



Select Committee on the European Union

Uncorrected oral evidence: Scrutiny of Brexit Negotiations

Monday 21 October 2019

12.05 pm

Watch the meeting

Members present: The Earl of Kinnoull (Chair); Baroness Couttie; Baroness Donaghy; Lord Faulkner of Worcester; Baroness Hamwee; Lord Jay of Ewelme; Lord Kerr of Kinlochard; Lord Lamont of Lerwick; Lord Morris of Aberavon; Baroness Neville-Rolfe; Lord Ricketts; Lord Sharkey; Lord Teverson; Lord Wood of Anfield.

Evidence Session No. 1

Heard in Public

Questions 1 – 23

Witness

I: Rt Hon Stephen Barclay MP, Secretary of State for Exiting the European Union.

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Examination of Witness

Stephen Barclay MP

Q1 The Chair: Good morning, Secretary of State. Thank you very much for coming along during this very busy period. This is a public evidence session, as you know, and is being televised. We will send you a transcript in short order and will be grateful for any corrections. In view of the fact that we have a lot of questions to pose to you, I hope you will not mind if we go straight in. Perhaps you could give us your reaction to the events of Saturday in Parliament.

Stephen Barclay MP: It was disappointing in that the expectation was that there would be a meaningful vote and, in the end, that did not happen. The legislation had been predicated on requiring the Government to come back with a deal. Many questioned, perhaps, whether the Prime Minister would be able to do so. I think that he has achieved a huge amount in a very short period of time and achieved a deal that addressed the central concern of Parliament in the preceding meaningful votes; that was the issue of the backstop. By making those changes to the Northern Ireland protocol, having a consent mechanism to address the democratic concerns that existed with the previous arrangements, I think he achieved a huge amount in a very short period. The deal is a win not just for the UK but for the EU, which wants to see the UK leave in a smooth and orderly way. It was obviously frustrating for many of us on Saturday that we were not able to have the meaningful vote.

The Chair: Thank you. We are, of course, going to probe many of those issues in greater detail. I wonder whether you can state clearly what happens next. There is a lot of press comment but it would be good to hear it from the horse's mouth.

Stephen Barclay MP: The next issue is that the Speaker will rule on whether a Section 13 Motion can be taken. That will be a decision for the Speaker after defence Questions today at 3.30 pm. Subsequent to that, the issue will be whether the same question can be put. That was touched on in a point of order on Saturday, when the Speaker did not give a ruling. So, the first issue will be to see what ruling the Speaker makes today; obviously, parliamentary business will reflect that.

The Chair: Late on Saturday night, three letters, which I am holding here, were sent. Could you give us some of the rationale behind sending the three letters, as well as, perhaps, an update on any reaction you have had to them from the EU?

Stephen Barclay MP: The first point—as the Prime Minister said, and as I have repeatedly said—is that the Government will comply with the law. The Prime Minister complies with the law. The letter that was sent on Saturday complies with Section 1 of the Benn Act. The Prime Minister has also written to members of the European Council to explain his position. Nothing in that letter undermines the legal validity of the request in the first letter. I think the evidence of that is taken from the response of

President Tusk, who has made it clear that he regards the request to be valid and has indicated that he will consider it.

The Chair: The EU is considering the letters. Could you lay out what you think will happen there? Have you had any reaction from the EU? When do you think it might react and what steps is it taking to consider the letters?

Stephen Barclay MP: These issues are obviously very recent. I am sure that the EU will want to consider its position in light of ongoing developments within Parliament. It is absolutely in order for the Prime Minister to express his view, which has not changed. He has done that and done so while complying with the law. Clearly, Chair, as you are well aware, it is not solely a UK decision as to whether there is an extension. It is a decision that requires the unanimity of all EU heads of state. I am sure it is a decision about which they will think very carefully. It is not one for me to second-guess.

Q2 **Lord Wood of Anfield:** What happens if the Speaker does not allow the vote? What is the plan?

Stephen Barclay MP: We will cross that bridge in due course. We hope that the Speaker will enable the House to have a meaningful vote. It is, after all, the House of Commons that passed the legislation to require a Section 13 vote. Therefore, having put in place the legislation to require a meaningful vote, it seems odd if, having secured a deal, you do not have a meaningful vote on the Prime Minister's deal. The hope and expectation in government, having secured a deal, is that the House will give its decision on the Section 13 meaningful vote, but that is a matter for the Speaker to determine.

Lord Wood of Anfield: Irrespective of what the Speaker decides, do the Government plan to introduce the withdrawal agreement Bill today? Could you say a little about what will be in it?

Stephen Barclay MP: As these things are moving at a very quick pace, we will take one step at a time. Clearly, as you are well aware, Lord Wood, in order to ratify the deal that the Prime Minister has reached, the law as it stands requires a Section 13 meaningful vote but it also requires the legislation to be passed in the form of the withdrawal agreement Bill. As we touched on at our previous session, that is a significant piece of legislation and we have a finite amount of time before 31 October. Within government there is a desire to get on to that. Many of the issues have been considered and debated considerably in both Houses. But the first issue is to address Section 13 today.

Lord Wood of Anfield: I have one last small question on this. With regard to the process, it has been widely commented that the amount of time that Parliament has will be quite compressed compared with major Acts in the European field such as Maastricht. What is your thought on that? Also, what is the Government's general approach to a problem that may well emerge, that amendments to the withdrawal Bill may conflict

with the treaty signed in Brussels last week?

Stephen Barclay MP: It is the case that the Maastricht Bill, with which some colleagues around the table will be very familiar, was introduced as a three-clause Bill, amended to eight clauses, and took over 400 days of parliamentary sittings. I am sure that many around the table remember that period extremely well.

We have seen, in particular with the Cooper legislation and the Benn-Burt legislation, that this House of Commons is willing to expedite business where it is seen to be in the interests of the House to do so. There are many within Parliament who are concerned about the consequence of no deal. The Chair touched in his opening remarks on the fact that any extension would require the agreement of the EU, so there is no guarantee in respect of any extension.

We have secured a good deal, which addresses the central concern that Parliament had, and we are mindful of the fact that many issues are for the future agreement. The current issues are just the winding-down provisions, and large parts of the withdrawal agreement have been accessible since last November and debated repeatedly in the House since then. It is therefore our expectation that the House can move quickly to implement that legislation.

Lord Wood of Anfield: What if there is a conflict between the amended Bill and the treaty?

Stephen Barclay MP: We are committed as a Government to leaving on 31 October. As I said, the House of Commons has moved quickly on other legislation. The debate is so often through the prism of the UK, but we have to keep stock of the fact that this has to be ratified in the European Parliament as well, not only in the UK Parliament. We need to move in order to do that.

Q3 **Lord Lamont of Lerwick:** I wonder if I could press you on the consequences of the Letwin amendment. One theory is that some people who voted for it were doing so very much to get their hands on the withdrawal agreement rather than on the voting principle. Getting that positioned led to Section 1(4) of the Benn Act, which includes the Kinnock amendment. The suggestion is that, having passed the Letwin amendment, this is actually a way of getting a customs union into the WAIB. Is that correct or incorrect?

Stephen Barclay MP: There are aspects of that and there are aspects of a second referendum being a potential amendment that some will seek to impose through the withdrawal agreement Bill. I point colleagues to, for example, the remarks of Sir Keir Starmer on "The Andrew Marr Show" on Sunday, where he made it clear that that is the intended approach of the Official Opposition.

Lord Lamont of Lerwick: Is it the effect of the Letwin amendment in any way?

Stephen Barclay MP: Amendments can be put through the withdrawal agreement Bill, and I am sure that those amendments will be sought. The House has already voted, through the indicative votes process, on a range of issues and those issues have been rejected. However, it is quite clear that the original intention of the Benn legislation was to do with concerns from some colleagues that the Government were not serious about their negotiations. That is how it was presented to the House when it was argued that the House should support the Benn legislation—on the basis that the negotiation was a sham and that the Government were not serious and were rushing headlong to no deal. Self-evidently, those claims were false. The Prime Minister has secured a deal that has been agreed with the EU 27. What we saw through the Letwin amendment was a moving of the goalposts from presenting the Benn legislation as being about concern over no deal to shifting it to say, “Well, we won’t have a meaningful vote anyway; we will still require an extension because now the concern is less about no deal and more about wanting more time to scrutinise the withdrawal agreement Bill”.

Lord Lamont of Lerwick: But how do you remove the Kinnock amendment?

