



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EUROPEAN AND EXTERNAL RELATIONS COMMITTEE

Thursday 27 November 2014

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EUROPEAN AND EXTERNAL RELATIONS COMMITTEE
22nd Meeting 2014, Session 4

CONVENER

*Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP)

DEPUTY CONVENER

*Hanzala Malik (Glasgow) (Lab)

COMMITTEE MEMBERS

*Clare Adamson (Central Scotland) (SNP)

*Roderick Campbell (North East Fife) (SNP)

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

*Jamie McGrigor (Highlands and Islands) (Con)

*Alex Rowley (Cowdenbeath) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Mary Alexander (Unite Scotland)

David Anderson (University and College Union Scotland)

Arianna Andreangeli (University of Edinburgh)

Stephen Boyd (Scottish Trades Union Congress)

Richard Dixon (Friends of the Earth Scotland)

Liz Murray (World Development Movement)

Jean Urquhart (Highlands and Islands) (Ind)

Scott Walker (National Farmers Union Scotland)

Dave Watson (Unison Scotland)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

European and External Relations Committee

Thursday 27 November 2014

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Christina McKelvie): Good morning and welcome to the 22nd meeting in 2014 of the European and External Relations Committee. I make the usual request to switch off mobile phones, because they interfere with the electronic equipment.

I welcome to our committee today Jean Urquhart MSP, who has an interest in the main agenda item.

The first agenda item this morning is to decide to take agenda item 4—scrutiny of the draft budget 2015-16—in private at this meeting and future meetings. Is that agreed?

Members *indicated agreement.*

Transatlantic Trade and Investment Partnership

09:00

The Convener: Agenda item 2, which is the main topic for our committee this morning, is the transatlantic trade and investment partnership and its implications for Scotland. I welcome what is a very robust round-table panel. I ask everyone around the table to introduce themselves. I will start: I am the committee convener.

Hanzala Malik (Glasgow) (Lab): I am the deputy convener.

David Anderson (University and College Union Scotland): I am the current president of the University and College Union Scotland.

Clare Adamson (Central Scotland) (SNP): I am an MSP for Central Scotland.

Mary Alexander (Unite Scotland): I am from the union Unite Scotland.

Roderick Campbell (North East Fife) (SNP): I am the MSP for North East Fife.

Scott Walker (National Farmers Union Scotland): I am from the National Farmers Union Scotland.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I am the MSP for Kilmarnock and Irvine Valley.

Stephen Boyd (Scottish Trades Union Congress): I am assistant secretary with the Scottish Trades Union Congress.

Jean Urquhart (Highlands and Islands) (Ind): I am an MSP for the Highlands and Islands.

Arianna Andreangeli (University of Edinburgh): I am a lecturer in competition law at the University of Edinburgh.

Liz Murray (World Development Movement): I am from the World Development Movement.

Alex Rowley (Cowdenbeath) (Lab): I am the MSP for Cowdenbeath.

Richard Dixon (Friends of the Earth Scotland): I am from Friends of the Earth Scotland.

Jamie McGrigor (Highlands and Islands) (Con): I am an MSP for the Highlands and Islands.

Dave Watson (Unison Scotland): I am from Unison Scotland.

The Convener: I thank all the panellists for their excellent written evidence. I think that all committee members were last night using

highlighters on interesting points in it. The evidence has been very helpful in informing the questions that we will ask this morning.

Many of you have taken part in round-table discussions in committees before, so you will know the etiquette: catch my eye and I will let you in. I want a flow of conversation around the table rather than individual conversations across the table. If you make sure that you channel all your comments through me, we can keep the discussion civilised and under control.

We have been lobbied by many organisations since we opened our inquiry. A key issue in the discussion of TTIP, which has generally been highlighted most by Unison and Unite, is the national health service. However, many areas across the board will be affected by TTIP: farmers in my constituency have lobbied me on their concerns about particular challenges, and people I know from the financial sector have also lobbied me about their concerns. The committee has also had some interesting evidence from Friends of the Earth on issues that we had not touched on, which was very helpful.

I want our discussion to begin with a wee taster from each of you about the challenges or opportunities from TTIP in your areas. We will have a number of evidence sessions for the inquiry, right into the new year. You are taking part in the first one, so you will help to inform the foundations of the inquiry. I am happy for people to put their hand up or catch my eye, but I want to hear from all of you on your areas.

Dave, do you want to start?

Dave Watson: Yes, I am happy to do that. Obviously, Unison's primary concern is around public services. We are especially concerned because we do not see what we want, which is an unequivocal exclusion of public services from the TTIP negotiations. We would like the negotiations to operate on the basis of what is called a positive list: in other words, it would list the things that are included instead of excluding certain things and leaving everything else open.

We are concerned particularly about what we think is a lack of enforcement procedures, particularly in respect of issues including independent labour organisation standards. We are also very concerned about the fact that there will, allegedly, be common regulatory standards, given that the United States' standards are much lower than ours. Our biggest concern is about the dispute mechanism. At present, there are very few trade barriers between the United Kingdom and the US, and we are concerned that large US corporations with a big footprint in the health service in the US will see an opportunity to come into the UK and privatise large chunks of the

national health service. That would be wrong because it should be a matter for you and other elected representatives to decide, not big American corporations.

The Convener: We will continue round the table for some opening comments.

Richard Dixon: The first key concern that FOE Scotland outlines in our submission is that at the heart of the rationale for TTIP is more fossil fuels coming across the Atlantic to Europe. That is a bad thing in terms of climate change emissions and will have negative impacts for people who live with extraction of those resources in the States.

The second concern is the deregulation agenda. I give the example of chemicals. I highlight that there are very different regimes and that our trying to bring them together will slacken our protection for people and the environment from toxic chemicals.

Thirdly, I agree with Dave Watson that the dispute settlement system is a real worry. An example that I have used is unconventional gas and fracking. That is a good example because in that area we in Scotland are doing something different from the rest of the UK. The UK Government is enthusiastic about unconventional gas, but the Scottish Government is much less enthusiastic about it and has put in place much tougher planning rules. It has also had an expert panel look at the issue, which has created two extra pieces of work—one looking at health impacts and one looking at fixing the regulatory regime, which is not fit for purpose.

We are always told that although there are fracking nightmare stories from around the world it will not be like that in the UK because we have the best regulations in the world. The US, of course, has some pretty lax regulations. However, if we bring the regulations together, we will not necessarily have the best ones. In Scotland, we have been cautious and we have perhaps been moving towards saying that we are not going to have this, but the rest of the UK is different. Some countries in Europe, including France, have bans in place and other countries are cautious.

We have the example of another dispute settlement process—the North American free trade agreement process—being used by Lone Pine Resources, which is a US mining company. It has taken the Canadian Government to court, or tribunal, over what the state of Quebec has done. Sitting in Scotland, we would think, "There is a state that has done something to protect its people," but its country is now in trouble through a dispute settlement process. That clearly shows what could happen to Scotland if we do this wrong. We could easily do something that we think is the right thing to do and end up in the wrong place.

That is happening in Europe as well. The other example that we give is the Swedish power company Vattenfall taking the German state to court, again about something that we are interested in. The example is about the banning or phasing out of nuclear power in Germany, but a big energy company can say that because it will lose profits because of that, it will take the state through a dispute settlement process. Again, that is important to Scotland, because we are on the same track of phasing out nuclear power.

Liz Murray: I will probably echo some of what Dave Watson and Richard Dixon said and pre-empt some of what others are going to say.

The heart of our concern is the fact that the treaty is a neoliberal move towards liberalisation, particularly of public services. We are concerned that, within that, the investor-state dispute settlement—ISDS—will tip the balance of power away from Governments towards corporations through the ability for them to sue, and that in turn will shrink the policy space for Governments to devise policies and regulate in the public interest. That covers a wide range of things from food safety to public services, to the environment to human rights.

The other issue for us is the regulatory harmonisation that Richard Dixon spoke about a moment ago. We believe that that is a threat to progressive legislation. The regulatory harmony aspect of TTIP goes further than other trade agreements have done and it has been touted as setting a gold standard for other trade agreements. Our concern is for countries, particularly developing countries, operating under similar trade agreements in the future.

We have questioned the basis of some of the political support for TTIP in respect of economic growth and jobs, especially at Westminster. Various pieces of research based on different modelling techniques show very different outcomes for economic growth and jobs, and I have put some of them in my evidence.

