HOUSE OF COMMONS

International Trade Committee

Oral evidence: UK Trade Policy Transparency and Scrutiny, HC 1043i

Wednesday 20 June 2018

Ordered by the House of Commons to be published on 20 June 2018.

Watch the meeting

Members present: Angus Brendan MacNeil (Chair); Mr Marcus Fysh; Mr Chris Leslie; Julia Lopez, Catherine West

Questions 1 - 47

Witnesses

I: Alan Oxley, International Trade and Competition Unit Advisory Council, Institute of Economic Affairs, Shanker Singham, Director of the International Trade and Competition Unit, Institute of Economic Affairs, Sir Lockwood Smith, International Trade and Competition Unit Advisory Council, Institute of Economic Affairs and John Weekes, International Trade and Competition Unit Advisory Council, Institute of Economic Affairs.

Examination of witnesses

Witnesses: Alan Oxley, Shanker Singham, Sir Lockwood Smith and John Weekes.

Q1 **Chair:** Good morning, panel. It is a rather large panel—a panel of four. You are outdoing the Committee at the moment. Can I ask you to introduce yourselves, and can I make an early plea as well? When questions come in, please don't answer them at length and you also don't all need to answer the same question, we could have just matters of difference. I will start on my left.

John Weekes: My name is John Weekes. I am a Canadian.

Chair: That is a good thing in itself.

John Weekes: I was Canada's chief negotiator for the North American Free Trade Agreement the first time it was negotiated, 25 years ago. I have had a history in other trade negotiations. I was Ambassador to the GATT during the Uruguay round of trade negotiations and subsequently Ambassador to the World Trade Organisation. I left the Government in 1999 and since then I have been talking on television and advising clients on what trade negotiations are about and where their interests may lie.

Alan Oxley: I am Alan Oxley. I have a similar bio to John, but it is much shorter. I was Australian Ambassador to the GATT during the Uruguay negotiations. After that, I left Government and set up a trade consultancy, which I have been running since then and can bore most people on most aspects of anything to do with trade if they give me enough time. I will try to constrain myself.

Sir Lockwood Smith: Lockwood Smith, recently retired High Commissioner to the United Kingdom—

Chair: You did that role very well.

Sir Lockwood Smith—but previously was for 29 years in the New Zealand Parliament, Minister of Education, Agriculture, Tourism, International Trade in particular, and Deputy Finance Minister. As International Trade Minister I chaired the APEC Trade Ministers process in 1999. I was the first Trade Minister in the world to sign China up to the WTO. I initiated the free trade agreement between Australia, New Zealand and ASEAN and put together the first building blocks of TPP.

Shanker Singham: I am Shanker Singham. I am with the Institute of Economic Affairs, where I lead on international trade and competition. I was formerly in the US as head of global market access and WTO practices at Squire Sanders, a global law firm. I was a cleared adviser to the US Government on international trade, serving in one of the international trade advisory committees on the regulatory TBT, SPS, and standards issues, and have advised on trade for a number of presidential candidates.

Chair: I believe you also worked closely with Mitt Romney.

Shanker Singham: Yes, I was a trade adviser to Mitt Romney in 2008 and 2012.

Q2 **Chair:** Thank you very much. I should have said that I am planning to go to Canada at some point in the summer, to Nova Scotia and British Columbia, Vancouver, hence my affinity with and fondness for Canada.

Panel, can I ask you, from your experience, how important is transparency when negotiating trade agreements? How open can you be? I am thinking of the Australian I met at the WTO in Geneva last week who, when I asked, "What help can you be to the UK?" said, "A great help when we get everything we want. After that we can possibly help." I don't know who wants to start the question on transparency. Lockwood Smith?

Sir Lockwood Smith: In this day and age, the public needs to understand what you are trying to do. That is really important. How your Government's trade strategy fits into your wider economic strategy is important, making sure the public understands where you are heading and how you are trying to get there.

Q3 **Chair:** What documents will you leave open? Presumably, there is a negotiating team with its objectives that it does not want the other side to see. You then have objectives that you do want your country to understand, so you have, I assume, a competing—

Sir Lockwood Smith: For New Zealand it has probably been easier, because of one of the things that we established following the period of protectionism in the 1970s. After you guys joined the EEC in 1973, New Zealand went through a phase of protectionism. We realised by the mid-1980s that that was an absolute dead end. We darned near bankrupted our economy. We realised that liberalisation is the only way to go, so it did not matter much that we tried to hide anything from people we were negotiating with, because everyone knew where New Zealand was heading. Our agenda was to liberalise. As a small country, we were able to have far greater impact globally because we led from the front. We basically unilaterally wiped subsidies, wiped tariffs, just eliminated them on our own, not waiting for a trade agreement to do it. We did it unilaterally, so other countries could see where New Zealand was heading.

I am not one who believes that you have to keep back where you want to end up in a trade negotiation. To me, one of the things that is important is that even though we are in Parliament here, Parliaments cannot negotiate trade agreements, and I say this as a person who was a member of the New Zealand Parliament for 29 years. Do not bring on yourselves the US mess—I should not say that—or the US situation, where Congress controls trade agreements or treaties, international treaties. A trade agreement is a treaty, an international treaty, and Parliament can make the necessary law changes or not make them consequent upon a treaty, but it is so important that the Executive retains the power to negotiate treaties, otherwise we end up where the US is and it is so difficult to negotiate then.

Q4 **Chair:** Should Parliament have any role then?

