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Brief Summary

The AFL-CIO recommends that the United States (U.S.) and the European Union (EU) incorporate a new approach to trade policy in the TTIP, one that prioritizes benefits for working families, not simply benefits for multi-national or global enterprises (MNEs). To successfully create a long-term approach to foster growth with equity, the U.S. and the EU must pursue a trade model that includes the promotion of fundamental labor rights included in the International Labor Organization core conventions; the preservation and expansion of public services; the creation of high-wage, high-benefit jobs that will help to create shared prosperity; and the maintenance of domestic policy space so that nations can conserve their natural resources, stabilize their financial markets, ensure food, product, and workplace safety, and otherwise promote the public interest without fear of investor-state lawsuits. If instead, the TTIP continues the low-road, neoliberal model and substitutes MNE interests for people’s interests, workers in the U.S. and the EU will continue to pay a high price in the form of suppressed wages, a more difficult organizing environment, and general regulatory erosion, even as MNEs will continue to benefit.

Introduction

1. The AFL-CIO appreciates this opportunity to comment on impending negotiations for a Trans-Atlantic Trade and Investment Partnership (TTIP or agreement).

2. The AFL-CIO believes that increasing trade between the United States (U.S.) and the European Union (EU) could have positive impacts on job creation and income growth for America’s and Europe’s workers, but is unlikely to have such impacts unless the U.S. and EU discard the traditional neoliberal approach to trade and instead focus on the creation of good, family-supportive jobs and broadly shared prosperity.

3. At the outset, we note that much of Europe, including the United Kingdom, seems to be heading more in the direction of the neoliberal economic policy that the United States has been following for some time now—that is, in the direction of weaker social protections (including fewer workplace rights), reduced investment in infrastructure, education, and training, and increased reliance on the market to solve its own problems. We believe this is the wrong direction, and we are concerned that if more European enterprises do business in the U.S. as a result of the TTIP, they will drag the nations of the EU further and further in that direction by demanding the same privileges they receive in America—privileges they can enjoy without corresponding and commensurate duties to their employees and communities.

4. As a general matter, the AFL-CIO supports the use of positive lists for any commitments made under the TTIP. Positive lists are less likely to create confusion regarding intended commitments and less likely to subject newly conceived laws and regulations to “necessity tests,” “regulatory impact analyses,” and other similar barriers. The use of negative lists needlessly constricts the policy choices that future governments can make without running afoul of trade commitments.
5. The focus of the TTIP should be the creation of decent work for all workers in the U.S. and the EU. Yet the studies that tout the TTIP’s potential to create jobs and boost the economies on both sides of the Atlantic are not convincing. One well known such study, “Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment,” has been criticized for its overly optimistic projections. For example, Dean Baker, of the U.S. think-tank the Center for Economic and Policy Research, disputed the characterization of the TTIP as an “economic bonanza . . . unless we define down bonanza to mean finding a quarter on the street.” He continued,

The first point to recognize is that the promised pot of gold from this trade deal is illusory. Last week, the media held out the promise of an increase in US GDP of $122bn from the trade agreement. The facts that this referred to GDP in 2027, and that the $122bn would be in 2027 dollars, were absent from the discussion.

It also might have been worth mentioning that this $122bn was a best-case scenario in the study that was cited [Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment]. This figure assumed that the trade agreement included all plausible reductions in tariff barriers.

The study also gave numbers for a deal that it described as “less ambitious” and, presumably, more realistic. Its projection of the increase in 2027 GDP in this scenario is 0.21% of GDP. That is roughly equal to a normal month’s growth. Since it will take 14 years to achieve this gain, the boost to growth would be just 0.015 percentage points annually.

If that sounds too small to notice, you’ve got the picture.

6. The potential for the TTIP to create large numbers of jobs notwithstanding, the purpose of trade agreements must be to advance domestic economic development and create level playing fields in each market, improving prospects for future sustainable growth whose benefits are broadly shared. Under today’s globalized system, trade creates winners and losers, instead of winners and winners. It is the workers in the U.S. and in many of its trading partners who have been the losers—especially in the most recent decade, while global capital has taken an ever increasing share of the world’s wealth.

3 Id.
7. U.S. workers’ share of national income is at its lowest level since the 1940s and is plunging:

8. On the other hand, the share of corporate profits has reached its highest level since 1952:
9. To serve as a net benefit for any but the 1%, the TTIP must change course—more of the same will only promote the status quo, which is unacceptable.4

Negotiators Must Ensure that the TTIP Does Not Endanger The Provision of Critical Public Services

10. Public services are already under threat from austerity policies in both the U.S. and Europe. In a recent briefing paper released in September 2013, Oxfam compared Europe’s current austerity measures to the failed “structural adjustment” programs imposed on developing countries by the World Bank and International Monetary Fund in the 1980s and 1990s. Oxfam concluded, “Europe is facing a lost decade. An additional 15 [million] to 25 million people across Europe could face the prospect of living in poverty by 2025 if austerity measures continue.”5 Given the current attack on public services by austerity policies in Europe and the austerity-driven “sequester” in the United States, it is all the more important that additional assaults on public services are not made under the guise of “trade liberalization.” Good trading relationships need not, indeed must not, require countries to limit or restrict the public provision of public goods in any manner. Nor must they empower profitable corporations to game the system to avoid paying taxes—a strategy that deprives the public coffers of their due and only promotes more cuts to vital services.

11. Replacing state provision with private provision of public services has often demonstrably lowered quality of services, worsened working conditions and wages for service workers, and excluded the poorest—as well as those geographically isolated and too remote from access to services to make service delivery profitable. When provided by the state, services provision is subject to democratic control and is sensitive to social goals determined by the locality, state, or nation. Most importantly, state provision has a role to play in achieving universal access to public services, in poverty alleviation, and in addressing economic inequality. Therefore, the TTIP must protect and promote public services.

12. Public services also play a major role in sustaining economic growth. Reducing inequality is increasingly understood to contribute to economic growth6; the public sector continues to be an important avenue for tackling income inequality. Providing transparent and accountable legal and regulatory systems free from corruption and private interest are essential to economic development. Education, health, and infrastructure address important market failures and externalities. Public sector provision, not market competition, is the most efficient way to provide most of these services. Not only are many public services critical for national security, but public sector spending has always provided important automatic stabilizers in times of economic downturn.

13. The TTIP should not promulgate regulatory restraints and disciplines that would lower the quality of services, reduce access, or affect working conditions adversely.7 Public

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7 To be clear, the AFL-CIO does not consider the provision of public services to be a commercial exercise. “Competitive neutrality” or similar principles that the U.S. and EU might consider including in the TTIP as
services, designed by the society to provide a minimum level of services for all, **must not be undermined** by the TTIP.

14. As such, repeating the language of GATS and prior U.S. “free trade agreements” (FTAs) is extremely problematic. GATS Article I:3 provides an extremely narrow definition of public services as “*any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.*” In both the U.S. and EU, essential public services such as water and wastewater services, health services, education, and public transportation are commonly provided on a commercial basis *even when provided by the state*—and therefore inadequately protected against the deregulatory effects of the TTIP unless a better public services exception is incorporated.⁸

15. A public services definition that is too narrow could limit the breadth of services that can be excluded from the agreement’s regulatory “disciplines,” market access commitments, and other requirements. Neither the U.S. nor the EU U.S. must make market opening commitments or agree to new disciplines in *any* public services sectors, including education and healthcare. The TTIP should not include any disciplines, barriers, or disincentives to prevent or deter national or sub-national governments from reversing privatization decisions and returning the direct delivery of public services to the public sector.

16. Finally, the AFL-CIO opposes the proposed use of negative lists for any service commitments under the TTIP. Negative lists have the impact of committing to the rules of a trade agreement laws, regulations, and public services that were not even conceived of by either party at the time of the agreement. As such, they can create a chilling effect on the future provision of public services. The AFL-CIO understands the desire for a comprehensive agreement, but a better approach would be a positive list, with periodic re-openings, either regularly scheduled or upon request of either party to the agreement.

**Negotiators Must Ensure that the TTIP’s Financial Services Rules Do Not Impede or Deter Financial Services Laws or Regulations**

17. The AFL-CIO opposes further liberalization in trade in financial services. The GATS already provides sufficient market openings (and even that text could be improved to promote, rather than simply allow, prudential regulations).

18. This view is not inconsistent with the views of Bank of England’s Executive Director Andrew Haldane, who has argued that institutions “are the perfect antidote” to the systemic risks posed by the financial sector. Unfortunately, this respect for regulatory institutions has too often been shunted aside in trade agreements as the financial lobbyists argue for looser and looser financial regulation under the guises of “free trade” and “free movement of capital.” The AFL-CIO strongly cautions against repeating the mistakes of the past. Instead, to the extent that *any* financial rules are included in the TTIP, those rules must promote the

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⁸ In the past, the U.S. has exempted some existing laws and regulations from the rules of the services and investment chapters of FTAs, but left the majority of existing measures as well as all future measures open to challenge. In particular, the exemptions taken in past agreements for public services have been inadequate—failing to exempt a number of important public services, such as energy services, water services, sanitation services, and public transportation services, from coverage.
stability of the financial system and avoid socializing the risks taken by private financial institutions.

19. In March, Attorney General Eric Holder admitted that certain financial institutions are not just “too big to fail,” they are essentially “too big to jail.” Specifically, Holder testified that “I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if we do prosecute—if we do bring a criminal charge—it will have a negative impact on the national economy, perhaps even the world economy. I think that is a function of the fact that some of these institutions have become too large.” The TTIP should not just allow but promote the development of new laws, regulations, policies, practices, and directives to address this concern. We need to learn from the economic disaster we are still recuperating from, rather than recreate the conditions that brought us to this point.

20. Given the size of the American and European financial sectors, should financial services disciplines be included in the TTIP, negotiators must pay special attention to the potential for unintended consequences of adopting industry-recommended language. Unlike past U.S. FTAs, the TTIP should not repeat and incorporate GATS provisions. Instead, negotiators should work together with academics, consumer advocates, national regulators, and other financial services policy experts to ensure adequate policy space, flexibility, and authority to effectively regulate: mergers and acquisitions; effective application of antitrust law; effective application of criminal and civil penalties; and prevention of systemic financial failures. There must be room for stronger regulations, instead of pressure to cut back on existing regulations.

21. For greater certainty, we suggest that the agreement eliminate any possible ambiguity or confusion in the prudential exception. Further, given the shift in global thinking with respect to capital controls, including the IMF’s recent formalization of its policy endorsing the use of capital controls in certain circumstances, the parties should not include language that inhibits the use of capital controls (see, e.g., Article 10.8 of the U.S.-Peru FTA).

22. Finally, we note again that the TTIP must not provide an additional avenue for enterprises to avoid their tax obligations. Too many U.S. and European companies already use their “home” nations as a flag of convenience, while parking money offshore in tax havens. The TTIP should include no financial services or other rules that treat a government’s non-arbitrary, non-discriminatory taxation system as a barrier to trade.

The Agreement Must Not Include an Investor-to-State Dispute Settlement Mechanism And Must Set Limits on Investment Claims States Can Pursue On Behalf of Their Own Investors

23. The AFL-CIO recommends the use of state-to-state dispute settlement instead of investor-to-state dispute settlement (ISDS) for investment-related disputes in the TTIP. We strongly oppose ISDS, which privileges a single type of economic actor—foreign investors—
to bring cases against sovereign governments to challenge democratically enacted laws as well as regulations and judicial and administrative decisions. While those who support ISDS often argue that it ensures the “rule of law” in nations with weak judicial institutions, the truth is the exact opposite. ISDS undermines the rules of law: it is antithetical to the core democratic values of the U.S. and the UK, replacing democratic decision making by public institutions working for the public good with the narrow, profit-seeking interests of a single private enterprise. Moreover, to the extent that the judicial system in a particular country is weak, the better approach to build the “rule of law” would be to support institution-building measures, not to provide a private, for-profit justice system to a limited few.

24. In truth, given the advanced judicial systems of both the U.S. and the EU, ISDS is an unwarranted risk to domestic policy-making at the local, state, and national levels. Investment disputes, therefore, must be resolved through a state-to-state process, just as other TTIP-related disputes will be.

25. ISDS provisions can be and have been used to challenge legitimate public-interest regulations. For example, the Metalclad Corporation, a U.S. waste disposal company, instituted arbitration proceedings against Mexico under NAFTA’s ISDS provisions, arguing that Mexico wrongfully refused to grant a permit to open and operate a hazardous waste disposal facility in San Luis Potosi, despite concerns that unstable soil at the site could pollute the community’s water supply. The panel found that Mexico had violated Metalclad’s right to “fair and equitable treatment” under NAFTA; after a Canadian court overturned a portion of the award, Mexico eventually paid Metalclad more than $15 million. More recent ISDS cases have involved challenges to government contracts, orders to clean up toxic waste, and requirements that patents live up to their promises in order to receive government protections. Ecuador was recently ordered to pay Occidental Petroleum $1.77 billion (plus interest) in a case in which Occidental had violated its contract with the government.11

26. As for the rest of any included investment chapter, it is important to note that there is broad, bipartisan support in the U.S. Congress for the principle that the investor protection standards contained in U.S. trade and globalization agreements should not provide foreign investors with greater rights than those enjoyed by U.S. investors in the United States. Congress first instructed U.S. negotiators to comply with the “no greater rights” principle in the Trade Act of 2002. In May of 2007, the Bush Administration and the Democratic leadership in the House of Representatives agreed that this principle would be explicitly stated in the preamble of the investment chapters of trade agreements. However, given the ad hoc nature of arbitration panels, the statement is not sufficient. The text of the investment obligations must make clear that none of them provide obligations that exceed obligations to a nation’s own investors under domestic law.

27. For example, the provisions concerning indirect expropriation and the minimum standard of treatment in U.S. investment agreements are intended to reflect the relevant standards under customary international law, which is created through the “general and consistent practice of states followed by them from a sense of legal obligation.” Given that the U.S. Constitution provides among the highest levels of protection for property rights of any country, standards that are based on the general and consistent practice of nations

regarding the protection of property rights would generally comply with the no greater rights principle.

28. Unfortunately, arbitral tribunals, which would continue to exist even under a state-to-state system, have not based their interpretations of the “indirect expropriation” and “minimum standard of treatment” provisions of investment agreements on the actual practice of nations, but rather have simply cited the characterization of these standards by other tribunals, using essentially a common law methodology to create “evolving” standards of investor protection. This must be resolved limiting the power of arbitral tribunals to rewrite the obligations as they see fit.

29. As a preliminary matter, we believe it imperative that the TTIP place obligations on investors. At a minimum, these additional responsibilities must include:

A. Foreign investors must agree to remain neutral in union organizing drives (e.g., by entering into global framework agreements).

B. Foreign investors must agree to abide by the laws and regulations of the U.S. as well as the state and locality of their operation. If an investor asks its own government to pursue state-to-state dispute settlement on its behalf, the investor must show it has “clean hands,” meaning it has no outstanding tax liabilities; has no open investigations, complaints, or violations under the National Labor Relations Act, the Occupational Safety and Health Administration, the Environmental Protection Agency, the Securities and Exchange Commission, or any state or local equivalent; is not facing criminal charges; and has no open OECD Specific Instances filed with any National Contact Point on the basis of its operations in the United States.

C. Foreign investors should exhaust domestic remedies before seeking solutions under the TTIP. Failure to do so would provide “greater rights” to foreign investors—who could bypass city council hearings, meetings with elected officials, federal rulemaking procedures, Fifth Amendment taking claims in federal courts, and other procedures and remedies that similarly situated domestic investors would be obligated to use, depending on the nature of the measure complained of.

Investors should not be able to make any claims to their own governments under the investment chapter if they have not fulfilled these basic obligations.

30. In addition, the TTIP should ensure that investors replicate and expand upon the generally high level of workplace rights in the EU, rather than drive a race to the bottom. For example, the U.S. and EU should explore adopting mechanisms to provide for consultation and information disclosure between workers and trans-national investors (as outlined in the existing EU directive on European Works Councils\(^\text{12}\)); stronger protections

\(^{12}\) Here, we emphasize that we are referring only to Works Councils formed pursuant to the Works Council Directives of the EU, in which around 10 million workers across the EU have the right to information and consultation on company decisions at the European level through their Works Councils. The Works Council Directives apply to companies with 1,000 or more employees, including at least 150 in two or more Member States. It does not provide bargaining rights, nor does it interfere with or reduce the bargaining rights of unionized employees. This structure should be protected and enhanced to include companies with operations in the US and at least one EU Member State who otherwise meet the requirements. In this document, “Works
for workplace safety and health; or even requirements to ensure “temporary” workers (such as those employed by third-party staffing companies) receive equal treatment with regard to pay, overtime, breaks, rest periods, night work, holidays and the like, as compared to non-temporary workers.

31. Finally, we provide specific recommendations to help clarify and set boundaries upon investment obligations:13

1. To avoid uncertainly about demonstrating a purported principle of customary international law (CIL), the TTIP should codify the State Department’s position in Glamis Gold Ltd. v. U.S. (Glamis) regarding the standard of proof for identifying principles of CIL. 14

2. To clarify the minimum standard of treatment with regard to foreign investors and ensure that the investment obligations provide no greater rights to foreign investors than to domestic investors, the TTIP should codify the State Department’s position in Glamis regarding the content of the minimum standard of treatment.15

3. The TTIP should clarify that an “indirect expropriation” occurs only when a host state seizes or appropriates property for its own use or the use of a third party, and that regulatory measures that adversely affect the value of an investment but do not transfer ownership of the investment or negate its entire economic value do not constitute acts of indirect expropriation.