The range of possible areas for Scotland to consider and be concerned about include public services, such as Scottish Water and perhaps the NHS, and difficulties with renationalising the railways—we have seen what happened with the east coast line this morning. Other areas include the Post Office and local authorities.

We saw a leaked text in July that indicated that schools' food-buying practices might be exempted from TTIP, but public hospitals with more than 500 beds and public universities will be included. That threatens policies to boost local economies, for example. In Scotland, procurement policy can support local economies, but TTIP could force that to be opened up. That different competition space

has a clear disadvantage for public policy, and for small and medium-sized enterprises in Scotland.

There is also the issue of transparency, although that is beginning to be addressed. There was some news on that yesterday, but we would like to see more on it because there is a distinct lack of information, particularly for policy makers.

Arianna Andreangeli: As you will have seen from my written submission, I take a slightly different tack. I preface my evidence by saying that I am a competition lawyer and my interest lies in issues of market access. I am conducting some new research on markets and healthcare provision, especially in the space of public health.

The European Union, as either an internal actor or an international actor, works within a well-defined framework of what we call conferred competences. In other words, the EU cannot act unless it is acting in areas that are conferred upon it by the member states. The member states remain the masters of the Treaty on the Functioning of the European Union, so unless it expressly states that the EU has competence to act in certain policy areas, it cannot take any such action. If trade is enumerated as one of those exclusive competences, we have to bear it in mind that the exercise of competences, even though they are exclusive, has to work within the complex framework of the treaty and the principle of conferral.

My interest in public health has spurred me on in researching the issue of competences. In respect of the provision of healthcare systems, article 168 of the treaty provides competences to the EU that are neither exclusive as trade competences nor even shared. The EU has limited competences when it comes to the provision of healthcare services; they are competences of a supporting nature, which means that the EU can act only to the extent that it is co-ordinating or supporting action of the member states.

We must remember that the treaty is the constitution of the European Union—no more and no less—and it can be amended only through treaty amendment procedures with the consensus of all member states. The treaty states that member states remain free to decide how to design frameworks for provision of public health services. That can be changed only if there is a treaty amendment, and not through an international agreement.

You will have seen my written evidence on the concerns that have been raised about the NHS. They are legitimate, and the public should engage in these discussions more widely, because these are live issues today. However, it is not through TTIP that the power of the member states to decide whether to provide healthcare services

through the market or outside it is threatened. That is simply because the EU has no power, unless the member states confer that power on it, to modify the choices of the member states, and it cannot mandate them on what form and framework they should construct for provision of healthcare services.

People will be familiar with the patients directive and other pieces of legislation that the EU has enacted in healthcare. Again, however, they have to be seen as part and parcel of the supporting and co-ordinating competency. For example, the patients directive is there to facilitate provision of healthcare services for individuals who work in member states in which they are not resident. I am probably a shining example of that, because I am Italian and I sometimes find myself working in other member states.

09:15

Pieces of legislation such as the patients directive enshrine a number of rights that are not new, because they are part of the *acquis*, or the case law, of the Court of Justice of the European Union, but which one can exercise *vis-à-vis* healthcare providers in other member states for the purposes of, for example, continuing provision of care. That is not going to change with TTIP, because such a change is possible only through treaty amendment and there is extensive case law that allows member states to justify derogations from principles concerning the single market and competition in healthcare, based on the public interest.

Public procurement is another area in which there is extensive EU legislation. However, in as much as the legislation that has been adopted at EU level is applicable, it is clear that there is a light-touch regime in awarding of contracts for what we would call essential services, including healthcare. Although there are principles of transparency and non-discrimination, member states can, as the Court of Justice has reiterated, apply principles that are inspired by non-market concepts with a view to, for example, localising services. In healthcare protection, there have been cases of areas being identified as those from which providers have to come, because that is germane to continuity of care.

Again, I stress at the very outset that although the EU might have exclusive competency in trade, it must be exercised within a framework of constitutional principles that are inspired by the principle of conferred powers. Because healthcare is a supporting competency, and not an exclusive or even shared competence, EU actions cannot have consequences that are as wide-ranging as might have been depicted so far. Again, public procurement is certainly very important and exists

to ensure that everyone can have a go at bidding for public contracts, but if the convener allowed me I could entertain everyone here with a number of ways in which healthcare can be provided without public procurement coming into the picture.

The Convener: That was very comprehensive. Jamie, do you want to ask a quick supplementary?

Jamie McGrigor: I believe that TTIP would be a mixed agreement, which means that it would be a shared competency.

Arianna Andreangeli: Yes.

Jamie McGrigor: In other words, it would have to be ratified by all 28 member states.

Arianna Andreangeli: That is correct.

Jamie McGrigor: What would happen if one member state were to use its veto?

Arianna Andreangeli: The treaty would not take effect.

Jamie McGrigor: The treaty would not go ahead.

Arianna Andreangeli: Exactly. Ratification has to be agreed by the whole membership. That is very much for member states to decide on, because each and every state has its own ratification process.

Jamie McGrigor: Is it possible that member states would sort of bully other member states that did not sign up to TTIP?

Arianna Andreangeli: I am a lawyer, not a politician, but I think that we have to draw a very clear distinction between the legality of the conclusion of such agreements and their coming into force, and the judgment—which is a political judgment—on the opportunity that they present. Of course, member states that believed in TTIP and thought that it would be beneficial for them—which would be completely acceptable as a political judgment—could exert diplomatic pressure on other member states. Ultimately, however, it comes down to a judgment about opportunity, which is, I am afraid, way beyond my pay grade.

Jamie McGrigor: I understand that there have been seven rounds of negotiations so far.

Arianna Andreangeli: That is right.

Jamie McGrigor: What stage would you say we have reached? Are we halfway through, a quarter way through or at some other stage?

Arianna Andreangeli: It is very difficult to tell because, as far as I understand the timeline, negotiations across a number of policy areas have been taking place in parallel. It depends very much on where you are sitting and whether you

are looking at the negotiations on regulatory standards or some other area. Some areas are more advanced than others with regard to the amount and extent of the discussions that have been had and the extent to which there is shared understanding. Intellectual property, for instance, seems to be off the table now—and for very good reasons, even from the legality standpoint—and another area in which negotiations have been suspended because the Commission wishes to take more evidence is the investor-state dispute settlement. My educated guess is that we are probably a quarter way through, because there are still a number of areas in which discussions are not as advanced.

Clare Adamson: Good morning. You mentioned member states using case law to defend positions. Has that case law been used solely in the context of the single market and the EU, or is there case law for member states defending their positions against existing bilateral agreements with countries outwith the EU?

Arianna Andreangeli: I assume that you are referring to case law in the field of healthcare.

Clare Adamson: Yes.

Arianna Andreangeli: I must thank you for allowing me to make this clarification. I was talking about the case law of the Court of Justice of the European Union in respect of the implementation of rules regarding the single market and the construction of justifications for, say, restrictions on the principle of free movement on public interest grounds, especially the protection of health. In that case, the Court of Justice has made it clear that member states retain the power to decide how they design their health services. The provision of the highest possible level of healthcare is one of the EU's keystone principles and objectives; it is a germane objective, if you like, and member states remain free to decide how they provide it. As a result, they can carve out exceptions from the principle of free movement, especially the free movement of services, because doing so can be essential for the continuity of care provision and, ultimately, the survival of their populations.

The Convener: I will let our other witnesses speak and then I will come back to members. Sorry, Rod.

Stephen Boyd: As I am joined this morning by a number of colleagues from our affiliated trade unions, I will leave the specific sectoral impacts to them and confine myself to a few brief comments about TTIP's economic rationale and potential impact.

As our submission makes clear, we are very sceptical about TTIP's economic benefits for two main reasons that have already been highlighted

by others. For a start, because traditional trade barriers between the EU and the US are already very low, any gains from TTIP are likely to be minimal at best. A number of the studies that have been used to promote TTIP's economic benefits are hardly convincing, and the economic models that they use are, as always, very sensitive to what they leave in and what they leave out. The fact is that TTIP might even impede job growth by making it much more likely that the frivolous patents that are common in the US will become more common in the EU, and we must not forget the cost—and availability—of prescription drugs, which is significantly higher in the US than it is in the EU. Unless a model includes such negative impacts, it will not really tell us very much.

