

International Trade Committee

Oral evidence: The Impact of UK-EU Arrangements on Wider UK Trade Policy, HC 1549

Wednesday 12 September 2018

Ordered by the House of Commons to be published on 12 September 2018.

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Members present: Angus Brendan MacNeil (Chair); Mr Nigel Evans; Sir Mark Hendrick; Mr Ranil Jayawardena; Mr Chris Leslie; Emma Little Pengelly; Julia Lopez; Faisal Rashid; Catherine West; Matt Western.

Questions 1 - 85

Witnesses

I: James Canham, Managing Director, Accenture Border Services, Michael Lux, EU customs and international trade lawyer and Eric Pickett, EU customs and international trade lawyer.

II: Dr Emily Lydgate, Lecturer in Environmental Law, University of Sussex and fellow of the UK Trade Policy Observatory, Dr Michael Gasiorek, Senior Lecturer in Environmental Law, University of Sussex and fellow of the UK Trade Policy Observatory and Dr Peter Holmes, Reader in Economics, University of Sussex and fellow of the UK Trade Policy Observatory.

Written evidence from witnesses:

[Michael Lux](#)

[Eric Pickett](#)



Examination of witnesses

Witnesses: James Canham, Michael Lux, and Eric Pickett.

Q1 **Chair:** Good morning, panel. Thank you very much for coming to our evidence session this morning on a new inquiry into the impact of UK-EU arrangements on wider UK trade policy. It is much appreciated. First, panel, can I ask you to introduce yourselves, name, rank and serial number, please, for the record, starting on my left?

James Canham: James Canham, Managing Director of Accenture. My role at Accenture is to oversee all the work we do around the world with customs and border agencies.

Michael Lux: My name is Michael Lux. I am a former German customs official who has worked both locally and in the Ministry of Finance, and then for 25 years I was head of unit in the European Commission inter alia in charge of the customs code and of customs procedures. For the last six years I have been working as an attorney and consultant on customs matters.

Eric Pickett: I am Eric Pickett. I am a German lawyer. I specialise in EU customs law and international trade law.

Q2 **Chair:** Thank you all very much. First, to Mr Lux and Mr Pickett, it might be quite a wide-ranging question, but can you summarise the various possible outcomes of the Brexit negotiations as they currently stand? I think that we are talking of a deal or no-deal scenario without the customs union and without the single market. As it currently stands, it might affect UK customs arrangements, with particular reference to imports from non-EU countries.

Michael Lux: First, the question is whether the UK remains in the EU customs union or not. If the UK remains in the EU customs union, then it has to apply the policies of the EU. There will be problems with anti-dumping duties and with preferences because the agreements with third countries are between the EU and the third country, and as the UK will no longer be a member of the EU these agreements cannot be applied as such. They can, of course, be amended but they cannot be applied as such.

Now it is not the wish of the UK to remain in the customs union, so then the relationship would be a free trade agreement between the EU and the UK. The UK can then enter into a free trade agreement with any other third country. If I go to the Chequers paper, there is the idea of the UK joining the free trade agreements that the EU has. This is a theoretical possibility, but it would be a trilateral agreement, which means that all the partners would have to agree that the UK becomes a third party to that agreement.



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Q3 **Chair:** For clarification, there are 40 agreements for about 68 partners?

Michael Lux: Yes. First, it is unlikely that it will work with all of them and it is also unlikely that it will work in a short period. That is the main point I want to raise. It will certainly not happen for next year in March and it is even unlikely that this will happen if there is a transitional period for the end of 2020. Time is the biggest problem in my view.

Q4 **Chair:** Mr Pickett, do you have anything to add to that?

Eric Pickett: Yes, I agree with my colleague, Mr Lux. I think he hit all of the major points there.

Q5 **Mr Chris Leslie:** Thinking about if we pursue the Chequers proposal for a facilitated customs arrangement—this is the UK Government's fix around not being in the customs union but sort of trying to keep the benefits of it—I just want to explore the readiness of the UK if this has to come into place by March, which we assume is the commencement time for this, and the actions that would be needed to put that in. In some of the written evidence, Mr Lux, beforehand you have pointed out the number of technical issues.

Can I first ask you about the act of collecting tariffs on behalf of the European Union? Of course, we have since seen that there is an insistence on reciprocity, that we would be asking the Europeans to collect our tariffs. Could you just walk through some of the technical things that would have to be in place in order to do that, in particular your point about tracking and enforcement? Perhaps other witnesses want to come in on this as well. How much might you envisage that costing? How would it be operationalised? Also, if we are collecting tariffs on behalf of the EU, do we have to accept EU audit, EU anti-fraud rules and presumably ECJ oversight potentially if we are doing that on their behalf?

Michael Lux: I start with the easiest point. If someone is collecting customs duties on behalf of the EU, he must subject himself to the controls of the EU. There is no way out, so it is unrealistic to expect that the EU would ever accept that because that is a standard rule that is applied everywhere you collect duties on behalf of the EU. DG Budget comes with controls, the Court of Auditors comes with controls, and if there are legal issues then the European Court of Justice is to handle them.

For example, on the interpretation, the UK Administration might classify the goods in one heading of the tariff with a specific rate and then there is a dispute and then only the European Court of Justice is allowed to determine what is the right tariff heading.

Q6 **Mr Chris Leslie:** To be clear, you do not know of anywhere else where other jurisdictions collect tariffs on behalf of the EU that are not EU members—or does this operate elsewhere? What is their experience?



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Michael Lux: There is the case of Norway collecting the duties on behalf of the EU, but only at the border. That is important. It is designed as a border simplification so that when the goods leave Norway you have a clearance on the Norwegian side and another clearance on the Swedish side. Yes, it does exist, but everything that is done by Norway on behalf of the EU is also subject to controls.

Q7 **Mr Chris Leslie:** Tracking and enforcement, the infrastructure, the logistics, the costs of that with goods coming into the UK but perhaps destined for the EU and vice versa?

Michael Lux: Yes. First, the Norwegian example is not that. Yes, the costs would be quite high. I do not know whether Mr Canham can estimate the cost. If you want to track each consignment, then you would probably have to use RFID tools that are attached to the consignment.

Q8 **Mr Chris Leslie:** What does RFID stand for?

James Canham: Radio frequency ID.

Michael Lux: Radio frequency ID, yes, which are attached either to the container or to the individual goods. It does not exist yet. It will take many years, but it is possible. It comes with a high cost. The next thing is that if the tracker is attached to the container and then the goods are unloaded, of course, you cannot follow unless you put it to every package, which would increase the cost enormously. In my view, it will just not work due to the high cost, apart from the fact that the whole model is, from my point of view, unacceptable because it also forces the EU to apply the UK tariff. The model works only if it goes both ways. That is a point that is not mentioned in the Chequers paper. It needs to be done both ways, so why should the EU accept something that makes their life extremely complicated in order to solve—

Q9 **Mr Chris Leslie:** Shall we hear from the others on the same basket of questions?

James Canham: I think the question was if we were to accept the proposals set out in the White Paper would we have enough time between now and whatever date is decided to be able to effectively collect the duties, whether it is those flowing to the UK or those flowing to the EU. There are a couple of things here.

First, in terms of the collection of money, that happens at the border anyway. As a trader with the UK, the implications in terms of additional burden would probably be limited because you are still paying a tariff or a duty. I think that the challenge comes in then working out whether or not that good has stayed in the UK or whether it has moved into the EU territory. I know there have been some studies that suggest there is a high likelihood of being able to track goods once they enter the border and what their final destination is. I do not know too many of the details.



One of the things to point out is that I have worked around the world on various different borders on various different transformation programmes, and one of the critical things you need in any transformation is time. There are things you can do quickly, but in terms of delivering a sustainable, long-term solution they take many years often.

Mr Lux mentioned RFID. I think that there are other technologies that could potentially help deliver that solution. If we look at the internet of things, for instance, and the ability to trace goods, not just trace goods but understand where they are coming from—the temperature and the environment they are being transported in, whether or not they have been tampered with—the information associated with that represents a really good opportunity to trace goods, and understand where they have completed their journey, whether they have been tampered with or whether they have moved beyond our jurisdiction.

Q10 Mr Chris Leslie: In your professional judgment, is that technology available now in the real world and could it be implemented in this UK system with those reciprocal arrangements with the EU by March or even by the end of a transitional two-year period after March 2019?

James Canham: The system I described, if we are talking internet of things, for instance, you could combine that with other technologies. To complete a full system by March would not be possible.

Q11 Mr Chris Leslie: Would not?

James Canham: Would not be possible, but most technologies these days, if you look at how they are built, if we go back four or five years or 10 years, technology IT systems tended to take a number of years to build. Somebody would go away and build them and then three or four years later turn them on and they start working. The way things are done now is slightly different.

