

Exiting the European Union Committee

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

Tuesday 27 February 2018

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Members present: Hilary Benn (Chair); Joanna Cherry; Sir Christopher Chope; Stephen Crabb; Mr Jonathan Djanogly; Richard Graham; Peter Grant; Stephen Kinnock; Pat McFadden; Craig Mackinlay; Seema Malhotra; Mr Jacob Rees-Mogg; Stephen Timms; John Whittingdale; Hywel Williams; Sammy Wilson.

Questions 1101 - 1162

Witness

I: Pascal Lamy, former Director-General, World Trade Organization.

Examination of witness

Witness: Pascal Lamy.

Q1101 **Chair:** Good morning, Mr Lamy. You are most welcome. Thank you very much for giving up your time to give evidence to us as a Select Committee today, drawing on a very wide range of past experience and expertise you have, including as a Trade Commissioner and former Director-General of the World Trade Organization.

In an Institute for Government seminar, I think I am right in saying that you said that you thought negotiating a new trade and economic relationship between the United Kingdom and the European Union would take between five and six years. Could you just set out for us why you think it would take that long? Has anything happened since you said that that has led you to revise that estimated timetable?

Pascal Lamy: Thank you for the honour of being a witness in this Committee. From the very beginning, just after the vote in 2016, I have been thinking and saying—I am now free enough to be saying what I



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think, which is a great relief after many years of institutional constraints—that, trade-wise, Brexit is like removing an egg from an omelette. The UK is in the internal market. It is part of the omelette that was stirred for many, many years. Moving back from that is inevitably, in my view, a very complex issue technically, leaving aside the politics. Getting this done is as difficult as getting an egg out of an omelette, which is why I think it will take a long time.

Just after the Brexit vote, I said publically that, overall, in my own experience, there will be the time it takes to get to new trade arrangements between the UK and the European Union plus the time it takes to implement whatever new arrangement there is. These two times have to be added, because, if I am in business, I will be fine if there is an agreement; I will not be fine if this agreement comes into force the day after, as I will need some time for preparation and implementation.

To answer your question, Chair, it will take a long time because, simply, it is very complex. It took many, many years for the EU to move from a common market to a single market. I remember when we moved from the common market to the single market. There is a difference between the common market and the single market, which is regulatory alignment. I remember that, because I was Chief of Staff for Jacques Delors when he took this initiative in 1985. This process of convergence and integration, mostly through regulatory convergence, has been going on for many, many years. Moving back from that will be complex and, in my view, for what it is worth, costly. If there were many benefits in moving to a common market and then from the common market to the single market, there will be costs in moving back.

Q1102 Chair: At the moment the two parties are talking about a transitional period. From my perspective, that will be a period in which negotiations have to take place, because they will not be concluded on the future partnership between now and October. It will end in December 2020. Presumably, in the light of what you have just told us, you do not think it will be possible to do that by December 2020.

Pascal Lamy: That is what is on the table so far. This is what I understand, Brussels and the UK Government have agreed to so far. My own view is that there is a serious risk that this is too short to come to a fully fledged new trade arrangement. We still call this the transition period, and this side of the Channel now calls it an implementation period. For what it is worth, my sense is that two years will be too short.

This is the purpose of a brief that, coincidentally, the Institut Jacques Delors published yesterday in its English version, which is precisely about this transition. Of course, this piece, which is a public one, is for your Committee to consider, if you so wish.

Q1103 Mr Djanogly: This question is specifically on this, and it goes to the heart of a lot of discussions that this Committee has had over the



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months: the difference between an implementation period and a transition period. Legally, it is an implementation period, in so far as it comes under the aegis of Article 50—us leaving. You have just raised a very serious issue: a lot of people are treating it as a transition period rather than an implementation period—i.e., assuming that the change will happen during the period. The following question is: what will happen if we do not? In practical terms, where would we be if, at the end of the implementation period, we have not finalised future terms?

Pascal Lamy: If that were to happen, you would have to repeat what you just did, which is to have a longer transition in order to avoid the famous cliff, which is a change that moves the whole trade regime between the UK and the EU to WTO terms, which is what I believe both sides so far want to avoid.

Q1104 **Mr Djanogly:** So you think that the EU would be open to extending the implementation period.

Pascal Lamy: I am not speaking for the EU. I do not have any mandate

At the end of the day, this is about business. Businesses are the ones who need certainty on what is going to happen, because they have to plan and, if they do not plan, they have a risk and they have costs. On both sides, we need to provide them with enough certainty.

We will probably come back to this question of whether or not the cliff is apocalyptic in the discussion. I have my own views about that, but this transition might need to be prolonged, which will raise specific questions, not least because one of the reasons why the present transition has been understood to end at the end of 2020 is that this is the end of the existing financial arrangement between member states, which are on a five-year basis. There is a new Multiannual Financial Framework coming in from 2021 onwards—without the UK, as far as we can expect. This will create new problems, but at the end of the day what matters is whether this process is or is not damaging trade, economic and business relationships. On both sides, the normal behaviour would be to try to limit this damage as much as possible.

Q1105 **Chair:** In her speech in Florence, the Prime Minister set out the famous three-basket approach, where you would have alignment in some areas, achieving the same result but by different means in others, and divergence in the third basket. Michel Barnier has said, “That is not a runner. It is not going to work”. Would you give us your view on that approach? Why is managing divergence so complex and so difficult, as you have just described it?

Pascal Lamy: I am aware of these different positions. There is no straightforward answer with a “yes” or “no”, I am sorry to say. In many ways, it depends: it depends on whether the omelette is really an omelette.



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Let me take one example so that we do not only look in theory. For the moment, the UK, as a member of the European Union, has in road transport a freedom that is called cabotage. That means that if I am a lorry driver, I can load my cargo in London, drive to Paris, unload a bit of this, reload a bit of that, do the same in Marseilles, and my final destination is Rome. Members of the EU have agreed that this freedom is for them. If you are a third country, you do not have a cabotage right. If you are a third country, you can load your lorry in London. If you have to go to Rome, you cross the Channel, France and the northern part of Italy, and you unload in Rome. This is obviously much less efficient, because the capacity you have might not be optimised in terms of loading, unloading and getting a price for your cargo and your lorry.

On both sides, the normal reaction will be, "Why should we change this?" After all, it is efficient; it is good; and it makes transport more efficient and less costly. It is to the benefit of everybody. That is fine—okay, let us do that. In this case, we keep this—fine. I am convinced the EU could be ready to consider that but with one condition, which is that the UK maintains the EU rule on driving hours. This is nothing to do with the internal market in reality in terms of efficiencies, but I am sure EU members will not want the UK, who may have, when it exits, a driving maximum of 10 hours per day, to compete with lorry drivers within the continent, who have an eight-hour driving time standard.

These things are connected. They go with each other. In many areas—this is why I am using the image of an omelette—things are already very, very, very closely knitted. De-knitting this is extremely difficult.

Chair: That is extremely helpful. A lot of colleagues want to ask questions, because we have a lot of ground to cover. As succinct answers as possible would assist us.

Q1106 Mr McFadden: Good morning, Monsieur Lamy. We all hope there will be a good deal agreed between the UK and the EU, whatever the timescale that you were discussing with the Chair, which allows trade to flow and minimises economic disruption. There is the possibility that this does not happen. I want to ask you, with your WTO hat on, a couple of questions about this. Let us take a scenario where, somehow, the EU and the UK cannot reach an agreement, and the UK leaves the EU at the end of this transition period without an agreement in place. How would you, as a former chair of the WTO, explain to the British public what that would mean in terms of trade?

Pascal Lamy: Let me try to answer simply. If you look at trade on the planet, seen from the moon, you have four leagues. You have league number one, which is the domestic system and the internal market. League number two is for bilateral trade agreements. League number three is the WTO regime. League number four is for countries who are not members of the WTO—basically, North Korea, Algeria and a few others. Let us leave this fourth category aside, just for the sake of not being too exhaustive.



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WTO is league number three. The assumption for the moment is that, if and when the UK leaves, it will leave without a deal and adopt the existing EU trade regime as per the WTO. The UK multilateral commitments in terms of market opening, goods, services, constraints on subsidies, intellectual property— and so on—will be the same as the EU ones.

What does this mean in practice? For goods, it means that there will be a tariff on trade in goods between the UK and the EU. Assuming it is the same, it is, on average, 4% or 5%. The weighted average is in the zone of 3%. There are peak tariffs in agriculture. There are rather high tariffs in the automotive industry—around 10%. For footwear and textiles, it is probably 7%. That is for goods.

