

Exiting the European Union Committee

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

Wednesday 25 April 2018

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Members present: Hilary Benn (Chair); Mr Peter Bone; Joanna Cherry; Sir Christopher Chope; Stephen Crabb; Mr Jonathan Djanogly; Richard Graham; Peter Grant; Wera Hobhouse; Andrea Jenkyns; Stephen Kinnock; Jeremy Lefroy; Mr Pat McFadden; Craig Mackinlay; Seema Malhotra; Mr Jacob Rees-Mogg; Emma Reynolds; Stephen Timms; Hywel Williams; Sammy Wilson.

Questions 1378 - 1488

Witnesses

I. Mr David Davis MP, Secretary of State for Exiting the European Union.

Examination of Witness

Witness: Mr David Davis.

Q1378 Chair: Good morning, Secretary of State. Thank you very much for coming to appear before us this morning. As ever, we have a great deal of ground to cover so short questions from colleagues and succinct answers from you, Secretary of State, would be much appreciated. Can I begin with the meaningful vote on the withdrawal agreement? Leaving aside when that agreement is concluded, how long will Parliament have to scrutinise it before we vote on it?

Mr Davis: Thank you. Good morning, Mr Chairman. First, yes, I will be as brief as I can. Can I just make a point at the moment? My department is normally under high time pressure. At the moment we are dealing with the high pace of negotiations, diplomacy, policy and Parliament. We are very tight. My office has told your clerk that I have to limit this to an hour and a half. I mean no discourtesy by this but my next meeting is very important to me. I just want to make that point at the beginning.

Q1379 Chair: Can I just then say something on that subject? I speak, I think, on behalf of the whole of the Committee in saying that will not really do, because a part of your responsibilities is to appear before this Select Committee and be accountable to Parliament. I think this is the second occasion where, as far as I am aware, apart from having another meeting, a specific reason has not been given. We all have other meetings. The Committee has a lot of ground to cover. These sessions are very important to us in enabling us to do our work and an hour and a half is not satisfactory. May I say that to you?

Mr Davis: I understand that. I hear what you say. We have today, as is well known, a Cabinet committee this afternoon, which I have to have various things done before we start. I make the point to you. I hope we can get through this in an hour and a half. If not, we will write to you with answers to questions that are left outstanding. Of course, as always, I will try to make myself available whenever possible. If you remember, on one occasion I came at two days' notice to the Committee.

Q1380 Chair: Let us conclude this. Would you be willing to come back pretty speedily to conclude the session if you want to cut it short to an hour and a half today?

Mr Davis: Let us see how we get on and we will see how we deal with that, Chairman. We will try to get through this as briskly as we can. We have a lot of things to talk about. Of course, as always, I will try to make myself available, as I have done these last three weeks. Last week, I was appearing in front of a Lords Committee. Next week, again, I have another Lords Committee. I am here today. As I said to you, we have



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the maximum pace at the moment on negotiation, diplomacy, policy and parliamentary activity.

Now, on the meaningful vote, in terms of timing, one of the things we have said on the issue of the vote—there will be several votes on the outcome of this negotiation—is that the first vote will be what has been referred to as the meaningful vote: a vote on the overall treaty and agreement in both Houses. I have given an undertaking, I think at your request, Mr Chairman—it may have been Keir Starmer's but I think it was yours—that we do this before the European Parliament has—

Q1381 **Chair:** Secretary of State, I am aware of that. Mine was a very simple question: how long will Parliament have to scrutinise the draft agreement once it is concluded by the negotiators before we are to vote on it? Is it a week, two weeks or a month?

Mr Davis: I do not know at this stage but I am laying out what the parameters will be. At one end, you want, as you have said yourself, that we will do this before the European Parliament will vote on it.

Chair: We know that.

Mr Davis: We have said, and I have said in terms, that that is what we will endeavor to do. We have a pace on us to deliver you a vote in that timetable. I am not going to try to preempt what the usual channels will determine, which is how long, how much time there will be and what the actual draft of the vote will be. I also make this other point to you. Unlike most votes in the House, in the previous several months you will have seen unveiled or put in front of the public and in front of Parliament all the elements of the negotiation. We already know large parts of what is going to be put in front of the House. We will know all of it, to the very last bits of the negotiation, way before we are in a position to put it to the House. You will then have a statement, and I imagine not too long after that, you will have the vote. That will be a matter for the usual channels at that stage.

Q1382 **Chair:** Okay. We will be presented, as Parliament, with an impact assessment of the withdrawal agreement before we vote. Is that correct?

Mr Davis: That is correct. Let us be exact. Given the precision of words on this particular issue, we have said that we will give you an economic assessment. That is the point: an economic assessment.

Q1383 **Chair:** Can you give an assurance that the Government's motion on the withdrawal agreement will be amendable? Yes or no?

Mr Davis: Mr Chairman, if you can tell me how to write an unamendable motion in the House of Commons, I will take a tutorial.

Chair: Fine. It will be amendable. Thank you very much.

Mr Davis: I think so. I am looking around at various people who are



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very likely to amend it.

Q1384 **Chair:** That is fine. It is just very helpful to get that assurance from you. The Government will of course treat the result of that vote as binding on it.

Mr Davis: The Government is unlikely to put a vote to the House that it does not intend to take properly seriously, yes.

Q1385 **Chair:** What does that mean?

Mr Davis: What I have just said. In other words, if the House rejects the proposed negotiation then that negotiation will fall. There are two chances of that, because of course you will then have the second reading of the Withdrawal Agreement and Implementation Bill, which will incorporate all of that, which will also be another test. In that case, of course the Government have absolutely no choice constitutionally.

Q1386 **Chair:** Indeed. I suspect we will probably explore that in a bit more detail later on in the session. In the last two occasions you have appeared before us, you have said that the negotiations on our future relationship—I am not talking about the withdrawal agreement—will be concluded by the end of the Article 50 period, which Michel Barnier of course thinks means by the autumn. Is that still your view?

Mr Davis: Michele Barnier separates this out, bear in mind. The Article 50 period is the end of March 2019. Article 50 lays down in terms that the withdrawal agreement has to take into account the future relationship. You have to have substantially agreed what the future relationship will be at the point you agree the withdrawal agreement, so yes.

Q1387 **Chair:** So you think that is still possible now.

Mr Davis: Yes.

Q1388 **Chair:** Will the document on the future relationship be a political declaration or a draft treaty?

Mr Davis: It will be at that stage a statement of the Council. I would not imagine we will have legal text at that point.

Q1389 **Chair:** What status will it have if it just a statement of the Council?

Mr Davis: Nearer to political declaration than draft treaty. It will not be in draft as a legal text at that stage.

Q1390 **Chair:** It is likely to be a political declaration, and a political declaration is not a treaty.

Mr Davis: No, it is not a treaty. Again, to remind you of previous evidence, Mr Chairman, when I have appeared in front of this Committee I have reminded you that the requirements of European law are that they cannot sign a treaty with us until we are a third country. That means they cannot sign a treaty, which is the only point at which a treaty



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becomes in any way binding, until the first days of April or the last day of March in 2019.

Q1391 **Chair** How can Parliament set any store by it if it is asked to vote on this whole process when the really important question of our future relationship is merely a statement of the Council in the form of a political declaration and not a draft treaty?

Mr Davis: That does not mean the Council will not view it as binding. After all, each of the agreements we have come to in December and March are seen as binding. They are not legally binding but we view them as completely politically binding. That is pretty forceful. I remember I made this point in December and people got into a terrible uproar, saying, "Oh, he is saying it is not legally binding". It was not, as the Commission confirmed. That does not mean we do not view it as binding. It is binding.

Q1392 **Chair:** It has been reported you want to send over hundreds of civil servants to negotiate 40 to 50 strands of work between now and October. Is that happening?

Mr Davis: It will. As is in the public domain, we have been having discussions with the Commission in the last week and this week. Some of that has been about Northern Ireland. Some of it has been about the customs proposals. Some of it, and the most important bit in some ways at this stage, has been about how we organise the substantive negotiation. If we send over however many officials and there is nobody there to talk to them, that is pointless. What we are in a process of doing is discussing that with them, but yes, it will happen.

Q1393 **Chair:** It will happen. Has that been agreed by Michel Barnier yet?

Mr Davis: What Michel said—because I talked to him about this before the March agreement—in the press conference was that all elements of the future partnership will have to be dealt with in parallel, which is in other words saying the same thing. You can look the quote up. You will find it was at the March press conference.

