OFFICIAL REPORT
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Culture, Tourism, Europe and External Affairs Committee

Thursday 21 March 2019

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CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE
9th Meeting 2019, Session 5

CONVENER

*Joan McAlpine (South Scotland) (SNP)

DEPUTY CONVENER

*Claire Baker (Mid Scotland and Fife) (Lab)

COMMITTEE MEMBERS

*Annabelle Ewing (Cowdenbeath) (SNP)
*Kenneth Gibson (Cunninghame North) (SNP)
Jamie Greene (West Scotland) (Con)
*Ross Greer (West Scotland) (Green)
*Stuart McMillan (Greenock and Inverclyde) (SNP)
*Tavish Scott (Shetland Islands) (LD)
*Alexander Stewart (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Lorand Bartels (University of Cambridge)
Dr Holger Hestermeyer (King's College London)
Allie Renison (Institute of Directors)

CLERK TO THE COMMITTEE

Stephen Herbert

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Culture, Tourism, Europe and External Affairs Committee

Thursday 21 March 2019

[The Convener opened the meeting at 09:11]

Article 50 (International Agreements)

The Convener (Joan McAlpine): Good morning and welcome to the ninth meeting in 2019 of the Culture, Tourism, Europe and External Affairs Committee. I remind members and the public to turn off mobile phones. Any members using electronic devices to access committee papers should ensure that those are turned to silent. We have received apologies from Jamie Greene MSP.

The first item on the agenda is an evidence session on international agreements. I welcome to the meeting Dr Lorand Bartels, reader in international law at the University of Cambridge; Dr Holger Hestermeyer, reader in international dispute resolution at King's College London; and Allie Renison, head of European Union and trade policy at the Institute of Directors. Thank you for coming to give evidence to the committee.

We are probably closer to no deal than we have ever been, and on 13 March the United Kingdom Government announced a tariff scheme that will apply if there is no deal, under which there were newly announced non-discriminatory tariff arrangements. My understanding is that the Government chose to grant duty free access to the UK for an additional range of products including things such as bicycles, cereals and shoes that did not have such access before, irrespective of the goods' origins. That will come as a bit of a surprise; many people were surprised to learn that it was possible to do that.

Can you share some of your knowledge on that topic and tell us why the UK did not just roll over existing agreements but decided to slash those tariffs? What might be the effect on manufacturers in this country?

Dr Holger Hestermeyer (King's College London): The UK has made commitments under World Trade Organization law, which are maximum tariff bindings. The UK can unilaterally lower those tariffs, but that has to be done for all WTO members on what is called a most-favoured nation basis. If we are looking at no deal, the UK will no longer be entitled to give special treatment to the European Union or to get special treatment from it, because that has to be justified under a trade agreement under article XXIV of the general agreement on tariffs and trade.

The UK is looking at a situation in which imports from the EU—if tariffs remain as they are—would become more expensive, which will hurt the consumer, and industry, too, because it, of course, uses the input. Therefore, it is a rather rational emergency measure to say that we will lower tariffs. Of course, that has to be done in consultation with industry and consumer associations, to understand where tariffs can be lowered, because it will have a dual effect. First of all, the tariff is there to prevent prices going up. The other effect is that there will be a lot more competition, so, for example, Chinese products can enter at the same tariff rate, which is a risk to UK industry.

09:15

Dr Lorand Bartels (University of Cambridge): I will add something on the legal front, and I am sure that Allie Renison has lots to say on the business front.

Another level that sits on top of the normal tariff rate—this is what you asked about and what Holger Hestermeyer talked about—involves anti-dumping duties and, in theory, other so-called trade remedies and anti-subsidy duties. The Government has also said that it will continue to apply EU-level anti-dumping duties on 43 products, which is about third of the total. That comes after having done a review in consultation with UK industry. Essentially, the idea is that there is no need for anti-dumping duties on products that are not made in the UK. I do not know whether that is a 100 per cent true outcome, but my understanding is that the Government took a fairly benevolent view in favour of UK industry concerns. That covers products such as steel and so on. Therefore, it is not just about maintaining the EU tariff and then going down to zero on all the other products—there are also anti-dumping duties on top that.

Allie Renison (Institute of Directors): If I am completely honest, at this stage I think that most of our members for whom this is business critical are quite happy to have the information and, to a certain extent, they are still processing that information.

We did a survey not long before the decision was taken to try to gauge where opinion was. The priority balance was slightly more in favour of prioritising EU import flow, bearing in mind that, despite the fact that the new duties were slashed for the rest of the world, I think that 13 to 18 per cent—I am not 100 per cent sure of the figure—of products that had no duty on them will now face it.

Obviously, we are talking about products being brought into the EU.

However, there is a concern about how the process was handled. That is probably coming out more vocally from the membership—depending on their views on tariffs—because of the length of time that it took to get the information released. Further, now that we have the information, the other concern is, how long will the measures remain in place? What does "temporary" mean?

The most common thread of consensus across lots of the different sectors that our organisation represents is their concern about multiple changes. The biggest question that we are getting now is less about what the measures mean for people's businesses and more about when the position will change again. Will it be in six months? Will it be in 12 months? I think that the broadest consensus of concern is about that issue, rather than about the changes themselves.

The Convener: I see. You mentioned consultation. Was there detailed consultation on how the different goods were selected? I imagine that there might well be manufacturers who make some of the targeted goods in the UK. There might be only one or two of them, and they would be very hard hit. I am thinking particularly about a manufacturer in my region, which makes a product that nobody else makes in the UK but which has lots of competitors from India. The manufacturer would not expect to feature highly in the discussions, because it is the sole manufacturer. However, the tariff would devastate that business and the people who work for it. What happens to businesses in that position in consultations?

Allie Renison: On your question about consultations, that depends on who you are speaking to. I think that the general consensus across all business organisations—with the potential exception of agri-food, because I think that the Department for Environment, Food and Rural Affairs started the discussions a little bit earlier—is that there was none of the widespread extensive consultation that you would get when you have any change to tariffs in other countries. That was the biggest issue that came out of the process. It was very ad hoc and there was little engagement with businesses. A lot of it was done belatedly through business organisations, which has not left us a huge amount of time to take the proposals to our members and come back with feedback, so the process has been pretty woeful.

The Convener: The Department for International Trade document, "Processes for making free trade agreements after the United Kingdom has left the European Union", details consultation with the House of Commons and the House of Lords, with a nod to the devolved Administrations. I do not recall any consultation with any Parliament in relation to those agreements. Was there any political consultation?

Dr Hestermeyer: First, I should disclose that I work as a specialist adviser for the House of Lords EU Committee. I cannot speak for it, however—I am speaking in a private capacity.

The problem is that there are so many processes going on at once that it is difficult to generalise. The tariff measures were a unilateral UK measure—no other country was involved—whereas the trade agreements are of course a separate matter because other countries are involved.

When it comes to trade agreements, you have to distinguish between several types of processes. The first is what is generally called the rollover process by the press. There is no public international law term for "rollover"; it does not exist as a concept in public international law. However, the idea is that the current agreements that the EU has will become UK agreements.

Technically, after a no-deal scenario or post-transition period, that means signing new agreements. Under public international law, those are entirely new agreements. However, the Government's initial conceptualisation—at least from what I understand from the press—was that the agreements will continue exactly what we have at the moment. Therefore, the Government probably did not see very much need for consultation. The same criticism was made of the Trade Bill discussions and the issue is coming up again and again—

The Convener: I am sorry to interrupt, but the announcement that was made on 13 March does not involve a continuation and there was no consultation—

Dr Hestermeyer: Yes, but it is also not an agreement. You spoke about agreements, so I wanted to distinguish between the two processes. With the continuation agreements, there was very little consultation.

Allie Renison: I think that you are referring to the new scrutiny proposals—is that correct?

The Convener: Yes.

Allie Renison: I cannot speak for the Scottish Parliament or any other devolved Administration on what consultation there was. Having said that, the Institute of Directors is part of an alliance between business groups, other stakeholders and trading groups that has called for improved consultation and more involvement of the devolved Administrations—beforehand at least—in the mandate for trade agreements. However, I do not think that that has been sufficiently fleshed out at this point.

I have not read the entirety of the document. I do not think that it references having something akin to the joint ministerial committee (European Union negotiations), which I think that it would be helpful to have in relation to trade. There are examples in other countries, although nothing is a perfect precedent.

There are trade-offs in relation to how you involve the provinces in Canada or the states in the US. However, in some other countries, you have representatives of states or provinces outside the negotiating room, to a certain extent. Nothing is a perfect model. There are issues—something may be too prescriptive or not sufficiently flexible. However, we would expect to see a much deeper set of scrutiny proposals before we embark on any new trade agreement.

There is a big question mark—I presume not only for the devolved Administrations but for business and industry—about how the intersection between the EU negotiations and third-country negotiations will work. There is obviously a huge amount of overlap, and one of the biggest issues since the referendum is around the challenges that are posed to cross-Government policy.

The Convener: Thank you. Dr Hestermeyer, I know that you said that the announcement on 13 March was not a trade agreement as such but, given your role and your close working with the House of Lords, were you aware of any consultation with the committees of the Lords or the Commons on that announcement?