We tend to take a much more iterative approach. If you are thinking about the internet of things, for instance, as a technology and you wanted to pick a particular area, let's say meat flowing across the border, you could in a fairly quick timescale run a proof of concept in that area to try to test the technology to understand the benefits it might bring and some of the issues you would need to overcome. Once that is proved, it presents an opportunity to scale it up.

Q12 Mr Chris Leslie: If we had time to pilot, do you mean, that kind of thing?

James Canham: I prefer proof of concept to pilot. Pilots tend to run for a long time and not often turn into anything. Proof of concepts are really about getting much more into the technology and proving them.

Q13 Mr Chris Leslie: Very diplomatic. Mr Pickett, a similar view?



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Eric Pickett: Yes, I agree with what has been said so far. One thing I would like to add is that you have to bear it in mind that much of this requires a certain amount of data exchange and that, of course, would also have to be agreed with the EU in order for that to occur. That is another hurdle that would have to be considered.

Until this technology comes about, you can obviously also anticipate the market participants having a certain amount of bureaucracy that they would have to contend with, which increases costs. Then there is the exposure. In particular, what happens if they are not able to demonstrate that the item remained in the UK or in the EU to the satisfaction of the authorities? At that point in time, then you do have the possibility of post-clearance recovery and other sanctions.

Q14 **Mr Chris Leslie:** Do you think we would be asked by those other 27 countries to pay for the cost of reciprocating the tracking of our goods going in on different tariffs through those countries, and can you envisage what the cost of that facilitated customs arrangement reciprocity might be?

Eric Pickett: I am not an economist. I am just a lawyer.

Q15 **Mr Chris Leslie:** Does it sound like a large figure potentially?

Eric Pickett: Potentially.

Q16 **Mr Chris Leslie:** Mr Canham, you are more on the operational side?

James Canham: It is very hard to put a figure on something of that scale.

Q17 **Chair:** Is that because the figure is so small or the figure is so large?

James Canham: Because I do not really know the requirements and it would be very hard to put a figure on something that was an abstract.

Q18 **Mr Chris Leslie:** For the UK to do it would obviously entail costs for the UK systems for the goods going outwards to Europe, but that is quite a different order of cost to asking the other 27 countries to do it, albeit just for the UK. The baseline cost of establishing a system would be pretty similar country to country to country, I would have thought. Obviously, there are different scales, but the reciprocal arrangement seems to me intuitively to be a higher order of cost magnitude than just the UK cost doing it for Europe. Do you follow?

James Canham: I do. I think that assumes that each of the other member states would have to undertake a programme unilaterally to comply with the terms of the arrangement. My experience is slightly different. Often on critical systems the EU does something centrally and then makes that capability available to the other member states. That is certainly the type of programme that I have worked on in the past. I am not sure it would be 27 times the effort. It may be a central system that the EU would need to build and then make available to member states.



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There are a lot of common customs capabilities that the EU builds and makes available for the member states, some of which we use here in the UK.

Q19 **Chair:** It is making an argument there for the EU saving money if member states are joining in clubbing together, which is a novel idea.

Michael Lux: May I add something on that point? I have just written a study for the European Parliament on the implementation of IT systems in the EU, which will shortly be published. One of the points is that unfortunately, even if there is a central EU system, member states still have to link it to their national clearance system, so there would be a cost for each member state, too.

The other thing is that there is disagreement within the EU member states as to what extent you centralise things and as to what extent you maintain national systems. The cost would be much higher in the EU than it would be for the UK. That can be stated.

Q20 **Catherine West:** Just to give an example, earlier in the year we heard from the Turkish hauliers association about the delays at the border between Turkey and Bulgaria and the proliferation of paperwork for each individual. Even though they have a special relationship with the EU, they still have to do an enormous amount of paperwork for each individual EU member state.

There is also an issue around drivers. Do you think that that is going to be an issue for us in terms of the recognition of drivers' licences, of their immigration status and that sort of thing? Thinking very practically, so much of our cross-border trade, which is surface—I am not even thinking about Heathrow, which is obviously the main port of entry for so much, but just in terms of our borders—is food. How many more vets would we need? How many more specialists in terms of checking that food has not gone off?

Finally, if things do go wrong, and in life there is always something that goes wrong, is it the legal responsibility of the company? Who is going to pick up the insurance bill when the dairy products go off or when the meat goes off waiting for checks?

Chair: Or the shellfish from the Hebrides goes off.

Catherine West: Or the shellfish from the Hebrides goes off. Which side does the insurance legal liability fall on?

James Canham: I cannot answer the legal question. Let me pick up the first couple.

The question was about whether we will have delays for checks at borders. You used the example between Turkey and Bulgaria at the moment. One of the ways to avoid or to minimise delays at borders is to develop trusted trader schemes. The border is an interesting place. You can look at it in a transactional way in terms of wanting to look at the



things that are coming across a border, or you can take more of an entity view: who is moving those goods across the border? Trusted trader schemes are very much focused on the second approach, which is let's understand the entities, the companies moving things across our border. Let's make sure we know about those companies, we know about their supply chains and we can trust them. Some of these are large traders. Some of them will be small and medium-sized enterprises who will register for trusted trader schemes. Once you shift away from the transactional to the entity base, that takes away a lot of the pressure in terms of potential queues and delays at borders. A trusted trader scheme combined with a mutual recognition agreement with a third party country enables you to help that flow.

On the issue of vets, again I would say this, but technology can bring some capabilities that may lessen the requirement for significant new numbers or checks. I mentioned the internet of things. If you add in blockchain technology, the combination of those two things whereby you have a really strong sense of the provenance of that meat, the certificates associated with that meat, the destination of that meat and the entities using it means that you are creating a very trusted supply chain. In fact, not a trusted supply chain, a supply chain with some verifiable truths so that having to check everything is not done at a point of geography, which is a border, it is done because you trust a supply chain. You are using data much more effectively than you are people to facilitate checks. Those are my answers to the first two points.

Michael Lux: First, I would like to say that Mr Canham is talking about the future, not what is happening today at the borders of the EU. I am advising clients who are facing problems today at the border, and today at the border all your points are true. Even if there is a customs union—not the UK remaining in the customs union, if there is a customs union—there are border controls. There are documents to be presented on paper, like the veterinary document, though there are attempts now being made to have that in electronic form. It is possible, but if the member state concerned does not have an electronic system—and even in Germany they still insist that the veterinarian puts his stamp on the document—then all these nice things that Mr Canham describes and that will come one day, do not exist now.

James Canham: I would disagree. There are examples of everything I have said that are happening in different parts of the world. Maybe in small proof of concepts, but this is not science fiction we are talking about; this is science fact.

Michael Lux: I am talking about the EU; I am not talking about other parts of the world. That is important to know. In the EU, we will have all these problems. Of course, in the long and medium term everything depends on the kind of agreement that exists between the EU and the UK. Lots of the marvellous things that Mr Canham is describing can be introduced. I am not saying they cannot be introduced, but it will take



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time. They will not be available in March 2019 and in my view they will not be available on 1 January 2021 either.

- Q21 **Catherine West:** What about the liability question? Could the UK Government be sued by companies because it failed to put in place the correct customs arrangement so that products could be—

Michael Lux: Sued by whom?

Catherine West: By the business people who are trying to—

Michael Lux: That is a question of national law, of UK law. I am not going to answer on UK law.

- Q22 **Catherine West:** What about the other way, though, going into the EU if there is some kind of problem getting in? In the end, businesses are going to be affected because their products will go off and they will lose money. Who is going to pay? Is it their insurance?

Michael Lux: The trader has to bear the cost. I am advising my clients when they have a contract with a UK supplier to make the UK supplier pay for everything. My clients are in the EU, but I do not know whether the UK suppliers will accept that in the contract, so it is a question of leverage of either side.

- Q23 **Catherine West:** Our supermarkets that want to import mozzarella cheese, if it goes off, will have to pay for another batch to come in and will carry the costs, so our food will increase in price for consumers here?

Michael Lux: Yes.

- Q24 **Mr Nigel Evans:** The National Audit Office has said that there has been sufficient progress that would leave customs arrangements unchanged until December 2020. As far as any new technology or implementation, I think we are looking towards that date because it is everybody's understanding, isn't it, that should the implementation period go ahead until the end of 2020 nothing much will be perceived to have changed until we properly leave? Yes? Good.

President Juncker has done his state of the European Union speech today. I am sure we were all gripped by it. He said that after Brexit the United Kingdom will no longer be part of the single market, no part of it, to much clapping by MEPs. Mr Lux, what is your interpretation of what that means?