More important, we are very concerned that TTIP will lead to a general lowering of standards across the whole economy and that it will be actively detrimental to the economic social model that I think the Scottish Government is trying to create in Scotland and which trade unions are certainly working with other partners to create. It is crucial that we understand that this is not about removing what we would traditionally describe as barriers to trade but about imposing a common regulatory structure that will be policed by an international mechanism that will not have been passed by the normal democratic process in each country.

The economic orthodoxy is far too relaxed about assuming the benefits from any gains to trade. It does not look at the distributional impact, and I would argue that the evidence shows that the lower the traditional trade barriers such as tariffs and quotas, the greater the distributional impact of any movement to extend free trade further. Even some of the models that have been used to promote economic benefits have clearly shown that there will be job losses as a result of TTIP and, again, the evidence shows that the people who are displaced are very unlikely to get jobs in the future that pay them at similar rates or employ them at a similar skill level. You might be able to argue that the economy as a whole will benefit in the future, but the fact is that there will be big distributional impacts. If we are all as concerned about inequality as we proclaim to be at this time, we must understand that trade agreements have a major impact in that respect.

Scott Walker: I want to talk about TTIP in the context of food and agriculture, in which respect the private—or non-government—sector is probably unique. Because everyone needs to consume agricultural products, TTIP will impact on everyone. In Scotland, agriculture stretches into all the rural communities, into the central belt with its manufacturing focus and everywhere else, and TTIP will have quite a significant impact on it.

There are some potential gains, which we can talk about later, but I want to concentrate on the potential negatives in two areas, the first of which is the US's different approach to food standards. In that respect, I want to flag up two specific issues. The first issue is the competition faced by domestic producers, the impacts of which will, in Scotland, be felt strongest in our beef sector. That sector has been one of the achievements of our food and export market, but it will face strong competition because of the standards in the US.

The second issue around standards is consumer recognition. As I understand the TTIP rules, we will not be able to put any of these differences on our labels for consumers, which means that they will not be able to make a fair choice about the products that they buy. Studies up to now have tended to show that, although consumers might say the right things when asked about the products that they wish to consume, they all too often base their purchase decisions in supermarkets on price alone. Given the difference in trading standards between the US and the EU, there will be quite a big negative impact on a lot of agricultural production here, and in this time of volatility and concerns about food security, we must be concerned about that.

The second area in which there are potential negatives for the agriculture sector is the protection of intellectual property, which has already been mentioned this morning. Europe has a unique system of geographical indicators, which in Scotland can be seen in things such as Scotch whisky, Scotch beef and Scotch lamb. The system also goes down to individual products such as Arbroath smokies and Dundee cake, to name but two. However, the US does not recognise our system of geographical indicators, which again brings us back to the competition faced by the sector.

I will stop there, convener, but we are generally concerned about the impact on jobs and security in rural communities.

Mary Alexander: Most of those who have spoken have already highlighted my own concerns. At the beginning of the discussion, Dave Watson highlighted concerns about the NHS and public bodies, and we welcomed former First Minister Alex Salmond's letter to David Cameron, in which he asked Mr Cameron to use his veto to exclude the NHS from TTIP. In that letter, Mr Salmond said:

"Scotland must not be bound into a trade deal that threatens the public ownership of the NHS and could undermine the democratic decisions of the Scottish people."

We are part of a broad coalition campaign, and you will find quite a lot of information about all this if you click on #NoTTIP. There is no doubt that

there is huge opposition to TTIP and what it means. I will not go over the arguments about the inclusion of the ISDS, but the evidence highlights examples of corporations such as Philip Morris suing the Australian Government over plain packaging legislation in 2012; the Swedish energy giant Vattenfall suing the German Government for losses as a result of Germany phasing out its nuclear programme; and Occidental Petroleum Corporation winning damages of £1.77 billion in its suit against Ecuador, despite the fact that the contract in question had been terminated because Occidental had broken Ecuadorian law.

09:30

We therefore have huge concerns about democracy, transparency, accountability and, of course, labour rights. The treaty on labour rights is a major cause of concern for trade unions. The concern is well founded because any labour rights chapter in free trade treaties is often incorporated as a non-binding appendix rather than as part of the substantive text. We have already heard from Republican congressmen in the US that they are willing to agree to TTIP only if extending EU labour standards to the US is ruled out in advance. In addition, US trade representative Ron Kirk said that the agreement would seek

"substantial progress on ... addressing liberalization in areas of service, investment, labor and the environment".

Dave Watson referred earlier to the right-to-work states and what that means for American workers. We have real concerns about that situation being extended to the EU and about the EU participating in a race to the bottom.

The European Trade Union Confederation's general secretary, Bernadette Ségol, has underlined that trade unionists oppose the inclusion of the investor-state dispute settlement provisions in the agreement, stating:

"Considering that both parties are advanced economies with well-developed legal systems, the ETUC sees no reason to create a by-pass to national courts for foreign investors".

Our big concern is that there are corporate lawyers making decisions behind closed doors about national states and corporations—there is no openness to that.

We believe that TTIP should include a comprehensive and enforceable labour development chapter. The EU and US have their own legal systems and we want them to commit to the ratification and full implementation of the core labour standards of the United Nations International Labour Organization. That is a key issue for us.

David Anderson: I suppose being last means that there is very little left to say. However, I can

say that I agree with a number of points that my trade union colleagues have made and I want to highlight what Dave Watson said about the importance of having a positive list of areas that are included in TTIP rather than calling for the exclusion of certain areas. That is particularly important when a Government can change the classification of a public service. The example has been given of further education in England, which was previously regarded as part of the public sector but was recently reclassified as a non-profit institution servicing households, which moves it out of the public sphere into an area that is semi-private and open to competition.

It is important to highlight the role of higher education. Universities in Scotland play a significant role in the country's economy, society and culture. It is important to recognise that although universities are autonomous and independent institutions, they have a mixed economy of public, private and third sector support to deliver their research and teaching. It is very difficult to classify that as being within a particular sector, because universities have a unique role.

Having a positive list of areas that are included in TTIP would provide protection for the areas that we do not want to include and would help focus the debate on what benefits there might be, although I agree that there is limited evidence of benefits coming from TTIP. Whatever benefits there might be, having a narrow list of areas that are included in TTIP would protect the areas that we are concerned about.

The Convener: Okay. Thank you. Rod Campbell wants to come in.

Roderick Campbell: I want to focus on the investor-state dispute settlement mechanism. Perhaps I can pose a question as a devil's advocate rather than as an ordinary advocate—which I am. The UK is currently a partner in 90 bilateral agreements, all of which have ISDS clauses. To date, there have been only two actions against the UK, neither of which involved matters of public policy. Why is that, and why do you distinguish what is proposed? A bit of clarification would also be helpful as to why the European Commission has suspended hearings on the ISDS.

Richard Dixon: We are talking about something that is very different in terms of scale and who we are negotiating with. If the agreement comes about, it will be the biggest free trade agreement in the world, and it will be with the most litigious country in the world, which suggests that the ante will go up seriously.

We have had reassurances, some of which are in the Scottish Parliament information centre briefing, from UK ministers, Commission officials

and commissioners that they will of course protect everything and that we do not need to worry too much. However, we assume that Germany probably had the same sort of reassurance when it signed up to the energy treaty, and it is now being asked to pay out nearly €5 billion for phasing out nuclear energy. We also assume that the state of Quebec thought that it probably would not be in court or a tribunal because it did something right in putting a moratorium on fracking.

The scale of what we are signing up for and the country that we are signing up with suggest that there is a much greater danger that we will end up in a lot of complex disputes that will go to tribunals. If that starts to come true, every elected representative will start to think, "Shall we put a law or a policy in place for that, as we might end up in court because of it?" That will start to slow down the Scottish Parliament's powers, because at the back of their mind people will always think, "Hang on. How will the US react to that? Will Europe crack down on us, because it will get us in trouble with the US?" There could be a regulatory chill effect.

In answer to Roderick Campbell's question, some dispute systems exist. The UK has perhaps been lucky, but other countries have certainly suffered because they have been part of those dispute systems. However, the system to which we will potentially sign up is on such a bigger scale and is with such a potentially more dangerous partner that we will certainly suffer if it is not written right or is simply got rid of.

The Convener: Does Arianna Andreangeli want to come in?

Arianna Andreangeli: No. I think that that was clear. Liz Murray wanted to comment.

Liz Murray: I will add a tiny bit of detail to what Richard Dixon said on the scale of the agreement, particularly given the substantial foreign direct investment from the US to the UK. That is another key difference between some of the other bilateral trade agreements to which the UK has signed up and the one that we are discussing, given that FDI from the US in the UK is a quarter of a trillion dollars.

