

Exiting the European Union Committee

Oral evidence: The progress of the UK's negotiations on EU withdrawal, HC 372

Wednesday 21 February 2018

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Members present: Hilary Benn (Chair); Mr Peter Bone; Joanna Cherry; Mr Christopher Chope; Stephen Crabb; Peter Grant; Wera Hobhouse; Andrea Jenkyns; Craig Mackinlay; Seema Malhotra; Mr Pat McFadden; Mr Jacob Rees-Mogg; Stephen Timms; Mr John Whittingdale; Hywel Williams; Sammy Wilson.

Questions 1049 - 1100

Witnesses

[I]: Emanuel Adam, Director of Policy and Trade, BritishAmerican Business; Dr Peter Holmes, Reader in Economics, University of Sussex; Dr Pinar Artiran, Assistant Professor, Bilgi University, Istanbul; Sam Lowe, Research Fellow, Centre for European Reform.

Examination of witnesses

Witnesses: Emanuel Adam, Dr Peter Holmes, Dr Pinar Artiran and Sam Lowe.

Q1049 **Chair:** I wonder if you, our witnesses this morning, could introduce yourselves for the record and the tape, just so that we know who is who.

Emanuel Adam: Good morning, Chairman. Good morning, honourable members of the Committee. My name is Emanuel Adam. I work for BritishAmerican Business, which brings together the American Chamber of Commerce to the UK and the British-American Chamber of Commerce to the US. I have worked with the organisation now for five years, and was majorly involved in representing those businesses—mainly UK and US businesses—on the TTIP negotiations.

Dr Holmes: My name is Peter Holmes. I am from the UK Trade Policy Observatory at the University of Sussex, and I have been teaching and researching in the field of European integration for rather a long time.

Dr Artiran: Good morning. My name is Pinar Artiran. Members of this distinguished Committee, I am with the Istanbul Bilgi University faculty of



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law. I am an assistant professor in private international law, but I have also been teaching European Union law. As such, I have also been appointed by the World Trade Organization as a WTO chair-holder since 2014. Last year, I provided written evidence to the UK House of Lords on the Turkey-EU customs union agreement, as well as acting as a consultant to the European Commission for the modernisation of the Turkey-EU customs union agreement two years ago.

Sam Lowe: My name is Sam Lowe. I am a research fellow at the Centre for European Reform, and I have worked on trade for quite a while.

Q1050 **Chair:** Well, you are all most welcome. We are very grateful as a Committee to you for giving up your time this morning to give evidence to us. The acoustics in this room are not fantastic, so if you could speak up for the record that would be helpful. Secondly, we have a lot of ground that we want to cover in the time that is available, so succinct answers from you would help us get through all the things that we want.

I wonder if I could kick off, and ask you, Dr Artiran, in the first instance, how the EU-Turkey customs arrangement works for Turkey. What is good about it? What is frustrating? What would Turkey like to see changed?

Dr Artiran: Thank you very much, Mr Chairman. I will try to be as objective as possible, due to my association with my university and my chair-holder position.

What we looked at two years ago in the report that we have been writing was that, normally, the customs union has been very helpful for Turkey, in the sense that we were able to produce industrial products, but in terms of the agricultural products, because primary agricultural products are excluded from the context of the customs union agreement, this has not been very helpful for Turkey. When we started with the customs union agreement, we were mainly producing primary agricultural products, but that was excluded from the content; therefore, that has been problematic.

On one side, because we could not sell the primary agricultural products to the European Union, this helped Turkey to develop industrial products, which can be said to be a positive outcome. On the other side, when we look at the customs union, obviously, no services are covered by it, so in those areas, especially construction services, where the Turkish state is very active and Turkish companies are very strong, we could not have access to that. Moreover, public procurement is not part of the recent deal, and free movement is not included in the customs union either.

When I look at it as an academic from outside, also combining with my expertise in the WTO, the most troublesome thing is the asymmetric relationship between Turkey's and the European Union's relation to the free trade agreements to be signed with the third countries. Normally, under the WTO rules, article 24 of the GATT requires countries that are



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members of a customs union to harmonise their common customs tariff and common commercial policy. That means that, when a country signs a free trade area or customs union agreement with another country in the world, the other party of the customs union should sign the same agreement.

What happened in the Turkey-EU customs union is that the EU would take the initiative, because this is clearly stipulated in the association agreement between Turkey and the European Union. The EU has to take the lead; then Turkey will sign a similar arrangement. But all the third countries, including Algeria, Mexico and South Africa—important trading partners for Turkey—because they had already signed an agreement with the European Union, were not willing to sign an agreement with Turkey.

Why? Because simply, when they sign an agreement with the European Union, their products will be exported to the European Union, and from the European Union territory, thanks to our customs union, without any control, they have access to the Turkish market. Therefore, there is no incentive to sign a separate deal with the Turkish Government. I see this as a major shortcoming.

Perhaps I should also mention the lack of a proper dispute settlement mechanism. The institutional structure of the Turkey-EU customs union is very lacking—this has also been mentioned in the report that we have prepared—because the institutional structure of the Turkey customs union requires only consultations through a joint committee, which normally is supposed to meet every month, but the highest decision-making organ within the Turkey-EU customs union is the association council, which meets every year.

Q1051 Chair: That is extremely helpful. Can I ask a very practical question? When a lorry from Turkey carrying goods moves from Turkey into the European Union, does that lorry go across the border with no checks? Are there some checks? Does it stop? In practice, how does it work?

Dr Artiran: Many thanks, Mr Chairman, for the question. That is yet another very problematic issue. You are really asking me questions that are very to the point. The European Court of Justice recently pronounced on that. The Turkish lorries, especially the Turkish road transporters, are very active in the European market, and this is one of the major trade items of the Turkish economy. When they try to cross the border from Bulgaria, Hungary, Romania and other countries, they are being made subject to road transport—

Q1052 Chair: This is to do with road transport, but in terms of the goods that are in the back of the lorry—the actual goods themselves: parts for a car, or whatever it is—are those checked as the lorry moves from Turkey into the European Union?



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Dr Artiran: Depending on the nature of the product, especially if it is a product that is related to the sanitary and phytosanitary standards, it might be checked. Normally, there are no checks.

Q1053 **Chair:** Normally, there are no checks for industrial goods, but if it came to animal products, fruit and vegetables, there might be phytosanitary checks. Then there is a separate problem about lorries and road transport.

Dr Artiran: Exactly.

Q1054 **Chair:** I just have one other very brief question for those who want to respond to it. Turning to TTIP, I would ask those who want to contribute very briefly what they think are the main lessons from what happened with TTIP when it comes to the possibility of a free trade agreement—if that is where we end up—being negotiated between the United Kingdom and the United States of America? What are the lessons?

Emanuel Adam: I am happy to kick off, starting with three general lessons that may go beyond the scope of the question. The business community certainly believes, even though it supported it, that TTIP was a very comprehensive agreement, and in hindsight may have had much too great of a scope. Secondly—and this may be TTIP-specific also—we underestimated the public interest in the trade agreement, and therefore had to prepare to respond to concerns that have been raised around the negotiations.

Then, we had a number of stumbling blocks that held the negotiations back, and they included investment, among others; agriculture; and, in parts, services and procurement. When it comes to overall lessons from TTIP for a future UK-EU arrangement, we may want to go more into detail, but there are a few lessons that we can learn in terms of the ambition that the European Commission had, and, with that, the UK as a major contributor to the European Commission position. As I said, we may want to go into detail on that further on.

Q1055 **Chair:** I am sure that we will later on, but I was just looking for the most important lessons.

Dr Holmes: When the proposal came out, there was a high level of ambition about mutual recognition of testing and certification. I have to say, at the time, I thought that that could not work. It turns out that, even as the negotiations were progressing, the ambitions were scaled back, and essentially it became about the harmonisation—or at least the approximation or mutual recognition—of future legislation.

There are two lessons from that. First, mutual recognition of testing and certification is much harder to do than people thought. Secondly, there were a lot of public fears about the potential impact on the legislative process in the future: whether regulatory co-operation, as they called it, might pre-empt either EU or US domestic legislation. That is one of the things that killed it in the end.



Sam Lowe: One of the lessons to take from it is that TTIP was envisioned to be perhaps the most comprehensive free trade agreement ever negotiated, but for the purposes of a UK-EU agreement it is still very much a free trade agreement. If you are taking the Norway-Canada dichotomy, which I prefer to think of in terms of obligations versus access—so on one side you have high obligations and high access, and on the other you have lower obligations and lower access—it is still very much in the Canada box.