For services, the level of EU WTO-committed openness is very, very low compared to, of course, the internal market, which is totally open, but also to major bilateral trade agreements, such as the latest one that the EU has just started enforcing, which is the CETA agreement with Canada. What is clear is that this WTO regime is much less open than the bilateral agreement, which itself is less open than belonging to the internal market.

This would entail costs and controls. The big problem is on controls. Even if you have a bilateral trade agreement, which is not exactly your question, there will be customs for goods and for people. This is not least because you have to control what happens if the EU and the UK agree on a preference that is more open than the WTO regime. You have to make sure the preference on the EU side is given to a UK-originated good, and the UK will have to make sure that the preference given to the EU corresponds to EU-originated goods. You then enter into this whole question of rules of origin, which is a horribly complex question, because it depends on sectors, and you have to negotiate all of that. There is nothing like, for instance, a WTO standard for rules of origin, so you will have to negotiate these parameters.

Q1107 Mr McFadden: Thinking about our economy in terms of services, which dominate, manufactured goods and agricultural products, in this WTO scenario, which of those three would you say would incur the biggest impact?

Pascal Lamy: I am of the view that, on the goods side, the equation is relatively simple. My own view, again for what it is worth, is that we should keep trading at zero—duty-free and quota-free—for goods, and certainly for manufactured goods, in order not to damage the value chains, which are efficient and which have been constructed because of their efficiency.

Agriculture may be a bit more difficult. If support systems, which are quite consistent on both sides for the moment, were to diverge, then the problem of whether you can have a zero-tariff—totally duty-free and quota-free—regime became an issue.



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Services is a totally different ball game. In goods, even a zero tariff, as I have said, would imply controls, first, to check that the preference is given to the right origin, and, secondly, because you have in goods a lot of technical specifications and conformity assessments. You cannot import flowers without checking pesticide residues, nuts without checking the content of aflatoxins or pork without checking the content of ractopamine. These are the phytosanitary standards, and it is the same for the safety of lighters, toys and cars. Assuming I am right in the zero assumption with technical specifications, it then takes us back to the problem of regulatory alignment with the EU.

Services is much more complex. It depends very much on sectors; it depends on whether you are after Mode 1, Mode 2, Mode 3 or Mode 4 in services. Mode 1 is cross-border service provision; Mode 2 is consumption abroad; Mode 3 is freedom of establishment; Mode 4 is provisional transfer of personnel for the time of the provision of the service. It is horribly complex. In WTO terms, again it is much less open than in goods.

Q1108 Mr McFadden: This is my final question to you. There are a number of major economies around the world that do not have free trade agreements with the EU. One thinks particularly of China, India and the United States. These are very important economies. In the absence of a formalised free trade agreement, do they trade with the EU simply on the basis of WTO rules? Are there other agreements in place that are, if you like, more than WTO, but less than free trade agreements? Could you tell us a little bit about that? These are major economies in the world, which are a big part of the debate here.

Pascal Lamy: You are absolutely right. There are various ways of regulating trade, some multilateral, some bilateral and some unilateral. If you take the case of China, India and the US, it is different. The EU and India are negotiating a free trade agreement. This negotiation has been ongoing for many years.

That is not the case with China, because China keeps a relatively high protection of its economy. So far there has not been a political consensus on both sides that we should engage with China in something where we would both loosen our protection. By the way, the EU is a relatively open economy on this planet. I am not sure China has a big problem with the sort of trade protections we have either in goods, which is their major competitive advantage, or in services where, frankly speaking, they do not have a serious competitive advantage.

The US is a different case. The reason why we do not have a free trade agreement with the US is because we are both the most open large economies. With that we can trade relatively easily, but not as much as we theoretically could, which is why the TTIP negotiation was launched some years ago. It has failed so far; it is in the fridge for the moment. This TTIP negotiation was very interesting, because it was precisely about regulatory convergence. Where can I get economies of scale in



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transatlantic trade? It was not so much about tariffs. The US has a specific tariff on ceramics, SUVs and some footwear that is higher than the EU; that is not a big problem. If I am operating in a transatlantic way, where I have a problem is in the different precautionary standards. I would wish this to be levelled so I can realise my economies of scale. This is where the real crux of the issue is. This is where the potential for more trade is available.

Q1109 Stephen Crabb: Good morning, Mr Lamy. When we have met with Michel Barnier, one of the things he likes to show us is his famous slide that shows the descending staircase of different Brexit options. On the far right-hand side of the graphic is a dotted line, and on the right-hand side of that line is “no deal”. It is even worse, in those terms, than the option at the bottom of the staircase. Do you broadly agree with that presentation? Do you not think there is some merit in treating a WTO no-deal outcome as something to be negotiated and in seeing merit in treating that as one negotiated option possibility alongside the others?

Pascal Lamy: The WTO option is, in many ways, an option in case of no deal. This is what will happen given the commitments the EU has if, if I understand it well, the UK exits. The UK is already legally a member of the WTO, so there is no big problem there. It is automatic: if and when it exits, it automatically keeps its legal capacity as a member of the WTO. It notifies its trade regime as the equivalent of the EU one, so it is a “copy and paste” of the EU system. This provides for a floor of trade regulation and trade openness.

As I said previously, this is not as good as a bilateral agreement, which is not as good as the internal market. It is not the apocalypse and it is not the law of the jungle—there will be a system; there will be discipline; there will be regulation—but of course at a much higher cost than league number two, which is at a higher cost than league number one.

Q1110 Stephen Crabb: Has the UK Government made a mistake from a negotiating point of view in not keeping this seriously in play as an option that we would be willing to live with?

Pascal Lamy: I would be very cautious about pronouncing political judgment on the behaviour of Governments, on both sides, by the way. I have to remain free and neutral. This option is there. There is a safety net there. It is a net with rather wide stitches as compared to a good bilateral agreement or as compared to the internal market, but it is there.

Q1111 Stephen Crabb: If both the UK Government and the Commission were treating Brexit as a longer-term project—so the Article 50 timetable did not apply in the way that it is and we did not face the key points in the negotiations we have coming up—could the WTO outcome actually be a positive outcome for the UK, if there were more time to prepare? I mean if there were time to adjust trade patterns and for business to adjust.

Pascal Lamy: In technical terms, the WTO is the second best as compared to a bilateral agreement, which is the second best as compared



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to the internal market. There is no doubt that the hierarchy is in this order, which is basically why WTO members negotiate WTO-plus bilateral agreements, “plus” meaning more trade openness and more facilitation of trade. That is why EU members negotiated a regional “plus plus”, which is the internal market.

Q1112 Sammy Wilson: Can we just turn to the border between Northern Ireland and the Irish Republic? Currently, there is a frictionless border there. If we resorted to WTO rules, how would the WTO regard the border between Northern Ireland and the Irish Republic? What would they expect to happen at that border between Northern Ireland and the Irish Republic, the Irish Republic being a member of the EU and Northern Ireland of course being outside the EU after Brexit?

Pascal Lamy: Whatever option you take—either a bilateral agreement or the WTO option—the UK exits the EU, which means that Northern Ireland exits the EU. This will necessitate a border. There will have to be a border, because you need to check both goods and people, though services is a different story. You have to check, if there are duties, that duties are paid. If there are no duties, you have to check there is a good reason for paying no duties, which is the about origin. Plus, of course, there are technical specifications. Usually, because there can be a rupture in the transport of goods, there is a need to check using samples that your chickens do not have this disease or your lighters have this certification.

Whatever the solution, it implies a border. The question on the Irish issue—I discussed this when I went to Dublin last autumn—is about where you have it. I recognise that this is an extremely politically sensitive issue, but I do not see any solution with no border at all.

I suggested at the time what I called the Macau option, which is a system that derives from the fact that in order to be a WTO member you do not need to be a sovereign, but you need to have an autonomous customs policy, which is something that Macau and Hong Kong have, for example. In the case of Macau, they clearly belong to China, but they are members of the WTO in their own right because they have an autonomous trade policy. The Macau option would be about giving to Northern Ireland the same autonomous trade capacity as China has given to Macau, which does not mean that Macau does not belong to China, and then you have a single system. Because then Northern Ireland says, “We will apply the same trade regulations as Ireland”.

Otherwise, you have to have a border. Again, where is this border—is it north-south; is it east-west? That is an extremely politically complex question. In my view—I am putting it very simply as an expert—if it is not east-west, it has to be north-south, and the other way round.

Q1113 Sammy Wilson: You say “a border”. A border can take many different forms. Indeed, a former director at the WTO has given a report to the European Parliament indicating that those border arrangements could be



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done on a virtual basis, where electronic checks and a range of other measures could be put in place to do the kind of checking you have suggested. Are you suggesting that, in your view, a physical border—as in border posts along the land boundary—is the only way of complying with the requirements of the WTO?

