

Exiting the European Union Committee

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

Monday 3 December 2018

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

Questions 3330-3476

Witnesses

I: Rt Hon. Stephen Barclay MP, Secretary of State for Exiting the European Union; Oliver Robbins, Prime Minister's Europe Adviser.

Examination of witnesses

Witnesses: Stephen Barclay and Oliver Robbins.

Q3330 **Chair:** First of all, Secretary of State, can I congratulate you on behalf of the whole Committee on your appointment and welcome you to your first appearance before us? Mr Robbins, welcome back. As you both might suspect, we have a great deal of ground to cover, so succinct questions, colleagues, and succinct answers would help. The first is to you, Secretary of State: when will the Committee receive the results of the Irish joint mapping exercise?

Stephen Barclay: I am conscious that my predecessor wrote to you about that. It is something I am looking into at the moment, so I cannot give you a precise date, but I am very aware of that issue and keen to get an answer to you as soon as possible.

Q3331 **Chair:** I would just point out that it was your predecessor but one. It was in April and your predecessor but one said to us that we would get a copy of it "shortly". I do not know what your definition of "shortly" is, but December is not my idea of "shortly". The purpose in asking the question is whether we are going to see it before we vote on 11 December.

Stephen Barclay: I am alive to the issue, as I say.

Chair: I know you are alive to it.

Stephen Barclay: I have been in post just over two weeks. I have made inquiries on it and I will get a letter to update you shortly. I am very conscious of the issue.

Q3332 **Chair:** Could you explain what might possibly get in the way of your honouring the commitment of your predecessor but one to the Committee, so that you do not release it to us?

Stephen Barclay: We have seen through various motions in Parliament that Parliament can request information anyway. As I say, I am very keen to get the information to you and I hope to have an update on that shortly.

Q3333 **Chair:** Has there been any resistance from the EU side to this now being published? Are either you or Mr Robbins aware of any? Is anyone aware that this is a problem?

Stephen Barclay: I am not aware of any, no. I would have to clarify that point.

Q3334 **Chair:** Neither of you has any idea whether there was a problem on the EU side with publishing this. The argument was that the negotiations were going on, but they are finished now, so we ought to have it, and a promise is a promise.



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Stephen Barclay: This is why I am hopeful we can get something to you shortly.

Q3335 **Chair:** On behalf of the Committee, the clear expectation is that we are going to get it and, when we get a letter from you, it will make it clear. That is helpful, as long as we see it. As I understand it, Secretary of State, you will principally be leading on domestic preparations for Brexit. Is that correct?

Stephen Barclay: There are two things, Mr Benn. First, on the domestic side, as you are well aware, there is a huge amount to do, for both the forthcoming meaningful vote and the planning following that, with the withdrawal agreement Bill and the various plans that will need to be made for legislation or, in the event of that vote not going through, for no-deal planning. The first aspect is on the domestic side.

Secondly, phase 2 is perhaps the crux of your question. I will lead phase 2 politically, on behalf of the Prime Minister. Ministerially, I will lead phase 2 on behalf of the Prime Minister. The structure of Whitehall is an issue that I am discussing with the Prime Minister and with colleagues across Whitehall because, as I am sure you will appreciate, as we move into phase 2, the governance structure will undoubtedly need to reflect a different approach. There will be a lot of different work streams and there is the mere fact that we will be outside the EU institutions, so the Prime Minister's own interaction outside of those institutions will change. That is something we are looking at, and I will happily write to you and the Committee once we have further clarity.

Q3336 **Chair:** That would be extremely helpful. On the assumption that Michel Barnier is still sitting on the other side of the table, will he find you sitting, looking at him, when he comes to those negotiations?

Stephen Barclay: As I said, there are two things. Ministerially, I will be leading phase 2.

Chair: Ministerially, yes, that is what I mean.

Stephen Barclay: The governance architecture within Whitehall is something we are looking at, at the moment.

Q3337 **Chair:** Can I take it you have seen the legal advice of the Attorney-General on the withdrawal agreement and the political declaration?

Stephen Barclay: Yes, I have.

Q3338 **Chair:** You have read it. Could you briefly explain why the Government are not complying with the resolution of the House of Commons of 13 November?

Stephen Barclay: As you know, the Attorney-General is before the House this afternoon. The House and the Committee will have ample opportunity to explore that with him. As you know from your own distinguished ministerial service, there are well-established conventions



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for legal advice. I understand those arguments were also rehearsed at the recent Liaison Committee, of which you are a Member through your role chairing this Committee. I am sure the House will discuss that with the Attorney-General this afternoon.

Q3339 Chair: I am well aware the Attorney-General is appearing before the House later. This is the reason I am asking you: if the Government are saying that this clear resolution of the House of Commons, which the Speaker has confirmed, is effective, it is not just an expression of the opinion of the House; it is an expression of the will of the House that certain documents should be provided for it. That has implications for certain other votes that are coming up, if the Government say, "Well, that was all very interesting, but we are not doing it". I am looking for reassurance that, if the House of Commons votes for certain things to happen, which may well follow the result of the vote on 11 December, the Government will respect that and get on with it, rather than saying, "No, we are not doing it". It is a point about democracy in the House of Commons.

Stephen Barclay: I very much hear the point you raise, Mr Benn. I am always mindful myself of the Speaker and the directions that he gives, but it is an issue the Attorney-General will address this afternoon. As the law officers lead on this, it is best that I allow the Attorney-General to address it.

Q3340 Chair: As a general principle, if the House of Commons votes and tells the Government to do something, do you think the Government should do it? Is that something you would subscribe to?

Stephen Barclay: Distinguished Members of the Committee—I look particularly at Mr Chope in terms of Standing Orders and how the House rules—as a general principle, when the House makes a direction, the Government listen very carefully to it. At the same time, it is a point of longstanding practice, for very well-known reasons of which you are well aware, that, if legal advice is disclosed, there is a concern as to how it might impact the frankness and openness of legal advice in the future. It is a very well-established approach that legal advice is not published, but the law officer will discuss this in more detail this afternoon.

Q3341 Chair: We look forward to hearing more later. Finally to you before I turn to Mr Robbins, why will the Government not rule out no deal, given that, first, it is quite clear we are not ready as a country and, secondly, from the documents that were published last week, it would do considerable damage to our economy?

Stephen Barclay: I would rather put it that we are ruling in a deal. We have a good deal that respects the referendum result. European colleagues have made clear it is the only deal. It delivers on things such as a skills-based immigration system, taking us out of the fisheries policy to be an independent coastal state and taking us out of the common agricultural policy, which are things that I, as a Brexiteer, campaigned



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for. It delivers on the referendum result, but it does so in a way that, as the Chancellor said recently, manages our economic relationship with Europe and ensures we have the free flow of goods. We have a deal on the table that is a good deal. It is the only deal and is what, as a Government, we should be focused on delivering.

Q3342 Chair: That is very helpful. Unfortunately, it is not the answer to the question I put to you. This is the question I put to you: why will the Government not rule out leaving with no deal given that, in my view, we are not ready, and given the view of the Government, as published last week, that it would do damage to our economy? You have heard what businesses have said about the implications of leaving with no deal. How could any responsible Government contemplate leaving with no deal?

Stephen Barclay: In your previous question to me, you said, Mr Benn, that the Government should always be mindful of the resolutions of the House. On the point, therefore, that it is for the Government to rule things out, one cannot be certain. If we do not support the deal the Prime Minister has secured—and secured after a very hard-fought negotiation lasting over two years, when the Prime Minister fought day and night to secure a good deal for this country, which honours the referendum—if we do not deliver on that, we risk significant uncertainty. As the Prime Minister has set out, that could be no deal and it could be no Brexit. I am sure Members of the Committee, reflecting different perspectives on the referendum, will explore both sides of that. The point is that we will move into uncharted waters. We will move into significant uncertainty, and that could be no deal but it could also be no Brexit. That is the risk. Both of those options and that uncertainty will be very damaging to the jobs of your constituents and the jobs of my constituents, which is why this deal is the right deal for us.

Q3343 Chair: Let me ask you one more time. Do you personally support leaving the European Union with no deal?

Stephen Barclay: We are preparing for no deal. There is significant work going on.

Q3344 Chair: We know you are preparing, but is leaving with no deal something that you, as the Secretary of State for Exiting the European Union, would be prepared to support?

Stephen Barclay: What I support is the deal that the Prime Minister has negotiated and that is what we are focused on.

Chair: Yes, I have got that.

Stephen Barclay: Your question on the legal advice pointed to this very issue. One cannot second-guess how the House will react, but it is the Government's focus to deliver on this deal. As a number of senior European figures have made clear, this is the only deal and it is a deal that the business community supports. It gives them the certainty that they need for jobs, but it is also one that does not damage our



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democracy, because not honouring the referendum, the biggest vote in our history, would be hugely damaging for our democracy and very divisive for the country.

Chair: I clearly hear what you say, but would also observe that the job of Government is to prepare for all eventualities.

Stephen Barclay: We are preparing for no deal.

Q3345 **Chair:** You are preparing for a no-deal exit. Mr Robbins, can I turn to you? I begin by expressing appreciation to you and all your Civil Service colleagues for the very hard work that, over the last two and a half years, you have put into these negotiations, in what I think would be fair to describe as quite challenging circumstances. If you could convey those thanks on behalf of the Committee, we would appreciate it. Do you think the customs backstop is a bad outcome for the UK and, if so, why?

Oliver Robbins: The backstop is not the future relationship that either the EU or the UK wants to have with one another, so it is an uncomfortable position for both sides. The reality, as you know, Chair, from evidence from us but also your meetings in Brussels, is that there is not a withdrawal agreement without a backstop. As I have said to this Committee before, that also reflects Ministers' commitments to Northern Ireland and to avoid a hard border on the island of Ireland, rather than it being something imposed on us. It is a necessity and a slightly uncomfortable necessity for both sides.

Q3346 **Chair:** In what way would it put our security co-operation at risk if it came into being?

Oliver Robbins: The provisions of the Northern Ireland protocol do not extend current security co-operation. Everything that we want to do as partners for the European Union on the security front is in the political declaration, and Ministers are pleased and satisfied with where that has come out, but none of that is automatically conveyed by the legal text of the Northern Ireland protocol.

Q3347 **Chair:** Can you tell us what the impact would be on trade between GB and the EU if we were to enter the backstop? What kind of friction would be involved? That would not apply to Northern Ireland, but would to GB/EU trade. Can you tell us what that friction would be?

Oliver Robbins: I cannot precisely, no, because it depends on a series of other factors including, explicitly, the level of alignment and regulatory co-operation between Great Britain and the EU in those circumstances.

Q3348 **Chair:** How would that be determined? We could be facing having to take a decision on whether to enter the backstop in a year and a half's time. The choice is whether to go for the backstop or for an extension of the transition period. Are you saying you would expect something to be worked out that would add to what we already know about the backstop, between now and then? We have had evidence that says there would be



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some friction, because GB would be in a different place from Northern Ireland.

Oliver Robbins: All I am saying is that there is no presumption in the backstop of fluid trade between Great Britain and the European Union. The text says that the degree of regulatory co-operation between the United Kingdom as a whole and the European Union will be a factor in the way both parties decide how to set their systems of checks and controls. Nothing is assumed in either direction.

Q3349 **Chair:** Why does the word “frictionless”, given frictionless trade used to be the Government’s policy, not appear in the political declaration? Is it because we did not ask or the EU would not agree with it?

Oliver Robbins: The Government have vociferously put forward their proposals on how to achieve frictionless trade with the EU, as you know, especially since the White Paper in July. As the Prime Minister briefed you at the Liaison Committee last week, some of those proposals have gained traction, while others are still challenging and difficult. Ministers were pleased that the political declaration that is laid out in the declaration makes clear that it is the ambition of both sides to achieve as frictionless a relationship as possible and that, at the extreme, frictionlessness is not ruled out by the spectrum of outcomes that is described in that declaration. I do not think Ministers, least of all the Prime Minister, are hiding from the fact that we still have a job to convince people of the detail of every bit of that.

Stephen Barclay: The key to the deal is that it will be a sovereign choice. Throughout the negotiations, the Prime Minister was told it was a binary choice; it was a choice between Canada and Norway. The political declaration makes clear that she has secured a bespoke relationship, which gives a spectrum. There is a choice between frictionless and alignment, but that is a sovereign choice as part of that negotiation.

Q3350 **Chair:** Finally from me, I have asked you about goods but, when it comes to services under the backstop, if it kicks in—for example British broadcasters can currently broadcast to all member states with a single licence—would that come to an end if the backstop came into operation? It is a factual question.

Oliver Robbins: Would you like me to take that, Secretary of State? The protocol only relates to those aspects of EU law that are required to avoid a border in Northern Ireland. That is about tangible goods; it says nothing about services. If the backstop were to apply in the absence of any other agreement with the European Union, there would be no services relationship.

Q3351 **Chair:** There would be no services relationship, so the broadcasters could not do that any more. The current arrangements for mutual recognition of qualifications of architects and lawyers would come to an end. Any arrangements for our services sector, which is 80% of the British economy, would come to an end under the backstop. Is that correct?



Oliver Robbins: A whole series of relationships in both directions between the EU and the UK, in the absence of any other agreement, are not catered for by the protocol, which is why it is an uncomfortable situation for both sides.

Q3352 **Chair:** But the Government never asked for anything on services in their Chequers proposals. That was the whole point. It is a bit hard to blame the backstop for the fact that it does not cover services, because the Government did not ask for services when the Chequers proposal came out in the summer. Is that correct?

Oliver Robbins: May I answer that, Secretary of State? I do not think that is completely fair. Remembering the hours that we spent discussing it, the political declaration is clear about the level of ambition on both sides for services, and explicitly says that it wants those services relationships to be well in excess of the standard WTO arrangements and, indeed, go beyond those agreed in recent EU FTAs. Already, like in other aspects of the political declaration, the EU side is agreeing with us that this should not be a standard third-country relationship.