Sir Lockwood Smith: Should Parliament?

Chair: Should Parliament have any role whatsoever in trade treaties?

Sir Lockwood Smith: Parliament, I think, obviously has the critical role at the end of the day, in that only Parliament can change laws and if a trade agreement requires change to your laws, as many do, Parliament has total control over that.

Parliament is so important, I think, in what you started out with initially—the question about public consultation. Making sure Parliament understands where the Executive is heading is critically important; having a published global trade strategy is important so that everyone knows where the Government are heading.

Q5 **Chair:** To probe that a bit further, where should the genesis of a trade agreement be? Should it be a parliamentary decision? Should it be the

Trade Minister meeting another Trade Minister in an airport lounge and saying, "Let's have a trade agreement"? Where should the wellspring be?

Shanker Singham: If I could talk about how the US does it and then follow with what I would advise the UK Government to do, it is critical that the Executive branch, the Government itself, are the negotiator who is doing the trade negotiations. Parliament plays a very important role—

Q6 **Chair:** This would exist when Jeremy Corbyn is Prime Minister and Len McCluskey is the International Trade Minister?

Shanker Singham: It has to be. The reason for that is that no country will negotiate with another country's Parliament, so you just won't have any progress. It is an Executive branch function.

Parliament plays an advisory role. The committees of jurisdiction, such as this Committee—in the US, the House Ways and Means Committee, the Sub-Committee on International Trade—that is the committee that plays an advisory role, and they have access to documents and access to the material that other people do not have, material that is not publicly available. Also, what the US does and what other countries do is use industry advisory committees and trade policy advisory committees. I was a cleared adviser, so I had secret clearance. You are shown what the text is; there is a cleared advisory website where you see text as it is being negotiated. You can comment on the text as it is being negotiated—

Q7 **Mr Chris Leslie:** Which country?

Shanker Singham: The United States. If I went down the corridor in my law firm and I briefed my law partner who wasn't a cleared adviser, I would go to jail. It is a serious level of clearance, which is, I think, necessary to have that sort of advisory function made out. It is very important that you do not blur the lines of what is the negotiator's function and what is the advisory function.

Q8 **Chair:** My question was where this should start. Should Parliament kick it off? Should the Ministers meeting in the airport lounge kick it off? Where is the point you say, "Let's have a trade agreement"? Who said? Whose decision? Who sets the direction in this?

Shanker Singham: I think the Government set the direction, the Trade Minister sets the direction, but Parliament will always have an up or down vote on the agreement. If, ultimately, the trade agreement is brought back to Parliament and Parliament does not like it, they can always vote it down.

Q9 **Chair:** Can I get a view from Australia and Canada while I have you here?

John Weekes: We have had different approaches at different times in our history. As I was listening to the discussion, I was thinking about that. Let me go back to the original free trade negotiations we had with the United States, which were clearly initiated by the Government. Of course, Parliament had an advisory role, but it was very interesting what happened at the end of the negotiations. The Government brought the agreement back and tried to get Parliament to approve it. They had a majority in the House of Commons, so that was not a problem. They did not have a majority in the Senate. They could not get it through the Senate, so they called an election and the election was essentially fought on the basis of whether the free trade agreement was the route the country should go down or not. It looked for a while, in the course of the election campaign, as if the Opposition might win but they didn't; the Government came back with another majority and was able to implement the agreement. When I was doing the NAFTA negotiations, for still basically the same Government of Prime Minister Brian Mulroney that had been through this earlier experience, the Trade Minister, Michael Wilson, who was my boss, wanted me to be as open as possible in terms of how we approached the negotiations so he offered me up to the Opposition Caucuses to go and brief them.

Sir Lockwood Smith: That must have been fun.

John Weekes: I gave background briefings to the press about once a month, and my instructions were to be as candid as possible without giving away secrets. I took that in my stride and decided to be quite open about what I said—obviously, there are some things we cannot say—and that did go very well. It led, I think, to a more informed discussion nationally about what was going on in those negotiations than would otherwise have taken place. In the end, it made it somewhat easier for the Government to manage the process when we got down near the end of the negotiations. One of the things I remember the Minister saying to me at one point was that he felt that a well-informed Opposition was much easier to deal with than one that was not well informed.

Before we got to the complete end of the NAFTA, because Brian Mulroney resigned and was replaced by Kim Campbell, who was a short-lived Prime Minister sort of waiting for the election that was imminent, and maybe it was because it was a pre-election environment, they took a completely different view and told me I was not to talk to the press at all, but that was a much more short-lived situation.

We have had Governments that have taken various approaches on this. We have certainly experimented, and in various ways, but always a feature of the negotiation has been something like what the Americans have had in terms of private secretary advisers, because the Government have realised it is important in the course of a negotiation to be able to discuss with people in the business community, and, frankly, in labour and other groups, non-government organisations, what the negotiations are about, what they are intending to do, and ask for their reaction on specific texts and specific issues that come up in the negotiations. Again, in giving that detail of information to these people, there has to be some process of assuring the confidentiality of that information will be respected by those individuals.

Q10 **Chair:** Before I move to Julia Lopez and Chris Leslie, let us have a perspective from Australia.

Alan Oxley: It is very similar. In Australia, agreements only succeed if the Government are clear to people about what the purpose is. Our system is not as open as yours in terms of talking to industry groups. I personally think they should spend more time on that, but they don't. The reality is that at the end of the day it is a negotiation across many issues, and the challenge for any Government is that it might line up a series of positions on four or five questions, there may be three or four others to be resolved, and they cannot enter the business of having a discussion with those sensitive areas until they have the whole package together.