Q1394 **Chair:** If, as you have just confirmed, the political declaration covering our future relationship is all we are likely to get as part of the withdrawal agreement, inevitably negotiations on a treaty to give effect to that political declaration are going to spill over into the transition period. Is that not correct?

Mr Davis: Not inevitably. Bear in mind, you have left out a six-month lacuna in that, between October of this year and March of 2019. It does not inevitably mean it will spill over.

Q1395 **Chair:** But it might.

Mr Davis: It is not our intention that it will.

Q1396 **Chair:** Indeed, but that depends on the other side.



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Mr Davis: It does. Various important players—not in the negotiating team—made it very plain that they want the substantive future partnership to be very detailed. Angela Merkel, for example, said that even in October. There is no reason why we cannot turn a very detailed substantive arrangement into a treaty before the end of the Article 50 period.

Q1397 Chair: When that is turned into a treaty there will a separate further vote in Parliament on that when it comes before us.

Mr Davis: First, the de minimis position is the Constitutional Reform and Governance Act will apply. That is the de minimis position. There may be more than one treaty, for a start. It is impossible. We do not know what the full structure of the treaty will look like: whether security and defence will be separate from the future economic partnership. It is quite possible. Some of these things will have substantive domestic effects, so they will of course come with Acts of Parliament before the House as well.

Q1398 Chair: Could I turn to the question of customs arrangements and the Northern Ireland border? We understand you visited the border on Monday but it does not appear that you are much closer to finding an answer. You said on Monday that we hope to have this sorted by October, but it has been reported that the European Council wants to see significant progress by June. How are you going to do in two months what you have not been able to do in 22 months thus far?

Mr Davis: The first thing to say is that perhaps the most important voice on this would be Leo Varadkar, who said that he would rather see a good agreement in October than any agreement in June. I do not know what the veracity of what is reported is. We will make progress as fast as we can on this. There are some hard issues at the core of it, as we well know, but our undertaking is very plain: we will avoid a hard border at all costs; we will underpin the peace process, the Good Friday agreement and all of the elements of it; and we will come up with a mechanism that will enable that to happen at the border.

What we have said all along, and indeed the Council agreed and Mr Varadkar agreed, was that the best way to do that was with a good free trade agreement, because that then eliminates a lot of the issues from the beginning—not all of them but a lot of them. That is the way we are addressing it. We will of course address what are termed options A, B and C. The free trade agreement is option A but we will address all three of them in that time.

Q1399 Chair: You have just accepted, Secretary of State, that there is not going to be a trade agreement in the form of a treaty by October, because it is going to be a political declaration, and yet a deal on Northern Ireland has to form part of the withdrawal agreement. You proposed two options last October: a customs partnership and using technology. The first of those seems to have been emphatically rejected by the Commission. Is that correct?

Mr Davis: No.

Q1400 **Chair:** They are still open to a customs partnership. Is that the case?

Mr Davis: The Commission has taken an open negotiating position. That is where it is at the moment. You must not assume that every statement from the Commission lasts forever. I suggest the Committee goes back and looks at the early statements by the Commission, for example on the role of the court, and sees how that has moved over time in the negotiation. That is their negotiating position. They have criticised various elements of each of the two options talked about. We will go back and address those in negotiation. That is what a negotiation is for.

Q1401 **Chair:** Right. They have not accepted it but you are saying they have not rejected it.

Mr Davis: It is the first day, as it were, or the first few days of this round of negotiations; it is the opening position.

Q1402 **Chair:** It is all a bit late though, is it not?

Mr Davis: No, it is not. Bear in mind the interaction of this. By the way, you conflated entry into force with the treaty signing and so forth in talking about the relationship between the future agreement and the withdrawal agreement and the arrangement with Northern Ireland. The effective importance of the Northern Irish agreement, when it comes into effect, is the end of the implementation period. Until the implementation period is over, we are de facto operating within the single market and within the customs union. It is at the end of that that that takes effect. That is when it has to impact. No, I do not accept that we are in anything like as difficult a position as you describe. It is of course not straightforward. It is not going to be an easy negotiation. Nobody has pretended that, certainly not me, in the course of my time in this job.

Q1403 **Chair:** Have the Government had any talks with suppliers or businesses about the technology you want to use under the second proposal?

Mr Davis: The option B proposal?

Chair: Yes, using technology to get rid of a border.

Mr Davis: Yes, indeed. Some of the technology exists already; indeed, most of it exists already. You mentioned I was in Northern Ireland, and I was talking to one of the industry groups there at that time about their requirements on this, to supply the UK through the Irish Republic. Much of the technology already exists. It is a question of the extent to which it is used. For example, automatic number plate recognition exists already inside Northern Ireland, in terms of tracking patterns of big shipments and so on. In terms of the authorised economic operator, that exists at the moment but not in sufficient quantity to make this work. Electronic pre-notification exists at the moment. Indeed, a great deal of the compliance trade across the border on issues such as excise—there is already an excise border there—is done electronically, as you would



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expect, by either pre or post-notification. A lot of these things exist already. What that particular so-called maximum facilitation option does is take all the best practices from around the world, and in different parts of it, and put them together into one. No component of it is new. The overall size of it is new or would be new.

Q1404 Chair: Have you started discussions with any of the suppliers of the technology? Have you talked about lead times and putting in place a plan for actually making it happen, as opposed to saying that it exists around the world?

Mr Davis: Some of it is already being done by HMRC's planning. I think you had the head of HMRC here speaking about this, who said to you, if I remember correctly, there is no need for a harder border in Northern Ireland under his organisation's plans.

Q1405 Chair: Finally from me, you have emphatically rejected remaining in a customs union but when the Trade Bill returns to the House, the House will vote on whether it wishes to adopt a different policy, i.e. to remain in customs union. If that is carried, you are going to have to change your policy, are you not?

Mr Davis: I am not going to enter into hypotheticals on what the House may or may not do and if the Government are defeated in these arguments. I expect the Government's policy to be upheld.

Q1406 Chair: If it is not, you are going to have to respect it, are you not?

Mr Davis: The Government always respect Parliament but I expect the Government's policy to be upheld, for good reason.

Q1407 Stephen Crabb: Secretary of State, last time you were here you told us about how you had changed your view on the wisdom of staying inside the customs union. Do you now regard the customs union as a protectionist racket?

Mr Davis: You are trying to put words in my mouth, Mr Crabb. The customs union, like all customs unions, is designed for the interests of the countries within it. It has advantages for them. When we joined back in the 1970s, from about 1972 until about 1985, we saw significant improvement in our trade with Europe off the back of that. It tapered off after that. I would not use those phrases. I try to avoid pejorative phrases in my job because diplomacy is a large part of it.

Q1408 Stephen Crabb: What is motivating you and your colleagues in the Government's position towards the customs union right now? Is it because you are persuaded of the economic upside of new trade deals and that there are game-changing economic opportunities out there for the United Kingdom that we need the freedom to be able to get, or is it more about the symbolic freedom in itself of being able to strike trade deals?



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Mr Davis: It is more the former. There are two things. The Commission itself has said in terms that 90% of the growth in world trade will come from outside the Union. That is what we are talking about here: our participation in global trade, both inside and outside the Union. You see harbingers of this in our own position: even inside the Union, we have gone from roughly 60% of our trade being into the Union versus 40% with the rest of the world, to a position, in a year or two's time, when that will be reversed, with 40% with the Union and 60% with the rest of the world. You must not throw away 40%, so you have to do something to defend that, but the 60% is the big area where we have huge opportunities.

Q1409 **Stephen Crabb:** Do you accept that none of the Government's own data modelling shows that these potential future trade deal gains outweigh the potential loss?

Mr Davis: The trouble with the modelling is it is based on guesses about what will happen to our trade levels and whether there will be a significant reduction in trade with the European Union. That is what most of these models include, as well as very small increases with the rest of the world. In fact, the secular trends deny that. What is more, on just one element of what the Council's guidelines say, is that the Council said upfront that it wants to avoid tariffs and quotas. Straightaway, even outside, if we can keep that option in the negotiation, the arguments for sudden sharp downturns in trade with the Union tends to fall apart. One of the reasons, when talking to this Committee before, that I have been not particularly enamoured—"dismissive" is the wrong word—with mathematical modelling techniques is that they all sit on assumptions about what will happen to trade. If you get that assumption wrong, the whole model is wrong.

