

International Trade Committee

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

Wednesday 21 November 2018

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

Questions 185 - 225

Witnesses

I: Dr Brigid Fowler, Senior Researcher, Hansard Society, David Henig, Director of the UK Trade Policy Project, European Centre for International Political Economy, and Maddy Thimont Jack, Researcher, Institute for Government.

Examination of witnesses

Witnesses: Dr Brigid Fowler, David Henig and Maddy Thimont Jack.

Q185 **Chair:** Welcome to the International Trade Committee's further evidence session in our inquiry into trade policy transparency and scrutiny. This morning we have three witnesses. Can I ask the witnesses to introduce themselves, starting on my left; name, rank and serial number, essentially?

Dr Fowler: Good morning. My name is Brigid Fowler. I am a senior researcher at the Hansard Society.

Maddy Thimont Jack: Good morning. Thanks for inviting me. My name is Maddy Thimont Jack and I am a researcher at the Institute for Government.

David Henig: I am David Henig, Director of the UK Trade Policy Project at the European Centre for International Political Economy.

Q186 **Chair:** Excellent. Thank you all for coming. Can you first outline the current procedure for UK parliamentary oversight of European Union trade policy?

Dr Fowler: Thank you for the invitation. The system at the moment, as you will know, falls under the European scrutiny system, which is governed partly by arrangements at the EU level on when they make decisions and the different decision-making stages that they have chosen to have and the different information, the documents that they have chosen to publish at the EU level. That is combined with decisions that have been made at the UK level about how this Parliament chooses to scrutinise the EU level developments.

The other thing to bear in mind is that the way the system for scrutinising trade agreements in particular works in practice has developed over time because the EU has changed what it chooses to publish over time. In this context, the most notable innovation was that this year for the first time the EU published mandates at the start of the negotiating process for the Australian and New Zealand FTAs that it started negotiating just before the summer. For the first time it has published the mandates right at the beginning of the process.

Broadly, the European scrutiny system here is set up so that the vast majority of EU documents are deposited by the Government with the scrutiny committees in the two Houses with an explanatory memorandum. Those documents are held under the so-called scrutiny reserve until the two committees separately are content for the Government to proceed. The idea is that the committees should be able to hold the Minister to account for what he or she does in the EU Council, including saying, "We are not content for you to sign up to something".



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From the perspective of future scrutiny of trade agreement making going forward, I think the key thing is that because of the way the EU level and the UK level interact at the moment, this Parliament potentially has a say over the opening of negotiations and the signature of trade agreements. Under the UK-only procedures, as you will know, when the UK on its own makes a treaty, this Parliament has a say only at the end when it needs to legislate and when it needs to give consent to ratification.

Q187 **Chair:** The EU approach gives the UK Parliament more say than the UK approach gives the UK Parliament. Is that what you are saying?

Dr Fowler: In the way it operates in practice, yes, but it is a combination of the decisions, the way that the EU has decided to go about it and the way that this Parliament has decided to go about it. The decision to create a scrutiny reserve is entirely a decision of this Parliament and so it is a combination of the two.

Q188 **Chair:** Thank you. Do you want to add any further comments to that?

David Henig: I will add an example to illustrate. Recently when there was the discussion about the splitting of the tariff rate quotas at the WTO, through the EU scrutiny mechanism Parliament got to see the EU documents that were related to that and the explanatory memorandum and asked a series of questions about it whereas in fact there was no requirement on the UK Government to say what the UK Government's approach was. The Government did not set out before the House particularly any detail of our approach, merely to set out that it was our intention to split the quotas. The detail all came via the EU scrutiny mechanism. If it had not been for that scrutiny mechanism, there would have been no requirement on the UK Government to provide the House with any detail about how it was being done.

If we go to another example of the Government procurement agreement, you may be aware that there have been some issues, some countries have raised concerns about the UK's offer. We don't know what offer has been made by the UK Government—we think it is the same as before—nor does the House have any rights, as far as I can tell, to see any details of the new offer. I am not also sure whether—

Q189 **Chair:** Controversially, could you say for the tabloid writer that the EU bureaucrats are more open to the UK Parliament than the UK bureaucrats are open to the UK Parliament?

David Henig: Yes, at the moment.

Q190 **Faisal Rashid:** This question has probably been answered. It is about the international trade proposals that were lodged in July this year and the effectiveness of that in order for Parliament to be able to contribute to the new agreements and scrutinise. How effective are the proposals put forward by the Government?



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Dr Fowler: There is a number of things one could say. By definition, those negotiating directives were the product of 28 member states rather than one. You can make the obvious point that by definition there ought to be more scope when the UK is making trade agreements on its own for it to tailor them to its interests and priorities. In terms of this Parliament being able to feed in, one of the problems with the European scrutiny system, which is by no means perfect, that your counterparts have always raised is that by the time a document gets to be published by the Commission and circulated to the member states' national parliaments and comes through the European scrutiny system it is often already too late. There has been a constant theme of how can national parliaments get upstream in the European Commission process. If you were to try to translate that to the national level, it would raise issues about what kind of document comes to this House: is it a draft, is it amendable or are you being presented by the national government with, "This is what we are going to do"? Again, there are issues there.

The other issues that have come up through the European scrutiny system are often about timing. The European Union has its own timeframes and there have been difficulties when your counterparts here have felt that they have not been given enough notice or they need to rush through a decision. Ultimately you can get to a scrutiny override where the Minister says, "I am sorry, this is on the Council agenda. I have to sign it off" even if it is still being held under scrutiny here. But one of the potential benefits to come out of this process is that hopefully the UK Government will be much more in control of its own timetable for making trade agreements. Obviously it will have to accommodate other partners but it will not be driven by, "It is on the Council agenda next week".

Q191 **Faisal Rashid:** That is positive for the UK taking control, but in terms of the Parliament scrutinising those new agreements and having to contribute, how effective is the launch of the Government's policy from the Department for International Trade?