If we were to take that route, the arrangement would end up looking much more like TTIP was originally envisioned. By that, I mean the European mandate for the negotiations, because obviously, over time, negotiations happened, and it got watered down a little bit. It would look more like that than Canada, but your baseline is that you are still very much a third country. Checks would appear. Borders would go up.

An agreement such as TTIP, which was a living agreement designed to encourage continued conversation over time around avoiding additional costs for business, could achieve a reduction of checks, but not removal—because we would be seen as lower risk—and the reduction of bureaucracy for certain businesses, because over time, as you developed, you could talk about different ways of avoiding that. There would also be the possibility of continued discussion, or at least a structured discussion, around future equivalence rulings in different areas, where it is both low risk to consumers and poses low systemic risk.

Q1056 **Seema Malhotra:** I want to ask a very general question, just in terms of the experience that Turkey has had now of being a member of the customs union: has there ever been any regret about that decision being made?

Dr Artiran: Perhaps this will also be my contribution on the TTIP. I think the Turkish Government started questioning themselves following the TTIP initiative by the United States. At the beginning, the customs union decision was part of Turkey's accession process to the European Union, and this always worked together with the accession process we started with the Ankara agreement in 1963.

Sooner or later, the problems started arising, and Turkey started seeing that, even though we are not going to leave our prospect of joining the European Union, we should somehow try to improve this customs union agreement. If TTIP saw the light of day, what would happen? The American products would directly hit the Turkish market because of the free access that they will get through the European Union, and that would ruin all of the Turkish producers, both in Turkey and when we sell our products to the European market. I think that the start of the TTIP initiative has been a game-changer for Turkey.

Q1057 **Seema Malhotra:** Can I ask a slightly separate question, as well? I think you have made a comment before about the lack of dispute resolution. I was interested to know—and perhaps Mr Lowe can also



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contribute to this—what could fill that gap, and also what role the Court of Justice of the EU has in relation to Turkey’s relationship with the EU.

Sam Lowe: In regards to Turkey, as has already been eloquently explained, there are issues, but the ongoing question in regards to the UK—as per the discussion we are having at the moment—is whether such a model is workable for the UK. There are different opinions on that. I think the answer is that the way it works for Turkey now would not work for the UK.

In regards to third-country arrangements, we would have to have a consultation mechanism and essentially be able to discuss with the EU about entering into negotiations at the same time, and even potentially implementing at the same time. The one caveat is that I do not foresee any situation where we would be able to have an effective veto over European trade policy. It is an EU competence, and it would fiercely protect that, but you could see an upgrade of the model that exists now. Indeed, the Commission has previously floated ideas such as this for the Turkey arrangement. I feel that, if the UK went into a customs union with the European Union that led to the creation of these models, it would likely have to be extended to Turkey as well, because it would otherwise be seen as unfair.

In terms of dispute resolution, under such a model, I could see it definitely requiring state-to-state covering from an UK-EU perspective, which you have in most agreements. The issue with Turkey’s is that it is very state-to-state, but it does not cover very many of the different issues that pop up, largely to do with suspensions, I believe, of the customs union. That is one model, but I would see in such a relationship the requirement being something more similar to an EFTA court-type mechanism, which, while not being direct ECJ, makes reference to it.

Q1058 **Seema Malhotra:** Could I ask you to clarify a little bit? Has there been any significant contribution or role of the Court of Justice of the EU in the relationship that Turkey has with the EU? It is something that we should understand a bit further, if there has been a downside of not having a stronger relationship.

Dr Artiran: First of all, the dispute settlement possibility comes with the Ankara association agreement. Article 25 of that agreement normally provides a settlement procedure for the parties, but that has not been properly used, because it gives that authority to the association council. As you may guess, an association council is not a court; nor is it an arbitral tribunal. Therefore, it has not been used properly in the past.

Moreover, the actual provision that has been brought in by the customs union decision 1/95 has not been effective either, because the condition to bring a dispute to the attention of the parties requires the consent of both of the parties. You may imagine that, if one party wants to sue the other party, obviously, the other party will block. We have a similar system in the WTO for consensus procedure. Therefore, I do not think



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that it is a very helpful mechanism, and yet we really need a proper dispute settlement mechanism within the Turkey-EU customs union.

Giving that authority to the European Court of Justice is not possible for the time being. The customs union decision clearly stipulates that the interpretation of this decision lies with the European Court of Justice, but the European Court of Justice is not mentioned or spelled out in the customs union decision as the organ that is going to settle the disputes between the parties. Therefore, on the other side, the European Union law is not directly effective in Turkish law either.

In the intellectual property field, the courts that are dealing with intellectual property are trying to be mindful of the European Court of Justice's rulings, as well as the legislation at hand, but there is no such obligation on the sovereign Turkish courts to follow the European Court of Justice's rulings, nor to follow the other decisions that it has made. That may probably be a shortcoming of the format that we have with the European Union.

Q1059 Seema Malhotra: Just one final question: what are the arrangements between Turkey and the European Union with regards to the freedom of movement of people, and is that perceived to be an arrangement that works well for Turkey?

Dr Artiran: As far as I am aware, there is no arrangement of free movement of people. That is precisely what is being discussed right now. It is one of the Turkey-EU customs union modernisation items that are at the table, as you may know, because of the huge influx of refugees from Middle Eastern countries towards the European Union. As far as I know, this is on the discussion table—that, through the customs union modernisation, visa-free access to Turkey will also be given. It is still on the table, so we do not know what is going to happen.

There have been some interesting decisions by the European Court of Justice to give Turkish nationals some rights that derive from the Ankara association agreement. There is also a procedure that some of the Turkish citizens are using in relation to their residence in the United Kingdom through the Ankara agreement, because there is a provision in the Ankara agreement that stipulates that, if a Turkish national can show that the person properly found a job, can finance themselves, and is going to establish a business in an EU country, that Turkish citizen can get a residence permit and successfully establish himself or herself in the EU country.

Dr Holmes: Just following up briefly on the question about dispute settlement, if you do not have a binding dispute settlement system, you have to have some sort of sanction. Within the EU, if one country is judged to be breaking the rules or giving an unfair subsidy, that can be corrected at source through the supranational power of the ECJ. With the EU and Turkey, the absence of that means that both sides can invoke anti-dumping duties on each other, and they sometimes do. That creates



all sorts of implications for common external tariffs and border control. One of the things one has to consider here is what sort of sanctions the UK and the EU are thinking of being able to impose on each other in the absence of a correction-at-source mechanism.

Q1060 Stephen Timms: There are two areas that I would like to ask about. The first is about Turkey, and the exchange of personal data between Turkey and the European Union. We are told that Turkey has not obtained a data adequacy determination from the European Commission. I am wondering why that is, and whether, at the moment, personal data can be exchanged electronically between Turkey and the EU. Secondly, is Turkey going to change its laws in line with the GDPR, the General Data Protection Regulation?

Dr Artiran: I tried to look at this problem recently, but as far as I can see there is no clear and identified regulation that has been clarified by the Turkish Government in relation to the exchange of the data. The Turkish Grand National Assembly passed legislation in relation to data privacy, but I am not really aware of whether this also includes the transfer of data from Turkish land towards the European Union. We are not aware of whether or not there is any such agreement. Could you please repeat the second part of your question?

Q1061 Stephen Timms: Just on that, you are saying that you are not sure at the moment whether there is any personal data being exchanged between Turkey and the EU.

Dr Artiran: Yes.

Q1062 Stephen Timms: Can anyone else shed any light on that? I presume there is not, because if there is not an adequacy determination, it is probably not allowed.

Dr Artiran: No.

Q1063 Stephen Timms: The second question was about whether Turkey will upgrade its law. I know there has been a law introduced recently.

Dr Artiran: It has been recently, yes.

Stephen Timms: But the EU is also upgrading its law. It has this thing called the GDPR that everybody is implementing across Europe, and I am just wondering whether Turkey will implement that as well.

Dr Artiran: Since Turkey is still a candidate for accession to the European Union, I believe that the European Union would force Turkey to adopt that kind of legislation. We will most probably try to align with that legislation.

Q1064 Stephen Timms: The second question I want to ask is about TTIP. A very important issue for the UK is whether our future free trade agreement—if that is what we get—with the EU will embrace services as well as goods. Michel Barnier has told us that it will not; others are more



hopeful that it might. Does the TTIP story shed any light on whether a free trade agreement can embrace services in a significant way, rather than just goods?

Emanuel Adam: When TTIP was launched, in the initial mandate and structure of the negotiations, services fell under the first big block, which was market access. There were three big blocks: market access, cutting red tape, and establishing new rules. It fell under the first block, and was clearly designed to be part of the negotiations.