Dr Hestermeyer: I was not aware of that, but it would not go through the procedure that I am involved in. Basically, I work on treaties.

Claire Baker (Mid Scotland and Fife) (Lab): Dr Hestermeyer, you said that, if tariffs were removed for European goods coming in, that would open up the market to other countries such as China. Am I correct in thinking that we could lower the tariffs, as that would be within WTO rules, but we could not do that exclusively for goods from the EU, because we would have to treat all goods from anywhere around the globe the same?

Dr Hestermeyer: Yes. In WTO law, the most-favoured-nation principle means that you have to treat all WTO members alike. If you have lower tariffs, you have to use the same tariff rate for all WTO members. However, there are exceptions, one of which is if you have a trade agreement in place, although that comes with a couple of conditions. Currently, we have a trade agreement with the EU—that is, the EU treaties—and accordingly the UK can treat the EU better than all other WTO members. In a no-deal scenario, that trade agreement falls away and there is no replacement, so there is no longer a justification to treat the EU better. Therefore, if we continue to impose the tariffs that are imposed currently, we would have to impose those tariffs on all EU goods coming in. If we decide to lower tariffs, we would have to lower them to the same rate for all countries in the WTO.

Allie Renison: It is probably better to turn to my colleagues to judge the feasibility of this but, about a month and a half ago, a recently departed trade minister suggested to the Government on the floor of the House of Commons that, to deal with the Northern Ireland border issue, particularly under a no-deal scenario, the preference could continue to be extended to EU imports. Obviously, that would flout one of the most fundamental rules of the WTO, but his rationale was that we would not have to deal with a challenge for at least 18 months. That is not necessarily Government thinking, but I was rather concerned to see it being discussed. I turn to my colleagues to see how feasible it would be.

Dr Hestermeyer: That is more of an enforcement issue. It would basically be saying, "Let's not respect the principle for a while and see what happens." Because the WTO dispute settlement mechanism takes a while, during that time, you would just continue with the policy. It would be illegal but, because there is no remedy for past wrong in the WTO, you would just ignore the rule. You could try to invoke exceptions—there is a national security exception—but that would raise serious issues in the WTO.

Dr Bartels: The latest proposal on the Northern Irish border is to allow all products in without checks, regardless of whether they are from the EU or other countries. Holger Hestermeyer and I have a different point of view on whether that is illegal under WTO law. On one reading, so long as, for example, Chinese products and Irish products are treated equally at the Northern Irish border—if no duties or checks are applied to either—that is not necessarily a violation of the most-favoured-nation principle, because both sets of products are being treated equally.

I see it as a question of whether the UK is required to have a uniform policy on tariffs at all its borders. That is a separate question that precedes the most-favourfed-nation issue. At the end of the day, that is a bit of a technical issue, and we would probably agree that the national security exception should cover it, if it comes to that. It is a question of how we look at it, and I do not think that it is necessarily a most-favoured-nation issue.

Claire Baker: I want to fast forward to the stage at which the UK is starting to negotiate new trade arrangements with other countries, although I do not know how long it will take to reach that stage or whether we will ever reach it. I am thinking primarily of countries such as the US, Australia

and China. What challenges are involved in that? The UK, which is a small country, will want to strike trade deals with big economies, but we will no longer be part of the EU trading bloc. How difficult or straightforward will those negotiations be?

At the moment, we are aligned with the EU rules and regulations, which are not the same as the US rules and regulations. We are all familiar with the problems that arose with the transatlantic trade and investment partnership negotiations. Where does the future for the UK lie as far as regulatory partners are concerned? I imagine that it would be difficult for us to have a deal with the US unless we were to move away from the EU regulatory regime.

09:30

Dr Bartels: I will kick off on that one. First of all, the UK is not a small country; it is a big country. It is particularly big compared with my country, which is Australia, or with New Zealand; indeed, it is big compared with most other countries. If you think about it, there are not that many countries that the UK is not bigger than—economically, it is ranked sixth or seventh in the world. Therefore, the UK is a significant force in international economics.

That said, what does that mean for trade agreements? We can distinguish between tariffs and regulations. When it comes to tariffs—assuming that the UK is able to engage in trade negotiations and is not bound to the EU customs union, which would mean that there was nothing to talk about—it would be a normal trade negotiation. I do not see why the UK would be in a particularly bad situation. If the UK unilaterally gets rid of its tariffs, that will mean that, in negotiation terms, there will be nothing much to talk about, which will be an issue. If it holds on to a few tariffs, the question will be which ones it will negotiate away in exchange for market access to another country, and what sort of market access it will get.

What I have to say in response to the second part of your question, which was about regulations, kiboshes everything that I have just said. In reality, trade agreements are about tariffs, but they are also about services. A lot of effort goes into negotiating regulations, but it does not usually amount to anything. Essentially, countries say that they will talk about their domestic regulations and that they will reduce them in trade agreements, but they never do—that just does not happen. We could say that the reason for that, from the UK's point of view, is that it is bound to EU regulations. If the UK enters into some form of single market, Norway-type arrangement, formally speaking, that will stop the UK doing anything but, in reality, the pressure will be domestic. Domestically, it is very hard for a country to state publicly that it is going to reduce its regulatory space because of an international agreement. I think that that will mean that nothing much will happen there. If the US saw that as a condition of a TTIP-type agreement with the UK, it would stop such an agreement, because the US really cares about that sort of thing. Most countries do not really care about that sort of thing, because they accept that, when it comes to changes in domestic regulation, nothing can be expected and nothing much will happen. They would rather just talk about whatever tariffs are there.

Dr Hestermeyer: I want to make two points. First, to some extent, we are already engaged in negotiating new agreements. I know that the Government says that it is trying to roll over existing agreements, but our current arrangement with Norway, for example, is based on the European Economic Area. As all of that EU-type regulation will fall away, whatever comes after will be different, so, to a large extent, it will be a new agreement. In some regards, it might be a case of copy and paste but, in other respects, it will be new.

I agree with almost everything that Lorand Bartels said, but I have a point to add about what makes a difference when it comes to leaving the EU. There are two—soon, there will be three—trading powers in the world that have the power to push through their regulatory models: the US and the EU; they will be joined by China. An example of how they push through their models is what happened in the EU's negotiations with Canada on the comprehensive economic and trade agreement. Canada is, of course, a federal state, so there are things that the federal Government cannot offer—for example, Government procurement in the provinces. The EU pushed for the provinces to be at the table to get agreement on that, and was ultimately successful. I do not think that the UK can aim for such structural changes in how negotiations are carried out and how regulation is drafted because, to some extent, the market is too small for that. However, a normal trade agreement is very much possible.

There needs to be some realism about what trade agreements do. There is a lot of talk about free trade in services, but that would mean committing to regulation. Before we start thinking about opening up the markets of other countries, we need to reflect on whether we want to be bound, because we seemed to have a problem with being bound to EU regulation. If we want to open up services markets through free trade agreements, we will be in the same situation. Do we want that? What do we want?

Dr Bartels: I will add something quickly, because I do not want to use up Allie Renison's

time. CETA, which is the agreement between Canada and the EU, provides a good lesson, because it includes nothing about changes in domestic regulation—there is literally a blank page that says, "To be discussed." That agreement between the EU and Canada, which is a fairly big player, is a good example of the fact that, as I said, countries just do not change their domestic regulation.

There is a difference when it comes to countries that are within the EU's regulatory orbit. By and large, such countries like to align with the EU—we are talking about eastern partnership countries, such as Ukraine, Georgia and Moldova. It also applies to some smaller sectors in Israel. However, that is not a common experience.

I agree with what Holger Hestermeyer said about services. It is an issue that everyone talks about a lot, but it is very hard to identify areas in which anything has actually changed. Famously, in the Korea agreement, there was a little bit of market access opening for law firms, which meant that a UK law firm that I work for was able to set up in Korea and get first-mover advantage. However, that is one of the few examples that people can point to in which there has been any market access opening under a free trade agreement.

Aside from reducing tariffs, which is still the guts of any negotiation, as it was in the 19th century, the value in free trade agreements lies in the opening up of Government procurement markets. There is a lot that is of value in that regard. As Holger Hestermeyer indicated, in federal systems, that is the area in which the engagement of devolved Administrations is needed, simply because they control money and procurement.

Allie Renison: From a business organisation perspective, as someone who worked on the TTIP negotiations, I do not see any reason why, at a superficial and macro level, doing a trade agreement with America is any less desirable. That said, there is perhaps slightly more reason to question the impetus or the need. I am not arguing that the UK is completely open to competition, but there are more closed markets to the US in the EU than there are in the UK. The US market is still very closed in many areas, such as procurement, particularly at sub-federal level.

The question is about ambition. The UK completely reserves the right to not put certain things on the table. When it comes to the famous issues around agri-food, it is not a case of co-opting the US's rules; it is about what the UK will allow in that it does not currently allow in, whether that is because of the UK's desired preferences or the functions of EU law. For example, the hormone treatment of cattle is allowed for imports of dairy products into the EU, but not for beef. Therefore, there is a question about to what extent the UK wants to put that on the table, so to speak, to allow such imports to come in. In relation to the Agriculture Bill, a discussion is going on in the House of Commons about requiring certain standards for all imports. Some of those standards are legitimate, but standards can be used for protectionist purposes, to a certain extent.