Dr Fowler: The new ones now? We have not yet seen the results of the consultations that they launched in the summer on the four potential new trade agreements. At the moment I would say that the Government are making some of the right noises about needing to involve people and needing to consult, but at the very least I would want to maintain some caution until we have seen what comes out of those initial consultations and what gets published.

Maddy Thimont Jack: I agree with what Brigid said. Essentially what the Government have said so far is extremely vague. There is not much detail and we don't know how they envisage any of this working. That is a problem and hopefully your Committee can feed into that and make some recommendations for how it should work going forward. Something that they have not talked about—I am looking at Liam Fox's speech to



the House—is how they will set a mandate and whether there will be parliamentary involvement on a mandate.

I want to raise the point that it has been quite interesting, as Brigid said, that the EU has started publishing mandates where previously it didn't and the utility of doing that. One of the arguments that the Institute for Government has made is that the EU has used that transparency throughout the negotiation with the UK to really push its agenda. When you publish a mandate, when you have more buy-in from Parliament, you can use that in negotiations and say, "This is what Parliament wants and this is what we have said we are going to deliver" so it may be more difficult to make concessions. I think something that the Government should be considering particularly is how to use transparency to further their agenda during trade negotiations.

Q192 Chair: Is that a recommendation you would make? You said for the Committee to make recommendations but the Committee makes recommendations from the evidence it gets.

Maddy Thimont Jack: Sorry, yes, I should have been clear. That is recommendation. It is something the Institute has previously said, but I think it is important to recognise the value to the Government's negotiating position. Part of encouraging the Government to do this is also to convince them that it works for them as well. I think that is something that the Committee can definitely push, that it will help during the negotiation itself to be able to say, "This is what we have agreed in Parliament". Even if you don't necessarily give Parliament a formal vote on the mandate, just having a debate in Parliament to hear what Members think, to inform what that mandate will be, would be a good first step for the Government.

Faisal Rashid: Contribution and scrutinise.

Maddy Thimont Jack: Exactly.

David Henig: I was working for the UK Government on the TTIP negotiations between the EU and the US and that was when an awful lot of the transparency debate really happened in Europe. What you see the Commission doing now with regard to Brexit was built on the learning of TTIP where they were not transparent at the start. The mandate was not published and then you had the outcry from civil society. It was almost in response to that that they realised you have to be more open now in trade because otherwise there is suspicion. This is not the environment anymore of 10 years ago when, frankly, no one cared very much about trade. Now trade is a big issue. If we fast forward, it is the expectation of various people that the UK will start negotiating with the US on 1 April. That is the expectation of the US among others. The US, TTIP—it is the same. We can expect an awful lot of interest and I think that if this House has not given a considered opinion on that matter before the start of negotiations we will run into problems very quickly with a lot of the big political issues we know about.



Q193 **Mr Ranil Jayawardena:** On that, Mr Henig, aren't you concerned that the fake news that surrounded TTIP will engulf all future trade deals, including a UK-US trade deal?

David Henig: Yes, it will. We don't know yet how to fight against fake news effectively.

Q194 **Mr Ranil Jayawardena:** Why would you put forward the transparency that you are suggesting, which opens the risk of fake news governing this country?

David Henig: What I found during TTIP was that the more certain you could be that the rumours and fake news were not correct, the more you could point to evidence to say that, "Parliament has looked at this or previous negotiations have said this", you can reduce the risk of that. I will give you a couple of examples. You may recall that during TTIP one issue that was continually raised was investor-state dispute settlement and the risk that X could happen as a result of this, the Government could be sued. The problem is that it was very difficult to rebut that because the Government could be sued; it probably wouldn't be, it never had been, but nobody had ever really debated the issue so those rumours could fly around unchecked. Something like privatisation of the NHS kept flying around as well.

You could say that the EU has done many trade agreements before and this has never happened; it is not going to happen this time. The risk the UK has is that we have not done any trade agreements before so the trust is not quite there. Exposing these issues early and having clear positions and saying, "MPs have examined this and this is the case" will give Government a lot more substance to be able to rebut fake news than if no debate had happened and it is all rumour and hearsay.

Q195 **Mr Ranil Jayawardena:** Of course that is on the basis that the public trust MPs more than they trust fake news.

I know Dr Fowler wants to come in, but I will put another question to you, Dr Fowler. Given the lack of nimble manoeuvrability that domestic constraints can have on negotiations, to say nothing of the hand tying and potentially hand weakening that discussion of secret negotiating strategies could have, would this level of parliamentary involvement be desirable in getting the outcomes from a trade deal that the country might benefit from?

Dr Fowler: I endorse what Maddy said. The onus should be on those who are saying we should not publish to explain why. In particular, it would be extremely useful if somebody were to invite, for example, the Prime Minister to reflect on the article 50 negotiations and say, "Did you feel that the fact that the EU was more transparent and published a lot more material gave you an advantage or gave them an advantage?" just genuinely to explore the bases for these decisions. It makes a lot of sense to be able to say, "This is what we are doing. People have



considered it and fed into it". If you don't publish, that just feeds the mistrust, as David said.

If I may make one tiny point quickly, I know it sounds silly but I would put all the material on a decent website because you need to make it easy for people to find. When I am skimming around what some other countries do, some websites run by whichever department it is that runs these things are an awful lot more user friendly than what DIT is doing at the moment.

Q196 **Chair:** Is it a recommendation to have a more friendly website?

Dr Fowler: Yes. You might want to have a single page for each negotiation and just put all the primary documents up there and leave them there.

Q197 **Mr Ranil Jayawardena:** You don't believe that the strength of our arguments and the strength of negotiations could be weakened in any way at all by putting all this information out there and putting our position out there?

Dr Fowler: David would know better. I quite understand, and there seems to be a general understanding even among pro-transparency campaign groups, that there may be commercial issues and a degree of non-disclosure needed, but I think the bias should be towards transparency.

