EU laws will in effect continue to apply. I think that understanding will only be strengthened by what was announced half an hour ago, which you learned outside and we learned in here, about the EU Council's agreed negotiating position. Could we begin a series of technical probes of you by confirming whether that is correct?

David Davis MP: That is broadly correct. It is not quite universally correct. It is correct in as much as it applies to the single market and the customs union, and in a number of other areas, except where we are currently constrained in making third-country trade treaties and signing them—this is not agreed yet; this is our position—which we cannot do at the moment because of the duty with regard to sincere co-operation under the treaty restrictions that exist currently.

Mr Rees-Mogg asked me last week why we do not just extend membership for a couple of years rather than have the implementation period. One reason is that we want to get out from under that particular duty so that we can go ahead and make those negotiations and sign them. It is not exactly the same as membership, but it is very, very similar.

The Earl of Kinnoull: Picking up on that, I conveniently have a copy of Article 50 here—

David Davis MP: That is more than I have.

The Earl of Kinnoull: This is quite a complex area and you are really saying, "Yes, we'd like to use Article 50, but we need these changes". Have you sought any legal advice on that? It is quite an important point for everybody.

David Davis MP: Which aspect?

The Earl of Kinnoull: Essentially as to whether Article 50 is a good basis on which to conclude the transition agreement.

David Davis MP: The Commission is confident about it. I am not allowed to tell you what our lawyers' advice is, but they do not draw any problems with it to our attention. As I say, the Commission seems to be confident that Article 50 is a good basis for it and we see no weaknesses.

The Earl of Kinnoull: That is very helpful. Thank you for that. I will have to read it later on. I am not quite tired yet, but I am tiring, Chairman.

David Davis MP: I once annoyed the *Times* by saying that it is more important in my job to be calm than to be clever. It got very upset about that. Actually, what is more important is persistence.

The Earl of Kinnoull: I can persist, but your time is very limited, and many of us would ask questions. I think we are finding the clarity that you are bringing to things very helpful.

Article 50 states in paragraph 3, "The Treaties shall cease to apply to the State", effectively two years after the notification has occurred. I therefore wonder how you feel the treaty will be used to get the EU regulations to continue to apply to the UK after that date, and how the Court of Justice of the European Union would be involved in that period after the two years.

David Davis MP: As I say, it will come down to what the lawyers tell us is required to be put into the draft. That does not worry me particularly, because, as we said, the existing regulatory structures and the court structure will continue to exist. What will not exist is our membership of the Council—or our membership of the court, for that matter.

The area of my focus when it comes to the legality of Article 50 is whether it could deliver a two-year, or thereabouts, arrangement. My understanding is that there was some dispute about that—not here, and not in Brussels or between us—when one or two national parliaments challenged their own Governments to say, "Surely this is just another trade arrangement. It should be a mixed agreement", and so on. We took advice on that and we think not, so long as it is limited.

The Earl of Kinnoull: This is the very last question before I retire to my bed, I am so tired. Picking up on what you have just said, the rest of paragraph 3 of Article 50 suggests that all the member states together—that includes us—can agree to extend the two-year period. But that does not appear to have in it any of the minor alterations, such as no longer being a member of the Council and being able to negotiate external treaties, as you have so helpfully outlined. Are you confident, based on the advice that you have received, that, nevertheless, Article 50 remains a suitable basis on which to conclude the transition agreement?

David Davis MP: The answer is plainly yes. On the extension right that you talked about of, what was it, one year—

The Earl of Kinnoull: Under this thing, you could extend it for an unlimited period.

David Davis MP: I do not think that will happen, either from our point of view or from that of the other side of the coin. There are 27 countries, one of which would have a price that would be too high to pay, even if we wanted to do it, and we do not.

The Chairman: One point that always troubles me, but I think sometimes amuses my colleagues, is substantive: the issue of the acceptability of any such agreement to third countries, not merely the EU 27. There may well be other countries, large or small—the United States, for example—that have an agreement with the European Union. If they have a smart trade negotiator who wants to seize an advantage, they may want to say, "Actually, we have an agreement with the European Union and you are no longer part of it". Can you cover that?

David Davis MP: Yes. We have thought about this quite a lot. Liam Fox is the man to give you the authoritative line on this, but the position is this: the right of damages or claims on the part of another state, having done a negotiation with the European Union, is, "Well, we did a deal for a market of 300 million or 400 million"—whatever number of people it was at the time—"and now you've gone out of the second biggest market". So there is a three-way interest here. From our point of view, it is to continue with these deals in the interim, because that makes for less disruption and fewer problems. There is an interest on the part of the third country, because it wants to keep access to the full market or whatever the power of its treaty was. There is an interest on the part of the European Union in that it does not want to fall out with a third country, or something else, as a market by denying it or taking away some part of the original deal. We all have a common interest. That is not to say that in the next few years we will not get the odd scrap here and there. You saw a little of that over the TRQ, the WTO, arrangements, but, generally speaking, we think they are all soluble, and soluble in the timetable.

