



OFFICIAL REPORT
AITHISG OIFIGEIL

Culture, Tourism, Europe and External Affairs Committee

Thursday 4 June 2020

Session 5



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CULTURE, TOURISM, EUROPE AND EXTERNAL AFFAIRS COMMITTEE
13th Meeting 2020, 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)

Ross Greer (West Scotland) (Green)

Gordon Lindhurst (Lothian) (Con)

*Stuart McMillan (Greenock and Inverclyde) (SNP)

*Oliver Mundell (Dumfriesshire) (Con)

*Beatrice Wishart (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Patrick Harvie (Glasgow) (Green) (Committee Substitute)

Philip Rycroft

CLERK TO THE COMMITTEE

Stephen Herbert

LOCATION

Virtual Meeting

Scottish Parliament

Culture, Tourism, Europe and External Affairs Committee

Thursday 4 June 2020

[The Convener opened the meeting at 11:00]

Negotiation of the Future Relationship between the European Union and the United Kingdom Government

The Convener (Joan McAlpine): Good morning, and welcome to the 13th meeting in 2020 of the Culture, Tourism, Europe and External Affairs Committee. For our fourth remote meeting, we have received apologies from Gordon Lindhurst MSP, Kenneth Gibson MSP and Ross Greer MSP. For the committee's meetings in June, Ross Greer will be substituted by Patrick Harvie MSP. Does Patrick Harvie have any interests to declare that are relevant to the committee's remit?

Patrick Harvie (Glasgow) (Green): I do not think that I have any formally registrable interests. However, for the purpose of clarity, I want members to be aware that, along with a range of other MSPs and politicians from different parties, I am a voluntary vice-president of the European Movement in Scotland.

The Convener: Thank you very much for that, Patrick.

Our main item of business this morning is an evidence session on the negotiation of the future relationship between the European Union and the United Kingdom Government with Philip Rycroft, who is a former permanent secretary at the Department for Exiting the European Union. I welcome Mr Rycroft to the meeting—albeit remotely—and thank him for agreeing to give evidence.

Because of the challenges of managing a virtual meeting such as this one, we will take questions in a pre-arranged order. I would be grateful if questions and answers are as succinct as possible. I remind everyone to give the broadcasting staff a few seconds to operate their microphone before they begin to ask their question or provide an answer.

I invite Mr Rycroft to make some opening remarks.

Philip Rycroft: Thank you very much, convener. I am very glad to be with you—albeit remotely.

I will say a little bit about my background and perhaps—[*Temporary loss of sound.*—]why you are interested in asking—[*Temporary loss of sound.*—]today.

As you mentioned, I worked at the UK Government's Department for Exiting the European Union. I worked there from March 2017 to March 2019. From October 2017, I was the permanent secretary, or head, of the department.

Throughout that time—indeed, from the beginning of 2015—I was the head of the UK governance group, which was formed in 2015 from the Cabinet Office's constitution group, the Scotland Office, the Wales Office and the Office of the Advocate General for Scotland. Its job was to provide the main source of advice to the Prime Minister and other ministers on constitution and devolution issues.

I spent the first 20 years of my career working in the Scottish Office, the Scottish Executive and then the Scottish Government, and I have lived in Scotland for more than 30 years. I continue to do so.

I am an honorary professor at the University of Edinburgh, a visiting fellow at the Bennett Institute for Public Policy at the University of Cambridge and a specialist partner at Flint Global, and I have some non-executive roles.

I look forward to taking members' questions on our future relationship with the EU.

The Convener: Thank you very much. We very much look forward to benefiting from your expertise and wide-ranging experience.

I will start by asking about the potential effect of Covid on the negotiations. Michael Gove said that he thought that Covid would concentrate the EU's mind on reaching a deal. However, last week, David McAllister MEP told us that Covid was slowing down the whole process and making it more difficult to reach a deal. Michael Gove said that the UK Government was ready to walk away next month if no progress is made; David McAllister told us that so little progress had been made that there might not even be a special meeting this month.

That has led to some speculation and suggestions that the UK Government is, in fact, aiming at a no-deal Brexit. *The Spectator*, which has quite close channels with the UK Government, has argued that the UK Government believes that the coronavirus crisis represents an opportunity to walk away from a trade deal—to use Covid as cover for a no-deal Brexit. What is your view on that?

Philip Rycroft: I personally think that that is a very odd view of the world. Exit from the EU—from the transition period—without a deal would be a

very big step for this country to take. It would have a huge impact on thousands of businesses throughout the land, many of which are currently struggling for survival. To have to face the added complexity and uncertainty of a no-deal exit from the transition period at the end of this year would be very damaging economically.

I remain of the view that a deal is in the interests of both the UK and the EU. I happen to believe that it is in the interests of the UK Government, too. It would not be a good look to fail to achieve a deal over the course of this year, but an enormous amount of work still needs to be done in order to achieve that outcome.

There is no doubt that coronavirus has slowed things down. It is a huge distraction for the EU and the UK. Thinking of the EU perspective, we tend to take a slightly myopic view of where the EU's interests are. Brexit, even in spite of coronavirus, will be quite a long way down its list of priorities. It is moving on, to coin a phrase, and it wants to get Brexit sorted out, but Brexit is not top of its list. It is up to the UK Government as well as to the EU and the European Commission, which is leading the negotiations, to put in the hard yards to ensure that we avoid an outcome of no trade deal at the end of this year.

The Convener: The UK has not given any economic impact assessments with the draft legal texts that it has recently produced. You have spoken a little bit about the economic impact. You are probably aware that, yesterday, the Scottish Government published a paper that showed that Scottish gross domestic product could be as much as 1.1 per cent lower after two years and the cumulative loss of economic activity would be about £3 billion. Other economic impact assessments have been produced, including by the United Nations.

Given that there is so little time left to conclude any kind of deal, do you think that we are facing a sort of yellowhammer situation? Charles Grant spoke to our committee some time back, and he said that yellowhammer still applied.