Stephen Barclay MP: When the withdrawal agreement Bill is presented, people will be free to table amendments, and the Kinnock amendment can be part of that, but the point worth remembering about that amendment is that Stephen Kinnock voted against the deal three times. His amendment is to put back Theresa’s deal, the previous deal, but he voted against that three times. It is a further indication of the concerns many have that some of these changes are driven less by a desire to amend the deal and more by one to stop Brexit entirely. That is certainly what the Opposition are trying to do, particularly with the second referendum amendments.

Q4 **Lord Faulkner of Worcester:** How much thought have you given to the processes of the House of Lords in the passage of the Bill? There is no question of this House rejecting it or passing what would effectively be killer amendments, but it is quite likely that amendments will be carried in this House that will require the Commons to reconsider. Have you built that time into your timetable, also bearing in mind that many Members of this House, I suspect, will not feel as bound by the 31 October timetable as the Government are in the Commons?

Stephen Barclay MP: It is obviously a very valid point given the time that there is, but against that I would say that we have already had two extensions. It is now I think 1,214 or so days since the referendum. We have debated these issues at length in both Houses. Their Lordships have expedited legislation such as the Cooper legislation and the Benn legislation, and many of these issues have been debated at length in both Houses. As I said in response to Lord Wood, many of the issues around the withdrawal agreement have been debated at length. It is the case that when we come away from the winding-down arrangements on to the future arrangement, there are some material issues about the roles of both Houses—how those will be reflected in such questions as setting the

mandate, what framework negotiators will be working to, how the interests of the devolved Assemblies will be captured within those future discussions and so on. There are a lot of material issues to be debated, but they are on the future trading arrangements. The withdrawal agreement and the political declaration form a treaty that we have agreed with the EU 27. The issue now is how we have the mechanism to implement it, notwithstanding the fact that I am sure that there will be large numbers of amendments because the scope of the Bill is extremely wide.

The Chair: It is worth pointing out to those watching that Lord Faulkner is an extremely long-serving and well-respected Deputy Speaker of this House, so his question has a very serious point behind it.

Stephen Barclay MP: One thing that is always daunting about coming to this Committee is that, whether it is Lord Jay or former Chancellors, whichever topic we cover there is usually a huge amount of experience, including that of Lord Faulkner.

The Chair: We are about to come to Lord Jay. I should say that in 2016 Lord Jay commented, as we finalised our first report on Brexit, which was on the island of Ireland, "This is the first report that we are making and it will be the last issue that we consider in this process as well".

Q5 **Lord Jay of Ewelme:** Thank you very much, Lord Chairman. Some of us who spoke on Ireland before the referendum are not in the least surprised that it is the most difficult issue at the end. I want to ask one of two questions about that, and there are a number of other questions on Ireland that others will want to ask. Could you summarise the main changes that have been made in the revised text of the protocol on Ireland and Northern Ireland and give us some indication of the rationale for those changes?

Stephen Barclay MP: There is a lot of technical detail that I know you are close to, Lord Jay, which the Committee may want to explore. The overarching change to which I would draw the Committee's attention is the provision of consent. Then we get into the detail of the scope of the joint committee on issues such as VAT, how tariffs will apply to a range of goods and some of those detailed arrangements. What is fundamentally different around arrangements in the Northern Ireland protocol as the Prime Minister has negotiated it is that he has changed the incentives on the EU compared with the previous deal. On the previous deal, the concern in the House of Commons was that the backstop would be used as a trap—the "unless and until". With the backstop, there would be little incentive for the EU, so the concern was that that would be used as some sort of leverage into the future trade negotiation.

The difference with putting in a consent mechanism with a time limit of four years—as you well know, it is quite unusual for the EU to agree that sort of exit-mechanism link to consent—does more than simply give the Northern Ireland Assembly a say four years hence. What it does, which is much more significant but has been largely underreported, is create a

shared incentive to minimise any burdens and impacts, because the EU will know that the Northern Ireland Assembly will be voting on this, so there will be an alignment on both sides in coming to the most pragmatic and lowest-friction outcomes.

Lord Jay of Ewelme: Are you completely confident that this new arrangement will in fact remove what was seen to be the problem with the backstop—that is, that it could continue indefinitely? Is that in your view now completely gone as an issue?

Stephen Barclay MP: The central concern in Parliament in the debates that we had was about the indefinite nature of the backstop. You will recall paragraph 19 of the Attorney-General's advice, where a change was secured by the previous Prime Minister in Strasbourg relating to the EU acting in bad faith, but I do not think most people around the Committee thought that was the way that the EU would operate in any regard. The concern reflected in the Attorney-General's advice was if both sides acting in good faith simply could not come to an agreement on the future relationship. In that instance the Attorney-General's advice was clear, in paragraph 19, that the consequence of that could be that the terms would be indefinite. That concern about the backstop being indefinite even if the EU were acting in good faith is what was central to why the House would not pass it. It is a hard test, as you know, to prove that someone is not acting in good faith.

That is why what was significant about the letter of 19 August from the Prime Minister to President Tusk was the narrowing down of the issues on which the Government focused in the negotiation, so that it was not simply about replacing the entire Northern Ireland protocol—for example, the single electricity market, the common travel area and north/south co-operation were not within the scope of that negotiation—but sought to address the backstop specifically. What was at the heart of that was, first, the indefinite nature of it, the lack of consent and the democratic issue there. Secondly, there was the concern that the Good Friday agreement, in which some around the table were key players, was built on the fact that it needed the consent of both communities. It was clear, not only from the DUP but from other prominent voices within the unionist community, that there was a wider concern with the backstop as it was constituted.

Lord Jay of Ewelme: As befits a former civil servant, can I ask two rather more procedural questions? The first is about the specialised committee on the protocol on Ireland/Northern Ireland. What role will it have and how will it operate in practice?

Stephen Barclay MP: The joint committee will have a balance of representation from the UK and the EU.

Lord Jay of Ewelme: The specialised committee—the one on Ireland.

Stephen Barclay MP: The one on Ireland will have membership from the UK and the EU. This is distinct from the arbitration panel, which you are talking about.

Lord Jay of Ewelme: I am talking about the one mentioned in Article 14 of the protocol: the specialised committee or “The Committee on issues related to the implementation of the Protocol on Ireland/Northern Ireland”.

Stephen Barclay MP: That committee will look at several things. For example, it will look at the scope of products that would fall within the tariff schedule: if you had goods coming from GB to Northern Ireland to be used solely in Northern Ireland, tariffs do not apply. One example would be that if a supermarket such as Tesco could show that the goods coming from GB are for those stores in Northern Ireland, no tariffs would therefore apply because it is within the single customs area. Where the committee will want to look at things in more detail is if goods going into Northern Ireland were then going on to the EU, perhaps into products there. A good example of the differentiation might be where goods go into a restaurant in Northern Ireland and are, self-evidently, to be sold to customers of that restaurant. If, on the other hand, those same products are going into a ready-meals factory, which then exports those ready meals as goods into the EU—principally Ireland, in this instance—the joint committee would give guidance on that issue.

The other area where that committee would give guidance is on issues such as VAT, where again there is a specific duty within the text for it to have consideration of the impact on Northern Ireland’s place within the United Kingdom. Perhaps the best illustration of that is VAT on sanitary products, an issue on which the House of Commons has made it clear that it wanted to remove VAT. At the moment, generally speaking the rule within the EU, as you know, is that you cannot go below 15%. Ireland has 0% on them, therefore there would be scope to get rid of VAT on sanitary products—usually referred to as the tampon tax—not only within Great Britain; you would also be able to do so within Northern Ireland as part of that UK approach. Those would be the issues that the committee would look at.

The Chair: Before Lord Jay comes to his final question, perhaps I might say one thing and ask Baroness Hamwee to come in. It is quite a technical and complex question as to what the specialised committee will do. Perhaps you might be able to write to us afterwards on that topic as well.

Q6 Baroness Hamwee: You said that it would be self-evident that products going to a restaurant would be used in that restaurant. Given the history in Ireland of what happens with purchases of fuel on one side and the other of the border, is it not perhaps going to be less than self-evident? I think the term “products at risk” is used. I am having a bit of difficulty in understanding how, in practical terms, this will operate. I am not being suspicious of people on either side of the border, and please do not take this as Irish-ist, or whatever.

Stephen Barclay MP: Obviously there is smuggling today, even with the current arrangements. I was drawing a distinction between the areas where it will be clear cut and the areas on which the joint committee will need to give guidance. For example, if one looks at the tariffs aspect there will be certain areas, particularly for larger businesses, where it will be self-evident that the goods going from GB to Northern Ireland are for the purpose of the market in Northern Ireland—hence my example of a major supermarket, where its supply chains and data will make that clear. It will be for the committee to provide guidance on those areas where, for example, goods are components of a different product. The question is then: is that product being sold in Northern Ireland or within the EU? That is where the joint committee would need to look at it.