4. The TTIP should narrow the definition of investment to include only the kinds of property that are protected by the U.S. Constitution. This would mean excluding the expectation of gain or profit and the assumption of risk. We also recommend excluding sovereign debt, derivatives, and carbon offset contracts from the protections of the definition of covered investment.

5. The TTIP should not allow use of the most favored nation (MFN) principle to assert rights provided by other investment agreements or treaties.

6. The TTIP should explicitly limit national treatment to instances in which a regulatory measure is enacted for a discriminatory purpose.

7. The TTIP should ensure that foreign subsidiaries cannot request that the EU or U.S. pursue an investment claim on their behalf when the other party that is the home of the subsidiary’s parent company.

Councils” does not refer to any kind of employer-sponsored effort to avoid or weaken unionization of workers.


15 Id.
8. The TTIP should modify the restriction on capital controls (used for example in the U.S.-Korea FTA, Art. 11.7.1(a)) so that it allows the use of such controls—at least with regard to circumstances consistent with recent IMF guidance.16

9. The TTIP must include a strong exception protecting challenges against all non-discriminatory public interest measures (including but not limited to labor, the environment, public and workplace health and safety, food and product safety, and financial stability).

The TTIP Must Secure Fundamental Labor Rights

32. It is imperative that the TTIP address economic justice and the societal infrastructure that can promote it, not as an adjunct goal, but as a central part of its trade and economic development efforts. Freedom of association and the existence of free civil society organizations, including trade unions, are essential to a democracy. These institutions provide a venue for ordinary citizens to raise their voices collectively, claim their rights, advocate for policies that serve their constituents and the broader public interest, and hold government accountable. As large membership-based institutions advocating for social and economic justice for workers and citizens, independent trade unions are among the most important of these institutions.

33. Given the generally high level of worker protections in the EU, the TTIP must expand on the labor rights approach in other U.S. FTAs by improving upon the commitment to adopt, enforce and maintain core labor rights as laid out in the International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work and instead make clear that the ILO Conventions and their jurisprudence will serve as the yardstick by which labor rights are measured.17 A trade agreement with Europe presents an opportunity for the U.S. government to go beyond the “lowest common denominator” approach to labor rights and create people-centered trade rules.

34. Guaranteeing that workers across the U.S., the UK, and the rest of Europe can exercise workplace rights and bargain with their employers for better wages and working conditions is part of an approach known as “predistribution,” coined by Yale professor Jacob Hacker. Such policies, by empowering workers and their unions, can help address income inequality at its core, by ensuring that workers can make a decent living in decent conditions in the first place—rather than by relying on traditional (and often unpopular) redistributive measures such as government taxes and transfers that take from some and give to others.

35. To achieve these goals, the AFL-CIO recommends that the TTIP build upon the changes achieved in the U.S.-Peru FTA in 2007 (also known as the “May 10” provisions). In other words, the labor provisions in the TTIP must be stronger than those achieved in any prior agreement. The TTIP should fulfill the promise that the “May 10” provisions will serve as a floor, not a ceiling, on labor rights. These provisions represented an important step

16 Supra note 12.
17 The AFL-CIO understands that the EU requires developing country recipients of GSP+ benefits to adopt the eight ILO Core Conventions. The AFL-CIO supports U.S. ratification of all eight conventions and urges the U.S. Senate to ratify the outstanding core conventions as soon as possible. It is difficult to imagine a “high-standards agreement” that fails to adopt the highest possible standards for labor protections.
forward for labor rights, but did not contain all of the essential elements of an effective labor chapter.

36. Beyond using the ILO core conventions as the labor standard in the agreement and omitting a repeat of Footnote 2 from the Peru text (to help clarify that ILO jurisprudence will help give meaning to each party’s labor obligations), the AFL-CIO has several additional recommendations. The labor provisions should also apply to all workers, regardless of sector or industry. Limiting available redress solely to violations that are “sustained or recurring” and “in a manner affecting trade or investment,” as is the case in the Peru agreement, is too narrow. The text should be broadened because these limitations potentially exclude too many workers from coverage and make it exceedingly difficult to effectively pressure recalcitrant governments to do the right thing and protect their own workers. In addition, the TTIP should include enforceable standards for acceptable conditions of work and the treatment and recruitment of migrant workers.

37. The labor chapter’s enforcement mechanism must be timely, accessible, and reliable. The TTIP’s labor provisions must ensure that meritorious petitions proceed in a timely manner to the next step of the process until they are resolved (including through dispute settlement if necessary). Workers’ livelihoods depend on swift justice; workers do not have the luxury of time. Should countries fail to resolve their differences during the consultation stage and proceed to the dispute settlement stage, the process must be at least as strong and swift as that available to business interests, and penalties should, where possible, be directly related to the sectors in which violations occur (in order to leverage to political power of employers) and high enough to encourage parties to engage seriously at the initial stages. Token fines unrelated to the economic sectors where the violations occur will do little to encourage private sector compliance or deter future violations. Finally, wage and hour, health and safety, labor relations, and any other labor measures must not be subject to investor-to-state dispute settlement.

The TTIP Must Protect Domestic Procurement and Other Domestic Economic Development, National Security, Environmental Protection, And Social Justice Policies

38. The TTIP must not surrender or limit the application of domestic economic development, national security, environmental protection, or social justice policies, including policies related to “buy national” and “buy local” requirements (these policies are frequently known in the U.S. as Buy American or Buy “State” policies). We support the right of all governments to use procurement policies to create jobs in their own municipality, state/region/province, or nation.

39. The AFL-CIO has long maintained that trade agreements should not constrain federal and sub-federal procurement rules that serve important public policy aims such as local economic development and job creation, environmental protection and social justice—including respect for human and workers’ rights.

40. After the current record-slow recovery ends, the U.S. government must carefully consider the diminished impact of fiscal stimulus caused by procurement commitments (which decrease the ability of lawmakers to direct funds toward domestic job creation).
Thus, procurement projects funded by stimulus funds appropriated in response to a verified recession should be free from TTIP disciplines.

41. Additionally, the AFL-CIO still has concerns left unaddressed by U.S.-Peru FTA. For many years, the AFL-CIO has raised concerns about technical specifications in procurement chapters. The procurement chapter of the U.S.-Peru FTA took a good step forward by providing that a procuring entity is not precluded from preparing, adopting, or applying technical specifications:

(b) to require a supplier to comply with generally applicable laws regarding
   (i) fundamental principles and rights at work; and
   (ii) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health

42. However, the TTIP must expand the language above to include living wage laws and, for the sake of clarity, prevailing wage laws. It must also leave room for the bidding process for non-discriminatory but potentially innovative policies such as providing a better score for employers with better on-the-job safety records or excluding bidders that do not have “clean hands” (e.g., firms that have failed to pay taxes, have outstanding unfair labor practice charges, OSHA violations, or outstanding violations of other national, state, or local laws).

43. We also urge that any procurement negotiations proceed on a “positive list” approach whereby only entities that are specifically listed are covered by the agreement’s procurement rules.

44. Finally, but importantly, the AFL-CIO expects that no sub-federal entities will be bound to the procurement provisions of the TTIP without their express consent and that none of the exemptions or exceptions taken from obligations undertaken in the WTO GPA will be deleted or altered in any manner (e.g., highway and transit projects).

**The TTIP Must Not Simply Be a Tool to Undermine Public Interest Laws and Regulations**

45. Because the TTIP will be more about so-called “behind-the-border” barriers than about tariff reductions, public interest law and regulation are amongst the core issues for the TTIP. If the regulatory provisions in the TTIP are seen merely as a tool to undermine public preferences, it will risk legitimacy, both in the U.S. and in Europe. All we need to do is scan the headlines to find stories about corporate wish lists and efforts to tear down regulatory barriers. The U.S. Chamber of Commerce went so far as to write that “one of the biggest issues to overcome [in the TTIP is] regulatory sovereignty.” Negotiators must resist these pressures if the TTIP is going to work for working people.

46. While the AFL-CIO agrees that in certain areas, regulatory cooperation could increase trade and efficiency in ways that benefit workers and consumers, we also caution against any efforts to use the negotiation process as a backdoor route to attack important worker, consumer, and food safety protections, such as those included in the EU’s REACH chemical safety initiative or labeling requirements for genetically modified foods.

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47. The TTIP must not make it easier to avoid or block regulations meant to secure the health and safety of the public—whether that means on-the-job health and safety regulations; licensing and certification requirements that protect consumers from bogus practitioners of medicine or law; bonding or deposit requirements to ensure the ability to pay customers’ claims; building codes; or any other public interest measure. Working families should not have to give up the regulatory gains made in the 20th century nor the right to needed future protections in the name of “free trade.” In this regard, the TTIP should not require either party to engage in “Regulatory Impact Analysis” in order to justify particular public interest measures.

48. Indeed, the AFL-CIO believes that the goal of the TTIP should be to increase the level of protection for workers and the public in both the U.S. and Europe. To the extent that harmonization is useful to enhance trade, the TTIP should call for the adoption of the strongest protections. Moreover, the U.S. and Europe have been world leaders in developing and implementing laws and regulations to improve workplace safety, regulate toxic chemicals, and protect consumers and the environment. The TTIP should establish a framework for the U.S. and EU to draw and build upon their respective regulatory experiences to enhance protections. For example, the EU is much further ahead than the United States in the area of chemical regulation, particularly with respect to requiring the testing and registration of chemicals through its REACH legislation. The agreement should call for U.S. to adopt chemical legislation and regulations similar to REACH.

**The TTIP Should Exclude New Market Access in the Maritime and Air Transport Sectors**

49. We understand that the EU has asked that the ownership and control rules that pertain to airlines, the right of the carriers of two sides to operate in each other’s domestic markets (“cabotage operations”), and maritime transport services be included as topics in the TTIP negotiations. For the purposes of air transport services, the AFL-CIO’s comments here are limited to whether or not air traffic rights and services directly related to those rights should be included in TTIP. The AFL-CIO strongly believes that they should not. Likewise, the AFL-CIO believes that maritime transport services and U.S. maritime laws such as the Jones Act should not be included in these negotiations.

50. Air transport services have historically been excluded from general trade agreements such as GATS and bilateral and multilateral free trade agreements. Rather, such services have been subject to a separate administrative regime, under which the U.S. has negotiated air service specific agreements with foreign countries. These negotiations have been led by the Department of State and the Department of Transportation, two agencies with dedicated experts on air transport services. This regime has led to the steady and dramatic removal of barriers to trade in the air transport services sector.

51. The U.S. and the EU have recently entered into such an open skies Agreement (“Agreement”). During the comprehensive discussions that resulted in the Agreement, the EU sought the exchange of cabotage rights and the elimination of restrictions on the ownership and control of airlines by the nationals of the parties. In fact, it is fair to say that consideration of altering the ownership and control rules was one of the central topics in the negotiations. Ultimately, the Agreement left in place the restrictions on cabotage. With respect to ownership and control, the Agreement left in place the statutory restrictions but
did establish a Joint Committee (consisting of representatives of the two sides) that meets on a regular basis and is tasked, among other things, with considering possible ways of enhancing the access of U.S. and EU airlines to global capital markets. The existing administrative framework has been successful in opening markets and liberalizing trade in air transport services while at the same time taking into account the legitimate concerns of airline labor.

52. The request to eliminate the ownership and control restrictions raises its own set of difficult issues. If an EU airline were able to own a U.S. airline, it would be able to place the air crew of the U.S. carrier in competition with the air crew of the EU airline for the international routes flown by the previously U.S.-owned carriers. If the foreign owner sought to eliminate U.S. jobs and move this work to a foreign crew, it is unlikely that U.S. labor laws would provide an adequate remedy or protection for these workers. This is a very real threat, and the consequences of a similar arrangement are currently being felt by aviation workers in Europe where several airlines have taken advantage of the lack of a comprehensive labor law in the European common aviation area to undermine the ability of European flight crews to bargain over the flying done by their companies.

The TTIP Should Consider the Elimination Of Market Distorting Mechanisms Such as Offsets and Offset-like Transactions

53. Offsets involve the transfer of technology and/or production from a U.S. company to a company in another country in return for a sale in that country. They can and have cost U.S. workers thousands of jobs. While offsets are virtually unregulated in the US, over 20 European countries have well established policies that are feeding the development of their own industries and bringing U.S. productive capacity and technology to their shores.19

54. Efforts to eliminate offsets were contemplated by the short-lived Presidential Commission on Offsets. That Commission, created by President Clinton, perished during the Bush Administration before it could issue a final report. Although prohibitions against offsets were reflected in the now-defunct U.S.-EU 1992 Agreement on Large Commercial Aircraft, that language was narrow, weak and, rarely (if ever) enforced.

55. A high-level dialogue with the EU on jobs presents a tremendous opportunity to adopt new language that is robust and that will effectively eliminate EU's use of offsets and offset-like activities. Ultimately, this effort could assist U.S. and European companies that are constantly being pitted against one another by China. If both the U.S. and the EU were to agree bilaterally not to engage in offsets with each other—or when competing with one another for sales to China—jobs that would have been lost (in both the U.S. and the EU) due to offsets could be avoided.

The TTIP Must Contain Intellectual Property Rules that Support American Innovation While Promoting Access to Affordable Medicines

56. Intellectual property (IP) protections—designed to promote innovation and serve the public interest—are critical to creating and maintaining domestic jobs, as well as to increasing exports. Therefore, the TTIP should ensure that the creators of such intellectual property are protected from intellectual property theft—whether in the form of illegal streaming and downloads, counterfeit products, or inadequate protections against infringement. The IP provisions of past U.S. FTAs have not effectively deterred rampant counterfeiting or illegal downloading, a failure that resulted in lost jobs and reduced incomes for workers who rely on copyright protections for their incomes (e.g., writers, actors, stagehands).

57. To effectively promote U.S. jobs, however, strong and effective IP protections must be balanced enough to also promote legitimate generic competition—particularly in the area of medicines. Rules that prevent fair competition from generic producers not only fail to create as many jobs as they might, they also jeopardize public health both here and abroad, by ensuring that life-saving medicines are priced out of reach of many working people—in the U.S. and elsewhere.

58. Past U.S. FTAs have provided excessive protections for the producers of brand-name pharmaceuticals. Indeed, these agreements far exceeded the international standards for patent protection established in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The AFL-CIO opposes TRIPS “plus” provisions because they jeopardize access to affordable medicines, particularly in developing countries.

59. The Peru FTA agreement took a significant step forward in cutting back the most onerous requirements for the IP protection of pharmaceuticals in U.S. FTAs. However, harmful language on data exclusivity remains in the Peru FTA agreement.20

60. Data exclusivity precludes use of clinical trial data of an originator company by a drug regulatory authority, even to establish marketing approval, normally for a defined period (five years in past U.S. FTAs). Data exclusivity can thus impose unnecessary costs—in financial and human health terms—on public health systems, which are forced to purchase brand-name pharmaceuticals at elevated prices when cheaper generic medicines would otherwise be available, but for the FTA.

61. Despite progress in the U.S.-Peru FTA to roll back TRIPS-plus requirements, U.S. trade policy has since taken a turn for the worse with regard to access to affordable medicines. For example, the AFL-CIO opposes efforts (such as those included in the U.S.-Korea FTA) to increase the power and influence of private sector drugmakers over the pricing decisions of public health systems and pharmaceutical benefit plans. The TTIP must not include such provisions, which could jeopardize the financial health of the National Health Service as well as several U.S. health programs. Instead, even while respecting IP rights, the TTIP can and must ensure that countries retain the policy space to expand and improve national, regional, and local health programs in a cost-effective manner.

62. Further, the U.S.-Korea FTA requires patent term extensions for new methods of use

[20 The data exclusivity provisions are found in Article 16.10, sub-sections 2 (b) and (c) of the Peru FTA.]
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and manufacture of a pharmaceutical product.\textsuperscript{21} It also effectively eliminates “pre-grant opposition,”\textsuperscript{22} which allows the validity of a pharmaceutical patent to be challenged before a patent is granted, a process which makes it cheaper and quicker to dispose of bad patent applications than after a patent has been granted to an undeserving application. These provisions should not be repeated in the TTIP because they further delay legitimate generic competition that plays a role in increasing access to medicines for working families.\textsuperscript{23}

63. The AFL-CIO strongly supports governmental efforts to control costs of medicines so as to be able to provide affordable medicines to the public. We oppose efforts to further enrich brand-name drug producers at the expense of working families and encourage negotiators to consider whether their negotiating goals will have the primary effect of raising drug costs or reducing access to affordable medicines to workers in any country, and, if so, to adjust those goals appropriately.

The TTIP Must Protect the Environment

64. Environmental protections, including obligations for countries to enforce domestic environmental laws and adopt, maintain, and enforce policies and commitments under multilateral environmental agreements, must be included, using the U.S.-Peru FTA as a floor, not a ceiling. Moreover, the agreement should require parties to adopt, maintain, and enforce measures to restrict and eliminate trade in illegally taken wildlife and illegally harvested wood and wood products (e.g., Lacey Act-type provisions). The TTIP parties should also agree to prohibit derogation from national, sub-national, and local laws and regulations that establish environmental standards or aim to protect the environment and public health. Environmental provisions must be subject to dispute settlement at least as strong and effective as that provided for other commercial commitments of the TTIP (again using the U.S.-Peru FTA as a floor). Moreover, environmental and public health protection measures must be exempt from ISDS challenges.