Maddy Thimont Jack: I think it is important to look at the balance in transparency. Publish a mandate but maybe not publish full updates on every single aspect of the negotiations. One of the recommendations made in the report last year about trade policy is that the way to manage this is potentially to give a specific group of MPs privileged access to some of the—

Mr Ranil Jayawardena: Maybe the International Trade Committee.

Maddy Thimont Jack: We used the model of the Intelligence and Security Committee as an example of where this is already done. It might be the International Trade Committee, but we would even look at the fact that the Prime Minister nominates people to that committee, so there is already an example of the way you do this. It might be that when you come to the end of the negotiations, it is up to that committee to report to Parliament and tell Parliament what it thinks about how the process has gone because it has access to more information. It is important to be transparent and, as we have said, the EU has potentially taken advantage of that during the last negotiations, the negotiations over Brexit, but you don't want to be leaking all the information and there is a balance to be struck. That is a fair point.

David Henig: To go into more detail, the mandate is a fairly general document, a list of your priorities. If you didn't publish it, the other side would probably guess what it was roughly anyway because this stuff is



not rocket science, but it is important that MPs have had the debate on what is particularly important. What the other side does not necessarily know is what priority you are going to give to different aspects and what at the end of the day you might drop, you might compromise on. That is for the negotiation and you shouldn't be giving regular reports on, "The car industry is not so important on this one".

Trade negotiations are all about competing interests and you can't give a running commentary on that, so it is finding a sensible balance between allowing some debate, allowing MPs to have a say. That is why I very much endorse the idea of a group of MPs who are able to have privileged access to the negotiators. Then your colleagues can ask you, can lobby you, frankly, on behalf of their interests. It is a Team UK approach really. In the end, we want this to work best for the country and it will work best if MPs have a say as well as the Department for International Trade and so on.

Q198 Matt Western: This is really important stuff, isn't it? At the heart of this is all about addressing the claim, which was that we would be taking back some sort of control over a process, in this case about trade deals and trade negotiation and so on. We have witnessed that there is a frustration in this place about the most recent draft agreement where I think it is fair to say that there has not been an inclusive approach, even within Government circles, and it has been handled by a very few people. This is what we are trying to counter here, I think across the political divide. What you have been saying so far has been about how we involve. It is not just who and how but at what stages for what sort of parameters are set and so on. I am interested to know from each of you at what stages you think Parliament and who within Parliament should be involved in this.

Maddy Thimont Jack: I might repeat myself a little bit on what I have just said. You need to have a general consultation before approaching a trade process anyway. If we take a step back from Parliament, before the Government go out and negotiates new trade deals it is really important to have a clear trade strategy that takes into account different interests within the country. One of the challenges facing the Government and the UK, whichever Government is in power, is that being part of the EU means we have not had to make some of those very difficult trade-offs and say, "We are prioritising this over this". We have been able to allow that lobbying to take place at the Brussels level and maybe have been able to hide a little bit behind different interest groups in other countries. That is a first stage to this anyway. There is a role for Parliament in that in having debates in the House maybe about what the priority should be, but that is the first step to anything before we go out and try to strike new trade deals, as the Government want.

The next stage, if you prioritise which countries you are going to try to negotiate with, is explaining why you are going to do that. Then it is about publishing a mandate. I am not sure that you need to have a



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formal vote on a mandate but I think that a debate in the House would be a sensible approach because it allows MPs to express their views. The Government can then take that into account or at least explain to MPs why they have chosen to take the approach they have. That would be sensible. It is a public document anyway so businesses and other interest groups are also aware of what the Government are trying to do.

I think there is also something about publishing an assessment, an analysis of what the impact of the trade deal will be. We have recommended that there should be an independent body that is responsible for that so that instead of having different Departments coming up with different approaches and different ways of analysing, you have a consistent analysis for each trade deal. Then Parliament is able to look at them and say, "These are all in the same style and we understand what the different priorities are". I think that should be published alongside the mandate.

I will let the others speak but I think there is something about the negotiations, about sharing texts with a privileged group of members. You are going to have to appreciate the fact that trade deals are going to have a massive impact on a huge number of domestic policy areas, so there will be committees that want to conduct inquiries into different areas. As we have with the future relationship with the EU, a huge number of committees within the House and the Upper Chamber has been conducting inquiries into that. There is a question about whether maybe the Department for International Trade can play a co-ordinating role in that in overseeing the different inquiries.

To finish up quickly, as we get to ratification, which I appreciate we have not spoken about, under the current process, under CRAG, the House is able to debate on ratification but there is not an obligation on the Government to schedule time for that vote. I think that is something that should be addressed, and maybe we can return to it, but giving Parliament an actual scheduled time to have a debate and vote on the deal should be considered. That is my comprehensive view on that process.

David Henig: Yes, all of that. I am going to add one thing, which is that as well as having those debates upfront and through the process, I think there could be a regular report from the Government on each negotiation that it is going through, not necessarily in great detail but enough to say, "We are currently negotiating with X country. We have had three rounds. We have gone through these. We are covering these sort of general issues", to provide information. If you want to know more then you will have to ask the people who are closely involved with that particular negotiation.

One of the things that concerns me at the moment—maybe less so if we have a withdrawal agreement—is that every time we ask about the progress of carrying over the existing EU trade agreements, we basically



have no information. You just have the Government saying, "We are on track" and that is not enough. We need to have a little bit more to play with than, "We are on track". "We have had a number of discussions with Egypt and we have not had so many with Morocco." I don't know, I am making up those examples, but we need to get to that point. The Commission now does that. It didn't always in the past, but it does that process of saying regularly where it is. I don't think providing that information would compromise the Government's position in any way.