Q1410 **Stephen Crabb:** You regard the Government's modelling as wrong.

Mr Davis: The best modelling in the world is wrong; that is what I would say to you. I think the last time I was here I said that the Bank of England Deputy Governor referred to a Michael Fish moment about modelling, because they could not predict it. The Queen famously, in 2008, said, "Why did nobody see this coming?" talking about the financial crash. There are a fair few examples of modelling being wrong. The OBR are brilliant at what they do—they are very, very good—but look at the size of errors in the forecasting of borrowing levels. The previous Chancellor had a fantastic windfall one year. £26 billion was found down the back of the sofa. That was a modelling error beforehand.

Q1411 **Stephen Crabb:** Finally, Secretary of State, do you not agree that in the same way that there are some people who now argue that after Brexit we can have a liberal immigration policy because we will be making a sovereign choice to have that liberal immigration system, and that it is a free choice for us and is in our national interest, and similarly some people say after we leave the EU it may be that we choose to maintain EU-style regulation because we recognise that it is in our



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national interest and it is a free, sovereign choice for us to do that and that it is not being forced on us, if you were persuaded that staying inside some kind of customs partnership is in our national interest, do you not see that there is a strong argument, similar to those examples I have just mentioned, that a free, sovereign choice to be part of that arrangement would be in our national interest?

Mr Davis: The reason I first changed my mind was because I was looking at the size of the opportunity outside. I am not somebody who has ever been nailed to a particular ideology on these things, particularly in the area of free trade. Free trade is never perfect. On immigration, you know better than me, given your history, about that area, yet my job is to get the decision back to Parliament and back to the UK Government, and it is then for them to make individual decisions in the best interest of the UK, its economy, social structure and whatever. That is why we talked about a generous and comprehensive free trade agreement with an associated customs agreement. If you have no tariffs, if you have no quotas and if you have mutual recognition of standards, why would you have a very high friction border? If you can avoid that, that takes away the advantage of a customs union.

Q1412 Craig Mackinlay: Discussing where we would like to be with EU citizens, the Prime Minister has mentioned that we want a streamlined system, getting rid of the 80 pages of filling in that is currently the case. Has there been any progress thus far within the Home Office, that you know of, as to what that streamlined process might look like? Will it be drawing on national insurance data? What are the thoughts thus far?

Mr Davis: There has been a great deal of progress. There is a whole effort going on on this to make it user-centred. To that end, just as an aside, we have groups set up that involve EU citizens here. We have of course had liaison with all the embassies and so on. Coming back to the information base, the aim is to make it the absolute minimal necessary work from the point of view of the individual making the application. We intend, for example, to use things like HMRC data and allow people to effectively prove their work history by referring to their own HMRC data. Yes, that is what we are aiming to do. Some of that has started.

Q1413 Craig Mackinlay: Do you have any indications as to what EU and other EU countries are thinking of on the reciprocal basis for our citizens thus far?

Mr Davis: Not at this stage, no, we do not. At least I do not. We have to return to the citizens' rights issue under the ongoing relationship arrangement.

Q1414 Craig Mackinlay: This is the bit that is still in white, is it not, and not agreed?

Mr Davis: From memory, I think the citizens' rights in the withdrawal agreement is green but it does not include everything we would necessarily like, as we have said very publically, in terms of voting rights,



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onward movement rights and other things. The voting rights we may never resolve with respect to the Union. We may have to do all of that bilaterally, but I have already raised that with many of my opposite numbers there. None of those I have raised it with, though I have not raised it with the most difficult countries, have had a problem with it. They have said, "Yes, we want to deal with this bilaterally". We are not doing that via the Union but we will be raising other issues via the Union, and onward movement is one. When we deal with that, we are going to have to address the practicalities of how it is done, because it will then have more complex practicalities than we are facing with the 3 million here. We have not got to that point yet.

Q1415 Pat McFadden: Secretary of State, can I take you back to this question of the resolution that the House is going to be faced with later this year? What will the Government do if Parliament does not accept that resolution?

Mr Davis: As I say, it is a hypothetical. I do not think it will. We intend to bring the best possible negotiated conclusion we can to the House. We will then make the best case we can. We do not normally lay out what we will do if we lose in votes, as far as I am aware.

Q1416 Pat McFadden: You said before that if this happens, the deal falls, full stop, in total. Is that true in all circumstances?

Mr Davis: If it is a straightforward defeat of that, I would expect that to be the case; the deal would fall. Yes, I would think so. If we are unable to carry it forward, then we are unable to carry it forward. The Chairman asked me, "Would we respect the vote?" The answer is the Government will respect votes they bring to the House.

Q1417 Pat McFadden: What I am trying to drive at is whether there are any circumstances in which you would go back to the EU on any points. For example, if the resolution was amended to say that Parliament requests the Government to seek an extension of the Article 50 process, to discuss this or do that, is that possible, or would it be the Government's position that if you vote against this in any way, the whole thing falls and we leave without a deal?

Mr Davis: You cannot extend the Article 50 process unilaterally. That requires unanimity of both us and the EU 27 all together. If Parliament asks for something that is impossible, then obviously we cannot deliver on it. I am not really going to be drawn into every possible option and do your work for you in terms of how to draft an amendment to make it more difficult for the Government.

Q1418 Pat McFadden: Of course it is not just down to the Government but Parliament can request our Government, and it is not impossible; it is simply that it is not solely in the gift of the Government. Those are two different things, are they not? It is not impossible to extend Article 50; it is simply not within the gift of the Government.



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Mr Davis: The rules are clear: with unanimity, it can be extended.

Q1419 **Pat McFadden:** Correct. It is not impossible, is it?

Mr Davis: It may be impossible. It depends on whether anybody else wants to stop it. Remember the other side of this argument: the Walloon Parliament held up a treaty with Canada for some time and the TTIP option has pretty much died off the back of a few countries' objections. It may well prove to be impossible. I cannot tell you at this point.

Q1420 **Pat McFadden:** On the likely time we have for this, the Institute for Government produced a report the other week that you have probably seen, setting out various scenarios. They thought Parliament should have around five days to discuss this. Does that seem in the right ballpark?

Mr Davis: I do not know what the timetable will be when we get to this point. If we have an agreement, as both sides are intending to, in October, then what I imagine will happen is in the first instance the Prime Minister will come back and make a statement to the House. There will then be a vote put. Normally speaking, I would not expect that to be immediate but, as I say, it is a matter for the usual channels. Five days does not sound onerous but, as I say, it is a matter for the usual channels.

Q1421 **Seema Malhotra:** Thank you, Secretary of State, for coming to give evidence to us today. Could I ask you first just to clarify further whether the withdrawal agreement text that is brought to this House in October will be the final text?

Mr Davis: It will be the text we will have negotiated at that time, yes.

Q1422 **Seema Malhotra:** It will be the final text and subject to amendment thereafter if there are amendments that can be brought forward by the House.

Mr Davis: Do you mean the agreement?

Seema Malhotra: Yes.

Mr Davis: No, the House will not be able directly to amend the agreement. The agreement is effectively in the form of an international treaty. You can look up the conventions as well as I can on that.

Q1423 **Seema Malhotra:** Will you be looking for approval of both Houses of Parliament before proceeding?

Mr Davis: That is what we have said.

Q1424 **Seema Malhotra:** What will happen if the House of Lords does not pass the motion but the House of Commons does?

Mr Davis: The House of Lords has accepted, if I remember correctly, in one of the debates on Article 50 when this was first raised, that in the



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event that there was a difference of view between the two Houses, it would defer to the Commons. The Commons is the critical vote.

Q1425 **Seema Malhotra:** Can I ask you this question? You have said that you cannot confirm how long we will have for scrutiny in the autumn. Are you concerned, therefore, that we will not hit the October deadline that you are working to?

Mr Davis: No, I do not think so. Bear in mind that there are a number of stages to this. First, it is not at all impossible that we will have debates on the agreement when it is clear but not signed. That is possible. You then get to your critical so-called meaningful vote. Then, after that, you have the Withdrawal Agreement and Implementation Bill, which will take time and will have within it elements of British law that will need to put into effect the implementation period. All of these are times at which the House can express its view and, indeed, if it chooses to, block the whole thing. That will take time.