Philip Rycroft: There are two questions in there. First, what is the economic impact likely to be? You are quite right. Lots of economic impact assessments have been done, including one that was led by my department, the Department for Exiting the European Union, which was published in November 2018 and considered a range of possible scenarios, including no deal, so-called average FTA—an average free trade agreement—a European Economic Area-type outcome, and the arrangements under the white paper proposed by the then Prime Minister, Mrs May.

The outcomes that we are most interested in now are an average FTA, which is what the

Government is heading for, essentially, or a possible no deal. That work suggested that, modelled on impact over 15 years, GDP growth in the UK would be around 5 per cent lower under an average FTA than it would have been otherwise. Under no deal, it would be about 7.5 per cent lower than it otherwise would be. To be absolutely clear with the committee, that does not mean that GDP would fall by that amount; rather, the country's economy would not grow as quickly as it otherwise would have done, so that is lost growth.

That modelling sits about in the middle of the pack of all the other modelling that has been done by lots of groups of economists in the private sector, the public sector and elsewhere. We have a pretty clear understanding of the likely impact but, of course, the estimates have not been updated to take account of the Government's negotiating position. However, as I said, to my mind, the modelling remains sound.

If we ended up with no trade deal by the end of this year, the withdrawal agreement—the treaty that we as a country are now signed up to—would remain in place, so the measures relating to citizens' rights, the budgetary commitments and, in particular, the relationship with Northern Ireland, which are some of the issues that I was worrying about at the beginning of last year, would remain in place. However, we would move into a new trade relationship pretty much overnight, and we would have to work to World Trade Organization terms and conditions. That would have a very big impact.

Given that businesses have not had the time to prepare sufficiently for that outcome, partly because of coronavirus, there is clearly a risk that there would be hold-ups at the border, because businesses would not have the right paperwork in place. All the issues that I worked very hard on with my team when I was in the civil service would kick in again, and the civil contingencies planning that came under the operation yellowhammer heading might be required. Depending on what happens at the end of this year, there is still a risk of disruption as systems and traders on both sides of the border adjust to the new trading reality.

The Convener: There is a lot in that answer that I would like to follow up on but, because we are holding a virtual session, we are restricted to asking two questions, so I have to set a good example to the other committee members. I hope that I will be able to come back in at the end of the session, and I am sure that many committee members will want to follow up on what you have said.

Claire Baker (Mid Scotland and Fife) (Lab): Philip Rycroft has argued that the UK Government does not favour a no-trade-deal Brexit but that it does want a resolution to the current situation. The

convener mentioned the argument that we should have an extension, which is not possible without a legislative move and a request from the UK Government. Why is the UK Government so set against an extension, given the current Covid crisis that we are all facing? Do you have a view on the proposal that there could be a conditional extension? Raoul Ruparel has talked to the committee about such an extension.

Philip Rycroft: That is a very topical question, because we are approaching a hard deadline, which is at the end of this month, for the UK to be able to request and the EU to agree to an extension of the transition period by up to one or two years. To aid the committee's understanding, I highlight that that is an important deadline. The request for an extension would be made under the authority of the withdrawal agreement treaty, which, in turn, is founded on article 50 of the treaties. The authority of article 50 has now expired, so the deadline is a hard stop. If the UK has not requested an extension by the end of this month, it becomes very difficult legally to agree to an extension before the end of the transition period at the end of this year.

Raoul Ruparel has put forward an interesting proposition to see whether something is negotiable in that space—as Claire Baker said, it would be a conditional extension. The lawyers will tell you that that would be really difficult, because the legal basis, in European Union terms, is simply not there. Obviously, there are treaty articles that would allow the EU to negotiate a different treaty with the UK, but those treaty articles generally fall under so-called “mixed competence”. Therefore, that could not be decided just by the Council of Ministers on its own; it would require ratification by member state Parliaments. Some countries also have constitutions that require ratification by regional Parliaments. In other words, it is a complicated and time-consuming business. I think that, if the end of this month passes without a request and an agreement on the extension of the transition, it will be very difficult to revive that proposal.

11:15

You asked why the Government is resisting extension. I look at the issue not so much from the perspective of the negotiations or the complex arguments about Brexit; I look at it simply from a practical point of view. If we do not extend the transition, there will be, at the end of this year—deal or no deal—a new trade border with the EU. People need to understand that. Even if we get a free trade agreement, that will require a new trade border for goods and services, because the terms of trade will change substantially. As I said in response to the convener's questions, that is a

huge challenge for UK-based businesses and, indeed, for EU businesses trading into the UK.

Currently, almost every business in the UK is dealing with the biggest peacetime economic shock that we have faced since at least 1929. The afterburn of that shock will be with us through the rest of this year and probably well beyond it. Therefore, this appears to be an odd time to add to the burden on businesses when we have a choice not to do so.

The shock would, of course, be asymmetric. It would impact on UK—or, more particularly, Great Britain—businesses more than it would on EU businesses at a time when businesses would be trying to find their feet again after the coronavirus crisis.

In that context, we might wonder why the Government is apparently insistent that it will not seek an extension. I think that we have to look for the answer to that question in politics. It is a political decision that the Government has taken because—I presume—it believes that it reflects the interests of those who voted in the general election and gave the Government a substantial majority, and that it is sticking by the proposition that it put to the electorate. That is a perfectly legitimate political decision to take but, of course, that political outlook does not necessarily coincide with the interests of a lot of UK businesses.

Claire Baker: You have presented the significant challenges that we will face in the next six months if there is no request for an extension, and you have shown how difficult it will be to achieve a deal by the end of the year. Is there a realistic prospect of the UK Government and the EU reaching consensus by the end of the year?

You said that the UK Government does not want a no-deal exit—that it plans to get a deal. It seems that that will be extremely challenging: we have struggled to find any commentators who agree that it will be possible, given where we are now, to reach a deal by the end of year.