Q4 **Lord Cromwell:** Could we come back to the CJEU and the withdrawal agreement, and the possibility that somebody might refer the withdrawal agreement to the CJEU to ensure its compliance? Have you assessed the risk of that, and, if it happens, what happens next?

David Davis MP: I have thought about it. Assessing legal risk, I think, is beyond the human mind, in truth. I have been given legal advice too many times to count by incredibly expert, expensive lawyers that has turned out to be not quite right. Obviously that risk exists. How big it is I do not know.

Lord Cromwell: Joking aside, are you saying that you have not taken legal advice on that?

David Davis MP: No, I am not saying that. I am saying that, although the department has lots of lawyers who deal with this sort of thing, we have considered the matter, and the best defence against it is accurate compliance with Article 50. That is all you can do. You cannot do more than that. If we are taken to court, we are taken to court and we have to deal with it.

Lord Cromwell: I have a supplementary question on that. I am sure you have closely read the Committee's report, *Brexit: Deal or No Deal*, in which we recommended—

David Davis MP: I have probably read a summary of it.

Lord Cromwell: I am sure you have absorbed it in detail. We suggested that the Government and the Commission might want to announce a joint position on the legal status of any transition agreement, rather than wait and see if it is challenged. Would you lend your support to that?

David Davis MP: Let me think on that, because I do not want to give an instantaneous response on it. Apart from anything else, I have not

discussed that idea with the Commission. If I think it is worthwhile, we will talk to the Commission and come back to the Committee.

Lord Cromwell: Of course.

The Chairman: It would be helpful to keep in touch on that.

Q5 **Baroness Falkner of Margravine:** Going back to the Earl of Kinnoull's question about Article 50 and the transition, I understood from the speech you made last week that you were thinking of powers to object. What has happened on that? Can you elaborate a little?

David Davis MP: We have not engaged on that yet because the Commission has just decided on its guidelines for it. The General Affairs Council has just today decided on the guidelines and, although our officials will be in meetings, that is mostly technical work. We will start talking about this next week. We will make an objection against them, I am sure, but this is the first round.

Baroness Falkner of Margravine: Could you spell that out a bit for us?

David Davis MP: I will, yes, but as I say, there will be an objection to it. I do not imagine that this will be very large. I say that because at the moment the Commission's offer is 21 months. As luck would have it, the average time from inception to implementation—flash to bang—of European law is 22 months, and probably quite a lot longer than that. In this period in 2019, we will get a new Parliament, a new Commissioner and a new Commission. I do not think that the work rate of the Commission or indeed of the whole institutional structure is going to be quite as high as normal, so it may take longer. Point number one is that there will not be many of these. Point number two is that the British Government will not have representation on the Council. We may or may not have some limited involvement in the technical committees, but any decisions taken will not have our initial approval; we will not be party to them. We will up until we leave, and we will have had a say on most of the law that comes in then, but thereafter not. We took the view that it is not particularly good democratic practice to have the country accept anything without some say-so, particularly if the European Union takes it upon itself to do something that is actively disadvantageous to a major British industry or something like that. That is why we have raised the matter. Let us see how it goes.

Baroness Falkner of Margravine: Would an example be a financial transactions tax?

David Davis MP: Something like that. There are a number of possibilities that may or may not be probable, but I cannot tell you what they will be at this stage.

Baroness Falkner of Margravine: If we are not a member of the EU, what legal basis will this objection have?

David Davis MP: The aim will be to make it part of the treaty that we sign.

The Chairman: At which point, Lord Liddle has a question.

Q6 **Lord Liddle:** I should like to go back to the Lord Chairman's point about third countries. Let us look at what happens once we have left the EU and we are in the transition period. Let us take the case of JLR, which manufactures cars for export to South Korea and which gets in under the EU-Korea trade agreement. A lot of its supply chain is situated on the continent. Once we have left the EU, given that the rules of origin require 50% or 60% European content, whatever it might be, we would not continue to satisfy the content rules. Therefore, if Korea wanted to be stropky, it could say that it will not take British cars any more. By the way, I hasten to add that I have no interest in JLR of any kind; I am just using it as an example.