What this really depends upon is the art of the Government, which John has described quite well—of having people who will connect with the industry interests associated. They must be consulted. They must be brought along. They are not necessarily shown the end result of what is to be in the agreement, because often the agreements hinge on a variety of factors and that is often the biggest challenge—for Government then to go to their legislature and say, "Will you vote this up or down?" We have a dual-House system. Our Lower House has to have a majority for the Government to be in office. Our Upper House system is based on state representation. Typically, there is some negotiation that goes on that has requirements to be put in place.

When we did the free trade agreement with the United States, there was a particularly anti-American attitude among the Labour Party, who were in Opposition, and as an act of "S on the liver"—if I could use that expression—a penalty was imposed that any CEO of a company who did not comply with a particular measure, which was quite minor, would face five years in jail. The Government put that in place because they wanted the agreement, but sometimes they are the sorts of things you have to live with. What is quite critical, however, as has been said by everybody else here, is the public has to be told what the whole purpose is, the legislature has to be brought in from the beginning, and there has to be quite open discussion until you move to the point where the process is complete.

Q11 **Julia Lopez:** The question I have been given is about secrecy, but I would like to not ask that and draw instead on your collective experience, because it is a very experienced panel. I would like to know what you would advise Britain going forward, based on your collective experiences of what has happened in the past and the pitfalls of your own countries when negotiating trade deals, also taking into account the current atmosphere that we are operating in when it comes to a movement away from free trade. Where do you see that the UK could be a thought leader in this regard? How do we create maximum opportunities for ourselves while not being naive to the challenges we are going to face?

Sir Lockwood Smith: I am happy to have a go first because that last point you made, to me, is so important. As a former Trade Minister, I chaired one of the main working groups at the Battle for Seattle, when they first tried to launch what became the Doha round. I missed your voice. The UK's voice was buried under the skirts of the EU and we desperately needed a like-minded, major global player like the UK and your voice was not there. You were not in the green room; the EU was there, not the UK.

The fundamental issue for you, as you look ahead—because I think the UK can have a major global role in leading, and the world needs it right now, as we say, with some of the negative things about trade liberalisation going on, but in order to do that you must be able to have your own global trade strategy, and it is dead simple. If you remain part of the EU customs union, you cannot have your own global trade strategy; you will not have a global voice on trade issues. It goes even a little bit further. If you remain bound into the EU regulatory system, you will not be able to have a significant global trade strategy, sitting on a smart global trade strategy, and again other countries will be less interested in what the UK has to offer and do, because you are tied into something that is not where the world is heading. If you want to have a look at where regulatory systems are heading at the moment, look at the TPP agreement.

Q12 **Julia Lopez:** Do you think it is possible for us to extricate ourselves from the EU's sphere of influence without causing substantial economic harm, moving towards the place where you think we need to be?

Sir Lockwood Smith: Ideally, of course, what I would dearly love, if I was negotiating, is to negotiate the world's best free trade agreement with the EU, and it ought to be the easiest thing to negotiate. New Zealand was the first developed country to negotiate a free trade agreement with China. That was quite challenging, because the systems we start from are so different, and New Zealand has not just a free trade agreement with China but one with Hong Kong and a separate one with Chinese Taipei as well.

You start from a common position with the EU. You start from being members of the customs union. It ought to be the most simple thing in the world to negotiate a free trade agreement from that position and it needs to be world leading. Services are so important; financial services are so important. The whole development of regulatory systems is so important as the world moves ahead. You have the chance in the negotiation with the EU to lead the world in those developments, and it ought to be something that is not that difficult, if only people would get their minds away from the political hubris surrounding it all and focus on the real—

Chair: We are two years down the track and that simplicity is yet to be found.

Julia Lopez: Let's not start this argument.

Sir Lockwood Smith: Trade agreements—

John Weekes: They don't come quickly; they never do.

Sir Lockwood Smith: But they are not that complicated if your objectives are very clear, though they do take a while to work through, no question. I started work on TPP in 1999. It was finally signed, finally after the US pulled out of it, last year. That is basically almost 20 years in the evolution of the world's biggest regional trade agreement.

Q13 **Chair:** You are saying that was a simple agreement?

Sir Lockwood Smith: No. TPP is far more complex because you have countries like Vietnam that have previously been communist countries with major state-run businesses. Those are more complex. With the EU, I say you start from a customs union or you start from a single market. It ought to be very simple to negotiate such an agreement.

Chair: Sorry, Julia, to have been cutting across you there. You might want to come back.

Q14 **Julia Lopez:** I would like to get everybody else's thoughts on this.

Shanker Singham: The big gains for the UK are clearly where we are strong, which is we are the second biggest exporter of services in the world. Clearly, improving regulatory barriers in services is a huge part of the potential gain.

What you have to do, though, is be able to negotiate concurrently with the EU as well as with the US and with other countries. Lockwood has talked about TPP, UK accession to the TPP, and accession is a lot easier because they have done the work of actually negotiating the agreement and you simply have to decide whether your regulatory system is the right system for accession. The UK system would have to change its regulatory system in some ways to accede to the TPP.

Q15 **Julia Lopez:** Do you think those changes would be politically palatable?