Now, in context, we know that it is very difficult to add a strong service chapter to a trade agreement, and I think we have seen that in the previous agreements: it never reached what businesses would have liked to see. Nevertheless, it was part of the discussion, and papers and proposals have been exchanged on services. If you look at services in general, you can make a reference to the European Commission paper and proposal on services. It has published two, which covered market access areas, mobility areas, recognition and qualification areas, and licensing and approval measures, as well as new rules.

From a business perspective, our overall objective was to have a services chapter, to have it as comprehensive as possible. When you look at specifics, from a largely UK-driven perspective, we looked in particular at access for telecommunications services into the US. We looked into recognition of qualifications, particularly in the infrastructure sector—architecture is an example that came up several times—and then anything around intellectual property, which fell under new rules, but was also part of the services discussion.

When you speak of services, of course, you will move quite quickly to financial services. That is a different discussion. I will stop for now, however, to see whether Sam would like to continue that answer, and then we can come back to financial services.

Sam Lowe: Yes. Thank you, Emanuel. The thing to make clear is that services are incredibly difficult to liberalise when it comes to the cross-border trade of them. In terms of multi-country liberalisation of services, there has been no progress on it since the WTO GATS round in the 1990s, other than within the European Union, and one of the reasons for that is that it is very difficult to assess services at a border. A few of the industries come with systemic risk elements.

If you are a regulator or politician in a country, how willing are you to allow a person to sell a service into your country from outside of your regulatory jurisdiction with no ability to hold them to account, or to force them to change something if it goes wrong, in the knowledge that if something goes wrong it is likely to be you who loses your job or gets into trouble? You can see it with the financial crisis. It toppled Governments across the world, despite originating in the US with mortgages.



In regards to TTIP specifically, it is wrong to say that it does not cover services. It has a services chapter; it has a chapter on financial services. I also think that it is wrong to say that Michel Barnier has said that services will not be included. He has offered CETA. CETA has services included. It is included, but what you see from these chapters is that they clarify the existing European commitments, so the WTO GATS commitments, but also in new areas. They say, "These are our reservations in these different areas, and these are the reservations for different member states", and in doing so provide certainty for the businesses, as in they essentially know to which rules they are playing.

It has extra things, sometimes, for recognition of qualifications, but not much more than that. This is true of TTIP, as well. One of the issues that they have is that written into the EU's agreements with Canada and Korea, the future agreement with Japan, and also its agreement with the Caribbean states, is that when it comes to the cross-border supply of services, if it offers greater liberalisation to another country—such as the US, in the case of TTIP—the EU would then have to unilaterally offer it to Canada, Korea, et cetera, as well. There is a clause that says that it has to do that. There are qualifications that mean that you can be free of it, but that requires a large degree of regulatory alignment.

TTIP does not go further than Canada, really, in its approach to services. The one extra thing that it did have was, because TTIP was envisioned to be a living agreement, it suggested—at least on the European side; the US did not want this, for reference—institutionalising a dialogue whereby they could work together to assess possible areas where equivalency rulings could be made, and to avert barriers in future as regulation progresses at the international level and elsewhere. That would have been progress on Canada, and it is probably something that, if we were to go for the low-obligation, low-access route, I would imagine the UK would be pursuing.

Q1065 Sammy Wilson: I know that there are big differences between Turkey and the UK, in terms of the size of the trade we have with the EU, where we are starting from, et cetera, but what lessons do you think we can learn from the EU-Turkey customs union if the UK were to seek to negotiate its own customs union when leaving the EU?

Dr Holmes: A very basic point, in my mind, is that an incomplete customs union is a quantum leap away from a complete one. I have not physically seen it, but from everything I have heard and seen photographs of, the EU-Turkey border is not an open border. The stories are up to 30 hours' delay. The moment that anything is excluded—in this case, agriculture is excluded—you have to have a provision for stopping every truck just in case. Normally, they will be waved through, but unless your agreement is complete, it does not deliver you the frictionless border that you might hope for.

The key thing in the Turkey case is, as I understand it, that some of the regulatory alignment may not be complete yet. I am not quite sure of it.



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Mutual recognition is the key thing. For a long time, there was not complete mutual recognition, so things had to be checked at the border to make sure that they really conformed to EU standards, even if they went through duty-free. There was the possibility of anti-dumping. Things had to be checked.

I believe there was a case when the EU put anti-dumping duties on televisions from Turkey, and Turkish manufacturers were then selling them across the border to Georgia. They got Georgian certificates of origin, and then they were trundled back across Turkey into the EU, and there was a big dispute about whether they were really Turkish. All these things have to be checked. If it is complete customs union, you do not need to have any checks. As long as there is anything that you need to stop things for, you have a potential problem.

If I could just throw in one other thing on services, about these things, rules of origin are extremely tricky. When you look at most free trade areas, customs unions should not need rules of origin, but in practice, unless your agreement is complete, you do. Things have to be checked and proved, as in the case of these televisions: where did they come from?

One thing that we have just been hitting on at Sussex in the last few days is how you deal with services in rules of origin. It is something that never occurred to me until quite recently, but where goods and services are bundled together you have a problem in measuring value-added, and most of the rules of origin are defined in terms of the value of material inputs and where they come from. They are actually very obscure on how you treat service inputs. For example, if a British firm outsources a certain service facility to Deutsche Bank in London, does that count as UK value-added automatically?

The point is that rules of origin are designed to throw sand in the wheels. I am not sure how it works in the Turkish case, but I am pretty sure that that has not yet been dealt with. In an agreement that is not complete, you have to have all these barriers, including rules of origin in a not-complete customs union. Incompleteness is not a gradual thing. It is either complete or it is not, and if it is not, you potentially have lots of problems.

Sam Lowe: Peter and I both have a small obsession with rules of origin, so I am going to mention them again as one of the lessons from Turkey. There is a lot of confusion about what customs unions do. At their most basic, you apply a common external tariff: both partners agree to apply the same common external tariff, and that is it, as well as the agreement between each other. It creates a necessary, but not sufficient, environment for the removal of border checks elsewhere, but it does not do it automatically.

The one thing that it does is remove the need to prove the origin of your product in order to qualify for the agreement between the two parties to



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the customs union. In the case of Turkey, that has been very beneficial. There are studies that show that, if it exited the customs union, but liberalised everywhere else and went into a deep and comprehensive free trade agreement, reducing non-tariff barriers, it still would not make up for the cost of having to deal with rules of origin after leaving. Estimates of the cost of rules of origin vary. It is usually put between 2% and 6% of the value of the product, but the real cost is that companies just find it too complicated, and do not use a free trade agreement.

In terms of lessons for the UK, if we are to leave without a customs union and go into a free trade agreement, rules of origin really become a big problem, especially for, say, the car industry. In terms of locally sourced content, on average, it is about 42%, and to qualify for any free trade agreement the threshold is usually 55%. When I talk to them, they say that the locally sourced value-added is actually lower, because they are just counting the number of suppliers they buy off locally, but those suppliers might have got those inputs from elsewhere.

It becomes a big problem for supply chains, especially when you take into account that we are currently part of a Europe-wide supply chain in most of these products, and we are largely a producer of intermediary goods. We import to export, so what happens to these supply chains once you leave a customs union? Turkey's experience was the opposite. It joined a customs union and managed to become party to these supply chains. If the UK is to go in the opposite direction, you can very much foresee the opposite happening.

Q1066 Sammy Wilson: Just on the rules of origin, taking the example of the car industry, are the products coming from the EU to the UK to be put in the cars, to go back into the EU afterwards?

Sam Lowe: In some cases. Supply chains can get very complex. You could have an engine going from a car factory to be put into a car in South Africa and then re-imported back into the EU under the EU-South Africa free trade agreement. That works because the UK content can be considered local, because there is bilateral cumulation of origin written into the EU-South Africa agreement. It gets very, very complicated. The point is that these pan-continent supply chains are reliant on being in a customs union. Each time these products cross the border, a question has to be asked, if you are the owner of the supply chain—if you own the company—as to whether it just makes more sense to bring the value-added supply chain within a customs union and export from there.

For the example of German cars, if we left a customs union, I am assuming we are going to have a free trade agreement with zero tariffs on the final car, so it is solely a question for them of convenience as to where they place the inputs. If they brought that all back into the EU 27, under a standard free trade agreement scenario, they would still be able to sell into the UK on pretty similar terms. There would be slightly more bureaucracy, but they will still be competitive. Customs union does



matter, and rules of origin matter. It just happens to also be very complicated and slightly dull.