Telecom and Related Services Commitments Must Not Devastate Communities or Jeopardize Privacy and Data Security

65. As employers move call center operations overseas, they leave social safety net costs (including increased unemployment insurance payments, food assistance, etc.) in their wake, while simultaneously lowering their tax payments to the U.S. government. The TTIP should not make market access commitments that would exacerbate this problem in which those companies imposing greater costs on U.S. communities by eliminating jobs contribute fewer (or even no) taxes to help solve the problems they create.

66. This call center off-shoring trend also jeopardizes privacy and data security for all Americans. The offshoring trend has evolved into a crisis for consumers, with fraud and identity theft becoming a multi-million dollar business. For example, in one widely reported swindle, criminals used foreign call center workers to make 2.7 million calls and collect some

\begin{footnotesize}
\textsuperscript{22} Id., Art. 18.8.4.  \\
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$5.2 million through threats and intimidation, alleging that innocent consumers owed money for past loans.24

67. Threats to consumers’ private data are not new. For at least a decade, the U.S. and European press have been reporting security breaches in overseas call centers. Foreign call center workers have peddled customers’ financial and medical information to criminals, defrauded consumers of millions of dollars by posing as debt collectors, and stolen hundreds of thousands of dollars from bank customers.

68. The TTIP must go further than any previous trade deal in protecting the privacy and security of American and European families’ electronic information. In particular, it should not be used to weaken the strong privacy protections that already exist in Europe. Unenforceable declarations of parties’ respect for privacy are clearly insufficient in the case of global data theft schemes. Working families must be able to hold accountable—and receive compensation from—those who expose their data, no matter where the culprits operate. Otherwise, the TTIP will simply be a tool to promote more identity thieves who steal from working families while hiding behind international borders. If privacy cannot be enforced no matter where data is located, the TTIP should not agree to liberalize data markets.

Public Participation in the TTIP is Critical to Its Social and Democratic Legitimacy

69. The TTIP negotiating process should be accountable and transparent, allowing for a high degree of public participation as well as regular consultation with Congress, state and local elected officials, labor, civil society groups, and business interests. Legislatures and social partners should be integrated deeply in the negotiating and planning process, as well as the monitoring process after the TTIP is in place.

70. The monitoring process should focus on potential social and ecological impacts and the enforcement of rules laid down in the labor and environment chapters (and/or a sustainable development chapter, if included), but also on other parts of the agreement. The monitoring could be executed by a bilateral parliamentary commission (consisting of Members of the U.S. Congress and the European Parliament), in cooperation with social partners. Furthermore, a monitoring mechanism involving trade union representatives should also be included. Breaches of the agreement’s labor or environmental standards, if not resolved through consultative or cooperative means, must be resolved by imposing penalties up to and including the potential loss of trade privileges (consistent with violations of the commercial provisions of the agreement).

The TTIP Must Include Rules of Origin That Maximize Job Creation Among the TTIP Countries

71. Rules of origin provide the framework that governs whether a product will receive the benefits attributable to any TTIP agreement. Past U.S. trade agreements have often been insufficient in requiring the maximum amount of production and product transformation.

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within the signatory nations so as to maximize employment gains for workers in those countries. The allowance of significant levels of production in non-signatory nations can lead to forms of “venue shopping” in which corporations can directly invest, or use indirect suppliers, operating in countries with weak labor standards. Low rule of origin levels encourage the exploitation of oftentimes deplorable working or environmental conditions in non-signatory nations.

**TTIP Interaction with Other Trade Agreements**

72. The TTIP is being negotiated against a background of 13 existing trade and globalization for the United States, as well as the soon-to-be completed Trans-Pacific Partnership Trade & Globalization Agreement (TPP), a twelve nation endeavor being described as a “high standards, 21st Century” agreement. While the TPP includes all of the parties of the North American Free Trade agreement (NAFTA), namely Canada, Mexico, and the United States, we understand that the Office of the United States Trade Representative (USTR) does not intend for the TPP to supersede or subsume NAFTA—or any of the existing bi-lateral agreements the U.S. has with other TPP countries—meaning that countries will have a web of differing obligations to each party and, through the investment chapters of these agreements, the investors of each party. In such a framework, in which commercial entities will choose the obligation most favorable to their interests, it is possible that provisions more favorable to working families get lost in the process. After all, the question of which agreement provides the “highest level of protection” is in the eye of the beholder.

73. Moreover, the AFL-CIO is concerned that together, the TTIP and the TPP, are substitutes for a Doha Round agreement at the WTO. What developed countries like the U.S., EU, and Japan cannot achieve multilaterally at the WTO, they may be seeking to accomplish in smaller groupings where they have more leverage. The TPP and TTIP combined would include 40 countries and more than 65% of the global economy. However, some of the issues being pushed in the TPP and TTIP have been discredited at the multilateral level, including a global investor-to-state dispute settlement agreement, intellectual property commitments beyond TRIPS, and further market opening by developing countries without reform of agricultural subsidies in the developed world. If the TPP and the TTIP are used to coerce developing nations into accepting neoliberal policies unachievable in a multilateral forum, it seems likely that the outcomes will not benefit working people, but rather exacerbate the negative effects of current trade policy.

**Conclusion**

74. Recent history has shown that employers worldwide are accelerating their efforts to scour the globe to find the lowest cost locations to produce, unconcerned with the standards that may be undermined and the effect on working people whose jobs they are outsourcing and offshoring. The result has been the loss of millions of good, family-

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25 As USTR Ambassador Michael Froman recently told the *Wall Street Journal*, the Administration evaluated the Doha Development Round and concluded that it was clear that “China, India, Brazil, the major emerging economies, were not willing to play a role commensurate with their role in the global economy,” so instead, the Administration decided to “pursue fresh, credible approaches to liberalization in the multilateral trade system.” “Opinion: Does America Still Have a Free-Trade Agenda?,” WSJ Live, Sept. 24, 2013, available at: http://live.wsj.com/video/opinion-does-america-still-have-a-free-trade-agenda/858C532F-F3C5-41CE-8F13-5474471AB73D.html#858C532F-F3C5-41CE-8F13-5474471AB73D.
supporting jobs in the U.S.—many of them in the manufacturing sector but millions more in supporting industries. We must not allow the TTIP to jeopardize more American and European families through a poorly crafted agreement that only promotes more deregulation and downward pressure on wages and benefits. Prevailing wages, labor and other standards, privacy, and other critical interests may be at risk.

*10 October 2013*
Examination of Witness

**Professor Richard Baldwin**, Graduate Institute, Geneva and Director, Centre for Economic Policy Research

Q198 The Chairman: Professor Baldwin, thank you for coming to give evidence to us. I am sorry that we kept you waiting a little but you heard what was going on and I hope that you found it sufficiently interesting to justify the delay. As I think you know, this is a formal meeting of the Committee, and therefore everything is taken down and used in evidence. I think you are aware of the ground that we are going to cover. We have a number of questions to ask you, and I dare say that there might be some supplementaries. I will kick off. What in your view are the main factors that have led the EU and the US to make another attempt to strike a deal at this point in time; and given the track record in the past, what do you feel are the chances of success now?

**Professor Richard Baldwin**: Okay, I am going to have to take a long look at this to have a view of how the world of trade has changed, which is essential to understanding what is going on. There are really two key issues. First, there is a sea change in trade—in the nature of trade. That has led to a sea change in the nature of trade governance. This started around
1990 and led to a series of outcomes, mostly bilateral. TPP and TTIP are an aspect of knitting these sea changes in trade, which led to the sea changes in governance, a bit together. The second point is that it is a US view—I would not call it geostrategic—as to how to deal with China in the World Trade Organisation. I am very much not of the “TTIP is to confine China” opinion as I think the US is driven by a variety of goals, but to a large extent its aim is to get China to stand up and play a leadership role in the WTO, and that is how they view TPP.

Let me just take you through that very quickly. Around 1990 the ICT revolution changed the nature of trade in the sense that it allowed stages of production that were done within a factory to be dispersed overseas. This has always gone on between rich countries: the US and Canada and the auto industry, and western Europe and the Common Market and single market were essentially production-sharing agreements. What changed in the 1990s is that this could happen more in the south—US-Mexico, Germany-Turkey, Japan-Thailand, etc. It was a global change, driven by the ability to co-ordinate complex activities overseas. If you think about that for a second, what was going on inside a factory was not just goods moving between production bases. It was that ideas, knowhow, training, capital and people were moving inside rich company factories. Those flows are now international trade. The nature of trade has changed because the trading system is being used to make things, not just sell things.

That meant that two significant forms of discipline were needed. The first thing was to connect factories across borders, so things such as infrastructure services, telecommunications, temporary visas, capital flows, investment insurances and intellectual property right assurances were the flows of knowledge, technology, capital and people which had now to cross borders, and they needed new assurances for those. I like to call those supply-chain disciplines. The second was that companies started to put their tangible and intangible assets in other people’s jurisdictions. That was just fine when it was just the US and Canada, or France and Germany, because they had a framework for dealing with that. But once you started to put in developing countries, you had to put the assurances of those intangible assets in a trade agreement. So the nature of trading agreements changed, which was primarily developed through a series of bilaterals between Japan and its factory economies, the US and its factory economies, and not so much in the EU, because most of the factory economies are inside the EU. Apart from Turkey, most of the outsourcing that is done is done with central and eastern Europe, so the Common Market or the single market really is the outsourcing agreement. The very nature of this kind of networked international production makes it sensible to knit together some of these agreements. So that is the sea change. There is a very strong logic to having regional agreements underpinning production chains. That has developed in various places: it turned into NAFTA in North America and it is knitting itself together in different ways in Asia. One of the major motives of US companies in TPP is to knit those things together. I am going through TPP and I will come back to TTIP in a second, because they are very related.

The point about that was that the US was a little behind in Asia so Japan had these deep agreements with a series of their factories and the US did not. The US was interested commercially in these types of agreement. You then add to that the fact that China has essentially completely transformed its role in the world economy but had not changed its role in the WTO. The US found it very frustrating, I believe, that China would not treat itself like a developed country in the WTO and would not, for example in the Doha round, step up to the plate and make lots of concessions. I believe—and this is a sort of Fred Bergsten view of the world which I have talking about for a number of years—that the US is using the TTIP to make China demandeur. Once China has something to negotiate for in the WTO it will expand the Doha agenda. With the additional issues on the table we will be able
to finish Doha and get the 21st-century issues going forward. Those are the two things that led to TPP.

What is TTIP? To my mind it is a quite clear reaction to TPP. Take my point about the new trade governance. There are no global governance rules on these issues—there are some, but they are not as deep as they need for the production sharing. If the only game in town is TPP, when they become multilateralised, those will be the basis of it, and those are essentially US rules. People in the US, for instance, just assume that TPP will look like US-Korea. So it will essentially be the US template. I had discussions with De Gucht and his chef de cabinet, Marc Vanheukelen, and some other people about this a few years ago. They did not think that TPP was going to happen, but once it happened I think that they realised that the European template has also to be at the table when these things get multilateralised. So I view TTIP as a reaction. Both the US and the Europeans are interested in doing it.

Commercially, there has always been an interest in it, but commercially, as you pointed out in the question, this is the third time we have tried to do it. I did a study for the European Commission 10 or 15 years ago on the gains of TAFTA, as we called it back then—the transatlantic free trade agreement. There is a high-level interest that this might rewrite the rules of the world trading system in a way that is pro-Europe and pro-North America. I do not know whether that will happen—it is a geostrategic thing. I do not think that TPP will happen unless TTIP happens, and I do not think that TTIP will happen unless the leaders—heads of states—get involved and view it more as a foreign policy thing than an economic thing.

The Chairman: In many ways that is a very interesting disquisition, and you have covered quite a number of the questions that we have. Lord Lamont was going to ask a question about the regional trade deals, but I think that has been covered.

Lord Lamont of Lerwick: I do not want to ask anything.

The Chairman: Lady Coussins has a supplementary question.

Q199 Baroness Coussins: I just wanted to press you more on the timeliness of TTIP. We have had lots of evidence from all sorts of witnesses, who have used quite dramatic language about the timeliness of TTIP, describing it as a “once in a generation opportunity” and “now or never”. Is that true? Why is it now or never, and what is the worst that could happen if we did not have a TTIP now?

Professor Richard Baldwin: I do not see that at all, I must say. When politicians get interested in opening up world trade and investment flows, that is a good time and you should always seize it. This idea that China, Brazil, India—the BRICs—are going to redesign the world trading system in a way that is not favourable for the North Atlantic community is a fear they seem to have, and so maybe this is about seizing that in a very political way. Practically, however, I do not see it at all. The US, Canada and the EU have been negotiating for 60 years on all these issues, and there are all sorts of other forums that are leading to regulatory convergence, investment measures and all sorts of things like that. I do not see it as a disaster. It would be a very good idea, because this knitting together at the multilateral level of this deeper discipline would be good for countries other than the big ones. The situation now is that if you are in the US, Japan or the EU, you are sitting fairly well for these production networks. The people outside have the problem. Knitting it together at the multilateral level would be very good and TTIP would be a step towards that.

Lord Foulkes of Cumnock: Very briefly, is it feasible to have it completed by the end of this year?

Professor Richard Baldwin: Absolutely not.

Lord Foulkes of Cumnock: How long do you think it will take?

Professor Richard Baldwin: That was another thing on which I have a little bit of a round-about. If you do not mind if I take a few minutes on this I will answer all the other questions.
The Chairman: If you could be brief, as we have a lot of questions and some business after this.

Professor Richard Baldwin: Absolutely. What I meant to say round about is that there is an essential background. There are some tariffs between the US and the EU. They are mostly on small-volume, difficult things, and they have resisted 60 years of GATT negotiations for the reasons we all know. It is about textiles, apparels, motor cars and agricultural stuff. Motor cars are not small—that is a big thing. But mostly it is about a regulatory convergence or a harmonisation. I invite you to think about it as the single market programme—but asking the US to join. Maybe a little closer would be the European Union Economic Association Agreement, and asking the US to join. Or just go back to the single market programme. We were going to come to a regulatory convergence, but it started a process of regulatory convergence that is still going on. That is the best that TTIP will do: start a process in which, first, the regulations stop diverging and the existing ones start to move, or we get mutual recognition. That is a process, and the best we can hope with TPP is to set in place a framework for continuing going forward.

There will be an event for the tariffs—there has to be an event. If the tariffs come down that will be signed, and it has to be passed by Congress and the EU and all that sort of stuff. But for the big things it is about starting a process, so I do not think it will be done at the end of this year or anything. The US is interested in TPP first, which will take at least until the end of the year. Until they nail that down, we will not get the energy in TTIP. So I do not see it getting done by the end of this year, and probably not even by the end of next year. On the other hand, who cares? People are discussing the hard issues and making progress, and a lot of this stuff can be done without signing a free trade agreement. Huge amounts have been done by the transatlantic business dialogue without any legislative changes, so to a certain extent the gain is talking and moving forward, trying to get a thing.

Q200 The Chairman: You said in your opening remarks that one of the attractions of the TPP for the United States was enshrining American standards in the WTO down the line, and I can see that. But that is not the case with TTIP, of course, so what interest do you think they have in simply bringing European standards to the table, which is much more bilateral rather than a ripple effect?

Professor Richard Baldwin: There is a lot of business interest between the two, and that is what is driving it, but it is clearly nowhere near as strong as the business interest in TPP. The TPP is not about them trying to push their standards on everybody. It is just that they cannot conceive of any other standards, and there are these standards in their deep agreements—NAFTA, Korea, Australia, Peru. They have their standards, and they are just taking the US template and applying it to TPP. When they come to Europe, I think they realise that the template will not be the same. They are not trying to force the template; they are very much of the view that EU-Canada, EU-Japan, TTIP and TTP—the old quad that used to run the WTO—will have formulated, more or less, a basis of 21st-century trade disciplines, and then it opens up to multilateralisation. So this idea that China will then have a lot to negotiate for as it gets multilateralised is in no way diminished by the existence of TTIP. That secondary big-think view is actually strengthened if it is not just the US but all the other quads.

The Chairman: I think Lord Trimble felt that his question had been covered.

Q201 Lord Lamont of Lerwick: Could I just ask you a fundamental question about the sea change you described as happening in the early 1990s and trade becoming much more part of the production chain? Presumably, however, that change applies only to part of trade, not all of it—I do not know whether you could quantify that. Assuming that what you said is more and more the case, do you think the way in which policymakers have traditionally
Professor Richard Baldwin, Graduate Institute, Geneva and Director, Centre for Economic Policy Research—Oral Evidence (QQ 198-207)

looked at trade has to be modified? Do our notions of competitiveness and Ricardian ideas of comparative advantage have to be modified in any way according to your theory? **Professor Richard Baldwin:** Absolutely. I am writing a book called “Misthinking Globalisation”, where I explain my belief that policymakers around the world are misthinking the implications of globalisation. On the quick technical question, this global value chain revolution, which is another word for a sea change, has affected a handful of industries, mostly electrical, mechanical machinery and textiles, and some service stuff is going on as well. It has not affected all industries, and it certainly has not affected all countries. Let us come back to what it means for competitiveness. Probably the best way to think about it is that the notion of national competitiveness or comparative advantage, as we like to call it, has been denationalised. The traditional conception of how trade competes is that Britain produces, say, a jet engine, which should really be thought of as a bundle of British labour, capital and technology and the institutional framework on which it is all made. Then it goes overseas and competes with an American jet engine, which is a bundle of American labour, capital, technology, etc. All that is being stirred around. The main thing in my mind, if I had to point to one thing, is that the know-how is staying inside firms but crossing borders. So you get the products becoming a bundle of several countries’ comparative advantage, in particular moving inside the boundary of a firm. In essence, the boundaries of technology are no longer national. Let us suppose that we want to understand British performance and we stack it against British features. That misses the point that a great deal of the competitiveness of Britain’s products depends on other countries’ technology, labour, etc. So the whole notion of trade competitiveness has changed. I am not the only one to say this by a long shot; there are a number of interesting papers on it. The CPR did a study, edited by David from Nottingham—where we looked at competitiveness and value chains, and how that changes. So that is the first thing.