That is why I am not trying to guess. I have not sat down with a diary to work out how much time you have for that particular vote. My aim is to give the House as much time as I can to do all of those things, not just on the one vote but the whole thing.

Q1426 **Seema Malhotra:** Do you think you should be sitting down to work out how long the House will have to debate?

Mr Davis: I could spend a great deal of time on speculative exercises that, again, I do not control all the elements of. As the Chairman said earlier, the achieving of the October position will be dependent on us and the European Union as well.

Q1427 **Seema Malhotra:** The European Parliament has a process of constantly engaging with countries on the direction of policy. What process does the Government have planned to keep Parliament on board so that there is a very strong chance of this going through Parliament at the end, with no surprises?

Mr Davis: Do you think that Parliament has not debated Brexit enough? Is that the thrust of your question? I find it a little bit at odds with reality.

Q1428 **Seema Malhotra:** We might have a disagreement about what has been a meaningful debate if there is very little that can actually be changed. I am asking you this because it struck me as quite a distinction from the way that Guy Verhofstadt and the European Parliament has worked and the process they have of keeping everybody on board.

Mr Davis: I am just trying to think which process you are talking about with respect to the European Parliament. Which process of nation state engagement are you talking about?

Q1429 **Seema Malhotra:** In relation to the Brexit sub-committee and how nations are kept on board in the discussions. I am just wondering



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whether you have anything alternative planned so that you can be keeping Parliament on board as we proceed to October.

Mr Davis: There are a number of pieces of legislation coming in front of the House. The news has been dominated for most of the last few months by the progress of the withdrawal Bill, both in our House and then in the House of Lords. We have had of course Select Committee hearings like this and many others. Lord knows how many my Ministers in total have addressed, and it is not just my Ministers; as I said, before there are people like Jon Thompson at HMRC. There is no absence of information in this area, or indeed of government engagement with the House. It happens all the time. I am just trying to see where it is that you think there is a deficiency that needs to be dealt with.

Q1430 **Seema Malhotra:** There is also, in that whole debate, a lot of questions about how Parliament is meaningfully engaged in this process. You will know that there is this whole question about the meaningful vote, which you have just described as “so-called”, and how it came about. If I could ask you this question, will there be legal consequences of no deal?

Mr Davis: There are legal consequences of every single outcome. Indeed, it would also depend on what you mean by “no deal”. I have said to this Committee before that the complete absence of any outcome is unlikely. You might end up with a bare-bones deal; that is a phrase I think I have used before. You might end up with a whole series of bilateral deals. We are looking at tiny probabilities here. I do not think no deal is a significant probability at all. A massively higher probability is a deal. In the event it goes down that other route, nobody wants that. No other country wants that. Talk to Spain. They do not want their aviation issues blocked.

Q1431 **Seema Malhotra:** I agree that nobody wants it, but you have described the process. If Parliament does not agree to the deal and we proceed with no deal, on WTO rules, et cetera, there would be legal consequences, I imagine. Could you just outline some of what those legal consequences would be?

Mr Davis: I am trying hard to see where you are trying to get with this because, as I say, the legal consequences in terms of the relationships between nations, and between ourselves and the European Union, have every single permutation. Which aspect of legal consequences are you driving at?

Q1432 **Seema Malhotra:** Would there be changes to the way we would trade and status of legal contracts that would need to be worked through?

Mr Davis: If it was an absolute no deal, there would be a tariff arrangement in place. That is a legal consequence, I guess.

Q1433 **Seema Malhotra:** Secretary of State, normally when we seek a change in the law, if the Government bring something to Parliament, maybe to update existing law, and that vote is not passed, what happens to



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existing law?

Mr Davis: It stays as it is.

Q1434 **Seema Malhotra:** In the scenario that Parliament does not pass the withdrawal agreement and we move forward with no deal, which has legal consequences, do you believe that would be constitutionally challengeable, Secretary of State?

Mr Davis: That is for others to judge. It is not for me to give advice on how to challenge the Government. That is why I was about to intervene on you earlier and I did not, because we are trying to save time. This is the problem of using the phrase, "meaningful vote". "Meaningful vote" is a phrase that avoids the choices being put. Is what people using the phrase, "meaningful vote", are saying that they want the right to reverse the referendum—a referendum that was passed by a four-times majority in both Houses? Are we seeking to reverse Article 50, which said that we will leave? That is the piece of law that will stand in the event that you overturn a deal. Those are the sorts of legal consequences, if that is what you are driving at.

Q1435 **Seema Malhotra:** I have this final question, Secretary of State, going through that logic. Is it possible that no deal and proceeding with no deal without a vote of this Parliament would not be legal?

Mr Davis: In the circumstances you are talking about, we have passed the referendum Bill, massively. We have had the referendum. We have passed Article 50, massively, which is a very short Bill and very easy to comprehend. It is a 137-word Bill that basically says, "We are triggering Article 50. We are leaving". That was done, by the way, after a court case saying, effectively, "That is the way you should do it". The House then says, "We do not want that deal". There are quite a lot of votes in that. That is not being passed without the intention of the House. That is being passed with the explicit intention of the House, which is why I have been very stark about what this means, all the way through. I have never stood behind any form of strange words over this, unlike others. I have been very plain about it.

Q1436 **Mr Rees-Mogg:** Good morning, Secretary of State. I wanted to turn to the transition deal and the issue around sincere co-operation trade deals, because there is an exemption to allow trade deals in spite of sincere co-operation. I wonder if you could explain how that will work, what the opportunities will be and what the limitation may be, particularly in relation to our activities on international bodies.

Mr Davis: This was, in essence, the biggest since ask on the British side, in starting down the route for the implementation period or transition period; choose your phrase. The reason for that was that we were denied the right to do that by being a part of the common commercial policy and also by a duty of sincere co-operation. We could not even start down the route properly under the duty of sincere co-operation. What this does explicitly is allow us to negotiate and sign such deals, but



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not enter into force. That seemed to me to be reasonable. If you opened up a free trade deal, and let us say we have zero tariffs with some other trade partner, they could export products to here, and then in theory we could export them on without hindrance to the European Union. It would create a great loophole in their external tariff. That was in effect the offer we made. It has essentially been accepted.

In terms of the advantage of it, I spoke earlier about the huge size of the trade growth in the rest of the world. The story of the last 30 years has been this spectacular growth in world trade, a fantastic effect in the Chair's old stomping ground of world poverty and also huge opportunities for a country like ours with our world network, English language and all the various other competitive advantages we have. That is what it is aiming to do. The aim is explicit: it is to be able to get off to a racing start once we have formally concluded the whole process, including the implementation period, of having trade arrangements in place. We saw Justin Trudeau just last week saying that he wants to be first in the queue.

Q1437 Mr Rees-Mogg: Will the Government be able to act independently in relation to the prospect of trade deals in international bodies such as the WTO, or will we be bound by sincere co-operation in such organisations?

Mr Davis: We are in the middle of discussion with the Union over the ongoing trade arrangements, which they have negotiated previously, and how we fit within those. Other than that, I see no reason why we should be restrained.

Q1438 Mr Rees-Mogg: Is it your hope and expectation that the first trade deals, having been signed in the implementation or transition period, will come into force the day after we have left?

Mr Davis: That is my hope. I cannot tell you at the moment whether it is an expectation, because we are not really far enough down the road.

Q1439 Mr Rees-Mogg: There is one concern with the two proposals for customs with the European Union: that neither of them is likely to be ready for day one after we have left.

Mr Davis: Neither of which? Sorry, I missed the first part.

Q1440 Mr Rees-Mogg: The maximum facilitation and the special customs partnership. Is there a risk that the Government may be saying that we need to stay in the customs union for an interim period, which would obviously hamper our ability to implement any trade deals we have signed?

Mr Davis: No. At the end of the day, you have the option of varying, effectively, the sampling rate when you are checking things coming into the country. Bear in mind that our customs operator is checking things coming into our country. The bigger risk from that point of view is the other way: of the French customs authorities, the Dutch and others. We are talking to them already to try to facilitate that. No, I do not expect



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the solution to that to be extension of membership of the customs union. I would view that, on my part, as a failure.

Q1441 **Sammy Wilson:** Last week you started the discussions around the future trade arrangements. There have been rumours that they been suspended because of the issue of the Irish border. Have they been suspended or has the Irish border issue, and especially option C, been an impediment to moving forward?