Baroness Hamwee: So would some sort of inspection regime be in contemplation?

Stephen Barclay MP: It will be for the joint committee to set that out but the way this will work is to ask which are the products that carry risk. If one takes a step back, 50% of the goods that come in from third countries have no tariffs on them at all. So you have 50% which are tariff free and, generally speaking, any tariff below 3% is generally seen as not worth shifting supply chains for, because the burden on business outweighs the benefit in tariffs. The joint committee will segment which the goods are where there is a risk in terms of the single market. That is about addressing the legitimate concerns the EU has about the integrity of the single market.

The questions for the committee will be: which are the goods where there is a risk of that, and which are those where it is clear cut that there is none? Within the goods where there is a risk, is it clear that they are being sold to the market in Northern Ireland or is there a leakage onwards? Are the goods going into components with others or not? Proportionality-wise, there are exemptions depending on the size of the business concerned and what, in practice, the risk is to the single market as a consequence.

Baroness Hamwee: So essentially there will have to be a balance between, if you like, self-declaration and objectivity.

Stephen Barclay MP: I come back to the point that I made earlier: on the detail of the way in which the joint committee works, what is different about these arrangements is that there is a strong interest for the EU to make this work in the most proportionate and pragmatic way because it is subject to consent by the Northern Ireland Assembly at the end of four years. If you had a system that was proving cumbersome to businesses, that would clearly impact on the willingness of the Assembly to grant its consent.

In many instances, to take supermarkets as an example, within their businesses they already track where the food goes. This is not an additional cost in terms of their ability to know what products are being sourced from where, and where those products are going. I think that

Tesco has around 70 stores in the Republic of Ireland, so it already tracks what is going to one as opposed to the other. But before one gets into all the detail on this, the wider point is that the EU will have an interest, aligned with that of the UK, of minimising that impact on businesses in Northern Ireland—when we get into that detail—because of the consent mechanism that stands at the end of four years.

- Q7 **Lord Jay of Ewelme:** I have one final question. The withdrawal agreement also establishes a joint committee which can, as I understand it, propose changes to that agreement. What would be the parliamentary scrutiny involved for that? If the joint committee proposes that there should be some changes in relation to Ireland or something else, does that come to the House of Commons or the House of Lords, and in what form? What would be the parliamentary scrutiny?

Stephen Barclay MP: First, the EU does not have a majority on that so it is not that the EU can come along and make changes. We would overrule. Secondly, with the arrangements that will apply to Northern Ireland, regardless of where they land there will be a consent mechanism, which means that ultimately the Northern Ireland Assembly will be in control of those arrangements.

Lord Jay of Ewelme: I am not talking just about Northern Ireland. As I understand it, the joint committee mentioned in the withdrawal agreement can cover all aspects of that agreement. It might decide to change any aspect of the withdrawal agreement and if it does so, in what form would that then come to Parliament?

Stephen Barclay MP: One of the issues with the withdrawal agreement Bill—this is part of the debate that people such as Bill Cash have been having through the European Scrutiny Committee around changes more widely—is about what scrutiny the House has. Without pre-empting the commitments that will be given as part of the passage of that Bill, we are very aware of the risk to which you allude. Parliament will want to scrutinise that and ensure that there is the right consent. Colleagues around the table who know Mr Cash will know that he takes a close interest in ensuring that Parliament scrutinises. In the passage of the Bill, we will ensure that there are the right mechanisms for parliamentary oversight for any changes done by the joint committee. The other mitigation for the joint committee is that it will be jointly chaired, and chaired by a Minister, so there will be ministerial accountability for any decisions that the joint committee takes.

- Q8 **Baroness Couttie:** Businesses across the UK that trade with Ireland and Northern Ireland, as well as those in Ireland, will be looking at this and trying to work out practically what it means to them. Could you set out how you see the practical implications, not just for big businesses such as Tesco but for small businesses as well?

Stephen Barclay MP: The first thing that I would say is that we have the implementation period until December 2020, which buys time for further consultations with businesses. One of the things that gets slightly

lost in the debate is that people talk about the deal as if it is a free trade agreement or the whole of Brexit, when it is actually just the winding down arrangements.

Baroness Couttie: I fully realise that we are only at first base.

Stephen Barclay MP: So, there will be time. Whereas the backstop was designed to fall away—it was an insurance, and not part of the future arrangements—the advantage of the Northern Ireland protocol is that it can form part of the future arrangements. The key thing to say first is that we will have the implementation period. That will enable businesses in Northern Ireland to have time to prepare. The second thing is that the deal safeguards the frictionless flow of goods with the Republic of Ireland. When I went to the border I was looking, for example, at a concrete factory which fills half the lorry on one side with concrete and half on the other side with insulation, because one is heavy and one is light, one is bulky and one is not. For those businesses, again, the deal addresses the key issues of concern. Thirdly, you come to what is probably at the heart of your question: at the end of 2020, what is the level of impact on business?

Baroness Couttie: What do they actually have to do? Do they have to register somewhere or have special tracking devices that will be specified? What do they need to do as businesses?

Stephen Barclay MP: First, businesses already quite often have to do some sort of documentation, not least because of the single epidemiological unit that is the island of Ireland. There are already some controls there. The question would then be: do the goods that they are moving have a risk of leakage into Ireland? Where one assumes that the answer is no—because they are Northern Ireland businesses and, as you know, three or four times more trade is from Northern Ireland to GB as opposed to Northern Island to the Republic—in that instance, they will be tariff free and therefore the impact will be minimal.

Baroness Couttie: So there is no need for them to have some sort of central monitoring, or systems by which the goods that they are transporting are electronically tagged. It is just for them to self-declare what their goods are doing.

Stephen Barclay MP: As I say, first, it depends whether there is a risk of leakage with the goods. If there is no leakage, there will be no tariffs to pay. There will be a minimal declaration regarding which goods are being moved, but there is already a degree of that with current requirements. There will be no tariffs because these are GB to Northern Ireland goods and no tariffs will apply.

Baroness Couttie: There are two impacts here. One is tariffs and the other concerns the administrative issues that may go with that.

Stephen Barclay MP: The key, as I touched on earlier, is that the EU will be incentivised to work with the UK to minimise any of those

requirements because all these arrangements will be subject to a consent mechanism.

Baroness Couttie: Have you at this stage done any economic assessment on what the impact will be on Northern Ireland businesses?

Stephen Barclay MP: Particularly around small and micro firms—which are where these things tend to have more impact—again, the deal allows for exemptions so that they do not fall within the scope. The modelling will also be shaped by which goods fall within the scope of tariffs applying. If there is commercial processing, there will be a risk of leakage into the EU. If there is not commercial processing on goods, or the goods are not on-flowing, they will be exempt. Within the deal there are mechanisms to rebate and mechanisms to exempt, to reduce the impacts for small and micro businesses. The question then comes more to whether there is onward flow into the EU.

Baroness Couttie: Will we see at some point some sort of economic assessment of the impact, whether small or large, on businesses in Ireland?

Stephen Barclay MP: Modelling that will be shaped by where the guidance comes from the joint committee. Those would need to sit in parallel.

Baroness Couttie: Will we see an assessment some point? We would like that.

Stephen Barclay MP: I expect so, yes.

Baroness Couttie: The final point is that, as far as I understand it, Northern Ireland can benefit from any trade deals that the UK enters into. How does that work practically with its dual arrangements with the EU?

Goods from around the world will be coming into Northern Ireland on low or zero tariffs and indeed, potentially, with different specifications. How do the practicalities of that work with the protocol that we now have with Northern Ireland, with the risk of leakage and all of that?

Stephen Barclay MP: First, as Northern Ireland is part of the UK customs territory, it will benefit from those trade deals. Secondly, there is specific guidance where there is any distortion between, say, a business within GB compared to Northern Ireland; state aid rules allow for consideration to be given, so there is a flexibility from a state aid perspective. Businesses in Northern Ireland will get the benefits of UK trade deals. Goods going into Northern Ireland will need to address any regulatory issues. Perhaps part of your concern is around what happens if goods coming in are below the regulatory standards; there is a clear reciprocal commitment in the political declaration to high international standards. The Prime Minister has been very clear that one thing he is keen to do is to ensure that we have high standards as opposed to some sort of race to the bottom.

Baroness Couttie: Given that there may be high but different regulatory standards, does that mean we may potentially be looking at equivalence rather than achieving those standards in exactly the same way as the EU, to allow for trade in goods from countries outside the EU that may have different ways of achieving the same standards?

Stephen Barclay MP: That sort of balancing of differences in the regulatory standards between the two were part of the discussions in TTIP and are quite normal within trade discussions. On things like that, it is much more about the outcome of any level playing field.