The second thing is that I noticed in your question that you referred to stumbling blocks and building blocks. That is also a 20th-century concept that needs to be écarté—put to the side. Trade agreements in the old days were mostly about trade preferences or trade discrimination, if you want. These trade agreements are not about that. I come back to the single market. When we were doing it in the 20th century everybody said “Fortress Europe! What are we going to do?”. In the end there was no Fortress Europe. The single market was good for Japanese and American exporters. To a certain extent that is what these trade agreements are. There are still some tariffs, for example in agriculture, and there will still be some preferences, which could hurt some countries—textile and apparels are another area. But for most of the mainstream industries it is not about us or them but more about whether we have PC with Microsoft Windows or do we have Apple with the iOS operating system? They are not really against each other. There are gains to getting more people into one, and if you have one you are happy if that is the one that wins, so it is more like systems competition rather than providing preferences. I do not view these things as stumbling blocks or building blocks but more like a regulatory convergence or unilateral reforms which so happen to be put into regional trade agreements. The econometric evidence shows that, by the way, and I would be happy to talk about that.

**The Chairman:** I think this almost covers part of the question Baroness Quin was going to ask.

**Q202 Baroness Quin:** Yes, it does, but perhaps I can pick up on something you said earlier on. We have had a lot of evidence from people representing different sectors of the economy talking about what they see as the economic benefits of TTIP. You gave us a rather different slant in looking at it as a foreign policy issue more generally. You mentioned that many of the aims that America has in this negotiation are to try to bring China more into the international system on terms that the US would find satisfactory. Do you think that will
actually happen, and can you say a little more what specific aims the US has with regard to China?

**Professor Richard Baldwin:** First of all, I do not think the US is of one mind on China by any means. There are definitely people in the US who think of TPP as a way of coralling China, setting up the supply chain rules all around Asia except for the main supply chain person, which is China, which will either have to unilaterally adapt to it or make concessions to modify it. That is the anti-China or hard China group. The other looks at China as the world's largest exporter which pretends that it is a developing country in the WTO and does not have the same standards, and they find that ridiculous. After all, when we did special and differential treatment in the GATT in 1947, we did not have in mind the largest manufacturer—the biggest exporter—in the world. That was not what we had in mind. We had small, delicate countries trying to do good. The goal is that the US wants China to take a leadership role in the WTO. That is the positive thing. Will it work? Yes, it will—and I think it already has. For example, China recently asked to join the plurilateral on services, which is a bit of a revolution. It is hard to know what is inside China and what is not, but the new regime certainly seems interested in property right protections that they were not interested in before. To a certain extent China is starting to become a headquarter economy and starting to do this offshoring, and it wants protection for its companies and intellectual property rights. It pretty soon sees that there will be Chinese brand name goods that it will want IP protection for. So it is hard to know whether China is changing from a factory economy to a headquarter economy and getting ready for it itself, or if it is the pressure of it. However, I do think that this is changing China's attitudes already, and it will work in some sense.

**The Chairman:** Lord Jopling is going to ask about the WTO, which again is something you touched on in your earlier answers.

**Lord Jopling:** So much has been covered that I wonder—

**The Chairman:** I agree. Lord Sandwich.

**Q 203 Earl of Sandwich:** I had a vision of an atomic structure when you were talking about trade agreements around the world, with each one bouncing against the other. In that context it has been very interesting to see how the WTO itself is developing. Do you think that the recent Bali agreement was a kind of blazon of fire or a meteor coming through this structure? What are the consequences of TTIP for third countries, seen through that prism of light, if you see what I mean?

**Professor Richard Baldwin:** Let me talk about Bali. I wrote a column on Vox called “The Bali Ribbon”, in which I described the Bali agreement as more of a ribbon than a package because it took together things that were being done anyways, wrapped a ribbon around it and said, “Aha! We have done something”. For instance, I have heard it claimed that the US Congress will not have to pass any legislation at all in order to pass the Bali package—and that was part of the goal. That tells you what it was; it really was not very much. In fact, it is only very differently related to the real goal of the Doha round, which was to rebalance the trading system. I think we learnt from Bali that everything that could be done has been done, but it is a long way from what Doha was supposed to have done. It prevented the organisation from being completely moribund, but it is a long way from a spark. In particular, my view of the Doha round is that it is not self-balancing: the agenda does not have something for everyone around the table.

When the Doha round agenda was set in 2001, China was not China. In particular, China acceded at the meeting at which the Doha agenda was set, and it had made massive concessions in its accession talks. So Doha’s agenda was set up with nothing from and nothing for China. That was 2001. That made sense, because it was supposed to be done in three years, but it was not done in three years, and then China happened. Now it is
impossible to think about Doha with nothing from and nothing for China. But the agenda has no red meat for Chinese mercantilists. Of course it is a systemic thing, and they are very interested in trade, but what is the thing that China really wants out of Doha? It is not there, because it was not set on the agenda. We need to have something to expand the agenda, and those are the 21st-century issues that we will come to. Bali is not a disaster; it is in a sort of holding pattern. But if you also think this through, nothing can happen in the WTO on these issues until TTIP and TPP are done or dead. The US in particular will negotiate in the WTO—even on an agenda-setting thing—and in TTIP, and in TPP. Until we have the

Your second question is on the implications for third countries. Some of this is easy and some of it is hard. The easy part has to do with the old-fashioned tariff protections. If preferences are given on textiles, apparel, agricultural, that will hurt the third countries that are left out. Clearly countries in Central America and the Caribbean are very concerned about some of those topics. Those are very easy to think through, and probably important for the small countries involved, but Europe could presumably counter that by unilaterally improving the GSP preferences and things like that, so it could be offset. The systemic ones are a little harder.

My country now is Switzerland. I went through this TTIP thing a few years ago when the US and Switzerland were trying to negotiate a free trade agreement, or start it, so I wrote a book with Gary Hufbauer, and I was the Swiss economist. The whole thing was killed by small things. For Switzerland, the single market has meant that it has to mimic everything the European Union does in terms of regulation. If there are any regulatory changes, Switzerland has to adopt them. So Switzerland has adapted to this regulatory convergence within Europe through hegemonic harmonisation, and that is what the rest of the world will have to do. The problem for the developing countries is that we get this US transatlantic, transpacific set of high-standard rules—but are they the right rules for developing countries? They will not have a choice. They obey those rules or they do not export, just like Switzerland. It is more or less hegemonial harmonisation. Altogether, however, I think it will be a good thing for them, just as the single market increased exports from third countries into the European Union and investment. It is a very positive thing. You could very much say that central European countries were not really ready for the acquis communautaire, but when they joined, they took on this huge mass of advanced country regulation, and in the end it was probably pretty good for them.

Lord Jopling: Can I follow that? I am intrigued by what you say about Switzerland’s position of having to conform to the surrounding regulations. If the United Kingdom was to leave the European Union, is it your view that we would be in exactly the same situation as Switzerland, unable to sit in on the discussions but having to conform?

Professor Richard Baldwin: My view of that whole thing, whether it is the UK, Catalonia or Scotland, is that basically they would join the European Economic Association. Switzerland is not in that organisation, but it mimics it with those bilateral accords. The basic deal there is that you get to participate in the single market in terms of mutual recognition and no barriers, but you have to follow the acquis. It is not quite that they have no representation. They have no vote, but there is a comitology, a process of developing standards in which Swiss countries participate all the time. To a large extent Swiss companies are also European companies, so Nestlé France may be doing the negotiations. In any case, you cannot live in a tightly connected, isolated world. Just take manufacturing services—it is the same. Companies cannot pretend to make their own soup in one part of the pot. They have to follow these rules. It is quite clear to me that if anyone left the EU who is in this supply chain network, they would have to follow the acquis as it develops.

Q204 Baroness Coussins: We have seen the CEPR studies on the potential economic impact of TTIP, both on the EU as a whole and on the UK economy, although I am always
worried that these figures are always qualified by being described as the best-case scenario figures. I would quite like to know what the likely figures are rather than just the best-case scenario ones. Can you tell us what the key assumptions were behind the models you used in those studies so that we can make a better assessment of how to look at those predictions? Also, looking at key previous trade agreements, how would you say the predictions have stacked up against the outcomes in practice?

Professor Richard Baldwin: First, let me say that it is not a CEPR study; it was published by CEPR but it is a study by a team of people associated with CEPR. The lead guy is Joe Francois, who is a professor in Linz, Austria. I just became the director of the CEPR, so I am a little sensitive to that. What is in that? Let me say that it is a very hard thing, and not a clear thing. It would be a little like asking what the implications are for the financial regulations that have happened since 2008. I would say, “Well, it would be £100 million”. That is a gross simplification of what is going on. To the extent that TTIP involves regulatory changes, we do not know what they will be and which are different by industry; and these things interact with each other, so it is really very difficult to know what is going to happen. I will tell you how they did this.

They surveyed businesses on both sides of the Atlantic and asked what sort of barriers there are apart from the obvious ones like tariffs, and got a qualitative ranking. They then lined that up against actual trade flows sector by sector, saw where there were little flows compared to what you would have expected and tried to associate that with the answers of business. In essence, they associated missing trade with businesses’ perception of where the barriers are, sector by sector. They are not looking at a tariff and saying, “It’s going to go from 15% down to 0%; we know what that’s going to do to prices and to the quantities”. They are laying out, in a very reduced way, the implications of these regulations. The assumption is then that these regulations are going to be reduced by 10% or 25%, and they run through what happens to trade and look at it. That is essentially what is going on; they allow different types of adjustment in terms of scale economies and capital stocks, which I would be happy to talk about.

What will actually happen goes back to my view of what will actually come out of TTIP—a process of regulatory convergence rather than an event. Therefore I believe that those numbers will be realistic, but over a medium run, such as between now and the end of the decade, not soon. We will not be able to agree any kind of regulatory harmonisation across the Atlantic in a realistic timeframe. Just to bring you back to your history, remember that the European Union tried to harmonise standards between 1968 and 1986 through old-fashioned negotiating, for instance on the standards for steel vessels. It never worked, because it took too long, everybody had a veto, and the standards were evolving all the time, so by the time they agreed them they were out of date anyway. TTIP will not come to that kind of agreement if they could not agree it inside the EU. They will have to agree a process of regulatory convergence in which the costs of these regulatory things will melt over time. I do not know if I answered your question, but at least I talked for a little while.

Baroness Coussins: What about the second part of the question, which was about how accurate previous predictions have been?

Professor Richard Baldwin: I am going to be unsatisfactory about this as well. The trouble is that these are always saying, “The world is on this status quo. All we’re going to do is change a few barriers and then we’ll be better off by so many hundreds of billions”. Now you say, “Let us go back and look at what we did for NAFTA”. The trouble is that the world they projected for NAFTA—the status quo world—was nothing like what actually happened, because a thousand things happened. What did NAFTA do? Sorting out what NAFTA did is really very difficult. I will be a little more positive by saying that at least when it comes to export flows, they were not terrible. In terms of the income gains it is basically impossible to
say how much this will add to people's income. You can look at sectoral effects and maybe trade effects, but there are too many effects in the economy to go all the way back to wages and incomes. Things affect things, which affect things in the economy. Prices affect companies, which affect wages, which affect prices—the whole thing is too complicated to say, “This caused that”. So I would take with a large grain of salt any particular numbers on the overall numbers, but if you look at the CEPR studies saying that the biggest sectors that will be hit are motor vehicles, chemicals and processed food, you can take that to the bank. That is correct. There are these big barriers, a lot of trade and the possibility of some sort of harmonisation going on.

The Chairman: Baroness Young has a question, although in a sense you have answered part of the question she was going to ask.

Q205 Baroness Young of Hornsey: I think you have answered the bulk of the question I was going to ask, but one related thing that arises from your comments is the way you interpret TTIP as perhaps more foreign policy than economic benefits. Do you think there is anything in that for consumers? I take absolutely what you said in response to Baroness Coussin’s question. I noticed that you also referred to the question of income. Will people with high incomes or with low incomes benefit more? Is it possible to say based on previous studies?

Professor Richard Baldwin: Let me just characterise your characterisation of what I said. I think that the driving force is geopolitics, or high-level politics, but there is an enormous business interest on both sides. With the Swiss-US free trade agreement we found that everybody was interested, but it was killed by peanuts, chocolate and beef. Some 8,000 farmers in Switzerland alone could kill that agreement. So there is a huge business interest, but there are these very hard special-interest nuts. To overcome them we need Angela Merkel to say, “This is a systems competition between the Atlantic economies and China”, and then they will overcome the peanut guys.

Income-wise, when you talk about the income effects of these kinds of agreements, you are basically talking about price effects. The question is ultimately, will this affect prices in ways that line up with the differences in consumption bundles of rich and poor people? Rich and poor people consume different things; in particular, rich people consume a lower fraction of their income, so anything that lowers prices of consumption tends to favour lower-income people. Lower-income people spend more of their income on food, and the most protected bits left in the economy are food, on both sides of the Atlantic. If they actually make progress on liberalising the food trade, it will be more favourable for people with low incomes, but it will all work through the price effects. Unfortunately, the big barriers are usually associated with extremely strong special interests. History shows that those bits will be left aside or dealt with in tariff-rate quotas so that there is not very much effect.

Baroness Young of Hornsey: Just to be clear though, in terms of empirical evidence, because that is what we are looking for, is there anything from previous studies which you would say perhaps we should not take with a grain of salt or which would be more illuminating?

Professor Richard Baldwin: The trade agreements that primarily lowered tariffs are much easier to trace through. You lower the tariff and it is like lowering sales tax or something—you can see what happens to the price. At least in rich countries there is a systematic bias of protection towards labour-intensive goods, which, for whatever reason, tend to be over-represented in low-income people's budgets: shoes, clothes, food—things like that. As a consequence, in the US, for instance, when we were trying to sell the Uruguay round—I was working for the Bush senior Administration at the time—we were pointing out the gains to low-income people because it was liberalising textiles, apparel and shoes—that was the argument, and it has. If you go to developing countries, it usually works the other way.
round, because a tariff tends to protect manufacturing, and so it works the opposite way in many developing countries. In rich countries, because the labour-intensive and food are protected, if it liberalises, it helps out. Those could be quantified. If you had Francois, he could do those kinds of studies for you. It is all in the model: he just has to look at the price effects by sector, and he can tell you what impact it would have on any particular consumption bundle.

Q206 Lord Foulkes of Cumnock: The Commission has said that it does not want labour and environmental standards to be compromised by this deal. Is that compatible with regulatory convergence?

Professor Richard Baldwin: When the US talks about labour and environment it is very specific, and it is really a conflict between the Democrats and the Republicans in the US. They have a famous “May 10th compromise”, whereby labour and environment must be in all US trade agreements. On environment, they are essentially insisting that countries sign up to five multilateral environmental agreements, so I do not see that as harming anything. Health and safety might be a different issue because of washing chickens with chlorine and things like that. The US tends to have looser standards than the EU; GMO would change as well. But real environmental things would not change—that is not what the US is asking for, although on health and safety it may be.

As for labour, this is a strange thing in the US. As you probably know, the US does not adhere to the ILO core standards. The Democrats are using trade agreements as a way of forcing the US into those. It has been a longstanding trip, all the way through from 1994, when it was put into site agreements and NAFTA. The idea is to bind the US into standards that almost every other country in the world already agrees to. That will not level it down. The political game in the US is to get the US more or less to agree to the core ILO things on prison labour, rights to organise, and stuff like that. It is not Europe going down; first of all, I think there will be very little change on environment between the US and EU because of what they are after. The race to the bottom on standards is more of a concern with things like food, health, safety and the precautionary principle, but I would not have called those either labour or environment.

Q207 Baroness Bonham-Carter of Yarnbury: I am not sure whether you were in the room at the time, but we just had a very positive description from the previous interview of the investor state dispute settlement negotiated with Canada under CETA. Should a similar mechanism be pursued in the investment chapter of TTIP? We heard concerns from other witnesses that such an inclusion might not be a good thing. An example would be that a US shale gas producer could take legal action against France because it prohibits its exploitation.

Professor Richard Baldwin: First of all, eight EU members already have bilateral investment treaties with the United States in which these things exist already, so it will not change for them. That is essentially what people are doing with putting investment into these agreements: they are taking bilateral investment agreements and putting them into these treaties. For a lot of countries it would not change anything, but for others it could change things. Ultimately, when you sign this agreement you have to realise that you are making law, and in a slightly different way. If this gets signed by the EU, it is enforceable through courts that are no longer under the control of the UK Parliament or the European Parliament or anything, so you do not have a right to change your mind afterwards—these things get locked in. You have to be a little careful about what rights you grant or not. You have created a parallel system of law which can be enforced through a parallel system of courts, and you are doing that because you want to encourage investment. You want to make the companies comfortable placing their investments abroad. The plus is that that encourages production-sharing, moving and technology and all that. The downside is that it definitely changes lawmaking in certain areas. My advice is to be very careful of what is in there,
because once it is in there, you have to change the treaty to change the laws. It is not just passing another law in Parliament.