The question is about ambition. One of the reasons for TTIP was to put in one place a basket of issues that had not been resolved over 10 to 20 years. You could argue that, to some extent, it failed because it involved two massive power blocks. There are pluses and minuses to agreements between places with different competitive strengths or different market sizes.

I would not necessarily have picked the US as a first priority for a UK trade agreement, simply because it is quite important to get some experience under your belt. In certain areas, such an agreement would force choices between alignment with the EU or alignment with the US.

I am massively simplifying things here, so my colleagues can disagree with me as they see fit but, to some extent, if you were to characterise the difference between what the EU does through its trade agreements and what the US does, the US tends to focus a lot more on enforcement, particularly on intellectual property rights. The EU could be argued to export more of its standards; the EU tries to get other places in the world to adopt its standards. However, sometimes the way in which the US pursues enforcement, particularly in the intellectual property space, can amount to a country having to change some of its rules around, for example, the length of duration of patent terms. The Canadians are going to have to make changes on that as a result of the new changes to the North American free trade agreement—NAFTA.

Ross Greer (West Scotland) (Green): I would like to drill down slightly further on that point. As Lorand Bartels has already said, most trade negotiations are about tariffs and regulations, but sometimes they are a bit more political. For example, in order to progress its arrangements with Morocco, the EU has essentially recognised the occupied Western Sahara as part of Morocco, at least for economic purposes.

Looking at the economic powers that are larger than ourselves, such as the US and China, while taking on board Lorand Bartel's point that the UK, even outside the EU, will still be a large trading power, if we have a no-deal Brexit and the US in particular sees an opportunity—although Allie Renison has just made the point about it perhaps being an unusual choice for the UK to prioritise the US so quickly—what would its priorities be in trade negotiations in that event? What incentive would

the US have to speed that process up? If tariffs have been dramatically lowered or, in some cases, removed, what incentive is there for large trading blocs or large economic powers to progress negotiations quickly?

Dr Bartels: I will kick off, although all of us probably have something to say about that.

The US has made public its negotiation aims when it comes to the UK, and they are similar to the US's aims when it comes to other countries. Let me pick a few examples that are politically salient.

There would be a desire to reduce tariffs on normal products. That would affect producers of those products, but it would not have wider policy implications beyond that. It is well known that the US would like to be able to sell services that are currently provided by the national health service. There are economic arguments in favour of that from the point of view of consumer choice, and there are public policy arguments against it; it is a hotly debated issue. So far, the UK's approach has been to ring fence the NHS. Of course, the NHS comprises many different types of services; cafeteria services are different from brain surgeon services, one would hope. One must distinguish a little bit what one means by NHS services and, in fact, the UK has made commitments when it comes to midwives and so on. There is already some flexibility there. That is clearly one issue that might well be on the table.

Another area that is a big deal is that of food safety standards. The US has said publicly that it would like to be able to sell its beef into the UK, and it is no secret that the beef that it is talking about is produced through the use of artificial growth hormones. Chlorinated chicken is another example.

The thing to say about that is that, when free trade agreements deal with that sort of issue, they essentially replicate the rules that are already there in the WTO. Sometimes they add a bit of detail or flavour, let us say, but they do not change the fundamental predicate of trade regulation in the area of food safety, which is that you can protect food safety as long as it is based on science. The US argument is that current EU food safety standards are not based on science but on what the US says is an inappropriate application of the precautionary principle.

That is just a negotiation version of what the US could probably argue in dispute settlement at the WTO today. In fact, it has argued that about chlorinated chicken and hormone beef and, when it came to the hormone beef, it won. With chlorinated chicken, it pulled the case for reasons that I do not know about. With hormone beef, it won the case, because there was no science that the EU could adduce to say that its restrictive measures were valid, and that has been fought out in retaliation for the past 20 years.

Those are the two areas that we can analyse a bit differently—in fact, there are three, if we start at the beginning. First, there is the normal tariff-type negotiation, which is nothing special. Secondly, there will be an effort by the US to chip away at the NHS and other services; I think that a policy decision needs to be made there. Thirdly, there is the area of food safety, the arguments about which turn up in the newspapers a lot. What is sometimes overlooked there is that, ultimately, the rule is whether the approach can be justified based on science.

09:45

Allie Renison: I want to pick up the second part of Ross Greer's question; I apologise if I do not answer it correctly.

You asked what could speed up some of the decisions. Lorand Bartels referred to the EU having lost the case—for want of a better word—at the WTO. I would keep a very close eye on that, particularly under a no-deal scenario. I think that this is now up for review, but that situation was temporarily dealt with by the EU agreeing to increase its quota for non-hormone-treated beef from the US. Having said that, although the UK would technically be under no obligation to continue to follow EU rules and regulations relating to the single market, if the UK decides to continue with most of those rules and regulations, it would be interesting to see whether the US wants to bring a case against the UK, too.

Other countries have similar bans in place, for slightly different reasons. Switzerland has a similar ban, although to some extent it has a labelling choice to allow in some such products from the US. However, other countries ban ractopamine, for example, which is one of the big things that US farmers feed their cattle. The US has not necessarily pursued those countries at the WTO, so it is hard to tell whether that is just a function of market size. Beyond tariffs, that is one of the big offensive interests that the US will have, particularly since there is a political view that it judges the UK to have a slightly different approach to the precautionary principle from the rest of the EU. That is not necessarily the case, but there is a view that the UK has a slightly different view from the EU about how science is used in such regulations. If tariffs are not on the table, or not to the extent that the US would like them to be, that will be a big offensive interest.

Dr Hestermeyer: As if we had not covered enough areas yet, I would like to add two more. One is pharmaceutical prices. The American

pharmaceutical industry and the American Government have long thought that the US unfairly pays much higher prices than everyone else. The US finances research, and other countries get to live off that research but get low pharmaceutical prices. There is a push for a fairer situation—from the point of view of the US—which would usually be done through IP law. There is also a push to prevent price comparisons, effectiveness studies and so on. The UK has always been a model in that regard, and UK prices are used as reference prices in other countries. For the pharmaceutical industry, destroying that model would be an enormous win, so we can expect a push there.

We can also expect a push on genetically modified organisms. Data flows are another big thing. Europe tries to export its model for data protection, whereas the US opposes it.

Another area is the protection of geographical indications, which has long been a dispute between continental Europe, which protects geographical indications of origin, and the US and the new world, which oppose them.

To some extent, this also answers Ross Greer's other question about what interest the US would have in pushing for trade negotiations quickly. Currently, the UK is also negotiating with the EU. It is not unlikely that those negotiations will lock in the existing policies, so if the US pushes now and can achieve agreement now on those issues, that would disrupt the EU negotiations, and it would be another country won over for the US model.

Allie Renison: We have asked our membership where the balance of priorities lies, and I think that about 62 per cent think that the EU is the most important to prioritise, whereas 13 to 14 per cent are looking at third countries. We know, at least, where the bulk of the membership's focus is, if it became an either/or choice.

Ross Greer: I have one more question, but I can come back to it later if you need to move on, convener.

The Convener: I am told that we have a little bit of time, but I ask our panel to keep their answers as brief as possible so that we can get as many members in as we can.

Ross Greer: In that case, I will direct the question at Lorand Bartels; it is about WTO disputes. My understanding is that the WTO's court of appeals is dangerously close to running out of a sufficient number of judges to make any decisions. Is there a danger that that could occur in the next two to three years, when the UK is in the depths of a post-no-deal crisis?

Dr Bartels: The situation that you describe will arise on 10 December this year. That is a cliff edge. There seems to be no sign that it will be overcome.

That is not necessarily the end of dispute settlement in the WTO, as there are workarounds. Disputing countries will still have the first level—the panel level—available to them. The problem is, what will happen at the end of that? The problem with the appellate body disappearing, if it does, is that countries have a right to appeal. Therefore, if a country does not want to play ball, it can just say that it cannot exercise its right of appeal, and everything will just stop. However, it is possible to work around that by saying, before the dispute, that a separate appellate organisation will be set up, and there are proposals for that.

Countries can play the game if they want to and, ultimately, most countries seem to want to. The real question is, what if you have a dispute with the US and the US sits on its hands and says, "No appeal; we're not doing anything"? However, of course, the US is just as frequently a complainant. We will just have to see what happens there. Nobody really knows.

Tavish Scott (Shetland Islands) (LD): Allie Renison, you just said—thank goodness—that your membership is saying that continuing the trade arrangements of British businesses with the EU is more important than any third-party agreements. Does the UK Government recognise that? Has that point got into the minds of the ministers who are responsible for this?

Allie Renison: It depends on the minister. The jury is out, because the real test case will be when we are in the next phase of negotiations, and we need to see how the department that is responsible for third-country negotiations and the Department for Exiting the European Union—which is the department that we assume will be responsible for the future trade relationship negotiations—intersect and interact.

To some extent, we have to make allowances for the fact that DIT has no remit to handle EU negotiations. That means that, almost by default, it has to focus on the rest of the world. There is concern about some of the interplay around that in the future. Assuming that we get on to that next stage in the next couple of months—that is a big assumption to make—it is important, regardless of the focus on moving speedily, to take time to do the work. I know that the Prime Minster has made a commitment to consult the Westminster Parliament more about the mandate for the future trade relationship negotiations, although I do not know whether that will stand when we are in that phase.