Philip Rycroft: I might be an outlier, but I think that it is still possible to reach a deal. I am not saying that it is a slam dunk—there is a huge amount of work to do.

We know where the big differences between the two sides are. It is, for example, pertinent to Scotland that there are issues about fisheries. There are also issues to do with there being a level playing field, which the committee will understand well, that affect all citizens and businesses in the UK. There are also the rules and standards that govern the environment, labour markets and fair competition in business to consider. There are arcane but large and important differences about the structure of the deal that might be done.

From looking at those issues carefully, I have no doubt that there is scope for compromise. It is possible to see a way forward on each of those three matters. It depends, crucially, on the political will to make compromises, which will have to come from both sides. It is not a one-way street; both sides have taken strong positions on those matters and both will have to shift. In my view, if the political will exists, a deal is possible by the end of the year.

How likely is that outcome? I am not a betting man, but if I was asked for odds I would not put them much better than 50/50. Even at that, I am probably ahead of most commentators, who are more gloomy about it.

It is worth remembering that it remains—in my view and, I think, in that of most commentators—overwhelmingly in the interests of the EU and the UK to have at least the trading relationship sorted out by the end of this year. It will be in neither side's interests to have the uncertainty and confusion of a no-trade-deal outcome, which would spill out into all the other domains of our relationship with the EU, not the least of which is security. The citizens of the UK and the EU have grown dependent on very close security co-operation. Needless to say, it would be a good thing if that was to continue.

Oliver Mundell (Dumfriesshire) (Con): Thank you for your answers so far. You say that there are red lines and that compromise will be needed on both sides. Would having more time for the negotiations be likely to produce movement? My feeling from having seen other EU negotiations, including the negotiations around the withdrawal agreement that you were involved in, is that the EU, in particular, tends to move at the last minute. A focused deadline might therefore produce results—particularly on matters such as fisheries, in which there is already a sense that the EU might be willing to move from its original position.

Philip Rycroft: That is a fair point about the dynamics of negotiation—not just on the UK's exit from the EU, but about international negotiations generally. There is a risk that negotiations will expand to fill the time that is available. The argument for an extension that I have made—although I think that it is clear that the Government will not follow it—concerns the economics of transition rather than the negotiating impact. On the current state of the negotiation and the positions of the two sides, I return to my point that, if the political will exists, there is time to get the problems sorted out.

It is right to say that the tough and controversial issues in any negotiation tend to be settled late in the day. The really important time in the negotiations will be September and October: do not forget that the negotiations need to be put to

bed by about the end of October in order to allow time for ratification by the UK and the EU before the end of the year. Time pressure can help to get folk over the line, but the key will be willingness on both sides to compromise on their original positions in order to allow a deal to emerge.

Finally, it is worth emphasising that we are talking mainly about sorting out a trade agreement by the end of the year. The UK's relationship with the EU is very complex, with its having been a member for several decades, so a number of domains will need to be sorted out in order that the UK can have an ordered and structured relationship with the EU in the future. I see very little possibility that it will all be sorted out by the end of the year.

We might get a free-trade agreement, but there are plenty of other domains—I have mentioned security; other examples are transport, energy and UK engagement in EU programmes—which might not be sorted out within that timescale. I suspect that even if we get a deal, we will still see negotiations continuing into next year on various aspects of our future relationship.

Oliver Mundell: From experience, do you think that there is willingness to move? What do you think a final outcome would look like on, for example, fishing and the level playing field? What would compromise look like?

Philip Rycroft: I cannot answer on whether the political will exists—we are all reading the runes on that. My instinct is to say that, for both sides, as we get closer to the end of the process, there will be a dawning realisation that failure to get a deal does not look good domestically for the UK Government, and it does not look good for the EU. They will want to get it sorted and to be able to move on and get Brexit done and out of the way.

Of course, the EU will have lots and lots of ongoing negotiations and discussions with the UK from here on in, for ever, because that relationship is so important, but it will see getting the principles of the relationship sorted out as being very much in its interests.

You asked about where there is scope for compromise. I cannot sort out for the committee what is a very complex deal in only about two minutes today, but let us look briefly at fisheries. Those of you who follow the technicalities will know that the EU is saying that it wants the certainty of “relative stability”—that is the technical term—through its fishermen knowing what access to UK waters and what opportunities to fish in them they will have. The UK is saying that it wants to move to something that works more like the EU-Norway fisheries negotiations, in which we would negotiate from zonal attachments. We would look at where the fish are and, on the back of that,

decide how the total allowable catches might be divided. That, however, would not give the certainty that the EU seeks for its fishermen.

Where is the compromise in that? Clearly, we can see a compromise in which the UK accepts that EU boats need some certainty year on year about what fishing opportunities there will be in our waters but, by the same token, we would expect that to reduce as a proportion of the catch over time. It would be a long transition, in order not to disadvantage EU fishermen too much as we go through the process. That would be a classic sort of compromise; we can see the possibilities in that.

In relation to the level playing field, the UK Government has made it very clear that it is not going to lower standards on environmental protections or the labour market. There are bigger arguments around state aid, however. The EU side is demanding something that the UK Government is saying is unacceptable: so-called dynamic alignments on state aid, which would require the UK to continue to adjust to changes in the EU rulebook. Where would the compromise lie, if we were to sit down and try to thrash out a deal on that? It seems to me that the shape of that deal is pretty self-evident. If the UK is saying that it will sign up to binding so-called non-regression clauses, that it will not let standards slip, and will not change its rules on state aid to weaken them, the EU could say that that is fine and accept it. It could drop its demand for dynamic alignment and accept that the UK does not have to follow future changes in EU laws. It seems to me that that is the space in which a solution could be found.

However, I come back to the fact that finding that space, exploring it, opening it up and debating it will require of both sides the political will to give it to the negotiators. Obviously, there are negotiations happening as we speak. The previous two rounds have not been very promising, which is not hugely surprising at this stage, and I doubt that we will see a lot of progress this week. The debate that I mentioned needs to be started pretty soon, in the summer, if we are to have a chance of getting a deal sorted by the year's end.