Chair: I acknowledge that point. I was merely making the point that it is not covered by the backstop, which could kick in. Anyway, that was very helpful.

Q3353 **Stephen Crabb:** Good afternoon. Can I stay on the subject of the Northern Ireland backstop, because it is probably one of the most problematic areas within the withdrawal agreement? Can I start, Secretary of State, by asking you whether there are any provisions of that backstop protocol that you have concerns with? Are you wholly comfortable with the way it is drafted?

Stephen Barclay: There are compromises. With any negotiation, there are compromises.

Stephen Crabb: What specific concerns do you have about the way the current backstop is drafted?

Stephen Barclay: The first point is that the intention is not to go into the backstop. There are a number of safeguards, one of which is the option to avoid going into the backstop. There are also things like extending the implementation period. There are also safeguards for coming out of the backstop, in terms of the "best endeavours", the requirement for timetabling and the option of technology, which was specific language put into the political declaration.

As Mr Robbins has just set out, the backstop is very uncomfortable for both sides. For example on the fisheries side, the EU 27 would lose all access to our coastal waters under the backstop. There are safeguards at the front end of the backstop, at the back end of the backstop for coming out, and a mutual interest in not retaining it and being stuck in the backstop. That is reflected in part 5 of the political declaration, which sets a timeframe. There is a mutual desire not to be in it on both sides.



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As for the areas of it that are less appealing, there are 92 pages of rules where there would be alignment. One would have preferred not to have required those 92 pages, but we should be clear that the reason for those 92 pages and the backstop is that the land border and the history of the peace settlement are unique within the United Kingdom. That is why special bespoke circumstances have been arranged, but there is a common desire on both sides not to get into the backstop and certainly for it not to become a permanent feature. A lot of colleagues have been concerned by the question of whether we could get out of the backstop. As I say, there are three tiers of safeguards to enable that.

Q3354 Stephen Crabb: Is it your belief that the “best endeavours” clause and the fact that both sides would be heavily incentivised to avoid going into the backstop are enough to make colleagues in the House swallow what you would admit is uncomfortable wording in the way the EU can veto us unilaterally leaving the backstop?

Stephen Barclay: We need to make the case, because it is quite a complicated area of law. The legal wiring between the withdrawal agreement and the political declaration takes some unravelling, and people have reacted quickly to the withdrawal agreement. There is a good opportunity with the Attorney-General today. As one gets a clearer picture of that legal wiring, one gets a better understanding of the obligations it places on the EU.

I would simply point this out, for example. Some colleagues were concerned when the Prime Minister, in the joint report in December, made the commitment of the backstop because, they said, it was binding. The same applies to the political declaration. It might not be legally binding but, politically, it would be very difficult for the European Union to row back from the commitments it has given. Part of the reason the negotiation has been so difficult for Mr Robbins and his team is that the European Union takes that language so seriously. If it was not meaningful and they did not need to rely on it, they perhaps would have been more relaxed about what went in the text. The reason that has been so hard fought is that it is a negotiating instruction to both sides and, therefore, will have a significant impact in shaping the phase 2 discussions. But I accept that a lot of colleagues across the House have been concerned about our ability to come out of the backstop, and that is something we need to explain.

Q3355 Stephen Crabb: Thank you, Secretary of State. Can I ask Mr Robbins this? The *Times* recently reported that you and your team had drafted a termination clause for the backstop, which included a specific unilateral mechanism that would allow the UK to quit the backstop if it so desired. Were those reports correct?

Oliver Robbins: Ministers asked us to look at a whole range of options for how to bring the backstop to an end, so we did. The Prime Minister and other Ministers tested some of those out on our European partners.



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What we went into the negotiation with, in the end, was a text that delivered the termination clause very much as it is laid out there.

Q3356 **Stephen Crabb:** Did the text of the termination clause that the *Times* reported on ever go to Cabinet for consideration?

Oliver Robbins: If I may say so, I should allow myself to be governed by the normal convention; I do not talk about what has gone to Cabinet or not. I can certainly assure you, and I hope the Secretary of State will back me up, that Ministers have had advice on the full range of options. What was tabled in the end was a ministerial decision.

Q3357 **Stephen Crabb:** You said a moment ago that it was tested on European counterparts, so we can presumably infer from that that they pushed back pretty strongly on the draft of a termination clause with a unilateral mechanism.

Stephen Barclay: There has always been a clear narrative that there cannot be a deal without a backstop. We may come on to other deals that colleagues have been exploring. Obviously I have only been at two Cabinets, so I would not have been at the Cabinet where that may or may not have been discussed. The point is this. It has always been clear that, whichever deal is entered into, there will need to be a backstop. Whether it is Canada, Norway, EEA-plus or the various options colleagues have floated, it would always need a backstop.

Q3358 **Stephen Crabb:** Secretary of State, when the deal gets voted down a week tomorrow, will you be advising the Prime Minister to resurrect Mr Robbins's draft termination clause with the unilateral mechanism to take to the summit the following weekend, and to ask EU leaders to reopen the text of the withdrawal agreement and insert such a termination clause?

Stephen Barclay: First, it is the Government's intention to win that vote. That is what we are focusing on. You would expect me to say that, Mr Crabb, but that is the case. As minds are focused on the uncertainty of the alternatives—and we may get into a wider discussion of those uncertainties and whether those other options would themselves command a majority of the House—it is clear that the only deal is the Prime Minister's deal. Yes, there are some compromises in that. They reflect a hard-fought negotiation, but that is the deal and it is the deal we need to secure.

Q3359 **Emma Reynolds:** Good afternoon. If the UK and the EU enter into the backstop, can you confirm that, under the withdrawal agreement, the UK Government cannot unilaterally withdraw from the backstop, and that that decision would have to be taken by the joint committee, as referred to in the withdrawal agreement, which is made up of representatives of each side?

Stephen Barclay: You are correct that it would be a question for the joint committee and then the arbitration process. That is the normal



approach. The point is that the idea that the EU has some sort of veto on that process is not correct, because there are requirements on both sides to act in good faith going through that. A question that has been raised is what the role of the European courts would be in that process. The role of the courts is not to determine; it is simply in terms of any interpretation of EU law. The role of the courts is regarding the factual position and the interpretation of the law, not determining the case. It would be for the joint committee and the arbitration process. There are requirements to act in good faith and for how that would need to be conducted.

Q3360 Emma Reynolds: I understand what you are saying. Is it certainly the case that the UK Government could not withdraw from the backstop unilaterally?

Stephen Barclay: It is an insurance. By its nature, the backstop is an insurance. As we have already covered, there are strong incentives, first, to avoid going into the backstop but, secondly, as to why from an EU perspective they would not want to stay. If you look at the comments that President Macron raised the other day related to fishing, on day 1, the EU 27 would lose access to UK coastal waters under the backstop. That would be a difficult conversation for EU leaders to have with their fleets. It is a further indication of their desire not to remain in the backstop. The political declaration reflects that, because it also gives a clear timetable, in part 5, to incentivise those discussions.

Q3361 Emma Reynolds: I hear what you are saying, but the factor going in the other direction is the need to avoid a hard border on the island of Ireland. My question really is this. The backstop could become quite long term if the EU and the UK cannot find a solution to that problem. If you cannot come to an agreement that avoids that hard border, the backstop will remain in place.

Stephen Barclay: I do not think so.

Q3362 Emma Reynolds: What is the point of the backstop then?

Stephen Barclay: This is a key issue and one that a number of people have been concerned about. First, it would be difficult from a European perspective if there was any suggestion of permanence, not least because article 50 does not allow a permanent relationship. The nature of that would open up litigation risk for firms in the EU 27, which would feel that Northern Ireland business, having a best of both worlds, would have a trade advantage compared to firms within the EU 27. It might be the case that this Committee takes the view that the willingness of the European courts to react to Her Majesty's Government would be limited, but it is much more reasonable to conclude that the European courts would react to a French firm, for example, that felt it had a trade disadvantage compared to a firm that could access the single market without the UK paying any lump sum of fees and without being subject to the four freedoms, including freedom of movement.



That is why, if one looks at the media reports, some in Europe have criticised the backstop. I know it seems odd in the context of the UK political debate, but some in Europe have criticised the backstop because they feel that Mr Robbins and the Prime Minister have an advantage in the negotiation, in that it gives access to that market without the financial contribution or freedom of movement. It is another reason why it is not an advantageous position for the EU. I will give a third.

Q3363 Emma Reynolds: But there could be friction. Let us be clear about this. We have taken evidence on this, and there could be friction between the UK and the EU, as Mr Robbins has just conceded is the case, depending on decisions on regulatory equivalence. The situation for Northern Ireland and the rest of the EU is different from that for the UK and the EU under the backstop. Is that not the case? What you are talking about is access for the Northern Irish economy to the rest of the EU, not the whole of the UK.

Stephen Barclay: There are already different aspects to this. Take animals, for example. There are 5 million animals flowing across the Northern Irish border as it is. On the GB and Northern Ireland border, there are around 30 checks of animals at the moment. There are already existing issues there, so some of these points are already in place.

Q3364 Emma Reynolds: I have one last question on the future relationship. Mr Robbins, I understand you were there in Salzburg. Given the response of EU leaders at Salzburg, particularly to the economic proposals in the Chequers plan, to what extent do the economic proposals in the Chequers plan still constitute the UK's negotiating position on the future relationship—the response being negative, just to be clear?

Oliver Robbins: First, the response to the White Paper at Salzburg, and before and after that, has not been as wholly negative as some have perhaps portrayed it, including on the economic side. We do not have time to go through the whole declaration, but many aspects of our White Paper proposals are welcomed and reflected in where the joint declaration has ended up. It is for the Secretary of State to speak for the Government's policy as we enter into the next phase, but I can say with confidence that this declaration allows us to continue to argue for the position that the Government took in the White Paper in the areas where we have not yet nailed it down.

Q3365 Emma Reynolds: To echo what the Chair said, I thank you and your colleagues in the Civil Service for all the work that you have put into these many documents. I know you have been hard at it for years, not weeks or months. But it is the case that the political declaration is not legally binding; therefore, it is still totally uncertain whether our future economic relationship looks more like the EU's economic relationship with Canada or Norway. That is still not clear, because the negotiation on the future relationship has really only just begun. Is that the case?



Oliver Robbins: May I have the first go on that, Secretary of State? There is one thing the Secretary of State has already mentioned, but let me amplify it a bit. The political declaration is not a legally binding document. That is of course true, Ms Reynolds, but it is extremely unusual—in my experience unprecedented—for a political declaration like this to be explicitly referred to in an article in an international treaty. I look at article 132 of the withdrawal agreement. Excuse me, no; I have got my numbering wrong. It changed.

Emma Reynolds: It was 132 in the previous draft, was it?

Oliver Robbins: Yes, we added 50-odd articles. Article 184 of the withdrawal agreement specifies that the declaration, dated as this declaration is, is the basis for the negotiations to proceed. As the Secretary of State was saying earlier, that is not just a moral and a political commitment, but a failure to proceed in good faith with the decisions taken in that declaration would ultimately be internationally enforceable.

Secondly, this declaration gives actors in the UK and the EU a great deal more confidence than they would have had before its signature. For a start, some of the basics of the economic relationship that were in doubt until we had achieved this declaration are now certain. There shall be no tariffs, no fees and no quantitative restrictions. A series of things, which in a standard third-country relationship would be there, are declared as not being part of our future economic relationship.

It is fair to say, as European officials have said for their side, that once the Union makes an offer like this, it is hard for it to step back from it. One of the achievements that Ministers should justly be proud of over the last few months is that, in its March guidelines, the European Union attached a long list of conditions to such a close economic relationship. Some of those were frankly a bit extravagant, and this declaration pares them down to a much more common-sense level. There are some areas, particularly on regulatory co-operation on goods, where the true extent of how far we can manage away some of the checks, controls and frictions that might be part of a standard economic relationship is not yet fully bottomed out. The key achievement of this document is that that is still to play for in the second phase of negotiations.

Indeed, in mentioning this spectrum of outcomes in the way the European Union has jointly signed up to doing, it concedes of there being a relationship between the kinds of obligations that the UK and the EU are freely going to enter into with one another and the degree of friction in the trading relationship. As the Secretary of State said a moment ago, basically both sides have agreed that this is not quite the binary situation that some made it out to be some time ago, where you are either Norway or Canada, if you will forgive the caricature.

Q3366 **Mr Rees-Mogg:** Mr Robbins, I will first ask you about today's *Daily Telegraph* and a couple of extremely interesting comments that are



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attributed to you, which you may wish to disassociate yourself from. I at least want to give you that opportunity. First, "He"—that is to say you—"argued that extending the transition period after Brexit would provide a more 'cast iron escape route'". Is that your view?

Oliver Robbins: You would expect me to say that I am not going to comment on an apparently leaked document, but it is certainly true that, if the UK were to enter into an extension to the implementation period, some of the other negative consequences of being in the backstop that the Chairman referred to at the beginning would not apply.

Q3367 **Mr Rees-Mogg:** I thought you would say that you would not comment on a leaked document, so I will ask your view on the next quotation, regardless of where it has come from. "We should not forget that the backstop world, even with a UK-EU customs union, is a bad outcome with regulatory controls needed somewhere between GB and NI, serious and visible frictions and process between GB and the EU, and no security co-operation provided for". Is that broadly your view?

Oliver Robbins: All I can do is reiterate that the backstop is definitely an uncomfortable outcome for both sides.

Mr Rees-Mogg: It is for one side, at least.

Oliver Robbins: I think it is for both.

Q3368 **Mr Rees-Mogg:** I am not at all convinced about that. They have us exactly where they want us. Secretary of State, can I come to you now? You mentioned that this would only be temporary, but temporary can be quite a long time in EU terms. Norway remained in a temporary agreement for 22 years before the EEA was established. When the Government say "temporary", it is not a time-limited temporary.