Baroness Couttie: That is where equivalence comes in.

Stephen Barclay MP: Absolutely, rather than marching in lockstep. Already, in the political declaration, there is a recognition of the need to observe high international standards. We may get into a debate around the shift from the withdrawal agreement to the political declaration, in relation to the level playing field. From a UK point of view, we are saying, "Let us reflect that the aspiration is a best-in-class free trade deal". If you look, for example, at CETA, it is quite normal to have level playing field commitments within free trade deals, but it should be the UK that designs those so that they are bespoke to the UK market rather than necessarily designed for what the EU 27—28 while we are still there—need. It is also worth flagging the interplay with state aid. When decisions are taken, state aid specifically allows the UK Government to take on board any disruption to Northern Ireland vis-a-vis the rest of the UK.

Q9 **Lord Wood of Anfield:** I have two questions on the Great Britain/Northern Ireland border—the relationship, I should say. Will Northern Ireland businesses have to complete export declarations if they send goods to Great Britain under these arrangements?

Stephen Barclay MP: I apologise; I was just getting a note saying I have a UQ to answer this afternoon. Forgive me.

Lord Wood of Anfield: That is okay. Under your proposals, will Northern Ireland businesses that trade with Great Britain have to complete export declarations?

Stephen Barclay MP: If they are moving goods to Northern Ireland, they are not exporting.

Lord Wood of Anfield: No, from Northern Ireland to Great Britain.

Stephen Barclay MP: From Northern Ireland to Great Britain? No. We have said, in terms of from Northern Ireland to GB, that it will be frictionless, so no, they would not be exports.

Lord Wood of Anfield: Even though I believe the *Union Customs Code* says that when they leave the customs union, goods have to complete these declarations?

Stephen Barclay MP: I would have to come back and write to you on that. My recollection is that there are not requirements coming from Northern Ireland into GB.

Lord Wood of Anfield: In the event that we cannot negotiate a free trade deal with the EU without paying tariffs, does that mean that tariffs will appear at the Great Britain/Northern Ireland border as well?

Stephen Barclay MP: No. The whole point of being part of one customs union is that there are no tariffs between the UK and—

Lord Wood of Anfield: Imagine that we end up not being able to secure a no-tariff free trade deal with the EU. What will happen at the border?

Stephen Barclay MP: The whole aspiration, and what has been agreed as part of the deal is what we are aiming for, is a zero-tariff arrangement. That is what we are aiming to deliver.

Q10 **Baroness Donaghy:** I am going back to VAT, although quite a lot of these areas have been covered. You referred to the political declaration. I wondered if you would like to expand a bit on the reference to VAT co-operation and combating VAT fraud. Have the Commission's concerns about a VAT fraud been alleviated?

Stephen Barclay MP: One of the big changes on VAT is that in the previous protocol there was virtually no guidance on VAT; in fact there was not any guidance at all to the joint committee. One of the significant changes here has been the guidance and the fact that the UK will be responsible for the application and implementation of that. In terms of the revision of Union law listed in annexe 3, there is an agreement to discuss it in terms of implementation with the joint committee. So there has been significant progress compared to where the previous protocol was, which had no guidance on VAT as opposed to what is in the current guidance, particularly the point that I was alluding to a moment ago in terms of the requirement to take on board any impact between Northern Ireland and the rest of the UK.

Baroness Donaghy: I want to ask a general point about this. I return to the point made by the noble Lord, Lord Faulkner, that it is this kind of detail that the House of Lords tends to get into in committees. I appreciate what you said about the other two Bills that went through speedily, but they tended to be more about process than about the content of what will be a massively significant Bill. I wonder whether there has been a realistic assessment about how long the Lords may need to do justice to this Bill.

Stephen Barclay MP: The distinction that I would draw on this is that what both Houses are being asked to consider is the agreement as reached with the EU—that is, the withdrawal agreement and the political declaration. On the future trading agreement, which is partly why the business community sought an implementation period, the debates are still to come. Your House will have between the ratification of the withdrawal agreement and December 2020 to have multiple debates on

these issues and on how the joint committee and others are operating. The issue in terms of what has been agreed is the principle that the joint committee will consider reductions and exemptions to VAT so that the UK can reduce VAT on Northern Ireland. Those are the principles that have been agreed. In terms of the future arrangement, obviously the mandate that has been given to negotiators and how that operates and moves forward is still to be done between now and December 2020.

Lord Lamont of Lerwick: I wanted to ask a question that I know Lord Kerr—if he were here, which he is not—would have wanted to ask. Actually I think I know the answer to the question, but for Lord Kerr's purposes: are there any circumstances in which the Irish rate of VAT would be levied in Northern Ireland on things like distance sales or sales over the internet? Lord Kerr was concerned about whether the Irish Sea might become a VAT border as well.

Stephen Barclay MP: The point is that there is scope to align down below 15% if the Irish rate is lower. That is why I use the example of sanitary products, where the Irish rate is at 0%. It is also then in terms of what is the UK rate, and that is what will be applied.

I would like to come back to Lord Wood, who asked a very fair question on declarations. Just to be clear, the exit summary declarations will be required in terms of Northern Ireland to GB.

The Chair: That is a helpful clarification.

Q11 **Baroness Hamwee:** I think there is a split here with the questions about possible bureaucracy asked by Baroness Couttie. You said that one has to be particularly concerned about the micros and SMEs. You have answered questions about bureaucracy, and thank you. I want to ask about what I understand still to be the position: that businesses may find themselves having to make payments and then seek reimbursement from the UK. I think that that is the position if I have understood the arrangements correctly. Is there going to be a cash-flow issue for them? I know we are digging into small things but, as Baroness Donaghy says, this is the sort of thing that the House of Lords may well take longer than until December 2020 to investigate.

Stephen Barclay MP: There are two mechanisms that apply. There are both exemptions and rebates. Particularly for small firms, one would look to exemptions so that there was not a bureaucracy and an impact in terms of cash flow.

Baroness Hamwee: If they are not exempt, there could be the position of making a payment and then seeking reimbursement and a delay between those two, so we should understand that they could be subject to some sort of cash-flow issue.

Stephen Barclay MP: Hence why both options are there. There is the option of exemptions but there are also rebates. You are right that if there was a requirement to pay up front, that would have a cash-flow impact. But in any event that is only on those issues within scope. As I

touched on earlier, 50% of goods coming in are tariff free. A significant proportion are then below 3%. Those that are going purely to Northern Ireland will be out of scope as well. The question then is how you apply the exemptions and the rebates.

Lord Morris of Aberavon: Secretary of State, the present VAT system is heavily reliant on self-declaration. Will there be oversight machinery to ensure that returns are properly made? I have some experience professionally of heavy lifting machinery being imported from the Republic of Ireland to Northern Ireland and then to England, thereby—allegedly—escaping any VAT at all. The new arrangement is more complicated. Generally VAT works and is a fairly easy way of raising money for the Exchequer but, to come back to Baroness Donaghy's question, is the Commission satisfied that fraud will be adequately, properly and fully dealt with in the new arrangement?

Stephen Barclay MP: That is why the new arrangements have been crafted as they have been. What is at the heart of your question is a very legitimate concern on the EU side about whether you would have arbitrage where there were different rates. That is why, on the one hand, the VAT regime is administered by the UK. In terms of VAT rates in Northern Ireland, there is scope to reduce them where that aligns with Ireland, such as in the sanitary products example. There is also scope for exemptions and flexibility where there is an issue in terms of the rest of the UK, so HMRC will have greater freedom in how it then applies any exemptions. The joint committee will review the terms of how this will apply as part of its remit.

Lord Lamont of Lerwick: Are you saying that there is a difference between the reduced rate in Northern Ireland and GB? How would that be policed? Would it be in the middle of the Irish Sea?

Stephen Barclay MP: Under the new protocol, the UK can apply reduced VAT rates or exemptions to the supply of goods taxable in Northern Ireland, in order to align with where Ireland is, so that there is consistency on the island. Then, from a state aid rule point of view, it can also look at any distortions within the UK.

The Chair: Thank you for that. We move on to the final question set on the Irish issues.

Q12 **Lord Faulkner of Worcester:** This goes back to political stability in Northern Ireland as a result of recent events. Do you feel that the opposition of the unionist parties puts the sustainability of this agreement in jeopardy? What does it do to the confidence and supply agreement in the House of Commons with the DUP for the rest of this Parliament?