David Davis MP: Generally speaking, while it will not be universal, the expectation will be that countries that have existing trade arrangements would find it better rather than worse—the least disruptive—to continue on through the implementation period on pretty much the same terms. We shall deal with that first. This is hinted at in its normal one-sided way by the Commission in its draft guidelines. That is for the implementation period. Thereafter, the question is whether they would want to continue and how the deal would be struck. Would it be a rollover, a grandfathering or some such thing like that, or would it be a renegotiated one? In the case of the big ones, South Korea being one of them, we would normally expect them to want to go through a degree of renegotiation not only in terms of our own market access but also of access to them. That is what we are set up to do and that is Liam's side.

Lord Liddle: So this is a potentially problematic issue.

David Davis MP: It is also an opportunity. Forgive me if I go off at a tangent for a few moments. One of the issues that is apparent to us is that when the European Union agrees a trade deal with a third country, it does one that aims to optimise as best it can the outcome for 28 countries. That means that it has to compromise.

Lord Liddle: I understand the point.

David Davis MP: When we take something that has been negotiated on behalf of 28 countries, I think that, while it is not certain, it is very likely that in doing a one-on-one negotiation we can get a better deal for both sides. I think that in most circumstances we would see an improvement in our trade arrangements. It will be minor rather than enormous, but nevertheless we will see an improvement. So it is work in that it is something that we have to worry about and get right, but I do not think that it is a big risk.

Q7 **Baroness Wilcox:** Good afternoon. Moving on, what are the principal differences between the UK and the EU on transition that will need to be resolved during the negotiations?

David Davis MP: During the transition or in creating the transition?

Baroness Wilcox: The principal differences between the UK and the EU on transition.

David Davis MP: There will be an argument about the right to negotiate our free trade arrangements. I am sure that there will be an argument about whether we can object to new law that we have not had a say in. There will be discussions about issues such as representation on technical committees. Bear in mind that we are often the prime mover in areas like aviation and pharmaceuticals. The regulators tend to be Brits because we are good at it. I would guess that those are the main ones, but there will also be arguments about what happens in the meantime as regards the treatment of Britain, British companies or British citizens. We have seen a little of that over the issue of Galileo and the ground satellite station for its GPS satellites, and in fact I complained about it. The Commission has taken a rather hard-line view, saying, "Well, if you are out, we have to cut out suppliers", or "We have to cut you out on security grounds". I refer to those sorts of things. So the range will be from quite big to quite detailed.

The Chairman: We can get some light and shade by March this year on some of these issues.

David Davis MP: Yes, I would think so.

Q8

Lord Whitty: Last week, some members of the Committee met a parliamentary delegation from Gibraltar. Obviously we have not seen the Council's text today, but the delegates were convinced that the draft clearly excludes Gibraltar from the transition arrangements. Can you update us on that and on the politics with Spain and the remaining 27?

David Davis MP: I would be surprised. We are working on the premise that the implementation period and the future arrangement cover Gibraltar. That is not to say that there will not be some scratchy negotiations with one or other individual country—I am not quite sure which it might be—but our intention is that the IP and the future arrangement should cover Gibraltar.

Lord Whitty: I am sure that it is our intention, but the question is whether it is as yet Europe's intention.

David Davis MP: Well, my press briefing outside did not tell me that.

Lord Whitty: If Gibraltar were to be excluded, how would the Government approach that?

David Davis MP: We would have a difficult conversation, would we not? Do you have the answer there, Lord Chairman?

The Chairman: I understand from my advisers that the matter is addressed in the guidelines.

David Davis MP: In what way?

The Chairman: "These negotiating directives should therefore, as the first set of the negotiating directives, fully respect paragraphs 4 and 24 of the European Council guidelines of 29 April 2017, notably as regards Gibraltar".

David Davis MP: There we are; you have the answer.

The Chairman: I detect a slight sense of relief in your voice.

David Davis MP: It is as nothing to the relief when I get out of the argument on that subject in the Commission.

The Chairman: Leaving aside the pleasantries for a moment, nobody is asking you to negotiate in real time when information comes through. You indicated that you are not fully up to speed with the details of the European Council agreement; we would not expect that. Do you have an immediate response? That is the first question. Secondly, if you do not, when are you contemplating giving such a response?

David Davis MP: To Gibraltar?

The Chairman: No, to the more general issue of the guidelines that have come out today.

David Davis MP: I am teasing you a little. Of course we have seen the draft guidelines. I do not think there is much difference. When a decision is taken in two minutes, it does not leave much time to alter the draft. You are quite right that I am not going to do the negotiation—not so much in real time but on air and in public. We will deal with the guidelines as and when we see them.

Q9

Baroness Falkner of Margravine: Secretary of State, you are no doubt aware of the fuss last week when it became apparent that the Government are not going to publish a position paper on financial affairs. Is that your position—you are not going to publish a position paper on financial affairs, in terms of your framework?