Catherine West: I have two quick points, just to confirm what you are saying. One is that in the TTIP negotiations it would have been much better if they had had the trade unions in much earlier explaining to the workforce what was going to happen. We know from talking to American senators and Congressmen and women that they said right from the start that if they had been able to get NAFTA as, "This is great" and have people in factories talking about it, similar to what is happening with the People's Vote at the moment, getting different people to say why they like something, that messaging can be very helpful.

The second was that some of these negotiations take so long that the trusted elected members who begin a negotiation in good faith are often replaced by others who may not be as able in the communications role. That is why you need the iterations on paper. I don't think just having reporting back works. You also have to have ongoing updates talking about these things, not just assuming that it will be pushed through Parliament at the last minute, because sometimes Parliaments change. Even in Europe we are seeing a lot of different sorts of parliaments now that might be taking a different view. Thanks, Chair.

Chair: Is there a particular question?

Catherine West: No, I just wanted to get that on the record.

Q199 **Matt Western:** Can I go back to Mr Henig? You were talking about sharing that information. Do you mean to all in Parliament or just to, say, a Committee?

David Henig: I think it would be helpful to have the regular reports more widely available, but maybe at a higher level. Then Members who are part of whatever arrangement is in place to scrutinise in more detail can do that but your colleagues who may not be in that position can ask you questions of particular concern. One of the things that your colleague just mentioned was about the effect of elections and it is really important that individual trade deals are not seen as a party political issue. Governments may change and what a waste of several years' negotiation if suddenly the other party comes and always rejects it. It is a waste and it does not take us forward. The idea of trade deals should be that they benefit the country as a whole. There should not be Conservative trade deals and Labour trade deals. There should just be good trade deals for the country.

Q200 **Chair:** Does any country fall into the trap of having party political trade



deals?

David Henig: They clearly used to in the US. There is an interesting document from 2007 or so in the US where there is a bipartisan agreement on trade deals, which goes through a number of things such as labour and environment standards. Clearly the reason for that document must have been that prior to that there was so much debate and disagreement between parties about what should be in a trade agreement that they got together and said, "We need to have these labour and environment clauses in this particular way and that is what we expect the Administration to do".

Yes, countries do. We look at President Trump pulling out of the Trans-Pacific Partnership. New Zealand had a change of government and it was touch and go as to whether they would stay in the Trans-Pacific Partnership. Clearly political parties will have different views on trade deals.

Dr Fowler: This is one area where there is a tension and it is unavailable and the Committee may wish to think about it. If you look at how to do a successful international negotiation, you want a broad consensus and you want it to be sustainable over changes of Government. But if you look at a trade negotiation or a trade agreement as a form of economic policymaking, particularly in an environment in which a lot of popular disaffection with politics is due to the perception that everybody thinks the same and there is no real choice, you can make the case that you want there to be some domestic contestation about what goes into these agreements. There is a bit of tension and we need to try to hit the sweet spot somewhere, where you make good trade deals that are sustainable and don't fall apart every time you have a change of Government but that people don't feel that they have just been railroaded, they were given no choice, nobody disputed or contested anything. It is a fine line.

Chair: I am feeling like Harry Truman. He was looking for the one-handed economist. You both make good arguments for either way.

Q201 **Matt Western:** Mr Henig, you were saying that the current reporting is that current negotiations are on track, but of course sidings have tracks as well. If that information is shared as you are all suggesting, what actions should be available to some form of scrutiny to ensure that we keep on that track?

David Henig: I may have to defer to colleagues on the parliamentary procedures because I am not exactly sure how you would set up a committee structure or structure that allows Parliament or a committee to demand more detailed information from Ministers. I think that you mentioned the Intelligence and Security Committee.

Dr Fowler: If we are talking about Government sharing of information with Parliament, one thing I would suggest is that it is probably worth trying to get it written and published, not necessarily as an unchanging document. You want it to be flexible as everybody learns how this works



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and what works and what doesn't. One of the reasons why the European scrutiny system has worked relatively well is that at least everybody knows what documents are supposed to be coming through and who is allowed to do what with them and simply getting some kind of written undertaking from both sides. Similarly, in the EU there is the so-called inter-institutional agreements between the Commission and the EP about who is going to share what with whom and when and who is going to talk to whom when.

On a very practical level it is just to avoid, for example, wasting the time that was wasted with the impact assessment argument in the article 50 negotiations when everybody spent weeks arguing about who was going to publish which impact. I would have thought that could be sorted out.

Chair: A reminder to the Committee that we are about halfway through our projected questions.

Q202 **Julia Lopez:** I have a general question and then I have a couple of questions for Mr Henig. The general one is about who is getting parliamentary involvement right across the world? Who is the gold standard? Are there any things that we should be avoiding from international comparisons? Mr Henig, you talked about lessons learned from the TTIP negotiations. If you were going to do a lessons learned on the negotiations that we have had with the EU so far, what would they be? Some of the things in the withdrawal agreement are going to have impacts in trade terms and it would be interesting to know what your thoughts are on that. I understand that you helped set up DIT. Do you envisage a smaller role for DIT if the withdrawal agreement goes through?

David Henig: I will start with the general question: who gets it right? I think that all countries are learning, to a degree, that what happened with TTIP and the Trans-Pacific Partnership made trade controversial for the first time in years. Everybody is learning.

I think Europe has learnt very well and I think New Zealand has learnt very well. I am in touch with various people in New Zealand and they always seem to be in villages around New Zealand consulting extremely widely on their trade agreements. They have published a really good document on what they are aiming to achieve. I think it is called "Trade 2030", what trade policy is for. They are really trying to take trade out and show the benefits and get people involved. I think the system they have come up with in the European Parliament works quite well. The European Parliament gets to pass advisory motions. They are not necessarily binding on the Commission but they give a sense of feeling and that works quite well in allowing a pressure valve for views without it having to become a big conflict.