Stephen Barclay MP: On the issue of consent in Northern Ireland the concern that the EU had, and I think others within Northern Ireland had, was about the principle that one body within the Northern Ireland Assembly would have a power of veto. The question that has been raised is whether this amounts to a change that should have the double consent

mechanism. The Government's view is that these are reserved matters relating to international relations; they are issues about our relationship with the EU and therefore not within the scope of the Assembly under the terms of the Good Friday agreement. These are reserved matters for Westminster. Given that Brexit is happening by a majority vote of the British public—52:48—we therefore feel that it is reasonable to have a vote, as set out in a unilateral declaration, which is by a majority of the Assembly Members. If not, you would in essence be giving a veto to one side or the other.

Lord Faulkner of Worcester: Is it not the case, though, that the DUP was certainly under the impression that that was exactly what the Prime Minister had offered it before he went back to Brussels?

Stephen Barclay MP: That was a concern that, for example, Nigel Dodds raised in the Chamber based on the letter of 2 October. The third or fourth bullet in that talked of having a consent mechanism—it was the fourth part of it. That letter was talking about the fact, going back to the earlier conversation with Lord Jay, that the concern with the backstop was that rules would apply in Northern Ireland over which people in Northern Ireland did not have a say. The proposal for a regulatory zone was therefore to address the concerns of the Irish Government, and the EU more widely, on regulatory alignment and having the flow of goods north-south. They used to talk about being not wedded to the backstop but having, through tests, the integrity of the single market and the Good Friday agreement, the third point being the all-Ireland economy and the regulatory impact there. The regulatory zone was addressing particularly that third point. The point is that it then opens a democratic issue: it means that regulation is applied without the consent of people in Northern Ireland, so having a consent mechanism was the vehicle to address that. The question then is whether you do this in a way that gives a veto. We do not think that is appropriate because these are reserved matters dealing with international relationships. They are not within the scope of the Good Friday agreement.

Lord Faulkner of Worcester: What happens if the Assembly never gets going again—never reconvenes properly?

Stephen Barclay MP: First, one of the impediments to the Assembly getting going has been the uncertainty around this issue. One of the things that I hope will unlock that is to get resolution on Brexit because that has been an impediment. Secondly, on getting the Executive going, there are other aspects of this package that we have not touched on. There is a new deal for Northern Ireland, addressing the Prime Minister's desire to level up all parts of the United Kingdom. Again, we hope that that will be beneficial to all parts of the community in Northern Ireland, with the challenges that are there. In the event that the Assembly is not in place, we have said that we will have a mechanism to consult the Assembly Members in any event. Assembly Members are still being paid, even though there is a debate about whether it should sit, but the unilateral declaration makes it clear that we would then put in place an

arrangement to ensure that we could get a decision from Assembly Members.

The Chair: Thank you. I am sure we would all say that after 1,000 days of the Assembly not sitting, it should get together as soon as possible. We move from Northern Ireland and Ireland to the political declaration.

Q13 **Lord Lamont of Lerwick:** I have a couple of questions. The first is about rules of origin. New paragraph 22 refers to "appropriate and modern accompanying rules of origin". We all know what rules of origin are; the question is what is meant by "appropriate and modern". What exactly do the Government have in mind?

Stephen Barclay MP: The protocol does not create any rules of origin requirements, but it does provide that tariffs would apply where there is a risk that goods might move on to the EU by themselves, as part of other goods, so the joint committee will agree the conditions of this and what the risk is. Part of it will be for the joint committee to assess whether there is a risk in terms of the rules of origin.

Lord Lamont of Lerwick: But there will be rules of origin under a free trade agreement, surely.

Stephen Barclay MP: Yes, but the question for the committee will then be: what is the risk of their leakage into the EU as a whole? Northern Ireland will benefit as part of those trade deals and the goods will have access—

The Chair: We have now moved off Northern Ireland and arrived at the political declaration.

Stephen Barclay MP: Sorry, I thought that Lord Lamont was back asking about Northern Ireland.

The Chair: Lord Lamont was asking you about some paragraphs in the political declaration, so perhaps he could pose his question again.

Lord Lamont of Lerwick: I was referring to paragraph 22 of the political declaration, which, as I said, refers to "appropriate and modern accompanying rules of origin". I wondered if that is all there was, or whether there was any thought as to what "appropriate and modern" meant.

Stephen Barclay MP: This is part of the negotiation that is still to come and will be part of the discussion that we have as part of that trade deal.

Lord Lamont of Lerwick: So we do not at this stage—

Stephen Barclay MP: We have not defined that at this stage, no.

Lord Lamont of Lerwick: We do not know about thresholds or accumulations.

Stephen Barclay MP: Not as yet, no.

Lord Lamont of Lerwick: My second question is about paragraph 77 of

the political declaration, which refers to the “Playing Field for Open and Fair Competition”. Could you comment on the changes that have been made from the previous drafting, which are quite significant?

Stephen Barclay MP: The key change there in paragraph 77 is, first, the commitment to high international standards. The Prime Minister has always been clear on that. If one looks at, for example, the Queen’s Speech and the commitment on environmental standards that was given, with an independent body to oversee them, or at the areas where the UK already goes beyond the EU—whether that is on parental leave or maternity rights and so forth—then the UK has a commitment to high standards. But those need to be part of a reflection of the level of access that comes in a future trade deal. There is always a trade-off between market access and regulatory commitments. The key issue in paragraph 77 is the word “commensurate”. It says that the commitments that are given will be “commensurate with the scope and depth of the future relationship”. It makes a commitment to uphold common high standards and includes a specific reference to the Paris agreement. That is reflective, as I say, of wider government policy on things such as the environment, but it should be commensurate with the level of access to the EU market.

Lord Lamont of Lerwick: Is the key point here, from the Government’s point of view, that the change has been made as a sovereignty issue? It is about having the freedom of choice; it is not indicating what it will do but it says whether we go up or down—the intention is to remain high—it is to have that choice.

Stephen Barclay MP: Yes, 100%. The whole point is that the UK will have control. That is why I touched earlier on the outcome that is sought. It is normal—as you well know, Lord Lamont—that commitments are made on regulation in free-trade agreements and international agreements. But if I take the Committee back to quite a well-known slide that Task Force 50 produced—it was called the staircase slide; Lord Jay knows the one I refer to—what it was driving at was that the level of access is linked to the level of commitment. But as you correctly identified, the crux of that point is that we will have control over it as a sovereign country.

What has been somewhat misrepresented in some of the media comments over the last 48 hours is the sense that, because this has moved from the withdrawal agreement into the political declaration, it reflects a lessening of ambition. That is wrong. It is a fact that the political declaration reflects the future arrangements and that is where the Government feel that these arrangements should be discussed and set out. As you well know, there is a linkage between the withdrawal agreement and the political declaration in any event, through Article 184, so it is a package. What the political declaration makes clear is a commitment to high standards, but that those should be commensurate with the level of access that the UK secures in those negotiations that are still to come.

Q14 Lord Ricketts: To follow on from that, when the Committee has travelled in Europe and when some of us have had conversations in European capitals, we have found real concern that the Government may be intending a lower-regulation, super-competitive economy—a Singapore-on-Thames. That is in the minds of some of our European friends. The fact that this large chunk of text has moved from the withdrawal agreement to paragraph 77 of the political declaration may fuel those concerns. It is then a sovereign British decision for the future, and I suppose high levels of commitment are in the eye of the beholder. What are you saying to European countries that still have those concerns?

Stephen Barclay MP: I think some of that stems back to, of all things, the former Chancellor's interview in *Bild* where there was a sense of that. He then gave an interview to *Le Monde* which re-presented that position. But you are right, Lord Ricketts, that there is sometimes that perception. What I am pointing to is that, first, the UK goes beyond EU minimums in a whole range of areas. Maternity leave of up to a year compared to 14 weeks in some countries is one example; parental responsibility up to 18 as opposed to eight in some countries is another. So, there are differences already, where the UK goes far beyond the EU minimum. Secondly, the Prime Minister made clear that his vision for the UK economy post Brexit is to have a highly skilled, well-regulated economy. But there is a difference between a one-size-fits-all regulatory approach and a more bespoke approach.

To give two examples: the UK has quite a distinct model on building societies, and on Lloyd's of London. We can set regulation that is bespoke to those arrangements and is probably different from the way the EU as a whole would approach some of those financial services issues, because it does not have the same model of building societies across Europe that we have here. One can get on to Solvency II and the capital requirements, or look at MiFID and its past requirements, which do not shape future behaviour. The point is: we can be more bespoke but that is not about a race to the bottom.