Baroness Bonham-Carter of Yarnbury: That sounds like very good advice. Would your advice go so far as to say that it should be excluded?

Professor Richard Baldwin: No. It is less of an issue between the US and Europe. The bilateral investment treaties really bite when the US is investing in Colombia, for example, and if something goes wrong, an American company has to go through the Colombian courts, which they may not trust. So they do not make the investment and Colombia loses. That is the big thing. The investment going across the Atlantic is enormous and has been for decades, without these investment rights, except in the eight countries that have them. I think overall that they are okay, but you have to—

Baroness Bonham-Carter of Yarnbury: Tread carefully.

Professor Richard Baldwin: Tread carefully and put in some provisos. I do not think that if you did these, all of a sudden there would be a huge flow of US investment into Europe or European investment into the US where it did not happen before. The systems of law are roughly equivalent and roughly reliable or not, as is any system of law.

The Chairman: Thank you very much indeed. You have covered a lot of ground and your answers embraced a lot of the questions which we had originally put down. Thank you very much, Professor Baldwin.
Edward Barker, Head of Transatlantic & International Unit, Department for Business, Innovation and Skills and Lord Green of Hurstpierpoint, Minister of State for Trade and Investment—Oral Evidence (QQ 113-127)

Edward Barker, Head of Transatlantic & International Unit, Department for Business, Innovation and Skills and Lord Green of Hurstpierpoint, Minister of State for Trade and Investment—Oral Evidence (QQ 113-127)

Transcript to be found under Lord Green of Hurstpierpoint
Transcript to be found under Lord Livingston of Parkhead
The Chairman: Gentlemen, thank you very much. Thank you, Mr Bicknell, for filling in at short notice. As I know you are both aware, this is a formal, on-the-record session. It is part of one of the many evidence sessions we have been holding to prepare our report on the progress, objectives and so forth of TTIP. Everything is on the record. We have a number of questions to ask you. We may deviate from the ones you were sent, but we have a number of things we would like to clear up. Before I launch the questions, is there anything you would like to say by way of introduction? It is not compulsory, but on the other hand I would not want to deny you the opportunity if you wanted to say something.

Andrew Kuyk: Thank you, Lord Chairman. As you said, this is an on-the-record session, which is in a sense slightly unusual in that there is an ongoing negotiation. In the nature of a negotiation, people want to be a little careful about what they say about either things that they want or that they do not want. I hope the Committee will understand that what one
says in a public session may differ slightly from what might be said in a more informal conversation.

Having said that, I do not really want to make a major opening statement other than to say that from the point of view of the UK food manufacturing industry—we will come on to the economic importance of that industry for the UK—as a general principle we are in favour of open multilateral trading systems. Food is a global industry with global supply chains, so we welcome any negotiations that are focused on liberalising trade, both in terms of export opportunities for our excellent products and to enable us to have supplies of raw materials at competitive prices to complete in the global markets in which we find ourselves. That is really the limit of what I would want to say by way of introduction.

The Chairman: I quite understand the point you made earlier, but I would like to say something in response which I hope you will take in what is intended on my part to be a friendly and constructive fashion. It is that the problem this Committee and all Committees in the House of Lords and the House of Commons have is that we are evidence-based. Therefore, we can only base our reports and the opinions we derive from the evidence that we get on what people say to us. Therefore, if there are things which people want us to take into account, either because they wish us to support that objective or because they might wish us not to support that objective, if they are unable to talk to us on the record about it we are unable to recognise that issue. I am in no way seeking to bully you into saying what you do not want to say, but I do want to explain to you the inhibitions on us to the extent that we cannot really take account of things that we do not hear in an evidence session.

Andrew Kuyk: Thank you for that clarification. I think we understand each other and certainly we are prepared to talk in terms of broad principles and generic issues. Where we might be a little more reticent is on some specifics. I am sure we can have a constructive discussion around the issues and the principles.

Q209 The Chairman: Let us kick off. One of the points that has been made to us ever since we began this exercise in Brussels, Washington, and of course in London too, is that agriculture is going to be an absolutely key element. In fact, if there is no deal on agriculture, there probably will be no deal at all. Again, a point that has been made to us is that some kind of deal involving GI on the one side and GMO on the other is likely to be at the heart of any deal. Although this is not something that everyone in the UK is aware of, it is certainly something that people in a number of other European countries, as well as the United States, are acutely aware of. We attach a great deal of importance to the views that you are going to put to us.

Setting aside for the moment the political importance of your sectors, could we first be clear about the economic importance to the United Kingdom for example of their share of total employment in the UK and of UK exports? You indicated your general approach to these talks, but in a best-case scenario how many jobs or exports might you expect to see added as a result of TTIP? I know that these kinds of estimates are very vague and not always reliable, but could you give us some idea of the magnitude involved in the questions I have asked?

Andrew Kuyk: Shall I start and then allow Phil to come in? If we start with the big picture and take the food and drink chain end to end, from farming through to retail, we are looking at a very large number of jobs indeed. According to the latest Defra estimates, something like 3.3 million people are involved in the food chain. That includes retail, catering, restaurants and so on, but if you take that big picture we are talking 3.3 million, which is over 10% of total workforce. That is a significant contribution to employment and the economy in general. When you break it down, food and drink manufacturing on its own...
directly employs about 400,000 people, which is obviously a much smaller proportion of the total workforce.

In terms of production, though, the total turnover of food and drink manufacturing is about £78 billion. That makes us the largest single manufacturing sector in the UK. It is about 16% of total manufacturing output and we have a GVA of about £20 billion. The export figures are distorted a bit as to whether you do or do not include alcoholic drinks. In terms of the US market, they are a significant contributor. Looking at the biggest picture, if you include alcoholic drinks, total UK food and drink exports stand at around £19 billion a year, which is about 6% of total UK exports. Exports to the US within that are about £1.8 billion if you include alcoholic drinks, but if you take out alcoholic drinks, which are largely but not exclusively Scotch whisky, it comes down to about £0.5 billion. The US is our largest non-EU market. With alcoholic drinks, it is the UK’s third largest export market overall. If you take out alcoholic drinks, it is the UK’s seventh largest market overall, so these are very significant figures.

Your last question about what growth in jobs or earnings we could expect or anticipate as a result of a successful deal is of course much trickier to answer. In the Commission’s estimates of the potential benefit of a successful deal—and of course there is an element of subjectivity as to what is a successful deal—there is a range of something like 25% to 45% growth potential overall. If you applied some simple arithmetic, took a mid-point of about one-third overall growth and applied that to the figures that I gave earlier for the food and drink sector, you might look at growth of one-third for the £0.5 billion of non-alcohol or one-third on the £1.8 billion including alcohol, and those are significant numbers. Whether they would translate directly into new jobs is again a little difficult to say. Certainly you would not expect it not to have a positive influence, but it is only part of the overall picture. In some cases an increase in exports might be the result of a successful deal and might make some existing jobs more robust than they would otherwise be. It might help to prevent erosion of employment from competition elsewhere rather than creating net new employment, but that is very difficult to judge.

Clearly, if we are talking about potential growth of that order of magnitude as a result of successful negotiation, that can only be in our interest and can only be positive. Assessing that or quantifying that is rather more difficult. Certainly we regard this in a very positive light. We see this more as an opportunity than a threat, and certainly we come back to the point that as a sector end to end we are very important to the UK economy. I am sure Phil will have points to make about the primary production end of that as well.

**Phil Bicknell:** Thank you. Yes, I would agree with that. If you take agriculture alone, its contribution to the GVA in the UK economy is £8.6 billion. That works out at around 0.6%, but I think it seriously understates the real value of agriculture to the wider food chain and the wider rural economy. It is worth bearing in mind actually that notwithstanding weather problems and challenges that we have had as an industry, there is much more confidence among farmers today about the long-term prospects for agriculture. We are a more profitable industry now than we were pre-2007, and probably the last four or five years have seen agriculture at its most profitable since the early 1990s.

To follow-up on Andrew’s point about trying to put some figures on jobs and potential growth, I think it is very difficult to quantify at this stage. Agriculture collectively accounts for 476,000 people in the UK. That includes employed agricultural workforce, farmers and partners in businesses themselves.

One of the things that we would certainly like to say is a full impact assessment of what a deal at the European level would mean for different sectors. It is something that we have called for previously. Personally I am quite conscious of the potential impacts of the Mercosur deal. When we got an impact assessment from the European Commission, it
highlighted the big threats to our beef and poultry industries in particular. From a beef perspective the UK would have borne most of the brunt of the potential losses to beef production borne by Europe, second only to Ireland. Bearing in mind that the average profitability of an English beef and sheep farm, whether in the hills or on the lowlands, is less than £20,000, we also need to look at it not just in terms of the potential job opportunities it creates but in terms of some of the potential threats from competition that might arise from opening up trade, and what the impact would be on the bottom line of some of our most vulnerable farming businesses and sectors.

Q210 The Chairman: Thank you very much. You have given us a raft of figures that will take some digesting in response to our question, so I do not blame you for that. I was just imagining as you were pouring out these figures that there must be some quite significant regional discrepancies. In a number of the subject areas that we are talking about, such as financial services, obviously the part of the country that stands to gain the most is London and the south-east. It occurred to me that in your particular industries—and I am taking the whole, first to last—that the south east would probably not be the most obvious gainer. Indeed, some of the benefits might fall rather unevenly in favour of regions of the UK that are less well off than some others.

Andrew Kuyk: As a general principle you are right that at the agricultural level, but also at the food manufacturing level, we are very widely distributed across the country, not surprisingly because food is consumed without exception in every household in the land. The coverage of the food industry has to be comprehensive and, again, for historical reasons you will have manufacturing taking place close to the market in all parts of the country. I do not think there is a single parliamentary constituency, for example, that would not have a food manufacturing facility of some sort within it. Again, Phil will no doubt expand on the agricultural side, but obviously it follows that there will be some regional specialisations. You might expect to have more dairy production and manufacturing to the west and more to do with grain towards the east.

There will be some north/south differences, but you are right in identifying that the impact on the economy, particularly if we are talking about a beneficial impact, will be much more widely distributed than for many other sectors. Again, anecdotally, there are not many food factories in London, so we are not talking about something that is only going to be of benefit to a small part of the UK. One would really have to drill down quite carefully into the figures to see where the regional disparities might be, but as a general principle we would say that it is one the strengths of our industry and, again, one of the key things in its strategic importance for the UK that it provides employment across the country. Again, I am sure that Phil will want to say something about agriculture and that it also provides support for infrastructure and economic activity in many more marginal areas.

Phil Bicknell: Indeed, the impact on a regional basis will depend on the potential for different product types. For instance, the dairy sector is quite eagerly anticipating developing export opportunities right now. That will benefit farmers predominantly in the south-west and the north-west, the dairy heartlands. At the same time, if we face potential threats perhaps in beef production, we could see some challenging situations in some of the areas up in the hills. It is worth bearing in mind—this probably overlaps with some of the discussion around geographical indications—that some of the opportunities that have been identified by the Agriculture and Horticulture Development Board for export relate to some of the UK regions, highlighting the potential for Welsh beef and lamb, and for Scottish product.

The Chairman: Let us leave this and pass to the next question. If there are any figures that you can give us, though, which show what the benefits might be to Scotland, Northern Ireland, Wales, the north-east and the north-west so that we are able to clarify the point I was driving at, that would be very helpful.
Baroness Young of Hornsey: Just to follow up what you said, Lord Chairman, would it also be possible for both witnesses to give us at least some indication of some of the vulnerable areas that you mentioned in relation to where there might be a threat coming from increased exports from the US into our sectors?

Q211 Baroness Quin: This question follows on quite well, given that geographical indications were just mentioned. I would just like to develop this a little further and ask what geographical indications you feel are going to be most significant economically for the UK in these negotiations. How strongly overall do you feel about GIs and how the issue should be pursued in the negotiations? We have picked up that it is an area that in the US they are not so interested in.

Phil Bicknell: It is worth remembering that on a European perspective the UK has made relatively little use of geographical indicators. For instance, we have just over 50 products with PDO or PGI status compared to 260 in Italy and over 200 in France. I think there are over 170 in Spain. That said, there is continued interest in the UK to build on geographic indications to help to enhance the provenance attributes of different products, particularly when it comes to marketing not just domestically but further afield. I have already mentioned the potential for Scottish and Welsh beef and lamb. A number of cheese products have PGI status, and I think that certainly the dairy industry will be looking to trade on those provenance attributes in international markets. I can see it being perhaps a sticking issue for TTIP negotiations, particularly because of the importance that some of our European counterparts perhaps attach to geographic indications. Interest in other member states in GIs is perhaps greater than the UK’s, given our lower use of such indicators here in the UK.

Baroness Quin: Do you have any sense of the American attitude towards this already, or is this something you have not yet explored?

Phil Bicknell: It is not something I will admit to having explored as yet.

Andrew Kuyk: From a food manufacturing perspective, we probably have a slightly different take, because most of the products that feature on the list for which we have obtained these designations in Europe tend to be either at primary or first stage processing. You are talking about meat as meat or cheese. We are not talking about the more manufactured products for the most part. As a manufacturing sector, we perhaps have slightly less history and slightly less interest in this issue.

Of course, historically this concept did not really exist before we joined Europe. Traditionally, cheddar, which has become ubiquitous, clearly has a very specific geographical origin in the UK, but it has now become a generic description of a type of cheese that is made throughout the world. In our trading history, when we used to import a lot of food stuff, we as a nation did not attach that much significance to that kind of specific origin and protection of designation. It is much more important in Europe. I do not know the US market in any detail at all, but my impression would be that the US has a rather similar history to ours in the sense that there are trademark protections and there are ways of safeguarding particular things, but as a general principle there have been generic descriptions of food products. That has been the history.

In that sense, I would not want to describe it as a clash of cultures, but there are different approaches that will be revealed in this discussion. In a sense, if Europe is saying that it wants protection, quite understandably, for certain things that have been traditionally protected in Europe, that in a sense is asking the Americans to have a different attitude from the one they have traditionally had to their own market.

In a negotiation, which is where we get on to the sensitive ground, you would expect somebody having something asked of them to say, “What is the benefit for me? What is the price? What is the counterpart?”. That is where it gets complicated, because in the nature
of a trade negotiation—I have participated in trade negotiations in a former career—you get an offer in one area and a concession in another. They do not necessarily match, so you can have an advantage for one product in one sector and the off-setting concession may be in a different one. In a complex negotiation, if you were to have protection for a French cheese or an Italian ham—and I use this purely as an example and in no sense as illustrating a particular demand—the off-setting concession might be increased access to the European market for beef or poultry. That increased access might impact on a sector that is not benefitting from the protection of the designation, and that asymmetry in a trade negotiation makes it quite difficult. It is very tricky for the negotiators to see where the balance of that would turn out.

Q212 Earl of Sandwich: I am very interested in what Mr Kuyk has just said. I am also encouraged by Mr Bicknell saying that we need to make more of geographical indication here. I would bring in Dorset Blue Vinney, Stilton, and all sorts of other things. The American market must also recognise the integrity of these products; we cannot assume that they are not going to be receptive. I take the point about the quid pro quo deals that are going to happen everywhere around the board, but surely we must make more in the UK of this. We are so ignorant of what the Americans hold as geographical indications. I suppose I am pleading for more evidence somewhere from the industry that the Americans are going to buy into this scheme, because surely it is in the interests of all.

Phil Bicknell: I suppose the Canada deal is something of a precedent. By no means did all the geographical indications that we have operating in Europe today gain acceptance with that deal. Canada agreed to protect a list of 145 names. Again, if you bear in mind the numbers of PDO and PGI protected statuses across Europe, that is just a fraction of them. It is not as though we will ensure that all the 50 or so products that we have now and any that we might increase might be accepted in any deal with the US. I suppose it could give producers legal rights to oppose any sorts of misleading or deceptive uses. That is the status in Canada right now. It will give us the same potential, of course, in the US. One of the things that is positive from that Canada agreement is that it provides the possibility to add products to the list in the future. Just as we have new products gaining geographical indications, as we do in the UK on a relatively regular basis—a couple have already been announced this year—we will potentially be able to extend that list.

Andrew Kuyk: Just by way of clarification, I hope my remarks were not interpreted as lack of support for the principle. I was just trying to contextualise that it has not been as significant a factor in the development of UK products. Because we are relatively junior players in this, if there were to be concessions there is a risk that the concessions would disproportionately benefit some other member states and the counterpart might disproportionately impact us, for example, because our market shares in some of these things are relatively small. I fully agree that we have some excellent specialist UK products that would stand comparison with anything anywhere else in the world, and we should of course try to maximise that, gain whatever advantage we can for those and grow those exports. I would not want anything I said to be interpreted as not strongly supporting that where we can. In a negotiation, though, we have to be aware of what the total impact would be, and where there are trade-offs we would need to make sure that those trade-offs did not cancel out the benefits that we stood to gain from that.

Baroness Quin: I have just one point. You mentioned that in the Canadian agreement 145 areas were mutually agreed. Do you know how many of those were UK?