Stephen Barclay: You are correct that people can take different interpretations of "temporary". The point is what the incentives are. I alluded earlier to whether the EU 27 would be comfortable with losing all access to our coastal waters on day 1 of a backstop. I do not think they would. That would be difficult politically. Would they be comfortable with businesses having access to the single market without the vast sums that you and I campaigned against and without the freedom of movement? I do not think they would. Would they be comfortable with the litigation risk of firms claiming a trade distortion? Would they be comfortable with the potential disruption to their own future free trade agreements, as they tried to calculate them without clarity on the population size for those free trade agreements?

It is not perfect for either side. If one does not—as I can see from your reaction—accept any of those safeguards, there is also, following the work of a number of colleagues in Government, clear language in the political declaration about things like the use of technology to expedite a solution. Actually, what we are debating here is the huge focus on the withdrawal agreement, which is the winding-down element. The backstop



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is a part of that, but our key opportunity is the future trade agreement. That is the way we get out or try to avoid going into the backstop in the first place. If that were to arise, and there are ways of avoiding it with the implementation period, the key is to move into the future trading relationship.

Q3369 Mr Rees-Mogg: Your point, Secretary of State, about the backstop being so unattractive for them is slightly contradicted by your suggestion earlier that no deal is possible without a backstop. If it is so bad, why did the EU insist upon it?

Stephen Barclay: The EU cannot enter into a permanent relationship while we are still a member. Therefore, we need to have exited in order to reach that future agreement. One of the issues that I am sure, as Brexiteers, you and I have often been lobbied about by business is not to have two sets of changes. They want to have one change. If you come out in a no-deal situation on a World Trade Organization basis, one assumes one will also be looking for a free trade arrangement in the future. You are then into having more than one change. One of the attractions of the Prime Minister's deal, through having the implementation period, is that we not only give businesses greater certainty in the short term, until the end of 2020, but beyond that, when a change is made based on that future arrangement, it is done because we left at the end of March.

Q3370 Mr Rees-Mogg: That assumes that no changes are made in the UK ex-Northern Ireland, post the implementation period, under the backstop. You are saying that there would only be one change and, therefore, the backstop would not allow GB to use its flexibility to change regulations. Is that the position, because otherwise there will be two changes?

Stephen Barclay: What I am saying is that I hear all the time from business that it wants certainty and as much clarity as possible. In Parliament, over the last week or so, we have had a huge focus on the withdrawal agreement and the backstop, in essence the winding-down provisions of our relationship. What needs to be the focus, what the phase 2 discussions are about and what the mandate set out in the political declaration unlocks is the future relationship. It is slightly paradoxical that we have had all this fixation on the backstop, the withdrawal and the winding-down provision when, as a Brexiteer, an optimist for the future and someone who wants to trade with the globe and the wider world, we should be looking at that future trading relationship.

Q3371 Mr Rees-Mogg: There is an inherent contradiction, is there not, in saying that the EU cannot use the facility under article 50 to negotiate the future framework, and that it can have a backstop without an end date but it cannot go further than that? It seems that the EU can agree what it feels like.



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Stephen Barclay: No, I do not accept that. Whenever I read the correspondence with the European Union, it is always striking how much its approach is informed by the legal process. That is something we sometimes do not give sufficient weight to within the UK. It is the legal process in Europe that a permanent relationship and trade arrangement cannot be reached until we have left. The Prime Minister and I are committed to ensuring that we deliver on that and leave the EU on 31 March. At that point, we would be in a position to agree a trade agreement, but we cannot do that before we have left.

Q3372 **Mr Rees-Mogg:** That is not quite what your predecessor but one said. He said the trade agreement could be agreed a “nanosecond” after we had left. It could not be formally agreed, but it could be negotiated.

Stephen Barclay: With respect, you are splitting hairs there, because the point I was making was that we cannot agree it until we have left. The point you have just made is that it could not be agreed until we had left. One can argue about how quickly after leaving it can be agreed but, as a former lawyer, the point of law still stands. I come back to the point that, as I understand it, the EU takes an approach in which its legal process is very important. You cannot agree, as a matter of European law, until we have left. That is the point.

Mr Rees-Mogg: The history of the EU is that it has mattered to adjust its legal process whenever it has needed to, on other occasions.

Stephen Barclay: The law evolves, of course.

Q3373 **Mr Rees-Mogg:** When it needed to bail out Greece, it suddenly found that its law did not apply at all. Let us come to some specific points on annexe 2, article 3(2): “Under no circumstances may the United Kingdom apply to its customs territory a customs tariff which is lower than the common customs tariff for any good or import from any third country”. When previously has the UK allowed for taxation without representation? The EU will be setting our customs taxes and we will have no say on it once we have left.

Stephen Barclay: You are talking about the Northern Ireland protocol.

Mr Rees-Mogg: No, this is under the backstop, annexe 2, article 3(2). It is taxation without representation.

Stephen Barclay: No, I do not accept that. I do not have the precise text in front of me, so I will pick up it up and happily write to you on it. We have covered why the backstop is undesirable, why we have no desire to go into it and the safeguards that there are to allow us to exit from it.

Mr Rees-Mogg: If the EU raises tariffs, we will have to follow and we will have no vote on that at all. It is taxation without representation, a fundamental constitutional principle, given away in the backstop.



Stephen Barclay: No, I do not accept that at all.

Q3374 **Mr Rees-Mogg:** But you do not seem to know about it, which is a bit of a problem. Can we also go to article 174, "Disputes raising questions of Union law"? The Government have consistently said that the jurisdiction of the ECJ will no longer apply once we have left, with the exception of citizens' rights. This says, "The arbitration panel shall not decide on any such question. In such case, it shall request the Court of Justice of the European Union to give a ruling on the question". This is not discretionary; this is absolute. When you look at some of the things that will be included in the backstop for Northern Ireland, specified EU law on VAT and excise, environment, electricity markets and state aid will apply to the UK in respect of Northern Ireland in the backstop, and they will all be subject to the jurisdiction of the European Court of Justice. Can you explain how this squares with the Government's stated view that we will be out of the jurisdiction of the ECJ?

Stephen Barclay: There is a limited area for Northern Ireland. The single electricity market is distinct anyway. That was a bilateral agreement entered into between the Republic of Ireland and the UK, so that it was not done through the Commission.

Q3375 **Mr Rees-Mogg:** Is that now coming under the ECJ?

Stephen Barclay: It will.

Mr Rees-Mogg: That is an addition to the ECJ's jurisdiction, rather than a subtraction, in this agreement.

Stephen Barclay: It comes back to my earlier point about winding-up issues. This also applies to goods, which is inherent in your question. There are areas, and the same applies for citizens, where as part of the winding-down arrangements certain rights and arrangements are in place, which are currently within the jurisdiction of the European Court, and that will continue within the backstop. I have already touched on the desire to come out of the backstop. Within Europe itself, VAT is not harmonised and there are variances within Europe, so VAT is not static. What European law says on VAT is around the minimum rate, rather than the constant rate. In the backstop, Northern Ireland would have to maintain the minimum VAT, which goes to the debate one sees in the press on things such as the tampon tax and whether it could be changed. There is an issue for Northern Ireland on the minimum rate, but the UK can align with that. From a unionist point of view, it does not mean there is a distinction, but it would be misleading to suggest that there is one VAT rate across Europe, because it is the minimum bit, not the harmonised bit.

Q3376 **Mr Rees-Mogg:** You mentioned the tampon tax. That could not be removed in Northern Ireland under this; nor could VAT on domestic fuel. The European Court of Justice would adjudicate on that. That is all correct. I have one final point on that issue. The European Court will be



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ruling when the Government have said that we will be out of the jurisdiction of the court. When the Government say things, are we to assume that there is a footnote saying "except in certain circumstances", because the Government do not particularly footnote their comments?

My final point is to bring your attention to article 4, which is at the heart of this. It establishes this treaty as superior law, which requires that "inconsistent or incompatible domestic provisions" may be disapplied. The suggestion that some members of the Government have made is that, if we do not like the backstop, in the end, we can simply pull out of it, but we would then be breaking domestic law, because we have agreed that this treaty would have the same status, the unusual constitutional status, of the European treaties.

Stephen Barclay: Parliament will have a good opportunity to debate this when the WAIB comes forward. On how it applies, you are correct there will be a direct-effect element to those provisions. In essence, there will be reach into the Bill. The Bill will give direct effect to that element, but it is a limited element. It goes to the heart of my reply to Mr Crabb. There have been some limited compromises within this, but what matters is the bigger picture. The specific circumstances of Northern Ireland have required some compromises, because of both the land border and the history of Northern Ireland and the Good Friday peace agreement, but they are very limited in scope. Some of those predate this, such as the single electricity market, and were done on a bilateral basis. Some of them interrelate with the common travel area. There are bespoke issues for Northern Ireland.

One can take a purist approach and say that none of those compromises should be entered into and one should not have arrangements distinct to the Northern Ireland situation. Rather than taking my comments on this, look at the views of the business community in Northern Ireland, the Ulster Farmers' Union and the biggest manufacturer in Northern Ireland, Bombardier, and the head of the Belfast plant. You consistently hear from the business community in Northern Ireland that, yes, there have been compromises in some limited areas. We can all play at picking out individual bits of law where the courts have a reach but the bigger picture here is that the business community in Northern Ireland and the Ulster Farmers' Union support this deal, because they see the benefits, the same benefits that concern some in the EU 27, as businesses in Northern Ireland will have the best of both worlds. That is why they support it.

Q3377 Mr Bone: The Secretary of State referred to the implementation period. We were clearly told by the Prime Minister, on many occasions, that the implementation period would be time limited and that it was an implementation period, not a transition period, so that, at the time when the implementation period was agreed, we would know what we were implementing. One of the reasons she said that was that she did not believe Parliament or the British people would put up with £39 billion of their money being given to the EU without the knowledge of what was to



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come. She slapped down any Minister who called it a transition period. She also said that “nothing is agreed until everything is agreed”. Mr Barnier said, “By October of this year, we must complete the work on withdrawal and, between October and March, we will finalise what we are implementing so that, when the signing of it occurs, we will know the complete deal”. That was the policy. When did that change, Secretary of State?

Stephen Barclay: On your first point—

Mr Bone: No, when did it change? I do not want the waffle; when did it change?

Stephen Barclay: You raised several points, so I was just going to go through the different ones. First, you raised the issue of whether the implementation period is time limited. The answer is yes; it is. It is up to the end of 2020.

Mr Bone: No, it is not. You cannot get away with that. You know that there is an option to extend it, so it is not time limited, is it?

Stephen Barclay: I was just coming on to that. Never mind trying to get away with it; I was just about to make the point. The point I was seeking to make, if I may, is that it is time limited until the end of 2020, but with an extension of either one year or two years. Even so, by its nature it is time limited. I hope that is a point of consensus.

Mr Bone: The Prime Minister said it was time limited to two years.

Stephen Barclay: It is two years with the option of a one-year or a two-year extension.

Mr Bone: When was the policy changed? That is all I am asking.

Stephen Barclay: I have been in post for 16 days.

Mr Bone: Perhaps this should be directed to Mr Robbins, who was there. Mr Robbins, when was the policy changed?

Oliver Robbins: The policy on the implementation period, for some time, has been that we would aim to have concluded all the negotiations on the future relationship to allow it to take effect in December 2020, and that is what the treaty sets out. In the closing weeks of the negotiations, Ministers felt it was prudent to allow for the possibility of extension. It is not more than a possibility and it has to be by mutual consent.

Q3378 **Mr Bone:** We are still trying to find out when the Prime Minister’s clearly expressed policy to Parliament, which kept Members of Parliament reasonably happy through a compromise they could go along with, was abandoned. I accept, Secretary of State, you have only been there two weeks, so you would not have been there but, Mr Robbins, you have been there right at the top. I am not asking for an explanation; I just



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want to know when it was abandoned: a month ago, four months ago, six months ago.

Oliver Robbins: I do not think that policy has been abandoned, with respect. The policy is to conclude the negotiations on the future relationship in time to leave the implementation period on time, by the end of 2020, and the treaty sets out that both parties will use their best endeavours to achieve that aim.

Mr Bone: You have to accept, Mr Robbins, that that is a complete change in the policy of the Prime Minister, who clearly expressed that, at the time when we signed to leave, we would know what we were implementing, whether it is a free trade deal or what. That has been changed. That policy has clearly been changed.

Stephen Barclay: I do not accept that. There are two points at the heart of your question. First, is there a time-limited implementation period? The answer is yes, to the end of 2020. Now, we have given ourselves an option, but the fundamental point is that it is time limited to the end of 2020. That is the first point. Secondly, will we know what we are implementing? We have a clear framework, and Mr Robbins has already talked about the amount of resistance there has been and the extent of the detailed negotiation to secure that. That is the clear negotiating instruction. It delivers a bespoke arrangement, which is something that the Prime Minister was consistently told she would not be able to secure.

Q3379 **Mr Bone:** That is all well and good, but the Prime Minister clearly said we are not going to spend £39 billion of taxpayers' money without knowing exactly what we are going to implement. That is a change in policy. I am not saying whether it is a right or wrong change in policy; I am just asking when that was decided and how.

Stephen Barclay: I do not accept the premise that it was a change. The issue of the £39 billion I know you have raised a number of times in the Chamber. I am happy to get into the detail around the methodology of that, what it relates to and why that range of £35 billion to £39 billion has been agreed. It has been agreed on the basis of us maintaining our relationship with our closest trading partner. That is what the political declaration allows us to do. It gives clarity about the fact that we will not be in a standardised arrangement, as other third countries, and reflects the very close relationship of over 40 years and the shared values that we have with the EU 27. Reflecting that, the Prime Minister has secured a bespoke deal. That is what we are paying for. We can happily get into the £39 billion.

Q3380 **Mr Bone:** I will save time, Mr Chairman, because we have heard all of this. It does not help the debate when politicians and civil servants do not answer a straightforward question. When did the policy change? If you had something to implement, it would be fair, but you have nothing to implement, so the policy has been changed, but when? If you do not accept that, it makes these sorts of debates farcical, because you are



flying in the face of the facts.