Mr Davis: No. Clearly it is dominating quite a lot of the discussion. I saw the report you referred to, and the Commission itself explicitly said that was not true. We have had no indication it was true. No, we do not think that is the case.

Q1442 **Sammy Wilson:** Certainly the Irish Government and the EU have said there had to be progress on all three options for the Irish border. Obviously, the Government have put forward their proposals for options A and B. There is a stalemate with option C at present, because of the way it has been interpreted. What do you see needs to be done to move that particular discussion on?

Mr Davis: There is a difference of view, which you have described as a stalemate, on option C. What the Commission proposed was simply not acceptable, and indeed not acceptable to the main opposition parties either, certainly not the Labour Party; I am not what the Scottish Nationalist position is. That is not a tolerable one because it basically breaks up the United Kingdom or effectively starts a process that would break up the United Kingdom. Our interpretation of what "full alignment" means is different at the moment. We think it basically means outcome alignment. We give examples of how that can be done, even under existing circumstances. All of us, including the Irish Government, think that the best option is option A. Option A of course hangs on how comprehensive and effective a free trade agreement you have. If you do not have a tariff or a quota between ourselves and any of the 27 member states, including the Republic of Ireland, then that makes all of the customs agreement options easier. It does not take them away, but it makes them easier.

You will know this better than me. In Northern Ireland, when people cross the border, they cross an excise border, they cross a tax border and they cross a currency border. For companies trading across that, they have to deal with that now and pay those differences in excise, VAT or whatever it might be. That will be the only financial difference. The issue then will resolve down to regulatory issues and how we get mutual recognition—regulatory issues and rules of origin. If things come into Britain or Northern Ireland, taking up Mr Rees-Mogg's point, that are from countries with no tariff, which otherwise would pay a tariff going into an EU 27 state, we have to find a way of dealing with that. Those are the issues that would become paramount in the circumstances where we get a free trade agreement, which in my view is a probability well north of 90%.



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Q1443 **Sammy Wilson:** I think that any sensible person would accept that getting the free trade arrangement in place would eradicate the need for option C, anyhow. This is the difficulty I have: the free trade arrangement and the bones of the free trade arrangement are not likely to be in place by October, and indeed the Irish Government have said that they want this issue resolved by June, or at least the Foreign Minister has said that.

Mr Davis: Yes, Mr Coveney did. That is right.

Q1444 **Sammy Wilson:** Given the details of the free trade arrangement are not likely to be in place by October, how then can we have or even see the possibility of the issue being resolved as part of option one? The details of option one are not going to be known by October.

Mr Davis: The first thing to understand is what we mean by what will be in place by October. There have been people saying that it is about political agreement or whatever. It is going to be substantive. It has to be substantive. It has to be substantive from the British Parliament's point of view. The British Parliament, when voting for the withdrawal agreement, will be voting for a bill of £35 billion to £39 billion. It will want to know, on the other side, what we are getting in exchange. The hardest time I am going to have in October is people saying, "What have we got for this?" The European Union understands that too. It will be very substantive, and what we are talking about here is central to it. It is absolutely central to it. The free trade agreement, mutual recognition of standards and how you deal with rules of origin are central to the future economic partnership. We have to have that substantively resolved by October.

The technical details we maybe do not have to have resolved by then, but bear in mind that this issue in practical terms only bites in January 2021, because of the implementation period. I know I have come under accusations of setting up a vassal state from the Member next door to you, but the reason for the implementation period is to allow us to go from substantive to agreed details before it starts and then, during the implementation period, ratification and practical effect. That is why that sequence works like that.

Q1445 **Sammy Wilson:** For the record, is it still the Government's position that if there is an insistence on option C being finalised by October, that it will not include either different arrangements for Northern Ireland or indeed total regulatory alignment for the whole of the UK?

Mr Davis: That is right.

Q1446 **Sir Christopher Chope:** Can I follow up on that last question, on the interaction between options A and C? If the facts giving rise to whether option A is going to be workable or not are not going to be established until October, why is it we are being told that we have to decide by June whether we are going to go for option A, B or C?



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Mr Davis: A number of things are happening. We are in the middle of a negotiation. One of the things that happens in negotiations is people try to set up deadlines, sometimes artificial deadlines, to put pressure on one element of the negotiation that they think is in their favour. We have seen a little bit of that. That is why I refer back to the Taoiseach and Mr Varadkar's comments; he said that it is better to have a good deal in October than any deal in June. We do not see June as an artificial timetable. Let me be clear: we are going to try to get an agreed form of words on option C as quickly as we can, but not to an artificial timetable.

Q1447 **Sir Christopher Chope:** One of the elements of any agreement will be to try to tease out exactly what is meant by option C. There has been correspondence between the Chairman and you about the work that has been done on this, which is called the mapping exercise. Can you tell us the latest position in relation to that mapping exercise? What further work has still to be done?

Mr Davis: That is still underway. I do not have detail of that in my head, Mr Chairman. I will write to you on that. The Chairman wrote to me just this week and I have just sent a letter back.

Sir Christopher Chope: I have it here.

Mr Davis: I can let you know what that detail is. I am hoping it is going to be over quite quickly. We are going to tell the European Commission—my officials may already have done it—that we want this to be transparent and to be published as soon as we can. I am going to make sure that this Committee sees a copy of it all before it goes in the public domain.

Q1448 **Sir Christopher Chope:** What are we talking about: weeks or days?

Mr Davis: You are asking me to put a guess on top of a guess. I do not know but we will write back to you very quickly, in the next day or so, and give you an idea of that.

Q1449 **Sir Christopher Chope:** It is just that the answer you gave to the Chairman is obviously very carefully worded, as all civil servants' letters are.

Mr Davis: Are you trying to suggest I did not write my own letter?

Q1450 **Sir Christopher Chope:** I am sure you signed it. It has your signature on it. It says, "Further work has been agreed to finalise it. I am hopeful that we can conclude this soon". You then go on to say that it is a joint UK-EU exercise, including the Irish Government.

Mr Davis: I am dependent on the Commission and on the Irish Government. That is why I am not going to give you a guess at this point in time.

Q1451 **Sir Christopher Chope:** You are blocking us on that.

Mr Davis: No, I am not blocking you. I will write back to you very soon.



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Q1452 **Sir Christopher Chope:** Can I ask you, finally, about the last sentence of your letter? It says, "I will also ensure the Committee receives sight of the mapping exercise documentation prior to wider publication". How is that going to work, bearing in mind that you also say in the letter that this belongs collectively to the EU and the UK?

Mr Davis: We will make that point to them. They have their own groups that they need to brief as well, the Brexit committee of the European Parliament and so on. I do not think that will be a problem.

Q1453 **Sir Christopher Chope:** It might be sensible to remove that June constraint and say we will sort out the mapping exercise, sort out the trade deal and leave all of this until October.

Mr Davis: Generally speaking, in all of this negotiation, I find that when we get into the detail and work through detail it tends to unblock things rather than block things. That is not always, but generally it tends to unblock things rather than block things. That is what I would hope will happen here.

Q1454 **Stephen Kinnock:** Good morning, Secretary of State. During the course of this session this morning, you have made two very important statements. You have said, on the one hand, that the motion that will be brought before us in the autumn will be amendable but, on the other hand, you have said that if the House rejects the motion, the motion falls. Both of those statements cannot be true, can they? If it is amendable then by definition—

Mr Davis: If it votes it down, it falls. If it amends it, it is amended. What is the problem? They are different outcomes.

Q1455 **Stephen Kinnock:** Just to be clear then, if the House amends the motion and instructs the Government to, for example, go back to Brussels and negotiate a different deal to the one that was put before us, the Government would respect the will of the House and would go back to Brussels to do that?

Mr Davis: I am not going to speculate on amendments that have not even yet been laid, let alone passed by the House.

Q1456 **Stephen Kinnock:** Secretary of State, you have said that a few times this morning. Surely you must appreciate the risk of us heading towards a constitutional crisis here. Surely it is the responsibility of the Government to have scenarios in mind so that it is ready to respond when the House does vote?

Mr Davis: The first responsibility of the Government is to promote and defend the national interest, which means not putting yourself in positions where you create options that are advantageous to the other side in the negotiation, for example. That is one of the reasons I have in the past argued in this Committee against a referendum, because that would create an incentive on the other side to give us a bad deal, so that they might get a referendum that keeps us in. Similarly, I am not going



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to give advice on how to create circumstances that might undermine the Government's negotiating position, as that might do. I do not know what you have in mind, but it might.