The point that we are making repeatedly to DIT and other parts of Government is that many of the things that can be done in relation to third

countries do not have to go into the trade agreement bucket. To some extent, the more you put in there, the more you will hold other things, such as agriculture, hostage.

On issues such as digital trade and co-operation in the financial services industry, the financial services industry in the US and the industry in the UK are enthusiastic about the idea of a trade agreement or some other kind of mechanism that will foster the co-operation that the previous US Administration's Department of the Treasury shut down because it was worried about what it might lead to. Regulators in the US—financial services regulators, in particular—do not like those things being discussed in trade negotiations.

To answer your question more fully, the priority that has been accorded to the EU negotiations so far proves that ministers are thinking about future trade arrangements with the EU, but I think that that will be a really big test once we are out of the EU and there are competing negotiations.

Tavish Scott: Do you have any sense of the capacity in Government to do what is necessary? We have repeatedly been told that, for the past 40 or 50 years, we have relied on the European Union to negotiate internationally. Do you have any sense of the views of business on that?

Allie Renison: Capacity is a concern, no matter who you speak to. However, I would not say that that should be gauged through a numerical lens. The Office of the United States Trade Representative employs around 200 people, so it is not necessary to hire thousands of people to deal with this.

To some extent, I hope that the negotiators will cut their teeth on what are referred to as the rollovers. Obviously, if and when we get on to the next stage and enter the implementation period under the withdrawal agreement, DIT will still have to roll over the existing agreements or create new stand-alone UK agreements on top of its new third-country pursuits. There is concern about it being stretched to capacity at that point.

Tavish Scott: Is it the UK Government's policy simply to seek to roll over arrangements with third-party—that is, non-EU—countries? Those are the agreements where, as I think that Holger Hestermeyer said earlier, you could delete "EU" and insert "UK". Is that the default position that it is trying to achieve?

Dr Hestermeyer: That was an assumption at the beginning, but it is not that easy. It is really important to point out that there is not a single agreement where you can simply strike out "EU" and write in "UK" and have to do no more than that. The devil is always in the detail. For example, things such as rules of origin, tariff-rate quotas and so on need to be readjusted and renegotiated, and you might have to find formulas. With regard to the agreements that have been done, it seems that they are based on past trade flows, with some opening where those trade flows were so low that you cannot really say anything.

A lot of change is going on. Let us look at Switzerland, for example, which is one of those countries that has a lot of agreements with the EU—120 or some enormous figure like that—a lot of which are based on EU law. We can see a model emerging whereby, all the agreements that are based on EU law, where the Swiss are aligned, will be difficult or impossible to roll over, because, currently, the UK is not ready to commit to align in those respects.

Tavish Scott: Because it would involve aligning on regulatory—

Dr Hestermeyer: Exactly. That would mean aligning with EU regulation, which must be dealt with in the EU negotiations.

All those negotiations have a bit where you can already do something—in areas such as standard trade agreements, tariffs and so on—and a regulatory bit, which concerns issues such as SPS, which cannot currently be covered.

Tavish Scott: Sorry—what is SPS?

Dr Hestermeyer: Sanitary and phytosanitary standards. They simplify controls at the borders by saying, basically, that Switzerland will follow EU rules in that regard. There are also things such as veterinary exams in the country, which mean that you do not need those strict border controls that you would otherwise have between countries.

Tavish Scott: Dr Bartels, in the context of the Irish border, you mentioned a product or a 40ft container coming in from China with an ultimate destination of somewhere in the UK. In a scenario in which we have left the European Union, that container could arrive in Dublin, cross the Irish border—leaving aside the detail of that—and then come into the UK. Presumably, in that case, it will have come into the EU before it comes into the UK. That means that it will have to be okayed—stamped or whatever—when it comes through Dublin harbour. Is that correct or am I missing something about how that would work?

Dr Bartels: No, that is perfectly correct. One would imagine that, when it comes to tariffs, the tariff would usually be higher, which would stop that from being a problem. Of course, that is not always the case, because the EU has a lot of free trade agreements and, as we have just been hearing, the UK does not, yet. It is therefore conceivable that you will get a product coming into the EU under a free trade agreement and then finding its way into the UK without what should be the UK tariff having to be paid. Turkey is a good

example of that. If you were a Turkish truck driver, you would be thinking of driving to Dublin instead of London. The UK Government note of last week—or perhaps the week before; things are moving pretty quickly—addressed that point. Essentially, it accepted that risk and talked about justifying the situation and so on. There is definitely a risk there. It is not as though everything is dealt with simply because the product was in the EU first.

Annabelle Ewing (Cowdenbeath) (SNP): As you have just said, Dr Bartels, things are moving quickly. However, as of this morning, we are eight days away from crashing out of the EU with no deal. That is one scenario that, as the convener said, is looking a bit more likely now than it ever has done. The information that we are getting is second hand, because the Brexit secretary does not deem us worthy of direct contact, sof we are getting stuff passed on to us by the House of Lords—it is very good of the House of Lords to do that. The last update that we got was on 25 January, so things have probably changed a wee bit. Where are we today? Has the UK signed, or is it about to sign, any trade deals? In eight days' time, what signed trade deals will be in place for us to rely on? How many are there—seven or six?

10:00

Dr Bartels: I do not have any more information than what is publicly available—I do not have access to the Brexit secretary, either. There is one agreement with Switzerland. We are talking about basic agreements. Holger Hestermeyer will be able to speak to this in more detail, given his work for the European Union Select Committee in the Lords.

The agreements are being advertised by the Government as new trade agreements, and as if they are rock-solid, gold-standard trade agreements, but they are not really. They are bundles of two agreements. One is based on the assumption that, if there is a withdrawal agreement, there is a transitional period; the other is based on the assumption that there is a no deal. That one is a much more basic agreement—essentially, it is tariffs only.

How many of those do we have? From small to big, there are agreements with Liechtenstein, the Faroe Islands, Norway, Iceland and Switzerland. That is it—I do not think that there is a great deal more than that, although I am probably forgetting something.

Allie Renison: Israel.

Dr Bartels: Israel—and Palestine.

Allie Renison: Chile.

Dr Bartels: A Chile deal is in progress. There is also one with the eastern and southern African—ESA—region, which does not include South Africa. It is worth putting that on the record, because I have noticed that that point has not been made. I used to advise both regions, so I am familiar with their make-up. The southern African region is called the Southern African Development Community, or SADC, which is made up of 14 countries in total and includes South Africa and the Southern African Customs Union, or SACU. The ESA region includes the countries to the east.

I understand that the SADC negotiations are going badly, although they were supposed to go well. The South African trade minister, Rob Davies, seemed to get on well with our trade secretary, and positive noises were coming out of the negotiations. However, as of last week, which was the last time that I looked, it turns out that negotiations have not been so easy. There are sticking points on, for instance, sanitary and phytosanitary standards—South Africa has a particular concern about citrus black spot—and Namibian bone-in beef. The issues are being negotiated, but they have not been sorted out yet.

Dr Hestermeyer: Of the big trade agreements, Switzerland is the most important. We have not seen the Norway agreement yet. My guess is that there will not be a lot on services. The regulatory bit that we now have will fall away, although there will probably be a zero-tariff part.

There are a number of small agreements that people tend to forget, because we focus on the big trade agreements. There are those that concern mutual recognition. There is also an agreement with Switzerland on insurance services and one with the US on prudential measures.

I think that the DIT has done a fairly good job, given what could be expected in this difficult situation and what is possible. It goes to UK trading partners and says, "We want to roll over this agreement". The trading partners reply, "But isn't there going to be a transition period that you are negotiating in the withdrawal agreement?" The DIT says, "Yes, that is what we hope, expect and are negotiating", and the trading partner says, "So what are the arrangements afterwards going to be like?" When the reply to that is, "We don't really know yet", that makes for a difficult negotiation situation for anything regulatory. The DIT does not know what the situation will be and it is asking its trading partners to commit resources to negotiate something that might not be necessary or might fall away anyway.

The main problems in the process are lack of transparency, overadvertising and overselling. The statement "we will roll over all agreements by the end date" was part of a lot of the debates, and then people were briefed on condition of secrecy.

People need to trade on those agreements. If someone is using the EU-Turkey customs union to build cars in Turkey, it would be advantageous to them to know what will happen in two weeks' time.

Annabelle Ewing: In eight days' time!

Allie Renison: I do not criticise the Government lightly, but I think that its communication with industry about the rollover agreements has been pretty awful.

I cannot betray the confidential information that I receive in meetings, which is difficult because I am then unable to engage with our membership about that. That means that most of our members—who are company directors—are not following the ins and outs of all this. They are relying on the same headlines that most people read.

On the one hand, there seems to be a proactive push—albeit belated—to get people ready for a no-deal exit from the EU but, on the other hand, there does not seem to be the same urgency in relation to telling businesses that some trade preferences may end.

Given that we knew from the beginning that there was a heavy intersection with the EU with any set of arrangements—particularly in the case of Turkey—it would have been much more helpful if it had been made clear, again at the beginning of the process, that there was a strong possibility that those arrangements might not be rolled over in time. If businesses had been cognisant of that possibility, it would have helped them to prepare.