It is also helpful to consider NAFTA, which has been around for 20 years, with Canada as an example of a country in a similar position to that of the UK, and the number of cases that have been brought against the Canadian Government by US investors. There have been 30 such cases in the past 20 years. Many of those have not been settled—some were thrown out on merit—but some resulted in compensation or legal costs being paid by the Canadian Government, and one or two resulted in changes of policy as a result of the chilling effect that Richard Dixon described.

Dave Watson: I want to focus in particular on health. I will bear in mind Arianna Andreangeli's points—obviously, it is dangerous to have two lawyers giving evidence at the same time, but the committee will be pleased to hear that I will not have a legal debate with Arianna Andreangeli on the finer points of European law, as I largely agree with her.

I will answer Rod Campbell's point by talking more about the practicalities. There may well be a theoretical legal position, as Arianna Andreangeli has set out, but there are practical examples, too. We have highlighted Slovakia's health insurance system, and I am sure that the Australians did not expect a challenge from Philip Morris International on tobacco controls.

Richard Dixon is right about the regulatory chill point. I have a fair amount of experience over many years of dealing with Scottish Government and local authority legal officers who have tried to do things. The usual reaction from a legal officer in any public sector body is to tell the minister that they might be challenged. That is the real threat. It is not necessarily the case that there will be a challenge or that we will get to the European Court of Justice; the issue is the freezing and not doing anything that might be a wee bit risky.

The real challenge is with regard to US corporations, which are notoriously litigious and have huge legal departments that make the Scottish Government's legal offices look like a wee high street solicitor's in comparison.

The other point to acknowledge in relation to health is that it is the UK and not Scotland that is the member state—I appreciate that that might be an issue for debate, but it remains the case at present—so the question is where any legal challenge would come from. Would the UK Government mount on behalf of the health service the sort of legal challenge that Scotland might want to mount, given Scotland's very different health system, on which there is fairly broad consensus across the political parties?

I do not dispute the strict legal view on the TTIP, but I believe that the practical examples that I have given illustrate that we could have a real problem with it. The way to sort that would be to exclude public services from the TTIP by using the positive list approach, which would mean that there would be no risk to areas such as health in the first place.

Arianna Andreangeli: To respond to Rod Campbell's question on why European Commission talks on the investor-state dispute settlement mechanism have been suspended, both Karel De Gucht, the previous EU trade commissioner, and the new trade commissioner for the Juncker Commission wanted greater scope for debate, so the talks were frozen because the

EU decided unilaterally—quite rightly, to my mind—to gather extra evidence. There was an online consultation that has either just expired or is about to expire in the next couple of weeks. The talks were therefore suspended because it was felt that there was a clear need for greater debate on the ISDS mechanism.

In relation to the comments that Dave Watson just made, Scotland is a regional Government within a unitary state, and it is the EU's view that it is a matter for the member state to decide how best to distribute powers, whether vertically or horizontally, across the Administrations in its domestic institutional set-up. Obviously, the rights and liabilities in the context of the TTIP lie with the member state seen almost as a Westphalian entity.

I can see where Dave Watson's comments on Scotland and its choices come from, but we must bear it in mind that Scotland enjoys full powers to regulate health services in Scotland according to the Scotland Act 1998. To be honest, I see that as a safeguard for Scotland, because before those powers could be changed there would have to be a debate in Westminster about the 1998 act, and the way that things are evolving indicates that there is quite a lot of appetite for devolving more powers to the Holyrood Parliament as opposed to taking powers away from it. To be honest, unless politicians were completely schizophrenic in that respect, which I frankly do not believe they would be, I do not see any backtracking on the NHS happening.

Finally, as a lawyer, I see the ISDS as a source of some concern because I believe in the benefits of having an effective court system, which all democracies have. It is really important that disputes are heard in the context of what we on the continent call the "juge naturel"—that is, the natural judge for a particular claimant. The great danger of the ISDS is that it takes important disputes away from the court. I do not see why judges should not be well versed in dealing with such disputes.

At the same time, in terms of a state's liabilities for the consequences of policy changes, there is a well-established principle in international law that policy changes that are dictated by the public interest, made in good faith and carried out according to well-established, thought-through rules are not challengeable in respect of tort liability. There are many checks and balances in the applicable rules that will have a bearing on the limits of a state's liabilities.

Willie Coffey: We will no doubt hear in due course what the UK Government's view on the issue is if its representative comes to the committee. I am particularly interested in Mrs Andreangeli's comments on conferred

competences. If all the member states agree to the TTIP, all the things that people worry about and fear could happen. What is the view of colleagues around the table of member states' views on providing access to healthcare services within their jurisdictions? Are they all against it or all in favour of it, or do we just not know?

The Convener: Does Liz Murray want to comment?

Liz Murray: No. I was just trying to point out that the unions will probably know more about that issue.

09:45

Dave Watson: I well understand the argument. It is absolutely right that, if the TTIP was to go outwith the current competences, that would require a change, which each of the member states would need to approve, and the approval mechanisms would vary. In the UK, it would probably require only a piece of secondary legislation to do that; in other countries, it would require a piece of primary legislation or at least the approval of their Parliament. Different mechanisms would be needed.

My concern is that it might not get to that stage because the EU negotiators would say that the situation did not exceed the EU's competences, so the matter would end up in the legal mechanisms, and judges, not Parliaments, would make the decisions. I think that such decisions are largely political ones about the way that we run our health services, for example, so Parliament is where those decisions ought to remain instead of our taking, frankly, a punt on judges or an arbitration panel under a mechanism such as the ISDS.

Willie Coffey: Can Arianna Andreangeli clarify the point? If the member states do not agree to access being provided to their respective health services, how can the will of the member states be overcome, even through the courts?

Arianna Andreangeli: The principle of conferred competence says that the EU can act only in those areas that are identified as being conferred on it by the treaties. For instance, the provision of public healthcare services is an area in which the EU enjoys very limited competence and I do not see its gaining more competence in that area. Even if the EU successfully negotiated the TTIP and agreed to a common text, that common text would be effective only in respect of those areas that fell within the competence of the EU at that particular time. If healthcare provision does not fall within those areas in which the EU can, if you like, commit the member states, according to the principle of conferred competence—and barring a treaty amendment—that change could not happen.

Member states remain free, within their respective jurisdictions, to say that, although they accept that healthcare is a service and therefore enjoys the principle of free movement of services, they remain sovereign over the way in which they provide that service to their own populations.

If we want a mechanism whereby ownership of the health service is by the state directly or by controlled bodies, so be it—the EU cannot mandate the state, nor is the EU saying that it will mandate the member states to privatise health services. On the basis of the principle of conferred competence, I do not buy the argument that has been much bandied about on the TTIP—or, for that matter, on the application of the free movement of services rules—that it will lead to privatisation by stealth. That simply cannot happen through the EU. The matter falls within the competence of the member states, and if the member states think that that is a good idea, that is a choice for domestic politics; the EU has no responsibility over the matter because the EU enjoys no power in that particular area.

I do not know whether that answers your question.

Willie Coffey: It does. That is really helpful. Individual member states could make individual, independent decisions and allow access to their health services—

Arianna Andreangeli: —or not. They could go for marketisation or they could commit themselves to public provision.

The issue also has a bearing on the scope of public procurement. The public procurement rules were mentioned earlier, and the case law is very clear that the public procurement rules, going beyond the two key principles of transparency and non-discrimination, will not apply if services are provided “in house”, as we call it. That means that they are internalised through a member state's structure—through healthcare authorities, for instance, or through bodies that the healthcare authorities have significant control over.

Let us take, for example, the system of healthcare services in Scotland, in which healthcare authorities control hospitals. If those controlled hospitals provide medical health services to the population, those services would not have to go out to tender, because the hospitals are under the strategic and functional control of the state authority that commits to providing the services and the resources.

Jamie McGrigor: My first point is about the ISDS. Mary Alexander and David Anderson raised concerns—their points were well made and it is important that those concerns are being brought up at this stage. I know that one of the most contentious points of TTIP is the ISDS. I am not a

lawyer, but I am aware that the largest-ever Commission consultation—on the ISDS—has just closed. The consultation attracted 150,000 replies and I imagine that a good few of those were from lawyers. It will be interesting to see what comes out of that consultation.