Q1067 **Sammy Wilson:** Dr Holmes, you said that one of the important things was to ensure that there are no gaps or things left out. What barriers do you see if the UK were to want to negotiate a customs union with the EU on leaving? What barriers do you see in making it more comprehensive than the Turkish arrangement is, to avoid the kind of problems that you have highlighted?

Dr Holmes: Dr Artiran probably knows these gaps much better than I, but the things that I come across are, first of all, what she was talking about here: the common external tariff and the free trade areas are not uniform. My understanding is that cars coming from Mexico are stopped at the EU-Turkey border because of the fact that the Mexicans would not sign the FTA with Turkey.

Dr Artiran: Exactly.

Dr Holmes: There is an actual tariff on there, although it is not called a tariff; it is some sort of tax surcharge on cars coming in. If there are any countries with which the EU has an FTA and we do not, even if it is called a customs union, you still have these origin requirements.

Sam was talking about a full customs union, where we can do away with rules of origin. In fact, in term of the EU, I am old enough to remember the period before the single market, when every member state had its own separate arrangements with Japan over cars. The French were applying what were not strictly rules of origin, but they were saying, "Well, those cars assembled in the UK are not really British cars. We are going to treat them as if they are Japanese". You really have to get your free trade agreements completely properly lined up, which Turkey has not been able to do. What Sam was talking about there, about some sort of common negotiating procedure, was very important.

Then, you have to deal with anti-dumping. For example, if we had a situation where the UK did not put an anti-dumping duty on Chinese steel but the EU did, somebody would have to check the goods that were coming through. If we are in a separate customs jurisdiction—this is a legal point—it is not obvious that we can put anti-dumping duties on to a good that is not produced in the UK because the EU has such duties, if we cannot show injury to our products under GATT rules.

Then, we have the question of the regulatory harmonisation, because Turkey has the obligation under parts of the customs union agreement to have regulatory alignment, but that itself did not guarantee mutual recognition of the testing and certification in Turkey. You still have to have goods stopped at the border, even if there are no tariffs, if there is any possibility that they may not satisfy USPS or conceivably some sort of non-food-safety standards. Basically, you have to harmonise your external policy completely, and you have to see how the customs union



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relates to what you might call the regulatory union dimension, the single market dimension.

Q1068 Sammy Wilson: What, then, would you see as the requirements in a customs union-plus to, for example, prevent goods being stopped at all the borders that there are between the Irish Republic and the UK, whether that is the Northern Ireland border, the sea border between Dublin and Holyhead, or whatever?

Dr Holmes: I have to say that I am a pessimist on this, so you cannot treat my view as definitive, but my understanding is that it is very difficult to see how you can avoid the need for some checks unless either you have a totally comprehensive customs union, with a genuinely common external policy, and harmonisation or mutual recognition of all of the standards where somebody might suspect there could be a divergence—you do not want to block divergence for the sake of it—or, genuinely, the UK wants to introduce some system of self-certification and the EU has mandatory third-party certification.

I personally cannot see any way, other than a very, very comprehensive, bureaucratic and technologically challenging system, whereby your drone says, “Ah ha, that good does not comply”, and then some squad of customs men rush to the border and say, “No, you cannot let that through”. It is very difficult to solve that problem.

Sam Lowe: You could solve it with a comprehensive customs union that covers absolutely everything. There can be no exclusions, because as Dr Holmes has said, once there is an exclusion, you essentially need to have checks to differentiate between that which is excluded and that which is not. You would need a single market for goods, so you follow all the European rules there, including for behind-the-border issues that impact on competitiveness, and we already have a list of those, because they are written into the EEA agreement. We would also have to stay part of the European VAT area, because otherwise VAT becomes a border tax once we have left.

I refer to this as the Jersey model, because you can only get press if you give something a catchy name, but it is essentially based on the idea that Jersey has this relationship with the European Union now. It is not a member of the European Union. It is in the European customs union. It is de facto in the single market for goods. It is not actually in the VAT area; that would be the Isle of Man, which has the same relationship. That would be the addition. If you were to do that, you could have a situation where you have no checks on the Irish border in any direction.

There would still be invisible barriers, because there would still be barriers to services. We would have extricated ourselves from that, and, in doing so, theoretically given ourselves the freedom to negotiate on services and the like globally. Invisible borders do not lead to trucks backing up on them.



Dr Holmes: I agree with that completely.

Q1069 **Stephen Crabb:** Mr Lowe, you have written quite extensively over the last few weeks about the Jersey model, and there is growing interest in what you have had to say about this. You have just described some of the key features of it, which you think are particularly instructive to the UK Government at this time. Thinking about Michel Barnier's famous infographic—the staircase of different options, which one of my colleagues described to him as representing the staircase from Paradise to Hades—where on that staircase would you locate the Jersey model?

Sam Lowe: Not being able to picture the staircase exactly in my head, if we are putting it into the Norway-Canada dichotomy of high obligations versus low, it is on the high obligation side. The reason I and my colleague John Springford developed this model was to answer the question of whether we can come up with a halfway house that we think will be palatable to the EU, because there have been lots of suggestions for halfway houses. We have seen an excellent IFG exploration of them; IPPR has produced models, and so has Open Europe, but what do we think would work on that side?

The starting basis was how you fix the Irish border issue, for one. We think it does that. Secondly, would the European Union go for it? We are not sure. We think maybe, and the reason for that is because it is a comprehensive customs union. A customs union is an already-defined relationship that the EU has, in part, with another country, in Turkey, and it is also defined within the WTO GATT agreement. That exists, and no country goes into a customs union without wanting to remove barriers to trade with others.

The logical step of any customs union is a single market for goods. You even see it with Turkey having to write European rules into its own, because ultimately you want to get to an area where you do not have to check things on that border. That is why you have done it, so it seemed like a logical progression. It also comes with a big question on freedom of movement, because what I have described so far is essentially quite similar to Switzerland, but with a customs union, and it has freedom of movement requirements. It would also come with payments, and it would come with some sort of supranational oversight, similar to the EFTA court covering the bits of the agreement.

The question is: what does the UK get from it? I have explained why it might work on the EU side, although it is still open for question. The UK gets the ability to regulate its own economy in the area of services, and it would be free to do that as it wishes. It would be treated by the EU as any other third country, so on the basis of equivalence rulings and the standard access provided by GATS. It would also have the ability to negotiate agreements on services, investment, and data with other countries around the world, so it frees up the UK to do that.



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I think that is palatable on the EU side, because as I and most people who have looked at this believe, from the EU side, this would still be a hit to the UK. I do not think there is any situation where our ability to negotiate with third countries compensates from the losses of Brexit, but theoretically it gives us the ability to try.

Q1070 Stephen Crabb: It does not fit exactly with the UK Government's red lines, and it does not fit exactly with what the EU Commissioner said about the indivisibility of the four freedoms, but it satisfies the constraints of December's joint report.

Sam Lowe: Yes.

Q1071 Stephen Crabb: That is very helpful. Could I just ask a couple of other, wider questions, which I know you have commented on? On the EU's existing free trade agreements with third countries, how reassured are you that the UK Government are going to be in a position to benefit from the rolling-over of those on day 1 after Brexit?

Sam Lowe: This is also something that I have written on quite extensively. I was getting push-back from the Department for International Trade from at least last October by saying that it was impossible to get them replaced by March 2019. It was very confident that it could, and as of, I think, three weeks ago it changed its mind and realised that it will have to work with the European Union to come up with a fudge, essentially, for the transition. It will have to ask the existing third-country FTA partners to continue to treat us as members of the EU for the purpose of these agreements throughout the transition.

Ignoring all sorts of criticisms of anyone, essentially, the reason why they could not be replaced by March 2019 is that there just was not enough time. There are quite a lot of agreements. Some of them are very complicated, including the one with Turkey, the one with Switzerland—which is actually multiple bilateral agreements—and the one with the EEA countries. There just was not enough time to do that. If this works, we will have potentially bought ourselves more time to replicate these agreements. I do not even think that "replicate" is the right word. It is "replace". They are not going to be rolled over; they will be replaced.

Is it enough time, even taking the transition into account? I am not sure. Also, there are some countries that are not necessarily readily going to go along with essentially a UK-EU-derived fudge throughout the transition. I imagine they will ask for concessions early on in that stage, in regard to the UK's future relationship with them. They will try to get something early, including the South Koreans, for whom exports is a national religion. They do not like the EU-Korea deal very much, because it turned out better for EU exporters, relative to Korea. As to the changing Government approach, that is positive. That is the only actual way of going about it, but will it work? I hope so. I do not know, though. There are still question marks.