Shanker Singham: Yes. Lockwood mentioned at the beginning the idea of good regulatory practices, and any trade agreement will have a regulatory coherence chapter, the first half of which is all about good regulatory practices. The UK has been a bit of a leader on this domestically. You want to regulate in ways that are the least trade restrictive and the least anti-competitive, consistent with a clearly stated, legitimate regulatory goal. That is basically where the WTO and the OECD thinking on this has got to.

Absolutely, with the EU, we ought to be in a position where we can negotiate a very high standard agreement on regulatory practices and manage the differences as we diverge in ways that ensure that recognition, once granted, cannot be removed in an unreasonable fashion. That should be our goal with the EU but you have to be able to negotiate with other players at the same time because these negotiations will affect each other. I would say services are where the big gains are. There is a lot of domestic regulatory reform that we could do that would improve our own domestic arrangements.

Q16 **Julia Lopez:** Do we have the capacity and the time to be able to do that?

Shanker Singham: I think we do. The advantage of negotiating with other countries is that they will want you to do that anyway. If you want to deal with the US, if you want accession to the TPP, regulatory systems in the UK will have to improve. There are big gains on the regulatory side. We talk a lot about tariffs and border barriers, but the biggest gains are actually domestic regulatory gains. There are studies on the EU that go back to 2010 that talk about if the EU improved its domestic regulatory systems, just in the area of product market regulation, there would be an 8% increase in European GDP. These are big numbers. The OECD has talked about 5% to 7% increase in GDP for regulatory reform for developed countries. The gains from removing your border barriers and tariffs and so forth are actually not that great—maybe 1% or 2% GDP is what is achievable—but the domestic regulatory gains are much, much bigger.

Q17 **Julia Lopez:** Is there anything you would like to add, Alan?

Alan Oxley: The thing that has intrigued me most from being, like Lockwood here, one of the farthest away from the EU is that we watch it from a distance. Everybody who has been a trade negotiator in Geneva walks away with a view of how the EU works, and the short answer is badly, because it has become unwieldy. The thing that surprised me most when the whole Brexit debate occurred was how little is known in the UK about how the EU is dysfunctional. If you had the choice, would you join the organisation or not, if you knew how it worked? The short answer would be no, but that is not really what the debate is about.

It means that the instrument has to be analysed, has to be assessed, the way it works has to be looked at, and you need to restore some expertise. I was astonished to learn, when the announcement was made about leaving the EU, that only one British UK civil servant who was working in the Commission returned to London; none of the others did, the other 25 stayed there. They were all paid. That meant that you did not have any significant skills inside your system to help you form trade policy and related issues, which is commonplace for the rest us having been through these sorts of worlds. You face an extremely difficult environment. You have a very difficult task of getting together a team to do this for you, but then there is the bigger picture, which is being referred to here. Quite frankly, if you stopped cold and asked Australia, "Would you join the EU?" the answer would be, "Definitely not, for all the following reasons." One of the major reasons is that the EU has become regulatorily dysfunctional. Over time, what is starting to happen in the EU is that it has more and more regulation, which is actually impeding the purpose of free trade agreements, which is to foster access to higher-value, low-priced goods, and the EU is a machine that is not set up for that.

Q18 **Chair:** Looking at the area of policy transparency and scrutiny, and this is the area we are at at the moment, what are you thinking that Government should be doing going forward, if we are looking at how much we let be known and how much we keep to ourselves?

Alan Oxley: Do you mean in the negotiations?

Chair: Yes, this is the area we are probing.

Alan Oxley: Well, that is in negotiation. Everybody knows negotiating with the EU is difficult. History shows the pattern. They have the strangest people in executive positions in the European Community. We see them on television and it is not so funny because the EU is equipped with not first-class people, really, in many of its areas. It has become a huge bureaucracy and that is to its disadvantage. From your end, the biggest challenge, I think, which was made in our comments, is it is very easy to do a bilateral trade agreement, but when you have to negotiate with a body as large as the EU, maybe what happened here in London was that you moved too quickly before getting a picture as to what was to be involved. Now that the whole process has been initiated, you have to cope with it.

Chair: Given the constraints of time, we will move on to Chris Leslie.

Q19 **Mr Chris Leslie:** A couple of aspects sticking to parliamentary scrutiny, the transparency issue, because we can too easily get waylaid. Can you give us examples of where in other jurisdictions there is a pre-agreement dialogue with Parliament? I liked your example of the informal discussion with different caucuses and parties as things were going through because I definitely think that information is useful. Do you know of circumstances where Parliaments have been asked to give a pre-agreement mandate or some sort of outline as a way of helping with the negotiation? The danger is, isn't it, that you can spend all this time with the Executive negotiating, getting it to the end of the process, and then bam, at the end Parliament just sticks two fingers up to the process.

Shanker Singham: That does happen a lot. With the US agreements—

Chair: Wallonia springs to mind.

Shanker Singham: If you look at the Colombia and Panama and Peru FTAs that the US did, they did not have the majorities in Congress to bring them to Congress, so the President never brought them for quite some time. He spent quite a lot of time negotiating and then they just sit until there is a parliamentary majority.

The way the US does this, and I would suggest this is what the UK should do, is the US has a trade promotion authority. What Congress does is it essentially says, "Within broad guidelines, we are going to give you the authority; we are going to delegate to you the authority to negotiate a trade deal." That trade negotiating authority should be fairly simple. You do not want to tie the hands of a negotiator too much, but you might say, and the US does say things like, "On labour, you need to negotiate an agreement that does not violate certain core ILO conditions."