Pascal Lamy: Yes, that is my view. I find the concept of a virtual border extremely interesting and attractive, but I have never seen a virtual border. The best system of trade facilitation that we have is with Norway. If you go from Norway to Sweden, you have a border post and you have border control. If there was a place where everybody would be happy with a virtual border, it would be this border. It is nothing like that.

Q1114 **Sammy Wilson:** Let me just press you on that. From what you have said in your earlier answer, the purpose of the border is to ensure that rules are complied with, that taxes are collected and that the regulations that are required are adhered to. You are saying it is not possible, even though currently some of that is being done by electronic checks, etc. You are saying that that is not possible.

Pascal Lamy: Yes, absolutely. An electronic check is a check.

Q1115 **Sammy Wilson:** It does happen at present. We were told by the head of HMRC that 96% of customs checks currently are done electronically.

Pascal Lamy: I am absolutely fine with that. I am a big fan of electronic checks, because it is less costly than a physical check, but it still is a check and it is still more costly than no check.

Q1116 **Sammy Wilson:** But it is not a physical border. It is done electronically; it is done without border posts being put in place to open lorries, etc.

Pascal Lamy: Leaving aside the issue of smuggling around the border, you will need to be able to do these checks on sanitary grounds and safety grounds. We are talking here mostly about goods, but you will also need to check people. Borders are also a place to check and control people. We know that even within the European Union now, with the Schengen rules, borders can sometimes reappear.

Sammy Wilson: We have a common travel arrangement already in Northern Ireland.

Pascal Lamy: So far, yes.

Q1117 **Sammy Wilson:** Outside of an FTA, what would WTO rules say about the UK unilaterally choosing to operate a frictionless border?

Pascal Lamy: Are you still talking about Ireland or anywhere else?

Sammy Wilson: I will come to the second part of the question in a moment, but it could be between Northern Ireland and the Irish Republic. It could be between the Irish Republic and Great Britain, or the UK and other parts of Europe.



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Pascal Lamy: By definition, a border is somewhere where you do checks on both sides. The UK has a good reason to check that what comes into the UK has the proper origin—assuming there is a zero tariff, which is the right way to go—and the other way around. The border is the place where you have checks on both sides. If one side says, “There will be no checks,” for whatever reason, the other side may not agree with you that there is no ground for checking.

Q1118 **Sammy Wilson:** It is possible for the UK to unilaterally say that it wishes to have no checks.

Pascal Lamy: Yes, but that will not mean that there is no border.

Q1119 **Sammy Wilson:** That would be a choice for the Irish Republic, and for the EU to decide whether it wished to impose on the Irish Government to put those checks in place.

Pascal Lamy: You are absolutely right, but I am convinced that if the UK trades with a zero tariff with the EU, UK customs will want to check that what crosses this border has an EU origin, so that you do not give a zero tariff to Chinese goods that are imported into the EU and then re-exported through the Republic of Ireland to Northern Ireland—i.e., the UK.

Q1120 **Sammy Wilson:** If the UK unilaterally decided to put no checks on the border with the Irish Republic or between GB and the Irish Republic, there are no WTO requirements that would require the Government of the UK to put those checks in place.

Pascal Lamy: No, absolutely not. It would simply mean in this case that the UK would be ready to give zero tariffs to Chinese goods.

Q1121 **Mr Rees-Mogg:** Thank you for coming in to see us, Mr Lamy. That is absolutely the point, is it not? If the UK Government believed in free trade, it would be completely relaxed about Chinese goods coming in. One of the great opportunities about being outside the customs union is that we will be free to set our own tariffs and those could be much lower and provide cheaper goods, particularly food, clothing and footwear, benefiting the poorest in our society most. This is one of the real opportunities of leaving, and we can do it unilaterally.

Pascal Lamy: Was that a question?

Mr Rees-Mogg: It was a question.

Pascal Lamy: It all depends on what so far, I have to say, is unknown, which is about what the UK believes is the right trade policy for the UK. We have no clue. When I say “we”, I mean observers, notably on the continent. The question is: what is the trade policy of the UK once it has recovered its autonomy in trade policy? What you have just said is an option, which is totally opening trade. This view exists within the UK political spectrum. Patrick Minford was a great advocate of that for a long time. Whether the UK Government’s position is that the UK will be



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totally open, I am not sure. Maybe it will be. Secondly, even if it is a totally open, unilateral zero tariff, you will need to check standards. As a precaution, you will need to check the safety of cars, toys and dolls.

Q1122 Mr Rees-Mogg: We will not need to check it from the European Union. We could unilaterally say, "We believe the European Union has satisfactory standards. Therefore, we are willing to carry on taking things from the European Union. Therefore, there is no need for any hard border between Northern Ireland and the Republic of Ireland". It would be a unilateral decision by the UK, and that would be legitimate under WTO rules.

Pascal Lamy: First, we are only talking about goods here. We have left aside the big issue of services. Secondly, if the UK autonomously decides that the safety of things coming from the EU is fine, this does not mean the EU will do the same.

Mr Rees-Mogg: That is true.

Pascal Lamy: This is not least because the EU needs to be sure that what it imports, as is the case with the UK within the internal market at present, fits a number of precautionary requirements, which protect health, safety and the rest. This issue of what we call in our jargon "non-tariff measures" is absolutely crucial. Again, whether the UK Government has a trade policy to be 100% open—duty-free and quota-free, with zero tariffs—is not for me to say, but so far I have not seen a clear picture of what it could or should be.

Q1123 Mr Rees-Mogg: No, but what I am really asking is whether, under WTO rules, there is a clear route that the UK could take that would ensure there were no additional complications in goods coming into the United Kingdom, because that would be under our control.

Pascal Lamy: You can always unilaterally open your trade more than what you have accepted as a minimum requirement in WTO, of course. That is why, by the way, bilateral agreements are WTO-plus. For instance, when I was EU Trade Commissioner, I made sure that the EU would adopt a regime that is called Everything But Arms, where EU imports duty-free and quota-free from the least developed countries without any duties, but of course with technical controls. That was an autonomous trade opening, which was perfectly acceptable under WTO terms.

Q1124 Craig Mackinlay: Thank you, Mr Lamy. It is very good to see you. I just wanted to examine some of what you said. You said the sort of premier league was the internal market; the secondary league was bilateral agreements; the third league was WTO. That is as if the internal market is some sort of gold standard and is the cheapest route. That is the bit I have some difficulty with. To comply with internal market standards and specifications, there are costs associated to businesses in complying with those rules. We might determine them to be somewhat



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excessive.

Is it not a fact that while the internal market has been in place, the US has actually had twice the amount of growth into the EU internal market than the UK has from within it? That rather demolishes the idea that the internal market is a gold standard. What are your thoughts on that?

Pascal Lamy: Again, I was Chief of Staff to Delors when the EU, on his initiative, decided to move from the common market at the time to the single market. The reason this was done—and it was enthusiastically supported by Great Britain at the time—was that levelling the playing field in a capitalist, market economy is a good thing to do because it produces efficiencies and economies of scale, which benefit the consumer.

There may be some cases where for each and every member of the European Union moving to a common standard implied a bit of a higher cost, if the previous standard was lower. It always worked, because the benefit you get from accessing a pool of 500 million consumers is much larger than the marginal cost you have to bear in order to match a bit of a higher standard.

It has worked this way, and there is no dispute within the EU that moving to the internal market was a good thing to do. It remains a good thing to do, not least because in some of these areas the internal market is still imperfect. It is relatively well done in goods; it is still imperfect in services. There is more to come, in my view, in order to explore this mine of available efficiencies, which are there.

Q1125 **Craig Mackinlay:** Going a little bit further with the internal market, you have Turkey's relationship with the EU, which is one of customs union—an imperfect one, because agricultural goods are outside it—yet we heard last week that this has not been frictionless trade. Turkish lorries are held up at the Bulgarian border for many hours, because they may not comply with the technical standards the EU require and, of course, there are checks to ensure agriculture products meet the phytosanitary checks.

We then have the completely different example of the Norway-Sweden border, which is a fairly good example of a frictionless one. You have Norway not in the customs union, but in the single market. Still, we have delays and the potential for borders.

Based on what we have been hearing over the last few days from the Opposition party that the customs union may be the solution, is it not the case that once you accept the customs union, we then need the single market for the frictionless thing? It is rather that one leads to the other. We either do not bother with both or we do not bother leaving the EU. Is that, frankly, what we are looking at? Would that be a fair assessment?