Q1457 Stephen Kinnock: All I have in mind is that if a meaningful amendment is to be on the table and the Government are to respect that amendment, which by definition is what makes it meaningful, a very meaningful amendment would be, "We want to have a deal with the European Union but we do not think the deal that the Government have brought back from Brussels is satisfactory and we therefore instruct the Government to go back and get another deal". Are you confirming to us today that the Government would do that if so instructed by the House?

Mr Davis: I am saying to you, in terms of the reasons I have just outlined, that I am not going to speculate on what the Government will do in response to an amendment that has not yet been laid, let alone passed by the House. As a practical matter, I am not entirely sure how much force a Government sent back with its tail between its legs by Parliament would have in such a negotiation, but that is a different matter. What you are making is a constitutional point. You can draw your own conclusions on it. I am not going to speculate on it.

Q1458 Stephen Kinnock: Turning to the political declaration on the future relationship—the post-transition relationship—I think most people would accept that in many ways that would be the most important aspect of what we vote on in the autumn. Can you say a bit more about how much detail you think will be in that political declaration, given it is such an important vote for us? What do you think would be a satisfactory level of detail and information for MPs to make an informed choice?

Mr Davis: Quite a lot, to be honest. The Chairman referred earlier to reports of me saying that we are talking about 40-plus parallel strands. One of the reasons is that I want us to know ourselves—not just to be able to face Parliament—what the substantive conclusion is in all those different areas. I have just talked about the substantive issue of a free trade agreement and mutual recognition, which would be almost central to the whole thing. There will be a whole series of other areas where we will have issues that may not be central but are massively important: aviation, data, nuclear materials and how we handle that. Some of this is being handled in the House as well in other legislation going through the House. The nuclear materials one has already been through the Commons stages.

We intend that there will be a large amount of substantive material on this—basically decisions. I avoided the phrase, "political declarations", because it sounds rather woolly; it will be a statement by the Council on a whole series of decisions as to what the future economic partnership will look like. I highlighted earlier my comments to the Chairman that Angela Merkel has said herself that she wants to see a lot of detail around that too, because they will have to present the withdrawal agreement to their own parliaments as well. Nobody wants a pig in a



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poke. Nobody wants any more uncertainty than is absolutely necessary. The difficulty we have is that it will not be ratified until after we leave. That is where the area of doubt comes, not in the amount that we will achieve by October.

Q1459 Stephen Kinnock: Is the weakness in your logic not that there is an umbilical cord going from the Northern Ireland issue to the political declaration? The future relationship post-transition is, to a large extent, going to be determined by what can be agreed around Northern Ireland. Until the Northern Ireland issue has been resolved, meaningful discussions on the political declaration cannot really start and, in that case, is it likely that we are going to have that level of detail by October? Are you not fundamentally being held back because you have not yet found a solution to the Northern Ireland issue?

Mr Davis: No, that reverses the logic, Mr Kinnock. We have said since the beginning and, indeed, when we were at this stage of the first round of the negotiations, organising the four strands, we were very clear that we wanted Northern Ireland in there, because we view both the circumstances of Northern Ireland and the protection of the Good Friday agreement and, indeed, bluntly, the protection of the economy of our closest neighbour, Ireland, as fundamentally important.

That means it is important, but it does not mean that the best route to solution is via option C. Indeed, when I had a conversation with Michel about this before March, back at Downing Street, I said, "We should do them all in parallel". The one that everybody agrees on—and I include the Taoiseach in this, and I think even Mr Coveney, who may have said some other things that I do not agree with—is the general view that a free trade agreement will make the Northern Irish border issue much easier to deal with. It will also protect both Northern Ireland's and the Republic of Ireland's markets and economic positions, so they have an interest in doing this too.

Q1460 Stephen Kinnock: Secretary of State, I absolutely understand those arguments, but the British Government have made it clear throughout this process that there is an integral, intrinsic relationship between the Northern Ireland issue and the future relationship post-transition, and that the Northern Ireland issue is one of the three big-ticket issues under the divorce piece of this negotiation. You then move on to the future relationship post-transition, so, by their own admission, the British Government have been saying, "We cannot sort out the future relationship until we have sorted out Northern Ireland". If that is the case and Northern Ireland still is not sorted, is it realistic that we are going to have a very detailed political declaration, given the very short timeframe that we have?

Mr Davis: Yes, I think it is. The thing to be aware of is that option C is, in essence, almost a reserve parachute, a final backstop guarantee for all elements of this. Nobody sees that as the most desirable outcome. Everybody sees the free trade agreement, option A, as the most desirable



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outcome, and that is true across the board, maybe with the exception of one or two people who want to keep us in the single market at almost any price, but I do not think there are many of them. I do not take your view. I think it can be done in parallel; indeed, we are intending to do it in parallel. That is part of the outcome of our 45-plus parallel strands.

Q1461 Stephen Kinnock: I have one final question. Will the political declaration be sufficiently detailed that the OBR will be able to make an assessment of it prior to Members of Parliament having a vote on the draft agreement?

Mr Davis: Off the top of my head, I do not know. Let me just think this through for a second. Bear in mind that we are going to provide an economic assessment ourselves. The OBR is required by the Budget Responsibility and National Audit Act 2011 to make two budget forecasts a year based on government policy. I am not sure quite how the timing of that will fall, so I do not know the immediate answer. However, to come back to the underlying point in much of the discussion earlier, nearly all of this will be in the public domain in the run up to October. Both the OBR and the National Audit Office have access to all government data anyway, so I do not see that being a problem. Let me have a think about that. If I am wrong about that, I will write to you.

Q1462 Hywel Williams: Good morning. The reports that we have seen are that you have comprehensively rejected option C. You have said yourself that you agree that there is a need to include legal text detailing the backstop solution for the Irish question. Do you have a backstop of your own that you could possibly share with us?

Mr Davis: I do not like to correct people, but let me start with a correction. We have not rejected option C. We have just rejected the Commission's first attempt at it, because it was one that both sides of the House have said no British Government could accept. We will come up with our own wording on it. We are working on that as we speak and we will come up with our own wording on it. We will then have an argument about that, no doubt, I am sure.

Q1463 Hywel Williams: You will be sharing it with this Committee.

Mr Davis: We will share it with everybody at some point, but not in the first round of negotiations. We have to have some of the negotiation first.

Q1464 Hywel Williams: You said earlier on that the Commission's comprehensive, systematic and forensic annihilation was their opening gambit in the negotiations, as I understand. Can I ask you about option B, which is that the United Kingdom will propose specific solutions to address the unique circumstances of the island of Ireland? Now you said a moment ago that you wanted option A, which is a UK-EU deal, but can you just comment on option B? It sounds to me like a specific, Northern Ireland-only solution.



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Mr Davis: No. It is if we have some deal that is not the free trade agreement approach that clearly we are playing for. When Mr Chope has asked me about the various strands, there are a whole series of issues that have quite specific reference in them. The Single Electricity Market, for example, is a very important issue that is almost unique to the island of Ireland in terms of its importance and structure, so we would probably want to do something on that. Agribusiness is massive, so we will have to think about how we deal with that too, and it is the most difficult because you have cross-border farms and whatever else. There are a variety of specific issues of that sort of nature that we try to resolve in the event of another deal, but without knowing what the other deal is I can make speculative comments to you, which is what I am just doing, but I cannot tell you in detail. That is the one that really does have to follow after whatever the deal looks like.

Q1465 **Hywel Williams:** In principle, there may be a possibility of specific issues for Northern Ireland being sorted by a specific answer for Northern Ireland, which does not apply to the rest of the United Kingdom.

Mr Davis: The Single Electricity Market, for example, does not apply. You have in the island of Ireland a single phytosanitary epidemiological space; we have had since the BSE crisis, from memory; I was the Europe Minister then. That is where I got my first round of grey hair. You have already some specific things, and we would have to look at that.

Q1466 **Hywel Williams:** Are there other pairs of countries anywhere where there are two potentially competing customs regimes, like in this case? I am concerned that a lot of the attention is on the north-south trade issue. There is a great deal of east-west trade as well.