David Davis MP: You mean financial services? We have not decided yet what position papers we will publish. Last year we published 14 over the summer. I know this to my grim experience because I had to cancel my holidays and sit here and sign them all off. The reason in part was to quash the sort of story that kept coming back from Brussels, "Oh we have to have enough detail. We don't have the detail". Well, they did. We told them the detail and we put it all in the public domain. It suited us in negotiating terms to publish it, as well as being good democratic practice. We will make our judgment on that as the negotiation goes on. That is the smart thing to do, rather than commit to just yes or no.

Baroness Falkner of Margravine: You will be aware that the regulators have required financial services firms to prepare contingency plans. I note that you have referred today to this in-between period, what we might refer to as a transition, as an implementation period. If financial services firms are going to have to make contingency plans about

whether they need to re-license in the EU, how do you expect them to do so if you are not indicating to them what your framework priorities will be, in order for them to have clarity during this transition period?

David Davis MP: One of the constant refrains in this process has been an understandable call from business—not just financial services but all businesses—“Tell us what is going to happen”. Well, of course, we are in the middle of a negotiation. We cannot actually tell them what is going to happen. We can tell them the aims, but sometimes you tell them the aims and that actually undermines the chance of achieving the aims. The purpose of the implementation period is threefold. The reason I use the phrase “implementation period”—when I am dissident enough to do it—is threefold. Number one is for the United Kingdom Government to put certain things in place, whether it is customs arrangements, new regulatory structures, animal health inspections and so on. Number two, and in some ways the most critical, is to allow foreign Governments, the Governments of the 27, to do the same. In most cases—not all—they are unlikely to start that process until the deal is struck; that is, until we have left in March 2019. The third reason is so that businesses can make their decisions and implement them in the implementation period on the basis of relative certainty; namely, that we will have struck the broad structure and substance of the deal by the end of this year, before we have left. So they will know before the implementation starts what the effective outcome is—not what we think it will be, not what our negotiating position is, not what the Commission says it should be, but actually where we are.

The Chairman: One final question perhaps on this issue of transition and implementation.

David Davis MP: I thought Baroness Falkner was not finished.

The Chairman: Baroness Falkner first, then Baroness Armstrong.

Baroness Falkner of Margravine: So in effect you are saying to companies that are coming to year end, their reporting periods, “Hang around, wait, don’t make your plans until we have a withdrawal agreement in place and agreed by all the other countries as well. For those of you who are inclined to move your jobs, you will need to do so without any further information from us as to our negotiating priorities”?

David Davis MP: No, Baroness Falkner, that is not what I said. I said, “You will have nearly two years, or about two years”—we do not know what the thing will be—“after we know what the deal will be”. That is the point. We will know that before we leave. That is the aim. When I was asked by the Chairman, “When will you conclude this?”, I said that both the withdrawal agreement and the future agreement, the substance of it, would be done by the end of this year. It will two years from then, at least, before anything changes. That is the importance of the ECJ and all these other compromises we have made: it gives them two years of certainty, knowing what the deal is, and then they can make the decision with their regulators. The regulators will say that they have to do

something or they do not, and so on. It is absolute certainty. It is not guesswork. It is not what we would like. It is not aspiration. It is not the Commission's negotiating position. It is actual fact.

Baroness Armstrong of Hill Top: It is probably a cheeky question, Secretary of State. Do the Government have an agreed position on what they want from the transition?

David Davis MP: From the transition? Yes, absolutely. You could never be cheeky. I was up in your part of the world last week.

Baroness Armstrong of Hill Top: I could tell you something about the local MP and your visit as well, but there you go.

David Davis MP: It is pretty clear: we want a high degree of stability. We want the right to do deals outside. Broadly, that is it. Ideally we want some control over our destiny in terms of any subsequent legislation. It is pretty simple, really, pretty straightforward.

The Chairman: Thank you. We have a final question on transition/implementation. Some speculation surfaced over the weekend—one never knows where it comes from—that the period might not be two years but might be three. Have you any comment on that or is anyone having any second thoughts about it?

David Davis MP: No. I know where the story came from. I tell you what, this weekend has been a spectacular weekend for bogus stories. I am not going to pick any of them up because I will just upset the editor of the newspaper concerned. But the simple truth is that we have, as the Prime Minister put it, about two years. Why? Because of the practicalities of the three requirements—our Government, foreign Governments and companies—two years is about right. Twenty-one months may be fine. Plus or minus a few months is neither here nor there, but we are not talking about extending to three years. It is not necessary.

Q10 **Lord Liddle:** Secretary of State, you have been clear that you expect the substance of the future economic and security relationship with the EU to be clear by March 2019, one way or another.

David Davis MP: Before then, I hope.