Phil Bicknell: I am not aware, but I can find out and come back to you.

Q213 Baroness Young of Hornsey: Most of the points that I was going to raise in this question have been addressed in one way or another. Because of some of the evidence that we have had, it would be interesting to know your views and whether you share their views.
that this whole issue of geographical indicators could be the biggest threat in the negotiations around agriculture, as opposed to GMOs, for example, which were formerly thought to be one of the bigger threats. The issue of trade-offs that you have already raised has been pointed out to us. We are aware, for example, that the French Government identified the same kind of trade-off that you mentioned for beef, poultry and pork or whatever as being a likely condition for their support. They would need to have guarantees for wine, dairy, et cetera.

Andrew Kuyk: I do not think that either of us is really in a position to give a view as to whether this is going to be a major breaking point for the negotiation. I would want to stick to what I have said, which is that this is slightly novel in terms of trade negotiations. Trade negotiations are normally about removing protection and liberalising. Here we are talking about something that would involve a degree of ring-fencing and a degree of protection. Again, as I have said, the traditions and cultures are different both between the UK historically and the US currently, and the European model, where there is much more of this origin and protected designation. In that sense, because it is novel—and, in the time-honoured phrase, novel and contentious—it could well be quite difficult to find a way through, but I am sure the negotiators will attempt to overcome those challenges and find ways of resolving them.

Phil Bicknell: To add on to that, part of the potential for it to be such a sticking point is not just because of the time but because the money that different member states have invested in establishing some of these geographical indications. My understanding is that many member states have chosen to support financially the development of individual PDO and PGI statuses. Here Defra has chosen not to support applications that way because the view is that they potentially give a marketing advantage, so it should be down to the group of suppliers or businesses involved to undertake the application to gain that status. I think the fact that member states have put money into developing these PDOs and PGIs, potentially offering support to enhance the marketing, makes it a slightly different debate with some of our European counterparts.

Q214 Baroness Henig: We move now to the vexed question of GMOs. It has been suggested to the Committee that GMOs might not be quite the hurdle that some expect because a procedure for commercialisation of them already exists, and this has resulted in the authorisation of GMOs for animal feed and for human consumption. It has been suggested that any compromise might lie in speeding up that existing EU procedure rather than removing it or changing any associated requirements. I suppose my first question is: do you share that assessment? Then, is there any science-based reason to be cautious of GMOs? Are you satisfied that such considerations are adequately captured by the current procedures?

Phil Bicknell: We already know that the European Commission has ruled out making any changes to the basic laws of the EU when it comes to GMOs. It will not make any changes; basic laws relating to GMOs will not be part of the negotiations. That presumably points to the fact that they will not be quite the hurdle that perhaps many anticipated previously. The NFU believes that the EU legislative system for GMOs is seriously broken. There are question marks over how efficient and how effective it is, particularly given that we already have global trade in genetically modified material. Really, the EU system has to be consistent with that in the US and elsewhere.

One of the concerns from the NFU perspective is about delays in the biotechnology and the approval process that we have in Europe. The system of checking shipments of approved varieties, for instance, has in the past created some significant increases in feed costs for UK producers. With poultry feed, for instance, there is a considerable differential between GM and non-GM food that is coming in to Europe.
Baroness Henig: Can you just expand on the science-based reasoning? Are we right to be cautious about GMOs? Do you have anything to add on that?

Phil Bicknell: When it comes to the importation of products from the US, again the EU’s approval system has been sluggish and slow. It is arguably not responding to the science. EFSA has never concluded that a commercial biotech variety in the US is unsafe, but in the EU we have not yet approved a single biotech product in the last 12 years.

Andrew Kuyk: I do not think there is a material difference between us and the NFU on this. It is probably just the terminology. There are procedures in place in Europe that are in our view entirely proper and fit for purpose for risk assessment. They are evidence-based and there is no current evidence of risk to human health or the environment from the processes that have been carried out.

I think the point that Phil is making is that there is a difference between those procedures and the outcome of those procedures. There has been an enormous delay in acting on recommendations that result from the procedures. I am not sure that the procedures are broken. The procedures are there. They are rigorous, they are evidence-based, they are objective. The problem is in the decision-making following on from the procedures. When Phil describes the system as broken, I think you would have to have some kind of approval process. The approval process that we have as a process—the factors that are taken into account, the rigour with which the examination is carried out and the aim of putting protection of health and the environment at the forefront of decision-making—is all fine. The problem then is the time taken to implement the decision-making if you have a positive recommendation. The procedures are not working properly, but that does not mean that the procedures in themselves are flawed; it is the decision-making. I would draw that distinction between the procedures and the decision-making.

The Chairman: Do you think it could be speeded up somewhat?

Andrew Kuyk: Clearly there are examples of other countries elsewhere in the world that have similar procedures and that do manage to arrive at speedier decisions. I would just rest at that.

The Chairman: If I could just press you one stage further, are we dealing with very difficult issues that take time to resolve, or are we dealing with a certain element of bloody-mindedness?

Andrew Kuyk: I would not describe it in those terms. I think we are dealing with political considerations that overlay an evidence-based process. That may sound slightly weasel-worded.

The Chairman: No, that is a very good rendition. That is very well phrased.

Q215 Lord Trimble: In view of the last comments, this might be a hypothetical question, but if there was serious competition for British and EU producers from GM-fed cattle, would that be a problem?

Phil Bicknell: This was flagged up by Simon Coveney, the Irish Minister for Agriculture, Food and the Marine at the Oxford farming conference just earlier this week. He felt that the livestock sector was going to be a major obstacle to getting an agreement on a US-EU deal. Would it be a major problem? If you look at the US livestock numbers—their slaughterings last year were actually their lowest in a decade and they have seen their numbers of livestock decrease considerably over the longer term—but they still have significant costs of production advantages over EU farmers. Part of that is related to the cost of feed, but you also have to factor in a number of regulatory burdens that we face here that perhaps US counterparts do not face. There are issues around animal welfare, traceability, the use of hormones, and GM, which we have already mentioned. Environmental legislation is obviously also very important in Europe. This all creates additional costs for farming businesses in Europe, particularly in the UK. There is access to
plant protection products to consider as well for growing the feed and there are issues around mycotoxins legislation, for instance. There are definitely some challenges that would result because of the differences in legislation that face our beef industry in Europe versus the beef industry that currently operates in the US.

**Lord Trimble:** You mentioned a whole host of things other than the GM factor or the hormone factor, but is there any way in which those other regulatory factors can be resolved? Are we just going to have to struggle on under the burden?

**Phil Bicknell:** The issue around hormone-free beef with the EU and US has been a long dialogue. Particularly in trying to get a deal, I am aware that the French Government have warned that the results of any negotiations could actually be made much worse from a European perspective, depending on the issue around hormone-free beef. I suppose the potential outcome could be Europe granting an increased quota for non-hormone treated meat, but then the challenge for the US is how they segregate.

**Q216 Lord Jopling:** Let us turn to hormone implants and so-called hormone-free beef. In asking questions about this, I must declare an interest as one in receipt of funds from the common agricultural policy. It has been suggested to us that there is already a possible solution ahead, which is to negotiate a quota of hormone-free beef from the United States. At the same time, we are told that the French Government warned—I think you referred to this a few moments ago—that if the results of the negotiation with the US were to result in a multiplication by three or four times the size of the quota provided to the Canadians, they would face strong political difficulties. The question I want to ask is: what is your reaction to this suggestion of negotiating a quota, and how large would be too large as far as the UK is concerned?

Let me go back to the background of this. To talk about hormone-free beef is a total contradiction in terms because the growth-promoting hormones occur naturally in cattle, to the extent that as I understand it—certainly it used to be—it is impossible to tell whether beef has been implanted with growth-promoting hormones or not. Coming back to what I said a moment ago, the presence of these hormones is larger in bull beef than it is in implanted castrated beef. Therefore, it is quite impossible to tell whether beef has been implanted or not. I would be grateful if you could tell us what you feel about the background to the whole of this arrangement, which was brought in many years ago led by the Commission. It really was a Luddite response in trying to put a block on imports and it was the only reason for it.

**Phil Bicknell:** There is another point to be added to that, and that is the potential consumer reaction and the views not just of shoppers but retailers when it comes to the use of hormones in their supply chains. Andrew might want to comment on this further. We recognise that there would be significant clamours from consumer organisations upset about the potential for hormone beef coming in and any labelling being required. That also creates some challenges in the food chain where you do not have labelling outside retail i.e. the hotel/restaurant sector and the wider food service market. That creates some wider challenges for consumer awareness and understanding the origin of any of their food products, particularly beef.

To return to the original question about the quota, this is one of the areas where we still need the evidence to understand the potential impact. It is where we need the Commission to produce an impact assessment. From an agricultural perspective, it is important to take the view that the quota needs to be balanced. One of the lessons we have learnt about different countries fulfilling their quota is to make sure that it is not filled only with high-value cuts. The lamb industry has undergone some significant challenges over the last 18 months with product coming in from New Zealand, for instance. A proportion of its quota has been specifically filled with high-value cuts. That creates issues to do with the carcass.
balance. It drives down the cost of high-value cuts, but it also limits the value of the overall carcass. If we saw a similar issue with quotas being fulfilled with specific high-value cuts of beef from the US, for instance, that would not only create some wider challenges in the agricultural industry but have a knock-on impact on our red meat supply chain.

**Lord Jopling:** You have not addressed the point I was trying to make that these hormones appear naturally in cattle. They are a natural product, a natural part of the beef we eat every day. All you are doing with implanting is increasing the amount of growth-promoting hormones that there are. Perhaps I could ask you a question that you might find useful in the future of these negotiations. Are you both aware that when this ban was introduced in the mid-1980s, the Commission organised a scientific examination of the impact of banning growth-promoting hormones? When that scientific survey or assessment was produced, it was suppressed and the Commission refused to make it public. I know, because I was involved in this at the time, that that report came out with a verdict that there was no harm to the public health in using growth-promoting hormone implants. I would hope that it might be possible in the negotiations to revive that scientific assessment. It will be somewhere. It was certainly present in MAFF because we got hold of it at the time. It seems to me that this whole approach to hormone implants is entirely Luddite and entirely protective in its effect.

**Phil Bicknell:** I am not aware of the report that you mentioned, but I shall speak to science colleagues to dig it out. It is perhaps worth bearing in mind as well some of the differences in our production systems. The feedlot system will predominate in US beef production and perhaps that makes it more conducive to using growth promoters, whereby you can try to increase further the efficiency of turning relatively costly feed into carcass weight. I would imagine that the use of such growth promoters would work best in that scenario. The reality is that the majority of our beef production, certainly here in the UK, is going to be grass-fed and pasture-fed. It is a question of turning grass into meat over a longer time period rather than some of the more intensive systems that predominate in the US.

**Q217 Baroness Quin:** Just to follow up, I understand that some forms of technical co-operation are already in place between the EU and the US on animal and plant health, and other issues. Does that give some cause for optimism in dealing with some of these issues in the future, and can it be part of an ongoing process that is linked in with these negotiations?

**Phil Bicknell:** Yes, I think so. There is obviously some amount of trade between the EU and the US anyway. There are some challenges. In particular, for instance, meat can be exported to the US, but there are issues around equivalence programmes for meat inspections, which tend to be a significant hurdle for anybody looking to export to the US and might be perceived as a barrier to trade. Anything that tries to build on what we have and makes progress in that direction is of course valuable.

**Andrew Kuyk:** I would just add that obviously there are channels of communication. Witness the figures that we quoted at the outset: trade is taking place. We are looking to enhance that trade, so we are looking to streamline and improve procedures. Clearly there are discussions that go on. Without wanting to get back into controversial territory, there is a distinction between the procedures and the application of the procedures, rather as there is with the GM approval. You can have a framework that talks about co-operation and mutual recognition but that does actually come down to the practical detail of the inspectors on the day and the attitude that they take. That is the kind of territory that we may get into in these negotiations. Neither Phil nor I are directly party to this. These are negotiations conducted by the Commission and the UK is one of 28 member states. We are stakeholders within the UK. We are quite some way off the nitty-gritty of the negotiations, but we need not just words on the page but the spirit of application. It is about getting mutual recognition both in principle and in practice.
I do not know how much we want to go into some of the non-tariff barrier things, because there you get very much into the anecdotal thing, but there are examples of procedures that are entirely compatible but different. It is a question of the extent to which authorities on either side are prepared to say, “We accept that your procedure is equivalent. We do not have to actually go through and check it for ourselves”. That would be a kind of breakthrough. I think we need to move beyond the stage of discussion and channels of communication to overt mutual recognition that says, “Okay, we rely on you. If you have inspected it and you have tested it according to procedure that we recognise as legitimate, we do not then have to do it again”. That is the step that is missing and that is what I hope we can proceed to in these negotiations. I am deliberately describing that in generic terms, but I will give you an example. Clearly there are discussions and there are issues that are resolved as part of normal business, but I think we are looking for a step change, with mutual recognition that says, “Yes, your system is as valid as ours. Therefore, if it is okay under your system, we will take your word for it”.

Phil Bicknell: There is an example of EU and US equivalence on organics, for instance, in that exactly that arrangement exists but does not yet include dairy or meat.

Q218 Earl of Sandwich: We are going to move on to the important topic of tariffs, which perhaps offer more opportunities in this sector than in others. I was surprised to see the European Commission figure of over 40% on average for processed food products. Surely that gives us a lot of opportunities. Which tariff lines would you identify as sensitive for the UK in your particular sector? Which tariff lines do you expect to be most sensitive in the US? Which tariffs in the US do you want to see removed, and what impact would you anticipate on trade flows in general? Should consumers expect to pay lower prices if tariffs can be reduced or removed? I apologise for coming in late. I may have missed some of the earlier responses on this.

Andrew Kuyk: I do not think you did. Can I take your last question first? It would be axiomatic that if tariffs are reduced one would expect consumers to benefit. I did not say in my introductory remarks that clearly if these talks are successful and we manage to liberalise trade, we would expect consumers to benefit both in price and expanded choice. There is clearly something in it for consumers as well. I say that because I am aware that some commentators on these negotiations occasionally say that there is a risk of standards being lowered or consumers not benefiting and that it would actually be businesses that benefit, not consumers. If we can make food more affordable and increase trade, that must be of benefit. I wanted to get that point on record.

Although the figures you quote seem high, I am not sure—again, this is a rather technical point—whether that analysis looks at the bound rates or the rates that are actually applied on a most-favoured-nation basis in practical trading terms. There is a difference sometimes between the bound rate in WTO and the applied rate. I see the adviser nodding. I suspect there is some element of that, because that does seem quite an inflated figure. Again, without wanting to be evasive, I have not come here with a shopping list either of tariffs that we want to see reduced or of tariffs that we do not want to see reduced the other way around because this is a negotiation. I would make the point that certainly in the interests of the businesses that I represent, it is actually the areas that I was previously talking about—the non-tariff barriers, the mutual recognition—that are far more of an impediment to liberalisation than tariffs in themselves.

In my introductory remarks I said that we are in principle in favour of open multilateral trading systems and liberalisation of trade and would support anything that reduces tariffs, but it is invidious to try to have a shopping list. I do think that in terms of the practicalities of trade and the opportunities for the UK, the non-tariff barriers are the more significant bit of the negotiation for us.
Phil Bicknell, Chief Economist, National Farmers’ Union and Andrew Kuyk, Sustainability Director, Food and Drink Federation—Oral Evidence (QQ 158-173)

Phil Bicknell: To add to Andrew’s point, a number I have is that 40% of the value of agricultural products imported from the US into the EU is currently duty free, so I perhaps query some of that average number. In terms of a shopping list of interests, certainly we would have a defensive interest in beef, as I have already mentioned, as well as poultry, pig meat and egg products. There is also some concern around sugar as well. Again, I emphasise that a full impact assessment once offers are exchanged is essential.

**Q219 Baroness Bonham-Carter of Yarnbury:** Can I return to the Europe-Canada free-trade agreement that we referred to earlier? You mentioned that negotiations on GIs have achieved 154 exemptions. To what extent do you think precedents set in CETA are going to help with the TTIP negotiations? We had a letter from Lord Green in which he mentions access for non-hormone treated beef and greater access to both federal and sub-federal procurement markets.

Andrew Kuyk: I will let Phil respond, because he spoke about the agreement earlier on GIs. Just on the general principle, from my perspective, if I may express it this way, the Canada agreement shows that there are no no-go areas in these negotiations: things that are potentially difficult such as GIs and hormone beef. Solutions can be found. It might be a bit heroic to say, though, because those deals were done in the context of an agreement with Canada, it follows that they can be done in this negotiation because there are potentially quite significant differences of scale in terms of the actual size of quotas. I also think there are some differences in the historic patterns of trading that mean that the sensitivities might be slightly different.

It is a question of “on the one hand”, “on the other”. On the one hand, it shows that there are no no-go areas—solutions can be found on things that are difficult issues—but it does not follow that that will automatically mean that we can do a deal in these negotiations on those same issues, because the history will be different and the scale will be different. If I had to choose, I would say that there is some ground for optimism. It has shown that these things are capable of solution, and that should encourage negotiators on both sides to try to find ways through.

**Baroness Bonham-Carter of Yarnbury:** Going back to the GI point, I was not in Brussels but my colleagues were, and Commissioner De Gucht was extremely pessimistic about the US and GIs in particular. Anyway, that is for the negotiations. I am particularly interested in the federal/sub-federal point because we have not talked about that.