A lot of our members may not know that they are using those agreements. Very often, the agreement is handled by their freight-forwarding company. They may have hired someone to make efficiencies in their supply chain who suggested using the trade agreement, to which most businesses would say, "That's fine—do what is helpful and advantageous to the company."

This is anecdotal but I am concerned by how often I hear that when companies are asked whether they are trading with Turkey through the customs union, they either have no idea or they say no. When they are asked what form they are using, they say that it is an admission temporaire roulette form. If they are using the ATR form, that means that they are using the customs union agreement.

We would have liked the same kind of get-ready campaign on the rollover agreements—in case they do not all pan out as people may have been led to believe that they would—as there has been for the EU no-deal preparations.

Annabelle Ewing: So—more doom and gloom, really.

The issue of geographical indications has been raised. If the scenario is that we are out of the EU in eight days with no deal and with very few trade agreements, where do we stand in relation to geographical indications? It is an important issue for Scotland in particular.

Another issue is services—including, importantly, services provided to the EU27, particularly in the financial services sector.

I am concerned about those two issues because, in eight days, if there is no deal, there will presumably be immediate consequences.

Dr Bartels: I will talk about services; I will leave geographical indications to others.

This is a split that we have had for about 20 years. The default position for services is that the UK will be a third country, which means that it will be in the same position as Australia and New Zealand, for example. I am speaking about the UK versus not just the EU but the EEA more generally. It will be a third country without a free trade agreement, which will be a massive hit. As everybody knows, the UK has a large trade surplus in services, so it is quite a big deal.

Of course, one needs to distinguish between the international guarantees that come with providing services under the WTO, under free trade agreements and, for that matter, under EU law, and what actually happens.

I am not saying that services will stop being supplied; it depends very much on the type of service. If you are supplying an unregulated service such as hairdressing in a country that does not much care, aside from visa issues, there will be no particular difficulty. Things could well continue as they are. However, if you are supplying regulated services such as medical or legal services, the situation is quite different.

One has to distinguish between the guarantees and domestic regulations, which might mean that services can continue to be supplied. That said, no-deal contingency planning arrangements are, of course, being set up on both sides. The UK has said that, for the time being, things will essentially continue in many areas, including financial services. My understanding is that in the EU there is a difference of opinion between the European Commission, which likes to take a hard line and say, "It's all over, Red Rover. If you are lucky we will offer you some equivalence decisions, which we will give and take as we see fit", and the member states, which are keener on keeping business as usual. We will see how that plays out. I have not seen that dynamic reported much in the press, but I know that it exists. The member states may start to prevail over the European Commission.

Annabelle Ewing: On financial services, the single banking licence, single investment services licence and single insurance passport are subject to the mutual recognition deal with minimum harmonisation of standards, which is very EU-law heavy. Individual member states that wish to do something slightly different have no leeway. That area of EU law is laid down in terms, and there have been many cases before the European Court of Justice. Member states do not have discretion with regard to the single banking licence and the single investment services licence, do they?

Dr Bartels: I do not mean that members states will go it alone. There is some talk of going it alone when it comes to ports—Calais and so on—but I am not referring to member states operating outside the normal scope of EU law. Rather, I am referring to member states acting in Council to tell the European Commission what to do.

Allie Renison: We get that question a lot and it is harder to give a one-size-fits-all answer on what barriers will be faced in services. The lack of harmonisation in that area, compared with the single market in goods and the customs union, is both a benefit and a drawback to business.

On the one hand, there may be a less immediate automatic impact across the 27 member states, because, outside the more harmonised area, to which Annabelle Ewing referred and to which I will come back, it can depend on how each EU member state treats third countries. The lack of harmonisation is also a complication, however, because it means that, unlike with the single market in goods and the customs union, I cannot tell a manufacturing company that it is going to face exactly the same rule in Germany as it will face in Belgium, for example. There is more discretion, which may mitigate some of the impact, but it also complicates planning because it is so dependent on the country in question.

The passport—the banking licence that Annabelle Ewing referred to—will effectively stop UK providers of services continuing to have one foot in all 27 member states through that single licence. They will have to recertify and relicense in each EU country. If a business is looking for the most efficient place to locate, that will depend on each member state's licensing regime for third countries.

Annabelle Ewing: Yes, and many of the major players are showing what their plan is by moving their effective head office to one of the 27 EU member states. With that comes a vast outflow of capital because the head office has to be more than a brass plate. It is subject to prudential regulation, consideration of capital adequacy and so forth, so there has to be an asset base in the member state of incorporation. The assets are going, which is a surely a worry to your organisation.

Allie Renison: The last data that we have on that is from January, when we asked about relocation. For some companies, it is a matter of physical relocation, but for others, it is by necessity about expanding—it is about moving or expanding operations out of the UK to the EU.

We explicitly asked whether relocation was in connection with Brexit, because there are people who will be moving for other reasons. We included that option and found that about 29 or 30 per cent have moved or are seriously considering doing so. I am checking the figures for Scotland on my laptop; I think that it is about the same share.

Before Holger Hestermeyer comes in on geographical indications, I simply say that I have not seen the latest position GIs. The UK was intending to introduce a register to continue providing GI protections, but I do not know where that process has got to at this stage.

Dr Bartels: On the point about financial services moving, it is important to draw a distinction between what is happening in a period of uncertainty and what would happen if the UK went over the cliff edge. Ultimately, EU member states do not want their consumers of financial services to be in trouble. The EU does nicely out of a period of uncertainty, because there is no cost to the consumers; there is a cost to the suppliers, which have to set up in two locations and wait to see what happens. The fact that business has been moving to the EU in advance is smooth for EU member states and of no particular consequence to them—in fact, it is good for them, as they want to attract that sort of business. However, they are not facing the wrath of consumers whose contracts have collapsed between one day and the next. One needs to consider that scenario, which would be the position in a no-deal situation. EU member states might look at the situation a little differently then, which is what I was referring to.

10:15

Dr Hestermeyer: I confess that I have stopped looking at GIs ever since I started spending all my days reading treaties. However, the EU puts GI protection in its treaties, and the UK does so, too, in the rollover agreements. That is a little different from other treaty obligations, such as those on services or trade in goods, where you would know that, if the treaty ceases to have effect, everything will immediately change in the partner country because quite often other countries have been forced to change their regulations. GIs grant a quasi-property position, and I argue that it is problematic to withdraw from that even if the treaty

obligation to have it falls away, because you have granted a property position and you cannot just take it away. However, we will have to see how countries react.

The problem with intellectual property is largely that it includes EU trademarks, which will cease to have effect in the UK. I have not seen what exactly the UK plans to do in that regard, but I have always considered that to be a rather important issue.

Allie Renison: I think that there is an opt-out for trademarks. GI was a big issue that was settled late in the day in the withdrawal agreement. I was not involved in the negotiations but, to be frank, I think that that was for trade-off purposes. It is not something that you give away lightly, even if you want continued protection for your own products. There is a division of opinion in the trade policy community on the extent to which continuing to afford the protections that are currently provided to products under EU law will complicate future trade negotiations. I do not think that it will complicate the negotiations to the extent that others think that it will, given that, in the TTIP negotiations, the UK had ample opportunity to register plenty of products and did not do so. As far as I know, it did not register any. To an extent, that may be because the Scotch whisky industry is very good at not relying on trade agreements to do that work—it does a lot of its own bilateral work with Governments to get protection for Scotch whisky on GI registers in other countries.

The Convener: I have a quick supplementary question on GI. We have been sent a table by a House of Lords committee outlining some of the agreements that have been signed or are about to be signed. It refers to separate agreements with the US and with Mexico on the mutual recognition of certain distilled spirits and spirit drinks. The information on the agreement with the US refers to the protection of spirits such as Scotch whisky and Tennessee whiskey but it does not mention GI, whereas the information on the agreement with Mexico specifically mentions GI. Is there a reason why GI would feature with Mexico but not the US?

Dr Hestermeyer: This is a hugely complex field that is made even more complex by the fact that the EU was able to achieve something in that regard in the World Trade Organization. In the WTO agreement on trade-related aspects of intellectual property rights—TRIPS—wines and spirits receive a slightly different treatment from other areas. The US does not really like the concept of GI protection, but it will grant protection under other laws as some sort of trademark. I assume that that is where the difference comes in, and that the US will grant a different form of intellectual property protection rather than GI protection.

The Convener: Is that something to worry about?

Dr Hestermeyer: Not particularly; it is simply to do with a long-standing trade conflict. The EU argues that GI protection is inherently about the territory where something is grown. It says that producing parmesan cheese in the area where parmigiano reggiano comes from is inherently different from undertaking precisely the same process in Minnesota. The original GI concept is that something is unique because of the territory and that people can only make it there. The US does not sign up to that.

The conflict has been particularly arduous when it comes to one type of beer. The US produces it under the name of Budweiser, but a town in the Czech Republic that is called Budweis in German and České Budějovice in Czech produces its own beer and has it protected as a GI in the European Union. That clashes with the US trademark everywhere in the world.

Allie Renison: GIs are an issue between the EU and the US. There are GIs in trade agreements, but there is a huge EU offensive to export, in effect, its GI regime and get other countries to recognise it.