One of the things in learning from the process that we have just been through is it has been very much a closed Government. Everybody has been trying to open up Government and right from the start an



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acceptance that we all have to do this together, everybody has large numbers of interest, not everybody can be satisfied; how are we going to run that process; how are we going to give people a say? That is right at the front of my mind and the whole situation we see now is does it have a majority, does it not have a majority? You really never want to get to that situation in an international agreement where after all this negotiation you find that you are not sure it met the demands that were placed on it. That is not easy because everybody has interests. You all have businesses in your constituencies and you want to see them benefit from whatever the agreements are. In doing that, Government have to be open to seeing that. I don't think we have seen that. We have seen a bit of a culture of secrecy and it would be good to change that.

Q203 Julia Lopez: On the DIT question, which was basically do you foresee a smaller or larger role for the DIT within the terms of the withdrawal agreement if it gets through?

David Henig: I think there is a lot for DIT to do. There is a lot of trade to do. We don't know quite what will happen with free trade agreements but there are so many other things to be involved in. There is everything to do with the WTO and there are smaller agreements. I think there will be a big demand for us to try to do regulatory agreements. There is a big role for somebody in Government to be focusing on trade. There is a lot more we can do about joining up trade promotion and trade policy and making sure that what we hear from businesses is what we then prioritise in our trade policy. There are many tools that can be used. That is borrowed from the Secretary of State who often makes the point about the trade policy toolbox. It is far wider than free trade agreements.

I think that it still has a large role. There are people who disagree with me on that but I think that it has a big role whatever happens. The UK has to take on a lot of responsibilities from the EU as from 1 April and it will be very busy doing that quite aside from negotiating free trade agreements.

Q204 Sir Mark Hendrick: On Mr Henig's response to Ms Lopez's question, you contrasted the negotiations, which, as you say, were done in some secrecy by the Government with the EU, with for example, European trade agreements where the European Parliament would have some oversight and be involved in a consultative sense. Isn't there a big difference, though, with what we are seeing with the EU at the moment where it is effectively a divorce in a marriage that has lasted about 40 years and you are trying to disentangle all the structures that have been set up over that period of time before you even get to the trade deal? Even though, as an elected politician, I would like a lot more transparency, in fact you wouldn't want some of the discussions to be heard in public, given the likely things that have been said across the table. There is a significant difference between disentangling 40 years of a relationship and striking up a new trade deal.



David Henig: Absolutely. I think we have already said that there are some things that you want to keep relatively secret and there always will be—and that is where sharing it with only a select few MPs may be a way forward and that is something that they do in Europe; they also do that in the US that I am aware of. In the article 50 process you have seen a mix of things. Some things are the divorce elements and some are about the future elements.

If one looks through the withdrawal agreement, you have things on fishing, for example. Why fishing and why not other sectors? You have things on geographical indications. I think many of us knew that that was going to appear in there but there has not been much of a debate in the UK. You have the situation where that is a bit of both but we have not really had the debate. Fishing is there presumably because quite a lot of noise was raised by fishing communities during the process that this was very important, so it appears, but it was never debated as to whether fishing should have been sufficiently important to be in the withdrawal agreement or whether other things should have been in there.

Q205 **Matt Western:** With this whole inquiry, it has been quite clear that some form of scrutiny committee is required. We have talked around this so far this morning, but it would be really helpful to hear your more precise comments on the role and the composition that any such committee should have to scrutinise trade deals.

Dr Fowler: I think the key decision is what exactly you want the committee to do. There is all too often a tendency to just say, “We’ll have a committee”. If we are talking about a committee to scrutinise negotiations as they are ongoing, a couple of points can be made. One difficulty at the moment is that we don’t know what kind of volume of negotiations we are talking about going on at any one time. That will shape what kind of workload we are looking at. Are we talking about one committee? Might you be talking about subcommittees, one doing each different negotiation if there were a lot going on at one time? There is the volume consideration.

The other consideration, which has already been touched on, is the need to bring in expertise from across Departments, just as we hope the Government will make this a cross-Government exercise. Your colleagues on the Business Committee will have interests. If you are doing financial services, the Treasury Committee will have interests. We may come on and talk about devolved matters but if you are talking about Welsh lamb, your colleagues on the Welsh Affairs Committee are going to have an interest. You are going to need to think about how to bring in people from across Departments.

The third thing I would say quickly is the need to make sure that whatever kind of committee structure you have is resourced appropriately with trade lawyers and people with trade expertise. You have seen what the withdrawal agreement looks like, you have seen other trade agreements and you know how technical and complex they



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are. If it is going to do this job seriously, it is going to need to have that kind of expertise to call on.

Q206 **Matt Western:** Given what you have just said, what sort of powers do you think it should have?

Dr Fowler: This is where you come to the question of do you want to replicate some kind of scrutiny reserve again. Do you want to say somebody, either the Chamber or some committee, should have some kind of signoff before you start a negotiation or before you sign an agreement? Do you want to institute some kind of lock or do you want to go more down the, "Let's just have a debate" but make sure we have enough time that some kind of committee can at least produce a report to inform that debate. There are decisions to be made about whether or not you want the lock, some kind of vote.

David Henig: The European Parliament international trade committee meets for one to two days every three or four weeks. The workload is quite high on these things. If you look at their agendas, which are available online, they are spending an hour or two on each agreement now and that is just what we see in public. In private the leads for each agreement are seeing texts as they come in. There is a huge workload and they are getting involved in a huge amount of detail above and beyond the normal level of detail, if I am being honest, that this Parliament is necessarily used to. These agreements are very wide ranging now. They cover all manner of regulatory issues as well as tariffs, so there is a lot of detail to work through. I endorse exactly what Brigid was saying.

Q207 **Matt Western:** You are right to remind us of that. What you are saying is that it is not just the civil service capacity issue but also the Member capacity issue and whether we have sufficient capacity in here to do that sort of scrutiny? Yes, is what you are nodding? Perhaps you could say yes so we can hear.