Michael Lux: It means there will be border controls and, yes, legally speaking, if you are no longer in the EU you are not part of the single market. There are, of course, arrangements possible under which you have benefits very close to the benefits of the single market, if you are in an agreement like Norway, the EEA, but that requires that the four freedoms of the single market are applied.

- Q25 **Mr Nigel Evans:** Yes, so that is not going to happen. Using all the red lines on what Theresa May has already said, there are certain things that



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are not applicable. Norway is one of them. Do you think Chequers is dead?

Michael Lux: Since I do not belong to the Commission I can speak openly. Yes, the answer is yes.

Q26 **Mr Nigel Evans:** Right, because that is an important aspect, clearly, of the customs arrangements post 2020. As for certain meat products coming from Australia and New Zealand, am I right in thinking that we take more of a quota in of those products than the rest of the European Union?

Michael Lux: Yes.

Q27 **Mr Nigel Evans:** There must be some arrangement put in place of orders now to stop us importing this massive amount of lamb, let's say, and then shipping it out to France if we so wished. Are there border controls already? If we remember the sugar thing, we were told that when they tried to export sugar from here to Italy there was lots of paperwork that they had to do, so there are clearly border issues on sugar. What I am saying is that we are not inventing anything new. Some of this is already going on.

Michael Lux: Yes, but it will become much worse.

Q28 **Mr Nigel Evans:** There will be more of it. I want to come to the new technology bits and pieces. We are talking the end of 2020. Is it your belief, Mr Canham, that there could be sufficient technologies in place to ensure that if the European Union wants it, we will be able to have sufficient tracking, on the several technologies you are talking about; that some form of deal could be done that is not EEA, not Norway but some form of Canada, because we are not going to have freedom of movement?

James Canham: Without understanding the full terms of what was required by that date, it is difficult to say whether all the technology will be available. What I would say is that whenever the Brexit vote was announced we already had a pretty well-functioning border. We score pretty highly on a lot of the indicators that people use to measure the border, but that is for trade of people. In fact, we put a higher percentage of people through automatic processing e-gates at airports than anyone else in the world. We have been investing in our border and some of the technologies I have mentioned are being considered.

Three things are needed to successfully transform a border. The first one is a really clear mandate in terms of who is driving the programme of transformation. We are moving to a situation in the UK where with the Border Delivery Group we are organising ourselves effectively. Everything is about money. Any transformation, any event that requires a change at the border, is not going to be delivered through existing commitments. You are going to need additional funding flowing to the border to create



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something that is fit for purpose for the UK in terms of what it needs to have to trade with the rest of the world in a post-Brexit scenario.

The third thing you need is a plan and effective dialogue, and that plan will contain some of the ambitions we have for the border—many of those are already set out in the future UK border proposition, which came out last year—as well as remembering that the border has two sides. You cannot just fix your own border. That border juts up against another territory that you need to have collaboration with, whether it is data sharing or negotiation, whether it is on legal instruments.

I am confident in technology and emerging technology. It used to take four or five years of watching an emerging technology before it went from some lab into our pockets that we could use. That is probably six months now. The ability to have a clear vision and deliver on it over a two-year period, let's say, we can do much more than we were able to do a few years ago. We do not necessarily have to wait three years for systems to turn on.

Q29 Mr Nigel Evans: With your experience of Southampton, where a lot of non-EU goods come in, where I am told they only check 1%, surely that is either trusted trader or technology in practice?

James Canham: There are two things. The goods that come into our large ports—Felixstowe, Southampton—they have been on the high seas for a fair while probably, so you tend to know what is coming. You have much more time to prepare. You also have to give a lot of credit to the ports themselves, which have invested in some of these new technologies to perform their risk assessment, to predict what is coming, to move things around effectively, to minimise warehouse costs and disruptions. That is the important thing about the border. It is not a geographical place itself; there is a whole chain of events that need to happen to move a good from one country to another, from the point of purchase right to the point of delivery. The border is a much broader thing in terms of the solutions you bring. It is not just the Government spending money at a geographical place, or the systems around it. It is working effectively and collaboratively with that whole supply chain. It is not just the Government's ability on their own to invest and use their ecosystem suppliers to deliver a particular technology, it is that dialogue, that collaboration, the involvement of all that ecosystem that is required.

Q30 Chair: I want to move on a little bit. Mr Canham, I want to ask you a couple of questions.

These technologies have probably been screamed out for and cried out for at all borders across the world, because everybody wants to reduce this. It is not a unique thing here. When they come into existence, I imagine they will be applied elsewhere. What I am hearing is that these technologies that you are hopefully envisaging or want to see, they do not seem to be ready for next March. It does not seem that they will be there for next March.



James Canham: If you are looking for an end-to-end solution using IOT, being able to deliver something like that by next March, let's say, is going to be very difficult. If you were to pick a particular regime and you wanted to run a proof of concept, as I have said before, between now and that period, there is a lot you can do.

Q31 **Chair:** It seems to me, just listening to that, that the UK Government are going to probably have to grab on to any EU deal just to buy themselves a transition period until 2020. It is vital, politically, for the Government that they get a transition deal so they do not have to face the music in March. They can at least delay the facing of the music for a wee bit longer.

The other question is that I remember reading in the *Financial Times* a while ago that the UK is currently doing about 30 million border checks and it has the capacity to do 100 million. Leaving the EU and being out of the customs union and the single market would require something like 300 million border checks. Without the technologies, what is the general preparedness at UK borders at the moment for dealing with the volume of demand that will be put on a normal EU third-country partner?

James Canham: The interesting thing about checks at the border is that often people use, "We are checking 1% or 5%" or, "Some country is checking 10%". The thing is that it does not matter what the percentage is. You need to be using the data that you have, using the systems you have, to check the right things. If you are checking 0.1% of things flowing across the border and you are finding what you should find, or spotting fraud, or gathering undeclared revenues, then the percentage is irrelevant. We have to give credit to the National Border Targeting Centre in the UK—

Q32 **Chair:** As you said, it is easier to target containers on the high seas for a matter of days or weeks, say 15 days from Brazil or whatever, versus a turn-up-and-go at Dover on the back of a lorry, which has basically been in the park for two, four or whatever minutes they take to process it.

James Canham: It is, but the borders around the world are naturally data-rich environments. There is a lot of information. Our ability to use it effectively is developing all the time. It is often in different systems; it is often in different Departments. One of the first steps you really need to take when you have a new stress at the border is to work hard to get your data in the right place, to understand it, to assimilate it, and be able to analyse it so that you can more effectively target those things you need to target.

I made the point earlier that one of the critical things in the transformation of any border is time. These are not often things that you can do in matter of weeks or months.

Q33 **Chair:** As we know from the fabled story of Dover, two to four minutes means a 17-mile tailback. A point to check with the panel: I think that the meat that comes in from New Zealand or Australia under the TRQ



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system to any point in the European Union can then freely move about the European Union afterwards as processed or whatever?

James Canham: Yes.

Michael Lux: Today.

Chair: Today, yes.

Michael Lux: But that will change, yes.

Chair: That will change, yes.

James Canham: Again, don't forget the commercial aspect of the border, though. The sophistication in supply chains, particularly in the agricultural industry in its ability to track things from farm to fork, internationally is strong. There are technologies beyond Government systems that are valuable and viable at the border. We have to take a view that it is not just the Government's problem. There is a range of players at the border who will help any transformation effort.

Chair: That is why they put ear tags on the lambs.

Q34 **Emma Little Pengelly:** I want to build a little bit on some of the discussion around technology arising from the smart borders paper that was supplied to the Exiting the European Union Committee. I have also been contacted by a number of the big technology firms who feel very confident that the technology to resolve and significantly ease any friction on borders exists out there. James, in particular, would you agree that at the moment there is significant technology out there that could make a substantial difference in terms of the easement of goods across borders, regardless of what the border looks like?

James Canham: Yes. It is not just my view. There are increasing numbers of examples around the world where consortiums that involve Governments or Governments themselves are embracing these technologies to reduce the friction at borders. There is always going to be friction at a border, because of not just the border processes that you need to go through but the whole processes in a supply chain.

I mentioned the internet of things and the ability to understand where a good is at any point in the supply chain. If you trust that supply chain, if you have a strong understanding of where it is and what it is, the point at which it crosses a border is just a point in a process. It does not need necessarily to undergo any stops or physical checks.

Q35 **Sir Mark Hendrick:** Can you give some examples? You are talking in very abstract terms.

James Canham: If you were to look at the internet of things, the examples of where borders are using that more effectively are more in the port systems at the moment, moving things around ports rather than across the supply chain, but that technology is moving quickly and its application for moving things across a border is increasingly relevant.



Q36 **Sir Mark Hendrick:** Where is it being used?