Pascal Lamy: What history tells us is that the EU started as a customs union and a common market, and then moved to the internal market. The common market was a customs union with free trade, but borders. We then moved a stage further—to a single market, which is a common



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market without borders. The price of doing that was regulatory convergence. You can have a customs union without an internal market. It was the case for quite a long time—until 1992.

The two examples you give are perfectly valid. Norway, basically, is in the single market *de facto*, without being in the customs union, because Norway, for its own reasons, wants to keep an autonomous trade policy, although in reality, if you look at the difference between the Norwegian trade regime and the EU trade regime, there are not many differences.

The case of Turkey is a bit different. It is a bit of an awkward situation, with a sort of customs union that is not really a customs union in some areas. The reality is that this awkward situation can only be understood with the notion that it was agreed at a time where Turkey was to join the European Union. This is the reason why you have this specific arrangement, which nobody is happy about, by the way, not least because Turkey has *de facto* lost control of its trade policy. If the EU signs an agreement with Egypt, and Turkey does not, the reality is that in many areas they have to abide by this agreement.

By the way, this is also now a problem the other way around. If I am correctly informed, Turkey recently signed a free trade agreement with Malaysia. The EU does not have a free trade agreement with Malaysia. What happens if Turkey imports and re-exports Malaysian products? The Turkish example, again, is not a valid one. It can only be seen as something that was done at a time when we thought Turkey would very soon join, which obviously is the opposite with Brexit, if and when it happens.

You must distinguish between the customs union, which means that you can have free trade within the customs union for the price of abiding by the trade agreements that the customs union passes with the rest of the world, and the single market, which is a sort of “customs union-plus”, with regulatory convergence.

Q1126 Hywel Williams: Good morning, Mr Lamy. Just to go back to the point Sammy Wilson and Jacob Rees-Mogg were raising about having an open door, essentially, between the Republic of Ireland and Northern Ireland, is there anything in World Trade Organization rules that would require the UK to extend a similar open door to other countries? Can we have one policy for the peculiar requirements of Northern Ireland and the Republic, and then other policies in terms of trade with other countries?

Pascal Lamy: That is a good question. In theory, the WTO regime is guided by what we call the most-favoured-nation clause. In theory, you are meant to provide to any of your partners a specific preference you provide to one of your partners. This is the theory.

Article 24 in GATT and WTO allows for specific bilateral or regional arrangements under a number of conditions. The main condition is—I quote the law, the regulation—that it opens “essentially all trade”



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between the two partners. Whatever “essentially all trade” means is a matter for interpretation. Trade lawyers have written thousands of pages about this, which is a very interesting theoretical case.

One condition is that these preferential agreements liberalise essentially all trade, and another condition is that they are notified to the WTO and in theory vetted by a specific committee. In theory, members of the WTO have to clear this in looking at what is in this agreement. The reality is that this process is complex and cumbersome. There are a lot of agreements waiting in line to be cleared, and the control is, let us say, shallow.

Q1127 Hywel Williams: In your very wide experience of trade, is there any country in the world that has an open door to all trade with anybody?

Pascal Lamy: No, I do not think so, because the country doing this would have no leverage to gain market access in third markets, which of course is your negotiating currency. If you have totally open trade, why should others give you access to their market? They have duty-free, quota-free access to your market. Unfortunately, that stems from the fact that—intellectually, it is a bit absurd—we say, “Trade is protected and we negotiate the way it is open”, rather than saying, “Trade is open, and we negotiate the way it is protected”. In my view, that would be a much simpler solution, because we all agree basically that open trade is a good thing. There may be reasons here and there to obstruct trade—good reasons—but it would be better if we said it is open. We do it the other way around, which puts countries who intend to have a totally open trade policy in this asymmetric, disadvantaged position.

Q1128 Hywel Williams: Can I ask you one further question? Much of the discussion about the north and south parts of Ireland is in terms of just that particular border, but the UK has trade with the Republic east-west as well. A lot of the trade either comes in from Dublin to my country, Wales, and is shipped to other parts of the 27, or it stops in the UK. Depending on what agreement we have in the north and what agreement we have with the 26, as it were, I can envisage a situation where you have a certain set of rules north-south, and another set of rules east-west. What would be your opinion of that situation—i.e., two countries with two different regimes for trade between them? Is there such a thing anywhere else in the world?

Pascal Lamy: In this case, I assume that the north-south regime would be the EU one, in which case you have a different regime for Ireland as a whole. I hope I am not stepping on a political landmine, although I have a notion they are not far away! In this case, you have a north-south regime that is similar and an east-west regime that is a bit different. In a way, that is inevitable, in my view, if you want to avoid a border. This border, in my traditional view, is a hard border.

Q1129 Hywel Williams: Where does the border lie between Northern Ireland and the rest of the United Kingdom, if you have an open door between



the south and the north and this peculiar regime in those circumstances?

Pascal Lamy: You need checks, which is what I said in answer to the honourable Mr Wilson. In my view, at the moment the UK exits the customs union, there has to be a border. The choice is whether it is north-south or east-west. The practicalities are such that there is already a sort of east-west rupture, because there is a sea in between, but I recognise that this is politically extremely explosive.

Hywel Williams: This is a comment. If we have a north-south open border, it seems to me that we have inevitably established a border between Ireland and the rest of the United Kingdom up and down the sea. That is how it seems to me.

Pascal Lamy: That may be the case.

Q1130 **Peter Grant:** Good morning, Mr Lamy. At the moment, there is nothing unusual about the Irish border. It is an international border between two EU member states, so it is a non-existent border for most people. When we went there, we could not find the border, just as, when you cross from Italy into France, unless there is a sign to tell you that you have crossed the border, there is no physical infrastructure.

After we leave the European Union, what has been described—Sammy was describing it before he had to leave—is a situation in which one part of Ireland is in a customs union and the other part is not. We are trying to find a way not to have a customs border at the border of the customs union. What other examples can you point to where there is a customs union whose border outside the customs union is completely invisible and completely soft?

Pascal Lamy: I cannot think of any example of this kind.

Q1131 **Peter Grant:** Why is that? Why does somebody else not see the benefits of having an open border, as is being suggested for Ireland?

Pascal Lamy: Again, this is because belonging to a customs union in goods at least—let us leave aside services and people—means you have a single tariff and a single control. Once it is done at one bit of the border, it is valid for the rest. You need to be able to check this, and there is trust or confidence among the members of the customs union that if something crosses the border of one of them, it is okay for the others. This element of trust is absolutely crucial. It only works if trust is there. As you know, trust is a material that carries a lot of emotions in politics, and the reasons for trust to be there are usually very specific. Otherwise, in the Westphalian system, the first article of diplomacy is, “I have no eternal friends; I have no eternal foes”, which means I will only provide my trust with extreme care.

Q1132 **Richard Graham:** Bonjour, Monsieur. I am very interested in your Macau option, not least as a former British Consul to Macau. If I understand you correctly, the analogy is that both Macau and Hong Kong have autonomous standing within the WTO while under the sovereignty



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of China, and you are suggesting that Northern Ireland could have an autonomous relationship with the customs union of the European Union if the UK was outside it. Is that correct?

Pascal Lamy: Yes.

Q1133 **Richard Graham:** In your view, would that be a similar option for Gibraltar?

Pascal Lamy: I am less familiar with the case of Gibraltar, but why not? The idea came to my mind, because it exploits this not very well known specificity that in order to be a member of the WTO you do not need to be a sovereign. By the way, the same can be true for China and what in WTO we are only allowed to call Chinese Taipei, but which others would call Taiwan. In this case, it is even more diplomatically sophisticated, because it allows China to say, "You are a province like Macau, and we give you an autonomous trade policy", while Chinese Taipei says, "No, no, no. We are not a province; we are like a sovereign". It can be seen both ways: wings on the one side and legs on the other.

Q1134 **Richard Graham:** I understand. How would the rules of origin work in that situation? For example, were the UK to secure a free trade agreement with, let us say, the US and goods from the US flowed into the UK through a free trade agreement, what would then happen if they were to pass through Northern Ireland into the Republic of Ireland?

Pascal Lamy: It depends on the terms of the agreement between the EU and the UK. Assuming Northern Ireland mirrors the EU regime, it will depend on the terms of agreement between the EU and the UK on what confers the origin.

This is a formidably complex question. Let us make it extremely simple: in the CETA agreement with Canada, the agreement is that a car is considered as originating in Canada in order to benefit from the preference the EU gives to Canada for importing cars from Canada when the Canadian value is 50%. It has to be 50% locally made in order to be considered Canadian. That is the simplest way.