Q20 **Mr Chris Leslie:** This is a Congressional authority?

Shanker Singham: It is a Congressional act.

Q21 **Mr Chris Leslie:** How does that actually work?

Sir Lockwood Smith: Can I offer a different view here? I have worked so much with the US and trade promotion authority is such a problem—don't get yourselves into that mess—because the US Executive, the Government, cannot negotiate an agreement that can get anywhere without trade promotion authority, or fast track as it used to be called. As you seek to try to negotiate things with the US, if they do not have fast-track authority, the Congress can unpick every line of the trade agreement and that is totally unacceptable.

Q22 **Mr Chris Leslie:** It is a catch 22 in a way, because also, if Congress feels it has been ignored, it just sits on the shelf, so how do you—

John Weekes: If I could come in on this, I would like to say something about the US and then something about Canada, and there may be some similarities between Canada and UK. I don't know, I have not studied it closely enough, but we do have a similar system of government.

In the United States, the Congress, under the Constitution, has the power over regulating foreign commerce. This is what has led to the situation where the Administration needs authority from Congress, and it has become the trade promotion authority, in order to be able to negotiate effectively internationally. There was a whole period of time in the early part of the 20th century, up until the Reciprocal Trade Agreements Act in the 1930s, when the United States Administration negotiated a whole serious of trade agreements, none of which were ever brought into force because Congress did not approve them, so they have a unique situation that really requires this. In Canada, the Government under the treaty-making power, have the authority to be able to negotiate a trade agreement and also, in most cases, or in many cases, to bring it into effect without Parliament, because a lot of authority, for cutting tariffs, for instance, has been delegated to the Government by Parliament.

The Government, however, because of responding to democratic pressures, have altered how they go about this and now will always table a trade agreement before Parliament that is concluded and there is an opportunity for discussion on that, and so on. Then, of course, because trade agreements have become more complex, in almost every case legislation is required to implement the trade agreement, so that definitely brings Parliament into the equation. Having said that, that is a sort of minimalist look at it. I think there is everything to be gained, quite frankly, in my view, by the Government being more open in terms of explaining what they are doing in trade agreements.

Obviously, there are certain things you cannot do. You cannot have every negotiating session televised, and so on. You do need to have a confidential environment in which you can pursue an effective trade negotiation, but you can be very open in terms of discussing what your objectives are, how you are going about pursuing them, how you are going to—

Q23 **Mr Chris Leslie:** Yes, I don't think anybody is advocating that Parliament is going to negotiate; you do have to have the Executive negotiate a treaty and present it. I am just thinking of different tactics for either consultative or concurrent agreement or some sort of mandating or parameter—obviously in the States they have this—within boundaries. I know, Sir Lockwood, you are not so keen on that. Otherwise I am worried. In the Commons, in a couple of weeks' time, we are going to be asked to vote on the Japan trade deal with EU ratification, and CETA, the Canadian trade deal. There is a lot of lobbying, saying, "Throw them out, they are all bad," and there is a lot of pressure on MPs, when, of course, as you know, with these very technical agreements a little bit of lobbying can come in and MPs have not been aware of it until that point. I do worry that, especially in narrowly balanced Parliaments, things can knock off very big agreements with a small push.

Sir Lockwood Smith: Our constitution is very similar to yours, in that we do not have a written constitution, so we have a number of conventions, if you like. Ours is exactly the same as Canada's, in that the Executive has the authority over international treaties. Just as in Canada, in New Zealand a trade agreement could be brought into effect—most modern agreements do require law changes and so they do come to Parliament, but we do table them in Parliament; they are now all tabled in Parliament. The Trade Minister from New Zealand will take the Opposition, the shadow Trade Minister, to trade events with him or her, around the world. We make sure the Opposition is well and truly involved in the strategic thinking. We have a very bipartisan approach to international trade.

Q24 **Mr Chris Leslie:** One of the issues we are thinking about is confirmation hearings for key appointments; obviously not the Secretary of State, but the chair of the Trade Remedies Authority, for instance—that is one of the issues that has come up here—as a way of getting a sense of parliamentary ownership into the trade process. I appreciate that is not to do with trade deals—trade remedies is a slightly separate aspect of that—but are there examples of Parliament that you are aware of—certainly in the States that is the case, but elsewhere—where there is a sort of—

John Weekes: Parliament becomes the regulator?

Mr Chris Leslie: No, Parliament effectively gives its consent, either to the broad parameters or to individuals—not necessarily the negotiators, but those who are chairing quangos, policy bodies. Do you see what I mean?

Shanker Singham: There are a couple of points that need to be made here. When Sir Lockwood was talking about TPA, the original fast-track trade negotiating authority was supposed to be a very simple mechanism, a delegation of authority, without having everything hanging off it. It has become so complicated because people have added all kinds of things to it and it basically becomes almost a negotiation in and of itself. I agree completely that that is to be avoided here.

The other point is that the US is a very big economy, so it can get away with some of this. That is a drag on negotiating that perhaps the UK may not be able to. I think that is a good thing to think about. The Government, however, the Executive branch that is negotiating, have a very, very good reason to keep Parliament and the relevant committees, the DIT Committee and the other committees, fully engaged in the process because they know that ultimately they are going to have to come back to Parliament with a deal and they do not want to waste the time. They need to have mechanisms to deal with Parliament. Consultative mechanisms, where Parliament is able to advise on the creation of trade policy, are perfectly legitimate and, in fact, Governments will fully utilise that if they want to see the deal passed in the future.