Stephen Barclay: With respect, I do not accept that because the policy has not changed. There is a different debate we can get into about the financial settlement, what David Cameron agreed in 2013 as part of the seven-year settlement, the fact that the implementation period takes us to the end of 2020 and how those liabilities trade off against the assets we are getting back, for example from our shareholdings in the EIB and others. That is a very different debate. We can explore the issue of the £39 billion and the negotiation Mr Robbins and the team had, but that is a separate issue. The issue is that the Prime Minister has always been clear that there would be a time-limited implementation period. That is the case and it is still 2020. Personally, I think it is a good thing to have an option. Why would we not want to have an option? I do not think it is a negative; we do not have to use it, so it strikes me as a logical thing to have, but it is time limited to the end of 2020 and, beyond that, it is part of the arrangement.

Mr Bone: Thank you, Chairman. Clearly I am not going to get an answer.

Q3381 **Mr McFadden:** Good afternoon. I am sorry if I am a little bit croaky. Secretary of State, are there any circumstances between now and next Tuesday in which the Prime Minister will pull the vote?

Stephen Barclay: No, I think the vote will happen on Tuesday and I am very much looking forward to making the case. The Cabinet has an important job. It is for the Cabinet as a whole to make the case ahead of Tuesday. I hear from businesses up and down the country that many businesses are making the case themselves, because they do not want the uncertainty that will flow if this vote does not go through.

Mr McFadden: There is no chance that, sometime between now and next Tuesday, the Prime Minister will look at the likely numbers in the Commons and decide not to proceed with the vote. That will not happen.

Stephen Barclay: The meaningful vote has been set out for the 11th and that is what I expect to be the case.

Mr McFadden: You expect it.

Stephen Barclay: Of course.

Q3382 **Mr McFadden:** Do you have anything stronger than "expect"?

Stephen Barclay: What more would you like me to say? I have answered the question twice. I expect the vote on Tuesday.

Q3383 **Mr McFadden:** Can I go back to this question of money? Your predecessor made quite a lot of the conditionality of the financial settlement. It was not just the settling of past accounts; this would only be paid if we got a satisfactory result on the future relationship. Has that conditionality been built into the withdrawal agreement and, if so, can you tell us where?



Stephen Barclay: The House of Lords reports looked into this issue as well and the importance of the financial settlement to our wider relationship. What is in the withdrawal agreement is a mechanism for how the financial settlement has been calculated. What will then be in the Bill is the process by which we will pay. That is one of the distinctions that people sometimes confuse between the two. The withdrawal agreement will set out the principles on which the financial settlement will be calculated, which is why there is a range between £35 billion and £39 billion, rather than a precise figure. Beneath that methodology is a complex interplay between the liabilities the UK has, the assets we would get in return and how they will interrelate.

Q3384 **Mr McFadden:** I understand all that. The question I am specifically asking, whatever the actual sum is between £35 billion and £39 billion, is whether there is conditionality on paying that linked to a successful outcome on the future relationship or if that is legally binding on us once we ratify the withdrawal agreement. If there is conditionality built in between stages 1 and 2, as it were, can you tell us in what clause of the withdrawal agreement that applies?

Oliver Robbins: May I support you here, Secretary of State? As I tried to bring out a bit for Ms Reynolds earlier, the withdrawal treaty, in article 184, creates an international law obligation on both parties to turn the political declaration into legally binding agreements. That is an obligation on both sides that needs to be read with article 5 of the withdrawal agreement, which compels both parties to use good faith to deliver on all their obligations in the treaty. This is relevant because there are clearly financial obligations in the treaty; there are also obligations to negotiate that future relationship in good faith. In that sense the two are linked.

Q3385 **Mr McFadden:** Do you see article 184, Olly, as giving the UK the ability to say, "We are not going to pay part of this financial settlement" at some point in the future?

Oliver Robbins: The correct legal view—but this is something that the Attorney-General will no doubt be probed on this afternoon—is that it creates an international law obligation on both parties to negotiate. That is not the same as an obligation to reach a particular outcome, but it is an obligation to negotiate in good faith. These clauses are not completely unheard of in international law and we believe the "best endeavours" provision here is a strong one. It means that, if there are obvious signs of bad faith in the execution of that obligation, it raises a question, which in the end will be susceptible to arbitration, as to whether the other party is in breach of its obligations and which other obligations of the agreement should be suspended. I am sorry; I know that is a slightly techy answer to the question, but I want to be as accurate as I can be.

Q3386 **Mr McFadden:** There are circumstances under that article in which the UK might say, "We are going to suspend or not make payments under the financial settlement", if the UK judged that the future relationship negotiations were not being conducted with best endeavours or



something like that.

Oliver Robbins: Article 5 of the withdrawal agreement creates a very strong explicit presumption that both parties will execute all their obligations in the withdrawal agreement in good faith. If that is called into question by one party or the other, there is a strong dispute resolution mechanism in the treaty that deals with that eventuality, up to and including the ability for an arbitration panel to endorse the suspension of aspects of the agreement.

Q3387 **Mr McFadden:** Can I ask you one other thing, Olly? I echo what the Chairman has said about your efforts and the efforts of your team in putting all this together. It has been a huge effort and body of work. I want to ask you about the link between what we already committed to in the agreement in December last year and the withdrawal agreement, and the shape of the future. There has been talk about a spectrum of outcomes: it is not just Canada or Norway; we now have a more open canvas, but is that really the case? In other words, do the commitments that the UK has made to keeping an open border in the future, which are why we have ended up with the backstop, not also inform the shape of the future relationship? In other words, do these questions of customs and regulatory alignment, so that the free flow of goods can continue, not inform the shape of what comes out in the spectrum that you referred to?

Oliver Robbins: First, the backstop has been a very particular instance of a much longer, deeper, more difficult policy discussion with the European Union about how you avoid friction at a border. I would not want to pretend that we have won that argument yet, with what the Government put forward in July being the right systematic answer to that question for the UK as a whole. The Secretary of State and I are trying to explain that, by joint agreement with the EU, what we have ended up writing together in this declaration does not preclude that being the right answer. As the Secretary of State brought out more strongly than me, it has brought out the joint determination of both sides to find a better way of doing it than is laid out in the backstop.

Q3388 **Mr McFadden:** In a way, you have been done a disservice. It is right and understandable that the country has made a commitment to no hard border. That commitment and the commitment to frictionless trade point to an outcome where we are adhering to one set of rules. It would have been better for Ministers to have been candid with the public about that, instead of pretending that we still have a full canvas of options, when those commitments clearly point to one kind of outcome for our future relationship with the European Union.

Stephen Barclay: I do not think it is a lack of candour. The point, as Olly has alluded to, is that there is a spectrum of options and the negotiation has kept that open. That is part of the achievement that the Prime Minister has made. Clearly, frictionless trade requires more alignment. There is a question then as to how that is negotiated in phase



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2, but the point is that the option of frictionless trade is still on the table, which is clear in the political declaration.

Q3389 **Mr McFadden:** I will ask one last question, Mr Chairman, but let me put it in a slightly different way round. Do you believe that a Canada-style deal is consistent with the UK's commitment to no hard border and to have frictionless trade?

Stephen Barclay: The phase 2 negotiation will need to get into the detail. Let us not forget that we start from a position of alignment because we have been part of the EU. We start from a different position from the Canadians and others, because we are already aligned. What is also clear in the text is the shared commitment on both sides in the shared values. That is the premise through which the negotiation will be conducted. This is part of the detail of what we explore in phase 2.

Q3390 **Mr McFadden:** I am going to press you a bit further. I am sorry. Would a Canada-style or Japan-style free trade agreement, one of the latest-in-class EU free trade agreements, be compatible with the commitments that your Government have already made? It is not a trick question.

Stephen Barclay: I am not suggesting it is for a minute. I am saying that this is in both sides' interests. Let me give you specifics. Take medicine; there has been a lot of debate about the importance of keeping the supply of medicine frictionless. What tends to get less coverage is that 45 million packages of medicine go from the UK to the EU each week. It is in both sides' interest to have frictionless trade. It is in the mutual interest of us and the EU 27. Within phase 2, we will need to get into discussion, from the starting point of regulatory alignment, which is part of the unique relationship we have, about how that will be managed, alongside the aspiration for it to be as frictionless as possible.

Mr McFadden: At some point, you will have to level with the public about what these commitments for no hard border and frictionless trade mean. Part of your trouble is that that has not happened so far, so people are being told that all these options are on the table, when really they are not. That moment should come sooner, rather than later. I will leave it there for now.

Chair: I recollected that the Prime Minister had actually said that she thought a no-deal Brexit would be better for the UK than a Canada-style agreement. I think that is what she said when she was at the United Nations, but we will move on.

Q3391 **Sir Christopher Chope:** Can I take you back, Secretary of State, to the issue of the relationship between the withdrawal agreement and the future arrangements agreement? We are fortunate in having received advice from the House of Commons EU legislation team on this issue, and the legal note that it has produced says, "The fulfilment by the UK of its obligations under the withdrawal agreement, for example making payments under the financial settlement, is not conditional on reaching a



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satisfactory future arrangements agreement". The legal advice then goes on to refer to article 184 and article 5, and says, "While these are legal obligations at the international law level, they do not stretch as far as obliging the European Union to enter into a future arrangements agreement which it does not consider to be in its interest".

If the UK wanted to try to enforce this obligation to use best endeavours and be of good faith, the legal route of recourse would be by complaint to the joint committee and, ultimately, dispute resolution before the European Court of Justice. Then it goes on to say, "There is no compulsory system of determining and enforcing any sum that might be owing under international law", and, "The degree of detail in the political declaration affects the assessment of the risk of the lack of conditionality in the withdrawal agreement. The language of the political declaration varies. Some provisions are couched in firm language, with or without conditioning words. Some are matters for consideration or exploring or matters that parties envisage happening". Secretary of State, do you accept that as an accurate assessment of the legal status of the linkage between the withdrawal agreement and the future arrangements agreement?

Stephen Barclay: I have two points, first on the financial settlement. Perhaps I will just reference the Lords report, because it is often quoted as grounds for us not making any payment at all of the £39 billion. Paragraph 137 of the Lords report says, "The political and economic consequences of the UK leaving the EU without responding to claims under the EU budget are likely to be profound". As the Prime Minister has repeatedly set out, we are a country that honours our obligations. Those obligations are significantly less than the EU was looking for. They started at around £100 billion, from memory, and we now have a range of £35 billion to £39 billion. As part of the implementation period, we are continuing to gain many benefits, including the receipts that come our way from assets and other things. The point is that the financial settlement reflects our legal responsibilities and obligations. The Lords report recognises that and that is absolutely right.

There is a separate point about whether, as part of the political declaration, the EU honours the commitments it has made in that political declaration. We have already covered that terrain to some degree, in that there is a clear legal connectivity between the withdrawal agreement and the political declaration. There is also a political responsibility and commitment, which is partly why that document was subject to such negotiation. It sets the clear direction of travel for the future trade agreement, which is connected to but not dependent on the financial settlement.

Q3392 **Sir Christopher Chope:** You accept what the legal note that I read out asserts. There is nothing wrong with accepting it.

Stephen Barclay: I accept that we have legal obligations to the European Union, which require a contribution. I know there are some



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colleagues, including those around the table, who feel that we should not pay a penny to the European Union, and I respectfully disagree with that position. As the Lords have set out, walking away from our legal obligations and not paying a penny would not put the UK in good standing, as we go out in the world to trade.

Q3393 Sir Christopher Chope: That is not the question I am asking. I am asking about the conditionality and the linkage. I remind you, Secretary of State, that when the Prime Minister made her Lancaster House speech, she said, "I want us to have reached an agreement about our future partnership by the time the two-year article 50 process has concluded". You would accept that we are nowhere near reaching such an agreement about our future partnership. The reason that the Prime Minister wanted us to agree both things was so that there could be linkage between them, and we would not end up paying £39 billion without being sure what we were going to get in return.

Stephen Barclay: It depends. The crux of the question goes to the specificity of how much detail is in the agreement. The political declaration has clarity about things the European Union has agreed that the UK will be able, as part of our future relationship, to enter into with it. It is perhaps not at the level of detail that you would prefer, but I would argue that it is significant.

Oliver Robbins: I wonder if I can help on the specific question you were asking about the publication you referred to. While we have been here, the Government have published their own legal assessment of the withdrawal treaty. Paragraph 77 of that document explains our take on article 184 and article 5. To a non-lawyer, what it says is not inconsistent with what you read out, Mr Chope, but the important point that I was trying to get across to your colleagues is that 184 creates an obligation as to the conduct of the parties. It does not create an obligation for a particular outcome, but it says that the conduct of the parties must be informed by this political declaration.

Stephen Barclay: Anyone who is more familiar with the commercial courts will know that you cannot legally compel another party to conclude a legal agreement. You can put into legal texts a requirement for another party to act in good faith or act reasonably, those sorts of requirements. You cannot compel them to conclude, which in essence is the distinction coming out.

Q3394 Sir Christopher Chope: I do not think anybody is disputing that. You say, Secretary of State, that it is quite clear. Can I give you some specific examples? In paragraph 26 of the political declaration, it says, "The parties will put in place ambitious customs arrangements". What does that mean? Then paragraph 54 says, "The parties also agree to consider addressing social security co-ordination". In paragraph 55, "The parties will explore the possibility to facilitate the crossing of their respective borders for legitimate travel". In paragraph 20, "The parties envisage having a trading relationship on goods that is as close as possible". What



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legal enforceability is there in relation to any of those vague, waffly, ambiguous phrases?

Stephen Barclay: The text refers to it being a framework. This is setting the negotiating instructions, in essence—the framework for those future trade agreements. I am not suggesting to the Committee that there is not significant work to do in phase 2, as we put them into legal text, but it shows the framework by which the EU 27, the Commission and the UK will conclude those trade agreements. That is what is being set out in the political declaration. As Olly has referred to, there are clear legal underpinnings to that in the way the European Union must undertake and conclude those negotiations. That is what has been agreed.