You will probably detect from my accent that I have a slight window into the issue. The reason why it is a particular issue in the US, not for all products but for specific ones, and particularly for cheese, is that there were a lot of European immigrants to the US in the 19th century and people have continued to use names such as cheddar and gouda. In effect, they have become generic terms in the US. The issue is that the US does not want to have to change its labelling laws to reflect the EU's, thereby affecting its producers and consumers.

Alexander Stewart (Mid Scotland and Fife) (Con): We all know that the clock is ticking and that time is running out, but every single organisation has been putting contingencies in place. We have been told that, and that continually happens across all the sectors, whether in goods and services, products or the environment—whatever organisations are involved in. We know that that is the case, but we still find ourselves in this dire situation and there are concerns about what may occur in a few days' time. A lot has been said about the temporary measures that may require to be put in place, and you have made some comments today about some of those and what might happen.

Realistically, what are your fears and anxieties about the situation that we find ourselves in? How do you think it will evolve and progress in the next few weeks? What is your take on the process? Each individual organisation, commentator and

academic has a view on what might happen, but what is your take on how severe it will be? Are we exaggerating what will happen, or is it really going to be as dire as many people believe?

Allie Renison: For the record, I note that about 40 per cent of our members have done contingency planning. Another 40 per cent have said that they are not going to do it until they know what they will be adjusting to, and those tend to be the smaller companies. One of our members in the latter group told me that he spends 50 per cent of his time dealing with known-quantity compliance issues and the rest trying to run his business. For that reason, I think that, although there are some things that we can anticipate under WTO terms, there is a lot that we cannot anticipate.

Let us take goods as an example. Those who are involved in logistics and the transport industry know what is required to move products across borders, and they are the most vocally unhappy at the moment. I think the reason for that is that, at the UK end, some of the simplified procedures that are being brought in to mitigate disruption—at least, in the areas that can be controlled, such as imports—were brought in very late, in February, so traders have not been given much time to overhaul their trade management systems.

The concerns that we are hearing from those sectors, in particular, are not about the new controls, which are more relevant for goods going into the EU than for those coming into the UK, as the UK has more leeway to relax some of them to a certain extent. The concerns are more about the potential disruption because traders are not used to the forms or procedures, so they do not have the correct documentation. There are reports that the Netherlands is creating what is tantamount to a lorry park because it anticipates that people will not have the correct information and will need to be pulled aside. That is where the particular concern about disruption is coming from, and we will not know what will happen about that until exit day.

Dr Hestermeyer: I feel that there are two different components to what is going on. It is really important to point out the problems, because we can tackle them only if we point them out. I find discussions that criticise people who point out problems highly unproductive, because we need to know where the problems are, otherwise we will be surprised by them. Every single administrative change in a well-existing administration creates problems. If there is a new form, for example, there will be people who have not seen the form and people who do not know how to fill out the form. That is utterly normal. Why would it not happen now, when a lot of forms are being changed?

There will be initial problems that might, at times, be grave, such as more lorries being pulled aside, more delays or customs officials being confused by what they have to demand, because they have not read the briefing papers. Like any radical change, that will last for a little bit, and we will then get over that and we will be in a new normal. That new normal will be at a lower level, with more controls and with a steady flow of more difficulties, as these things go.

Dr Bartels: In essence, I agree with that. When systems work smoothly, it does not take very much for them to be badly disrupted. There are recent examples of that such as the five-hour delays on the Eurostar because of a little strike or—as the committee might remember—the US Administration's new immigration rules, which caused immense hold-ups at the airport some time ago. It really does not take very much, and I think that a new form would do it. However, as Holger Hestermeyer said, that is different from the underlying friction that you would get from proper regulatory change.

Alexander Stewart: You talked about 40 per cent of businesses being prepared for some aspects and perhaps 30 per cent of companies moving around to find new locations to mitigate some of their difficulties. That leaves a massive number of businesses in a very difficult and unknown situation as to what might happen as we move forward. Do witnesses have views on that?

Allie Renison: I am most concerned about lots of businesses getting caught out by nasty surprises. In a way, that might be more relevant—while not so immediate for services—because understanding it might take some companies by surprise, particularly in areas where there is not a lot of harmonised EU law. It might take some time to be felt, depending on when companies are trying to change a cross-border contract. Lots of businesses have been sitting down with their suppliers and customers in other countries. However, some companies do not have what we call incoterms—which, in effect, make it clear where the responsibility lies if something goes wrong—in their contracts. If that issue has not been dealt with, there could be unpleasant discussions down the track. Therefore, there might be not an immediate but a gradual realisation of the problems as they arise.

Alexander Stewart: We touched on the temporary measures that will be put in place and the rollovers and all of that—which will be intended to be supportive—if we are in that position. However, how realistic is that view? We have heard today about some of the crises that might happen in some sectors and industries and that they are not prepared. Business will go on, but it

will continue in a different format and in a different way.

Allie Renison: The temporary nature of the measures is a big concern. The source of frustration for business is probably less the change that might come on the day itself and more how many times it is going to be re-done. The whole point of the implementation period and the withdrawal agreement is to keep everything the same and change it once.

The impression is being given that leaving without a deal would be the end and would provide certainty. However, given that it is very likely that the UK would continue to negotiate with the EU and change its temporary measures, people should be disabused of that notion.

Dr Hestermeyer: As always, some of the temporary measures will work better and others will not work as well. From what I have read about Northern Ireland in the public DIT announcement, I do not see how this will work for long.

Kenneth Gibson (Cunninghame North) (SNP): A lot of the issues that I would have liked to touch on, such as the importance of the Ireland situation, transparency, rollovers and priorities, have already been covered. I am pleased to see that committee members are thinking along the same lines.

Capacity was also touched on, and Ms Renison talked about numbers not necessarily being an issue. However, what about the ability and experience of the people who are carrying out the negotiations and the political support that they have behind them—is that an issue?

10:30

Allie Renison: Again, I will be cautious. Because I am not in Government, I do not want to speak to what is going on in Government. All I can say is that, from engagement and looking at the situation externally, there is a concern about doing so many things at once, particularly once we get into the next phase. That will obviously be complicated if we are in a no-deal scenario, because mitigating measures will have to be taken, negotiations will have to be entered into with all the countries with which the UK has existing deals that cannot be rolled over and new arrangements will have to be made.

There are a lot of civil servants who have negotiated with the EU—not necessarily purely on trade—within the confines of the EU. That is very different from negotiating with the EU from the outside, but there is a fair bit of experience there. Again, I cannot speak confidently to what is going on in Government, but questions have been raised about the Government's openness to accepting external advice or people who have previously worked on such negotiations. There is perhaps a tendency in Government to rotate people and an aversion to bringing people in from the outside. That is as far as I will go with that, because I am not inside Government. That might be a function of salary or wanting to keep things in-house. As far as I am concerned, that is a matter for trade negotiations with the rest of the world.

Dr Hestermeyer: As well as experience, it is really important to have the right procedures in place. The further a Government moves away from trying to just reproduce what it already has, the more it will be at a loss, from a negotiating point of view, as to what it wants. A Government negotiator who is negotiating a concrete number for rules of origin needs to know what the country's industry does, so it needs partners in industry to talk to. Those procedures have to be in place, and there has to be a capacity to openly consult industry and to make sure that, when industry is consulted, that process is representative of the country's interests and does not capture the views of just one person.

Kenneth Gibson: There are complexities in how such deals are negotiated. Do you think that the bilateral trade agreements that have already been reached—not that there are many of them—favour the interests of producers, especially exporters, or the interests of consumers?

Dr Hestermeyer: Are you asking about the existing agreements?

Kenneth Gibson: Yes—the trade agreements that have been signed so far.

Dr Hestermeyer: From what I have seen, my personal judgment is that, largely, they simply reproduce the previous agreement, wherever possible, and cut the parts that cannot be reproduced. They attempt to do what was done by the EU agreement.

I am sorry to say this, but an issue that often arises in consultation processes is that industry does not want consumer interests on board. There has been a lot of discussion about that in the US, and there needs to be discussion about it here. Consumer interests should be represented on the consultation panels that the trade negotiators will have access to. I do not think that that is such a large concern at the moment, because most of the agreements simply reproduce what was there before. The issue is more problematic for some agreements, such as the one with Norway, because that cannot really be reproduced.

Kenneth Gibson: Yes. I do not think that any of us shares Boris Johnson's attitude towards business, but I think that it is important that the public are reassured that their interests will be defended when it comes to such agreements.

Does the Institute of Directors feel that the Government is approaching the agreements in a broad-brush way or that it is favouring particular sectors or industries? I hear what Holger Hestermeyer says about the attempts to replicate existing agreements, but I am thinking about the development of new agreements and the move into unknown territory.

Allie Renison: I do not think that the Government has got that far. I am trying to make allowances for the manic nature of the way in which the whole process is being conducted. The Department for International Trade issued a white paper, but I think that most people who work in trade policy found it slightly basic—I certainly did. I will give a counterexample. A couple of years ago, the New Zealand Government, following consultation with lots of stakeholders, produced a very detailed strategic agenda for its trade policy. To a certain extent, going into detail is slightly difficult if you do not know what alignment you will or will not maintain with the EU. There is an inevitability about that.