James Canham: The Port of Hamburg is a smart port. It has lots of technology and ability to control things, to understand where things are at any point. There are others.

Q37 **Emma Little Pengelly:** We have heard some evidence, particularly in terms of fruit or fresh flowers, of traders being able to track across borders to see where their goods are, the temperature, and whether or not, as you indicated, their shipments or containers have been tampered with.

James Canham: The main example used is Maersk, which is the largest shipper in the world. It has something like over 100,000 containers with IOT technology to measure temperature, location, and so on.

Q38 **Emma Little Pengelly:** A lot of this technology has been driven by the private sector. We have heard that from the ports, for example. Many people, particularly the younger generation, would be astounded by the idea that people would still need paper and physical stamps. In the private sector, ports in particular have been driven by efficiencies and have implemented some of this technology. Is it not also the case that we have talked about implementing a Government solution for whatever the friction on the border could be, right across Government and the way that we do digital projects? There is a wider point, but it is a key one for this. We have talked about 2020-21. The idea that it would take two to three years at least to put in place a tailored technological solution just does not work any more in terms of where the world is going and how fast digital progression and innovation is moving. In your experience in particular, is it not fair to say that that simply will not work? The idea of commissioning and procuring something now that would not be in place in two to three years' time when technology has moved on is not going to resolve border issues for us and make the best use of digital innovation.

James Canham: If you look at probably the most progressive customs project in the world, which is Singapore building its national trade platform, which embraces a lot of these new technologies to focus on reducing the friction for traders, that is a three to five-year programme. It is several hundreds of millions of dollars. It does not mean that it gets turned on in five years' time; it means that elements of it are available after a year's effort.

My answer would be that being able, in two years, to deliver the future UK border proposition, this world-leading border, which is fit for purpose for security, economy and society, is very difficult, but having elements of that is entirely possible. That is why we are embracing methods like Agile; we are embracing emerging technologies, trying them, proving them, and then scaling them quickly. End to end, difficult in two years; significant components, possible.

Q39 **Emma Little Pengelly:** I want to touch very briefly on the Irish border situation. There has been some suggestion and talk about, for example,



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Northern Ireland remaining within the customs union. It is just one of the suggestions that has been put out there. In terms of the agreement, in relation to December, it was made clear that there should be no new barriers between Northern Ireland and the rest of the United Kingdom; likewise, we should avoid a hard border. In your experience of what the requirements would be, if Northern Ireland stayed within the customs union, from a European Union perspective what would they require in terms of goods leaving Northern Ireland and going to GB?

Michael Lux: Going to which destination?

Emma Little Pengelly: Leaving Northern Ireland and going into the GB market.

Michael Lux: Okay. That is simple. You would have to lodge an export declaration, that is all. That export declaration then allows you to have your VAT deduction for that purpose because the common fiscal territory is left. I know that in the UK this idea sounds horrible, but we should not forget that a land border is much more difficult to police than ports and airports. Because these goods would leave Northern Ireland either by ship or by plane, you could then have dedicated places to which these goods go in order to minimise the impact on entry. The real issue is the control on entry. If there is no control, the UK loses revenue, in particular for VAT, and also in customs duties.

Q40 **Emma Little Pengelly:** The interesting thing about that is that there is only one land border, which is between the Republic of Ireland and Northern Ireland, yet when we talk about goods leaving the United Kingdom over sea borders and going to the European Union market, you have given evidence here today about how complicated and complex that would be. Yet when you talk about goods leaving the customs union from Northern Ireland to GB, you have said that that should be a relatively easy process. Those two seem to be incompatible.

Michael Lux: For the export from Northern Ireland. For the import into Northern Ireland, of course, then you would have the normal customs procedures. That is more burdensome than today.

Q41 **Emma Little Pengelly:** Could you specify what that would be? What would the European Union require in terms of import into Northern Ireland, in that situation from GB?

Michael Lux: Northern Ireland is part of the UK and you are talking about GB, Great Britain, which is without Northern Ireland.

Q42 **Emma Little Pengelly:** What I am saying is that at the moment there is an internal market within the United Kingdom. One of the suggestions from the European Union is to solve the land border on the island of Ireland that Northern Ireland potentially could stay within the customs union. What I am trying to get some evidence about is what that requirement would be in terms of the European Union. The European Union border effectively then becomes between Northern Ireland and the



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rest of the United Kingdom. You have talked a little bit about what would be required for export and import. What I am trying to find out is in terms of internal United Kingdom, if Northern Ireland was in the customs union, in your expertise what infrastructure or requirements would the European Union want to see?

Michael Lux: Since the goods would arrive only in ports and airports, first of all you could determine which ports and airports are allowed to take goods from outside the EU. That is a standard procedure in the EU. You determine that these are the ports and airports that can receive the goods and then you can do all the marvellous things Mr Canham has said because dealing with ports and airports is much easier than dealing with a land border.

Q43 **Chair:** Northern Ireland is going to have a border. It is going to have a border to its east, its south or its west. Which is the more complex border? Is that the question?

Emma Little Pengelly: No, it's not. It is a slightly different question. What I am interested in is when we talk about goods leaving the UK to the rest of the EU, depending on what the border arrangements are, all of the evidence is that it is very difficult, it is very complicated, it is going to be expensive. Yet when you were asked if that then happens between Northern Ireland and GB in accordance with one of the suggestions by the European Union, it suddenly is not as complicated for some reason. What I am saying is that there is an inconsistency with that because we are still talking in terms of the UK into the rest of the EU. We are talking largely about airports and ports as well. In your earlier evidence you were indicating how complicated that would be for goods going from the UK into the EU, yet you seem to be indicating that you do not think it would be hugely complicated between Northern Ireland and the UK.

Chair: Is a sea border between Northern Ireland and the UK any more complex than a sea border between Dover and Calais? That is the question.

Michael Lux: No, it would be the same. It would be the same, yes.

Q44 **Chair:** Would the sea border then between Northern Ireland and GB be easier or more complex than the land border between Northern Ireland and the Republic of Ireland on the south and the west?

Michael Lux: Land borders are always more difficult to manage than sea borders and airports, yes.

Q45 **Matt Western:** Much of this has already been covered, but perhaps I could ask Mr Pickett about the facilitated customs arrangement, which of course would see the UK responsible for its own tariffs but also collecting those of the EU at the same time, depending on which is the destination country. It has been suggested that there would be a lot of practical challenges to such an arrangement. Do you agree with that and how do you think they could be overcome?



Eric Pickett: I agree that there would be very significant practical challenges with that. Just to take one example, there is the issue of enforcement. Once the product enters the UK, it has to be robustly demonstrated—I don't know how, but let's say it is robustly demonstrated—that it is going to stay within the UK. Why was it imported into the UK? The idea is that the UK tariffs, if I have understood this correctly, are rather lower than the EU tariffs. That is the incentive. That is a problem if the UK also, simultaneously, wants to mirror the EU's tariff schedule within the WTO. How that is going to work is a challenge.

Leaving that aspect to one side, then the question is: how do you ensure that that product does stay within the UK? This gets even worse when you start to consider the supply chain. There is the very simple model. The UK importer imports it, robustly demonstrates that it is going to stay in the UK but, contrary to expectation and what was originally intended, somehow it manages to end up in Germany. There is that aspect, that is the very simple aspect, but what happens if that product then goes to, let's say, a wholesaler also located in the UK and then the wholesaler sells the product to Germany?

There is also the question of enforcement, which was briefly touched on previously because in that case the UK would essentially have to accept EU enforcement or the EU would be very much involved with that, which is something that the UK does not want.

Then one final aspect of this at the WTO level, if this were to occur—I am somewhat sceptical that the EU would agree to it, but if it were to occur—then the EU would have exposure within the WTO in reference to Article X.3 of the GATT. Article X.3 of the GATT very basically—I can somewhat simplify it—says you have to have uniform administration of your customs laws and regulations. This is a little bit problematic because the UK would be enforcing EU customs laws; in other words, as Mr Barnier has pointed out, the EU would have then outsourced that to the UK customs authorities and it is not clear whether or not the EU would have any authority to have any control over the UK customs authorities, if you see what I mean. That is one of the reasons why I think that this proposal is not perhaps something that would be met with universal acclamation within the EU.

Q46 **Matt Western:** Mr Lux, I think you covered some of that earlier. Is there anything you want to add?

Michael Lux: No.

Q47 **Matt Western:** The Government are not proposing that the EU apply UK tariffs and trade rules between the UK boundaries from third countries, but it does envisage that the UK would receive revenue from tariffs due on UK-bound goods through a tariff revenue formula. How would that sort of arrangement work? Are there similar arrangements elsewhere?



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Michael Lux: You mean when goods are cleared in the EU and they end up in the UK?