11:30

Patrick Harvie: I have to say that I was not expecting this session to fill me with boundless confidence and optimism, and I have not been surprised so far.

Perhaps we can turn from the UK-EU relationship to the internal dynamics between the nations of the UK. As you said in your introduction, you have a great deal of experience of the different Governments in these islands. In the

absence of any formal constitutional mechanism to give the nations of the UK the ability to approve, or withhold approval from, any agreement, the process now comes down simply to the politics.

I wonder whether you have had a chance to look at Michael Russell's statement to Parliament yesterday. He said:

"The draft UK legal texts ... were made available to the other EU nations only two weeks ago. We"

—the Scottish Government—

"had virtually no involvement in producing them and saw the legal texts—with no possibility of changing them—only 24 hours before they were published."

He went on to say:

"the Joint Ministerial Committee ... is meant to have 'oversight' of the negotiations in so far as they affect devolved competences, and to 'seek to agree' the UK position. In fact"

it

"has met only once".

Finally, he said:

"Despite our efforts, the whole process is not about influencing what is happening and still less about deciding on crucial issues for which we are responsible; it is merely about hearing about what is happening."—[*Official Report*, 3 June 2020; c 31.]

From your experience, is that a fair reflection of the general nature of the relationship between the Governments on these matters? Is the existing mechanism—such as it is—for joint decision making meaningful at all, or is it merely a cursory gesture?

Philip Rycroft: That is a fair question. I saw Mr Russell's letter to the committee. We were very exposed to that debate during the time that I was in Government; it really started in June 2016, and it has not stopped since then.

I will make a couple of introductory remarks. There is a huge chasm at a political level between what the UK Government proposes and what the Scottish Government believes is the right course for Scotland and, by extension, for the UK. Scotland obviously did not vote to leave the EU, and the Scottish Government does not wish to leave the EU and wants a very different outcome for our future relationship from the one that is proposed by the UK Government. That has been the hallmark of the discussions ever since June 2016. There is little coincidence of political thinking on the big issues of our future relationship with the EU.

However, it is worth stating—to give credit where credit is due to both Governments—that a lot of work that has been required just beneath the surface, in order to ensure that the UK as a whole is ready for exit, has been done. Civil servants on

both sides, with the support of ministers, have done a lot of work, for example, on no-deal planning and to ensure that the statute book in the UK and in Scotland is competent in respect of what happens once we have left the EU. They have done a lot of work on the new arrangements that will apply around the so-called common frameworks for powers returning from Brussels that sit within devolved competence. There will be—to use the jargon again—a far more extensive range of shared powers, which will require discussion between the four Governments of the United Kingdom from here on into the foreseeable future.

I put the marker down that, below the political line of sight, a lot of hard work has been done on behalf of, in essence, the citizens of the whole UK to try to ensure that the process is orderly. However, one of the big criticisms that the Scottish Government has levelled at the UK Government—this was true in my day as well as being true now—is that the engagements in the negotiating process have been very limited. We set up the JMC on European Union negotiations with the remit that Mr Harvie has just read out of oversight of the negotiations and seeking to reach agreement. It is probably fair to say that that has not operated entirely to the satisfaction of all those around that table.

That is a choice of the UK Government and a matter of the extent to which it seeks to involve the devolved Governments in its deliberations. I have always been of the view that, if it is politically possible, it would be better if the UK's negotiating position was clearly a united one across not just the other Governments of the UK, but the business community and so on. However, in the circumstances of the current political context and the difference of view between the Scottish and UK Governments on what the future relationship should look like, it seems to me very difficult to have productive, behind-the-scenes discussions about the UK's negotiating position.

Of course, in constitutional terms, as Mr Harvie has pointed out, the position is that that is reserved territory and the devolved Governments of the UK do not have the ability to formally approve or disapprove of the UK's negotiating position or, indeed, the outcome of the negotiations.

Patrick Harvie: The conducting of the negotiations is reserved territory, but it is clear that a lot of the content of what is agreed will impact on devolved territory. I am also a member of the Finance and Constitution Committee, whose work on common frameworks has not led me to have any confidence that there will be limits on the imposition of frameworks where there is disagreement. It seems to me that, where there is

disagreement, we are likely to have frameworks imposed rather than developed in common.

If we accept that Michael Russell was not misleading the chamber yesterday and that his description is accurate that the Scottish Government and the other Administrations have had no meaningful input into shared decision making, given your experience of the structures and the individuals involved at UK Government level, is there any prospect of change? Will we simply have to accept that the UK Government's attitude will be, "They're not in our party. They're not Brexiteers. We can ignore their input."?

Philip Rycroft: It is a slightly difficult question as there are different dimensions to it. The UK Government has ultimate responsibility for all the people of the UK. If we follow the constitutional route with regard to reserved areas, the UK Government needs to develop its negotiating position in a way that understands and respects the interests of people across the UK. Clearly, the UK Government will make up its mind about how it responds to the political expression of those views. However, if we come back to fisheries, which is one of the big issues at stake, my view is that the UK Government ought to listen to what the Scottish Government has to say about that. The UK Government also needs to form its own view of the interests of the fishing community in Scotland in order to inform the approach that it takes to those negotiations. Clearly, there are constructions in the UK Government that allow ministers to tap into that knowledge in order to understand what is going on.

Part of my job was to ensure that ministers around the Cabinet table in Whitehall were clear about the interests of Scotland and Wales, and my colleagues in the Northern Ireland Office did the same for Northern Ireland. I do not want to diminish the contribution of colleagues in the Scotland Office—for example, in my old team—and in other departments, but there are structures in place in Whitehall to achieve that and for bringing that understanding to UK ministers. However, the politics as you described it have to be layered over that. At what point does the UK Government say that it understands where the Scottish Government is coming from, but that it has a different political view and it will not take account the Scottish Government's views and that it is interpreting the interests of Scotland in its own light?