Q1072 Stephen Crabb: Finally, Mr Lowe, you may have seen the reporting overnight of the letter that some of my colleagues sent to the Prime Minister. There was a point towards the end of the letter that referred to the implementation period needing to be compliant with article 24(7) of GATT. What are the problems that you see with that request?

Sam Lowe: It was an interesting line, because it suddenly led to a lot of journalists having to google GATT and work through. It is quite clever, in a way, insofar as it points to an article in GATT that says that an implementation period is only compliant with WTO rules if the end point has already been set out. As I read it, the letter was saying that the existing approach of the UK—to have a standstill transition in which we negotiate—is not appropriate. What we want is for the agreement to have already been decided, and then use this phase to implement.

I disagree with their interpretation of this chapter. I think a heads of terms as to the eventual end destination would be fine to satisfy the other WTO members, and even if it was not, what are the other WTO members going to do about it? Nothing. The dispute settlement body is already coming under attack, and it is not worth anyone's while to challenge it.

It was interesting, insofar as it essentially said, "We need to get everything done very quickly and agreed", and in my mind that is impossible. It was always inevitable that we would go into a standstill agreement, because we need more time to negotiate. It will be one of the most complicated FTAs—and probably the deepest, even if we go the FTA route—between two countries ever, and the most important. It requires that amount of time to get it right. Yes, it was very fascinating, and it was a nice nod to trade nerds who already knew what that article was, but is it realistic? I do not think so.

Q1073 Craig Mackinlay: I had two points, just examining this Jersey option. When we have met Michel Barnier—in November and a couple of days ago—he is always saying, "You need to look at a model that exists", this classic staircase. Is it going to be Ukraine? Is it going to be South Korea? Is it going to be CETA? Then, when we look at some other odd borders around the world—I am getting quite interested in these odd borders—Gibraltar is in a slightly different place, and obviously Jersey is as well.

My understanding of Jersey—correct me if I am wrong—is that it is not in the single market, but it is not really a manufacturing zone, so it just tends to replicate things as far as it needs to. It is not in the VAT zone at all, and it is not in the customs union, because you can get duty-frees there. That is usually a good indicator of whether somewhere is in a customs union or not, yet it has completely free trade access, particularly on fish products and some agricultural products. When it shifts them over to France, there are no tariffs and it complies with the rules.

It is in a very semi-detached position, but I assume it is not capable of



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making its own international free trade rules, because that comes under the UK on an international basis. Would that be a fair summary of where it is?

Sam Lowe: Some of that was right; some of it was not, but broadly it is a good approximation. It is in the European customs union. It is in the European customs union by virtue of the UK's accession treaty to the European Union, where it is written in. It is actually in the customs union. We have been having the "a/the" debate. It is in the customs union, despite not being a European Union member, and it is comprehensive, insofar as it covers everything and it covers agriculture. It is de facto in the single market for goods; it is ambiguous as to why, but it is treated as such. It is not in the VAT area.

Q1074 **Craig Mackinlay:** It is treated as a completely third country for VAT.

Sam Lowe: Yes. When I called it the Jersey option, I probably should have called it the Isle of Man option, because that is in the VAT area by virtue of an agreement it has with the UK. Jersey just seemed to flow off the tongue, so I went that way.

In regards to relationships with third countries, it is again complicated, because the UK has the competence for negotiating internationally on behalf of Jersey, but in certain areas the UK has given that competence over to the European Commission in terms of trade. It is a very odd situation where a non-European Union member's trade policy is covered by the European Union. It can lodge reservations; it often does in areas such as tax, as you may suspect. I looked specifically at the Isle of Man on that; it has.

It is interesting, though, this strange relationship, insofar as it offers a potential solution to the transition in relation to the UK still remaining covered by the EU's free trade agreements during that time. There is already an example of a non-European Union territory that is covered by its external policy despite not being a member, so treated for the purposes of an international agreement as being part of it despite not being. This has led George Peretz, a QC at Monckton Chambers, to suggest what he calls the "Guernsey option". Essentially, we are all just running around Channel Islands and pulling out different bits of their relationship to try to come up with new solutions to new problems. He has proposed something called the Guernsey option, which could work in the transition in regards to us maintaining access to the third-country agreements.

Q1075 **Craig Mackinlay:** When you look at Turkey's experience, it is sort of in the customs union for manufactured goods, although not agriculture, but there is still—and Dr Holmes made that point very clearly—the opportunity for the authorities to stop things, because they are worried about compliance with single market rules. What you are suggesting is that we might as well not leave. We might as well be Brexit in name only, because, if we want that to continue, that is the only way forward.



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Well, that is purely unacceptable to the referendum result, so we need to get somewhere in life.

Could I just examine one thing you said, Mr Lowe? It was very interesting. This came out a few weeks ago in the CETA discussions that we have. Because of this "most favoured" clause in CETA, if for any reason, as I certainly hope, we can have a very good and deep free trade arrangement with the EU, the EU would have to offer the same sort of third-country good terms to Canada, because it has agreed to that already.

That causes some complications in financial services, of course, because we would want a free trade arrangement to cover financial services. It has not offered that to Canada, and de facto it would have to then add it to the clauses of CETA. That is where I would like world trade to go, but it seems the EU has some other ideas. Is that a fair summary of where you think CETA sits, with regards to the EU?

Sam Lowe: On the first point about Jersey, I do not think that it is Brexit in name only, in that it clearly distinguishes that we would be outside of the EU's regulatory purview in regards to services. It would be still quite a break in that area, and there would still be lots of areas where even general internal market law would not be deemed market-relevant in regards to that, so it is different.

In terms of the Canada "most favoured nation" clause, it is an interesting one, insofar as it only covers market access. To be clear, it is not talking about regulations here. As you said, it states that, if the EU grants additional market access in services to another country, Canada unilaterally gets those. It is not just Canada; it is written into the Korean agreement, it is written into the agreement with the Caribbean states, and it will be written into the Japanese agreement as well.

It does have a caveat, and this caveat needs to exist, because otherwise the EEA agreement could not exist; the EU's relationship with Switzerland could not exist. It essentially says that there are three situations in which you are not caught by this clause, one of them being if you are endeavouring to create an internal market, so Norway is not covered. The second is if you are an accession country, so if you are part of a stabilisation agreement and you are on your way into the EU.

The other one, which is the vaguer area, is sufficient regulatory approximation. This is where you would need to talk to lawyers, to work out how that is defined, but I would define it politically in two ways. It means whatever the EU says it means, because it is the EU that ultimately has to decide whether to go along with it, but it also needs to pass what I would call the sniff test with the third countries that have this clause.

It is not just the third countries; it is also the lawyers of businesses based in those countries, because they need to look at that and say, "Okay, we



are still not covered. This should not automatically apply to us as well, because of X, Y and Z". The UK can have a deeper relationship on services than Canada, but—like I say with the dichotomy—it requires moving away from the low-obligation box and placing yourself in an area with much higher obligations.

Q1076 Craig Mackinlay: Dr Holmes described very ably the complication of rules of origin. It really is a minefield, and you would need quite a good spreadsheet to put some of these things together, I am sure. You said that there is more attention to the value-added attaching to services coming into play. Is that actually being enforced, or do you think that this is something that Governments are now looking at?

I am just thinking that it is very easy and flexible for me to, say, provide comprehensive website services when I might farm out a little bit of that to a guy in India. He does a part of that website, and then I pull it all together as a package in the UK and sell it on. It is very commonplace. As things currently stand, nobody is any the wiser, and nobody cares. Are you saying that this is something that the EU, or other Governments, might be increasingly looking at, in terms of trying to find the value-added?

Dr Holmes: Yes. Local content, in almost every set of rules of origin that I have looked at, is defined in terms of material inputs. There is very little mention of services, and my understanding is that the European Commission is beginning to think about how it can revise its rules of origin to take account of what it calls "mode 5".

A very large part of British services exports are not, in fact, directly exported—my colleague Ingo Borchert has done a lot of work on this—but indirectly exported. You buy in services. Servicification of manufacturing is a buzzword at the moment. How do you count the domestic local content or the imported local content of something where so much of the value of goods reflects purchased-in services? As I say, I know that the European Commission is quite active in thinking about this and trying to revise its rules of origin. I know that the Department for Business, Energy and Industrial Strategy is aware of it.

Q1077 Craig Mackinlay: Do you think that it is a hugely protectionist measure? Why is it even thinking in these terms?