Q25 **Chair:** Do you agree with the point that was made by John Weekes that a well-informed Opposition, as the Governments of Mulroney and Harper had, was a good way to go?

Shanker Singham: Absolutely. I would say you want to be as clear as you can. You do have to differentiate between what your negotiating objectives are, on which you can be very clear, and the actual mechanics of the negotiation and the trade-offs that you are doing in the negotiating room, which do have to be confidential because obviously the whole agreement, the whole package, rests on lots and lots and lots of trade-offs.

Q26 **Chair:** If you are trading off Welsh farmers, and that is kept confidential, how do Welsh hill farmers react when they find out that the New Zealanders and Australians are going to be sending us all their meat instead, and you have a group of 15 or so Welsh MPs, maybe in a balanced Parliament, going mental about the situation that has just been agreed and you have not told them, you have sold them down the river, as they will say, in the political reckoning?

Shanker Singham: You would keep your Parliament informed of your negotiating objectives, and your negotiating objectives in agriculture would be certain things that you would be trying to achieve. In the US, for example, there are agricultural members who are parts of the trade policy negotiating machinery. They are there to provide their input and explain their views. Creating fora for people to advocate their views is perfectly fine and I would encourage as much of that as you can possibly do.

Alan Oxley: General Australian practice.

Chair: I should give the right of reply to New Zealand on agriculture. Australia is maligning them, semi-maligning them at least.

Sir Lockwood Smith: What these guys have said is that the more people can understand what you are trying to do, the better.

Q27 **Chair:** What about the trade-offs, then? You have offensive interests and to achieve these offensive interests you have given away and traded off. How aware should sectors be that they are to be traded away?

Sir Lockwood Smith: Our situation is different, in that we have nothing to give away. What New Zealanders understand, I think from our history, is that protecting any part of your economy hurts you more than anyone else. Tariffs or quotas or anything like that that the UK imposes on imports coming into the UK hurt your economy more than anyone else's economy.

Q28 **Chair:** So anybody in the world can freely trade into New Zealand; you have no barriers to people coming in?

Sir Lockwood Smith: To people coming in?

Chair: To people trading into New Zealand.

Sir Lockwood Smith: We have very low levels. When I was Minister—

Q29 **Chair:** These low levels are not hurting New Zealand?

Sir Lockwood Smith: They are. When I was Minister, we legislated, and the legislation went through Parliament, to abolish all tariffs, on our own—just get rid of the lot, because they hurt us. Sadly, a centre-left Government subsequently repealed that legislation. That one was non-bipartisan, but the levels are extraordinarily low. We have some of the lowest levels of tariffs in the world, for the reason that they hurt our economy more than anyone else's. We used to have a motor assembly industry in New Zealand. It was protected by import licensing. You could not import a motor vehicle without all sorts of rigmarole going through. The Japanese, and you guys, built motor vehicles and then would take them to bits, pack them up and send them down to New Zealand. We had 20,000 people employed in putting them back together again. We calculated, when I was Deputy Finance Minister, that it made more economic sense to pay all those workers the same salary as the Prime Minister, send them on holiday forever, and close down the industry, and get your transport sector operating at global cost.

Q30 **Mr Chris Leslie:** My last question. Parliaments that at the end of the process baulk or come in with a spanner in the works, that kind of thing—

the Wallonia example we were talking about, parliamentary ratification—they did get concessions—

John Weekes: They did.

Mr Chris Leslie—out of the CETA agreement.

Alan Oxley: Those French farmers?

Mr Chris Leslie: Are there other examples that stick out in your minds, in history, of where small Parliaments or any Parliaments—this is all politics—in the last-minute process have stuck in a refusal or a problem and they have extracted what they wanted? I am interested in whether if the Wallonians had been brought into it earlier that might have prevented the problem. However, maybe they did well leaving it to the very end, from their perspective without looking at the rights and wrongs of it. As a negotiating tactic, it wasn't bad for the Wallonians.

Chair: The Queensland or Quebec question, in reverse, isn't it, really?

Sir Lockwood Smith: That was a particular issue to do with the EU, that the Commission has competence to negotiate certain aspects of trade agreements but modern trade agreements go way beyond—

Q31 **Mr Chris Leslie:** You could still say it was an Executive, the EU Commission, not recognising its parliamentary problems, right? Are there other examples that you have had where Parliaments have managed to stick amendments in at the end?

Sir Lockwood Smith: Not in New Zealand.

Alan Oxley: I gave you the case of pressure being exerted on the Government by activist groups. They just had to concede and passed the law, which was unpleasant.

Mr Chris Leslie: Yes, which was this penalty.

Alan Oxley: That's right. That actually happens. It all depends on the numbers. It does quite depend on the ether.

Q32 **Mr Chris Leslie:** But you only, as an Executive, learn that these things can crop up if you are aware of examples where they have happened?

Alan Oxley: Clearly. To be successful, the Executive should be right across all the thinking that is going on in the legislature because at the end of the play, that is where the final decisions take place.

Shanker Singham: If they are sensible, they will do that. There will always be cases. If you look at the CAFTA-DR—the Central American Free Trade Agreement with the Dominican Republic—when it went through Congress, all of these votes are incredibly close and there are deals that are being done even on the Floor of the House to get them over the line. They are working sessions. John can talk about side agreements in the NAFTA.

John Weekes: Some of the concessions have nothing to do with the trade agreement.