Beatrice Wishart (Shetland Islands) (LD): I will take you back to the issue that we started on this morning: capacity. We have already discussed how some senior Conservatives have said that handling Brexit negotiations at the same time as dealing with Covid will not be an issue. Willie Rennie said that

"Jackson Carlow ... says the UK Government can do two things at once".—[*Official Report*, 3 June 2020; c 37.]

However, it is difficult to understand how work on leaving the EU and managing Covid can continue without affecting each other. Given your wealth of experience, what do you think is needed to handle the discussions? Do you think that the two things can be done together?

Philip Rycroft: There is no doubt at all that coronavirus has a huge impact. The impact on negotiations is a practical one in the sense that negotiations are happening remotely, so it is more difficult to advance them swiftly. The negotiating team in Whitehall has remained in place and is now based in number 10. It is not a huge team, and my understanding is that it has remained resourced-up to continue the conduct of the negotiations on a hub-and-spoke model, so the teams and departments supporting it are still there.

The bigger impact has been on the preparations for the world that we will be moving into, and a lot of folk have been taken off that work to support the effort on coronavirus. I have no doubt that, if coronavirus had not happened, the UK Government would right now, for example, be running a big campaign, as it did last year, to engage businesses and to encourage and enjoin them to progress their own planning for what will pertain at the end of the year, and to assume that there will be no extension to the transition.

As I said earlier, we know that we will have a trade border. That will mean that, either in a deal or no-deal situation, goods transiting the border both ways will have to have customs and security declarations; they will have to go through the rules of origin process to prove where the goods have come from; and they will have to go through regulatory procedures to ensure that the goods can be marketed either in the UK or in the EU.

Those are the so-called non-tariff barriers, which will apply at the end of this year come what may if we do not get an extension of the transition. If there is no deal and no trade deal, there is the potential for tariff barriers as well, which would be an additional burden for business. If you look at the numbers, the non-tariff barriers are more significant, and tens of thousands of businesses will need to adjust their processes and systems to get ready for that.

My worry about capacity is not so much about the negotiations—they are always handled by a relatively small team in Whitehall, and likewise in the European Commission—but about the wider effort to support businesses to get ready and ensure that the UK Government systems for running the new border and all the processes

associated with that are fit for purpose and ready to be up and running.

To take one example, a plethora of new information technology systems have been built or are being built to manage the new border. Coronavirus has called hugely on the Government's IT capability. Some brilliant stuff has been done, such as setting up the furlough scheme, dealing with the huge influx of universal credit claimants and so on. A lot of work has been done to help the big IT systems cope with coronavirus, and it has been done very well, but that work will have drawn folk away from the preparation of the IT systems that will be necessary for our new trade relationship with the EU at the end of the year. I am concerned about readiness, particularly the support that Government gives to businesses to make sure that they are ready.

11:45

Beatrice Wishart: Yes, and that is especially true when the UK Government is dealing with the cataclysmic catastrophe that Covid is to business.

I want to change tack a wee bit and ask you about citizens' rights and whether you think that the deadline for the settlement scheme should be extended to take account of Covid-19. The lockdown has meant the closure of scheme support centres and document scanning centres, making it more difficult for EU nationals to apply. We know how valuable EU citizens are to our society. Do you have a view on that?

Philip Rycroft: To be honest, I have not seen the latest statistics for the numbers coming through the system. Pre-coronavirus, the throughput numbers were looking good, but clearly, by definition, those who have not applied yet are more likely to have questions and issues that will need more sorting out.

The UK Government will have to make a judgment call on that. If it looks as though a backlog has built up that cannot be cleared in time, in my view—but, hey, I am just a private citizen with no influence over what the Government thinks—it would be wise for the UK Government to take a sympathetic approach. As you say, the EU citizens who have chosen to live and work in the UK add huge value to our economy, culture, socially and all the rest of it. It would be short-sighted of the UK Government not to allow some flexibility in the scheme if it looks as though coronavirus has inhibited people's ability to sort out their paperwork.

Annabelle Ewing (Cowdenbeath) (SNP): Good morning, colleagues. I thank Mr Rycroft for agreeing to be questioned by the committee.

Returning to where we are with the negotiations, there seems to be a suggestion that, if a deal were possible, it would involve a trade-off of Scottish fishing interests. That is not a new thing; it happened when we were on our way into the EU under Ted Heath's Tory Government. You seem to be suggesting that there could be some room for manoeuvre on the level playing field issue.

To what extent is there wiggle room on that under EU law? The coherence of the single market, which is predicated on the four fundamental treaty freedoms, is immutable. I am not entirely sure that all member states would be signed up for unravelling that. I just do not see where there can be any meaningful wriggle room.

Also, although state aid has been mentioned, it appears that there was no mention of public procurement in the UK's papers that were published on 18 May or thereabouts. I do not follow what room for manoeuvre the EU has, even if it got a trade-off on fish. Not all member states have an interest in fish, but they all have an interest in fair competition.

Philip Rycroft: I will take the point on fish first. People understand what happened in the early 1970s and the trade-off that was made with relatively generous access to UK waters being offered at that point as part of the overall deal, but it is worth remembering that boats from what are now EU member states had been fishing in UK waters for decades prior to our entry into the EU. There was a long history and tradition of that before the establishment of the 200-mile limit and so on.

The issue of fisheries is salient to the negotiations: it is about access not just to waters, but to trade, because a lot of UK fish are sold in the EU and vice versa. I suspect that—I may be proved wrong—because fisheries is such a dominant issue in the negotiations, it will have to be settled on its own terms. I cannot see there being a direct trade-off between fisheries and financial services—that is stretching things a little too far. We will have to wait and see.