Dr Holmes: Sam may well know more than I on this, but the rules are not clear. You need to sort something out. When you say, "There must not be more than a certain amount of imported value-added", it refers to imported material inputs. It does not mention services inputs. Similarly, if the rule is expressed the other way around, in terms of, "You must have at least this much domestic value-added", the rules are not entirely clear as to how you treat purchased services imports. There is all sorts of scope for protectionism to be introduced through these things, but I think there is a genuine need for clarification, without any issues there.



Sam Lowe: Can I just follow up on that briefly, in relation to why it is important for the UK? A customs union does not cover services—that is just known—but leaving a customs union has implications for the UK services industry. In terms of the value-added of services inputs exported as goods, Peter's colleague accounted for that being roughly £50 billion, which is the same as the financial services sector.

In regards to your question about whether people are starting to look at this and trying to account for it better globally, the answer is yes. One of the examples is in NAFTA, where there is a big fear that the rules of origin local content threshold is going to be raised to something like 90%. You have seen the automobile suppliers suggesting that it explicitly accounts for high value-added such as design services in order for them to meet this threshold more easily. It is a discussion that is ongoing. It would be helpful to have more clarity on this, because at the moment it is very ambiguous, and I have talked to freight forwarders who do not really understand quite how to account for it. It is work in progress.

Q1078 **Craig Mackinlay:** We would have an issue with pricing for tax purposes, as well.

Sam Lowe: Yes.

Q1079 **Andrea Jenkyns:** What did the EU propose on financial services regulatory co-operation in TTIP? I would like to put that to Mr Lowe.

Sam Lowe: I am not going to just read it out, but its proposal, and a summary of it, is online. Essentially, the proposal is that it would co-ordinate in regards to ongoing international discussions on financial regulation that is coming up, and also to its own—other things that individual parties have coming up, in order to avoid unnecessary barriers emerging—and then have a systemic discussion around areas where equivalence rulings could be appropriate. Largely, in financial services, those exist in areas that are low risk to consumers, and pose low systemic risk. It is just an attempt to identify those, because up until now it has been a bit ad hoc.

Q1080 **Andrea Jenkyns:** Again with you, Mr Lowe, and then to the rest of the panel, what were the barriers to the US and EU in terms of not opening their markets to financial services?

Sam Lowe: Emanuel can definitely elaborate on this, but one of the issues is that the US did not really want to. As far as I knew at the time, it even pressured the UK into helping it remove the financial services regulatory co-operation bit from the text.

One of the reasons why it did not want to—this should be understood in the post-financial crisis context—was that the Treasury did not appreciate USTR trying to take its competence, or it was just worried about it being moved to a different sphere. The other issue with the US specifically is that lots of financial services are not regulated at federal level. Insurance, for example, is done state by state, and opening those



markets involves a very difficult discussion between the US federal Government and US state governments. Is it worth it? That is a fight, in and of itself.

Emanuel Adam: From a business perspective, that was an interesting case, because pretty much every business—whether it be US-headquartered, UK-headquartered, or headquartered anywhere else in the EU—had called for financial services to be included in the TTIP agreement from the very beginning and throughout the entire process, and continues to do so, by the way.

We had not seen anything in the initial proposals. Coalitions have been formed around that process to push the US Government to look into that. As Sam Lowe alluded to, the US Government had said, “No, we would not like to do that, for several reasons. We do not want to open up the Dodd-Frank legislation that has just been implemented, and we believe that the existing fora”—in particular, what was the financial service coherence dialogue at the time, and is now a forum—are sufficient to bring that issue forward, and it would not make sense to duplicate that process, given that the same people would be involved”. That was, I think, around 2014.

Nevertheless, the EU had put together a factsheet/proposal as to what its objectives would be. Sam has mentioned a few of those already, which targeted in particular regulatory co-operation going forward. I also remember that in July 2016, not too long ago, the EU put forward a negotiation proposal that was then later published. As Sam also said, it included for the most part reservations as to the reference to the existing provisions that needed to be respected, but the Commission had put forward a proposal. I do not think that the discussion went very much further from there.

A final additional point from my side is that there was, however, a discussion around financial services market access, which is different from the regulatory piece. The EU and the US did indeed sit down—I think it was also in 2016—to think about the architecture of future chapters in financial services. I do not know whether this would have been within TTIP or outside, but it did take place. It was much more a market access-focused discussion, which would include different elements than the regulatory co-operation.

Q1081 **Andrea Jenkyns:** I would like to ask Dr Artiran this first: which issues are likely to be the most contentious in the negotiations regarding the financial services sector and the EU-UK free trade agreement, and how should the UK address them?

Dr Artiran: In general, for services, because it was not covered by the Turkey-EU customs union, we never really had that discussion. As Sam mentioned, according to the WTO rules, the customs union only covers the trade in goods. Therefore, we never had that kind of experience, so I would not be in a position to say anything about that.



Sam Lowe: What is going to be most contentious is that we will have to go through a process domestically of realising that it is going to look very different from what exists now. The offer that will be made by the EU, if we go the low-obligation, Canada-type route, will be very similar to the offer that has been made to anyone else. There is a good reason for this, insofar as, as soon as a new baseline has been set, that becomes the EU's baseline offer to the rest of the world as well. That is where it starts. We will need to come to terms with that.

It then becomes contentious in a different way if we want to maintain the same level of access as we have now, because it will require harmonisation, shared oversight and the like. It will have to be something similar to what Norway has, because, if it is slightly less and we get the same access, Norway gets upset. There is contention there.

It is possible, if we are to go the low-obligation route, to get an institutionalised, ongoing discussion, as was proposed by the EU in TTIP, in regards to future areas where equivalence may be appropriate, but it is important to state that equivalence is unilaterally applied, and unilaterally rescinded. In regards to any financial services firms planning on investing because of those provisions, you would have to weigh it up.

Emanuel Adam: Another controversial thing will be what kind of access financial services will have going forward in the future. That is also what companies—again, whether they are UK-headquartered or from anywhere else—are currently thinking through, and what they have to make part of their strategic decisions going forward.

Q1082 **Andrea Jenkyns:** I have a final question, and Sam touched on a point of this. According to Dr Kay Swinburne MEP, between 2009 and 2014, when Mr Barnier was Commissioner for Internal Market and Services, he drafted a chapter specifically on financial services to be included in TTIP. Therefore, a template exists for financial services to be included in trade deals with the EU, because Mr Barnier helped to draft this chapter.

On this occasion, as Sam Lowe already alluded to, it was the US that did not want financial services to be part of TTIP. My question to the whole panel is: therefore, in your opinion—a cheeky question here—if Mr Barnier is happy to consider financial services as part of TTIP, but not as part of Brexit, is Mr Barnier anti-Britain, pro-EU, or both? Why would he want to exclude access to British businesses but not to American businesses, when we are already part of the EU at the moment and already have a relationship?

Sam Lowe: My answer would be that he is obviously pro-EU, but I do not think that he is anti-Britain. He has already proposed an agreement that includes financial services. CETA includes financial services. All the EU's trade agreements include financial services. Inclusion is not the point. The point is the amount of access that you get.



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It is perfectly consistent for him to have proposed, as I have described, an approach to TTIP that does not necessarily grant more market access from the off than Canada, but at least provides a continued forum for dialogue. I do not really see the inconsistency. It is a failure of understanding on the UK's side, which is an understandable failure of understanding, because we have not had to deal with trade policy for a while, as to what is covered by trade agreements and what is not.

Emanuel Adam: Without having seen the proposal that Mr Barnier put forward in those years, we all appreciate that the EU-US relationship is a very different one from the UK-EU one. We had a very different starting place there. With the EU and the US, it was about finding measures that avoid duplicative measures going forward and anything that would lead to further diversion. It did not address existing regulation very much, or at least, when it came down to TTIP, it did not address existing regulation.

The UK/EU relationship is a different one, in the sense that we start from the same level playing field. That can have an advantage, but also a disadvantage, in terms of how we can ensure that this does not go apart while ensuring that the UK can have its own regulations and rules in place, and at the same time have access to the EU. That is the crucial question that we, and businesses, will all have to answer and are currently thinking about.

Dr Holmes: The EU-South Korea agreement includes financial services. I think it includes some complications for the UK, if we were to try to replicate that agreement, because it makes references to the evolution of EU regulations. We would have to align ourselves with that.

Q1083 **Wera Hobhouse:** Emanuel, can you explain—maybe just to me, but also because this is a public forum and people listen in—what you meant by the difference between the institutional access, if I understood that, and the regulatory aspect of financial services, just so that we can make that clear in our minds?