Mr Davis: There is a massive amount of east-west. I have forgotten what the multiplier is but it is huge. You are talking about £1 billion a week, in terms of the trade between the United Kingdom and the Republic of Ireland, and nearly all of it is what you are terming east-west in this context. Even some of the north-south, or the Northern Ireland back to the mainland of Great Britain, is through the south as well. One of the primary routes is effectively from Belfast to Dublin, across the Irish sea to Holyhead and then to the south of England. It is a trip that starts at 3.00 in the afternoon and has to be concluded by between 2.00 and 4.00 the next morning, because there are perishable goods and so on. There are a whole series of issues like that that we would have to resolve in a non-FTA outcome.

Q1467 **Hywel Williams:** So option B is a possible option, do you think?

Mr Davis: In terms of the free trade agreement, this is not just wishful thinking of mine. If you go back and look at the Council guidelines you will see they want a tariff-free arrangement, which is the keystone in the arch of this. That is massively, overwhelmingly probable as an outcome. I do not think options B and C are at all likely to be needed but nevertheless we have undertaken to do them, so we will do them.



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Q1468 Andrea Jenkyns: My question is following on from what Jacob was discussing about the implementation period. The Prime Minister and yourself secured an agreement with the EU of an implementation period until December 2020 at the March Council. From the UK's perspective, what was the most notable result from these negotiations?

Mr Davis: You are following on from Mr Rees-Mogg, because what he talked about was the most notable result. The referendum was not primarily decided on economic matters; it was decided on control of our own destiny. That was what it was really about but, nevertheless, the one big economic upside—there is a small upside in terms of some regulatory efficiency—is improving our access to non-European global markets, releasing Liam, effectively, to go off and actually sign the deals, not just talk about them but sign the deals; that is incredibly important. We cannot do that at the moment, so that is an enormously important outcome.

Q1469 Joanna Cherry: Good morning. The UK Government have sought the Scottish Parliament's legislative consent to the EU (Withdrawal) Bill under the Seoul Convention. What will the UK Government do when the Scottish Parliament withholds that consent, as it has said it will do yesterday?

Mr Davis: We are still talking to the Scottish Government on the amendments to clause 11, as you know. We have been working very hard. I am almost a fifth columnist in this Government in terms of promoting devolution, so I was slightly disappointed that we did not get agreement with the Scottish Government. I thought we got quite close. This is a matter primarily for the Chancellor of the Duchy of Lancaster, whose responsibility this is. In case the Committee have not followed it, the Welsh Government have essentially agreed with the changes we have proposed and we are still talking to the Scottish Government. We certainly will be, up until 5.00 this evening, when the last possible time for laying the amendment is, and I hope we will find a mechanism to get agreement between us still.

Q1470 Joanna Cherry: Yesterday, Mike Russell, who you know well now—

Mr Davis: Indeed. Bosom buddies, almost.

Joanna Cherry: He made a statement in the Scottish Parliament that the amendments and draft clause 11, which the Scottish Government had seen, would not be acceptable. I think we can say at best that it is a very real possibility now that the Scottish Parliament will not give its legislative consent to the withdrawal Bill. It seems to me that if that happens there will be three options: that will either stop the Bill in its tracks, it will delay its progress or the UK Government could simply ignore the withheld consent, ride roughshod over the wishes of the Scottish Parliament and proceed. Are you able to help us with which of those three options will be taken if consent is withheld?



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Mr Davis: Again, you are asking me to speculate. What I would prefer that we do is continue our discussions with the Scottish Government today and, if need be, thereafter, and try to get to a position where we have an amicable agreement. I am not going to colour that by offering up suggestions—what was the phrase you used? Roughshod. That is certainly not a word I would use.

Q1471 **Joanna Cherry** That is quite encouraging, because it has been reported in the press this morning that Theresa May has said that the Scottish Government and the Scottish Parliament can take or leave the amendments, but you are indicating that there is further room for negotiation about these amendments.

Mr Davis: No, I am just saying that the conversation, I imagine, is still going on. I am not party to that conversation at the moment, so I am giving you my speculation, frankly, rather than a fact, but that is what my hope is.

Q1472 **Joanna Cherry:** Can I ask about the transition period and Article 6 of the withdrawal agreement? I particularly want to ask you about the Court of Justice. At present there are two British judges on the Court of Justice, one from the English legal tradition and one from the Scottish legal tradition. During the transition period, the domestic legal systems of the UK will continue to be subject to the full force of the jurisdiction of the Court of Justice, whether in relation to litigation between individual parties or in relation to enforcement action against the UK. That being the case, why did you agree to Article 6 of the withdrawal agreement, which means that there will be no British judges on the Court of Justice during the transition period? Why did you agree to that?

Mr Davis: Because we are then a third country. There has been a bit of debate, even on this Committee, about whether this is an implementation or transition period or indeed an extension of membership of the Union. It is not an extension of membership of the Union. For those two years, despite the scathing comments of Mr Rees-Mogg, we will live with some imperfections, but it will not be massively problematic for us, I do not think. I do not imagine the European Court will behave in a particularly different manner.

Q1473 **Joanna Cherry:** What puzzles me about this is that it seems that the objection to the Court of Justice all along has been, I think to paraphrase the words of others, that it is a foreign court. At the moment it is a court where the legal systems of the United Kingdom are represented, in the sense that there are judges who are produced by our domestic legal systems. During the transition period it will be a foreign court, will it not? There will not be any British judges on it any longer, but the UK legal systems will still be fully subject to its jurisdiction.

Mr Davis: It sounds to me like you are in full alliance with Mr Rees-Mogg. You are going to come around accusing me of creating a vassal state again. You have never heard me describe this as a problem



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because it is a foreign court; after all I am not an antagonist of the European Court of Human Rights, which will fulfil the same—

Q1474 Joanna Cherry: If I can explain where I am coming from here, others—legal academics and commentators—have suggested that this may pose rule-of-law problems, in that we will be fully subject to the court’s jurisdiction. No third country is subject to the court’s jurisdiction, so there is an anomalous position here. We will be fully subject to the Court’s jurisdiction, yet there will be no judges from our legal traditions. Would it not have been possible for you to seek a compromise whereby during the transition period the British judges would remain in place?

Mr Davis: We did raise that issue but we did not get very far.

Q1475 Joanna Cherry: So you agreed to there being no British judges during the transition period, despite the fact we are fully subject to it.

Mr Davis: We will agree to all elements of the withdrawal agreement when we sign it off, assuming we do, assuming Parliament allows us to.

Q1476 Richard Graham: Secretary of State, after March 2019, when we will not be party to EU structures and decision-making, Michel Barnier has told us that he wants to see elements of the future arrangements, which he characterises as four pillars, in place as soon as possible during the transition phase, and I think he is particularly thinking of foreign security and defence arrangements. Given the sensitivity and urgency often involved in home affairs, justice and police decision-making, would it not make sense for the architecture for all the pillars—except the future trade agreement—to be in place as soon as possible during the transition? Would it not also be incredibly useful for both parties to have architecture and arrangements for dialogue on financial issues where stability and financial markets are so important to both of us?

Mr Davis: That is an interesting thought. Let me start with how fast we can get it into place. The truth is that for all of these areas we want to do it as quickly as possible, and, certainly for security, defence and home affairs issues, as fast as we can. We share that aim. The thing that will slow that down, if anything slows it down, will be agreement on some critical areas of how it works—things like jurisdiction of the European Court, to come back to Ms Cherry’s point, issues of whether the European arrest warrant will work and so on. We agree, and want to see this in place as soon as we can. Are you thinking of financial regulations, if I can get you to elaborate on your question? It is a fascinating idea. I had not thought of it before.

Q1477 Richard Graham: Yes. Certainly all the financial regulators made it clear when we took evidence from them last week that they would welcome this arrangement and hinted that there had been discussions of a similar sort around it.

Mr Davis: There have not in terms of the pillars. There has been some talk already between regulators. One of the things that will undoubtedly



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be necessary will be co-operation over financial regulation in terms of stability management, as there already is at a global level. When we have crises, the Fed talks to the Bank, talks to the ECB and so on. It is an interesting thought. Let me take it away and think about it, because we have to structure somehow how the future financial relationships will work.

The thing to bear in mind—this is literally off the top of my head—is that one of the areas that makes agreements mixed agreements is when the national stability is engaged. One of the reasons that financial matters have to go through a mixed agreement is that every country has a potential carve-out on financial stability, so it might trigger a mixed agreement ratification procedure. I will think about it.