Q33 **Mr Chris Leslie:** But in those cases, sometimes the other party to the negotiation just has to accept a last-minute negotiation that has come out of a parliamentary—

Shanker Singham: The thing is, a trade negotiation is a messy process and it covers a lot of different things. Sometimes you simply have to accept a less than perfect result if the Parliament comes in and says, "We want—" There were examples with the NAFTA process in the sugar and tomatoes areas.

John Weekes: There is one other aspect of what we are talking about here, from a Canadian perspective, that might be interesting for you, and that is the role of regional governments. Of course, in Canada, we have 10 provinces and three territories, and we used to work very closely with the provinces in trade negotiations, although formerly the provinces really were not being asked to do anything so they did not have to implement anything through their parliaments afterwards, until we got to the negotiation of CETA with the European Union. In that negotiation, the European Union made it clear that a pre-condition for entering those negotiations would be that negotiation of concessions directly by our provinces would also be on the table, for instance with respect to Government procurement practices at the provincial level, alcoholic beverage purchasing policies at the provincial level, and a few other things.

That required us in that case in particular to make a different arrangement with our provinces and have them much more involved as partners in the planning of the negotiation overall and as actual participants at the negotiating table in those areas where the provinces were being asked to make concessions. Similarly, at the end of the day, implementation required the provinces to take legislative action to implement those concessions on which they had agreed. That is the only negotiation, so far, that we have had that specific a role by the provinces but we have always worked, and continue to work very closely, with them on the negotiations overall because we recognise that it has an important effect on their economies and politically it has been useful to do it.

Q34 **Chair:** On that example you have just given, Mr Weekes, was there a potential for the provinces to undermine, if you like, the Canadian national Government's approach?

John Weekes: Yes.

Q35 **Chair:** Was there ever a temptation to grab the powers away from the provinces, under a pretext?

John Weekes: Obviously, this was a long process and the provinces, I would have to say, behaved very responsibly.

Q36 **Chair:** Was there no paranoia at the centre to grab any powers away from the provinces?

John Weekes: No.

Q37 **Chair:** No, okay. How did the dialogue go with the provinces and the central Government?

John Weekes: It went very well but it was time consuming and, of course, it got into a lot of very boring detail that you get into in these matters and did not, at any point, really lead to any sort of major political crisis.

Alan Oxley: Any payments to the provinces?

John Weekes: No, I don't think so.

Alan Oxley: Good.

Q38 **Chair:** New Zealand and Australia, have you had any mirror situations like that that the Canadians seem to have had but in the Canadian nature of things managed to deal with in a responsible and mature way?

John Weekes: It is interesting, some of my former colleagues in Government thought that this was a terrible example—"Why did we let the provinces get muddled up in this and how did we ever bring this upon ourselves?" I take the contrary view. I say that it is a good idea because, frankly, we are a federal country. The sorts of things that are of interest in trade negotiations now, a number of those are under provincial jurisdiction, and if we want to negotiate the best trade agreement possible on behalf of Canadians, we should be prepared to engage in a negotiation that involves all those different aspects that are relevant to the negotiation. The only way to do that effectively is by engaging the provinces in doing that. It makes life harder, you may get less sleep at night, have to work harder, you may need a slightly bigger team, but the end result, I would argue, justifies it. I think we have a better deal with you and the European Union as a result of our provinces having been part of it in that way.

Chair: I am tempted to make a plea to send the entire UK Government to Canada on a learning sabbatical on this. They can stop grabbing powers. That is another issue that we are dealing with at the moment.

John Weekes: You could discuss it with our High Commissioner. She used to be the top public servant in Canada. She might have some ideas.

Chair: A very capable lady. Have New Zealand and Australia had similar tensions or potential tensions, which Canada have well managed and that the UK has badly managed?

Alan Oxley: Unlike New Zealand, we do have a constitution and the powers for trade are firmly in the federal Government's hands. Sometimes, there will be discussions of the sorts of things John is talking about, but it is infrequent. The distribution of power in our system is quite clear; it is federal.

Q39 **Chair:** If the EU were to have a negotiation with Australia, demanding some state access as it did with Canada for provincial access, how does that play?

Alan Oxley: What our Trade Minister did when he learned about the Canadian problem on investment was to say, "We'll do a free trade agreement with Canada, minus investment," and there is a good reason for that because the Commission does not have authority to set investment policy. Every single member of the EU has to be approved on an investment measure in a free trade agreement. Our offer, my Government's offer, to the EU is to say, "We'll do an FTA but we are not talking about investment in it."

Q40 **Chair:** Because of the complexities on the European side?

Alan Oxley: Yes, because we did not want to have to go through the pain that Canada went through.

Q41 **Chair:** What if the EU had gone to you with something that was a state competency and said, "We need to get down to this level," as they did with Canada? How would the Australians have reacted then?

Alan Oxley: I think the reaction would be to say, "What's the colour of your money? Is it worth it? Is there going to be gain for us in that?" and then we would have a hard look at it. If it was significant, we could probably accommodate.

Q42 **Chair:** If it would have required internal Australian negotiations, as the Canadian's patiently did, would the Australians have had that patience to go through that process?

Alan Oxley: The amount of time it took Canada? Ten years, wasn't it?

John Weekes: Yes. A lot of these negotiations take a long time and there are pauses in it and so on, but at the end of the negotiation, on the investment issue, caused in part by the Wallonia situation, of course, the political situation had changed somewhat in Canada because we had a different Government in power from the one that had negotiated it in the first place. The Liberals were in power rather than the Conservatives of Stephen Harper, and they were much more open to the idea of putting some kind of restrictions on how the investor state dispute settlement system operated in the area of investment.