Emanuel Adam: I am very happy to do that, and I may need some assistance from the experts to my left. When it comes to market access, UK financial institutions are already active in the US. That is possible, and you can put up a branch or subsidiary there. You have to comply with certain framework criteria, in terms of how much you can own, how your board is put together, et cetera. Those are elements that fall under general market access, and I think there is a WTO link somewhere, which I leave to our experts to the left.

When it comes to regulation, it is then really about setting the rules and regulations for financial services: how they act under which legislation going forward, what they can do when a crisis hits, how companies have to respond, how much cash has to be put aside. I am not an expert here, but there is a difference there that has played a role in the discussion so far, and will continue to play a role with the EU and the US. At that point, I will hand over to one of you.



Dr Artiran: I would like to say a couple of words about why you would not propose whatever you are proposing to the United States within TTIP to the United Kingdom. We clearly have the same example in Turkey as well. We are in the process of negotiating the modernisation of the Turkey-EU customs union with the European Union, and I remember having attended a couple of meetings—academic meetings as well—where the EU Commissioners and EU officials were available.

When we were discussing what could be proposed to Britain and what could be proposed to Turkey, they said, “One size does not fit all. Every country is responsible, and every country’s profile is different”. Therefore, whatever may be interesting for the European Union when it offers it to the United States may not be that interesting in terms of its relationship with Britain. In that sense, taking one simple example for an agreement may not always work in your favour. You have to be careful.

In terms of the financial services, GATS has a chapter on financial services. There is a specific agreement on financial services, but apart from that, you also have to rely on the GATS provisions—the General Agreement on Trade in Services—if you would like to regulate the trade in services between the European Union and the United Kingdom. Apart from this, any agreement that would go beyond what GATS and the GATS annexe agreements cover is the obligation of the United Kingdom and the European Union to negotiate.

Q1084 **Wera Hobhouse:** That seems to contradict what you have just said about lowering the baseline. If they offered us something, they would have to offer Norway the same thing. Does that not contradict that statement?

Dr Artiran: Let me clarify: according to the WTO rules, there are regional exception clauses, similar to the customs union, which fall within the scope of the application of article 24, which allows customs unions in free trade areas. Under the General Agreement on Trade in Services within the WTO, there is a provision—article 5 of the GATS—that allows regional integration agreements. That means that you can negotiate an agreement where you expand your services coverage, but you do not have to extend that to all of the WTO members. This is an agreement between yourself and your trading partner, and provided that you comply with article 5 of the GATS, you will be compatible with the rules and you can do your own dealing.

Sam Lowe: To add to that, there is the specific issue with clauses written into existing trade agreements that the EU has where, if it offers greater market access for services to other countries, it has to unilaterally offer it to those countries as well. That is one specific issue. My point about the baseline was more in terms of future EU trade negotiations. If, in a free trade agreement, it has set a certain level of access, any future partner will expect that as the baseline for negotiations. It was not a point about the WTO.



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In terms of market access, just to clarify a bit further, services are traded under four modes. That is how it is understood. Mode 1 is that I provide a service from one jurisdiction into another while remaining in this jurisdiction: for example, an Indian call centre being used by a UK customer. That would be a mode 1 supply of service from India to the UK. Mode 2 is that I as a person can go somewhere to use a service. This could be me going on holiday; it could be me going to Bulgaria to use a private dentist. Mode 3 is the ability to set up a subsidiary in another jurisdiction to provide a service, and mode 4 is the temporary movement of a person to go and provide a service in another jurisdiction, which has some complications. That is how services are discussed in trade negotiations.

In regards to them being liberalised, it is about national treatment and most favoured nation. The first stage is, "Are we willing to treat your operators the same as we treat our domestic operators?" That is national treatment, and there are lots of reservations across the board there, or qualifications—as in, "You must have a certain amount of local people on the board" and the like. Then, there is "most favoured nation", which is, "Do we agree that if, in this area, we grant certain access to someone, we will grant that to everyone, or do we want an exclusion to be allowed to discriminate between different countries?" Everyone has lots of reservations there, as well.

Q1085 Joanna Cherry: I just wanted to clarify my understanding of the jurisdiction of the European Court of Justice in relation to the association agreement between Turkey and the EU, and the decisions of the association council. I wonder if I can direct my questions on this principally to Dr Artiran. As I understand it, the Court of Justice has jurisdiction to give preliminary rulings on the agreement. That is correct, is it not?

Dr Artiran: The Court of Justice has the authority to answer the preliminary ruling request. However, Turkey is not part of the European Union—it is not a member—and it is not part of the EU customs union. I would like to correct that mistake. It is often mistakenly understood that Turkey is part of the EU customs union. We are not. We have a customs union with the European Union, but we are not part of the EU's own customs union.

The Court of Justice of the European Union takes preliminary ruling requests from the EU member states. Since Turkey only has an association agreement with the European Union and has a customs union, we are not part of its own jurisdiction. Therefore, whatever the Court of Justice can do is only through the citizens who are resident in the European Union, who may be Turkish citizens with double nationality. When they bring a question to the European Court of Justice, the Court of Justice's authority will be allowed, but otherwise Turkey cannot send any request as a preliminary ruling request to the European Court of Justice.

Q1086 Joanna Cherry: Turkey cannot request a preliminary ruling, but any



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member state of the EU can request a preliminary ruling. As you have said, Turkish guest workers—as they used to be known—in the European Union have been able to do that, and thereby extend their rights of freedom of movement. Would I be right in understanding that the court has also taken the view that it has the right to give preliminary rulings on the interpretation of decisions adopted by the authority? That is correct, is it not?

Dr Artiran: It is true, simply because the association agreement and the 1/95 customs union decision give the authority to interpret all the decisions that are being taken within the association council, and the Court of Justice of the European Union is the standing body to interpret the rulings and the decisions.

Q1087 **Joanna Cherry:** It is correct, is it not, that initially some member states—Germany and the United Kingdom—called the jurisdiction of the court into question, but the court has been quite clear that it has jurisdiction to give preliminary rulings on the interpretation of the association agreement, and also decisions of the association council? As you say, these are not directly effective in Turkey.

Dr Artiran: Yes, because neither the Turkish citizens nor the Turkish courts have locus standi. We do not have the standing.

Q1088 **Joanna Cherry:** You cannot take a preliminary ruling, but when the Court of Justice rules on the interpretation of the association agreement, or if it rules on a decision of the association council, what attitude do the courts in Turkey take towards those rulings?

Dr Artiran: As I said, since we are not part of the European Union and the customs union agreement does not give that kind of authority to the European Court of Justice to have a direct effect in the Turkish courts, the courts in general are trying to be mindful of these rulings. Some of the courts—especially, as I said at the beginning, the courts related to intellectual property conflicts—refer to the decisions of the European Court of Justice. In other cases you do not see that much reference, and you do not see the Court of Justice coming into play in the Turkish sovereign courts.

Q1089 **Joanna Cherry:** If there was a dispute as to the meaning of a term of the association agreement, or a decision of the association council, who would have the final say: the Court of Justice of the European Union, or a court in Turkey?

Dr Artiran: First of all, you have to start with the association council, because customs union decision 1/95 gives that authority to the association council. The association council then has the authority, and it is going to vote about it. It is not automatic. It can send the problem to the European Court of Justice. In any event, I do not see the Turkish courts having any say on that. Starting with the Turkish-EU association council, and going from there to the Court of Justice of the European



Union, unfortunately, I do not see the Turkish courts pronouncing on that anywhere.

Q1090 **Joanna Cherry:** Ultimately, if there is a dispute about a meaning of the association agreement, it would be pronounced upon by the association council or the Court of Justice.

Dr Artiran: Exactly.

Q1091 **Stephen Timms:** This is a question to Sam. You have told us very clearly that, if we choose a low-obligation model for our future relationship with the European Union, we are not going to get free trade in financial services. I was wondering what obligations Norway fulfils that enable Norwegian financial institutions to have free access to the European financial services market, and is it conceivable that one might try to replicate those obligations in some way, other than through membership of the single market itself?

Sam Lowe: In regards to Norway and its obligations, it applies all the same internal market rules that the member states do in regards to financial services, and that is why it is granted the same level of access. In relation to whether it is possible to replicate that differently, this goes to my point that I do not think, when people say "Canada", they literally mean Canada. They mean a low-obligation model. I also do not think that, when they say "Norway", they literally mean Norway, largely because I cannot see why the EEA/EFTA states would want us in their group. We have different objectives in regards to the future. From the EU side, we could potentially be quite disruptive under that model. It is likely that, even in the high-obligation scenario, we would have a UK-EU bespoke model. It would just come with many of the same parameters.

Is the question whether you could carve out the financial services obligations?