Q1478 Richard Graham: The other thing that would be incredibly reassuring for businesses in particular is the amount of detail on what the EU tends to call the thematic pillar—all the detailed issues on aviation, chemicals, nuclear power and so on. Do you anticipate that there will be enough clarity on all of those by the time it comes to the vote on the withdrawal agreement in October?

Mr Davis: Yes. My argument to the Commission has been that we all want the withdrawal agreement to go through but, from the British point of view, at the very least we are talking about a major sum of money; we are also talking about major elements of migration control for the interim period and so on. All of these elements are things that the British Parliament will want to see a quid pro quo for.

Q1479 Richard Graham: So the only issue, in a sense, where parliamentarians will not have complete clarity before the vote in October will be the Northern Ireland issue, given that we hope to find a solution through the comprehensive free trade agreement.

Mr Davis: No, I do not think that will be a lack of clarity either. Once you have the in-principle agreement on, let us say, mutual recognition and tariffs, and some sort of customs agreement to minimise the friction on the border, that is the point at which we can turn around and say, “Yes, on that basis, option A will work like this”, and we will be working on that from now. Do not think that we will wait until it is done. We already have work on this. The so-called maximum facilitation option is really based around that thesis. I do not think that Parliament will have major doubts on any of these areas. The issue will be the detailed legal text, which will not be there.

Q1480 Jeremy Lefroy: Good morning. Last week, when we met in the City, we were told that the two major issues for financial services were contracts and data, particularly contracts that extended over either 29 March 2019 or 31 December 2020. What work is being done on that? Clearly this is absolutely fundamental to an area that is extremely important to all parts of the United Kingdom in future.



Mr Davis: A great deal of work is going on on that, mostly within the Treasury, as you can imagine. That is in play. Data is an even bigger issue in terms of the actual resolution, because it is going to be probably the single biggest area of inter-governmental co-operation, discussion and legal effect of anything that we are doing. If you want a measure of that, look back at the American circumstances, when the safe harbour arrangements were struck down by the European Court in the Schrems case. There is a second Schrems case underway. They are both at the front and centre of our activity.

Q1481 **Emma Reynolds:** Good morning. I have a quick question of clarification on something you said earlier. On the backstop option for the border on the island of Ireland of full alignment, you mentioned something earlier that I would like you to clarify. I think you said that there may be some disagreement between the UK Government and the EU, and you talked about outcome alignment; can you describe the nature of the disagreement that you are referring to?

Mr Davis: We do not see full alignment as harmonisation, with exactly the same rules. We see it in outcome terms. To give you a simple and very mundane example, we already have some degree of mutual recognition of other elements between north and south, on something as mundane as prescriptions from north and south; they are recognised on both sides of the border. What we are looking towards is a mutual recognition or outcome alignment.

The biggest area of regulation in terms of north-south trade is almost certainly agriculture, in terms of difficulty and volumes. We may well see slow changes, over time, in agricultural regulation, but at no point are we aiming to see a reduction in our animal health standards, for example. At no point are we going to see, being the country that we are, a reduction in animal welfare standards. We expect alignment to mean as good as, and recognisably as good as, what is happening in the south.

Q1482 **Emma Reynolds:** On the EU side, is the understanding, however, that "full alignment" means keeping the same regulation in those areas?

Mr Davis: If you look at their first proposal, in effect it looked like keeping Northern Ireland inside the single market, which would be exactly that. That is complete harmonisation. Yes, there is a difference, which we will no doubt negotiate out in the next month or two.

Q1483 **Mr Djanogly:** The interaction in terms of legislative procedure, which we have been discussing, has been in relation to the withdrawal Bill and the Withdrawal Agreement and Implementation Bill. There are, I calculate, 11 Bills on the go, or not on the go. There are four of them that are not on the go; the Animal Welfare, Agriculture, Immigration and Fisheries Bills, as well, of course, as the Withdrawal Agreement and Implementation Bill, have not even been started. Of the others, the Trade Bill and the Taxation Bill seem to have been lost in the ether somewhere and no one quite knows when they are coming back. On top



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of these 11 Bills, are we still on for 800 to 1,000 SIs? I do not think I am unfair in saying that a lot of people are saying we are winging it. Is there going to be some element of discipline put into this legislative process and some idea of when we are meant to be doing what?

Mr Davis: The first thing is that “winging it” is unfair but it is undoubtedly the case that we are having to cope with changes as we go along. You are right that it is 800 to 1,000 SIs, some of which will apply to the beginning of the implementation period but a significant proportion need to apply to the latter part. Taking SIs alone, we have just agreed in the process of the withdrawal Bill, through the Commons and now going through the Lords, to have sifting arrangements in place for SIs, which will recommend what happens to an SI if we propose a negative and the House thinks it should be a positive, which will of course change the timetable and so on. We cannot just draw up a lovely timetable. We never have with SIs, as you well know from your own time in justice.

Yes, there is a lot to do. We are taking 45 years of law and putting it into our legal system in about three years all told, at a stretch. Some of this needs to be done earlier, prior to the actual implementation period, but much of it will tend towards the end, so we have a little more time than you think. You are right. My count was six at the moment, including the withdrawal Bill in play. The Immigration Bill cannot really start until we have the Migration Advisory Council report, which is not coming until September. We have said all along that we want to do this on the basis of what is in the national interest and we will need that report in place before we do that. There has been an interim report but we have to wait on the second one.

No, we are not winging it, but we are having to accommodate changes as we go along. There may be other changes in the withdrawal agreement which, in turn, precipitate the need for new SIs. That is why one of the more controversial elements of the withdrawal Bill was clause 9, where we are taking the right to use SIs for withdrawal-related issues. Otherwise, most of them—nearly all of them—are simply taking EU law and putting it into British law with the necessary clarifications. That is all. Does that answer?

Chair: To paraphrase you from last time, for all that legislation, that was then, this is now and time is running out, on which subject, Wera Hobhouse.

Q1484 **Wera Hobhouse:** Secretary of State, you and the Government have said on a number of occasions that EU citizens should not be worried about the settled status process. However, I am worried about the difference between two processes: an application process and a registration process. If it is an application process, the application can be refused and there is no proper appeal process. If it is a registration process, the ball would be in the Government’s court to positively declare why somebody could not be registered. Could you clarify whether it would be a registration or an application process?



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Mr Davis: It is an application process but let me say this: there is going to be in place an appeal process for anybody who is turned down. That is going to be there. There will be an independent monitoring authority that will oversee this. This is not something we have had in terms of managing migration before: a body whose job is to make sure that these people are treated properly.

Q1485 **Wera Hobhouse:** But a registration process would be much more reassuring for EU citizens, so if you wanted to allay worries about EU citizens—

Mr Davis: If I may, Chairman, I will write on this, because this is an interesting point.

Q1486 **Chair:** It is a very important point, and what EU citizens will be looking for is an assurance, given the Windrush scandal, that no EU citizen who has been here is going to get letters like that because they lack documentation. I am particularly thinking of elderly relatives who are living with their sons and daughters here, who will not be on council tax and will not have a National Insurance number. Can you give us an assurance that they will not get the same treatment as the Windrush citizens got?

Mr Davis: At the risk of being mildly self-righteous, I will point you to my own speeches early on in this process, where I said that our treatment of the European citizens in the UK will be a moral issue. It is a moral imperative and that is how we have treated it. That is what we intend to do.

Q1487 **Chair:** I have one final point of clarification on something you said earlier. You referred to automatic number plate recognition when you were talking about technology and the Northern Ireland border. You did say on Andrew Marr's programme that cameras would not form part of the solution. Could you just clarify that there is no suggestion of cameras on the border?

Mr Davis: No, I was just reflecting on what is already there. I was reflecting on what is already in each country, back inside the country. I did not mean anything on the border.

Q1488 **Chair:** It is already there.

Mr Davis: It is already there, yes.

Chair: Right. Can I just say in conclusion thank you for coming today? There are others who definitely wanted to ask questions. Can I repeat that, having fixed a date and taken time for your office to be able to find a date—and we recognise all the pressures upon you—it is not satisfactory to then be told of a time constraint. I trust on the next occasion that we will get a date quickly and there will be adequate time because, as you are busy negotiating, we will want to be busy questioning you. I hope that you will respond in that spirit on the next



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occasion.

Mr Davis: Indeed you will be, and I hope it has been a satisfactory session for everybody to ask questions today. Thank you very much, Mr Chairman.