Lord Ricketts: Still on the political declaration, you have to take a fine-toothed comb to find the changes in it from the previous version but our eagle-eyed clerks have done that for us. On one or two other areas of difference, you could perhaps expand a little. One is on dispute resolution, in paragraphs 129 and 132 I think, where there are changes; for example, the previous political declaration on dispute resolution mechanisms referred back to arrangements that would be in the withdrawal agreement. Now there is rather more general, aspirational, less committing language about the form of dispute resolution mechanism: "appropriate arrangements", provisions for "expedient problem-solving" and so on. It seems more general. Could you give us the rationale for the redrafting of the resolution dispute mechanism?

Stephen Barclay MP: It really flows from the criticism we used to get previously that the political declaration was too wide in scope and the UK had not been specific enough about what sort of future relationship it was seeking. The Prime Minister has been very clear that the relationship the

UK is seeking is a best-in-class free trade agreement. That is not simply shorthand for CETA; it is saying that, where the EU has entered into deals with other countries, we take the best elements of that as a package together with other areas such as close security co-operation. That has enabled the text of the political declaration to be more precise in areas such as dispute resolution mechanisms, compared to what it was before.

Lord Ricketts: On continuing strategic dialogue, in paragraph 125 of the old agreement, the previous political declaration talked about dialogue between parties “at summit, ministerial, technical and parliamentary level”. All that is excised and we now have “dialogue at appropriate levels” to provide strategic direction. Again, is there any rationale for that much more general formulation of our future dialogue, which is presumably something that we all want to see in many different ways?

Stephen Barclay MP: The rationale there is similar to the change at—I think, from memory—paragraph 99, on defence. It flowed in that instance from the concerns of Sir Richard Dearlove and Lord Guthrie. There were a number of areas in the previous text where some parliamentary debate, from one side or another, interpreted it in ways that were claimed to be binding. What we have sought to do is to say, “These are issues that will be debated by the House as we go through the implementation and look at the future trade agreement, and therefore there should be flexibility for us to do that as we move forward”. Some of the things—for example, on defence co-operation—that were binding on the UK triggered a huge amount of concern, as you know, Lord Ricketts. Eminent voices such as Lord Guthrie said that on defence co-operation, it would require the UK to do certain things. I think it is right that these issues are dealt with in the next phase of discussions. What role Parliament and both Houses have in the future negotiating mandate will also shape that.

Lord Ricketts: Thank you. Many of us took issue with Sir Richard Dearlove and Lord Guthrie about those concerns. I am with you on that absolutely. Very quickly, as I know that other colleagues have points to raise, one issue that has had less airtime recently is the section of the political declaration on security, defence and foreign policy co-operation. I think that it is essentially unchanged from the previous version. What has changed though is that, whereas the previous transitional period was to have been 21 months—had there been the agreement in March—it is now not much more than a year unless extended. Are the Government at all confident that the mass of particularly detailed security co-operation regimes can be negotiated so that there is no cliff edge at the end of the transition period?

Stephen Barclay MP: That flows into the conversation more widely—given that the implementation period has been reduced—around to what extent it is deliverable by December 2020. I know that people such as Lord Macpherson have often voiced concerns in this area. Notwithstanding that there are commitments from both sides in the withdrawal agreement to act in good faith and to use their best

endeavours, and that the political declaration sets the framework for that, there are a couple of other points I want to make.

First, we start from a position of alignment. If one takes the security co-operation areas, on the European arrest warrant the UK surrenders eight times more people than is the case from the EU to the UK. The message I get in European capitals is an extremely strong desire from the EU to have close security relationships. The contribution that the UK makes through mechanisms such as the European arrest warrant or SIS II is very much recognised on the continent. If anything, there is perhaps a perception around the Galileo decision that that was not necessarily the right direction of travel from the EU. Similarly, the people I have spoken to in the EU have suggested that they are very aware of the importance of the security relationship with the UK.

We have seen from the Prime Minister his ability to negotiate a deal in less than 90 days, against the odds, after he was told that the withdrawal agreement could not be re-opened and not a word of text could be changed; that it was all-weather, all-of-life insurance and the backstop could not be replaced. He has delivered that. We now have a framework through the political declaration where, on perhaps one of the hardest bits to negotiate, the Northern Ireland protocol, a huge amount of work has been done. There is clearly still detail—in relation to the joint committee—and work to be done. But there has been clear progress on one of the most difficult issues.

We start from a position of alignment. As you well know, Lord Ricketts, in a free trade agreement, a lot of the up-front time is often spent understanding each other's economies and positions, whereas we start with that work, in essence, done. There are sometimes geographical issues. If you are flying negotiating teams back and forth to North America, there is a logistical issue; you tend to do a six-week cycle. We will be able to move much more quickly, just because of the close geography. So: we start from alignment; geographically we are much nearer; there is a shared will; there is a legal commitment in the withdrawal agreement to work at pace. Therefore, against that backdrop, I think we can work to that timescale, and the Prime Minister has shown his ability to do so.

The Chair: It sounds to me as if there is a lot of work for the National Security Adviser to do on that. I can see your head nodding, Secretary of State. The difficulty is that the National Security Adviser is also the Cabinet Secretary. I leave that point there and do not ask you to comment, but I think it could be time to split that post back again. Before we come to Lord Teverson, who has another line of inquiry, I will ask for a brief intervention from Baroness Donaghy.

- Q15 **Baroness Donaghy:** Back on the level playing field issue, could the Government live with an amendment writing into the Bill the whole issue of protections—worker protections, environmental standards and quality of goods?

Stephen Barclay MP: As part of the discussions with the Front Bench, there was quite a bit of discussion about workers' rights and protections. I have already covered the intent of the Government. The Prime Minister in his Statement yesterday signalled, in terms of the withdrawal agreement Bill, what is often referred to in shorthand as the Snell-Nandy amendment and some of the concerns raised by Opposition MPs about the Government's openness to looking at that constructively in the passage of the Bill. As part of the withdrawal agreement Bill, I think there will clearly be discussion on what commitments are made on workers' rights. But the underlying intent is that we want to have high standards, and that is very much reflected in the package.

Baroness Donaghy: So the Government could live with a reasonable amendment on that area?

Stephen Barclay MP: It is not for me to say. Obviously, we will look at each amendment in turn and it will be for the House to make a decision on those. What I have signalled is that in the withdrawal agreement and political declaration, which are a package, there is a very clear commitment from the Government to high standards. It is the case that those standards should be set by a UK sovereign Parliament and should focus on what are the best outcomes rather than simply marching in step with what the EU does in some sort of dynamic alignment.

Q16 **Lord Teverson:** Secretary of State, perhaps I could come back to a point made by Lord Lamont around rules of origin. If there is one thing that I have received representations on from manufacturing industry, particularly the motor industry, it is rules of origin and the whole problem that you cannot put together a motor car that has the right percentage. I think that is absolutely fundamental, and I suspect it is also true in our largest manufacturing industry, food processing. That whole area is critical to the future.

I take an interest particularly in energy. Here in the House, Lord Duncan was questioned recently on an SI about gas. When asked if we still wished to be part of the internal energy market, he replied positively. As we move into a more renewable energy sector, our dependence on interconnectors that help us to balance supply and demand is going to be increasingly important, but that does not seem to be completely in line with some other government statements.

Rather than ask a supplementary question as well, perhaps I can come on to an allied matter. In Prime Minister May's Lancaster House speech, she made a bid to remain an associate member—I think that was the description—of the medicines agency, the chemicals agency and the aviation safety agency. I would be interested to understand whether those wishes are now completely dead, given the much less aligned and more distant relationship that we are likely to have. I think again of that step-ladder in terms of the Michel Barnier graph. Do we still have any appetite at all, and is there any likelihood that we will, for remaining influential on, or a part of, those agencies?

Stephen Barclay MP: First, I absolutely accept the point on rules of origin. In fact I was due to meet, and this morning the Chancellor of the Duchy of Lancaster has met—we were due to do it together—major manufacturers to discuss the very points to which you refer. So we are in those discussions and we very much recognise that point.

On the energy market, I will put to one side the single electricity market in Northern Ireland because obviously that is in the Northern Ireland protocol and therefore is addressed in that way. On the question of the wider interconnectivity of the energy market across the EU, I would probably use as the best example when the “beast from the east” happened. You will recall that that hit Europe at the start of the week and then came and hit the UK in the second half of the week. In a situation like that, what you want is the security of supply that the connectors provide. There is another one going through the Channel Tunnel that I saw being constructed when I was down there. That both gives you security of supply and reduces cost, so there is mutual benefit from the connection between the UK and the EU energy market. The role of the North Sea in terms of offshore wind is hugely important to the EU’s climate change targets. So it is in the mutual interest to have, both from a security of supply and a price-issue point of view, a close relationship within the energy markets.