Stephen Timms: Yes.

Sam Lowe: I do not know—maybe technically. Politically, from the EU side, do services come as a package? My understanding would be that they do. From a technical perspective, I do not know how you would go about it, but maybe that is a question for someone in the future.

Q1092 **Stephen Timms:** You are saying that, really, if we go for a low-obligation model, there is no chance of us getting free trade on financial services.

Sam Lowe: That is what I am saying. I think there will be equivalence rulings in certain areas, especially towards the beginning when we need to smooth the bump, but I would imagine that they would be time-limited and would dissolve. Also, the transition, in a way, gives banks and financial institutions more time to set up subsidiaries in the EU, if they need to.



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Dr Holmes: I think Pinar would be able to explain this better, but I would note that, just as in trading goods article 24 of GATT says that you must abolish substantially all tariffs, there is an equivalent in article 5 of GATS, which says that you cannot simply go for one; you have to effectively remove substantially all barriers in services. You cannot just have a financial services FTA chapter. You have to have something much more comprehensive.

Dr Artiran: Article 24 of GATT requires that, in case a couple of the WTO members would like to get together and form a customs union or free trade area, they have to liberalise substantially all the trade. Now, the "substantially all the trade" requirement has never been clarified, but there have been some Swiss proposals where they said that 90% of the trade between the customs union or free trade area partners must be liberalised.

When it comes to services, article 5 of GATS regulates regional economic integration models, whereby you sign an agreement. It does not talk about "substantially all the trade", but it says "substantial sectoral coverage". Therefore, I agree with Dr Holmes: if you would like to sign an economic integration agreement under article 5 of GATS, you will have to cover pretty much all your services sectors in order to fall within the scope of that provision of the General Agreement on Trade in Services.

Q1093 **Mr McFadden:** Thank you, Sam, for giving us Jersey to add to Norway, Ukraine, Turkey and Canada. I want to ask Dr Artiran a question. In your exchange with the Chairman at the beginning of the session, the two of you talked briefly about trucks. I want to ask a bit more about that. You implied that there was a problem searching and stopping trucks and so on. Can you take us through that in a bit more detail? What is it like for a Turkish truck driver arriving at the EU border? What happens?

Dr Artiran: What happens is that they load their trucks from, let us say, Istanbul. They start driving, and when they hit the border of, for instance, Bulgaria, Romania or Hungary, they are being stopped and asked for a transit visa. They are perhaps simply transiting Hungary, perhaps leading to Germany, but at the border of Hungary they are being stopped and asked for certain licences, for some permits, and also some fees to be paid at the Hungarian border.

This has been a clear problem for the Turkish trucks for so many years. It has been brought to the attention to the Court of Justice of the European Union by one of the Turkish companies that is currently based in the European Union, so it is not just a proper Turkish company, but has a connection with a residency or work permit in Europe. It brought a case to the European Court of Justice, and the Court of Justice decided a couple of months ago that what is being done is contrary to the Ankara association agreement, and the customs union decision, which required that, similarly to the EU customs union itself, the free movement of goods provides that you cannot bring any equivalent restrictions on



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customs duties, like asking for a fee from the trucks that are transiting your territory.

You should not be doing it, because this is clearly against EU law. It is written very clearly in the Treaty on the Functioning of the European Union, and similar provisions have been embedded into the Ankara association agreement, as well as the customs union decision. Therefore, I find the ruling of the European Court of Justice very important. It basically requires the same free movement of goods requirements that are embedded in the EU customs union to be extended to the Turkey-EU customs union.

Q1094 **Mr McFadden:** You want the Court of Justice to help you sort this issue out.

Dr Artiran: Yes, but I would not be able to bring that case myself as a Turkish citizen based in Turkey. You need to have some linkage with a European country.

Q1095 **Mr McFadden:** You referred to the papers, the checks, the transit visa, and all this. How long might a truck be parked there? Would it be five minutes or 20 minutes, maybe?

Dr Artiran: I would not be able to tell you the exact number, but I remember having read a couple of interviews in the newspapers with businessmen who are dealing with road transport. Sometimes, they said that they are stuck at the border for a couple of days.

Q1096 **Mr McFadden:** Is there a limit on the number of trucks that can come from Turkey to the European Union?

Dr Artiran: Exactly. That is one of the other problems, because one of the other parts of that case that was brought to the attention of the Court of Justice of the European Union was the quota. It is not only that they are asking you for a transit fee; they are also putting a quota on how many trucks can transit a certain EU country.

At the same time, I would like to be clear: this is not an EU policy. Here, in this part of road transport, quotas and transit fees have been left to the sovereignty of the EU member states, so I would not like to say anything that would blame the European Commission or the European Union itself. It has been left to the authority and sovereignty of the member state. It is not a fully harmonised, regulated area, so it really depends on what a member state of the European Union would like to do in relation to those trucks.

Q1097 **Mr McFadden:** How does this quota work? How many trucks from Turkey are allowed in?

Dr Artiran: I would simply repeat that for this very area, for road transport, since there is no harmonisation, you can basically arrange how many trucks you would like to have passing through your territory, and



what kind of fee you would like to apply. This, as the European Court of Justice mentioned, is not in accordance with EU law.

Q1098 **Mr McFadden:** I just want to understand this. If a truck is going from Turkey into one member state, might that member state have a different quota for Turkish trucks than the next border along?

Dr Artiran: Precisely. This is what actually happens in the Bulgarian and Romanian cases, because those countries have different quotas.

Q1099 **Chair:** There is one final question from me to you, Mr Adam. Thinking about the trade deal that the United Kingdom has said it wishes to negotiate with the United States of America, from the American point of view, what do you think the US's priorities will be to get in such a deal? What will the US be hoping to be able to sell more of to us than it is able to do currently?

Emanuel Adam: Let me say first of all that the organisation I represent has three constituencies. One is primarily US-based; one is UK-based—that is the one that I have represented most today; and then there is a trans-Atlantic constituency, companies that act in a trans-Atlantic market. I think we all appreciate and know how important this relationship is. In that context, we support very much the dialogue that is currently being held and launched between the UK and the US Governments, and we know that the Trade Secretary will again be on his way to Washington very soon to continue those talks.

When it comes to the trade negotiation, it is a difficult question to answer. Initially, you would think that the US would use the existing template that it has been using for other trade agreements, put it on the table, and ask the UK to say what it thinks. That will include things that we have seen in TTIP. We will see services, procurement and goods. It will include agriculture, and liberalisation in certain areas that have been more difficult for the EU to negotiate previously. Data is one of those areas. I think that will be the starting point, using an existing template.

It will then depend on the negotiation as to whether the US will push more or less for certain areas. It will, of course, also then depend on the outcome of the Brexit negotiation, in terms of what sectors the US would like to have access to.

Sam Lowe: In terms of what the US will ask for, USTR very usefully produces a report every year about global barriers to US trade. It is mandated by Congress. The new one is out soon, actually. It is one of my favourite reports; I have it in the calendar. It lists globally, for every bloc, every country, what the biggest regulatory barriers to trade faced by US exporters are, and the EU section is one of the biggest. All those barriers apply to the UK as well. It is largely in areas of technical barriers to trade, which is to do with standards, but I should be clear: the approach to standard-setting is its main issue. On chemicals, it does not like the REACH approach very much, and on agriculture you have the



whole list that you see in the papers every so often. We know what it will ask for.

The question that the UK has is that achieving a deep relationship with the US requires a harder Brexit. It requires the UK to extricate itself from the EU's regulatory architecture. It is then a question of how much it prioritises the US over the EU, and it is one of those slightly annoying binary choices in some areas. If we do not want there to be border inspection posts on the Irish border, it is going to make it very difficult to do an agreement with the US, because border inspection posts are required if you are exporting to the EU from a third country that is not fully harmonised in regards to the sanitary and phytosanitary standards. Chlorine chicken, for example, would be a problem.

There is an issue there in regards to what the US would demand, and then there is also an issue in regards to what the UK would be able to achieve. The UK's aggressive interests are financial services, which we compete with the US on, and there is past history of not being that pro-liberalisation from the US side. Procurement is also an issue, because the big market in the US is largely at the state level, and lots of states are not even party to the WTO agreement on procurement and have very constrictive local content requirements.

Q1100 Chair: In practice, what the US federal Government could offer in those areas would be constrained by what state practice and approach is.

Sam Lowe: Certainly on procurement. On financial services, politics comes into it as well, and any change of regime.

Chair: That is extremely helpful. On behalf of the Committee, can I thank all of our witnesses today for your answers? It has been a really useful and helpful session, and we are grateful to you for coming.