As far as I am aware, the ISDS can be invoked only if capital is expropriated, which I believe is already against UK law. Is the ISDS any different from UK contract law—or from any other laws, for that matter?

Dave Watson: The difficulty is with the definition of “expropriation”. A fairly broad definition was certainly used in some of the cases that we referred to. I agree with Arianna Andreangeli that an American corporation cannot come along and say, “We want to bid for a hospital in Glasgow.” There would have to be a link with a contract. The corporation would have to have a contract for some elements of the service and it would have to show some loss. It is not a case of just showing that an opportunity was lost; there would have to be a real cost to the corporation or real expropriation. I agree that that limits the potential for challenge.

The worry is that there could be challenges in the UK, particularly in health services in England, but also in Scotland. People tend to think that we have a public services monolith, but a third of the Scottish Government budget goes on purchasing goods and services outwith the public sector, so there is already a fair amount of private sector work even in Scotland. In relation to the health service, of course, we have a very clear difference between the political approaches in England and in Scotland. My concern, essentially, is that Scotland will not have the ability to influence things if a legal challenge comes against a member state.

Again, I agree with Arianna Andreangeli on how to deal with the issue. The treaty may not even mention the NHS—it does not have to. The treaty could be employed in a legal challenge. That is why we want the positive list approach; if we have a positive list, there is no doubt. One of two things can be done: the NHS could be explicitly excluded or it could be decided that the only things that are covered by the treaty are the ones in the positive list. That would also protect the NHS.

We can argue about the potential legal challenges, but my point is that there is a very easy way to sort this. If the UK Government is not trying to encourage privatisation of the NHS in Scotland through the back door using TTIP, it should have no difficulty in agreeing on the positive list approach, at which point we would all say, “Thank you very much,” and we would have no problem in that particular respect. That is the challenge: there is an easy solution, but if

politicians do not want to take the easy solution, we have to question their motives for that.

Clare Adamson: Dave Watson said that the way to solve the issue is to exclude public services. I am concerned about the definition of “public services”. In the context of education and local government, arm’s-length external organisations and trusts have been set up and we have private finance initiative contracts for schools and for hospitals that involve catering staff. Given those complexities and the outsourcing of NHS laboratory services and so on, how tightly can we define the meaning of “public services”?

Dave Watson: The EU has been debating the question of services of non-economic interest for some considerable time and has never actually got to a definition that everyone in Europe has agreed on, so I am not confident that we are going to crack that one and I am certainly not confident that Europe is going to crack that one. There is a difficulty with that—there are all sorts of grey areas.

PFI is obviously a subject that is close to my heart—I have written a book on it. However, there are limited grounds on which to worry about PFI contracts, be they the current ones or the old-style ones. Part of the reason for that is to do with what would happen if you wanted to buy out a PFI contract. An announcement is being made elsewhere as we speak, and if we get the sort of borrowing powers that I would like, I would like to see us buy out PFI contracts. However, a number of American corporations have a say in a number of PFI contracts across the UK and Jamie McGrigor is right that, because of existing contract law, the only way of buying out such contracts is by agreement. In other words, it is necessary to agree with the current provider on buying out. If an agreement was reached, a legal challenge could not then be mounted under TTIP because, essentially, it would have been agreed that the contract would be changed.

Alex Rowley: When we took evidence from the Italian ambassador, we talked about the health service. His view is that public services are not included in TTIP, but I wonder about that.

Last week, David Martin MEP talked about a good TTIP being good for jobs and skills. Perhaps Dave Watson could expand on what the STUC says about that in its written submission and on the suggestion of a commission to look at it.

I also wonder about each organisation’s position on the TTIP. I understand that Unite has said that the UK should oppose the TTIP. What does each organisation here today think? Is there, as David Martin MEP said, a good TTIP to be had, or should we say that it is not in Scotland’s interests or in the interests of workers across the UK?

Stephen Boyd: I accept David Martin's point that if the current negotiations lead to us losing the things that we do not like in the TTIP that we have flagged up in our submissions, a good TTIP could be had. That is a reasonable intellectual position. My problem is that I do not feel that I have the information that would allow me to say without doubt that that is the case, in particular for Scotland. What is David Martin's case? What sectors does he see benefiting from TTIP? What would that mean for Scotland? What would be the net jobs impact? Where would the losses be? That information is not available in Scotland; I am not aware that the Scottish Government or Scottish Enterprise has any such analytical work. If the Scottish Government and enterprise agencies think that a case can be made, they should by all means present that case to us and we will look at it with an unjaundiced eye. In pure economic development terms, I can accept that a good case might be hidden in there somewhere, but it has not been presented to us. Nobody is making such a case in Scotland at this moment in time.

The Convener: The committee will write to the MEPs to get an up-to-date position on TTIP. We covered lots of topics with the MEPs at last week's meeting, so we are writing to them on that point specifically.

Liz Murray has some interesting written evidence that might be on the same tack.

Liz Murray: Do you mean on jobs in particular?

The Convener: Yes.

Liz Murray: The European Commission did an impact assessment and the modelling from that has been criticised. The UK Government has used the figures on growth and jobs that came from that impact assessment, which contains some assumptions that do not relate very well to the real world. For example, it assumes that markets are perfectly competitive, efficient and in equilibrium. In other words, there is a buyer for every product or service that is available, including labour.

The model has also been criticised for being open to bias. As in all models, the information that has gone into it has influenced the information that has come out. It also relies on optimistic assumptions about reducing tariffs and non-tariff barriers; it relies on eliminating 100 per cent of tariffs, and it is assumed that half of all the non-tariff barriers—of those that could be removed—would have action taken to remove them across all sectors of the economy, and that 50 per cent of Government procurement restrictions would be lifted. I do not know how that relates to what Arianna Andreangeli said. The assessment also looked at job displacement and assumed that, when people are forced out of uncompetitive

industries, they find a job immediately. There are some big questions around that.

10:00

Other research has come out since then. For example, in my submission I reference a peer-reviewed study from Tufts University. I could send round a link to that. Among its conclusions were that TTIP would lead to net losses in net exports after a decade, compared with the baseline without TTIP, and that it would lead to net losses in gross domestic product, a loss of labour income and 600,000 job losses across the EU. Quite significantly from a trade union point of view, it would lead to a reduction in labour's share of GDP—there would be a movement of the share of GDP from labour to capital. That is an important consideration from the point of view of social equality.

As Stephen Boyd said, as far as we know no specific research has been done on Scotland, and in evidence to the Business, Innovation and Skills Committee down in London yesterday, the Confederation of British Industry admitted that it had not done any economic analysis of the impact on different sectors. TTIP would have different impacts on different sectors in business in the UK.

Therefore, we do not believe that the jobs argument and the economic growth argument on TTIP stack up at all. There are questions over economic growth and jobs and there is the ISDS, with which we disagree. Even if the ISDS were taken out of TTIP, there would still be regulatory harmonisation, so there would still be what we think would be downward pressure on the standards that are there to protect public health, the environment and food safety, which would have an impact on Governments' ability to make progressive policies in those areas. In addition, the Scottish companies in the agricultural sector that have been mentioned would potentially be at a disadvantage.

Stephen Boyd: I would like to supplement what Liz Murray said. The main study that is referenced, which the European Commission uses, is that by the Centre for Economic Policy Research; I think that that is the one that Liz Murray was referring to. Under its model, by 2027—in other words, 12 years after implementation of TTIP—the US economy would have grown by 0.4 per cent more than it would otherwise have done and the European economy would have grown by 0.5 per cent of EU GDP. It does not explicitly state that TTIP would lead to more jobs, because it is a full employment model—it already assumes full employment. It indicates that wages might be somewhat higher than they might otherwise have been—although that is a very tentative finding—

but finds that there would be negative impacts for some workers.

The important thing to extract from that is that even if that model is correct, it would imply an annual increment in GDP of about 0.03 per cent. The point is that it will never be possible to present data that will prove that TTIP has had a positive impact on growth and jobs, because the predicted annual increment is so small that it will be lost in the rest of the data.

I reiterate what I said in my opening remarks. The models that promote TTIP's benefits explicitly do not include those areas in which it could have a detrimental impact on growth and jobs. I mentioned patents and the cost of drugs. It is very important to remember that TTIP is not a free trade agreement; it is about common regulatory structures. Big pharmaceutical industries will seek to ensure that their patents are stronger, longer and more far-reaching. I think that we know enough about the dissemination of knowledge in economics to know that that will have a negative impact on the wider economy over a longer period, and the models just do not consider such issues.