Lord Liddle: That is what I was going to ask you, because there are at least two bits of this. There is the framework for the future relationship, which will go in the withdrawal treaty, and on the economic side there is the trade treaty. You can say whether or not I have got it right. The framework bit of this, which goes in the withdrawal treaty, you intend to have completed by October. Is that correct? Then you are planning to sort out, according to what you have told us today, the guts, as it were, of the trade treaty in the remaining six months.

David Davis MP: No, it is not quite as simple as that. "Framework" is the word in Article 50. The Commission does not like the idea that it has to conclude this in this time; it keeps resisting that. Whether that is a

negotiating stance or a belief, I do not know. The simple fact—the not simple fact—is that there is going to be a variety of treaties, I think: on justice and home affairs, on foreign and security policy. There will be an overarching free trade agreement. There might be separate issues within that. There might have to be a separate data treaty, for example. It will not be one, it will be a whole series of them. Article 50 requires the Commission to take that into account in the negotiations. I do not want to go into the detail of how we will write that into it at the moment but there will be more than one or two or even three other treaties, in my view.

Lord Liddle: The timing question is of fundamental importance. I am very much on the remain side, as you know.

David Davis MP: We all want to get it right.

Lord Liddle: The democratic question is: are we are going to leave the EU in March 2019 before we know the detail of the basis on which we are going to be leaving?

David Davis MP: The aim is not to.

Lord Liddle: The aim is not the point. Are you saying that that will not happen?

David Davis MP: You introduced the word “detail”. That is why I talk about substance, because we need to know substantively what is going to happen. We need to know for the purposes of the implementation period, as Baroness Falkner quite properly asked me. You are right that we need to know for democratic purposes. We need to know as an exercise in good management. We believe all that can be done—it will be tight but it can be done—by the end of this year, earlier than March 2019.

Lord Liddle: Right, and how are we going to go about doing that? Does that mean that at a certain point the negotiations break up into dealing with different sectors and different issues? When do you expect that to be?

David Davis MP: We cannot start until 22 March, because that is when the guidelines are done. The moment that is done, we will be seeking to go for what you might call a full-spectrum negotiation.

Baroness Suttie: Perhaps I might follow up on that. Obviously you are not in a position to say in great detail how that will work in practice, but to take, for example, CFSP or security, you are saying that that will be done as a separate sector. Who would you expect to be negotiating that on the Brussels side? Would it still be Mr Barnier and team or would you expect it to be done by separate teams on the Brussels side?

David Davis MP: You would certainly need to ask them, but at the end of the day the decision-maker is the Council, not an individual negotiator. The individual Commissioners—people such as Mogherini and so on—will be involved as the representatives but there will be different people,

different experts, I imagine. But it is for them to decide. At the end of the day we know how we are going to organise ourselves. So there will be a lot of people, a lot of expertise from nearly every department of state around Whitehall. It will be a heavy co-ordination job. Barnier will head it up, I imagine, on their side, but it is for them to choose.

Q11 Baroness Verma: I would like a little clarity from you, Secretary of State. I am either misreading it or I am slightly muddled. Given that there are going to be several treaties and given that they are going to go across all the departments within Whitehall but also 27 other countries, do you realistically think that two years' transition will be enough?

David Davis MP: Yes. There are two things to understand about that. First, you say "all the departments" as though they are going to do it one after another. They will not. They are going to be operating in parallel. That is part of the point. So it does not make any one of them take any longer. The bit where there is a substantive point, and with respect to the 27, is that the trade part is likely to be a mixed agreement. A mixed agreement requires approval from all the parliaments of Europe, basically. That will be the thing that takes the time, more than anything else. That will go into the period of implementation—transition, call it what you like—which is why I responded as I did to Baroness Neville-Rolfe earlier.

Baroness Verma: But when we look at past treaties, discussed and agreed, they take time and even if you are doing them all at once—

David Davis MP: Let me give you a couple of reasons why. For a start, the overarching treaty will be a lot simpler than most trade treaties because we are looking at a comprehensive zero-tariff arrangement. If you look at something such as CETA, which has been bandied around like nobody's business, there is a section for motor goods, there is a section for almost every industry, bits of agriculture and so on. At that level it is going to be simpler. That is what we are aiming for.

Secondly, most free trade agreements take a fair amount of time, for three reasons. One is that they are a compromise between 27, 28, whatever. Mercosur, the EU—complex organisations take a little longer. But here you have all of them with their vested interest engaged. They all have exports and imports that relate to the European Union, so they have to focus on that in a way they do not normally have to. The second reason is the entry into force period. The entry into force period is when most countries look and say, "Okay, we need to sell cars to you, we need to alter our braking regulations or emission regulations so that we can meet your market"—or vice versa, or often both. That will not exist because we are at the same standards. You can see why these things are going to be quicker.