On the EU agencies, the best example is always that of medicines and their speed to market and being part of a wider EU market, although clearly these are issues for the future negotiation in terms of not just what appetite there is on the UK side but also what willingness there is on the EU side. The political declaration allows those discussions to continue. There will be a question of what fees are charged and what the mechanisms are for them, and you get into some technical questions on batch testing and how some of the UK labs would work within those.

Again, one should take a step back and look at the bigger picture. When I speak to people in EU capitals there is a recognition of the value of UK science and of the fact that when the UK leaves the EU, of the 10 top universities in Europe eight will be in the UK and two in Switzerland, so none of the top 10 universities will actually be in the EU. That desire to co-operate with us and have a discussion around how some of the agencies work is certainly the indication that I have had from capitals, and we will be very keen to explore that.

The Chair: Thank you. I am going to appeal for short answers because we have quite a few areas to go. I realise that there is a lot to get across, but it would enable us to get to all the areas.

Q17 **Lord Sharkey:** I will try to ask a short question. Returning to the issue of the transition period, do you anticipate any circumstances in which an extension to the period may prove necessary?

Stephen Barclay MP: No. The Government’s position is very clear that we are committed to the December 2020 date and do not envisage an extension.

Lord Sharkey: Does that mean that no work has been done on the cost implications of any extension?

Stephen Barclay MP: We are working to December 2020 and that is the Prime Minister's position, so we are not looking to extend and therefore we are not looking to incur the cost of doing so.

Lord Sharkey: Right, so no work has been done on the cost of any extension.

Stephen Barclay MP: As colleagues will know, work is done within Whitehall on lots of different scenarios. What I am stating clearly and unambiguously is that the Government's position is to leave on 31 October and to ensure that the transition period expires at the end of December 2020.

Lord Sharkey: I assume that also means that no mechanism has been discussed for parliamentary scrutiny of any extension on the grounds that, as you have just said, you do not think—

Stephen Barclay MP: What that question touches on is a slightly different point, if I may say so, about a situation that a Government might find themselves in. Within the text as it stands, it is the case—it is a matter of law—that a Government, depending post-general election on which Government were in power, have the legal option, subject to both sides agreeing, to extend by one or two years. That is a legal right in the text. There is then the question within the withdrawal agreement Bill of what used to be called the Swire amendment, whereby if a Government sought to exercise that option there would be a parliamentary mechanism by which there would have to be a vote of Parliament prior to exercising that. The point that I was making is that, notwithstanding both that legal option and the parliamentary question, the position of the Government is that neither apply because we are leaving at the end of December 2020.

Lord Sharkey: So it is the case that no deal is still a possible outcome if no agreement can be reached by the end of the transition period.

Stephen Barclay MP: I just do not see that as a credible scenario. First, we have just seen the Prime Minister deliver a deal when he was accused of having a sham negotiation and going for no deal. Secondly, both sides have agreed a framework for the negotiations and legal commitments to expedite those discussions and to act in good faith. If there were a situation where that was the case under this Parliament, I suspect that it would seek to debate further what happened in that scenario. However, we are many steps down the way. Clearly there will be a general election between now and then, and it will be for the Government of the day to make that decision. What I am very clear on is the Prime Minister's position, which is that the transition period is to the end of December 2020, and we are confident that within that period of time, mindful of the issue raised by Lord Ricketts, we can deliver a free trade agreement because both sides want to achieve that.

The Chair: We now move off the political declaration and to no deal.

Q18 **Baroness Neville-Rolfe:** Secretary of State, the Government have triggered Operation Yellowhammer in the light of developments this weekend. I want to ask some brief questions on those no-deal preparations, which will probably be the subject of your Statement.

First, how likely is a no-deal outcome at this stage? Secondly, what is the current assessment of the impact of no deal? I also have a question on tariffs, but perhaps you could first answer on the prospects.

Stephen Barclay MP: The risk of no deal remains. That is why Yellowhammer has been triggered and the Chancellor of the Duchy of Lancaster is making a Statement on that in the House today.

The reason for this, as we touched on earlier, is that the EU 27 may not agree an extension and the House has not to date agreed a deal; so that risk remains pertinent and it is important that we prepare for it.

Baroness Neville-Rolfe: And on the assessment of the economic impact?

Stephen Barclay MP: The Government have always been clear that a no-deal outcome would be disruptive. But part of the reason that we have had the Cabinet sub-committee chaired by Michael Gove has been, throughout the summer, to prepare to mitigate that. There are limits to the level of mitigation that the Commission has been willing to reach. For example, I wrote to Michel Barnier in relation to the Costa amendment passed by the House. The Commission's position was that it was not willing to enter into a mini-deal on citizens' rights. Notwithstanding that, we have worked bilaterally with capitals to represent the position of UK citizens within EU member states, and a huge amount of progress has been made. There will be disruption but, for example, 84,000 workers in the Polish poultry sector do not want to see delays and, on GIs, Italy has three of the top GI figures and there are over 3,000 European as against 88 UK GIs; so there are a lot of reasons why the EU wants to ensure the flow of goods through Calais and elsewhere. I was at the port of Rotterdam discussing the huge amount of work that it has done to keep goods flowing through such ports. But clearly there is a risk of disruption, and that is why Yellowhammer has been triggered.

Baroness Neville-Rolfe: We appreciate the work that you have done since we last spoke. One of the things you have done is to publish the revised tariff schedule. What was the rationale behind the changes? They were quite limited. Perhaps you can explain why you made those changes and did not make further ones.

Stephen Barclay MP: The changes were limited but reflective of some of the representations that we had received. The underlying rationale is that there is a balance to be struck between protecting the producer and protecting the consumer. The reason it was set at 87% to 13% in value—that is, 87% being tariff free—was because tariffs are a tax. They impact on the consumer, on price. We want to be world leaders in free trade and

to reduce tariffs but at the same time, as you well know, under the most-favoured-nation approach, one has to be consistent between the tariffs applied on the EU and those applied on the rest of the world. There are certain sectors where there is clearly a distortion, particularly in agriculture but also in the automobile section. That is why the tariffs were calibrated in a particular way. To take my own constituency, a good example is that of sugar and the trade-off between the UK and EU sugar beet markets compared to sugar cane and businesses such as Tate & Lyle. The tariffs have been calibrated in a way that works for the UK market but also protects on price.

Baroness Neville-Rolfe: How are businesses affected in the motoring or agriculture sectors that you mentioned? Have you had reasonable feedback from industries on the tariff schedule?

Stephen Barclay MP: There has been a huge amount of consultation on those, as you would expect. Ultimately, the best outcome is to have a trade deal. That is why we are focused on that and, ultimately, to search for a deal that is zero tariff through a free trade agreement.

The Chair: Lord Morris is the chairman of our Justice Sub-Committee, which has spent three and a half years looking after citizens' rights in this area.

Q19 **Lord Morris of Aberavon:** Secretary of State, I was in Spain when Parliament was recalled and, during the time I was there, I heard very real concerns from expats about pensions, healthcare and bringing family members back to this country. Can we have specific assurances on these issues of health, pensions and bringing family members back? There is a very deep and continuing concern among expats there.

Stephen Barclay MP: I met expats at our embassy in Madrid to have these precise conversations. Part of the reason I travelled to so many member states was exactly to raise these issues on behalf of UK citizens. You will be aware of the royal decree that the King of Spain put in place on the rights of UK citizens and the reciprocal arrangements that the Spanish are very keen to enter into. A huge amount of work has been done for citizens in Spain, who are the largest group of UK nationals in any other member state. This has been done on a bilateral basis because the Commission has not been willing. We pushed for it, but the Commission has not been willing to do as the Costa amendment asked and come to an arrangement on UK citizens across the EU as a whole.

Lord Morris of Aberavon: If there is no deal, there is concern that some of the 27 member countries will not give the same assurances that we have given to EU nationals in this country.

Stephen Barclay MP: There is some variance; we have a breakdown by each country of what that is. Part of the work that excellent officials in our embassies across Europe have been doing is having those conversations. It is the case in certain countries, for example, that you need to register by 31 October as opposed to in the UK where it is

December 2020. In some countries, driving licences have to be registered whereas we will recognise EU driving licences. On healthcare, the department of health has a fund for hardship cases. We have also put in a fund through the FCO and DExEU to support groups should they have difficulty and we are working with charities in the countries concerned. All countries have put arrangements in place and a huge amount of progress has been made. But it is the case—you are absolutely right—that there is variance between different member states. In France, for example, a fee is charged, whereas in the UK the settlement scheme has no fee whatsoever. So, there is variance, which is why it would have been better to have an approach that was EU-wide, but the Commission was not willing.

Lord Morris of Aberavon: Will the Government publish specific assurances so that people are satisfied that the situation has not deteriorated?