The other point was on the level playing field. It has been clear from the word go that the major concern of the EU about its future relationship with the UK has been about fair competition in the broadest sense of those words. The UK is a major trading partner with the EU, it is on the EU's doorstep and, from the off, the member states have been worried about the terms of trade, hence the emphasis on a level playing field. I do not think that there is any inhibition in EU law that would prevent the EU from coming to a deal with the UK on level playing field issues—the political will is there. As I said earlier, a compromise is possible.

The four freedoms no longer apply: we have left the single market, as we have left the EU. The level playing field argument has to play out about the nature of the relationship between the EU and the UK as separate trading entities. There are level playing field conditions in most free-trade agreements. The EU is looking for a more advanced version of that than the UK is currently offering. The UK is offering something akin to what is in the Canada-EU agreement, but the EU is saying that it wants something far more advanced, including a pitch for dynamic alignment on state aid. It seems to me that there is room for both sides to meet somewhere in the middle, but that relies on the UK saying that it will not drop its standard and for the EU to accept that as sufficient to meet its concerns about fair competition between the UK and the EU.

I want to make one more point. Some of the commentary on the topic is almost petulant. There is a sense that the EU is being unreasonable in some of its demands, and some commentating ask, "What right has the EU got to make these sorts of demands?" Of course, the EU has every right to make whatever demands it wishes in a negotiation with what is now a third country, just as the US and Japan do. That is the world of trade negotiations. The EU is now setting out its conditions in the interests of the EU and the 27 member states, just as the UK is setting out its conditions in the interests of the UK. Although we may not like what the EU is saying, we cannot complain about the fact that that is the position that it has reached. The EU is a sovereign entity and it will reach what it thinks is a reasonable position that looks after the interests of the 27 member states. In the UK, the realisation is dawning, perhaps a little bit too slowly, that we are now a third country and the EU does not negotiate in the interests of third countries—it negotiates in its own interest.

Annabelle Ewing: Absolutely. I totally agree with that point. I worked for 10 years in Brussels as a lawyer specialising in EU law, and it seems to me that the UK wants to remain in the club without abiding by the rules—that seems to be the sticking point.

On fisheries, information that we sought under the 30-year rule showed that, in the negotiations to take us into the EU, Whitehall explicitly stated that the Scottish fishing interest was expendable—that is a matter of historical record.

I turn to the UK's preparedness for a no-deal Brexit. Given your experience at the heart of the UK Government, can you tell us when the preparations for a no-deal Brexit started? Have they continued at pace continuously, or have they stopped and started? Are they currently going on? What is the capacity of the human resource in the

civil service to progress preparedness for a no-deal Brexit while negotiating with the EU, dealing with Covid-19 and trying to get on with the rest of the business of government? It would be interesting to hear your view, as you have been at the heart of the UK Government when it comes to those matters.

Philip Rycroft: I can speak with some confidence about no-deal planning up to the end of March 2019, because I was responsible for its co-ordination. That work started very early, and we were planning for not just a no-deal exit, but exit with a deal. There is a measure of coincidence between the work that needs to be done in that regard, because it was not absolutely clear what big issues would arise—[*Temporary loss of sound.*]

However, DExEU co-ordinated that work across departments, which ramped up during 2018. We established the yellowhammer mechanism, which was not about dealing with a no-deal exit in its totality but was set up to sort out the issues that would emerge where no-deal planning had not delivered the outcomes that we wanted. To give a brief example, there was no-deal planning that anticipated the need to handle the border in a different way, with different infrastructure and different instructions for hauliers and so on. If that plan broke down and there were subsequent queues at the border, yellowhammer would kick in to deal with that.

Yellowhammer was therefore a subset of the overall planning for no deal, and we put huge resource into it—there is no doubt about that. A big part of the effort in the departments that I had the privilege of leading was about working on that, and it became the central preoccupation of a number of other Government departments as well. We also mobilised staff from departments that were not Brexit impacted to come into that work. As far as I know, that work carried on at some pace during 2019.

What I cannot speak for is where that work has got to now, because I am not in the system any more. However, as I said in response to an earlier question, my concern is that the impact of coronavirus and the huge demand for extra resources, which you rightly pointed out, will have drawn resource away from continued work on preparedness not just for a no-deal outcome but for a deal outcome. I am sure that the UK Government is very conscious of that, but there is a lot of work to do between now and the end of the year to ensure that the new trade border and other arrangements function effectively.

Annabelle Ewing: Thank you.

Stuart McMillan (Greenock and Inverclyde) (SNP): Good morning, Mr Rycroft. You spoke

about the economic impact assessment that was published in November 2018. The economic landscape has changed hugely since then. We are aware that the UK draft legal texts were accompanied by neither an economic impact assessment nor an equalities impact assessment. There is therefore very little way of telling how the UK's proposals will affect the UK economy, which, as we know, has been severely damaged by Covid-19. Are you aware of any updated UK Government economic impact assessment or forecast that has been produced during the Covid period?

12:00

Philip Rycroft: The simple answer is no, and there is no reason why I would be privy to anything that was not in the public domain.

I have made the point that the modelling that was done by the UK Government, which was published in 2018, was consistent with a lot of the modelling that was done by other groups of economists. I stand by that. Although nothing has been updated to reflect the nuances of the UK's negotiating position as set out in the draft legal text, the broad parameters of the likely economic impact remain as they were. The UK Government's position has not shifted so dramatically from what we modelled as an average FTA as to obviate the work that was done. I stand by that range of estimates as a pretty good indicator of the likely economic impact over time.

To anticipate critics of what I have just said, I am talking about modelling, and modelling is not deterministic; it sets out what might happen, all other things being equal. Governments have the capacity to anticipate problems and to make changes in order to smooth some of those potentially bad impacts. It is worth mentioning briefly in the by-going that, even if we are losing traction in our trade relationship with the EU, we are generating new opportunities through free trade agreements with the rest of the world.

You will have seen that modelling has been done for the US and Japan deals. If negotiations are successful, the top side for the US deal is an uplift in UK GDP of about 0.16 per cent; for the Japan deal, the uplift is, from memory, about 0.07 per cent. That plays the downside risk of an average FTA, in terms of our future relationship with the EU, of a loss of growth of around 5 per cent.