Matt Western: Yes.

Michael Lux: There is no way that the EU would accept a revenue-sharing formula because they are two different customs territories. If the goods are entered for free circulation in the EU, by the way you do not get your duties back then and you would have to pay a second time when the goods enter into the EU. That is the simple way in which our law functions.

Q48 **Matt Western:** Mr Pickett, anything to add?

Eric Pickett: No, I believe that he said everything that I would have said.

Q49 **Julia Lopez:** What issues do you think the White Paper proposals raise when it comes to the scope for customs and VAT fraud, and how do you think those problems could be addressed?

Michael Lux: First, the question is whether the UK will remain in the customs and fiscal union. If the answer is no, then, of course, the issue is what amount of controls take place on the exit from the EU. On the exit, we normally do not have many controls. We have the main controls on entry. If the UK has very few controls on the entry, or no controls, then, of course, fraud will increase enormously. That is a point on which I disagree with Mr Canham on the number of controls. The fewer controls you perform, the more fraud you will have.

Of course, you can have the controls either at the border or at the trader's premises, so that is something where you can have different approaches, but where you cannot have it is small consignments. For all these little parcels coming from China, where a huge amount of fraud is taking place, everybody declares a value of under €22, but in fact the value is higher. Up to €22 you do not have to pay VAT. The EU is now changing this system, but they will have problems, too, in controlling it just due to the huge amount of parcels.

This is something coming up because on top of the high figures that we were told about for UK customs systems to deal with now for imports from the EU, if they copy the same system—which they are no longer obliged to because this is due to enter on 1 January 2021—they will have the additional burden of dealing with all customs declarations for small consignments. Today there is a waiver; you do not need to make a declaration. In future, you will have to make a declaration for each consignment. I don't know whether Mr Canham is aware of the impact of this on the UK CDS system. It will be another 30 to 40 million declarations on top, which they will have to cope with in this regard.

Chair: You have been mentioned, Mr Canham.



James Canham: Yes. I won't come on to the point about checks. Your question was about customs fraud and whether it will increase. Whenever there is a change or a transformation at the border, there is an opportunity for those who are non-compliant to increase their activity. Whatever system happens to be applied, it does represent opportunities for fraud. Let's face it, the borders around the world are places where fraud happens. A lot of effort and money is spent trying to reduce that, whether it is underdeclarations or whether it is nefarious activity involving things or people we do not want in the country.

It comes back to how you fix that and how you minimise the opportunities. To me it is about understanding who is using the border. Look at some of the huge progress that the financial services industry—banks—have made in terms of understanding their customers so they can minimise fraud. They have started to invest in those programmes. They have started to invest in the ability to understand who their users are and where the risk is. It is similar at the border. Use the data effectively. There is a huge amount available. The percentage we are accessing is probably quite small. Once you have that organised, the technology is out there, whether it is advanced analytics, machine learning, AI.

The basis for all of these technologies to work effectively is the data. I think that whatever stress event at a border, it represents a huge opportunity to not just make do because we have to do it, we have to make a change, but actually invest in something that is going to be sustained beyond the period of 2021. Let's look at a border in, say, 2023, which is really a world-leading border with these technologies that I mention. They are emerging. I may sound abstract at times, but these are things that I see happening and, as a citizen here, I don't really want the UK to sit on the sidelines and wait for technology to emerge when we have an event whereby we can grasp the opportunity to try some of these things. They will not all succeed, but it is better to fail fast and apply those lessons to the future than it is to not do anything.

Chair: The tides of time are upon us. Catherine West has promised me a small question.

Q50 **Catherine West:** We currently have a problem with the smuggling of guns into this country. It is a concern to many constituencies, including mine, where we have a big problem with young people getting access to these guns. That is a problem now. In your expert opinion, will that get worse or will there be capacity to improve the Government's ability to stop guns coming in, particularly from Eastern Europe? That is what I am told by the NCA. What is the new scenario? In a brave new world, when all the systems are in place and everything is perfect, will it be better or worse?

James Canham: Let's hope it is better; let's hope that we can embrace technology. Interestingly, there is a company we work with in Australia called Data61, which is using machine learning to scan baggage and other things. As of today, when something is scanned, a human has to



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look at a picture and make a judgment as to whether it needs to be looked at. We are starting with this company to use machine learning to recognise certain patterns, to recognise nefarious items, not just based on something that is pre-programmed. It is starting to have an ability to learn changes in patterns. I do not know whether it will get better or worse. My sense is that we can make it better, but we do need to look at opportunities to incorporate these technologies into our system.

Michael Lux: If I may add, if you scan every parcel, the chances are that you will discover the guns, but this comes, of course, with a high cost because you need all the equipment. For the air traffic, the Governments have transferred the cost to the airlines, but it will come with a cost. I cannot tell you how much it is, but if you scan every parcel, not only in air traffic but also every container, it is a huge cost and you need a much larger number of scanners than you have today.

Q51 **Chair:** A final point: a slide was shown to us by the Norwegian border checks on the Norwegian-Swedish border where guns were there. They were hard to see with the human eye. I do not know if we all spotted them when we were shown it, but certainly the artificial intelligence might help spot that.

Panel, thank you very much for coming along this morning. It is much appreciated. We are going to have a quick change to panel 2. I am aware, as ever, that parliamentarians will be wanting to be off for 12 o'clock, so can we be mindful of that in the next panel? It does truncate time, but we will do our best. Thank you.

Examination of witnesses

Witnesses: Dr Emily Lydgate, Dr Michael Gasiorek and Dr Peter Holmes.

Q52 **Chair:** Thank you to our second panel for coming along this morning. It is much appreciated that you are here. Can I ask for introductions?

Dr Gasiorek: Good morning. I am Michael Gasiorek from the University of Sussex, a trade specialist working heavily also with the UK Trade Policy Observatory at the University of Sussex.

Dr Lydgate: I am Emily Lydgate. I am an international trade lawyer at University of Sussex and also a Fellow of the UK Trade Policy Observatory.

Dr Holmes: Peter Holmes. I am also a trade economist from Sussex. I have been working and teaching on these subjects for rather a long time now.

Q53 **Chair:** It strikes me that pre-Brexit the only institution that was paying any attention to all this was Sussex. I am sure I am not strictly right on



that one, but post-Brexit now, Sussex is very much involved with this.

Looking at the common rulebook, Dr Lydgate, just to kick off, you have said that the question of what regulation is necessary for frictionless trade at the border is an ambiguous and existential one. My goodness. Can you elaborate?

Dr Lydgate: Sure. I think the existential question that the UK is facing is what the EU requires to open its borders to waive the need for border checks. I think the answer is quite a lot more than what the UK has offered in its Chequers proposal. I will just mention a couple of examples. One of them is that the UK does not include what the Commission describes as flanking policies. This means primarily environmental regulations and labour regulations. The UK does not indicate that it will align on those. For the Commission, this is raising the exact same set of concerns that Barnier has brought in terms of the division of goods and services. It does not trust the UK not to undercut its standards and thereby gain a competitive advantage. It does not want to open its border until those sets of concerns have been addressed.

Another area in which the UK is potentially sort of ring-fencing its coverage of the common rulebook is in terms of how it is proposing to deal with future divergence. This is an important issue. It is dealt with in technical procedures under chapter 4, but it has to do with what happens when we want to change what is under the common rulebook. The UK has proposed that we could move towards a model of equivalence, that the EU could recognise our regulation is equivalent, which the EU has rejected, because again it wants the UK to conform to the whole acquis, to the process that its regulators prescribe, not just the outcome.

Even though this is often described as a proposal for a single market for goods, it is much more constrained when compared to, for example, the EEC or even the Ukraine Association Agreement in terms of its coverage.

Q54 **Chair:** It seems to me that the UK Government's desire is to become a third country from the European Union. Did they look around and see what arrangements and relationships other third countries have and what is the best relationship any other third country has and how close that is to what the UK Government seem to want in Chequers?

Dr Lydgate: The question that is interesting to me is also what the EU wants, because I think the EU has given some very contradictory signalling here. On the one hand it has been very clear, "You are either a third country or you are in the single market" but on the other hand the Commission has already brought up this idea of the level playing field and how it is going to be very important for the UK to align in areas including environmental standards, labour standards, competition policy and taxation. This suggests more regulatory alignment, so in the next phase of negotiations we will have to see there an asymmetry in terms of the two countries' visions of what should be harmonising and what should not be.



Q55 Chair: Just to clarify that, what you are saying is the EU is quite happy on one hand to say the UK is a third country, but on the other hand it is calling the shots for the UK, which maybe their Brexiteer friends will not like as much. Is that roughly correct? When it is these labour laws—

Dr Lydgate: In terms of the UK's proposal?