Andrew Kuyk: Indeed. Before passing the floor to Phil, I would say that that is also an issue for the non-tariff barrier, because it is one thing getting an agreement at the federal level; how things are done at individual state level is another. Whether those regulations are implemented on the ground or whether there is an overlay of more specific local legislation is not captured by that bigger picture dialogue. That is an important set of issues.

Phil Bicknell: I concur with what Andrew has said. There are some key issues here such as mutual recognition—it has relevance for GIs—equivalence and harmonisation. As Andrew said, the CETA deal indicates that where there is a will, deals can progress.

Just to follow up on Andrew’s point about some of the differences, we should bear in mind that the US is a significant global exporter of food products. It targets potentially high-value markets. Talking about the beef industry, for instance, 90% of its beef exports are to Japan, Mexico, South Korea and Canada: to relatively affluent markets in the main.

The other thing to bear in mind, particularly in the US, is the amount of backing and support that its food promotion has overseas. In 2013, the US Government spent $172 million supporting the marketing of US food products overseas. That is some way different from the kind of scale that Canada is backing, particularly when it comes to high-value and processed food products.
Q220 Lord Jopling: I just want to follow up on what Lady Bonham-Carter started to ask about sub-federal arrangements. We have seen, and I expect you have seen, an assessment in the United States that every one of the 50 states would benefit from a TTIP deal. The question I want to ask you is: have you studied that assessment? Does that assessment include the situation, which is very worrying, that individual states, particularly over non-tariff barriers, can cherry-pick whatever the deal is and pick up and legislate on things that suit them but ignore and set aside the things that do not suit them? I imagine that will happen, and if I were a politician in Iowa or somewhere like that, I would want to cherry-pick a deal and leave aside the things that were not very helpful. Does that assessment of the benefit to the 50 states include that situation of cherry-picking? If it does not, would that not mean that the individual states would benefit even more than in the assessment that I talked about?

Andrew Kuyk: I am aware of the so-called 50-state study. I cannot say that I have looked at it in great detail. I note what you have said about what local politicians might or might not be tempted to do with a deal, and I do not think I particularly want to add to that. The general principle that a deal will be beneficial is one that I hope I endorsed in my introductory remarks, and I think it is good that there is supporting analysis on both sides that says that. It is fairly self-evident that people will try to maximise the advantage of an outcome in whatever way is open to them. That is the generic point: that if you have a system where you have one layer of legislation at the federal level and another layer of legislation at the state level, there is clearly scope for people to maximise an advantage. I would not really want to comment further, but that is a very valid thing to draw attention to. That is less evident in Europe because we have a single market, we have a different way of doing things, so there would, again, be a potential asymmetry in outcome as a result of those different circumstances.

Phil Bicknell: Just to follow up on that point, thinking about it from a European business viewpoint, the potential attractiveness of exporting to the US is completely different if I have one set of rules that I have to meet. If there are 50 different sets depending on what has been cherry-picked, the attractiveness of shipping makes it much more complex for me as an individual business.

Q221 Baroness Coussins: I first wanted to ask: on the spectrum that goes from mutual recognition of standards through to regulatory convergence, where would your sector hope or want to end up in the standards that have a specific implication for public health? The most notable example is the significantly higher nutritional labelling in the US compared to the UK and, I think, in the rest of Europe. Is that something that you are already talking about? Is that an example of where your sector might be prepared in these negotiations to step up to higher standards and, presumably, deliver more consumer benefits, or would you rather go for mutual recognition as opposed to upgrading standards, as it were? While you are just mulling over that in the back of your mind, my other question was going to be what the specific advantages of these negotiations about TTIP are bringing to your quest for more mutual recognition. You referred earlier to a dialogue, and I wondered whether you could say a bit more about what regulatory dialogue there already is between your organisations, or the European umbrella groups that you are part of, and the US on regulatory recognition or convergence.

Andrew Kuyk: Taking them in reverse order, almost by definition, because with a regulatory framework, in a regulatory context, the dialogue is not between trade associations and their counterparts but between respective authorities. We can lobby our authorities and our counterparts in America can lobby their authorities. We do talk to each other, but it is not appropriate for us to have a direct dialogue because we are not the people in charge of the
We are not the legislators or the regulators. I do not quite understand the question in the way that you asked it.

On your specific point about public health, first of all, clearly, I would want to say that no outcome of this negotiation should result in any weakening of any protection for health, safety, environment or anything else. That goes without saying. Labelling is a slightly different question. When I am talking about non-tariff barriers, I am talking about things that are to do with the approval of plants for export and licence conditions for the authorisation of trade. That is a rather different order from the descriptions and things that apply. I would take those sequentially. I would want improvement in that degree of mutual recognition—harmonisation is perhaps the wrong word—and acceptance on the facilitators of trade. Things such as nutritional labelling and so on are further down the track.

I must confess that it is not my area of expertise in the Food and Drink Federation, and I do not have much personal knowledge of what the US legislation is, so I could not really comment on whether the US legislation is or is not better at consumer protection or consumer benefit. I am afraid that is not my area of expertise.

Baroness Coussins: I take the point that you made earlier about the trade associations not being the appropriate bodies to conduct the regulatory dialogue, but are you aware of any regulatory dialogue between the regulators at the moment? I am trying to get at what added value the TTIP negotiations give to that.

Andrew Kuyk: Certainly we are aware. To go back to one of the issues around GM for example—again, I apologise, it is a term of art—there was an agreement a while ago to do with low-level presence in animal feed. We have been lobbying consistently for the Commission to agree a similar low-level presence tolerance for food. Perhaps it is not a direct dialogue, but that is very much an issue on which we would hope the TTIP negotiations would focus minds in that debate, which has been ongoing for quite some time in Europe. That is a concrete example of where TTIP will give greater force to issues that are already under discussion and in play in those kinds of areas.

Q222 Earl of Sandwich: May I just as a post-script go back to tariffs again? Lady Bonham-Carter mentioned Lord Green’s letter from UKTI. You have probably seen that an analysis was done of the simple and not-so-simple ways through TTIP potential sticking points. Tariff reduction/elimination is the only thing in the box marked most important and least difficult. This was in April, so do you still regard that as very out of date?

Andrew Kuyk: I do not know that I am in a position to be able to comment because I am not close enough to the negotiation. I would certainly say that as a general principle it ought to be in the less difficult category. I am not sure how I would rate it in importance, because that is more traditional trade negotiation territory. People who have been at it for a long time understand tariffs and mutual concessions on tariffs. When you get into things like GI, GMs, hormones and some of the other mutual recognition, that is rather more difficult, specialised territory. As a general principle, tariffs ought to be easier than a lot of the other stuff that we are talking about. For the reasons we discussed earlier, I am not sure how significant they are, but again, in terms of the momentum of a negotiation, if you cannot unlock the easier bits it has a depressing effect on the other things. I would hope that progress can be made on that.

Baroness Bonham-Carter of Yarnbury: Just picking up on that, Professor Evenett said on that matter that it is very much driven by the Food and Drug Administration in the US and depends on whether there is any change in leadership there. Are you aware of that being a possibility, and do you agree?

Andrew Kuyk: I am not aware, and as I said at the outset there is a difference between what one might discuss in a seminar and what one might discuss in a public session. I do not think I really want to comment further on that.
Q223 The Chairman: We have kept you a very long time. We were going to have two evidence sessions and you have pretty much covered the whole lot, but there is one final question I would just like to put to you if I may. It concerns third countries. Obviously it is not your remit, but what do you think might be the impact on third countries of the sort of deal you would like to see struck between the EU and the US on agriculture, food and drink? Should third-country producers, especially in the developing world and middle-income countries such as Brazil, expect to reap any benefits from this? Would the impact be neutral or potentially damaging? I realise you are not directly involved, so you are giving an opinion rather than anything else.

Andrew Kuyk: It is an extremely interesting question and I was giving a bit of thought to it. It is difficult to say. One thing that would be clear is if there is a successful outcome to these negotiations that will materially alter the landscape in international trading relationships, because self-evidently the EU and the US are both big players in global markets. A trade deal between them will alter the dynamic generally. As I said at the outset, in principle our first preference would be for a successful comprehensive multilateral trade deal in the Doha process. The faint hope of that has been kept alive by the recent mini Doha thing that at least keeps the process in play. As to whether a successful EU/US deal would act as a catalyst, if people perceive that as a threat, one way of mitigating that threat would be possibly to accelerate those multilateral discussions so that the outcome were more generalised.

It is a really interesting question and I think people around the world will be looking at this and trying to work out quite what they think the consequences for them will be. I can see it going both ways. The one thing that is a given is that it will alter the broader dynamic and will have a consequence. What that consequence will be I do not know, but again, where people see it as a threat they will seek to mitigate that threat. Whether that is by a return to a multilateral agreement, whether that is by giving impetus to more bilateral deals that will help counterbalance that I do not know, but it will be very interesting to see.

Phil Bicknell: Fundamentally, if you look at any trade agreement it will, as Andrew says, alter the dynamics. Take NAFTA itself, which has altered the trade flows with America. Historically Japan would have been its largest trading partner when it came to agricultural and food goods. Now Canada and Mexico are firmly placed as number one and number two. There is always a risk in trying to look at a crystal ball and understand what the impacts are going to be in the future, particularly when we look at agricultural markets. The markets, certainly since 2008, have been a lot more volatile.

Other factors are contributing to differences in demand flows around the world, particularly the growth of the Chinese economy and population growth in other parts of the world. Demand is changing the dynamics of that trade. Brazil was flagged up there in the question, and on the idea in particular of what the impact could be on Brazil, let us bear in mind that Brazil is obviously a major agricultural producer and increasingly a major player in agricultural export markets to rival the US in many instances. If that prompts more free trade discussions—I am aware that the European Union is undertaking a number of active discussions right now—it is probably a good thing that it is prompting further discussion about the opening up of trade globally.

The Chairman: Gentlemen, thank you very much. We have taken much more time with you than was originally intended, and that is a reflection of the depth and quality of your answers. Thank you very much indeed.
British American Business and British American Business Council – Written evidence

We are writing on behalf of British American Business (BAB), the British-American Business Council (BABC) and their 2,300 member companies on both sides of the Atlantic. BAB is the leading transatlantic business organisation, headquartered in London and New York City and dedicated to helping its member companies build their international business. The BABC is the largest transatlantic business network, with chapters in more than 20 major business centres throughout the US and UK.

BAB and the BABC have been strong supporters of a comprehensive EU-US trade and investment agreement and are playing a leadership role in promoting the ongoing negotiations for a Transatlantic Trade & Investment Partnership (TTIP). Our initiatives and activities include the launch of a new EU-US Trade & Investment Forum, road show events with local dialogues in various regional business centres and serving as secretariat for the All-Party Parliamentary Group on EU-US Trade and Investment, established in Parliament in May this year. In addition, we have intensified our policy work, providing input to UK, EU and US stakeholders on various issues. We look forward to continuing this dialogue.

The answers contained in this document are based on considered input from our member companies. Even though the submission mainly reflects a UK perspective given the questions posed, we would emphasise that a successful TTIP represents an opportunity for all EU Member States to further improve trade and investment conditions for transatlantic business and that we speak equally on behalf of our membership on both sides of the Atlantic.

THE TTIP

1) What are likely to be the most challenging chapters of the TTIP and why? What is the minimum level of ambition necessary in each chapter? How can the ambition of each chapter be maximised?

Individual efforts to improve the conditions for transatlantic trade and investment have been ongoing for decades, and many of the specific challenges are well known on both sides. However, we believe that the concerted effort to improve the transatlantic economic environment in the form of a comprehensive agreement provides opportunities to overcome many of the challenges of the past. We believe that all chapters of the TTIP hold challenges, as all fields of negotiation represent subject matters which are well known as generators of costs (e.g. tariffs, or complexities, such as regulatory duplication), but where for nearly two decades a series of transatlantic economic initiatives have failed to unlock paths to deeper transatlantic economic integration.

While all chapters of TTIP will be challenging, none present insurmountable obstacles now that the leadership and business sectors on both sides of the Atlantic have stated their strong support for a successful outcome. Negotiators on both sides have significant experience in fashioning the language of trade agreements, and know each others’ systems well. They understand as well the key problems in our trade relationship – including agriculture – and have used the period leading up to the launch of the negotiations to begin a process of addressing these.
That said, the most challenging issues are likely to be in the regulatory area, especially in financial services and data protection, where regulators are focused on their domestic mandates and are not accustomed to considering the impact of their decisions on external relationships. Here, the structure of the agreement will be important as the main body will need to create a framework for accelerating regulatory cooperation by developing a goal toward which regulators should strive towards maximising the compatibility between our regulatory regimes where possible and providing the tools to achieve this.

The level of ambition desired for TTIP also suggests that the governments on both sides will need to remain politically engaged to ensure that all actors – regulatory agencies, member states and sub-federal governments – are committed to achieving them.

One distinction we would draw, however, is as to acts of integration that can be effected within the scope of authority of the negotiating principals such as the US Federal Government through its Executive branch, and the European Commission (EC) on behalf of the European Union. And in the US, with its multiple levels of government with regulatory agencies, the US States, and bodies with mandates and scope not directly sensitive to Executive branch direction, will present additional challenges for the delivery of the envisaged changes that are meant to stimulate new economic value. For that reason we would encourage the two parties to the negotiations to draw in as ‘signatories’ in relevant ways (for example as ‘declarants’ as to what they will do to deliver parts of the agreement within their scope) actors whose engagement will be necessary, ranging from regulatory agencies, to standard setters, to sub federal government in the US. Further consideration should also be given to extremely ambitious approaches such as default ‘big bang’ recognition of essential regulatory equivalence of our US and EU regulatory systems en masse, leaving exceptions to be argued case by case by regulatory agencies against a timescale.

Continued strong political leadership will be needed in particular to ensure that technical negotiations do not predominate to the exclusion of the overall macroeconomic and geopolitical goals and considerations for the negotiations. Finally, we believe that strong political leadership and stakeholder pressure, including from business, will be needed. In order to underpin greater levels of stakeholder engagement, groups in business and civil society need to reach out to their own members in order to communicate more actively the strong case for the agreement and its benefits, so as to popularise the cause beyond the traditional policy community.

To that end BritishAmerican Business and the BABC, in collaboration with their membership, other business organisations and local partners have been active in promoting a series of road shows in cities such as Glasgow, Birmingham and Leeds to raise awareness, particularly amongst SMEs, of the potential of TTIP. The events have demonstrated that TTIP is a special, tangible and local opportunity. Before the end of 2013 we expect to have further road shows in Reading, Manchester, Edinburgh, and Newcastle.

2) Is the time-frame of completing negotiations within two years realistic? If not, when is it realistic to expect a deal to be agreed, and what can be expected to be achieved in the next two years?

We believe that it is realistic that an agreement can be initialed by July 2015. Key dates most relevant in defining the window for an agreement are the arrival of a new European
Parliament after elections in June 2014, the expiry of the current European Commission in October 2014 and the election of a new US President in 2016. Many areas of the agreement are likely to record actions and processes that will start, continue or complete at times beyond any date of signing, and there will need to be a balance of deliveries timed to take effect immediately (e.g. tariff elimination and other elements of the main market access part of the agreement) and other largely regulatory implementations that will happen in the future (e.g. detailed roadmaps for regulatory convergence with key sectors such as insurance or chemicals).

3) **How should the Commission most effectively conduct the negotiations in terms of ensuring appropriate transparency and communication, as well as full consultation with stakeholders, NGOs and EU Member States?**

It is key for the negotiators to seek dialogue with stakeholders in business and civil society in order to ensure that potential risks and challenges are identified in different sectors concerned by the negotiations. DG Trade is offering exemplary commitment to delivering timely detailed information to different stakeholder groups about the negotiations they are leading on behalf of the Commission and the Council. We appreciate the current efforts and call for continued regular outreach to business and civil society throughout the entire negotiation process.

Leadership offered by one Directorate can sometimes appear to be undermined by lack of commitment or opposition from other Directorates, and compromised by formalistic institutional barriers such as the expression of cross cutting mandates. For example, the Secretary General’s department plays a key role in expressing and facilitating consensus around aspects of European regulatory process. Transparency around not just the conduct of negotiations but the positive acts in support taken by these other directorates and the Council through its committees would provide a fuller picture for stakeholders, in turn helping in the assessment of true prospects for agreement. This type of commitment could be expected to be sought and received from the President of the Commission. We understand President Barroso has established and will chair a task force of Commissioners whose Directorates are implicated in TTIP, while the Secretary General, Catherine Day, chairs a similar task force comprised of the Directors-General themselves.