Alex Rowley: It is important that we pursue that further, because it is being assumed that a lot of good will come out of TTIP.

It is not just David Martin MEP who talks about "a good TTIP"; the UK Government and, indeed, the Scottish Government have said that a lot of benefits could come from TTIP, although they have also said that they have some concerns. The committee and perhaps those who are giving evidence need to look more at what the so-called benefits of TTIP are.

Last week we tried to tease out the role of Scotland on the issue of health services. What would be the position for Scotland, given that, as far as the European Union is concerned, the UK is the state, and a lot of health services that are privatised south of the border are not privatised in Scotland?

Arianna Andreangeli: The position would be exactly as I have depicted it. The EU cannot, through internal action, and even less so through external action, compel the UK to change the status quo. Scotland has decided to organise the provision of health services in a certain way because health services are devolved to its Parliament. The Parliament and the Scottish Government have decided to take steps so that provision of healthcare services remains in public hands. The EU cannot change that. It is clear in the application of the principle of conferred competence that the distribution of competence cannot be amended if not through treaty amendments. Extension of new competences in

the field of public health cannot take place unless there is an amendment to the treaty.

That means that member states decide how best to organise their own competences. If Westminster felt strongly inclined to extend to Scotland the principles in the Health and Social Care Act 2012, it would take the devolved area of competence in public health away from Scotland and bring it back to London. Unless I am imagining what is happening with the Smith commission, I do not see the process of devolution backtracking in that way. It is to the contrary—there seems to be a general consensus that the Scottish Parliament should get more powers. I do not see Westminster taking healthcare away from Holyrood and precluding Holyrood from making certain choices in, for example, maintaining healthcare provision in public hands. TTIP cannot change that because the distribution of competence is a matter of constitutional law in the EU. The treaty is the constitution of the EU, so unless we amend the treaty, that change simply cannot occur.

I like to do historical studies. In 2001, the European Court of Justice was asked to consider whether, at the time, the European Community could accede to the European convention on human rights. There was an argument that human rights are a keystone of the rule of law and the protection of individuals within the EU. There was almost an assumption that, because the EU had accepted those principles, there was an unexpressed competence in the treaty. The court said, "No. I am sorry. Human rights policy is not within the policies that are being conferred on the European Community, hence the European Community cannot, at this stage in the make-up of the treaties, accede to the convention."

I suppose that the principle always applies, so it applies in this case. Unless there is a change in the constitutional make-up of the treaty that would confer a competence on the EU, the EU cannot mandate member states on how they should regulate provision of healthcare. I do not know whether that makes sense.

Mary Alexander: On Alex Rowley's point about Unite's opposition to TTIP, we are very clear about what the benefits of TTIP should be. The agreement should have a positive impact on jobs and income in the UK and Ireland and should not just be for the benefit of business. We want the ISDS and public services to be removed from the remit of the agreement, and guarantees inserted to protect public provision and allow for the possibility of renationalising. As I mentioned before, we wanted binding and enforceable environmental and labour standards to be a central part of the agreement. The rationale behind our executive decision to oppose TTIP is all the reasons that I have outlined, including our

concerns about labour rights, the negative consequences of the agreement on European workers, the lack of transparency and the problems associated with the ISDS.

Stephen Boyd: I go back to Alex Rowley's comments about the European Commission and the Scottish and UK Governments all being strongly in favour of TTIP, which implies that there must be a positive case underlying it. That just refers to the deeply embedded economic orthodoxy that free trade is a good thing.

It is often said that comparative advantage is the only proposition in economics that is at once both true and non-trivial. That is true. Over the decades, that has led to people becoming very sympathetic towards free trade and to politicians living in fear of ever being described as protectionist. I argue that that leads to a situation whereby politicians do not interrogate the underlying case for such trade agreements nearly as closely as they should do. That should be done with rigour, which is sadly lacking.

If there is a positive case for TTIP, let someone present that case to us, with detail about how it refers to the Scottish economy as it is in real time rather than to a state described in an economic model that does not refer to the economy on the ground.

We must also be aware of where some of the key economic impacts will be. For example, motor vehicles are spoken about throughout the literature as an area where trade will increase, with benefits to both sides. That can happen only if, frankly, the EU is going to undermine its regulatory framework, which has essentially traded off large cars for lower emissions. Would we want to see that, even if it leads to more jobs and growth? I argue that that might not happen anyway, but if it did, it is something that, over the years, democratic Governments have essentially decided they do not want to happen. That should not be circumvented through a free trade agreement.

David Anderson: There may well be a possibility of getting a good TTIP, but what is on offer is certainly not it. The secrecy, including the secret negotiating positions, and the lack of public engagement and involvement in the whole process have set alarm bells ringing. There is also a lack of clarity over a number of questions that we have raised this morning.

Without a rewrite and a restart, we are opposed to the process. With that, we would be willing to engage in what is presented henceforth. However, as matters stand, we are in opposition.

Jamie McGrigor: I have a question for the NFU. I declare that I am a fully paid-up member,

so I obviously take a certain amount of notice of what it says.

The NFU written submission mentions worries about beef imports in particular and

"the use of antimicrobial washes for the purpose of reducing pathogens."

I recently asked about that issue when I was in Brussels. A good example is that it is common practice in the US to disinfect chicken with chlorine. However, although TTIP would reduce the tariff on the chicken, it would not remove the ban of the practice in question over here, so there would be no worry about such chlorine-disinfected chicken being sold here. In addition, the use and consumption of genetically modified foods are regulated by the European Food Standards Agency and the regulations cannot be tampered with.

My main question, as someone who has an interest in livestock and who represents a lot of farmers, is that Scotch beef, Scotch lamb, Scotch salmon and Scotch whisky are all important exports so, surely to goodness, would it not be beneficial to export them? There has been a ban of Scotch beef exports since foot and mouth. That could well be lifted. Would that not be a benefit? Could we not export more lamb to the US? Could the products not go to niche markets? Looking at the positive side, we would see more growth in the industry. What is your opinion? Is TTIP all negative or can you see some positives?

10:15

Scott Walker: Certainly for agriculture it is not all negative, but let us deal with the food standards issue first. For many years, the US has challenged the European Union in the World Trade Organization about the standards that we have in place for GM, saying that they are unscientific. In the US, they use growth promoters in their meat products and they say that the ban on such substances in the EU is unscientific, and they also say that the EU ban on chicken washing is unscientific.

From our point of view, the US is constantly challenging those bans, and our concern is that once the TTIP agreement is reached, depending on what is in the final document, there will still be erosion over the course of time, because one of the big gains for the US food producers is to get those products into the European Union. That is where they are going to get big gains. Whether we see such gains happen on day 1 is open to dispute—we will have to see the final agreement—but I think that it is only a matter of time once the agreement is in place.

We need some recognition in the final agreement that both the European Union and the

United States, for legitimate reasons, take a different approach to food safety. The US in particular wants to have equivalent measures in place, allowing the different nations to take different approaches, but it wants them to be seen as having the same impact on food safety, thereby allowing the free trade of goods backwards and forwards. In theory, that would be fine but, generally speaking, most of the US measures impose lower costs on the industry in the US than the EU measures impose here, so if that were to happen, we would be put at a competitive disadvantage.

We have excellent beef and lamb products in Scotland and we believe that they would be in high demand for affluent consumers in the United States of America, but the rules that the US has put in place following the BSE restrictions would prohibit the United Kingdom from exporting to the US market. Unless that changes, there is the potential to export but the reality would not be realised in the next few years.

That brings us back to the idea of geographical indicators, to which the United States of America and Europe take different approaches. Europe tends to look at where the product has been produced and at the tradition and history of that product and it protects products such as Scotch whisky and Scotch beef.

Jamie McGrigor: Scotch salmon too.

Scott Walker: Salmon is another classic product. The United States of America tends to operate a different approach, looking at the brand as the important thing, rather than where the product comes from and how it is produced. I imagine that many US firms would be looking at high-value Scottish products and seeing how they could copycat them in some way.

I am not saying that the whole TTIP deal is necessarily bad for agriculture. We think that, in the long term, there could be the potential for us to export some products to the United States of America. However, unless we have some agreement in place that recognises the different approaches to food standards—which are legitimate—and unless we have some proper agreement in place to protect our products, we will have concerns about the overall impact being negative. In some areas of Scotland, such as Orkney, Dumfries and Galloway and the north-east, where agriculture is a large part of the economy, if agriculture were to be decimated or harmed by the agreement, that would feed through not only to farms or to businesses that rely directly on farming, such as hauliers and vets, but to the whole economy of those regions.