Chair: When you say the EU is contradictory, you said on one hand it talks about the UK as being a third country, but on the other hand it is calling the shots in the list you gave there, that the UK must follow environmental law, labour law, taxation, whatever.

Dr Lydgate: Exactly. I think that is because the EU is not in a position—and indeed is not authorised to clarify its positions—in terms of what exactly it wants in the future relationship. But as you say, it seems to be wanting to give third-country status, but at the same time to have a lot of control over the conditions of competition in the UK.

Dr Holmes: Can I just amplify what Emily said? The notion of a common rulebook is often assimilated as being the single market in goods. If you look at how the common rulebook is defined, it talks about things that are checked at borders. We know that even for non-EU member states, the EU does not restrict its checks on, for example, food products to borders. In fish products and other things, they have what is called the HACCP system of risk control. EU inspectors get sent to third countries in South Asia to look at shrimps and so on and you do not import fish from people just by having checks at the borders.

The whole thing about the single market is that, because you have a complete assimilation of both product and process rules, you can assume that you do not need checks at borders. If we are having different rules on quality assurance, it is difficult to see how the EU would accept only the existing level of goods checks at borders.

Q56 Chair: If I was a tabloid newspaper editor, I might say we can expect legions of EU clipboard inspectors to arrive at fish factories and meat processing and slaughterhouses?

Dr Holmes: Yes.

Dr Lydgate: Can I just add one thing to that? I think a way of framing this is that complying with EU regulations is not a necessary condition for no border checks, it is a necessary condition for any country who wants to trade with the EU. What is required to achieve no border checks goes far beyond that and the EU only waives those because it has built trust, and it has built trust by having a lot of shared institutions and shared enforcement.

Chair: I will call in Nigel Evans at this stage. I am sure he has some views on all this, our Brexiteer.

Q57 Mr Nigel Evans: On the Canada deal, all the goods coming from Canada now into the EU, can you just explain to us, do they use equivalence



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there or are they exactly the same standards?

Dr Lydgate: Are you talking about through CETA, for example?

Mr Nigel Evans: Yes.

Dr Lydgate: Let's take the example of SPS. I think SPS is a really important area for the Northern Irish border, obviously because you have, for example, most Northern Irish food and animal products going to the Republic of Ireland and there are typically a lot of checks there, more than any other area. The CETA agreement has an SPS chapter and what you can see from that is it does not obviate the need for border checks. It does establish equivalence, but very narrowly, so you can look in these annexes, pages and pages, and there are certain products.

I think one of them is certain types of smoked fish that the parties have agreed to recognise as equivalent in terms of the standards of production, but it is not anywhere approaching a sort of comprehensive approach. I think the only example for a non-EU member is Switzerland, which has a common veterinary area with the EU and has harmonised all of its SPS regulation.

Q58 **Mr Nigel Evans:** Common veterinary area. Does that mean that is just a side rule by the European courts, the Swiss rules and regulations?

Dr Lydgate: Yes. The Swiss judicial model is a joint committee, but in terms of the areas where EU law is incorporated into Swiss law, then EU law is considered to be the authority on those areas, so its interpretations of those rules prevail, essentially.

Q59 **Mr Nigel Evans:** Can I ask you, Dr Gasiorek? We are looking at the possibility that with the common rulebook initially, everything will roughly be the same the day after we leave the European Union, but Britain will have the opportunity to deviate when it deems it appropriate for itself, although there will be consequences. To me, that sounds as if we will not be doing a lot of deviation and they will have to look very carefully at what those consequences would be. How do you read that?

Dr Gasiorek: I read that in a very similar way to the way you have just interpreted it. Imagine that there is a common rulebook that is agreed between the EU and the UK, which I think—as has been explained by my colleagues—unlikely and extremely difficult. But imagine a world in which we have managed to agree some common rulebook, yet the UK Government have retained the possibility that Parliament might choose not to apply bits of that common rulebook. The point of that common rulebook in the context of this discussion is to try to ensure that there is no need for border checks, for border inspections on regulatory grounds. If you are then choosing to deviate from those rules, you reinstate the need for having checks on regulatory grounds and, therefore, it seems an inconsistent position.



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What the White Paper mentions on this is that there will be some form of possibly financial compensation or whatever in the event that the UK chooses to deviate, if Parliament chooses not to apply elements of the common rulebook, but it is quite easy to see how that might rapidly lead to the need for border requirements again. It just seems to me an inherently inconsistent position.

Q60 **Mr Nigel Evans:** You refer to it as the Morton's Fork?

Dr Gasiorek: Yes, that is exactly what I mean.

Q61 **Mr Nigel Evans:** What does that mean?

Dr Gasiorek: That means essentially contradictory actions, but they supposedly lead to the same outcome here. On the one hand we apply the common rulebook, but we do not need a border. The contradictory action is, "Oh, but we might choose not to apply bits of the common rulebook, but we still do not need a border because we will have other forms or ways of compensating for that".

Q62 **Sir Mark Hendrick:** Sorry, Nigel. Could you give an example?

Dr Gasiorek: Of a specific rule that might not be applied?

Sir Mark Hendrick: Such as?

Dr Gasiorek: I do not have any particular examples to mind.

Sir Mark Hendrick: If you could create one.

Chair: Do you want to come in, Dr Lydgate?

Dr Lydgate: Yes. I will bring this back to the idea that the UK would propose that it wanted to deviate but then have its regulations still recognised as equivalent. Normally in terms of goods, equivalence in trade policy means that you have the same standard of protection, but you reach that in a different way. For example, the UK could say that the EU has a ban on beef that is treated with hormones, and rather than a process-based standard, which is, "We do not use any hormones in our beef production", we use a product-based standard, which is, "We test the beef at the border and if there is no residue of hormones, then it is considered equivalent". So that kind of movement—different means, same ends. That kind of approach could apply, for example, with pesticides, testing end product versus process. Does that work as an example?

Dr Holmes: Could I just perhaps give an example on the Swiss agreement? The Swiss do not have an all-embracing commitment to the single market; they have a series of bilateral deals under which the Swiss promised to adapt their legislation. As the recent referendum on the migration cap showed, the Swiss theoretically have the chance to say, "No, we are not going to do that" but in that agreement the EU has the right to say, "Right, the whole deal is cancelled" if Switzerland significantly departs from the promises it has made. Switzerland could



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depart from its commitments, but it runs the risk that the EU will just say, "Right, the free trade agreement and everything else is dead".

- Q63 **Chair:** That might be an action you freely take as a country, but the other side might freely take an action that forces you to take another action or not take the initial action that you intended?

Dr Holmes: Yes, so the Swiss have withdrawn the—I am not sure quite what has happened, but the migration—

- Q64 **Sir Mark Hendrick:** Is that why they have referenda on so many things?

Dr Holmes: They decided that if they implemented the result of that referendum on migration, this would cause a problem for Switzerland. Basically I think the Government said, "No way," because if they did implement a cap on migration—they have signed up to Schengen and free movement—the EU could say, "Right, that is it, end of free trade arrangements".

- Q65 **Julia Lopez:** We touched on it before, but what might the role of the ECJ under the common rulebook proposals mean for UK trade relations with non-EU countries, do you think?

Dr Gasiorsek: I am not a lawyer. On the role of the ECJ with non-EU countries, I think that the White Paper, as it stands, suggests that there will be mechanisms in place to deal with disputes. Ultimately, it is hard to see how the EU could accept those mechanisms being operational without the role of the ECJ in ultimately determining the outcome of those disputes. I am not a lawyer, but that would be my interpretation of the White Paper.

Dr Lydgate: I am happy to take a stab at that one. Yes, so the White Paper proposal is essentially that there will be a joint committee that will deliberate in the case of dispute. When there are areas covered by the common rulebook, the ECJ will act as the ultimate authority. This is a sort of association agreement model. There is nothing inherent in that that would prevent the UK from concluding trade deals with third countries, but it is significant in the extent to which it indicates that the UK is aligning its regulation with the EU.

That means that it might constrain the kinds of trade agreements the UK could agree, so it would be free to eliminate tariffs, for example, with third countries, but there are other areas in which there might be a clash with the EU's approach and the other country's approach. For example, the US approach again to SPS regulation might preclude a deep regulatory agreement in that area or even CPTPP, which has a different approach from the EU.

Chair: Have you finished there, Julia, sorry?

- Q66 **Julia Lopez:** I was going to ask what their view is on the actual terminology of a common rulebook. That seems to me quite a duplicitous term, on the basis that it is not really a common rulebook, it is the EU's



rulebook that we apply.

Dr Holmes: The Government have suggested their interpretation. The EU would almost certainly say, "No, we want our interpretation".