Maddy Thimont Jack: Yes, I completely agree with both of those.

David Henig: The capacity and the need to get into a level of detail on individual things. These are treaties that will last a long time, so what they say about agricultural regulations is an important matter. These are important political questions where civil servants, as I used to be, will need some political advice.

Q208 **Matt Western:** Reducing the number of MPs from 650 to 600 at this time is a really irresponsible thing to do, is what you are suggesting?

David Henig: Of course the other House could also play a role.

Matt Western: I am sure they will.

Chair: We might need more unelected Members when we lose some elected Members.



Maddy Thimont Jack: I appreciate we are on trade negotiations but there are also treaties that are not related to trade that might have quite a big impact on domestic policies in the UK. I think it is quite interesting whether you separate out the International Trade Committee that is scrutinising what the Department for International Trade is doing and also looking at the impact of trading relationships on the UK from potentially having a separate treaties committee. I refer you to what Australia has. It has a joint standing committee on treaties that reports to Parliament between the time the Government lays treaties before Parliament and Parliament then votes on it to inform the decision.

In my imagining of this privileged group of MPs, maybe that becomes a treaties committee. Like the Intelligence and Security Committee, you have representatives from both Houses on it and they look at trading negotiations but also negotiations on other treaties so that you can balance. It is about making sure that there is not over-duplication between different committees, that you use Members' time usefully rather than putting additional pressures and looking at duplication. I think it is a really important question of is it up to the International Trade Committee or is there a separate committee that has the privileged access while the International Trade Committee continues to look at the implications more generally of trade, trading relationships for the UK and, as I say, scrutinising the work of the Department. That is a question that I am putting out there. I would be interested to know what other—

David Henig: I already mentioned the World Trade Organization. What about changes that are made there? There are things that happen day to day, such as whether the Department for International Trade or other Departments are sufficiently taking up business issues or whether there are problems there. There is a lot here that affects your work.

Q209 **Mr Chris Leslie:** I tend to favour the connection between the strategic approach to trade policy and the specific link with treaties as they go through. Without being too rude about the European Scrutiny Committee, it tends to be populated with people who enjoy sifting and process arrangements but not necessarily thinking about the bigger picture. That is just my own personal prejudice about it. My friend is aware of the point I am making. The Treasury Select Committee has the capability of covering quite a vast array of public expenditure and fiscal issues and, through subcommittees of that Select Committee, can delve into things. I personally think that the model you were alluding to is if the European Parliament currently is having to give permission for trade deals around the world, effectively if we Brexit—and it is still a big if—that is probably the sort of model we need to be following. Sorry to be long-winded about it.

My question is about the nature of the power that that committee would have to have. It is about the scrutiny reserve or a sort of rubber stamp signoff. What would be your ideal model of a trade Select Committee that would have an appropriate level of emulating what the European



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Parliament does at present?

David Henig: With my hat on as former negotiator, I would say I want to take your views but I don't wish you to have a veto over what I decide to do. But there will be some tension on that and there should always be a bit of tension on that. I think you probably should have the power to see, at least in private, the latest state of play, to have a full report on what is happening to scrutinise in that way. I don't think there should be a veto. Similarly, we have not mentioned yet the publication of texts. I am not in favour, as some are, of publishing texts as you proceed, partly because it is so deathly dull.

Q210 **Mr Chris Leslie:** I don't think committees necessarily can veto, because as a small group that gives—but the power of the scrutiny reserve is that the committee can trigger something where the whole House could effectively reject the proposal. There is a power for the committee to kick something up to a decision for the whole House and if the whole House chooses to veto it then it can do that. That would be more appropriate, wouldn't it?

David Henig: I am trying to think how this would work. We are into real detail.

Dr Fowler: This is all very difficult because you run headlong into the prerogative. Putting limits on what the Government may do internationally is, as we all know, very constitutionally sensitive when it is using prerogative powers. That is one of the reasons why the scrutiny reserve was interesting because it did effectively put some limits on that. In a very weak way, the pre-ratification procedure does similarly. It puts some limits on when the Government can ratify a treaty at least. It is not an absolute. You can't impinge on the prerogative.

Q211 **Mr Chris Leslie:** I am trying to get a sense of the outer limits of the potential power of a trade committee. It has transparency powers. It has the ability if it wants to say, "This is a crazy proposed treaty" and kicks it up to the whole House with a recommendation. For time purposes, could we ask you to do a little note that suggests what could be the powers of the committee giving something to the full House, if you see what I mean?

Dr Fowler: Yes. I suppose it would be that there is nothing to stop you creating a system in which a committee got guaranteed time on the Floor of the House before an agreement was signed and able to move a substantive motion saying, "This should not be signed". That would be very strong but you could go that way.

Chair: A note on that would be useful as well, just details.

David Henig: I mentioned wanting the political direction. Negotiators would normally not want to get into a position where they can't carry the House and, therefore, they would take it very seriously if you were



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having those discussions. I am trying to think in a more constructive way of how you get to a good agreement.

Mr Chris Leslie: A safety valve mechanism.

David Henig: You have got a safety valve mechanism.

Q212 **Chair:** Is your point the idea that if you want to keep a secret and make a speech about it in the House of Commons, these speeches would be noted by the negotiators going into negotiations?

David Henig: Yes, but hopefully I would be told about that beforehand. As we are learning as a country how we are going to do this, I want to know that there are strong feelings because that is going to affect the way you negotiate. It has to be a bit of give and take in the period between the mandate, and I think the Parliament has a strong role in the mandate and a strong role at the end of the process. In between times, there has to be some give and take where it is not a running commentary but there is an ability to take a political direction.

Q213 **Chair:** Do you feel that negotiators would directly take an interest in what was said in the Commons Chamber and that would be noted and they would be aware and cognisant of that?

David Henig: Yes.