Jamie McGrigor: The potential of the markets is obviously enormous, if you can get the products

in there. Is your concern really about the fact that we would have to drop our standards?

Scott Walker: I am not saying that we would necessarily have to drop our standards. I am saying that we have different standards—

Jamie McGrigor: We have higher standards, really.

Scott Walker: I would say that we have higher standards, but others might dispute that. However, our standards impose extra costs on our businesses that the standards in the United States do not impose on businesses there. I think that our standards are correct. They are what consumers in the United Kingdom and the European Union have voted for. However, as I alluded to earlier, there is often a difference between the provisions that people vote for and the purchasing decisions that they make when they go to the supermarkets. The concern is that, if we keep our high standards—which I think we should do—but allow products in that operate to different standards, we will reduce the amount of product that we produce in Scotland.

Jamie McGrigor: But the chlorine-washed chicken could not be sold in the UK or anywhere else in Europe.

Scott Walker: It would certainly not be possible to sell it immediately in the United Kingdom. However, the United States has consistently argued this point at the World Trade Organization and I would be surprised if it did not continue to argue it under the final TTIP agreement. Even if we do not see those products coming in from day 1, I suspect that, at some point, we will be back in the Scottish Parliament saying that we are finding that the products are coming into the EU, or there will be a deal in place that will allow them to come into the EU. Our fear is not about what will happen on day 1 but about the long-term impacts of the TTIP agreement.

We want to put in protections at this stage. Unlike some, we are not saying that we should not sign up to the TTIP agreement; we are saying that protections should be put in place that recognise the differences in policy in the European Union.

The Convener: Richard Dixon, could you expand on the issues in your written evidence?

Richard Dixon: On the issue of a good TTIP, it is, of course, sometimes good to harmonise certain things. We have done some good work on that across Europe. Some of our best environmental and worker protection legislation has come from agreement across Europe.

To take a trivial example, if USB cables were standardised so that there were only two sorts, hundreds of millions of people would not have to buy a new cable every time Apple produces a new

product. That would save materials, energy and people's money.

Standardisation can be a really good thing. However, to sum up some of the comments that you have heard today and have read in the submissions, we can ask whether TTIP could be changed to become something good. We have heard that there is already light regulation between the EU and the US, which means that the differences are not that great. You have heard that, particularly if TTIP becomes a bit more restricted, the economic benefits of TTIP are absolutely tiny across the economy. You have heard that there are threats to key sectors such as agriculture and to key areas such as chemicals legislation. You have heard that the investor-state dispute settlement process is a potential nightmare that could lead to people being locked into legal actions and to countries and the EU being prevented from carrying on with progressive policies to protect workers, the environment and people's health.

At the same time, the public are excited about the issue and politicians are spending a lot of time talking about it. You would have to conclude that it is absolutely not worth it and that it should just stop now because it is a complete waste of time—particularly politicians' time.

The chemicals issue is an interesting example. Jamie McGrigor was talking about chlorine-cleaned chickens and said that they could not be brought into the country because they are banned. Fundamentally, TTIP will work if there is deregulation. Some 80 per cent of the gains from TTIP are supposed to be about changing regulations. Some of the things that we think are good protections in Europe are going to go if US companies are going to make money here—there might be a vice-versa effect, too, but that is the bit that we are worried about.

If the impact of TTIP was that the US's chemicals regulation became as good as the European regulation, that would be great. That would be a good aspect of TTIP. It would be a great gain for the world and would offer greater protection for people in the States because, even though the EU regime is not perfect, it is still much better than the US one. However, that seems unlikely to happen. As has been mentioned already, we have all these American corporations arguing in the WTO and other fora that chemical protections in the EU are unjustified and that the precautionary principle is unscientific and that, therefore, we cannot ban certain things on that basis.

That is the pressure that we are facing. As Scott Walker has suggested, we might go into the agreement thinking that we have safeguarded that stuff, but we will argue about it again in five years'

time, and we will argue about it some more in 10 years' time.

The example that I have given relates to hormone-disrupting chemicals, which I have campaigned on for 15 years or so. We have made some good progress. Some things have been banned both here and in the United States. The example that I have given is that France has gone further. Chemicals that affect the baby in the womb and the development of the child and which can cause cancers have been banned in baby bottles. France is going to ban them in any food product that contains baby food and in cooking utensils. That is a step in a grey area certainly, and it is possibly illegal in European law. To protect its citizens—particularly babies—France is probably going beyond what it is really allowed to do by Europe.

That is an ideal thing for TTIP to create a challenge on: a protectionist measure that is stopping the US producing terrible things to feed babies with or nasty plastic spatulas with phthalates. That is the kind of territory that we will get into.

To come back to my point, the fundamental issue is that TTIP is not worth doing unless there is lots of deregulation and, if there is lots of deregulation, all the things that we are worried about will happen, so TTIP is not worth doing. Therefore, either way, it is not worth doing.

The Convener: That is pretty conclusive.

Liz Murray: I agree completely with Richard Dixon and pick up on Stephen Boyd's point to urge the committee to be courageous, to not just accept the mantra of international competitiveness and the need for economic growth, and to be rigorous in the intellectual way that it looks at that whole idea and the underlying driver that it is for many decisions, particularly around TTIP.

Should I mention anything about transparency?

The Convener: I was going to go to that, but Willie Coffey wanted to come in, too. However, you can say something about transparency.

Liz Murray: You could also call for specific things in respect of transparency. There are now commitments to making things public, but on, for example, negotiating texts that have already been shared with Governments, you will not be able to see even from those what is still under discussion. You can look at other processes. Even the WTO, which is highly criticised, puts out negotiating texts with words in brackets, I believe, in areas that are still under negotiation. You could push further for that and for members of the European Parliament to be able to see some of the consolidated texts and the negotiating positions.

From December onwards, commissioners and senior staff will have to publish all their contacts in meetings that are held with stakeholders. It would be good to see those retrospectively, too. Obviously, that would include any meetings with any of us as well as with industry.

We say that the proposal for a mandatory register of lobbyists should absolutely be carried through and that it is really important.

Some progress has been made. It is good to see the European Commission responding to public concern—that is where that progress has come from—but we think that there is more to do. I could pass the committee specific suggestions, if that would be helpful.

The Convener: That would be very helpful.

Does anyone have anything else to say about transparency? The points have been well made. Does Willie Coffey want to come in with his final point?

Willie Coffey: I want to return to the ISDS mechanism. Liz Murray told us about examples of those disputes from around the world. Have any or all of those disputes been successful? Have national Governments here, there or everywhere ultimately had to pay out hundreds of millions of pounds, euros or dollars in such cases? What will protect us further? Dave Watson's paper suggests that we should remove the ISDS mechanism. Would that give us the protection that we think we need, or will we simply create a lawyer's paradise for ourselves with TTIP?

Liz Murray: The first part of your question was about the outcomes of investor-state disputes. I can give the committee a few little facts and figures, and I can also give you information afterwards to save a bit of time now.

At the end of 2012, 514 disputes were known about. More disputes were filed in that one year than ever before. Of the known concluded investor-state cases, 42 were decided in favour of the state, so it is clear that the corporations do not always win in such cases. However, 31 per cent of decisions went in favour of the investor—the business or corporation bringing the case.

10:30

In some cases, the state had to pay compensation to the investor and in other cases, where the investor lost, it did not. Legal costs are involved too, but international arbitration cases are different from national legal systems in that the question of whether the loser has to pay costs does not always apply.

Quite a number of cases—27 per cent—were settled without a verdict. In such cases there may

be payments or concessions for an investor, so one can see a squeezing of policy space where negotiations have gone on outside the arbitration hearing and where a Government has perhaps agreed to relax legislation in a particular area to stop the case going any further. The outcomes are variable.

What was the second part of your question?

Willie Coffey: It was on how we can protect ourselves. If the mechanism is removed, are we protected?

Liz Murray: The same element has been taken out of the Australia-US free trade agreement: the Australians were pushing for that, so the agreement has gone ahead without such a provision in it. There are precedents for such mechanisms not to be included in free trade agreements.

I have with me a paper by the London School of Economics, which the Department for Business, Innovation and Skills commissioned, on the costs and benefits of the investment protection part of the treaty. It notes that

“an EU-US investment chapter is likely to provide the UK with few or no benefits”

and that it would come with

“economic and political costs”.