As far as one can get a handle on the relative economic impacts of such things, those statistics have been modelled on a similar basis and put in the public domain by the Government. I think that they are still valid.

Stuart McMillan: Thank you for that.

It is interesting that you brought the US into the debate, because, as we are aware, the UK Government included public procurement in the draft legal texts for the USA trade deal, but not in those for the EU trade deal. It would be interesting to hear your comments on that.

My main question is on the economy and on trade with the EU in particular. The *Financial Times* is a newspaper that has traditionally been more supportive of the Conservative Party than of other parties. An opinion piece in the *FT* on 20 May stated:

"The UK's stated plan will see significant new regulatory burdens placed upon British exporters and importers. The decision not to enter a customs union and refusal to sign up to legally enforceable common standards will place new costs on UK businesses, just when many are already fighting for survival because of coronavirus."

Yesterday, the Scottish Government published "COVID-19: The Case for Extending the Brexit Transition Period", which highlights the additional costs that would affect businesses in a number of areas. For example, the document highlights

"what tariffs there may or may not be on trade with the EU; which regulations"—

businesses

"should follow; what Customs paperwork and processes will apply; how people and data will be able to cross borders in order to make businesses work;"

and

"whether professional qualifications will be recognised."

Notwithstanding that you still stand by the 2018 assessment, clearly there is now a growing body of opinion and evidence indicating that what was written then can no longer be considered valid or accurate in the current economic situation, or for the period after 31 December.

Philip Rycroft: What the modelling did not accommodate at all—because, of course, it could not have done—was the impact of the coronavirus on macroeconomic conditions, around which I absolutely accept that there are huge uncertainties.

However, the modelling did incorporate figures such as the ones that you have referred to. Those on the impact of non-tariff barriers, which I mentioned earlier, were established well before that work was completed. That element was led by Her Majesty's Revenue and Customs, which estimated that the impact of having customs declarations alone would be that about 205 million extra declarations would be required once we established a new trade border with the EU. That would add about £6.5 billion in costs from the UK's side of the border alone, and probably a similar amount from the other side. If we add up those

two figures, that comes to £13 billion. On top of that, we must put the costs of measures such as having rules of origin declarations. The range of estimated total costs was between £17 billion and £20 billion. The non-tariff barrier cost was at the heart of the modelling, because the economists say that that is what drives up costs to businesses—and, ultimately, costs to businesses are costs to the consumer.

In a sense, what the *FT* piece said was not news to me, because that has been the clear view right the way through the process. I again make the point that what the Government is driving towards is a free trade agreement. It remains in our interests to get a trade deal, but even if we do so we will be trading in the EU on different terms and conditions from those that we trade on now. In a way, talking about such an arrangement as a free trade agreement gives a slightly false impression. It would come within the proper terminology for that, according to the WTO rules and so on, but in practice it would be an agreement to have less free trade than we have now. That is the reality. We are coming out of the biggest and most established free trade area that the modern world has ever seen and going into a different trade relationship. The impact of that will be to put a trade border in place for services as well as goods, which will place on businesses costs that do not exist at the moment. That is where those estimates were derived from.

As I have said, of course, much has changed since 2018—for example, some parts of the UK's negotiating position have shifted. However, I stand by my view that if we get a deal we will be heading towards an average free trade agreement that incorporates all the costs that the *FT* described in its opinion piece on 20 May.

Stuart McMillan: Would you like to comment on the point about America?

Philip Rycroft: A whole wealth of issues would be involved in a US deal, some of which would be hugely important from a devolved perspective—not least the type of deal that could be done on agri-food. There are also lots of interesting issues on the trade-off between a US deal and an EU deal, which I think will make for one of the big stories that will emerge over the next few months.

I do not claim to be an expert on public procurement, but the global market for it is clearly large. The UK has signed up to the general agreements on procurement through the WTO, but it could do better than that through different trade deals. I do not know why procurement has not been put in as an objective on the EU side. Where that will take us in the negotiation, I do not know.

The Convener: Thank you very much. We have a little time left, if members want to come back in

again. I will go back to Mr Rycroft's sketch of what a compromise over fishing might look like. As an example, you said that the UK could accept EU boats on their terms to give them certainty, which would reduce gradually over a long transition period, and you described that as a "classic sort of compromise". You might be aware that, when Charles Grant came to this committee, he told us that he had been told by somebody in the UK Government that, basically, fishing would be sold out as the result of a compromise—something to which Annabelle Ewing has alluded in the past. When you were sketching out that compromise, did it come from information that you had heard from the Government, or were you speculating?

Philip Rycroft: A long time ago, when I worked for the Scottish Executive, my job was to be part of the team that looked after fishing, so I have a long-standing interest in fish. I was surmising; I do not have any inside track.

It is worth saying that, whether or not it is selling out the fishing industry, there are multiple interests in the fishing industry. It is not just the catching side in pelagic and demersal fisheries; there are the shellfish fisheries and the exporting of products, particularly from Scotland, into the EU market. A good outcome would protect the interests of the trawler boats in the pelagic and demersal fisheries and would also sustain the lucrative market for the shellfish fishermen in the north-west and elsewhere.

We will all have watched the boats being loaded up in Lochinver to get to the Spanish market within the day. At the moment, that trade happens without tariffs and the product gets through without having to be stopped and inspected. The more that we can do to keep those trade links open, through a good overall deal on fisheries, the better that will be for the whole of the fishing community in Scotland and the rest of the UK.

I reassure you that I do not have an inside track on the UK's negotiating position on fisheries. As with a lot of these issues, there is political noise and a lot of smoke and dust. When we step back and think about the economic, social and community interests on both sides over a 10, 15 or 20-year period, we see a deal that would require compromise and be a bit uncomfortable for both sides. However, it is far better to have certainty for those who depend on the industry, so that they can see the road ahead and not have a sudden shock of losing access or markets. That, surely, is a better outcome than heading into a no-deal exit, which could be very destructive of trade both ways and the overall stability of the industry.