Q214 **Julia Lopez:** It would be quite helpful sometimes in a tricky bit of a negotiation to be able to point to the House of Commons and say, "Look, these guys are kicking off. There is just no way we can get this through unless you give way".

David Henig: Yes. One interesting thing about the European Parliament approach when they put forward their resolutions on what should be in a trade agreement and then they put forward amendments, is going through them to work out which ones were put down by the Commission negotiators themselves through very friendly MPs in order to put pressure on the other side. There is a whole game going on here, but sometimes you absolutely want to say, "I would never get that through my Parliament", having first ensured that somebody has made a speech to say exactly that. Why not?

Q215 **Sir Mark Hendrick:** On this point, from my memory as a former Member of the European Parliament, we had consultative rights but not a decision or anything like that. Is that still the case?

David Henig: Now the European Parliament has to have a vote to pass the votes. I think that is a Lisbon—

Q216 **Catherine West:** I think the other thing that shouldn't be forgotten is some of the wider issues, not the detail necessarily on each clause but wider considerations around the human rights record of a particular country that deals are being done with or national security concerns. They are an ever-changing picture. I think that also should be factored



into how we go forward.

My question is: is the panel reassured by the statements already made by the Government relating to transparency, for example that they will develop their trade policy in a transparent and inclusive way?

Maddy Thimont Jack: I think it comes back to the fact that we don't quite know what that looks like. We need to have a better understanding of what the Government are intending to do.

To quickly jump in on what has been said before, even what you have just said about taking into account wider considerations when negotiating trade deals, that is why it is quite important, in my view, to have a debate. If you table a mandate and you have a debate on that, even if you don't have a vote you can air out some of the issues so that the Government are aware of the concerns of the House. When it comes towards the end of the negotiations it knows the bits where the House of Commons is likely to kick off.

Q217 **Catherine West:** I was personally very impressed by the level of knowledge of some of the Members, those who bothered to attend—that is in any Parliament—when we went and visited the Brussels committee, which we did about six months ago and saw how much they knew about human rights in China, about various problems with private sector involvement in Latin America, about a whole raft of things, which I am not sure is reflected in our knowledge base as Members here in the House of Commons.

David Henig: It reflects an awful lot of work that is done by the European Commission to produce reports on various things. They are asked to produce reports on something we haven't really mentioned, but it is not just the negotiations. They are asked, "Can you produce two pages and inform us on this?" You should be able to ask for that to be raised.

Dr Fowler: The only other thing I would throw in in relation to that is we mentioned previously needing to bring in a cross-departmental approach. The Foreign Office also has an interest here and a lot of the discussion about our new trade agreements has been about, "What are these other countries going to do to us? Are they going to make us eat chlorinated chicken?" or whatever it is. My sense from outside is that not so much thought or discussion is going on so far about the way in which these might be vehicles for us to do things internationally. We have a decision to make about whether we are going to put human rights clauses in our future trade agreements. That was something that the Foreign Affairs Committee recommended in one of its recent reports. There is what we are going to project as well as what we are going to take.

Catherine West: I think in some countries the department is "foreign affairs and trade" for that reason, so that you don't have the duplication and you don't have some civil servants going off doing deals with certain countries with the Foreign Office in the background going, "No". You want



to have a proper policy, not just trade for trade's sake.

Q218 Chair: Moving on, as every schoolboy and every schoolgirl knows, the UK is not a nation, it is a union. Last week we heard from the Scottish Government and part of the Northern Irish Executive and we were looking at the interplay between the UK Government—the union Government—and the nations within the union. Do you think the devolved legislatures should have a statutory role in ratifying future union-UK trade agreements?

Dr Fowler: Maddy knows far more about the devolved aspects of this than I do. All I would say is that under the general rubric of needing to bring people along with this process, clearly the devolveds have to be involved. On the institutional side, my understanding is that there are very live debates going on at the moment about the future of the intergovernmental machinery within the UK between the UK Government and the devolved Governments. One of the things that will need to be factored in is how Parliament shadows that new machinery, but I would defer to Maddy.

Maddy Thimont Jack: Within current devolution settlements, the question of giving the devolveds a veto over future trade deals is challenging. What is extremely important—and we have seen this with Brexit negotiations as a lot of what we said has been about the negotiations so far anyway—is to engage with the devolveds ahead of setting a mandate and throughout the negotiations. This is with the proviso that there is a current review of the intergovernmental machinery of the Joint Ministerial Committee because there is a huge number of challenges with it, which the Institute has looked at a number of times. We are very on board with the review and we hope that something positive will come out of that.

We think that a joint ministerial committee on international trade should be established immediately. That would be a way for the UK Government to consult with, and I have used the phrase before, and extensive consultation with the devolved Administrations during negotiations. The thing that is often overlooked—and this is something that Brigid has already said—is that there is a positive reason for engaging with the devolveds properly. If you are going to go out and strike new trade deals, you want businesses to make the most of them, you want businesses to take advantage of better access to other countries and you also want the devolved Administrations to be able to comply with and deliver any obligations that are placed on them.

This is something that happened during the CETA negotiations with Canada. The EU wanted concessions from the provincial level, so Canada had to involve the provinces much more closely during those negotiations because they needed to make sure they could deliver them and they would be willing to deliver on those.

Q219 Chair: Which countries have powerhouse devolveds that have a



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meaningful say over trade? You can have consultation and, as we have seen with many of the consultations, the UK Government will just say they failed to agree, "They have not done what we have told them", so they just move on. Where have we got powerhouse devolveds?

Maddy Thimont Jack: Two places that we have looked at are Canada and Australia.

Chair: I am thinking of Wallonia.

Maddy Thimont Jack: I am afraid I don't have detailed information about how that works. But I think the challenge for the UK is the way that our constitutional settlement works. With Canada you have a clear division of powers at the provincial and federal levels. We have the challenge in the UK of the UK Government acting for England and we also have the Welsh, Scottish and Northern Irish Governments, when there is one. That is the way the devolution settlement works and it makes it quite challenging to give a proper veto to the devolved Parliaments.