Having said that, how and why did we pick Australia, New Zealand and the US, looking at the comprehensive and progressive agreement for trans-Pacific partnership, which is the mega-regional agreement in the Asia-Pacific region? I do not know the answer to that. You need to be clear about what your agenda is. Who do you want to have trade agreements with, and what areas does it make sense to focus on—intellectual property, for example? What do you want to do with China? Is a trade deal with China a long-term aim? A lot more detail is needed than is provided in the UK Government's white paper.

The simple answer to your question is that I do not honestly think that the UK Government has got that far. If it has, it has not been very open about it. We know the objectives of the US's trade negotiators; we have no idea what the objectives of the UK's are.

Kenneth Gibson: Dr Hestermeyer, paragraph 18 of your submission talks about a "lack of transparency". Is there a lack of strategic thinking?

Dr Hestermeyer: There are a number of huge problems at the moment, and I am not entirely optimistic that they can be solved. For example, there have been public calls for new trade agreements, but how, in this environment, can you find the time to sit down calmly and reflect on what you want from a trade agreement with New Zealand when you are trying to adapt your business to Brexit and coping with all the other things on top of that? So, yes, there has been a lack of strategic thinking.

There has also been a lack of debate about what the country really wants. There has been a replacement debate: instead of debating what the food and animal welfare standards will be, there has been a debate about whether we want an agreement with the US or with the EU in the abstract, without ever saying what that means concretely. That is highly problematic.

Kenneth Gibson: That is very helpful.

Dr Bartels: I have to disclose that I have been heavily involved in training trade negotiators, so I need to be careful about what I say. I want to be fair and accurate.

The complexity of the situation is probably unparalleled in any country in the world; it is a huge area to get on top of all at once. For example, the UK Government is proposing to negotiate or renegotiate in parallel—the data is now out—more than a dozen agreements all at the same time, without, as Holger Hestermeyer said, in anticipation of that, having worked out basic domestic policy questions, because it has not had to do that before. We do not know what the UK's agricultural policy is. How can a free trade agreement be negotiated on that basis? Agriculture does not account for much overall in economic terms—I think that it is 0.6 per cent of the UK's gross domestic product—although, depending on the constituency, it can be more important. Overall, agriculture is very small, but it is the major hold-up in any trade negotiations. You need to know what your policy is, what your flexibilities are and what your choices will be. Those things need to be known before you embark on one trade negotiation, let alone more than a dozen trade negotiations at the same time. There are then all the other questions that we have been covering today.

That is one pressure that any Government would struggle with. In addition, the UK is doing this from scratch. Three years ago, there was virtually no knowledge in the Government about trade. I think that it was 2015 when I gave a talk to all the people who were interested in trade—at least, those who were free and interested enough to listen to what I had to say—and only a handful of people really had any idea about it. However, I have to say that, in the past three years, the situation has improved impressively. In 2016, matters were extremely dire, but it is now 2019 and the time has not been wasted—people have learned about trade.

There are a number of outstanding problematic issues. First, there is the issue of salaries. There is still a need to buy in people with information, which means that you have to pay them. Where is that information? Who are the people who know that stuff? It is people who have been working in the area—academics, who have academic jobs. There are a few of those, half of whom are here today if we include other people around the table,

although there are a few more. It is people who work for other countries, who will continue to work for other countries, because that is their job. It is people who work in law firms. To attract all those people, you will need to pay money. However, we can see, in the attempt to recruit people to the Trade Remedies Authority and, for that matter, to the DIT and so on, that people are just not coming because the salaries are not high enough. We can see that reflected in the fact that most people who work in those departments are young—the jobs are starter jobs for a lot of people, and that is a challenge. You just need money—money would fix some of this, but maybe not all of it.

In addition, I have seen two other problems that the Government needs to cope with, which are partly inevitable. One of them is co-ordination between Government departments. There are certain areas, such as services, in which five, six or seven Government departments all want control. Another example is tariffs. Who has control—the DIT or HM Revenue and Customs? In agriculture, there are tariff-rate quotas. The Department for Environment, Food and Rural Affairs has a TRQs team that is interested in rectification of WTO schedules, which one might have thought would be the sort of thing that the DIT would do. There is also the Foreign and Commonwealth Office. When it comes to trade agreements, there is a split between the FCO, the Department for Exiting the European Union and the DIT. The Department for Business, Energy and Industrial Strategy has an interest, too. Lots of Government departments are all dealing with different FTAs and different aspects of FTAs, even taking the lead on them in different ways, so there is a co-ordination issue.

Every Government struggles with that. It is difficult if you do not have a negotiator with an important role at the table, which is why some countries bundle trade with foreign affairs. It is not so much that trade is foreign affairs, although there is an element of that, as that the foreign affairs minister counts around the table and is able to overrule other Cabinet colleagues in order to get a trade point across. Without that, you cannot negotiate anything.

There is then a peculiarity of the UK civil service. It might sound as though I am feathering my own nest, Holger Hestermeyer's nest and the nests of our legal colleagues, but I find it surprising that the UK civil service still has a culture of generalism. That is surprising, not so much because of where the UK civil service comes from as because it is still the case.

Generalism works fine when you are dealing with domestic policy, because you can pull in experts as you see fit. Because this country does not have a written constitution, you do not really need legal experts, because everything is policy and, if you do not like the policy, you change the law. The UK civil service has a really different approach to the role of lawyers and other experts from that of other countries, particularly those in the EU. That is partly because those countries are used to having constitutions, but there are other reasons as well. When it comes to domestic affairs, that is okay; when it comes to international affairs, it is not. The FCO, which is used to dealing internationally, places huge importance on law. That is why the FCO's legal adviser is such a monumentally important figure in how the FCO operates.

I have not seen the same importance placed on lawyers—in particular, trade lawyers, treaty lawyers or whoever it happens to be—in the relevant Government departments. That is not to say that those departments are not interested in the law; but, from what I know, lawyers are somewhat segregated in those departments. They are not front and centre; they are seen a little bit as a defamation lawyer might be seen by someone who is running a newspaper or a television station—they run things by them to make sure that they are okay, and they get things implemented in legal language. However, that is the wrong way round. Law is the language of trade and international relations, and, if lawyers are not there at the very beginning, you will be speaking the wrong language and will have to translate into another language later. That is a cultural problem that the UK civil service has not yet grappled with.

Stuart McMillan (Greenock and Inverclyde) (SNP): You touched on GDP, Dr Bartels. Figures on Scotland's economic situation were published this week. The unemployment rate reached a new low, at 3.4 per cent, and GDP was up by 0.3 per cent in the fourth quarter of 2018, despite the backdrop of Brexit. Given the huge uncertainty that we face, how will GDP fare in Scotland and in the UK?

10:45

Dr Bartels: I am afraid that I cannot answer that, because that issue is outside my scope of competence. I cannot really speak about economic matters, so I will hand the question over to my colleagues.

Allie Renison: I knew that I would get that question. Business organisations tend to be more comfortable talking about the impact on businesses, rather than trying to project ahead. I do not know whether the question relates to different Brexit scenarios or to a no-deal Brexit specifically.

Stuart McMillan: Either.

Allie Renison: Although this is not true among our membership, statistically, fewer businesses in Scotland trade with the EU compared with the UK average. That said, although I do not know whether it would be right to say that Scotland is reliant on free movement, free movement matters a lot to Scotland; I live here, so I know that it does. There are challenges that are more acute and challenges that are less acute, but I am not entirely sure about the balance and the trade-offs. To some extent, particularly in a no-deal scenario, the question is whether the effect is temporary. Generally speaking, everyone accepts that the erection of trade barriers under that scenario, whether that is done voluntarily or not, would not be good for the economy. However, we cannot predict what mitigating actions would be put in place unilaterally domestically, particularly in the medium term, to offset the effects of a no-deal scenario.

Stuart McMillan: Would Dr Hestermeyer like to comment?

Dr Hestermeyer: I confess that I, too, am not an economist. There seems to be a general downturn in the world economy, which does not bode well. However, I cannot add anything that you will not have read already.

Stuart McMillan: My second question is about devolved Administrations, which the witnesses touched on earlier. I will read out a couple of lines from the UK Government's document on trade negotiations that was published in February. The document says:

"The Government is committed to working closely with the devolved administrations to deliver a future trade policy ... The devolved administrations will continue to be responsible for observing and implementing international obligations in areas of devolved competence ... We recognise that the devolved legislatures also have a strong and legitimate interest in future trade agreements."

That makes clear the UK Government's respect for the devolved Administrations, but how is that working in reality?

Dr Bartels: It is obviously a key part of the negotiations on the role of devolved Administrations in the areas formerly governed by EU law where these issues are not so grey. What to do about agricultural policy and how that relates to the role of devolved Administrations in agricultural subsidies, for example, is one of the touchstones that highlight that debate.

It is a pretty big debate, and I cannot comment on it too much. I can say how such matters are handled in other countries that have independent trade policies and do not have the particular overlay of EU law. Trade policies in such countries could be a model for a UK that is no longer in the EU.