I can give you a link to that paper.

The Convener: That is helpful—thank you.

Dave Watson: I should probably declare an interest at this point. A lawyers' paradise sounds like a very good thing, but sadly trade union lawyers do not tend to get paid that much, so it would be less of a paradise for me, although I will keep going at it.

Withdrawing the ISDS mechanism from the agreement is our solution, and we offer it to you as the way forward. I agree entirely on the question of what the cases are about—I would be less concerned about the actual cases and the costs than the regulatory chill point that Richard Dixon and I have both made to the committee.

I will give you one example. Many of the organisations at the table today recently came together as a big coalition to try to persuade the Parliament in passing the Procurement Reform (Scotland) Bill—now the Procurement Reform (Scotland) Act 2014—to take a range of actions with regard to international development, environmental factors, the living wage and so on. Tax dodging was one of the areas that many of us argued should be addressed in the bill. We persuaded the Parliament that action was a good thing in some cases, if not all, and the 2014 act

addresses some of those matters at least in principle.

Members who were involved in scrutinising that bill will remember long briefings from us, the law officers and everybody else. The Government's response was, "Oh well, we cannot do that because the law officers say it might be challenged, so there is a risk there."

I ask you to imagine what would happen if the Scottish Government took a tough line on aggressive tax avoidance with regard to the position of US corporations under TTIP. Their lawyers would be flying over in droves to challenge us on that point. The real risk here is that Government is essentially frozen with concern about what might happen in terms of legal challenge.

The Convener: We are just about running over time. Does Rod Campbell want to come in with a final point?

Roderick Campbell: No—two or three of the last points addressed the issue of transparency, so I have exhausted that line of questioning.

The Convener: This session has been our first on TTIP. We are meeting business and industry in a few weeks' time, and we have made a request to the UK and Scottish Governments and to the European Commission.

We intend to make a very broad sweep on the issue, and today's session has been helpful in informing us about some of the themes that we will consider. Please remember that the offices of committee members and the clerks are always open if you want to provide the committee with any more information. We take on board the fact that we should be very intellectual in making decisions on the evidence. Your written evidence has been very helpful in allowing me and the other committee members to formulate questions. I thank you all for your time and your evidence this morning, and I hope that this will not be the last time that we will discuss TTIP together.

10:35

Meeting suspended.

10:46

On resuming—

"Brussels Bulletin"

The Convener: Agenda item 3 is our "Brussels Bulletin". Do members have any comments, questions or requests for clarification?

Roderick Campbell: The issue of transparency is raised on page 3. It would be interesting to know whether there was any debate about whether the principle of transparency should be applied retrospectively—it is coming in on 1 December.

The Convener: We can find that out. Yesterday, Alyn Smith sent round a newsletter that I passed on to the clerk, Katy Orr, which gave us a bang up-to-date explanation of the situation. The policy on transparency is evolving and more information seems to be added to it every day.

Willie Coffey: I draw members' attention to the section on regional policy, on page 9, which tells us that €11.8 billion is aimed at cohesion policy funding that includes allocation for youth employment. Committee members have been quite interested in how that will pan out in the future, so I ask that we keep a close eye on how it develops particularly for those parts of the west of Scotland that are included in the initiative.

The Convener: We have agreed to do some work on that in our next inquiry, so it will be addressed anyway, but we can get an update.

Roderick Campbell: I draw the committee's attention to the post-G20 call for states to declare their intentions in relation to combating climate change in preparation for the 2015 Paris climate summit. I do not know whether a timetable has been set for states to clarify their national intentions, and I would be quite interested to know that.

The Convener: Okay. We can check that out.

Alex Rowley: Under the heading "Transatlantic Trade"—we have just had an evidence session on the subject—we are told:

"The European Commission has ... launched an online survey for SMEs, to better understand the difficulties they face in doing business with the United States."

Given where we are at with our TTIP inquiry, it might be useful for us to get a better understanding of Scottish companies' involvement with the US in terms of markets and exports. We might be able to follow that up.

The Convener: Katy Orr is way ahead of you on that. We have been looking at American business speakers who have done some work on the subject, and the next round table will include a few Scottish businesses that you will recognise. I

think that we have got the Scottish Salmon Company coming, but we are still waiting for replies.

Jamie McGrigor: Have you heard from Marine Harvest?

The Convener: We are still awaiting responses from a few people whom we have contacted.

Jamie McGrigor: There are all the whisky companies.

The Convener: They are on the list, too.

Alex Rowley: Will it be easy enough for us to be given a briefing note on what kind of trade we are doing with America?

The Convener: Yes, we will have that ready for the next meeting. That sentence jumped out at me as well, because it almost suggested a fait accompli, in the sense that people were already talking about how things could work better.

Clare Adamson: I agree that we should understand the implications for big companies such as Marine Harvest and for the whisky industry, but it would be good for us to look at the implications for small and medium-sized enterprises, too. I read an article recently about a microbrewery that had managed to get into the American market.

The Convener: We are way ahead of you. The company that you are talking about is Innis and Gunn, is it not?

Clare Adamson: Yes, so that is fine. I should have known better.

The Convener: You were right to mention it, because there might be a time when we are not way ahead of you and we will need to know.

Jamie McGrigor: I noted that Cecilia Malmström, the EU trade commissioner, said a few things about TTIP. Obviously, she was quite pro it, and there is a paragraph about that on page 5.

I wanted to ask about plastic bags. I see that the EU wants to phase them out completely. We have put a charge on plastic bags, but I do not think that a 5p charge will ever phase them out. In a wet climate, people could be walking around with lots of paper bags with the bottoms falling out while they are doing their shopping.

The Convener: Are you picturing oranges rolling down the street?

Jamie McGrigor: In Italy and other places, they use paper bags, but it is a very hot country. If you put a paper bag down on the ground and it gets wet, the shopping falls out of the bottom.

The Convener: Have there not been some initial figures for the first month of the charge on plastic bags? I think that it has reduced usage by 420 million plastic bags, or something like that.

Jamie McGrigor: Yes, because people bring their bigger plastic bags to put the stuff into.

The Convener: Mine are all hessian.

Jamie McGrigor: Maybe they are made of hessian. I do not know. Carpet bags, perhaps.

Roderick Campbell: It would be quite interesting to know where we are after the first few weeks. The target was to reduce annual usage to 90 bags per person.

Jamie McGrigor: Will the Food Standards Agency allow people to go on putting food into the same plastic bags again and again without having to wash them? Presumably someone will sooner or later get food poisoning. I bet you they will.

Clare Adamson: What about non-chlorinated chicken?

Jamie McGrigor: It is good stuff for lawyers.

Willie Coffey: I return to the TTIP issue. Our colleague Stephen Boyd from the Scottish Trades Union Congress told us that, no matter what we do, we have to ask that any data that is presented by way of argument supporting the initiative should stand up to scrutiny. Liz Murray give contrasting examples of how good TTIP was on the one hand and how bad it was on the other. I know that it is not our role to do that analysis and scrutiny of the value of TTIP to the European Union, but whoever comes to see us should be able to cite data in support of their respective arguments. We should look at that, because it is fundamental to be able to scrutinise the data that people are presenting to support their arguments.

The Convener: We have invited the UK trade and investment person.

Roderick Campbell: I do not wish to add to the Scottish Parliament information centre's workload, but the preparatory work on TTIP for future meetings is probably a moveable feast, and I would like us to be able to ask pertinent questions.

Jamie McGrigor: I do not know whether it has already been mentioned, but I noticed that on 10 November at the agriculture and fisheries council the UK was represented by Rupert de Mauley and Richard Lochhead. That is an advance, is it not? That is what the SNP has been asking for.

Roderick Campbell: It depends who calls the shots.

Jamie McGrigor: Richard Lochhead was representing the UK. It says that.

The Convener: He was not allowed to speak.

Jamie McGrigor: Was he not allowed to speak on 10 November? Are you sure? He cannot have represented us if he was not allowed to say anything.

The Convener: Indeed.

Are members happy to bring the “Brussels Bulletin” to the attention of our colleagues on other committees?

Members *indicated agreement.*

The Convener: Agenda item 4 is draft budget scrutiny, which we agreed to take in private.

10:55

Meeting continued in private until 11:05.

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e-format first available
ISBN 978-1-78534-399-5

Revised e-format available
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