We can say it was painful, we had to go back to the table and negotiate this, but actually the EU found in us quite willing partners in doing this. Of course, it does complicate the process of ratifying the agreement overall. This is one of the reasons why the CETA is only implemented provisionally at this point of time because it is those aspects of the agreement, including the investment provision, that lie outside the unique competence of the EU, that require that the agreement be approved by the legislatures of all the EU member countries, some of whom seem to have more than one legislature.

Chair: Indeed. I am aware of time pressing hard against us. Colleagues, any questions you want to raise or are you happy at the moment?

Q43 **Mr Marcus Fysh:** One last question. This concept that we have heard of, a single market with the EU for goods and a customs union that covers goods—would that be, if it were implemented, a status from which the UK could have any meaningful hope of trade deals with other nations?

Sir Lockwood Smith: Very simple: forget it.

Alan Oxley: It is a trade-impeding concept.

Q44 **Mr Marcus Fysh:** Just no?

Sir Lockwood Smith: This is your moment in time for the UK to step forward into a major global leadership role on trade. All I would say to you—I was not only a Minister, I was also Speaker of our House and I have a great love of Parliament—is do not waste this moment. This is a huge opportunity for the UK that will come only once in a couple of generations; don't waste it.

Alan Oxley: Take into account the Canadian experience of how long it took to get agreement on something as simple as approving investments. What you are talking about is far more complicated than that. You would be having a system in place that would gum everything up and you would not get a result.

Q45 **Chair:** Something simple we said to the WTO on the shape of TRQs and nine or 11 countries, I can't remember who they are, came along and have gummed up that process.

Alan Oxley: Agriculture is a special case.

Q46 **Mr Marcus Fysh:** Is it fair to say as well that if there is uncertainty about whether the UK will be in some sort of customs union that it would be difficult for other countries to agree even the TRQs?

Sir Lockwood Smith: Absolutely.

John Weekes: Other countries are going to want to be able to explain to their business communities what they are going to get out of a negotiation with the UK, and if you are in a customs union with the EU, you are not going to be able to change a single customs duty in the course of those negotiations. That is not going to make the negotiation very interesting. If you are in one of these what I call in-between Neverland situations of a new customs partnership of something that is not quite clear about how it is going to work but it looks rather complicated, it is going to be hard for these other Governments to explain to their businesses how they are going to benefit from an agreement with the UK when they are not quite sure what all of that mean in terms of actually selling something into this market. It might even be more complicated than it is now, when you are still part of the EU.

I have a very simple view of this. Obviously, not being a UK citizen, I am not invested in the Brexit debate one way or the other, but to me as a technical issue I think it is really a binary decision. Either the UK decides to have an independent trade policy and negotiate as good a deal as possible with the EU and negotiate good deals with the rest of the world, including in the WTO, and that requires having an independent policy, or it is better to stay in the EU—

Sir Lockwood Smith: Absolutely.

John Weekes—and continue to be able to participate in the development of EU trade policy and regulatory policy. It is a binary decision, otherwise you are out in the middle of no man's land on the first foot of war.

Alan Oxley: Can I make a simple point? When the Soviet Union released its satellite states to become independent nations, those countries applied to, and were accepted by, the EU as members. The tariff schedules have never been completed for that process. They are still undone, at least 10 years old. That is the nature of the bureaucracy that operates.

Q47 **Mr Marcus Fysh:** One last question. If we are in a transitional period, which includes a period in which things are effectively the same even after we have left the EU—i.e. we are in a customs union—when would you anticipate other nations who are members of the WTO would think it is the time to finalise what our tariff schedules at the WTO should be and what our quotas under those should be?

Shanker Singham: Other countries are going to have to believe that you are a credible trading partner, so that means they have to believe that you are able to offer further liberalisation in the future and that the future is not too far away. If the future gets kicked off quite a long way down the road, all these countries will simply say, "We are going to take our pound of flesh in the TRQ negotiations themselves because we do not believe that in any reasonable time we can go back our industries and say, 'Hang on for the next six months because we can get this really good deal'." They won't do that. You have to be credible as a trading partner and the sequencing and the timing is really important.

They have to also believe that the risk of you ending up in some sort of customs union or single market arrangement—in other words, the risk that you will not have control over your tariff schedules and you will not have regulatory autonomy—if they think there is a significant risk of that, they will back off. If they think there is less of a risk of that, and they think there is advantage in negotiating with the UK—and that might not just simply be for the UK market; that might be because they think that your emergence in the trade and services agreement negotiations in the

WTO, or other bits of the WTO, will be valuable—they might go for that, but it very much depends on your credibility as a trading partner.

Alan Oxley: There is another trade imperfection in the EU, which I will just mention very briefly because we have not really discussed it a great deal. When the Maastricht Treaty was struck, the agreement provided a commitment by every member that they would liberalise, and set schedules for, opening services markets and trading services between each other. It has never been done. Services is the new growth area in trade for advanced economies like yours. It is where the future lies. It is where growth is. The EU is not the right machine, if that is an interest of the UK.

Chair: Gentlemen, can I thank all four of you for a very illuminating and very worthwhile conversation? We could have continued for quite a long time into the afternoon and maybe up to the next 10 or 20 years, perhaps. That is maybe something that will happen. Thank you all.