The third reason is that some of these areas are fundamental. They are not just already existing entities. Let us take aviation. Aviation is held up as a big-risk thing. Well, I suppose it is on one level, but it is a risk both ways. It is a risk to the Spanish tourist industry and, on the back of that,

the Spanish property market. It is a risk to people from Lithuania not being able to get home. There is a political risk there. The areas that require a degree of speed and complexity are ones where there are very high associated rewards for getting it right or penalties for getting it wrong. So again there are strong reasons to expect it to be fast.

The Chairman: Thank you. We still have quite a lot of questions on the phase 2 negotiation. I think we will get through them if people are succinct.

David Davis MP: I will be as quick as I can, Chairman.

The Chairman: It was not an implied criticism of you, Secretary of State.

David Davis MP: I know I am a bit wordy.

The Chairman: But we need to discipline the Committee in view of your timetable.

Q12 **Baroness Browning:** On the back of what you have just said, could you remind the Committee, with regard to these various treaties that will be agreed, whether any of the 27 countries that would have to agree to the treaties still have a constitutional requirement to hold a referendum before they agree to them.

David Davis MP: I do not think so.

Baroness Browning: So that would not be a delaying factor.

David Davis MP: No, but frankly if they decided they wanted to, that would come into the implementation period. But that is not the requirement. The requirement for a mixed agreement is on parliaments and on the Council and the European Parliament.

Baroness Browning: Thank you. I will move on to ask you about these phase 2 negotiations and how they will be structured. In an earlier answer you rather indicated that you had clarity in your mind as to how these were going to be approached, but we did not quite get the impression that you were aware of how the Commission was going to structure it. Has there been any dialogue about how you will structure between you how you will proceed with phase 2?

David Davis MP: It depends on what you call phase 2. If phase 2 is the next bit—starting next week—yes, there has been. There has been lots going on there. Broadly speaking, we are aiming for a continuous negotiation. If you remember last year, it was a sort of stop-start round. It was not terribly satisfactory. So we went over to continuous negotiation from late October onwards and we will be looking at continuous from now till March. After March, we have not resolved that, but between now and March we will resolve that with them.

Baroness Browning: Thank you. How will those discussions go forward in terms of future trade relationships and the non-trade issues? Obviously

we hear a lot about the trade issues, but not so much about things like security and one or two others that you have mentioned.

David Davis MP: You might hear the odd speech in the next few weeks.

Baroness Browning: All right. So the interface between the two—

David Davis MP: Between non-trade and trade?

Baroness Browning: Yes, between non-trade and trade.

David Davis MP: There are interfaces, and in a moment I will give an example. Broadly speaking, we have taken the stance that we are behaving in a way that we think is responsible. Although it would probably be wrong to say that we are making a generous offer, by saying that, irrespective of everything else, we are aiming to maintain a strong security relationship with the European Union because we think that that is the way a responsible nation behaves. Bear in mind that we are the biggest intelligence power in Europe. We are one of the biggest nations, if not the biggest, in terms of our Armed Forces. If we spent the European average on defence and the development of other foreign security issues, we would save around £22 billion a year. That is how much extra we spend on being a responsible global and European citizen. Those are sort of freestanding, but there are links between them. Depending on which treaty on counterterrorism comes in, there will be a lateral link between that and decisions on data, which will probably fall within one of the free trade elements. So there are lateral links, but broadly speaking they are seen as freestanding.

Baroness Browning: Are you confident that if you come to an agreement on those very high-profile and important issues, although nothing is agreed until everything is agreed, they will not become bargaining chips?

David Davis MP: From our point of view or their point of view?

Baroness Browning: From either point of view.

David Davis MP: In essence, everybody is a beneficiary of the foreign affairs and security treaty, and frankly because we are bigger donors, if you like, the other side are in a way the greater beneficiaries. It is a bit harsh to put it that way because we are all beneficiaries, but let us look at this from the point of view of Estonia. It is extremely important to that country that Britain should continue with its international stance. We are a great force for good in the world and long may we continue to be so.

Baroness Armstrong of Hill Top: I simply want to ask the Secretary of State how the strand on Ireland and Northern Ireland is getting on. You began it in phase 1 and you then said that it would continue to be a strand in phase 2. What is going to happen?

David Davis MP: We will talk to the Commission and to the Irish Government about how to make sure that those north-south strands

work, as well as about the technical aspects. I do not know. They are a sovereign country and it is their call, but hopefully in return they will be supportive of our aim for a simple and comprehensive free trade agreement. They are very good customers of Britain and we should work together. But generally it will continue as it is now. As you know with these things, the detail and the words matter. We have to get the text exactly right and we are already working on that.