Q3395 **Sir Christopher Chope:** Finally, I will just say this. You and I, Secretary of State, were both elected on the same manifesto in 2017. Page 38 of that manifesto said, “We believe it is necessary to agree the terms of our future partnership alongside our withdrawal, reaching agreement on both within the two years allowed by article 50 of the Treaty on European Union”. You have admitted today that that commitment in our manifesto has been abandoned.

Stephen Barclay: No, I have not.

Q3396 **Sir Christopher Chope:** Can I go back to Mr Bone’s question and ask when it was abandoned?

Stephen Barclay: With respect, I have not said anything of the sort. That set out that we would reach an agreement after a very intense two-year negotiation. The Prime Minister has secured that agreement. One of the concerns that colleagues across the House have raised was on the legal force of that agreement. We have covered in the session today the legal connectivity, as to why the legal text in the withdrawal agreement gives effect to the political declaration, but it is not correct to say that an agreement has not been reached. The political declaration has been agreed with the other side. That sets a clear template and framework. It perhaps does not have the level of detail on every issue that you were hoping for, Mr Chope, but I do not think it can be said that an agreement has not been reached. It has.

Q3397 **Wera Hobhouse:** Thank you for coming to answer our questions. We heard this morning that an immigration White Paper will not be coming before the vote. Perhaps you can help me out. In light of the Government’s intention to end free movement after December 2020 and introduce, as you have already said this morning, a skills-based immigration system, I asked the Prime Minister a question last week: in January 2021, for an incoming EU citizen coming to Dublin, travelling on to Belfast and then to the rest of the UK, where will the immigration border be? The Prime Minister answered that there would be no immigration border, because we will be in the common travel area. Does this mean that the Government have had discussions with the Republic of Ireland, so that they too will introduce a skills-based immigration system or that they will also end free movement of EU citizens? It would be



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amazing news if that had happened, so I assume not. Therefore, I repeat my question: in January 2021 for an incoming EU citizen coming to Dublin, travelling on to Belfast and then to the rest of the UK, where will the immigration border be?

Oliver Robbins: Would it help if I came in here, Secretary of State? The Home Office's plans, which as the Secretary of State has said will be set out in detail in due course, are based on the idea that, for most EU citizens, immigration control and your right to work and stay in the United Kingdom will not be exercised at the border, but exercised in country. I do not think either side wishes to gum up the border by removing the e-gates and doing all sorts of things that will make it more difficult for people to move for legitimate purposes in both directions. That means that people coming through Ireland into the UK, either via Northern Ireland or directly, if they want to work and stay in the UK, will have to comply with UK immigration law, if they are EU citizens. That does not mean that you need hard infrastructure between Ireland and the UK, any more than you need more than the e-gates today.

Q3398 **Wera Hobhouse:** Can I ask again if, for somebody coming into Dublin, the Irish Government would check that an incoming EU citizen has the right documents either to work or to travel in the rest of the UK? Is that what you are saying?

Oliver Robbins: No. The Home Office will set this out in more detail but, for someone to work in the UK, they will need the correct documentation to be able to work in the UK. That is similar to somebody arriving today. It does not imply any particular new control on EU citizens coming in through Ireland.

Q3399 **Chair:** Or indeed from France to the UK, because there is a reference to visas not being envisaged for short-term visits. Therefore, someone from any EU country could arrive in the UK at Heathrow Airport. If they are on holiday as a tourist, they could do so without a visa or a permit. That is my understanding of the Government's plan but, as you have just said, if they want to rent property or work, they would have to get the appropriate permission, a visa of some sort, depending on what the Home Office eventually announces. Is that what the Government are intending?

Stephen Barclay: The immigration White Paper will set out the detail on this. What Olly was referring to is that employers currently have responsibilities for registering, so it will be for the White Paper to set out to what extent that reads across. I do not want to pre-empt that.

Chair: You are not proposing visas for tourists coming to the UK from EU countries.

Stephen Barclay: There are already commitments from the EU around 160-day visits for businesses and tourists. That agreement has already been reached with the EU and it is in the text, so that has already been covered.



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Oliver Robbins: This is an area where the phrase “free movement” is a bit misleading. The full phrase was always “free movement of labour”. For people to be able to live and work in the UK, there have always been requirements to ensure that is done legitimately. Depending on the Home Office White Paper, we will be looking again at what those requirements will be in the future. For moving across the border, the Chairman is right that the Government have said for some time they do not want to make the process unnecessarily more difficult for people than it is today.

Q3400 **Wera Hobhouse:** Can I insist that the UK, as I understand it, wants to move away from an immigration policy that is different from the Republic of Ireland? In the Republic of Ireland, EU citizens can continue to come and have free movement of labour, whereas that will terminate for EU citizens wanting to work in the UK, so there will be a divergence of policy. Who will be responsible for checking a work visa of an EU citizen is different from that which the Republic of Ireland requires?

Stephen Barclay: First, we should distinguish that, under the implementation period, EU citizens would be free to travel.

Wera Hobhouse: I asked about 2021.

Stephen Barclay: The Home Office White Paper will cover that. The point is that, in the short term, in the implementation period, the status quo will continue.

Wera Hobhouse: I know. My question was for 2021. We do not know what this arrangement is going to be like at all, because the White Paper has not been published.

Stephen Barclay: The wider direction of travel that the Government have signalled is to move away from a nationality approach to more of a skills-based approach. One would expect a direction of travel more akin to other third countries, but it is for the immigration White Paper to set out the detail.

Wera Hobhouse: We do not know yet.

Stephen Barclay: The immigration White Paper will set out the detail. It is not appropriate for me to pre-empt it.

Wera Hobhouse: But we have not seen it.

Stephen Barclay: There is a standard approach to these things. Mr Crabb has been a member of the Cabinet. He is familiar with it. Other departments will set out their approach in due course. I do not want to pre-empt another department’s announcement.

Q3401 **Wera Hobhouse:** Can I ask a separate question? Your predecessor, only on 21 October, said, “A good deal is in sight”. On 23 November he said, “This deal would be worse than membership”. What changed within that month? For bystanders and outsiders, this is extremely difficult to



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understand. What changed in that month or did your predecessor suddenly have a light-bulb moment?

Stephen Barclay: My predecessor is very bright and respected by people across the House. He can speak for himself very eloquently, so it is not for me to comment on the position that he has taken. From my perspective, it is a question of assessing the balance of risk. The risk of uncertainty, in my view, is one that would be very concerning to business and to the jobs of my constituents and yours. We have a deal on the table that respects the result, delivers on the referendum, delivers on things you have just been referring to like a skills-based immigration system, having control of our fish and waters, and taking our agriculture out of the CAP. I represent a farming constituency where the CAP has long been a cause of concern. It delivers on the referendum result, but in a way that delivers a frictionless approach at our borders, which is good for business. Dominic will speak for himself and I should leave it at that.

Q3402 **Wera Hobhouse:** But nothing changed in that month in the direction of travel.

Stephen Barclay: It is for Dominic, as a former Member of this Committee no less, to speak for himself in due course.

Chair: Indeed, you are the first Secretary of State for Exiting the European Union who has not previously been a Member of this Committee, so that is a claim to fame if nothing else.

Stephen Kinnock: That is surely a good omen, Chair, considering the fate that befell the others.

Q3403 **Andrea Jenkins:** First, Secretary of State, I wish you good luck in your new role. I know it is a challenging time ahead. Next week we are voting on your deal. Are you confident you are going to secure enough votes to get it through the House?

Stephen Barclay: It is going to be challenging. I think everyone recognises that. It is an issue on which a great deal has already been said, but there is clearly time between now and the vote.

Q3404 **Andrea Jenkins:** Will it get through?

Stephen Barclay: As a former Whip, one waits for the vote to see, but I am confident we can deliver this deal, because it is in the national interest. We have had a very divisive—

Q3405 **Andrea Jenkins:** You are confident you can deliver the deal, but—

Stephen Barclay: It is challenging. It is challenging because a lot of colleagues have already spoken out on this. Part of the challenge is this complex legal wiring between the withdrawal agreement and the political declaration. It is complex in terms of the economic analysis. One can run through a wide list of issues.

Q3406 **Andrea Jenkins:** Assuming it does not get through next week,



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Secretary of State, what is your contingency or plan B?

Stephen Barclay: Our focus is on delivering the vote, and that is what we are focused on.

Q3407 **Andrea Jenkyns:** Surely it is the job of Government to look beyond that.

Stephen Barclay: One hears a lot about this plan B. The Prime Minister has been very clear that—

Q3408 **Andrea Jenkyns:** There is no plan B. There is no contingency plan.

Stephen Barclay: The focus of Government is on delivering this vote. That is what I am focused on.

Q3409 **Andrea Jenkyns:** What if that vote fails? What happens in that event?

Stephen Barclay: In that event, Government will have to look at the consequences in due course, but the focus of Government is on—

Q3410 **Andrea Jenkyns:** Say the vote gets voted down, what is going to happen the next day? The public want to know. The Committee wants to know. The country wants to know.

Stephen Barclay: People often challenge politicians for honest answers. The honest answer is that it is unclear, because it is unclear how Parliament—

Q3411 **Andrea Jenkyns:** You do not have a plan.

Stephen Barclay: It is unclear how Parliament—

Q3412 **Andrea Jenkyns:** Mr Robbins, could you answer this?

Stephen Barclay: No, can I finish the point? We could be in a situation with no deal. We could be in a situation with no Brexit. There are significant problems with both of those courses. I can be clear that the consequence of the vote not going through next week would be uncertainty for jobs and for businesses that want to invest.

Q3413 **Andrea Jenkyns:** With respect, there is even more uncertainty if the Government and the Department have not planned.

Stephen Barclay: We have. It is a separate issue to come on to the work we have been doing for no-deal preparation. It is work Steve Baker did when he was the no-deal Minister. Chris Heaton-Harris and colleagues across Government have done a huge amount of work on it.

Q3414 **Andrea Jenkyns:** Minister, are you saying that really you do not know? You are deciding after the vote.

Stephen Barclay: No, I am saying that Parliament will obviously have views on this as well, but the focus of Government is delivering the deal. This is the best deal for the country.

Q3415 **Andrea Jenkyns:** It is the best deal for the EU, I hasten to add.



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Stephen Barclay: Your views are on record and I have read those. The point is that this is the only deal. The EU has made that clear. It is a deal that allows us to deliver the certainty that business needs. Also, for those of us that, as I know you did, campaigned for Brexit, wanted to see skills-based immigration, wanted to see us take control of our fishing, wanted to ensure we were out of the CAP, wanted to ensure we had independent—

Q3416 **Andrea Jenkyns:** You are going off the question, with respect, Minister.

Stephen Barclay: No, that is what this deal is about. That is what this deal is about.

Q3417 **Andrea Jenkyns:** I would like to move on to Mr Robbins now. Thank you very much for answering that, or not answering it in this case. Mr Robbins, you have been on this right from the beginning, for a very long time. What do you think is going to happen, or what have you advised the Prime Minister to do if the vote falls next week?

Oliver Robbins: I cannot really add anything to what the Secretary of State has said. The focus of the whole Government, from the Prime Minister down, is on delivering the deal.

Q3418 **Andrea Jenkyns:** Do you think that is good planning of the Government is they do not have a plan beyond the vote?

Stephen Barclay: As I have touched on, we have plans for a no-deal scenario, but that would be damaging to jobs. It would be damaging to business. Are there plans for a no-deal scenario, in the event the Government do not secure the vote? Yes, there are. A huge amount of work has gone on behind the scenes in Government on those plans. The focus of Government is on securing the vote, because that is in the national interest.

Q3419 **Andrea Jenkyns:** Secretary of State, in his resignation letter, David Davis said the Prime Minister's Brexit policy would put the country in, at best, a weak negotiating position and possibly an inescapable one. Furthermore, it said the policy will make control by Parliament illusory rather than real. Finally, the common rulebook policy hands control of large swathes of our economy to the EU and is certainly not retaining control of our laws in any real sense. Was David Davis, the Secretary of State for two years, wrong? If not, what dramatic changes have been made to the deal to put Mr Davis's concerns at ease?

Stephen Barclay: The biggest part of our economy is services and this deal does not put services in anyone's control—quite the opposite. I am taking that as one example. No, I do not accept that. I hugely respect the work David Davis did in the Department and in Government, and, incidentally, as a parliamentarian. He is a parliamentarian of huge standing. To say this puts our economy in the control of others is—

Q3420 **Andrea Jenkyns:** That was the resignation letter.



Stephen Barclay: Indeed. As the former Minister for Financial Services, I know services are a huge part of our economy. Also, as someone who wants to take a much more global approach, moving forward as part of our future approach, if I look at areas such as asset management, the UK has huge opportunities. I look at areas like fintech, insurance. There is massive potential for the UK within financial services. The idea that that is in someone else's control, I am afraid, is just not correct.

Q3421 **Andrea Jenkyns:** You have spoken about a global approach. I am sure everybody in this room would likely agree with that, whether you are a Brexiteer or a Remainer. Secretary of State, is it more or less likely that we could achieve a free trade deal with the USA under WTO rules or under the PM's deal?

Stephen Barclay: What the PM's deal secures is—

Q3422 **Andrea Jenkyns:** Is it more or less likely? It is a simple question. Are we more likely to achieve a free trade deal under WTO rules or under the Prime Minister's deal?

Stephen Barclay: The PM's deal allows us to secure a deal with the US.

Q3423 **Andrea Jenkyns:** You are saying it is more likely with the PM's deal.

Stephen Barclay: The PM's deal is in the better interests of the economy and I will explain why. Europe is our largest trading relationship. It is important we maintain that. In terms of the political declaration, it makes clear on page 1 that it will both respect the referendum result and enable us to have an independent trade policy.

Q3424 **Andrea Jenkyns:** Is President Trump wrong, Secretary of State, when he says it would be very difficult to get a deal with the US under the Prime Minister's deal?