Q67 **Julia Lopez:** The Secretary of State told us that around 4% of goods would fall under the tariff repayment mechanism, as outlined in the White Paper. Your colleagues have cast doubt on these figures. On what basis have they done so?

Dr Gasiorek: Let me take that question. I think the issue here is that the Government have not been clear on how they have arrived at that calculation. There is this figure of only 4% of trade being affected, but we do not know, because the Government have not explained the mechanisms that they used to derive that calculation. What my colleagues did was attempted to see if they could replicate that figure in using a particular technique, and they came up with a fairly similar figure using a technique, but that does not necessarily cover all the trade that would be applied by this.

The issue is not that the figure is wrong—although it might well be wrong—but really understanding how that figure is arrived at and whether it could be correct or not correct. For example, my understanding is that in calculating the share of UK intermediate imports that go on to the EU that would be affected, the Government used total trade, both exports and imports, to make that calculation. Inherently, that seems incorrect, but we do not know that that is the case. It is a question of trying to find out from the Government what techniques were used to arrive at that figure.

Q68 **Julia Lopez:** Is that quite an unusual situation? Have you found in the past they have been more transparent on these sorts of figures?

Dr Gasiorek: Not particularly. The transparency varies depending on the particular issue in question. It is just that there is this very specific figure in the White Paper and it would be nice to know—it is important to know, not just nice to know—how it was arrived at. Can I just add to that?

Chair: Yes, please.

Dr Gasiorek: Because I think this is quite important. It also depends on how you interpret what the Government intend by a facilitated customs arrangement. It is something that we have discussed at length among ourselves here. I think that there are two possible interpretations. When we are talking about tariffs and customs, there are two plausible interpretations of what is intended in the White Paper, which are somewhat different. I think the White Paper is ambiguous on this and both interpretations are plausible readings of the White Paper. It gets a little bit technical, but would you like me to explain what I understand by those two different interpretations, because they are quite important?

Chair: If we can be brief.



Dr Gasiorek: I will be brief. This is in connection with the buying of intermediates from a third country—so the UK firms buying intermediates from third countries, then exporting a finished good to the EU. We are assuming that the UK tariffs might be lower. For example, it might be as a result of a free trade agreement with America or something.

One interpretation of the facilitated customs arrangement is that when the good is exported to the EU, if the good meets the EU's and the UK's agreed rules of origin, then it is considered to be a UK good. Under those circumstances, the UK producer could claim a rebate to have the lower UK tariff applied on the intermediate. If the good does not meet the EU/UK rules of origin, then it cannot apply for that rebate and the EU tariff, which will have already been applied at the border, applies. What this means is that if the rule of origin is met, it is as if the UK was in a free trade agreement with the EU. If the rule of origin is not met, it is as if the UK was in a customs union with the EU. That is one interpretation.

The second interpretation is that if an intermediate good is used to produce a final good that is exported to the EU, in all cases the EU tariff should apply on the intermediate good.

Q69 **Chair:** As it comes into the UK?

Dr Gasiorek: As it comes into the UK. There is no need for rules of origin checks. There is a need for all sorts of other checks by firms, but there is no need specifically for threshold rules of origin checks. In that case, you are replicating the idea of the UK being in a customs union with the EU, but not with regard to third countries. Those are two different interpretations, which have quite different implications also for third party agreements. Both are consistent with a facilitated customs agreement.

Dr Holmes: We have had discussions about this and we are a bit puzzled. I once asked some moderately senior officials in DIT if they could explain which of these two interpretations is correct, and they were not clear. It is strictly ambiguous and it has not been resolved. The point to make is that rules of origin are an issue for trade facilitation—the interesting stuff you were talking about in the earlier session. What the facilitated customs arrangement does is to push back the administrative burden from the border to the company, so effectively they would have a set of accounts to keep on transactions, which are a kind of VAT on steroids, where you would have to not—

Q70 **Chair:** It is more red tape?

Dr Holmes: More red tape for the individual producers, yes.

Q71 **Catherine West:** New topic: security. The White Paper envisages risk and intelligence-based checks across the country rather than the UK-EU border to stop circumvention of higher UK tariffs. Professor Winters and Julia Magntorn say this would be intrusive and costly, possibly against WTO rules and at odds with the Government's commitments on Ireland. Why is this the case?



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Dr Holmes: It is the point I was just making, that if you are trying to avoid security checks at the border, you have to have them in detail. I was looking at quite an interesting little paper on cross-border supply chains in Northern Ireland and something like 75% of cross-border trade there is carried out by firms under 50 employees. Sorry, not value, but the number of transactions. Something like 75% of cross-border deliveries are from small companies under 50 employees and 33% are from companies under 10 employees. You have this huge manifestation of controls that have to be done at the factory level. I was at a company yesterday that produces copper wire and, of course, you would have to have them tracking every single piece of copper to see where it ended up. Very intrusive for security, as all of these things have to be done for tariff purposes.

Q72 **Catherine West:** I would imagine especially with the Northern Ireland question, in agriculture raw products go from the north to the south to be manufactured and food goes back to the north, back to the UK and so on; that does add a lot of complication.

Dr Gasiorek: What I just wanted to add to that was—this came up a little bit in the earlier panel session as well—that the facilitated customs arrangement, just purely to deal with both tariffs and the common rulebook, is complicated enough as it is for firms that wish to comply. At the moment non-compliance is largely dealt with at the border, not entirely but largely at the border. If you take away the border, you are forcing the management, the control of essentially fraud and non-compliance away from the border to somewhere behind the border, which therefore becomes much more intrusive.

Q73 **Catherine West:** But it also implies cost for the Government in order to make those checks, because whether it is a human being or a robot, at some point there has to be cost to put in place what is going to be quite an onerous system, particularly for SMEs, because of where they are based. Is there a costing available for this yet?

Dr Gasiorek: I have not seen any costings available on this, but you are absolutely right, this will need to be resourced and costed out and it will be potentially quite complicated, because you have to track the supply chain. I may import a good from the rest of the world perfectly legally and sell it to a wholesaler or sell it somewhere into the UK, but then the authorities need to ensure that that good is not shipped on by somebody else to the EU, where there might be no border or a frictionless border.

Q74 **Chair:** I am just checking; is this what we discovered when we were in North America? Is this similar to when companies choose to NAFTA goods and sometimes they choose not to NAFTA goods? They might be sending them over the border sometimes to be NAFTA-compliant, which is sometimes too onerous for some companies and they just go for the straightforward tariff over the border. Is this exactly what you are talking about? Then if you take away the border, for some companies the burden of compliance is so great that they just do not trade.



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Dr Gasiolek: Yes, it is similar to that. There is one difference, which is not an immaterial difference; the way the Government have set out their proposals is that the higher tariff, the EU tariff, would apply. If firms believe that they are, in fact, eligible for the lower tariff, the UK tariff, they have to demonstrate that and they have to apply for that. From a fraud and monitoring point of view, that makes things slightly easier, because it means you know who you should be monitoring, because you know who is applying.

Catherine West: Chair, in terms of the politics of this and what people expected when they were voting to leave the European Union, I do not believe this kind of thing was on the radar, because if you asked somebody, "Would you rather have a paid employee of the state doing that or a paid employee of the state being a social worker and looking after vulnerable children in a borough or a police officer keeping you safe?" that is an extra added thing. It has nothing to do with this, but I am saying we are politicians in the end.

Chair: It is an excellently made political point and I shall move on swiftly.

Q75 **Faisal Rashid:** My question is in terms of tariff rate quotas under the FCA. The application of tariff rate quotas under the UK and EU agreement that is proposed, how would that affect the third countries, third parties?

Dr Gasiolek: Tariff rate quotas are obviously slightly more complicated. At the moment, clearly goods, let's say meat coming in from New Zealand, can come into any EU country providing it does not exceed the maximum quota. I do not know what the specific customs arrangements are, but there are presumably customs arrangements in place where there is joint monitoring of how much of that quota has been filled and so on. For simple goods such as meat, refined goods such as meat, it would require some continuation of that system, but the difference would be now that it is the UK as a third country applying the EU's quota for the EU. One can easily imagine how the EU might be quite uncomfortable with that. Once the quota is exceeded, then the EU tariff should apply.

Q76 **Faisal Rashid:** We do not know what the quotas are going to be?

Dr Gasiolek: No, because that is still under negotiation and still under dispute in the WTO.

Q77 **Chair:** I think both the EU and UK thought it was going to be quite easy until they slapped it down at the WTO and another nine objected immediately.