From there on, you can go to more complex issues, because there may be other ways of determining origin. There is a question about whether there is cumulation of origin. If a car is produced in Canada using parts of cars that are produced in the EU, would this count as valid in order to calculate the Canadian value addition? There are lots of options, but this is inescapable. The moment you provide a trade preference, the goods you import need a passport.

Q1135 **Richard Graham:** Coming back to the UK, were the UK to secure a customs arrangement with the EU, is there any reason why that customs arrangement would not provide for something as close to the current free flow of goods between the UK and the EU, including between Northern Ireland and the Republic of Ireland, for the free movement of goods?



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Pascal Lamy: To be frank, I am not quite sure what a “customs arrangement” is.

Richard Graham: Let us say simply that it could consist of two key elements, one of which would be the free movement of goods and the other would be a high degree of regulatory convergence or mutual recognition.

Pascal Lamy: This is what we call a free trade arrangement. The question about whether there is a border or not is another question. We have free trade arrangements all over the place with customs posts and customs borders. Being a member of a customs union is different.

Q1136 **Richard Graham:** Yes, but, Monsieur Lamy, within the phase one agreement it says quite specifically that there will be no physical border between the Republic of Ireland and Northern Ireland. The question is not about whether that will exist, because there has already been an agreement that it will not exist. It is about what the customs arrangement is to make sure the goods flowing suit both sides on the regulatory angle.

Pascal Lamy: I have difficulty in thinking what a “customs arrangement” is apart from the implementation of a trade arrangement. Again, “arrangement” is a bit vague for my technical mind. I have a bit of a problem. Is there something like a pregnancy arrangement? I do not think so. You either are or are not. If and when—that is my hope—there is a trade arrangement, the way this works, including checks and customs, will have to be agreed, but there is no doubt in my mind that once the UK leaves the customs union there is a border.

Q1137 **Richard Graham:** The difficulty of language is fascinating, is it not? We had this in Brussels last week. The European Commission continually talks about “modèle” rather than “agreement”, which is really what we are talking about. When it comes to customs agreements, again I am fascinated that the word being used is always “union” rather than “agreement” or an “arrangement”.

At the end of the day, the relationship between Turkey and the European Union is not a union; it is an agreement or an arrangement. I am interested in why you think similar language cannot be used for a customs agreement or arrangement between the EU and the UK.

Pascal Lamy: That is because, again, in my view—maybe I am wrong—the process of customs is about the implementation of a trade agreement. This is what governs a system of processing, which is customs checks. That is what customs are there for. They are there because of checks and how you do these checks. Is there a recognition that if one side does 5% sampling, the other side will stop doing 10% sampling or the other way around? This is absolutely valid in terms of operational concerns, including in terms of trying to avoid as many costs as possible. It does not change the fact that the principle is that you have a border.



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Q1138 **Mr Whittingdale:** Good morning, Mr Lamy. Can I return, first of all, to the no-deal outcome? As you have heard, the great step slide of Mr Barnier has the eventual alternative as no-deal/WTO: it assumes that if we do not reach an agreement, we just fall out and immediately adopt WTO rules. As I understand it, that requires the UK to become an independent member of the WTO. Do you see any difficulty in being able to instantly move from the EU to being a WTO member state and benefiting and abiding by WTO rules?

Pascal Lamy: No, there will be no difficulty. I do not see any serious difficulty. Like all EU members, the UK is in its individual capacity already a member of the WTO. It does not have to become a member of the WTO, unlike if it was not within the EU. Member states have their autonomous capacity. They talk the same language—it is the European Commission that negotiates—but, for example, they pay individually their share of participation in the budget. Like Saudi Arabia and like Russia, the UK pays a fee based on the trade of the UK with foreign countries, including, by the way, EU countries. That leads to the strange situation in which 28 European Union WTO members pay much more individually than they would pay if the EU was to pay the duty, because then intra-EU trade would disappear from the bill. The tradition is that they do, and they do that because they are individual members.

Assuming, as I think will be the case, that the UK adopts the EU WTO trade regime at the moment it leaves, and it may then change for the future, there will be technical problems that have to be solved. The most well known example is tariff rate quotas. In some cases, the EU accepts imports, let us say, for Hilton beef. The EU accepts imports with a zero tariff until 100,000 tonnes and then the tariff kicks in. It also works the other way around, by the way, in some cases.

The EU has access to the Brazilian market or whatever with a quota that is an EU quota. How do you split the previous EU quota between the UK quota and the rest of the 27? That is a technical question that, by the way, will not be a problem between the EU and the UK. The problem will be with others. There is already a petition tabled at the WTO by a set of major agriculture exporting countries like Uruguay, Thailand, New Zealand, the US, Brazil and a few others. They have reservations about saying that the simple way of splitting the quota is fine. Their argument, for what it is worth, is, "If I export Hilton beef to the EU market, I want to keep the freedom of choosing to which part of the EU market I will export my Hilton beef, because I am looking for where the prices are best. If the UK quota splits, I lose one of these optimisation possibilities".

When I told you at the beginning that these things were horribly complex, this is only one-millionth of this complexity. Formally speaking, legally speaking, it is not a problem for the UK to directly move to what it already is—an individual member of the WTO.

Q1139 **Mr Whittingdale:** That is helpful. As you are probably aware, it is also



the ambition of the Government that during the course of the transition period we will begin to negotiate free trade agreements with third countries, with the intention that the moment we fall out of the EU, either by agreement or not by agreement, we will be able to sign a whole series of new free trade agreements very quickly. Is that something that you see any difficulty with through the WTO?

Pascal Lamy: I do not think that there is any doubt that once the UK exits the customs union and the internal market, it will have recovered the autonomy of its trade policy and it can negotiate specific free trade agreements. That is the legal reality.

Whether this will happen or not is, in my view, a different answer, not least because, with my experience of trade negotiations for roughly 30 years, third countries will want to know the EU-UK trade regime before they enter into a trade regime with you. The simple reason for that is the assumption that this will be the best available. And this will be the benchmark, and then they will negotiate in asking more than that, so that you give them more than what the EU has given them.

You then bump into a very specific twist, which is that in most of these bilateral trade agreements there is a provision about MFN. I sign a bilateral trade agreement with you, but in this agreement there is a disposition that both sides will respect: if we give a higher preference to another country, this will be given between us. This is to avoid the sort of erosion effect of, "I give you market access if you will give me market access, but I will give more to a third country, which erodes the preference I have given you".

This is very tricky. If the UK is in a situation where it has a free trade agreement with the EU, if it gives more to others it will have to give it to the EU. Your negotiating margin is limited, plus, of course, there is the usual asymmetry, which is that in a trade agreement it is the size of the market that makes your negotiating leverage. If I pay to have access to 500 million or 400 million, I will pay less to access 50 million than the other way around, which is obvious, given that this is about economies of scale.

Q1140 **Mr Whittingdale:** Does that apply more widely in that China, for instance, might want to see the terms of an EU-UK trade deal before signing a free trade agreement with the UK, but would China also want to see the terms of a UK trade deal with India before signing? Can you do a whole number simultaneously or do they have to be sequential?

Pascal Lamy: Again, given that the UK will keep trading 50% of its trade with the continent, this will inevitably be the benchmark. When I negotiated a free trade agreement with Mexico, I started from the fact of, "Thank you very much. You give me what you gave to the US". That is the starting point. Then I want more than that. That is the way these things work, of course. If you are giving it to the US, you do not love the



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US more than you love us in a trade negotiation; it is not a question of love. It is hard benefits, and that is how it works.

Q1141 **Stephen Crabb:** Mr Lamy, in your experience, would you say the fact the UK will no longer be a member of the single market will diminish the UK's value for non-EU countries in terms of striking future trade deals with us?

Pascal Lamy: Yes, not least because in many areas—not all, but many, notably in the services sector, which is the main bulk of where the economy is now—the UK for a long time has benefited from the fact that it was the entry gate into the European market. The attractiveness of a 60 million or 65 million consumer market, which does not give access to the EU market, is inevitably much smaller than the previous situation, although, as we have said, the UK might wish to have a more open trade policy than the European Union, which is very open, but not totally open.

Q1142 **Stephen Timms:** I do not know whether you know, Mr Lamy, but there is some discussion at the moment—you have talked about it already—of the possibility of the UK remaining in a customs union with the EU. I wanted to explore a little what the effect of the WTO's rules would be, should the UK choose to do that. If a country is in a customs union with the EU, how does that constrain the international trade policy of that country?

Pascal Lamy: There are provisions in the WTO that allow for a customs union, and the EU is not the only one. If my memory is correct, the first customs union was born at the very beginning of the 20th century in South Africa with SACU, the South African Customs Union.