Q220 **Chair:** Is there a tension there if the UK Government have a dual role; it acts for England and it acts for the UK?

Maddy Thimont Jack: I think there is a tension. It is something that particularly officials and Ministers, when they are engaging with the devolved Governments, should be aware of and be aware of that tension. That is a big challenge. There is also a big challenge that England is much bigger than the other countries in population size. I think about 85% of the UK is England. You have that quite asymmetric relationship that makes it more challenging.

Both Australia and Canada are federal with clearer processes, but even with Canada representatives from the provinces were closely involved, and I think the same thing happened when Australia was negotiating with the US on their free trade agreement. But there is also the fact that there is a general consensus, particularly with Australia. Their territories have got less involved over the years because there has become a clearer sense of what the Australian trade approach is. There isn't much protectionism in Australia. In agriculture, for example, there isn't much protectionism so there are not the same issues that may arise. Now that we are setting out on a new trade strategy, the UK really has to think about what it wants. Over time there has been less involvement—particularly in Australia, from my understanding of talking to officials there—than there used to be because the states and territories say, "Okay, we trust what you are doing", so they agree already.

David Henig: May I add quickly that at the end of the day you are going to vote on these trade agreements in Parliament at least on what benefits they give to your constituencies, businesses and residents. A deal that was bad for Scotland but had not involved Scottish interests, or Welsh interests, will be bad for getting the deal through the House in the end. It is in the Government's interests to make sure that all trade agreements work for the whole country. Generally, in trade policy governments tend



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to look more at making sure that the whole country benefits and that is why you see interests like agriculture tend to dominate in trade agreements because those are the interests across the country.

Q221 Chair: If the rest of us gang up and—pardon the metaphor—slaughter Welsh hill farming interests, it is possible at the moment we could do that?

David Henig: There is always a chance but I don't think it is a very sustainable trade policy to say we are going to abandon a certain—everybody could gang up on any particular industry. It is not a very good trade policy. That is not going to make for a good—

Sir Mark Hendrick: We did it on fish.

David Henig: Somebody coined the phrase financial services for cows, I think, but ultimately I don't think that is going to be sustainable.

Q222 Matt Western: The Government have said that they are committed to involving business groups and other organisations—civil society groups—in the formulation of trade policy. Do you welcome that? What sort of mechanism do you think would be best to allow that to happen?

Dr Fowler: David will know far more than me. Under the general heading of "People need to be brought along", you will obviously want to consult with people and there is also the information gathering aspect. You want to make an agreement that benefits people. The one thing perhaps to be aware of is the risk of any perception that this is just being driven by business. There are issues about whether you want to get trade unionists or civil society representatives also involved in that process. On the transparency front, you need to be transparent about who you are talking to and how people have been selected. These are quite general points that David can speak to.

David Henig: For trade agreements, you have to have a close relationship with business. At the end of the day, you are trying to remove barriers to trade for businesses, so you have to have that relationship right through the process. That will lead, as Brigid said, to some tension between business and civil society. You also have to have some process, which I think the Department is putting in place, of an advisory group that involves both business and civil society. But essentially it is a very heavy process. It is like with Government. There is a reason all these trade deals take time. It is because you have to involve so many people who have so many different interests—civil society, business, and so on. You have to involve them closely.

One thing I have noticed that the Commission learned from TTIP is that they have a quarterly meeting, I think, with civil society and they publish the details of what was discussed. They are very open about that. It is not discussing any great secrets but it is discussing broad political issues, maybe some of those that have already been mentioned about should we do deals with countries with these kinds of human rights records or what



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should be the role of the environment in our trade policy. They have those discussions with a group composed equally of business and civil society, but there is always going to be a bias towards dealing with business in trade agreements because trade agreements are essentially to remove trade barriers.

Q223 Matt Western: You will know that DIT is looking to set up a strategic trade advisory group. Do you have any views on that?

David Henig: It seems a sensible approach. It is not going to be everything they need to do in stakeholder relations but it is a good thing to do and hopefully that will be one group that has a broad discussion. We don't know who is going to be on it. We hope that it will be broadly representative. They have allocated different numbers for different groupings, so it should have a range of views and we will get to hear about what happens.

Maddy Thimont Jack: This is something that IfG recommended last May, so we are very in favour of establishing that. But a point that we made is that building levels of trust between negotiators and an advisory group takes time. We won't necessarily see the benefits of that immediately. A point that we also made was that when you do get into the meat of the negotiations, teams are often divided to focus on different chapters. Having advisory groups for each chapter might be beneficial so that you can get the proper expertise you need for those different areas. That might be something to consider going forward that DIT should think about.

David Henig: We had a discussion outside about the US system where they have cleared 600 advisers from business and civil society who can see the text. I am not sure that is a good model but there is a clearly a need for a lot of this engagement.

Q224 Matt Western: Finally and briefly, we have heard from others that in other countries they have the "room next door" approach to negotiations. Do you have any thoughts on whether that is appropriate for us?

David Henig: The people I have spoken to say that it is very important to have relatively close at hand, not necessarily physically, people involved but as part of the ongoing process. I don't think it has to necessarily be a room next door and there is some suspicion if you have a room next door about who is in it and who is not in it. To give the impression of fairness, it is probably more important that there are procedures that are open to all and if you have rooms next door you have to show in trade policy that you are open to both business and civil society. I think whatever you do, start with those principles.

Q225 Matt Western: A room next door to No. 10 would have been quite useful, wouldn't it?

David Henig: I think you all would have wanted to be in it, wouldn't you, possibly?



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Matt Western: Maybe all of us.

Chair: I thank the panel for their time this morning and for sharing their learning and knowledge with us. It is greatly appreciated. Thank you, all three of you.