Stephen Barclay: I note the comments of the President. Obviously, that is hugely significant because he is President of the United States. That has also been put in context by the comments of the US ambassador recently. It has also been put in context by the lead negotiator, the lead trade envoy, who has written to Congress in the US, signalling the desire for a trade deal. Liam Fox has done a huge amount of work. One should also bear in mind the balance, in terms of the amount of trade we do with Europe vis-à-vis the US.

Q3425 **Andrea Jenkyns:** I have a couple more questions, very quick ones, if that is okay. Mr Robbins, briefly touching on what my colleague Jacob mentioned about the *Daily Telegraph*, if you have actually warned the Prime Minister, I think us Brexiteers want to commend you for warning her on the issue of the backstop. Are there any other occasions when the Prime Minister has failed to listen to quite fundamental advice?

Oliver Robbins: I would like to think the Prime Minister listens to the advice she gets from across the system, including from her ministerial colleagues, all the time. I have to say, my experience over the last two



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and a half years of working for her and ministerial colleagues on this subject is that they have approached the issues and the options with incredible seriousness. The kinds of views that Mr Rees-Mogg was putting to me earlier have been part of a very healthy process of me and colleagues across Government making sure Ministers take the full suite of options and issues very seriously.

Q3426 **Andrea Jenkyns:** As a final question, Mr Robbins, are you aware of any advice shown to Ministers on the legality or feasibility of a second referendum?

Oliver Robbins: I am not aware of any, no.

Q3427 **Peter Grant:** Good afternoon, gentlemen. Within the last couple of weeks, the Prime Minister has suddenly started to talk up the possibility that Brexit might not happen, presumably to scare off the ERG and their fellow travellers. The Environment Secretary has been saying something similar over the weekend. As recently as five days ago, the Secretary of State for Scotland was telling the Commons that voting against the deal means voting for no deal without any other option being on the table. They cannot both be right. Which of them is right and which of them is wrong?

Stephen Barclay: It is a matter of Government policy that there will not be a second referendum. It is the firm Government policy that we will not revoke article 50, so the Government have made their position on a second referendum very clear.

Q3428 **Peter Grant:** Yes, but the Government have changed their policy on what Brexit means and does not mean more times than most of us can count, as a few Members have already pointed out. The Prime Minister has chosen, on a number of occasions, to remind us that it is possible that Brexit will not happen. The Secretary of State for Scotland is saying it is either this deal or no deal. Do you agree with the Secretary of State for Scotland when he directly contradicts what the Prime Minister has said?

Stephen Barclay: The point I have just made is that the Government are committed to the deal. It is the only deal. The European Union has made that clear. We are planning for a default option, if the deal does not go through, because one needs to prepare in case there is no deal. In terms of a second referendum, it is not Government policy. Significant difficulties would arise if you tried to have a second referendum, if you just look at the amount of time. I know there are colleagues round the table that are keen on a second referendum, but you can look at the logistics of that, in terms of how long it takes to pass the legislation, the need for a regulated period before a referendum and the need for time post that referendum, depending on what the result would be, and the fact that it is not a unilateral decision as to whether you extend article 50. That is a decision taken by the EU 27.

Q3429 **Peter Grant:** The Environment Secretary went on national media at the



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weekend to say that a second referendum is a possibility. Was that line approved by the Cabinet or by the Prime Minister, or was the Environment Secretary just going off and making up policy on the hoof?

Stephen Barclay: I did not see that particular interview. I cannot be any clearer that it is not Government policy to have a second referendum. That is the clear position. That would be hugely damaging democratically. We had the biggest vote in our country's history and we have a deal on the table that respects it. The EU has made clear that it is the only deal. Also, there are significant difficulties in trying to have a second referendum. As I say, it would not be within our unilateral control. Also, it would open up other questions. Would we have the European parliamentary elections if we were still a member, if we extended? There would be huge complications around that.

The fundamental point is that there would be uncertainty for businesses. It would be massively divisive to the country. After two years that have been very troubled and divisive, it is important we bring the country back together. We have a deal on the table that respects the result but also keeps our close ties with Europe. It is time now that we get behind that, in the national interest, and bring the country back together.

Q3430 **Peter Grant:** Can we look now at the long-term economic analysis the Government published last week? Can you confirm that every scenario looked at in that analysis indicated lower economic growth than we would have had if we had stayed in the European Union?

Stephen Barclay: Sometimes people see economic analysis as the forecast to a landing zone when actually it is a direction of travel. That was looking at the rate of growth. The fundamentals of the economy, as the Chancellor has set out, are very strong. The question within the economic analysis was twofold. First, within the rates of growth, what impact would different scenarios have? It was very clear from the economic analysis that the Prime Minister's deal is the best deal economically. That is the first point. Secondly, alongside that, there would be a number of other factors that would have a bearing on what the actual end result is. It is worth remembering that this was a 15-year projection. There would be other factors: demographics, migration, technology. There are a whole range of factors that would shape that economic analysis. The key point of it was that it showed the PM's deal was the best deal for the country.

Q3431 **Peter Grant:** With respect, Secretary of State, I asked you to confirm as a matter of fact that each scenario that was looked at in that analysis indicated a lower long-term rate of economic growth than the baseline of being in the European Union. Can you also confirm that, in each scenario comparing the impact assuming there is no change to inward migration to the impact assuming a significant reduction in migration from the European Union, in every instance where the Government have chosen to publish that analysis, it shows that a cut in immigration from the European Union leads to lower economic growth than what would happen



under the status quo? That is a matter of fact, is it not? That is what the analysis indicates.

Stephen Barclay: I would say two things. In answer to your question, yes, I think there is, from memory, a 0.7% difference, but that is taking things in isolation without, as I alluded to, the other things that would happen alongside that. It is taking it in a very binary sense without looking at the wider picture. In terms of migration, yes, from an economic point of view, if you look at it in pure economic terms, the Treasury scores migration in a positive way, but that is just one aspect. We have a commitment through the referendum, in terms of concerns that were raised in the country around freedom of movement. That is why we are moving to a skills basis. One cannot look at these things in isolation in a siloed way. You need to look at them in the round.

Q3432 **Peter Grant:** Going back to the result of the referendum, I noticed that Government Ministers are very good at knowing exactly what was in the minds of all 17.6 million people when they voted to leave. The ballot paper I had only said "remain" or "leave". It did not ask about anything else. How many of the 17.6 million people do you think deliberately voted for lower economic growth, and therefore presumably for a lower standard of wealth and income for themselves and their families than they would have had by staying in the EU?

Stephen Barclay: I do not accept the premise of that question. As I alluded to, the deal that is on the table from the Prime Minister is the best deal. That is what the economic analysis said.

Q3433 **Peter Grant:** It is the best one within the red lines the Prime Minister set out. It is not the best one that is available.

Stephen Barclay: Yes, within the assumptions set out for that economic analysis. First, that economic analysis is a direction of travel. It is not a forecast to a precise landing zone. Secondly, there are a whole range of other factors that will shape where we eventually land, in terms of the actual final outcome. One cannot take it in isolation. One needs to look at that wider picture.

Q3434 **Peter Grant:** Can we look now at paragraph 75 of the proposed political declaration, which is one of the paragraphs that look specifically at fishing? That paragraph commits the Government and the EU to establishing a new fisheries agreement that includes "agreement on, inter alia, access to waters and quota shares". One of your Cabinet colleagues about two weeks ago signed a letter that stated, "Access and quota shares cannot be included in the future economic partnership". Do you agree that the political declaration as it stands just now is incompatible with the demand that was made by your colleague when he said access and quota shares had to be excluded from the future partnership?

Stephen Barclay: The political declaration ensures there is a link between a future agreement on fisheries, including access to waters, and any agreement on trade. I would quote Bertie Armstrong, who, as you



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know, is the chief executive of the Scottish Fishermen's Federation. He says, "The declaration gives the UK the power to assert its position [...] with full, unfettered sovereignty over our waters and natural resources". This is a deal that is welcomed by the Scottish Fishermen's Federation. That is an indication of the fact that it ensures we take back control of our fishing, as an independent coastal state. Then we are in a position to negotiate it, just as other countries like Iceland do, moving forward.

Q3435 Peter Grant: In the statement the Prime Minister made on 22 November she said the deal would mean "our fishermen get a fairer share of the fish in our waters". What share of the fish in our waters do our fishermen get just now, either as a percentage or as a tonnage?

Stephen Barclay: It has been moving, has it not? If I take, for example, the under-10 metre fleet, since 2012 the quota has been realigned to deliver a 13% increase in quota for the inshore fleet. In 2016, this generated 677.5 tonnes of additional quota. The inshore sector was allocated 1,250 tonnes of quota uplift in 2018, which equates to an extra 3 million. Indeed, it is not all, as you know, about quota because part of the focus of under-10 metre vessels is non-quota species such as crab and lobster. The point about this is that we will be back in control and able to agree with the EU 27, in the ways that countries like Iceland are able to do. That is a huge win as part of the Prime Minister's deal.

Q3436 Peter Grant: The point is that the political declaration commits us to an agreement on quota share and continued EU access to our fishing grounds. What is the minimum acceptable share that the Government would consider to be fair in the future? The Prime Minister has promised our fishermen will get a fair share of the fish in our waters. What is the red line below which the Prime Minister will refuse to accept that deal? Is there a red line?

Stephen Barclay: That will be a matter for the fisheries agreement with the EU, which we will aim to conclude by July 2020. A key part of that is to have annual negotiations on access and quota share. I am not going to pre-empt those discussions. The point about this is that we have control, as an independent coastal state. We are able to negotiate on an annual basis. We are coming out of the common fisheries policy, which is the policy of the SNP. We are acting in a way that representatives from the fishing community very much welcome. It comes back to my point about delivering on the referendum result. People want to see us take control of our waters as an independent coastal state. The deal the Prime Minister has secured enables us to do so. I think that is very welcome.

Q3437 Stephen Kinnock: We have heard today that you are of the view that this vote is going to happen on 11 December. You are of course fighting your corner valiantly for that vote to be won by the Government. Let us just assume that some sort of miracle happens between now and 11 December and you do indeed win the vote. How long do you think it will take to turn this relatively open-ended and vague political declaration into a binding international treaty, assuming you can start on 30 March?



Stephen Barclay: Quite rightly, a number of Members of the Committee have paid tribute to the negotiating team for the work they have done in securing that political declaration. It is slightly at odds then to dismiss it simply as vague. The wording in there is subject to significant negotiation and that is an indicator of the force it will have, politically, in setting the framework. To the crux of your question, Mr Kinnock, on the timeframes, I would refer to part 5 of the political declaration. That gives a clear steer as to the aspiration.

I have just referred, in my answer to Mr Grant, to fishing and our aspiration to have a deal concluded by July 2020. As we look to the governance within Whitehall, and how we take this work forward, one of the issues will be to look at what the phasing of that work is. I share your desire, or I suspect your desire, to see momentum injected into that process. I am very keen to see that.

Q3438 **Stephen Kinnock:** Just for you to know, we have had a diverse range of witnesses giving us evidence on this issue for quite some time. They have not been unanimous on many things, but one thing they have been absolutely unanimous on is that the idea of turning the political declaration into an international treaty by the end of the transition phase is a pipe dream. It is not going to happen, because you of course have the negotiation process and then ratification by 28 national Parliaments and regional Parliaments. You have also, in your evidence, placed great emphasis on the need for certainty and clarity. Would you not accept that, if the political declaration were amended to make a specific commitment to an off-the-shelf model, such as the Norway-plus model, that is the only way in which we would have a chance of having this negotiated and ratified well before the end of the transition phase? Would you accept that an off-the-shelf model like that gives precisely the certainty, clarity and stability the country is desperately crying out for in these uncertain times and that you indeed have been emphasising?

Stephen Barclay: I absolutely see the point you are driving at. My concern is that I do not think the Norway option respects the referendum result. I met the Norwegian Foreign Minister last week. The rule-taking element that applies in Norway would have a—

Q3439 **Stephen Kinnock:** I am very happy to have a discussion about that but, just on this point, do you accept that off the shelf has a chance of getting done and dusted within the transition phase? A more open-ended thing like this has no chance whatsoever of being negotiated and ratified by December 2020. It is just not going to happen.

Stephen Barclay: No. One of the key achievements the Prime Minister has made has been shifting the dialogue from this binary off-the-shelf Norway or Canada debate into something that better reflects the shared values, the close working relationships, the 40 plus years of interrelationship with Europe, and that is the bespoke model. I have concerns with Norway, and I know colleagues across the House have raised the issue of Norway. The difficulty there is that you continue to



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make payments. You continue to have freedom of movement. Also, as someone who was the Minister for Financial Services, I think there are significant issues with taking rules, given the consequence for the financial services industry. If you look at, for example, Lloyd's of London, if you look at building societies that have a distinct model, there are issues in terms of rule-taking, particularly in areas like financial services, that would be very unwelcome for the UK, much more so than they would be in the case of Norway.

Q3440 Stephen Kinnock: If we then look at the other scenario, which seems more likely, which is that the motion will be rejected by the House on 11 December, do you agree it is the Prime Minister's moral duty as a public servant to have a plan B in place? It is a moral issue.

Stephen Barclay: We have covered I think twice now the issue of plan B. Our commitment, as a Government, is to win the vote. That is what everyone is focused on in Government and that is what I will be working very hard on between now and the 11th.

Q3441 Stephen Kinnock: If there is a compromise out there that provides the certainty that our economy and people so desperately need, and which is not perfect, since no solution is perfect, but provides that clarity that is so important for the commitments we are making, do you not think it is the Prime Minister's duty to have that option ready to go as soon as she loses the vote on the 11th?

Stephen Barclay: I respect the spirit in which the question is put. My concern is that that does not deliver on the referendum result for the reasons I have just alluded to, in terms of the concerns with Norway. We have a deal. European Union leaders have agreed it, after a very intense and difficult negotiation. The Prime Minister has secured that deal in the national interest. It delivers on the referendum result for people like me on the Brexiteer side who campaigned for changes in areas like having a skilled immigration approach. It delivers on that, on fishing and agriculture, on the list we can run through. It allows us to have an independent trade policy. There are significant wins in that deal. That is why I think it is the right deal and we need to make that case. It is for all members of Cabinet to make that case, but we need to make the case and secure the vote. That is our priority.