There are various models, although belonging to a customs union means you have to abide by the trade arrangements that this customs union enters into, because they are administered at customs. We are back to the notion that there has to be customs. There are various models on the table, including interesting ones. such a so called "Jersey" option. That is a customs union with goods only, not least because customs are about goods and people, and services is another area. Services can be protected or not, and you can accede more or less to a services market from abroad or with the freedom of establishment of that.

Of course, there is also the fact that services are regulated like goods. The safety of lighters is regulated, but the safety of accountants or dredging boats is also regulated, because there may be risks. Let us assume for the simplicity of the reasoning that we are looking at something that would be a customs union for goods. The UK would not then recover its trade autonomy for goods, but it might recover its trade autonomy for services.

Again, I am not saying this is the solution, but it is something that, given what a customs union is about, might look logical. If the purpose is really to avoid damaging bilateral trade in manufacturing and, if possible,



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agriculture, that is something the WTO could consider as part of a customs union, whereas, if it is part of a bilateral trade agreement, it probably would not satisfy the Article 24 condition of “essentially all trade”, in so far as there is a lot of trade in services. This would need to be checked.

Q1143 Stephen Timms: That is very interesting. If the UK was, say, to be in a customs union with the EU for goods, how would future EU free trade agreements then impact on the UK?

Pascal Lamy: The UK would have to abide by trade arrangements that were negotiated between the EU and third countries, without having a say on the arrangement. That does not prevent softer ways of consultations.

We have the example of Turkey. To be very frank, when I was EU Trade Commissioner, I had the Turkish Minister on my back once every six months coming to my office and saying, “Mr Commissioner, we have a big problem. You did not tell us that you were negotiating this or that. We are just takers of what you do, and that is unfair”. Frankly speaking, that it did make some sense.

The reality, and my frank answer to your question, is this: if the UK remains in the customs union with the EU for goods, the UK will have to abide by the arrangements that the EU signs for goods, which by the way are already extremely open. Assuming the EU will enter into new trade arrangements, it will be in the direction of reducing whatever protection or tariffs exist. This is different from the problem of technical standards and regulatory alignment. This is another issue, because if you were a member of the customs union, but the UK decided not to follow EU rules—in the way Norway or Switzerland do—for the technical specification of goods, you nevertheless would need borders. You would be in a customs union, but you would have borders. The borders would not be for customs tariffs; the borders would be for checking technical specifications.

Q1144 Stephen Timms: One thing the UK Government regard as important is that the jurisdiction of the European Court of Justice should end in the UK. Can you just reflect on how WTO dispute settlement works as an alternative mechanism for resolving future disputes of the kind that at the moment the ECJ might well determine?

Pascal Lamy: It is a possible option, assuming the WTO dispute settlement is not jammed, which it is at the moment for reasons that have to do with the United States of America. If you look at bilateral trade arrangements, such as the one that would be considered if and when Brexit happens, some of them have their own dispute settlement arrangements. Others have recourse to the WTO system as a simple way of doing this. There is a bit of a problem in this, because in theory the WTO dispute settlement is about applying WTO rules. By definition, a bilateral arrangement is a bit different from WTO rules, not least because



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it is more open. In this case, there is a little legal hitch, but the panels and the Appellate Body would interpret an agreement that goes beyond WTO rules. Some lawyers say, "This is not pure", but that is the case.

By the way, if you look at the real activity of dispute settlements in bilateral trade agreements, there is very little of that, except in the case of NAFTA, which is the free trade agreement between the US, Canada and Mexico. By the way, the Trump Administration wants to get rid of the dispute settlement that exists, which is a compulsory one like the one in the WTO.

Q1145 **Mr Djanogly:** Chair, we were discussing before the question of other countries waiting until they see what happens with the UK-EU FTA, or whatever agreement we have, to see where the ground lies before wanting to start their own FTA negotiations. The Government's core policy here is to look at the 60 or so agreements the EU has with third countries and to try to replicate them, for whatever reason—probably because they do not have enough people to go around and do it all again and it is an easy way to start. Are you actually saying that this might not be as easy as the Government are saying, because those third countries may say, "Actually, we want to see where you get to with the EU"? Someone like Turkey might say, "Yes, but can we have so many thousand visas on top?" What are the chances of these countries using it as a starting point, rather than just agreeing to roll over the agreements?

Pascal Lamy: Trade negotiators are trade negotiators. They will want to get as much as possible from the citrus once they have the citrus in their hands. That is their professional pride, and that is how it works. My assumption is that the UK will have to say, if and when it exits, to countries with whom the EU has a bilateral agreement, "Let us keep things the way they are for the moment". Whether others will accept this and not use it as a lever to get a little more, I am not sure.

In theory, they will have an argument to do that. They could say, "We have a bilateral agreement with the EU, which is a market of 500 million consumers. I, country A, gave to the EU, which is a 500 million consumer market, the equivalent access in my country. I paid to get access to this 500 million. Why do I have to pay the same price to get access to 65 million?" Or, by the way, they could even tell the EU, "You have removed a bit of my pie with Brexit so I paid the high price for the full pie and you are taking a bit of that out". In theory, normally trade negotiators would react this way.

My assumption is that a situation where the UK replicates the 100 or so agreements can only be a provisional one, relying on good will from all the parties and people accepting not to play dirty.

Q1146 **Mr Djanogly:** You have not heard anything that would suggest that people are intending to play dirty. It is not really playing dirty. It is playing to their advantage, let us say.



Pascal Lamy: I would be surprised if some do not do that.

Q1147 **Stephen Kinnoch:** Thank you very much, Monsieur Lamy, for coming in to see us. I wanted to ask about trade defence and anti-dumping measures. You will be aware, I am sure, that 18 months to two years ago the British steel industry was in a deep crisis, and this is a matter that is very close to my heart as I have the largest steelworks in the country in my constituency.

A massive contributing factor to that crisis was the dumping of Chinese steel, with massive overcapacity produced by Chinese steelmakers. Eighty percent of the Chinese steel industry is state-owned, so clearly we are not competing here on a level playing field. Our market economy is competing against a massively subsidised competitor. I wanted to ask you: as and when the United Kingdom leaves the European Union, do you believe that its ability to compete on a level playing field by using trade defence measures when necessary will be strengthened or weakened?

Pascal Lamy: For the moment, as a member of the EU, the UK benefits from the EU trade protection. Half of the people in DG Trade in Brussels are administering trade defence instruments—i.e., anti-dumping, anti-subsidy and safeguards.

If and when the UK leaves, the UK will have to build its own system of trade defence. It will have to recruit the necessary experts and accountants. Trade defence is extremely complex. Notably, in the case of anti-dumping you have to send people to inspect the books of the producer, looking at the books to see what the margin is, what the producing price is, what the selling price is and on which market. It is horribly complex. If my memory is correct, in Brussels you probably have 200 or 250 experts who are doing only that. The UK will have to build this expertise force and then will be bound by the WTO agreement on safeguards, on subsidies and on countervailing measures—the ASCM—like any other WTO member. The UK will be able to impose its own anti-dumping duty, to take its own safeguard measure or to impose its own anti-subsidy measure.

Q1148 **Stephen Kinnoch:** Just using the steel example as an illustration, do you think that if the United Kingdom was out on its own, perhaps just as a WTO member and not a member of the European Union, the anti-dumping measures that it could have taken against China could in any way have been as effective as the anti-dumping measures that were taken by the European Union, which ultimately led to the reduction in production and dumping of Chinese steel?

Pascal Lamy: Yes and no. Yes, in so far as, in theory, if there is dumping there is a margin of dumping that you calculate and you offset this with an anti-dumping duty. There is only one technical solution, and the UK would not do more than what the EU did, or the other way around.



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The “no” part of the answer to your question is that, if I am China, I have less of a problem with the UK with its own market obstructing my steel than the big market of the EU.

In this case, my own technical view is that the real problem we have is that there is a big overcapacity of steel production in China, that China has to cut this and that we have to bring China to reason, which is, by the way, what has happened in the G20 somehow, and the OECD. That is the real problem.

Would the use of UK trade defence be as effective? Yes and no, but the fact that it is a smaller market than part of the bigger market would be less of a problem for others, for sure.

Q1149 Stephen Kinnock: I just wanted to change tack a little bit and ask about this issue of the United Kingdom’s ability to strike trade deals with non-EU countries during the transition period. It is basically accepted now that the transition period will be a carbon copy of the status quo, minus our representation in the institutions. Assuming that the transition period is a standstill, is it conceivable that non-EU countries will wish to engage with the United Kingdom in any sort of discussion about doing trade deals whilst we are in that transition period?