Stephen Barclay MP: The situation has not deteriorated for whom?

Lord Morris of Aberavon: Do you intend to publish a document of some kind, so that expats in these countries can be satisfied that their own position has not deteriorated?

Stephen Barclay MP: We have already produced communications through our embassies. All our embassies have done a huge amount to communicate with our nationals in those countries as to what the arrangements are. The arrangements vary from member state to member state. Clearly, the best way to safeguard those citizens' rights is to secure a deal, but Parliament needs to vote for such a deal. To date, it has not done so. We will see whether we are able to have a meaningful vote today, but Parliament has not yet been willing to vote for a deal that safeguards citizens' rights. That would be the best way to address it but, if not, we have reached agreement with member states bilaterally. We have, as you correctly say, guaranteed healthcare and residency rights. We have allowed until the end of December 2020 for people to register. That is not the case in all member states. It varies from one member state to another. But a huge amount of work has been done through our embassy network with citizens and we have funds in place to work with them on any issues that arise.

Q20 **The Chair:** We move to our last area of questioning, which is on scrutiny. You spoke earlier, welcomely, of scrutiny during the transition period. I thought I heard you say that there would probably be something in the withdrawal agreement Bill to address the scrutiny gap for Parliament. But another large scrutiny gap is arising: the scrutiny of the future negotiations, which will take place pursuant to the political declaration. Can you tell us a bit more about how the Government are planning for that scrutiny, and how you foresee that sort of scrutiny would work?

Stephen Barclay MP: In large measure, it will be shaped by the timing of the next general election and what the outcome of that is on the Government who take that work forward. The expectation is that a

general election will be sooner, not later. Clearly, then, the negotiation of what is set out in the political declaration will be taken forward by that Government. That is, in part, why some of the debate we are having on the question of workers' rights is slightly odd, because the Government of the day will be able to negotiate provisions as strong as that Government would like. It will be for that Government; clearly, both Houses will want to feed in and inform the negotiation that takes place. There will clearly be debates in both Houses on that but, importantly, the devolved Administrations will also want to ensure that their equities are reflected in that debate. But these are for the next phase: the challenge we have had is that we have not been able to get on to that because we have not had a vote on the Prime Minister's deal.

The Chair: As a follow-up, the amount of time for the transition period, during which these negotiations on the future arrangement will take place, is very small. Election campaigns take quite a long time and the matter of scrutiny—Parliament versus the Government—is not really a political matter. Are you really saying that the Government are not going to think about scrutiny of the future negotiations at all before there is a new Government, post some election?

Stephen Barclay MP: No, quite the opposite. I thought we had already covered in this session the fact that both Houses will clearly want to have a say in how those negotiations are reflected. Not just that: I also referenced earlier the discussions there have already been with the European Scrutiny Committee within the House of Commons over the scrutiny that it wants over any EU law developed during the implementation period, as one example. What I was driving at is that, given that the political declaration covers what applies at the end of December 2020, ultimately the negotiation on that will be by the next Government more than by the current one.

The Chair: I accept that, but I would have thought that planning for the scrutiny for the future negotiations should be happening. I am going to ask Baroness Neville-Rolfe to come in here.

Q21 **Baroness Neville-Rolfe:** This is a similar point but it relates to third-country trade deals. What are the Government going to do to address the deficiencies in the Constitutional Reform and Governance Act, so as to ensure that there is effective parliamentary scrutiny of trade deals? You will know that there was a lot of discussion on this in the context of the Trade Bill. We would very much like to know, either from you or perhaps in writing, what the plan is. We have a current example that we have been looking at, on Korea, but we are particularly concerned about the long-term effect of these trade deals—not only the FTA with the EU.

Stephen Barclay MP: I am very happy to write with further detail on it but, clearly, one of the key issues in that is their sequencing. I think that is at the heart of the question: the sequencing between the EU trade deal and the rest-of-the-world trade deals. If those rest-of-the-world deals progress, they can demonstrate what the UK is capable of in those trade deals. On the other hand, once you enter into agreement on one, it can

quite often then be used as a floor as part of the negotiations on other deals. There is an issue in terms of the sequencing of the different trade deals, and the Secretary of State at the Department for International Trade has been doing a huge amount of work on that. There is also an interplay between that and the main scrutiny on the political declaration and a free trade deal with the EU. For the avoidance of doubt, we have been giving a lot of thought to those issues, as you would expect.

Baroness Neville-Rolfe: It would be good to hear from you because the parliamentary scrutiny of these deals is of significance to us. How do we input—in a constructive way, I assure you—going into the future?

Stephen Barclay MP: It does not feel that there is a shortage of parliamentary scrutiny on these issues, I can assure you.

The Chair: We have just done 100 minutes, so far. We are coming close to the end, though, and the penultimate question is from Baroness Donaghy.

Q22 **Baroness Donaghy:** This is about sorting out the grey area between CRaG and not needing to consult. That is definitely growing and growing in significance. We had a discussion on the Korean trade deal this morning—I chair the EU Sub-Committee which deals with internal markets and freedom of movement—and it is a matter of concern, particularly on the involvement of the devolved Administrations in all these processes. I am hoping that the sequences will build in those consultations with devolved Administrations. As a tiny example, we asked for clarification about the bridging mechanism in the Korean deal and whether the devolved Administrations would be involved in that. We got the answer back that there would be no sharing with Parliament in advance of its signature; although the initial comment in the parliamentary document implied that, a correction slip has had to be issued. There is a concern that it is not a very good start, if you like, to the idea that there should be consultation at every level with Parliament as well as with the devolved Administrations.

Stephen Barclay MP: I recognise the point. I would give the self-evident example of the deal which the Prime Minister has negotiated with the EU. Under CRaG, there is a requirement for 21 days; self-evidently, that deal was agreed on 17 October so one can see the clear difficulty there is with 21 days from then, given that we leave on 31 October. I absolutely take the point that those days are not there; we are very aware of that. Part of it has just been a consequence of the Council being on the 17th in this instance but, as you say, there are issues with some trade deals as well.

On the wider point about the devolved Administrations and the union, that is partly why Ministers went up to Edinburgh last week—a week last Thursday, I think it was—to discuss with the Scottish and Welsh Governments. It is why there have been a number of conversations with Ministers there. One thing that I think I signalled in a previous session was that I had asked officials within my department to have a wider remit

in their conversations with the devolved Administrations because, to be frank, at the political level it is sometimes more difficult but at an official level there is quite often scope for much more intense discussions. One of the clear messages that I gave to senior officials within the department was to intensify those discussions at official level, and that has been happening. But it is a very legitimate issue and one that David Lidington, as Chancellor of the Duchy of Lancaster, did particular work on to look at the role of the devolved Administrations in decision-making. I know that considerable thought is being given to it more widely within Whitehall.

Q23 Lord Teverson: Just briefly, Secretary of State, that is fine on the devolved nations but the community almost the most affected by Brexit is Gibraltar. I am interested to understand what their reaction was to the agreement. More importantly, going ahead, how are they practically involved in this process? They are very much on the front line.

Stephen Barclay MP: Yes, they are very much involved. In particular James Duddridge, who is a Minister in the department, has been liaising closely with the Gibraltar Government. Clearly, their issues are addressed specifically within the withdrawal agreement, as are the sovereign base areas. I was the first Minister from the department to go out and physically see the sovereign base areas, which again reassures you, I hope, on the fact that these issues are being looked at seriously. Clearly, the best way of moving forward is through the deal which, after detailed conversations with the Spanish Government and the Commission as a whole, addresses the issues pertaining to Gibraltar.

Lord Teverson: And for the future?

Stephen Barclay MP: In what respect?

Lord Teverson: How will they be involved in the future?

Stephen Barclay MP: In the same way.

Lord Teverson: We will be negotiating on their behalf for the future, presumably, will we not?

Stephen Barclay MP: Indeed, but that has been ongoing throughout. If you recall, when there was a debate around the meaningful vote the Chief Minister was clear in his support for it, given the fact that the issues from a Gibraltar point of view were in the text of the withdrawal agreement. There is a lot of contact with the Gibraltar Government. From memory, in my box last night there was a conversation between James and the relevant Minister. Obviously, they are having elections in Gibraltar but that is an ongoing part of the discussion that we have, not least with the Treasury as well because the financial service industry has a big linkage to Gibraltar.

The Chair: That is very helpful all round and thank you very much for spending 105 minutes in the witness box. I am sorry that you have been left with a little homework but perhaps I could cite in particular Lord Jay's point on the practical operation of the specialised committee on Northern

Ireland. Any help you could give on that would be much appreciated by us. Thank you very much indeed. We hope to see you again, I am afraid, so I bring this evidence session formally to a close.