Q3442 Stephen Kinnock: On the point of the referendum and the mandate, a narrow vote to leave could very well be taken as an instruction to move house but to stay in the same neighbourhood. Surely the instructions are to stay very close to Europe, to leave the political institutions, to leave the ever closer union, the political project, but to retain very close, strong and productive links through a well-established and well-understood framework. One could very easily interpret 52/48 in that way. It is the Prime Minister who chose to interpret it as leaving the single market and the customs union. We can have a long debate about what the referendum actually means. Is it not time, though, now to put that to one side and find a pragmatic solution that can command a cross-party



majority in the House of Commons, in the national interest?

Stephen Barclay: I think that is exactly what has underscored the Prime Minister's approach. If you look at the fact that this is a deal that enables us to have security relationships with Europe that no other third party will have, this is a reflection of the bespoke nature of the relationship. We are not part of Schengen. The previous narrative in terms of Schengen, which Olly will be very familiar with, is that if you are not part of Schengen you cannot be part of some of the security arrangements there. Actually, I firmly believe this is in our mutual interest. For some of the databases the UK puts more information on, as I understand it, than anyone else, so it is in both sides' interests.

Both parties want to ensure, if there are passengers who are a concern to law enforcement, that we are picking up that passenger information and, if there are criminals moving between countries, that they are identified. The political declaration enables very close security co-operation. It enables the supply of goods to flow across the borders. It does so in a bespoke way that also delivers on the freedom of movement, on the vast sums of money being paid, on the desire for an independent trade agreement. That is the point where the binary choice of Norway or Canada does not deliver what the Prime Minister's deal delivers.

Q3443 **Richard Graham:** Welcome, Secretary of State. One of the difficulties with this complex three-element deal is the way in which it has to be reduced to soundbites for the media. When the Prime Minister has said the deal brings back control of our borders, laws and money, while leaving the common fisheries policy and common agricultural policy, and enabling us to negotiate our own trade deals, can I offer a potentially more accurate, although longer, version of that? That would be to say this deal will bring back control of our borders and should do so for our laws once an agreement for life after the transition is secured, and most of the £39 billion paid, although some European Court of Justice controls will remain for a while. We should be able to negotiate our own trade deals, at least on services, to the extent future agreements on our customs relationship allow. Meanwhile, this deal buys us 18 months at least to negotiate the future in detail, subject to us not being stuck in the backstop and all 27 EU Governments and Parliaments approving the trade and customs elements. Is there anything in that that either of you would disagree with?

Stephen Barclay: I will just pick up the key points. First, to the extent to which during the implementation period we can negotiate trade deals, that is absolutely correct. Secondly, does that give businesses security during that period and the certainty they want? Yes, absolutely. Does it avoid, in essence, the two-step change that many businesses want to avoid, because to the extent they make a change they want to make one change? Yes, it does. On the financial settlement, that is respecting the legal obligations the country has entered into, but it is a significant reduction on what was expected at the start of this process. That reflects the bespoke deal the Prime Minister has secured. It gives us that



independent trade policy but it does so in a way that respects the fact that our strongest business relationship is with Europe.

Q3444 **Richard Graham:** Indeed, I just wanted to check whether you were comfortable with my extension of the soundbites the Government sometimes use. Secretary of State, you have said several times today that this is the only deal. You have, quite rightly, quoted European Union statements to support that. That would rule out the suggestion Stephen Crabb, among others, has made. Should Parliament not back the deal, could the Government and Prime Minister raise potential changes either to the withdrawal agreement's language on the Northern Ireland backstop or on some of the rather qualifying language in the future political declaration, for example substituting intentions and efforts for "we will do XYZ"? Of course, the European Council follows immediately after our vote. You are not ruling out any such effort, are you?

Stephen Barclay: First, as you say, the European leaders themselves have made clear this is the only deal. Secondly, the Prime Minister has touched on this in one of her many marathon sessions in the Chamber, where she has been asked about whether the European leaders would reopen the deal. The misunderstanding about that is that it would be reopened in a way that benefits the UK, assuming there are not aspects of this deal, this hard-won deal, that the EU would want to change. We saw that in the way concerns were raised by Spain, and the Prime Minister again on Gibraltar absolutely stuck to her guns, defending our sovereignty.

Q3445 **Richard Graham:** No, I understand. I absolutely understand the point.

Stephen Barclay: The idea that you can reopen this without the EU 27 saying they want further concessions would be a significant risk.

Q3446 **Richard Graham:** I understand your point, but you are not ruling out any such effort, are you?

Stephen Barclay: Our focus is on this deal. I am saying the EU 27 leadership have made clear it is the only deal. Also, the idea that after two-plus years of intense negotiation you are going to go back and get a different deal is not realistic.

Q3447 **Richard Graham:** Lastly, there has been much talk, and indeed my colleague Stephen Kinnock raised the question, of the option of Norway-plus-plus, the phrase used in the media, or really membership of the EEA and EFTA, as a possible if not a likely alternative, should the deal not go through. For many of my constituents who voted leave and for other colleagues whose constituencies voted leave, I think the reactions once they realise that arrangement would tie us into the EU's freedom of movement, oblige us to pay a considerable annual sub, lock us into the EFTA Court, which has very rarely disagreed with the ECJ, and make us a permanent rule-taker, would come as rather a surprise. What can you and the Government do to try to make the differences between that potential deal and the Government's deal clearer before the vote on the



11th?

Stephen Barclay: You make a very good point. There were a lot of people in the country who, as I say, voted in what was our biggest ever vote, a huge democratic exercise. If we were to row back on that, it would be very divisive for our politics and I think it would be very damaging. It is important that the Government demonstrate that we are honouring the referendum result. This deal does that. Some of the other deals on offer would not. As I referred to much earlier in the session, those other deals would also need a backstop. There is the idea that the reason for moving from the Prime Minister's deal is the backstop. Under those deals, there would also be a need for a backstop.

Q3448 **Hywel Williams:** First, can I just ask you some specific questions about the joint committee? To what extent would the joint committee be answerable to Parliament?

Oliver Robbins: The joint committee will be formed from the Executive, so its accountability to Parliament will run through Ministers in the normal way.

Q3449 **Hywel Williams:** The political declaration states that the future relationship will be overseen at summit and ministerial level, and managed and supervised by the joint committee. That is what it says. Looking at the extensive documents we have been provided with, I cannot see any reference to the devolved Governments at all. How do they fit in, in terms of either direct representation or consultancy in that process of the joint committee's work?

Oliver Robbins: That is still a matter Ministers will be keen to engage with the devolved Administrations about as we go past the vote and into planning for the next phase, including for operation during the implementation period. The joint committee is a UK-EU body, so the representatives on it will be representatives of HM Government and of the European Union. That does not preclude Ministers, as they do today, from wanting to use the joint ministerial committee structure and other structures that may be invented in due course to make sure they take the full range of views into those meetings.

Stephen Barclay: The underlying point is a very valid one. There have been attempts in phase 1 through I think the 15 meetings David Lidington has held with Mark and Mike respectively from the Welsh and Scottish Governments. My very first meeting I prioritised was to go to meet with colleagues from the devolved Assemblies. There is a question, moving forward—I spoke to the Secretary of State for Wales about this very point this morning—as to how we ensure we get the balance right in the information we share with the devolved Governments. If one takes the withdrawal agreement, it was shared, but parliamentarians, if one is not careful, might say, "Why are you sharing it with the Welsh Government if it has not come to the House?" There is a balance to be struck there. On the other hand, there is a very legitimate question on



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issues such as the shared prosperity fund, which I know is a particular issue in Wales, and lack of friction at Holyhead and how that is picked up. How are we ensuring that the issues and points that colleagues in Wales want to raise are part of our thinking? I am very keen to work with colleagues from Wales on this. As I say, I spoke to the Secretary of State about it this morning. My very first meeting was to prioritise this, because I feel it is something we need to do more of, but we need to be mindful of what we tell Parliament and what we tell the Scottish and Welsh Governments. It is something I am very happy to discuss, moving forward.

Q3450 Hywel Williams: The arrangements that are currently in place and have been in place have been widely criticised. People were worried, for example, that the Joint Ministerial Committee did not meet for a period of nine months, when quite crucial negotiations were going on. In fact, the JMC has been widely seen as being not fit for purpose. As a Member of this Committee, I recently attended a meeting in Cardiff of the forum between various House committees in this place, in the Assembly and in Scotland. We wrote to David Lidington about this, saying that the arrangements were not fit for purpose. Are you in a position now, or when will you be in a position, to outline what sorts of arrangements will be put in place?

For example, the Joint Ministerial Committee, as far as I understand, does not have any statutory basis. It does not have its own secretariat; it does not necessarily publish its own proceedings, et cetera. There are a wide range of things it could do to establish its legitimacy. Do you have plans, or are you implementing any plans, for that?

Stephen Barclay: First, I recognise the point; it is a very valid point. There are areas where it has worked well. For the withdrawal agreement Bill, draft clauses were shared. From the feedback I have had, people felt that part of the process worked very effectively. There are other areas where concerns have been raised. There are opportunities. The Secretary of State, for example, has an expert panel, and it is important to think about how that operates and ensures it is working with other stakeholders, so it is advising both the UK and the Welsh Government. That expert panel is one thing we should be looking at.

I am very keen, moving forward, to build on the areas that have gone well, such as, as I say, the draft clauses. There are certain constraints, because Members of this House would like to feel that we are sharing information with them in the right way, in terms of what is shared with the devolved Assemblies. But we are very happy to work with you on this.

Q3451 Hywel Williams: I am very keen that people feel involved, and that the Governments in Wales and Scotland are involved to the extent they can be. It is just a comment, really. It seems like a long chain from what the joint committee will be doing, in terms of very important matters, and the person on the ground feels that, through our own Government,



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through this Government and through the joint committee, et cetera, it is a long chain.

I just want to ask you one other question, which has concerned me for a very long time. If we leave without a deal and we go to a World Trade Organization situation, does that inevitably mean that there is a hard border between the north of Ireland and the Republic, between Dublin and Belfast, and equally that there is a hard border between Dublin and Holyhead or Abergwaun/Fishguard? That applies entirely, as far as the UK-Republic of Ireland-EU border is concerned, does it not?

Stephen Barclay: As I alluded to a moment ago, I very much recognise the importance of that Dublin to Holyhead trade, in terms of what distortion there might be within it. We have been discussing that with the Secretary of State. The importance of that trade is very much appreciated. We are very keen to ensure it is as frictionless as possible, because it is important from a Welsh perspective. I recognise that.

Q3452 **Hywel Williams:** I am concerned that there has been a great deal of attention to the potential situation in Kent and Dover but, as we have seen in answers to this Committee, what might happen in Anglesey and Holyhead seems something more of a mystery. It might entail some discussions with the Welsh Government.

Lastly, if you invert that and Northern Ireland has this special deal, we might be in a position, might we not, that, whereas Northern Ireland and the Republic have a softer border, between Holyhead and Dublin there is a harder border? That is possibly the case.

Stephen Barclay: You do not want a situation where there is a distortion, where there is a preference to go via Northern Ireland rather than coming across to Holyhead.

Hywel Williams: Precisely, and that concerns me. My knowledge is limited, but I cannot think of any other relationship between a member state and an ex-member state, or two bodies of that sort, with different arrangements between different parts. It seems slightly unique. I recognise that there are unique circumstances in Northern Ireland, which lead to that, but it is a peculiar situation and I am concerned it might lead to distortion.

Q3453 **Stephen Timms:** Can I raise a couple of questions about elements of the political declaration that touch on the services part of the economy, which as you have emphasised is the great bulk of it? First of all, on what it says about data, the Government had said they wanted an agreement on data that went beyond the normal adequacy agreement. The problem with adequacy is that it can be withdrawn by the EU unilaterally. The Government said they wanted to go beyond that, but there is no hint of going beyond adequacy in the political declaration that has been agreed. Is it still the Government's wish to go beyond adequacy, or has that aim been dropped?



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Stephen Barclay: The UK Government have said that we will unilaterally grant the EU adequacy. The EU at this stage has said that it would look at standard contractual clauses. The political declaration has language on data in it, and a clear recognition of that, because from a business point of view everyone recognises the importance of data flow.

Q3454 **Stephen Timms:** The declaration is clear that it wants to get on with achieving adequacy, and I recognise that, but it does not say anything about going beyond the normal. I just wonder whether that is still the Government's aim.

Oliver Robbins: If I can help with this, there are two areas in which what we have agreed on data protection is extraordinary by the standards of the EU's arrangements with third countries. The first is the mutual commitment in the political declaration, which is very unusual for the EU to have made, to make an assessment of us before we leave the transition period. As you rightly said in your question, certainty in this area is extremely important for a modern economy, and the political declaration moved us a lot further forward in that respect, because we are not subject to the vagaries of the adequacy process after we leave, but there is a strong commitment to undertaking that process before we leave the implementation period.

The second point here, I freely admit, is a slightly more technical point. Paragraph 10 of the political declaration talks about making arrangements for appropriate co-operation between regulators. That sounds very unexciting, but one of the things, as it sounds like you may remember, about the Government's proposals was to try to make sure that the very important and deep relationship between our own ICO and the European data regulators is able to continue. That paragraph allows that conversation to continue and deepen over the next few months.

Q3455 **Stephen Timms:** I am glad you raised that specific point. Will the place of our Information Commissioner on the EU Data Protection Board continue beyond 29 March next year?

Oliver Robbins: That is not specifically provided for here, but that paragraph is an allusion to the fact that we want to continue making that case, and the EU is listening to that case.

Q3456 **Stephen Timms:** Does that mean, as things stand, that place will not carry on beyond 29 March? Presumably there will not be any further negotiation before 29 March. We would hope to get back on it in the future. Is that what you are saying?

Oliver Robbins: Yes, it is the Government's intention that we would continue to participate. Whether it is in the full way we do today or in a more associate way, I am not exactly sure about now, but that paragraph is about allowing that conversation to develop over the next few months.