Pascal Lamy: I have the same answer as to the previous question on this topic: in theory, yes; in reality, third parties and third countries will, in my view, wait to see what the EU-UK trade regime is before they enter or not into the negotiation, at least into the conclusion of the negotiation. Furthermore, there may be, as we all know, a long time from when you start a negotiation. It is like building schools: the time between you cutting the ribbon and the school starting to operate sometimes is decades. Trade negotiations may be very long. Some of them could start, but my guess is that they will wait to see what is given to the EU by the UK and what is given to the UK by the EU, and they will use this as a starting base.

Q1150 Stephen Kinnock: We have created a Department for International Trade here, which is supposed to be going out and striking these deals. What do you think that Department is doing at the moment? What is the point of that Department?

Pascal Lamy: The first point of the Department is to build a Department: to gather the necessary expertise, which is not there, because rationally the UK, like the other members, from the moment this was pooled in Brussels, disarmed their own expertise on trade deals, which is totally rational behaviour according to taxpayers’ views.

The first thing is to rebuild this expertise and it takes time. Is it two years? Is it three years? Is it five years? The time probably has this order of magnitude. Then you have to look at what trade deals these countries have entered into with other countries, in order to get a sense of what they want or can do, or do not want to do or cannot do, so there



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is a huge amount of analytics to be done. You also need the UK, in the meantime, as I already said—and I am hoping I have said this in the nicest possible way—to decide on what its trade policy is about. You need a function such as, “I will negotiate trade with this country because I need this or I want that; they want this and I am ready to give that”. This is the content of a trade policy: where you want to be open, where you want protection.

I am talking only in market access terms, leaving aside the technical regulation and recognising that there is sometimes a bit of a grey zone between protecting the producer and protecting the consumer. This inevitably will take a lot of time.

Q1151 Peter Grant: Following on from the bit about the WTO scenario, it has been suggested that the benefits of being able to strike our own deals under WTO terms would outweigh the potential disadvantages of leaving the European Union. In what circumstances would another country be keen to strike a bilateral trade deal with the United Kingdom that gave us better terms than the deal we would be looking to negotiate with the 500 million members of the European Union? Under what kind of circumstances could the UK on its own expect to get a better bilateral deal than we would get as part of the EU?

Pascal Lamy: That is a very good question and the answer is that it depends. There may be circumstances or areas where accessing the UK market is of specific importance for a country that produces something that is very darling to UK consumers. Take jelly. There is not much of that on the continent, but British consumers love it. If I am country A and I have a big competitive advantage in producing jelly for whatever reason—nature, my climate or whatever—I will target the UK market and for that I will be ready to offer to the UK more than what I have offered to the EU in scrap metal tariffs or bicycles. I do not have a big domestic bicycle industry, so they will not be bothered, but my jelly producing industry will be very happy so I will go further.

I will go further for a price: for the price of my acceding to this niche that did not really interest the EU-as-a-whole trade negotiator but will interest UK-specific trade negotiators. Niches and specific cases of this kind might make sense, but you cannot generalise and it will remain the case that when negotiating with a 450-million consumer, there is a price to pay. When negotiating with a 60-million consumer, there is another price to pay. The price of B is lower than the price of A.

Q1152 Peter Grant: It has been estimated that by the time we leave the European Union, over 80% of UK overseas trade will either be directly with the EU or with countries that have trade deals through our EU membership. How much of that 80% is it realistic to think can be replaced by the niche market for top-class jelly that you referred to just now, and how long is it going to take to replace the trade deals that 80% of the trade is covered by?



Pascal Lamy: According to me, it is a small proportion. Whatever you say about modern technology offsetting the cost of distance—and there are numerous studies on this—proximity remains a fundamental driver of trade. I am not saying the UK will not have trade opportunities that it may not have today as part of the EU, but I would very much doubt, as an expert—again, I am not entering into any politics—that the 1% you can gain there will be comparable to the 5%, 6% or 7% you will lose on the other side. That is my rough estimation and, by the way, that is what economic calculations that are available on the market say.

Q1153 Peter Grant: There has been an assumption in the UK that if, for any reason, we fall out with the EU without a deal or if, following the advice of some Brexiteers, we just walk out almost immediately without waiting to do a deal, we will immediately start trading on full WTO terms. Some of your colleagues and former colleagues at the WTO question that. Your successor as Director-General, Mr Azevêdo, has indicated that the UK could face what he described as tortuous negotiations, simply to get back to WTO terms and that “pretty much all of the UK’s trade...would somehow have to be renegotiated”. Peter Ungphakorn, who is a former WTO official, has said something similar. He suggests that even if the UK decided to go for WTO terms, it would take a bit of time to negotiate and replicate the EU’s trading terms. Is that correct? Is it a fact that even if we go for WTO terms, we need to allow time to negotiate them before we start trading?

Pascal Lamy: If I was the DG for the WTO, which I was for eight years, my answer to the previous question about this would have been more cautious than the one I gave you, because I would be accountable to 169 members who, legally speaking, have a right to question any new notification that the UK would make of a new schedule in WTO, with the notion that, “I have not negotiated this”. I am not surprised that Azevêdo covers his back, because otherwise he would be told by some WTO members, “Hey, what you said is prejudicing my rights. You should not do that because when I go and sit with the UK they will say, ‘Azevêdo told us there was no problem’”. I understand fully, and I probably would have done the same if I were in his boots.

My answer to the previous question was an opinion. I do not think people will do that because it does not really make sense and because provisionally nothing changes much, but if the question is, “Legally, is it totally waterproof that no WTO member will object to EU-replicating?” legally speaking the answer would be no, there is no certainty. My view is that what is going to happen will be okay on this front.

Q1154 Peter Grant: That almost seems to suggest that, although we have tended to look at full WTO trading terms as being—I think this is how you described it—third division or fourth division, as opposed to the premier league of the single market, if we decide to relegate ourselves from the premier league into a third division, if we try to do it too quickly and we get it wrong, we might not even make the third division. Is it a



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possibility that we end up in the North East Somerset Sunday pub league for a few seasons before we try to get back in? Is it actually possible that if we really mess things up, we might not even have WTO terms?

Pascal Lamy: In theory, yes. In reality, no, I do not think so. It is a bit like reading a crystal ball. The main problem with the WTO option, again, is not so much in goods. The main problem with the WTO option is in services, because the relative level of opening of the EU according to its WTO commitments in services is very tiny, and there is much more of a difference in services between the WTO and a bilateral. In terms of third league, second league or first league, the difference in leagues is much wider in services than it is in goods. The EU goods market is relatively, in WTO terms as compared to other WTO members, much more open in goods than in services.

Q1155 **Sir Christopher Chope:** Good morning. Can I take you up on a couple of your answers to colleagues? I would like to ask, first, about this steel dumping. There was a lot of frustration in our country that we were not able to act unilaterally against the threat from China. Would you agree that when we leave the European Union, we would be able to take much quicker and more decisive action in such a situation, where the dumping is particularly adverse to a particular section of our heavy industry?

Pascal Lamy: I do not see why not. It is true that for the EU to take an anti-dumping measure they have to go through decision making on a simple majority, which is much more efficient than a larger requirement for a majority. My own experience is that it is not a very slow process, but if you do it on your own and provided you have gathered the necessary expertise forces, as I said previously, it might be quicker—i.e., take one year instead of 18 months, maybe. That is provided you get the necessary expertise, which inevitably will be more costly than pooling it in Brussels.

Q1156 **Sir Christopher Chope:** Certainly the representation that we had on this issue was that we thought we could have done it much more quickly if we had had the freedom and had not had to wait for the European Union.

Can I turn to another issue that you raised earlier? That was the issue of heavy goods vehicle cabotage. You emphasised the mutual benefits that come from cabotage but then you said that you need to have a requirement that UK-based heavy goods vehicles would have to comply with EU laws on drivers' hours even when operating solely in the United Kingdom.

Surely when the United Kingdom leaves the EU, in the same way as EU heavy goods vehicle drivers will need to comply with domestic UK law, which we will be able to change as we wish—we might, for example, wish to reduce the maximum permitted size of heavy goods vehicles—is it not right that when our heavy goods vehicles go over to the continent then they will have to comply with the rules in the European Union, but that that that can be done without the need for any complicated agreements between the EU and the United Kingdom?



Pascal Lamy: Please do not misinterpret what I said. I said that as far as cabotage is concerned—i.e., the ability to unload in Paris, reload for Marseilles, unload in Marseilles, reload for Rome—this trajectory would be under EU driving hours standards. I do not think that the EU would accept that the cabotage right is maintained if there is a situation that would be seen as EU lorry drivers having to respect an eight-hour driving standard while competing with people who have a 10-hour driving standard. They just would not accept that. It is as simple as that. This will not get a majority in the European Parliament.