Baroness Neville-Rolfe: Secretary of State, I enjoyed your speech, especially the “what will change?” part of it where you dwelt on the opportunities. You talked about being a world leader in engineering, the life sciences, medicine, media, commerce and law. We are also a world leader in financial services. I just wanted to check whether an agreement that contained nothing on financial services would be acceptable to HMG, given that financial services are in a slightly different position from those other sectors.

David Davis MP: The Chancellor made it pretty plain two weeks ago. He and I went to Germany on what was termed a charm offensive. He was very robust in his charm offensive. People keep talking about cherry-picking, but we think that to leave financial services out would be cherry-picking the other way around.

The Chairman: Can I clarify something in this area? We have been talking about different pillars, to use Monsieur Barnier’s expression; that is, in a sense the different areas of interest—

David Davis MP: That is a very old European expression: the first, second and third pillars. I think that Lord Jay probably invented it.

The Chairman: I will now drop it, but perhaps we could look at the discussions on future trade relationships. This is, as it were, a genuine implementation question. Do you see those going ahead on a sector-by-sector basis? Perhaps I may follow up on that. Do you anticipate involving other Ministers from the specialist departments, be it Defra for agriculture or whatever? How will you try to effect the best representation?

David Davis MP: The aim for the overarching trade relationship will not be dealt with sector by sector in the conventional sense. There would not be separate chemicals, automotive and electronics discussions because I would hope that they will all be on a zero tariff. Where there will be sector-by-sector issues will be on mutual recognition not only of standards but also of inspection. It is a rather important point that people often forget about when we talk about the mutual recognition of standards. We want the Germans to accept a car that has been inspected in Coventry and we will accept one that has been inspected in Munich. That part will tend to be related to individual discussions. I imagine that agriculture will have to be dealt with separately anyway, as would fisheries. I suspect that the financial services sector is so big that we will have to treat it separately. Again, there will be a massive regulatory equivalence issue to deal with. That is where the argument is going to be—on mutual regulatory equivalence.

Q13 Lord Crisp: Secretary of State, when addressing the Commons Committee you said that there would be something like 20 to 40 negotiating strands. In terms of your reporting back to Parliament, will you report personally on all of them or do you envisage other Ministers reporting to the different Committees?

David Davis MP: Mostly, I think it will be me. I am trying to think. I think that last year I gave 10 Statements to the House. We had more than half a dozen debates on individual issues—so-called Brexit issues like labour law and nuclear matters. Quite a lot of it will also come back through the Bills. All told, we have something like 15 Brexit Bills. The Nuclear Regulations Bill does not sound like a Brexit Bill, but it is because we will create a new structure for oversight of the nuclear industry and the export and import of fissile material. I do not want to cry on parade, but it is quite a burden, so you would expect some departmental Ministers to be picking up certain things. A mutual recognition of regulations issue is something that can perfectly properly be dealt with by an individual departmental Minister. BEIS has been handling the nuclear stuff to date, while obviously the Northern Ireland Office will handle some of the stuff that relates to the north-south strands. It will be a mixture of both, but I suspect that they are not going to let me off the hook.

Lord Selkirk of Douglas: Thank you, Secretary of State, for the clear picture that has been given. With regard to our six sectoral Sub-Committees with responsibility for different sectors including, for example, financial services, home affairs, energy and the environment, can you give us a picture of how the Government will assist the work of those Sub-Committees, including by making Ministers and officials available to give evidence so that they can scrutinise the progress of the negotiations sector by sector?

David Davis MP: Generally we will try to do that, either through my department or through the relevant individual departments. As I sit here today, I could also be addressing the House of Commons on an Urgent Question that is going on at the same time. I had to toss a coin and I decided that this was the much more attractive offer.

The Chairman: We are now aligned with you, Secretary of State.

David Davis MP: I should say this to the Committee. We find the important job of meeting our accountability requirements quite sizeable. I think that I am right in saying that, excluding the Prime Minister, I am probably the busiest parliamentary Secretary of State in terms of appearances to make regular Statements and take Questions, as well as appearing before Select Committees and the like, and that will continue. The truth be told, Brexit will be a major part of the legislative programme this year as well. You have straightforward accountability, you have the spin-offs of Select Committees and you have issues of legislation on all fronts. To come back to the comment of the Earl of Kinnoull, I think that the House will be very tired of Brexit by the time I have finished with it.

The Chairman: Thank you. We are in not in any sense signalling that we

are sparing you, Secretary of State, but genuinely—I can say this as a non-member of the Sub-Committees—I am often amazed by the degree of forensic perception that they show. They may on occasion be a useful vehicle for exchanges not only with your department but with other specialist departments. That is neither an offer nor a threat.