Q3457 **Stephen Timms:** Right, so on 30 March we will not have a seat on that board.



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Oliver Robbins: As things currently stand, we will not.

Q3458 **Stephen Timms:** On financial services, Secretary of State, you made the point that you were the Minister for Financial Services. What model of financial services equivalence are we aiming for with this political declaration?

Stephen Barclay: I think you raised this in the House. The concern the industry has always had is the 30-day notice and the extent to which withdrawal therefore would gnaw away at certainty. There is, again, language in the political declaration specifically on financial services, setting quite a high aspiration, which has been agreed, as to what our relationship should be on financial services. That speaks to that 30-day concern.

The language in the text has reference to close regulatory and supervisory co-operation. That reflects the fact that the Bank of England and the FCA have always been at the heart of the financial services regulatory approach within Europe. There is a huge body of expertise there. It is in our mutual interest. From a financial stability perspective, it is very important that the UK and the EU are working closely, in particular on the supervisory side. There is language specifically in the text. Olly will have the exact paragraph to hand, I am sure, but the substance of the point reflects is a concern I know you have quite understandably raised, which is the extent to which equivalence could be withdrawn.

Q3459 **Stephen Timms:** The Prime Minister has made the point twice now, I think, in the House, that the agreement means that equivalence will not be withdrawn on a whim. I am not quite clear about the basis for that confidence that it will not be withdrawn on a whim. What can we point to here that gives us confidence around that?

Oliver Robbins: Specifically here the wording is in paragraph 39 of the declaration, where it says, "It"—that is to say, the co-operation on regulatory and supervisory matters—"should include transparency and appropriate consultation in the process of adoption, suspension and withdrawal of equivalence decisions" and various other things. As it sounds like you may well remember, and the Secretary of State certainly will, that is an extremely unusual commitment on the EU's part. As the Secretary of State said, it is because of that deep interconnection between the City, and other UK financial institutions, and the EU capital markets.

Stephen Barclay: To the discussion we had earlier as to the weight of the political declaration, I would sit that language within the wider commitments given through the G7 and the G20 on financial stability and the lessons to be learnt from the 2008 banking crisis. There is, I would argue, a wider international underpinning of the desire for that to work.

Q3460 **Stephen Timms:** This is my final point. Have there been specific



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discussions between EU financial services regulators that underpin the confidence the Prime Minister has that this will not be withdrawn on a whim? I can see that that wording in the declaration could conceivably have been the result of a process of discussion with the regulators. Has it been, in fact, or did the negotiating team just come up with those words, and we will see in the future how they can be made a reality?

Stephen Barclay: It is difficult, because obviously I am new in post in this role, as opposed to my role in financial services, so it is probably more for Olly.

Stephen Timms: I think Olly would know.

Stephen Barclay: There were constraints on what discussions could be had at an earlier stage. There are discussions in other guises, under financial stability et al.

Oliver Robbins: As a very brief answer, given the time, this part of the political declaration was the product of deep expert talks between DG FISMA and a Government team led by the Treasury. It does not come out of nowhere. There is a process of mutual understanding here, which is encapsulated in that paragraph. On your specific point, the Governor of the Bank and the President of the ECB have been running a process together for the last few months. It has been more focused on the cliff-edge risks, but has allowed them also to explore some of these wider issues, I believe.

Q3461 **Seema Malhotra:** Secretary of State, in the document *Taking Back Control* you have the words: "Trade has had, and continues to have, an overwhelmingly positive impact on prosperity". I think that is unarguable as a statement. You have talked about how, "On leaving the EU, the UK will be free to pursue its own independent trade policy beyond the economic partnership with the EU". I do not think anybody here will be seeing our relationship with the rest of the world as anything other than open and outward looking. Can I clarify whether you believe we will be doing better outside the EU, and our EU membership, in trade around the world? How quickly do you think we will be doing better than we currently do?

Stephen Barclay: Do I think we will be doing better? Yes, and I think that is a key part of what Liam Fox's job is about as Secretary of State for Trade. Significant work has already gone on in terms of discussions. There is an appetite from partners to trade with the UK.

Q3462 **Seema Malhotra:** What evidence is there? If I can just quote this, it may be helpful. The Institute of Economic Affairs had done a study. When they came and gave evidence, I put to Julian Jessop that there could be quite a reduction in trade with our main trading partners, which are very close to us geographically, but there does not seem to be any clarity about how quickly we would close the trade gap through trade deals with other countries. He agreed that was a fair point. Would you have the same position?



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Stephen Barclay: In terms of trends, if I can quote one figure, since 2007 non-EU exports have grown from 49% of all UK exports to 56% in 2017. I alluded earlier to the primacy of financial services and services as a whole, and the opportunities that that will bring. There are opportunities there, and a big part of the DIT's work is ensuring we unlock them.

Q3463 **Seema Malhotra:** It sounds like there is no clarity. No modelling has been done that you are comfortable with, as somebody who is making a decision for the Government, on whether we would be doing as well as we currently do or better.

Stephen Barclay: That speaks to the economic analysis we touched on earlier. We touched on the fact that the Prime Minister's deal is the best deal, according to the economic analysis.

Q3464 **Seema Malhotra:** It is the best deal, but not as good as we currently have.

Stephen Barclay: That is taking it in isolation. The point your earlier question alluded to is that one can additionally look at a whole range of other factors would come into play on the economic analysis: demographics, global trends, migration, technology and so forth. One cannot just take these things in isolation.

Q3465 **Seema Malhotra:** Could I ask you this question, then? There are over 60 countries with which the EU currently has other trade agreements. We have been party to developing those trade agreements. Could I just understand, because I was not clear on this, what the position is in terms of maintaining access for British companies to do trade under those trade agreements?

Stephen Barclay: I think there are actually 40 international trade agreements.

Q3466 **Seema Malhotra:** But there are about 60 countries that are part of those trade agreements.

Stephen Barclay: There are 40 agreements, but they cover over 70 countries, which may be the point within it. Obviously we are very keen to ensure that continuity. If your question is precisely where we are on that, for understandable reasons, while the progress has been encouraging and we are engaging regularly, they are confidential, so one cannot say exactly where they are. But there are 40 actual agreements, covering 70 countries. They are a key area of focus, and significant progress is being made.

Oliver Robbins: Can I just add one point there, Secretary of State? Of course, during the implementation period, the two parties are agreed that those third countries ought to be notified that those agreements ought to continue to apply to us as they do, so that is an additional reason why



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our smooth and orderly withdrawal from the European Union is ensured by this deal.

Q3467 **Seema Malhotra:** Is that a guarantee that they will continue to apply? They will have been negotiated on the basis of 500 million-plus, in terms of the market of the European Union. Sorry, Mr Robbins, I just want to clarify if your last comment is a suggestion or a confirmation that they will continue to apply.

Oliver Robbins: It is a confirmation that the European Union, along with us, intends to inform third countries that they ought to interpret those agreements as continuing to apply to us for the period of the implementation period. It is not the same as a guarantee, Ms Malhotra, but it is a strong legal view from the EU, which it intends to be public about.

Q3468 **Seema Malhotra:** “For the period of the implementation period”, so we do not know what will happen after 2020 on these 40-plus agreements covering 70 countries.

Oliver Robbins: The Secretary of State was answering that point, which is what happens after the implementation period. Apologies if it was off topic, but I was just reminding you that, for the next two years, the important thing is that the withdrawal agreement gives us a basis on which to ensure continuity of agreements for that period.

Q3469 **Seema Malhotra:** It is interesting, is it not? Of the UK’s top 50 export markets for goods, according to the House of Commons library—so you may have some slight variation on the numbers—10 are covered by trade agreements that are listed so far. Of the other 40 of our top 50 export markets, 18 are other EU members. That is quite a substantial coverage of those that we trade with, both inside and outside the European Union. It is quite a big risk, is it not?

Stephen Barclay: That is why, as I said earlier, significant progress is being made. There is a lot of work ongoing on that, but obviously they are confidential, sensitive negotiations. But significant progress is being made.

Q3470 **Seema Malhotra:** But you want Parliament to make a decision next week on the basis of a potential future trade arrangement in the political declaration. Yet there is an intention to inform and notify third countries that they should continue to abide by the trade agreements for the period of implementation, but no clarity at all over what is going to happen after transition.

Stephen Barclay: As has already been covered, there is a commonality of interest, in that these are deals that have already been entered into. These are already agreed deals. The EU is aligned with the UK in terms of the signal that it is sending. On top of that, Ministers and officials are making progress on concluding those. There is a significant body of work



on those, but there is a common message from both the EU and the UK on them.

Q3471 Seema Malhotra: As a last point, it almost feels a little bit kamikaze to not have that in place. What message do you really want to give to business? When you are looking at trade with other nations, you want to have greater certainty than what seems to be in play at the moment. If you are looking at, for example, Australia, with which we might do trade agreements in the future, it is less than 2% of our trade either way, between our two nations.

Stephen Barclay: These are agreements the other side has already agreed. These are deals that they themselves want to conclude.

Q3472 Chair: To seek clarity on that, Mr Robbins, as you explained very clearly, the EU is going to notify those other parties: "We would like you to keep treating the UK as if it was in the EU for the purposes of the transition period". Presumably, the UK Government has gone to every single one of them and asked, "Can we just get assurance from you that you have read those words and you are going to treat us as a member of the European Union?" In other words, there is not going to be a problem with any of those. Has that process been undertaken yet? If so, have you had the answers that give you assurance that they will all carry on?

Oliver Robbins: That process has been hard to undertake for either party until Parliament here and the European Parliament on the European side have signalled approval to this withdrawal agreement. We are confident we know what the EU would say, and we are reasonably confident—although, as the Secretary of State said, these conversations by their nature are confidential—that we know how most of those third countries will respond. But it is not possible to do that formally and publicly until we have confidence that this withdrawal agreement is on its way to ratification.

Q3473 Chair: Is that not really quite a big problem, given the point that Seema Malhotra has just raised? Parliament is being asked to sign up to something when, never mind future trade deals with anybody else, we have no absolute assurance that, during the transition, we will continue to be party to the ones we are party to because we have been a member of the European Union, because it is said, until we have voted, the Parliament has voted and it has been ratified, you cannot actually get an answer out of those other parties as to whether they will accept what is the aspiration in the withdrawal agreement and the political declaration. Is that not a rather fundamental problem?

Oliver Robbins: What is very fundamental is that, without approval of the withdrawal agreement and therefore us moving into that implementation period, during which we are reasonably confident about the continuity of these deals, in the process that the Secretary of State has been describing in response to Ms Malhotra of making sure that, in the longer term, we are well equipped to deal with those trading



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relationships beyond the implementation period, we start on the back foot.

Chair: We really have to move on now.

Q3474 **Jeremy Lefroy:** Welcome, Secretary of State. I just have two quick questions. One is on the political declaration. On the assumption that the withdrawal agreement is passed, this is going to be an enormous amount of work, both on the trade treaty and other treaties with the European Union, and on the rolling over of treaties or negotiation of new trade treaties, which Seema has just spoken of. How well equipped are we to do that? In fact, can we take the initiative, rather than waiting for the European Union, because it will be engaged in quite a long period of political change over the next few months, so that we start off, this time, on the front foot?

Stephen Barclay: It is a very good point. First, the political declaration itself, in part 5, with the timetabling it has and the framework it sets, gives a clear direction of travel and a negotiating instruction. What underscores the question is the importance of us getting the governance right within Whitehall. That is something we are looking at, to build on the fact that there are lessons to take from phase 1, but also that phase 2 will be different. For example, we are outside the EU institutions, so that changes the Prime Minister's own action in terms of the EU institutions and those formal set pieces. That is something we are looking at very actively.

Q3475 **Jeremy Lefroy:** Secondly and finally, and I think extremely importantly, can you give from your perspective a vision, a fairly hard vision, of where we will be in three to five years' time, whether it will look as though we have left the European Union, and whether those broad promises—yes, promises—that we made about what we could be doing then will be fulfilled?

Stephen Barclay: Yes, very much so. It is very important democratically to be able to demonstrate that. There are clear aspects of that in this agreement, such as in the skills-based immigration approach, in not sending vast sums of money to the EU, in concluding international trade agreements around the world. Fishing and farming are both issues that are often quoted. Being outside of the CAP and having our own independent fishing policy are clear ways in which this deal demonstrates to the British public that we have delivered on the referendum.

It is also important to recognise that it is a time to bring the country back together after what has been a very divisive period of time. Part of bringing the country back together, part of the Prime Minister acting in the national interest in the way she has, is recognising the fact that we share values with our European counterparts. We are still a part of Europe, even if we are not part of the European Union, and it is important for our businesses to maintain the supply of goods, for society to maintain the security links, and for us to have a close relationship with



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Europe, but one where we are sovereign and able to pursue an independent trade policy.

Chair: I think Seema Malhotra has one very last follow-up, and then that is it.

Q3476 **Seema Malhotra:** Secretary of State, I think you will appreciate that this is such a serious matter in terms of clarity around the trade agreements and what that could mean for businesses in your constituency, as well as mine, that may be doing business under those agreements. Can I ask if you could commit now to making a statement in the next week, so that Parliament can be clear about the policy position in relation to these trade agreements both during transition and after?

Stephen Barclay: We will continue to keep Parliament informed of progress, but, as I have already alluded to, partner countries would understandably view our discussions as sensitive. That has to be balanced. The point I was making to the Committee as a whole is that progress has been made, as Olly has already touched on, in terms of the implementation period. We recognise the importance of the issue. Progress is being made, but they are sensitive as well.

Seema Malhotra: I personally do not think that is good enough.

Chair: You have both been most generous with your time this afternoon. As I said at the beginning, lots of Members wanted to ask lots of questions. We are very grateful you did not have any other meetings you needed to go to, or at least meetings you did not tell us about. We much appreciate that. We look forward to seeing both of you again, I am sure, as this process unfolds. Your evidence has been very helpful. Thanks for coming.