Q1157 **Sir Christopher Chope:** That is not the problem, is it? That will not be a problem because it has always been the situation that if you wish to operate in another country, with vehicles or selling goods or whatever, then you need to comply with the rules of that country. When we leave the European Union, our own heavy goods vehicle drivers will not have to any longer comply with EU regulations and laws if we decide that we wish to have separate regulations and laws. That is the issue.

Can I also ask you about the global trade? I thought the whole purpose of the WTO was to facilitate global trade liberalisation, and today you have been, in your evidence, emphasising the importance of bilateral deals rather than the benefits that come from multilateral deals, such as with global trade. Why are you now favouring bilaterals over multilaterals?

Pascal Lamy: I am big fan of Chinese proverbs, and one of my favourite ones is, "Do not mind the colour of the cat provided it catches mice". The purpose of opening trade is reducing obstacles to trade. It is a good thing to do that. I am not saying opening trade is a nirvana. There need to be conditions attached to that, and I wrote a book when I left the WTO and recovered my freedom of speech, which is called *The Geneva Consensus*, where I explained why trade opening works and under which conditions it brings the sort of welfare that, at the end of the day, is what matters. It is a tool to get something.

There is a multilateral trade regime that is the least common denominator, where Bangladesh and Sweden, who are two totally different animals, can agree on a basic set of rules. There are bilateral agreements that are WTO-plus. There are regional agreements that are WTO-plus. Sometimes there are unilateral trade measures that open trade without any price in terms of negotiations. All this mish-mash leads to trade being more open. It is not an either/or. For the last 50 or 60 years, you have had multilateral trade opening, regional trade opening, bilateral trade opening and unilateral trade opening. Whatever way you do it, the good thing is that it moves forwards. By the way, in many cases, bilateral trade agreements have opened the way to multilateralisation. There is a synergy.

I have had to cope with a lot of trade purists in my life, and trade purists will tell you, "This is a preference. A bilateral trade agreement derogates to the MFN clause. It risks creating trade diversion", etc. The



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fundamental reason why that is not the case is that this trade preference necessitates, as we said previously, rules of origin to be certified. The cost of certifying rules of origin will mean that, in some cases, people who trade do not want to benefit from the preference, because it has a cost to benefit from the preference, so they will go multilateral rather than using the available preferential trade regime.

All in all, global trade is more open today than it was yesterday. It was more open yesterday than the day before.

Q1158 Sir Christopher Chope: Can I just go on to this issue of the approximation of the laws relating to trade? When we leave the European Union, we will have the same trade arrangements with the EU as we have at the moment, and that will be a mutual arrangement. Under WTO rules, will we not be able to continue to be protected on that status quo following our departure from the European Union? That same situation will prevail, will it not?

Pascal Lamy: WTO rules regulate terms of trade. They do not regulate the technical specifications. There is nothing in the WTO that says the level of pesticide in flowers should be this or that. This is contained in two agreements that are WTO agreements, which are the technical barriers to trade agreement and the sanitary and phytosanitary agreement. They basically establish that you cannot manipulate precaution for the sake of protection. You cannot unduly favour your producers in the name of protecting your consumers. Take a very well-known example. Try to sell a locomotive to Russia. No way. Russian locomotives have technical specifications that only Russian producers can match.

WTO regulates on customs and issues of market access. It does not regulate on non-tariff measures. Again, the only principle that is accepted is that a non-tariff measure cannot be used as if it was a tariff measure. On the issue of whether the EU and the UK, if and when Brexit happens, will keep regulatory convergence, they will move to mutual recognition, which is a very specific way of ensuring, provisionally, with a certain fragility, regulatory convergence. In terms of whether there is a harmonisation and whether there is an agreement that if you move one way you have to notify, and I will be able to object, this is outside the WTO.

Q1159 Sir Christopher Chope: Do you accept that it would be much more difficult for the EU to say that they will not recognise UK products and services after Brexit, not least because of the agreement on technical barriers to trade?

Pascal Lamy: No. The EU will keep, as the UK will, its total sovereignty in deciding on specifications for goods or domestic regulation for services, which is the equivalent for services. The equivalent of a safety standard for lighters is an exam for architects or for accountants, or certification for dredging, as I already mentioned. In terms of regulation, according



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to WTO terms, as long as the EU or the UK has accepted market access, for exports coming from third countries, what you cannot do is impose specific standards on these foreigners that are different from the ones you impose on your producers. The WTO is about non-discrimination.

I had an example when I negotiated the terms of entry of China into the WTO. China opened its car selling outlets. The distribution of cars was opened. Not long after that, China took a regulation that from now on car distribution outlets would be further than 20 kilometres from the centre of town. Strange, because of course China's own outlets were in the centre of town. They had opened their market, so we were all happy that we could sell cars in China, but if you can only open 20 kilometres from the centre of town, you obviously will not sell many cars because people do not go there. The reason for that was precautionary. So there may be such areas. I then told China, "This, de facto, is discrimination. In theory, it is not, because your regulation applies to everybody, but in reality, you are cheating us because you opened your market. In reality, you are taking from the right hand what you gave me from the left hand". These are the terms of the game.

As long as there is no discrimination, you keep your sovereignty in putting in place standards A, B, C and D. There are a few areas in the international system where this standardisation is "global", such as the Codex Alimentarius for food, which is a joint operation between the FAO and the WHO. There is a very effective animal health organisation, which has a whole system of recognition: when there is a foot-and-mouth disease in one place then global measures kick in. Only a few of those areas are globally regulated. Most of them are not globally regulated and the level of precaution is in a way mastered by the countries who have the highest level of precaution, which is, by the way, why TTIP with the US would make sense.

Q1160 Sir Christopher Chope: Summarising your last answer, it will not be possible for the EU to erect new non-tariff barriers to trade in circumstances where those tariff barriers do not exist at the moment.

Pascal Lamy: No. They can always do that according to WTO terms. They cannot impose on the UK requirements that they do not impose on their national producers, and the other way around.

Q1161 Craig Mackinlay: My question is to do with this knotty problem of mutual recognition. We heard a lot about CETA when we were in Brussels last week—CETA-plus and a Canadian deal as a potential option for the UK. We then heard a lot of ranting, I would almost say, about Britain going up the route of social dumping, environmental dumping and tax dumping. I am not sure there are any tax chapters in the CETA deal. As I understand, if a Canadian chemicals company wants to sell into an EU state, there is obviously going to be a zero tariff, but it is still a requirement for the chemical company in Canada to comply with the REACH arrangements in the EU. Does that work the other way around as well? Does the European chemical company have to register with



whatever the equivalent Canadian organisation is?

Is it peculiarly in deals the EU does that we seem to not get mutual recognition? For instance, in the New Zealand-Malaysia free trade deal, is there a higher level of mutual recognition of standards, or are they fairly unusual? I know the one that definitely works is New Zealand-Australia, but is it unusual that these are implemented, or is it unusual that the EU does not like them?

Pascal Lamy: It is more used than it was 10, 20 or 30 years ago, but it is still not much used, because it is very complex and it is fragile. A mutual recognition agreement is something that is very fragile, so the reality is that in most of the trade agreements—indeed, the recent one, and CETA is a good example—there are nice words about best efforts to co-operate in standardisation of spare parts of cars or chemical ingredients, but the legal constraint is very weak and totally different from what it is in the internal market.

Q1162 **Chair:** Very lastly, going back to the first question I asked you, how long do you think it would take to negotiate a Canada-style agreement? When we met Michel Barnier, he said, “Given all the red lines the UK has set out, we could do a Canada dry agreement”. I think that was his expression. Do you think that would take five or six years, or could it be concluded quicker than that?

Pascal Lamy: I was the one that initiated the idea of an EU-Canada bilateral trade agreement in 2002. That was some time ago! The time for this idea to come to fruition has been roughly 15 years. I really would love Brexit, if and when it happens, to be as least damaging as possible for both sides, first, because I am a Norman, so I have a part of my flesh on your side, and, secondly, because if that is bad for you—which in my view it is, but this is a matter of government—it is bad for us as a proportion of our trading economic relationship. I hope that, at the end of the day, we will be much nearer to where we are than the Canada CETA agreement. Compared to the internal market the distance between the internal market and CETA is huge. This would entail many, many costs that are not there at the moment.

Chair: Mr Lamy, on behalf of the Committee, can I thank you very much for your evidence today, which has been really, really useful and helpful? If I may say so, it demonstrates the many years of experience you have had in trade matters, and it will assist us in our work.