The Convener: Thank you. We have questions from a number of members. Annabelle Ewing will be followed by Claire Baker.

Annabelle Ewing: Certainly, Scotland does not want a no-deal exit—that is a given. One issue that I wanted to raise before—I did not do so because I had used my two questions—is that of judicial and police co-operation. That is hugely important but has not received the attention that it deserves, certainly in the media. It impacts hugely on our personal safety and all the rest of it. To what extent can there be any meaningful co-operation without a role for the European Court of Justice—[*Temporary loss of sound.*] I would be interested in hearing your views on that.

Philip Rycroft: That is a good question. There is judicial and police co-operation, reflecting the wider security co-operation, such as through access to databases. That was all developed within the wider construct of European law and is based on the acceptance that every member state that is part of those systems abides by the European convention on human rights. That is the absolute foundation of that. Countries that open up their systems to access by other states can be confident that those states will respect fundamental human rights in the way that that access is used.

12:15

I agree with you that judicial, police and security co-operation is not as much discussed in the media and elsewhere as it should be, as it is absolutely critical and there is clearly a mutual interest in getting it right. There is no economic advantage or disadvantage for the UK in getting access to some of the important databases on which co-operation on criminal matters depends. It is not an economic issue; it is about the security of our citizens, and one hopes that both sides will recognise that.

We may not be able to sort everything out this year. The issue may require continued negotiation into next year. The EU may not be so concerned about the European Court of Justice, but it will look for assurance that the UK will remain committed to the rights enshrined in the European convention on human rights. It needs to give its citizens that assurance if they are sharing their data with what will have become a third country. There must be confidence that that data will be respected. If you dig a little beneath the surface, you may find that that issue is not yet resolved, which means that the negotiations cannot advance.

Claire Baker: I want to ask about the status of the political declaration. We heard evidence last week from David McAllister, who talked about that as being a legitimate document and the basis for negotiations. However, if you look at the free trade agreement proposal that the UK Government is now pursuing, it appears that it has abandoned

that declaration. Do you think that the political declaration is still relevant?

We know that the negotiations have to be finalised by the end of October, before ratification. Are you confident that the 27 EU countries will ratify, or do you foresee any difficulties?

Philip Rycroft: The political declaration was not a binding legal document—it did what it did. It was a joint declaration and subject to a lot of work over a period of months, and it was adjusted at the insistence of the incoming Johnson Government.

It still seems very relevant to me, because it was a declaration that both sides signed up to and it was meant to lay the foundations on which negotiations could be built. I hope that, as the negotiations progress, both the UK Government and the EU side will recognise the value of that document in setting out a framework for the negotiations that will help the sides to arrive at a deal. That includes a deal on the issue that you are referring to, where it seems that the Government may have departed from what the political declaration said about having a level playing field—there are also instances going the other way. If we are to reach a compromise, the political declaration will come into its own, because it contains the political intent that could allow that compromise to be reached.

Getting the ratification done by the end of the year will require unanimity among the members of the Council of the European Union. If it is deemed to be a mixed agreement, it will then require ratification by member states. However, an agreement of this nature can provisionally be applied through a trade agreement—that has been done in the past—so that it can be put in place and ratification can then take place over time.

The nature of the deal that we are seeking to make between the UK and the EU means that I do not anticipate difficulties with ratification by individual member states, although I anticipate it being quite a way ahead, and we do not know what the shape of the final deal might be. However, if we are on track and we get a deal because the political will and the good will are there to get us one, I am pretty confident that the ratification procedures that are necessary to have the deal kick in—even if any are provisionally applied—can be completed for the beginning of next year.

Stuart McMillan: I have a brief question on citizens' rights. The UK Government has proposed the restriction of EU migration into the UK after Brexit, but the Prime Minister yesterday made some completely ironic comments, asking EU nationals to come back here to help the British economy. Mr Rycroft, you mentioned compromise. Do you think that that is an area on which the UK

Government should compromise, to help the negotiations and move that agenda forward?

Philip Rycroft: People movement issues are addressed in the negotiations, but they sit within quite a specialist category—so-called “mode 4” provisions, which are typical in free trade agreements and cover the movement of businesspeople to service business contracts and so on. Immigration does not sit within the negotiations. The UK's policy on immigration says that freedom of movement will end, and the UK is legislating to put in place a new system for immigration that will encompass all countries, including—post-freedom of movement—the EU. There is obviously a huge debate about that policy and the conditionalities such as whether salary caps, points-based systems and so on are right both for the UK as a whole and for the different parts of the UK. However, formally speaking, immigration is not part of the negotiations.

Within all of that, there is a point to be made about good will. How open the UK is to immigration from the EU is a matter of great concern to a number of EU states. They will be looking really closely at what is now a domestic policy decision for the UK about how it handles its future immigration policy, and they will draw their own conclusions from that decision.

On your point—which the Prime Minister recognised—about the needs of the UK economy, we clearly still have a big reliance on immigration from different parts of the world, including the EU, for all sorts of different industries and skills. That is not going to change overnight. As a lot of economists and others will recognise, it is important to the UK economy that we have a sensible system for immigration. However, the way that we construct that system also sends signals about the sort of country that we are seeking to be—not only to EU countries, but to places like India and other parts of the world. Therefore, the immigration bill will be one of the first major pieces of UK legislation post-Brexit, and it is really important that it gets good scrutiny from the business community and from civil society across the UK. That is really important for the future of this country.

The Convener: That concludes today's session with Philip Rycroft. Philip, I thank you very much for coming to speak with us. It has been extremely helpful. The committee will continue its scrutiny of the negotiations next week, when a panel of stakeholders will give us their views. The time of that meeting will be confirmed as soon as possible.

12:25

Meeting continued in private until 12:47.

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