David Davis MP: And block you without blowing smoke. As you know, I am a long-standing supporter of public accountability. One of the reasons for that is that the simple process of preparing for a Select Committee, which is longer than the Committee itself—that is the real reason why I did not send a junior Minister; I have done the work and he had not—is a very good discipline. It makes you ask: have I thought of this, have I thought of that? I make no bones about that.

The Chairman: Lord Selkirk, do you need to come back on your question?

Lord Selkirk of Douglas: I am encouraged by what you have said, Secretary of State, but a large range of subjects can come up and the issues are obviously important to the persons concerned. Am I correct in thinking that great trouble is being taken to cover the interests of everyone; that is, the small groups as well as the big battalions?

David Davis MP: Yes, as best we can, absolutely, especially when you cast wider than the parliamentary element. My department has had 350 meetings with businesses. I have had a few Chevening days at which dozens of businesses have been present. We have—I think monthly, but certainly fairly frequently—a business advisory group into which we bring the CBI and other representative organisations. The Chancellor, the Business Secretary and I rotate the chairmanship of that group. Beyond that, of course, we have all the normal informal responses dealing with Members of both Houses.

The Chairman: We shall look forward to those future exchanges, but perhaps I may allow a final line of questioning.

Q14 **Lord Whitty:** One of our early reports, Secretary of State, looked at trade negotiations. It pointed out that almost every trade agreement has within it a disputes resolution system. Do you have any views on what form of disputes resolution should apply to the long-term free trade agreement and, indeed, would it go wider than trade, or would there be separate resolution systems for disputes involving, say, citizens' rights, corporate rights or contractual arrangements?

David Davis MP: We have published a paper on disputes resolution systems.

Lord Whitty: Yes, you did, but it had a large number of options in it.

David Davis MP: Yes, and those options still exist. There are a large number of options because you have different sorts of issues and disputes. On trade, most of the time it is likely to be an arbitration panel model. On citizens, you will have seen in the joint report what we have

effectively agreed. We have a judicial procedure within the UK with—we do not call it an ombudsman—an independent body to represent and look after those rights and we have given the UK courts the right of referral to ask opinions of the European Union. That is a unique construction.

In the context of issues around justice, home affairs, foreign affairs and so on, we would expect to see a much more political body in the form of a political committee. They will vary. The reason for the multiple options set out in the disputes resolution paper was not to avoid the question but to set out the options from which you can pick what is appropriate for each area. Let me cite the counter-example, which I sort of alluded to earlier. The way that the disputes resolution—if that is the right term—operates between Switzerland and the EU, progressed by them using the so-called emergency brake on immigration, was not in my view very functional; it was very one-sided in that it was like pulling the emergency communication cord only to see the wheels come off the carriage. We have to try to design and agree arrangements that are specific, tailored and effective to protect the relationship between us.

Lord Whitty: Have you considered any further, or have you rejected, the option that was put forward in relation to trade using the EFTA Court in certain circumstances?

David Davis MP: We thought about it, but broadly speaking it is too general. There are other issues as well. Basically on trade we want to design the resolution panels so that they are exactly appropriate for whatever the trade issue is. Bear in mind that trade does not have hard edges. It includes things like data, and probably the biggest component of modern trading is data flow, and we have to make sure that the outcome we get is very specific to that. As I say, I do not want to pull them all together because that is what the Swiss got wrong.

Lord Whitty: And the Swiss are not very happy with that, I agree.

David Davis MP: They are not. The truth be told, and to be fair to the Swiss negotiators of the 1990s—I think that Lord Jay and I were both in play at the time—they were negotiating with a view to joining. That was the problem. When they did not join, the mechanism that they had designed was not quite right and now they are facing the consequences. However, that demonstrates quite how important it is to get the detailed architecture right.

The Chairman: On that note, Secretary of State, I am sure that we as a Committee would like to thank you very much for the fullness and frankness of your answers.

David Davis MP: You always worry me when you say “fullness and frankness”.

The Chairman: Now I shall revert briefly to the French language, which colleagues will know I do not often use: it has been something of a tour de force. However, the implied threat, the glove on the table, is of course

that we look forward intensely to your continuing involvement with this Committee during the negotiations and we would be grateful if you could share with us what you feel you can, and in particular reflect on the possibility of using the work of the Sub-Committees as a suitable vehicle for looking at some of the detail where the devil lies.

The formal position is that we would like to see you again when that can be arranged. Meanwhile we will send you an uncorrected transcript of the session. I am sure that all my colleagues will continue to take a lively interest in what is clearly preoccupying the Government. We have released you just before four o'clock, and we are most grateful to you.

David Davis MP: Thank you, Lord Chairman, and welcome back to the Committee yourself.

The Chairman: Thank you, Secretary of State. On that note, we will conclude the public evidence session. After the public gallery has withdrawn, we shall have a brief deliberative session.