In general, there are times at which devolved Administrations are at the negotiation table—sometimes more directly and sometimes less directly. Why? I will not talk about Canada in that respect, because it is unusual and has a unique constitutional set-up. However, in other federal systems that are based on, for example, the US model—Australia is modelled on the US constitution in that respect, but Canada is the opposite—the federal Government has competence to deal with external affairs. The states are handled in a different way in that scenario; it is much more pragmatic. Theoretically, the federal Government can sign a treaty and that is the end of the story; the states have to put up with it. In reality, the Government speaks to the states when it needs to in order for the agreement to be implemented, because the states have legislative control over certain areas.

In this country, the Government would look at the devolution legislation to see the areas in which the devolved Administrations have legislative competence. Generally speaking, it is areas of non-harmonised—in a national sense—regulation and when money is involved. Procurement, which I mentioned earlier, is one such area, because devolved Administrations, or states in federal systems, spend money and the Government needs them on board if it will be making commitments on procurement.

One reason why services negotiations are more complicated than goods negotiations is that services regulation often differs between states. Imagine the UK going off to negotiate access to the legal services market in the UK without paying attention to the fact that legal services in Scotland operate under a different legal regime, with different regulatory bodies arranging matters, dealing with qualifications and so on. In that example, the devolved Administrations would need to be involved simply to make the agreement work. There is no point negotiating an agreement if it cannot be implemented back at home.

Regardless of the formal role of devolved Administrations and whether they have a seat at the table, in practice the two areas where they need to be consulted before an effective negotiation can take place, even if, formally, it could take place without that, are where the devolved Administrations spend money and where, directly or indirectly, they are in control of regulation.

Dr Hestermeyer: I have just pulled out the paragraph that the House of Lords European Union Select Committee wrote on the Faroe Islands FTA. It said:

"the Government's engagement with the Scottish Government while negotiating these rollover agreements

has been limited, and it did not share draft text with the Scottish Government prior to signature."

The Faroe Islands agreement is, of course, particularly relevant for fisheries, which I understand to be devolved. It is clear to me that, if you want devolution to be effective, that cannot continue, but the Government seems to recognise that and has said that it will change its policy in that regard.

The constitutional arrangement that we have here needs to develop. Foreign affairs are a prerogative power. The UK is unusual in comparison with other countries in that ratification procedures are theoretically part of the Government's powers alone. The only processes are the constitutional convention that the FCO will demand implementing legislation where necessary, which must be passed before ratification takes place, and the scrutiny procedure under the Constitutional Reform and Governance Act 2010, which can delay things but does not give an up and down vote on the treaty. Up and down votes on trade treaties are usual in other countries. If you have devolved powers, you need to include the devolved Administrations to some extent. It is very important for the devolved Administrations to engage with a reform discussion on that. To my mind, it is something that is now up for reform.

Allie Renison: It very much is, and you can be forgiven for asking the question. There has been a commitment to do that—I do not know at what stage that will happen; you might be better informed than I am—when the discussion about transfer of powers back to the devolved Administrations happens, once we are out of the EU, assuming that happens. You would expect it to happen before we enter a trade agreement with a third country, but I do not know whether that will be the case. Not doing that may complicate matters.

This is not the tail wagging the dog—it is just a fact—but the more devolved regulation there is, the more that complicates trade negotiations. That does not mean that you do not do the devolution, but it is a complicating factor. Everyone now has in mind what happened in Belgium when the regional Assembly was able to block CETA. That might have been great for the regional Assembly or the region, but it was not considered as great by anyone else around the world. There is a little bit of fear about that. The more devolved Assemblies are involved early on—regardless of how that is done, and there might be some discussion about agreeing the mandate—and can agree or discuss matters, the less that will happen.

Stuart McMillan: I very much appreciate the three answers.

In paragraph 25 of your submission, Dr Hestermeyer, you mentioned the European Union Select Committee highlighting the need for engagement. Tavish Scott and I were on the Devolution (Further Powers) Committee in the previous parliamentary session, which did a lot of work on intergovernmental relations. I think that Annabelle Ewing was on the committee as well. The problem of intergovernmental relations and having a genuine dialogue is perpetual. Are you aware of any improvement in relations between the devolved Administrations and the UK Government that could assist with the trade negotiations?

Dr Hestermeyer: At least from what I have seen in parliamentary debates, the Government seems to have agreed that the lack of engagement was not okay and that it wants to change that and share draft texts with the devolved Administrations.

Allie Renison: You would expect that before any trade negotiation. Part of that, as has been referred to, is a gaming tactic, like the US publishing its trade negotiation objectives, but I wonder how quickly the UK will move to that. Ideally, it is preferable to have a discussion about transfers of powers before getting into that, because that will complicate matters or potentially infuriate—for legitimate reasons—people in the devolved Administrations because that commitment was made. If you rush a trade negotiation and absent that completely, it will make the environment even more fraught.

Dr Bartels: This is one of those problems that arises because everything is happening all at the same time and for the first time.

Stuart McMillan: The intergovernmental relations problem has not arisen due to Brexit; it was there for some time beforehand.

Dr Bartels: Of course—that is true. There are aspects of the constitutional settlement that are in flux and on which there is on-going discussion, but, in the area of trade, Brexit has raised it to another level.

It would be useful to see how other countries have dealt with similar situations. Each situation is different, but one can try to get a sense of the type of matters on which a devolved Administration would have a more legitimate claim to have a say, and the type on which it would not. An example that came up in our earlier discussion was the effect on a particular business of no deal dropping tariffs to zero. That strikes me—I hope that it is all right to say this—as a national and not a devolved issue, because it is just a business in the UK and there is formal representation via the UK Parliament for such issues. That seems to me to be different from the issues in which, according to

the constitutional settlement, devolved Administrations have a particular role. It would be helpful to focus on the problem from the point of view of what is legitimately claimed and what is not.

The Convener: The committee's adviser, Dr Filippo Fontanelli, points out in his briefing for us the areas of devolved competence that are affected by trade agreements. There are extensive rules on public procurement, trade in agricultural and fisheries products, protected geographical indications—as we have discussed—environmental protection, sustainable fisheries, forestry, judicial co-operation against corruption and money laundering, and civil justice. There is a huge array of devolved competences. We have talked about intergovernmental negotiations, but we know that, in trade agreements, the EU Parliament has a formal role. At the moment, we are replacing that. What kind of role should this Parliament have, given that those devolved competences have an extensive impact on trade agreements and Scotland's interests?

11:00

Dr Bartels: My answer follows on directly from what I said previously. It depends on how you look at it. The thing about trade agreements is that they affect absolutely everything. If your test is, "What does this agreement affect?", you would have the Scottish Government negotiating trade agreements on its own, because a trade agreement affects absolutely everything. Every time you pull out your wallet, a trade agreement is implicated in some way, because you are buying goods or services that have some international component. That is an extremely broad test.

Other countries do not apply that test, which is why I take a more conservative view. My approach would not be to consider the areas that are affected by a trade agreement and which are also areas that the Scottish Government might regulate, because that covers everything. Instead, I would consider where the trade agreement more directly affects the regulatory powers of the Scottish Government or Scottish Parliament in the devolved settlement. I think that that is narrower.

Dr Hestermeyer: When it comes to what can be done, there are a lot of models to consider, because every federal country has had to find its own settlement in dealing with such negotiations. The EU itself consists of member states that also have a voice, and the outcome of discussions has often been mixed agreements in which member states also become parties.

A range of solutions can be envisaged. At one end, a solution might involve overriding devolution altogether through the trade agreement and saying that, as soon as there is a trade agreement, that area becomes a central competence, with the implementation being done through the centre. That is not very good for any devolution model. A solution at the other end of the range might involve you having a seat at the table, which complicates negotiations quite a lot.

Several points of entry are being discussed in the reform debate with regard to how to change parliamentary involvement in treaty arrangements. One point of entry concerns the mandate of negotiation and an up and down vote on the deal itself at the end—you cannot really have Parliament amending the deal because you then have to go back to the negotiation table, which is a pain. In that model, there would be accompanying rights of information and consultation.

Rather than giving devolved Administrations a seat at the table, which complicates matters, it seems reasonable to me to run the process through the devolved Administrations by establishing a requirement to consult and—why not?—a requirement to get the agreement of devolved Administrations when you are negotiating in areas of their competence. That will need to be discussed in depth. What makes those discussions more difficult is that there are many roll-over agreements that pretend to be old agreements. To some extent, it is possible to argue that you do not really need the same type of involvement in that regard. However, that should not diminish the need to have a good debate.

Another thing that can be learned from the experience of the EU is that it is vital for the devolved Administrations to have the relevant experts. In the CETA story, a lot of experts in the area of investor state dispute settlement were annoyed because they felt that the concerns were not always legitimate ones but were the result of people reading the agreements for the first time and getting a sudden shock. It would have been better if they had read the agreements—and got that shock—earlier, so that they could have been informed.

Allie Renison: I would probably follow the slightly more conservative approach that is favoured by Lorand Bartels. Everyone in the trade policy community was affected by the experience with the Walloons. That probably soured a lot of people's opinion on whether it is a good idea to have devolved Administrations, subject to constitutional requirements, having a vote at the end of the process. That is why I think that it is important to focus on the mandate—even if that involves a vote on the mandate—rather than on the end point.

The Convener: Thank you for your evidence. We now move into private session.

11:04

Meeting continued in private until 11:21.

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