Dr Gasiolek: Can I also add to that? It partly also depends on which interpretation of the FCA one applies, because you might imagine that the New Zealand meat coming into the UK is then used in the meat processing industry. Under the first interpretation of the FCA that I gave you, you might need to then think about the rules of origin and, therefore, which is the appropriate tariff to apply on the meat coming into the UK. Under the second interpretation, you have less of an issue. The



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implications with regard to tariff rate quotas do depend a little bit on which interpretation of the FCA you have and which one is intended by the Government.

Faisal Rashid: Yes, I am clear.

Dr Gasiolek: There is an ambiguity, let's put it that way.

Dr Holmes: It also raises the question: will the EU trust the UK's border controls? We know there is an issue about tariffs on Chinese textiles. I do not know if Mr Lux said anything about this, but the EU is suspicious of the rigour of the UK enforcement. Is it collecting it? The Chinese firms come in and declare a very low valuation. You are talking about stuff coming in by post, but the same thing applies to freight consignments. The UK has been quite lax in accepting the regulations.

At the moment we are subject to the supremacy of EU law and if they can show we are doing something wrong, then this can be corrected under EU law. If we are outside the system, the EU can only take some action against us. There would be fear that the British would have an interest in having their own separate quotas. If we were to have the FCA, the implication is we can import at whatever rate we like and then there has to be some very rigorous monitoring to make sure that the quota is not exceeded.

Q78 **Sir Mark Hendrick:** This is related. The White Paper refers to phased implementation of the FCA and states that it will become "operational in stages". How practical would that approach be and how might it affect the UK's ability to conclude and implement free trade agreements with third countries?

Dr Gasiolek: The ambiguity here is what does a phased implementation mean? My reading of that—which my colleagues may not agree with, and there could be completely different readings of that—was that the Government recognise that currently what it is proposing, the technology is there, the goodwill on the side of the EU is not there and that it could not happen. But what it would like in an ideal world is for the EU to agree that something like this in the future could be considered, not to completely throw it out for ever, but that the UK Government would have to convince the EU that technically it can be done, that it can overcome all these issues of fraud, all the problem areas that come up.

Should the UK be able to convince the EU of that in the future, then the EU might just be prepared to consider it. In other words, the phased implementation means for the moment we will operate as if we were still in the customs union and at some point in the future we would still like to be able to think about this option. But there are different readings of that.

Dr Holmes: One other interpretation is that the whole thing is introduced gradually. I was in Sweden recently and I saw pictures of the day when they switched from driving on the left to driving on the right. Clearly, it



would not have been a terribly good idea to say, "We will have cars switching on one day and lorries on another day". The whole thing about customs arrangements is you have to do it all in one go. You cannot say, "We will remove customs checks for one category while keeping them on another" because someone will say, "Oh, yes, this is—"

- Q79 **Sir Mark Hendrick:** Does it imply the use of technology, for example, where suddenly they are using some machines or techniques to assess something and that enables them to—I do not know—bring in tariffs on something in a way that they did not before?

Dr Gasiorek: I think we saw that in the earlier panel. One of the—

Sir Mark Hendrick: That is what Mr Canham was referring to, yes.

Dr Gasiorek: Exactly. What he was essentially saying is that you can bring in technology. You do not have to bring it in all in one go. You can start to bring in technology and that will reduce frictions at the border. That seems eminently sensible to me. Clearly, technology is evolving. Technology is going to minimise or reduce frictions at the border over time. The point, however, is that it does not do away with the need for a border.

- Q80 **Chair:** We are coming towards the end. There are a couple of questions left. How easy is it to split goods and services in trade arrangements? If the UK is to do so with the EU, what impact might this have on the UK's ability to establish new free trade agreements after Brexit?

Dr Holmes: I would just like to say I was in Brussels in February and this was the time when we started talking about, "Let's have a single market for goods with Northern Ireland or even the whole country". A very senior official—a British official from Northern Ireland, as it happens—in the Secretariat General said, "I am getting the message that the Commission is not ready to split goods and services". This is not just a whimsical thing they have come up with. This is something that is in the back of their minds.

There are three issues there. One is that an awful lot of services are embodied in goods. This is what the Commission refers to as mode 5. One of the things they are afraid of is that, for example, if Britain allowed firms to outsource a large number of services that are completely deregulated, then there would be some notion of unfair competition in there. For example, British banks might be allowed to have much more relaxed capital adequacy rules and lower reserve ratios. They could lend to British firms much more cheaply and that would be considered an unfair advantage.

The second thing is that a large number of goods and services are bundled together after delivery; for example, maintenance, things like that. It would be very hard to sell an aircraft engine without the service component. You could probably get around that, except that Britain would suffer from that.



The third point, which I think is quite important in the Northern Irish context, is that as I read the article—I think it is Article 49 of the December 2017 agreement—it does not refer to the absence of a border. What it refers to is the need for an all-island economy. I just happened to browse around job adverts in Northern Ireland. Electrical service companies supply electrical wiring and that sort of thing. They say, “You can be expected to work on both sides of the border”.

As I say, we have the mode 5 thing, which is where there is a problem in measurement of the valuation of the goods for rules of origin and so on. That is a technical matter and it probably can be dealt with, but I think that we really need, from the British point of view, to say, “Can we separate? Is it a good idea to say we are not going to be able to provide goods bundled with services any more?” I think the Northern Irish thing has not had the attention it deserves, all-island economies—

- Q81 **Chair:** That was a question I asked of the other panel: is it less disruptive to Northern Ireland? Let’s forget the whole island of Ireland, but is it less disruptive to Northern Ireland to have its border at the ports and airports on the east, as it were, and looking east or to have its border on the land, looking south and west? The other panel said it was always more difficult to have a land border. Their sea borders would be the same as the Dover and Calais type border. Do you agree with the assessment on that panel that the land border would be more difficult than a sea border?

Dr Holmes: I would, yes.

Dr Lydgate: Yes. I think Barnier has brought this up to de-dramatise the border, but at the same time the Commission has already said that the UK will become a third country when we leave. That means a number of things. One of them, just to take the example of live animals, which are currently moving across that land border, is that third country status means that those animals would need to have veterinary checks at designated border inspection posts. There are no border inspection posts on that border currently. An element of north-south co-operation is that there is a single epidemiological unit, which means that there is closer integration in the island of Ireland than there is between England and Northern Ireland, where there are veterinary checks on animals.

Chair: At the moment?

Dr Lydgate: At the moment, yes.

- Q82 **Chair:** So there is already an animal border between Northern Ireland and GB?

Dr Lydgate: In some respects—not in many, but in some respects—there are more checks in that border. Because of the lack of infrastructure on that border and lack of EU-recognised inspection posts, it is more difficult.



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Sir Mark Hendrick: I think that is because of foot and mouth and they want to recognise it for food safety regulations as well.

Q83 **Chair:** Bacteria do not recognise borders very well. My final question is in the Lancaster House speech, the Prime Minister—I think it was the Lancaster House speech—said the ECJ would end its jurisdiction, but can you apply the common rulebook without the ECJ?

Dr Lydgate: No, but I think the UK Government have conceded on this point. It is also conceded that where the UK is going to participate in EU agencies, which is in important areas covered by the common rulebook, it will follow ECJ precedents and rules, essentially. But one thing I think is interesting is that the UK Government mention EASA and the European Chemicals Authority as agencies that they wish to participate in. That implies that it is agreed that they will follow ECJ rules in this area. It does not mention the European Food Safety Authority. I do not know if that is an oversight, but I thought that was interesting.

Q84 **Chair:** A very final point. In all the things we have talked about on goods and services, just how easy will this be, and what impact will it have on the UK's ability to establish its own free trade agreements? It looks from what we have heard this morning that it is going to be very tied in to the European Union. I do not want to lead you in any way, but what do you think?

Dr Holmes: There are virtually no free trade agreements that deal only with services. Normally they are goods agreements; frequently you get a goods-only agreement.

Q85 **Chair:** As we have seen this morning, if the UK is as bound to the European Union as almost Switzerland is, how tied are its hands to go to this—

Dr Gasiorek: Imagine a world where a facilitated customs arrangement has been agreed and a common rulebook has been agreed. I think this is your question. What scope does this leave the UK to sign free trade agreements? On regulatory matters, as Emily said earlier, it really constrains the UK because it cannot choose different forms of standards with, for example, the US. So it constrains the non-tariff regulatory side that it could sign with third countries considerably.

On tariffs, it also makes it much more difficult to sign agreements with third countries, because essentially you would be saying some version of, "We would like to offer you preferential tariffs, but those tariffs will be applicable only to those goods that our firms can demonstrate are being sold only in the UK and are not going on, for example, to the EU". It makes the whole process of negotiation and what the UK can offer potentially much less attractive.

Chair: Fair enough. Panel, thank you very much. I thank you for being aware of my signals for time and what have you. It is much appreciated and your evidence was fantastic this morning. Thank you very much.



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