4) **How will TTIP negotiations be affected by relations with third countries, such as China, and also developing countries, including in relation to existing and pending bilateral agreements? How do you anticipate the TTIP interacting with the Trans-Pacific Partnership (TPP) and NAFTA, for example?**

Existing studies have demonstrated that TTIP will not only expand EU-US trade but also result in increased trade for the rest of the world. Both the EU and the US have stressed that TTIP will be negotiated in conformity with the WTO, though going further in some areas. We view a successful conclusion of the negotiations as an act of responsible leadership by two economic blocks representing about half of global GDP. It will be a historic, defining act of support for the rule of law, democracy and fair and open markets globally. The agreement should provide a template for integration that both the US and the EU can use in subsequent agreements with those countries that would care to view and
adopt any agreed disciplines as a shared basis for significant aspects of global economic governance. This would constitute, as it were, a globally available workshop for norms based on agreement between representatives of societies at similar stages of development, for example in terms of common expectations for consumer, labour and product standards. TTIP along with EU preferential trade agreements and US agreements such as TPP, NAFTA would form an organic fabric providing a rules-based environment covering the vast majority of global cross border economic activity. In ambition, negotiators should seek out best practice and minimum benchmarks from existing agreements. In practice, with the US being a party to both a putative TPP deal and NAFTA, any act of convergence delivered for TTIP will prima facie strengthen access through and across those other markets, and similarly vis-à-vis the European preferential or regional trade agreements. TTIP together with other major negotiations such as TPP and the FTA between the EU and Japan will spur continued trade activity by other trade zones such as the BRICS countries, Indonesia and Mexico and act as a bulwark against protectionism. The prospective negotiations for an EU-China Investment Agreement are a case in point as is China’s outreach in trade dialogue with Switzerland, Korea and Japan. Other important examples are the multilateral efforts in the WTO for the Bali talks and the negotiations for the Trade in Services Agreement (TiSA). After TTIP is included, the US and the EU will need to ensure that TTIP is compatible with NAFTA and the EU’s FTAs with Canada and Mexico, essentially expanding TTIPs scope. In addition, the US should aim to negotiate ambitious FTAs with the European Free Trade Association (EFTA) and Mexico.

5) What is the potential impact of TTIP on consumers, whether in the UK, EU or US?

The UK, the EU and the US provide high standards of consumer protection by sophisticated systems of regulation which deliver comparable outcomes and high absolute standards of safety. Similarly, studies suggest that EU and US citizens have similar underlying appetites for risk and protection. The maintenance of duplicative and divergent approaches to managing the same problems is an expensive and unnecessary exercise. TTIP will help to align different approaches to consumer safety, ensuring the highest level of protection for consumers possible. Across sectors, as new evidence emerges, and with experience based on understanding of past failures constantly available, the regulatory fabric can be subject to continuous assessment and, where needed, improvement.

IMPACT OF THE TTIP FOR THE UK

6) What aspects of the negotiations will be of the greatest significance to the UK, including its component parts?

The US is the UK’s largest export market receiving 28% of non-EU destined exports, and both countries are the top foreign direct investor in each other’s markets. Because of the strength of the UK’s existing trade and investment relationship with the US, any agreement will represent a package of measures which cumulatively add up to a macro proposition and offer significant benefits across the UK economy, and inter alia across our own membership.

We suggest strong prioritisation for measures particularly helpful to SMEs such as the simplification of customs and trade facilitation procedures (e.g. in regards to visa issuance
commitments) and simplification and aligning of regulatory processes which disproportionately impact SME export potential. While TTIP will help reducing exporting costs for bigger companies, the additional gain for SMEs is that it will become easier for them to enter the US market with new services, products and business models that have been too costly for them to export hitherto. In turn, larger companies, who transact with smaller companies in their supply chains, will also stand to benefit from increased SME level competitiveness.

7) For UK consumers and business, where are the greatest gains to be made and where could they be disadvantaged? What are the most significant non-tariff barriers for British exporters and importers?

For gains, please see answers to questions 5 and 6.

We are not aware of areas under discussion in TTIP that would lead to disadvantages to business and consumers. Increased trade in certain sectors will likely lead to an increase in demand in employment of skilled workers, and expand consumer choices. Furthermore, we have no grounds to believe that TTIP will either lead to deregulation per se nor to a lower level of consumer protection and environmental standards. We are in favor of transparent, effective, aligned and transatlantic regulation and regulatory frameworks, without prejudice to absolute numbers or regulations, but where possible with bias towards clarity of expression and brevity in regulatory form. Regarding the most significant non-tariff barriers (NTBs) that UK business confronts when accessing the US we would draw attention to the following non-exhaustive list:

a. Divergent regulatory requirements for product safety, service delivery and rights of establishment and professional practice.
b. Barriers relating to third party testing and export safety conformity testing often administered in obscure ways.
c. Lack of transparency in accreditation processes for the purposes of type approvals for export/import certification.
d. Obscurity and complexity in access to standard setting processes.
e. Plethora of state and city wide regulatory form and substance.
f. A legal system with unpredictable and variable bases for tort damages awards which amounts to a de facto investment barrier.

8) What are the political and practical challenges within the UK to an agreement?

We do not believe that political and practical barriers are significant in the UK. We consider the biggest political challenge to be raising awareness beyond the policy community and with potential beneficiaries such as SMEs and citizens at large whose interest and capacity for engagement so far have been limited. Practically we would like to see larger companies (as some of our member companies are commendably doing) playing a role in energising and educating their supply chains as to the potential gains available from TTIP, in particular so that the UK Department for Business, Innovation & Skills (BIS) can build up a detailed, granular picture of potential impacts and priorities.
9) **How can the UK seek to maximise its influence at EU level as the TTIP negotiations progress?**

We believe that the UK is in the position to be influential on TTIP within Europe and has played a leading role to bring the negotiations to the current stage. Drawing from the special history of the relationship between the US and the UK, we support the TTIP negotiations building good will, credibility and bona fides towards the European Union, while promoting a UK aim that is entirely compatible with a European one. Additionally, we believe that a TTIP-enabled European Union will be one that is more attractive to UK and American business. TTIP will deliver a more coherent European economic landscape, for example contributing to completion and/or upgrading the Single Market, and likely in its own right to contribute a growth friendly policy environment.

10) **What might be the potentially adverse effects for the UK of a failure of the TTIP negotiations?**

We believe that a failure of the TTIP negotiations would be a huge missed opportunity to strengthen the transatlantic market, to create new jobs and growth and to define future developments in trade globally. A failure of TTIP would also work against the current trade efforts shown by the EU which the UK strongly supports. We are convinced that the majority of the population of the UK would endorse the positive impact of the EU in terms of free trade. Failure of the EU and US to deliver on a key economic issue such as TTIP would only weaken the case for the advantages of the UK remaining within the EU. Conversely, a successful TTIP would add great strength to the position of those that argue that the UK is better situated within the heart of an EU structure that has demonstrated its ability to deliver on economically important initiatives.

**THE EUROPEAN UNION AND OTHER MEMBERSTATES**

11) **How could the Commission seek to ensure that the interests of the Member States are represented, and that a satisfactory outcome with regard to Member States’ interests is secured?**

We believe that the Commission should focus on ensuring that across the Directorates there is strong coordination and commitment, led by the Commission President. In terms of Member States interests, we are confident that existing structures for communication and decision making involving the Council are being respected and we would only add that we expect that a high level of engagement by stakeholders such as the European Parliament will pay dividends in terms of that body’s eventual scrutiny of the agreement. National legislators have a role to play also in ensuring that the Commission, the Council and the Parliament are acquainted with priorities in some cases by means of direct communication and engagement, such as visits to Brussels, outside the usual framework of institutional decision making.
12) What are likely to be the most significant potential gains and difficulties for other Member States? How do UK interests and those of the other Member States coincide or run counter to each other? What would you identify as areas of common European interest?

We are not qualified to offer views on other member states offensive or defensive priorities, but are convinced by pan EU evidence that TTIP will provide economic benefits for the entire European Union and not just for the UK.

13) From the EU perspective, what are likely to be the biggest political, institutional and practical challenges to a deal? How can they be overcome?

We see a challenge from an EU perspective in the integration of different authorities and regulations in the different EU Member States into the design and implementation of a comprehensive agreement. For example, in some cases, exporters to the EU are confronted with nationally different regulations and procedures in each of the 28 EU Member States. We believe that TTIP will help find ways to address these differences, contributing to a single European market, for example through streamlined customs facilitation processes and procedures.

14) From the US perspective, what are likely to be the biggest political, institutional and practical challenges to a deal? How can they be overcome?

The key US challenge will be to unite around one negotiation a series of disparate actors including branches of the federal government, regulatory agencies, standard setters, states and state regulators so as to deliver a meaningful package for agreement.

Consolidated Submission on the Transatlantic Trade & Investment Partnership (TTIP)

Introduction

This document contains a consolidated submission on the Transatlantic Trade & Investment Partnership (TTIP) on behalf of BritishAmerican Business (BAB) and the British-American Business Council (BABC) and their 2,300 member companies on both sides of the Atlantic. BAB is the leading transatlantic business organisation, headquartered in London and New York City and dedicated to helping its member companies build their international business. The BABC is the largest transatlantic business network, with chapters in more than 20 major business centres throughout the US and the UK.

General

- We expect a comprehensive transatlantic trade and investment pact to significantly benefit our member companies on both sides of the Atlantic, creating jobs, spurring
economic growth and strengthening the existing extensive trade and investment relationship between the United Kingdom, the United States, and the European Union.

- We believe that businesses as well as consumers and workers will benefit from a high standard agreement that addresses 21st century trade and investment issues, paves the way for improved engagement with other key economies around the world, and delivers a strong transatlantic platform for sustainable economic growth.
- We welcome the transparent approach that both the USTR and the European Commission have adopted in preparation for the negotiations. Stakeholder dialogue provides for important input and feedback, helping negotiators to understand priorities across the economy and society, and we look forward to continuing to participate in such dialogue, in particular in the UK.
- On the EU side, we want to see the UK at the heart of the policy debate – including trade policy – in a reforming European Union. We see a TTIP-enabled Europe as one much more attractive to our member companies – and other companies – on both sides of the Atlantic.

**Market access**

**Goods**

- Eliminate all tariffs on transatlantic trade in qualifying goods. A subset of tariff eliminations could form an early harvest in the negotiations. For some limited cases of sensitive products where tariffs remain high, phase-out periods should be as short as possible.

**Services and Investment**

- Agree on strong rules to help ensure fair treatment of prospective investors during the crucial pre-establishment phase ahead of market entry.
- Build on existing liberalisation agreements such as the EU-US Open Skies Agreement to further integrate the transatlantic market and to enhance competition and investment.
- Prohibit localization requirements (e.g. data storage, server location, domestic employment quotas).
- Ensure that services providers may choose the juridical form of their business operation (e.g. subsidiary, branch, etc.).
- Prohibit nationality requirements for senior management and board members.
- Expressly permit cross border data flows and external data storage, management, and processing.

**Transatlantic digital economy**

- Establish a framework with principles embedded within the agreement that allows for flexibility and recognises different approaches on privacy.
- The framework should ensure that companies can continue to pursue innovation and creativity and should support trade in areas such as cloud computing.
• Foster cross-border data flows of information and access to digital products and services and prohibit requirements mandating that service suppliers use local servers or other infrastructure.

• Enhance regulatory coherence such as mutual recognition or compatible principles in areas such as spectrum and network access, and media/pay-tv platforms convergence with broadband.

**Public procurement**

• Ensure national treatment for all levels of public procurement and increase market access at sub-federal and regional levels.

• Ensure that no further measures will be adopted that restrict market access in procurement beyond measures already in place.

• Work to overcome weaknesses in the Government Procurement Agreement (GPA) and other existing trade agreements the EU and the US are part of. We support adding “GPA plus” elements complementing the revised GPA disciplines so as to deliver greater reciprocal access to procurement markets.

• Establish standards for transparency, anti-corruption, and the rule of law in procurement practices that can serve as a template for other trading nations around the world.

**Regulatory issues and non-tariff barriers**

• Establish a framework that restates and strengthens existing ambitions for market integration, rule convergence and technical cooperation.

• Set out a process for continuous regulatory coordination and transparency for the development and implementation of efficient, cost-effective and compatible regulations and standards, especially in forward looking high technology areas such as data security, cloud computing, e-mobility, e-healthcare and nanotechnology.

• Agree that no spheres of economic activity should be excluded from the scope of the framework and establish a principle presuming functional equivalence by default by an agreed future date.

• Define and agree upon intra-institutional interlocking ‘rendez-vous’ points to drive aligned follow-through on agreement outcomes and append statements of regulatory agencies, standard setting bodies and sub-state entities as indications of intended agreed actions to give effect to the agreement.

**Rules**

**IPR**

• Build on the leading strong protections and enforcement provisions that already exist in the EU and the US and agree on US-EU IPR rule convergence and alignment (e.g. patent filing grace period, resistance to erosion of the global IPR, and EU adoption of trade secrets protection regulation).

• Resist indigenous innovation protectionism and recognize the importance of promoting effective and robust IP frameworks and IP protection globally.
Trade Facilitation

- Establish modernized, streamlined, and coherent customs processes (e.g. a coordinated customs clearance and security procedures) to facilitate transatlantic trade, particularly to the benefit of small and medium sized enterprises (SMEs).
- Increase the customs “de minimis” level for customs filings to facilitate the access of the smallest enterprises to the transatlantic marketplace.
- Cooperate to develop speedy, electronic and commercially meaningful customs processes and standards that make international trade an accessible and realistic prospect for all, especially for currently non-exporting SMEs.
- Further develop cooperation on air cargo security and trusted trader programs.
- Take the substance of the Trade Facilitation Agreement, the forthcoming Trade in Services Agreement (TiSA) and World Customs Organization (WCO) guidelines to use this as a basis for future multilateral template leadership.

Other Areas of Transatlantic Cooperation

- Cooperate to ensure level playing field access third country markets with respect to investment and services.
- Agree practical acts of phyto-sanitary surveillance cooperation in third country supply chains to build confidence in the outcome quality of respective systems and agree access concessions for sensitive sectors such as poultry.

17 October 2013
The British Chambers of Commerce (BCC) is a dynamic, high-profile and independent business network of 53 Accredited Chambers across the UK, representing thousands of businesses of all sizes and sectors. Local Chambers sit at the heart of the community, working with businesses of all sizes, and representing all sectors. Our mission is to make the Chamber network an essential part of growing business; we do this by sharing opportunities, knowledge and expertise.

We’ve been growing British business for more than 150 years, providing companies with practical support, useful connections and valuable access to new ideas and innovations. Even though we’re not for profit, we’re powerfully placed to help those who are.

Although there is a lot of hope and optimism about the benefits for jobs and economic growth as a result of the TTIP, there will be a number of challenges that will need to be addressed:

**Public procurement**
Public procurement is anticipated to be a challenge. The “Buy American” clauses at the US Federal and State level are protectionist measures obliging public authorities to hire domestic construction workers and to buy domestic products. The public procurement market offers huge business potential for EU companies.

Opening up government procurement to allow suppliers to bid for contracts in both markets promises to be a challenge. This implies abolishing or amending the “Buy American Act”. Government purchases of aircraft, public transport equipment, ICT, are key here. In addition, a whole range of measures protecting consumers, public health or the environment will be screened for their protectionist impact. There is a great need to guarantee “equivalent” protection in the US and the EU, while not necessarily applying identical measures.

**Non-tariff barriers**
Although average tariff levels are relatively low already, various non-tariff barriers or NTBs (often in the form of domestic regulations) on both sides of the Atlantic constitute important impediments to deepening transatlantic trade and investment linkages. Non-tariff barriers are the highest for food and beverage products, with imports from the US facing a 56.8% tariff equivalent, while EU exports to the US of these products face a 73.3% extra cost. Among services, financial services are one of the sectors with the highest estimated NTBs. In this sector, EU barriers against US exports amount to 11.3%, while US barriers against EU exports are estimated to be about 31.7%.

Registration, documentation and customs procedures: Generally, in the US there is a lack of automatic approval of EU products. For example, the US does not necessarily accept the EU certificate of origin. In practice, this means that European companies must compile further product documentation.

In addition to that the time used for customs declaration has increased as a result of ‘national security measures.’ Occasionally, the US uses its authority to exclude foreign
products and services in areas related to national security interests. However, the Act supporting this authority (Section 232 of the Trade Expansion Act of 1962) does not require that the industry present direct evidence of violation of security by the use of foreign products and services, meaning that the US industry has been given a tool that, in principle, can be abused as protection against foreign competition.

**Competition**

The removal of international trade barriers can open up some domestic industries to competition. Domestically the EU has always made a point of developing European competition policy as the EU creates an integrated market. The EU has applied the same internationally but the competition provisions it has included in FTAs have (to date) been fairly modest.

**Intellectual property rights**

The EU and UK’s creative sectors rely on IP protection. There is a need for a coordinated effort to harmonise protection of intellectual property rights for emerging technologies and to align US and EU policy on counterfeit goods and protecting intellectual property rights in third countries.

**Regulation**

EU laws and regulations cannot be repealed or amended by the TTIP, or any other international agreement, but require a separate legislative procedure, with the approval of all EU Member States and the European Parliament. The same goes for the US. One regulative condition that will be a challenge is the difference between the standards of the states. The US will impose a regulation at the national level with each state imposing state level regulations. This was the greatest barrier experienced by one of our members, a sports and nutritional food company. They struggled with the various costs associated with different state level regulations, and were held back from entering the market as a result for about 2 years.

The US increasingly requires that non-US products comply with regulations on consumer protection (including health and safety) as well as environmental protection. In this connection a grey area exists between formal and informal requirements. The formal requirements are statutory and issued by a public institution, while the informal requirements are not statutory and frequently are defined by e.g. trade organisations. In practice, the informal requirements are often necessary as they work as trade standards. This is often an indirect protection of US products and standards. Informal requirements and standards can therefore be changed without notice with extensive consequences for the market.
In contrast to reducing tariffs, the removal of NTBs is not as straightforward. In fact, it is unlikely that all areas of regulatory divergence identified actually can be addressed. There are many different sources of NTBs and removing them may require constitutional changes, unrealistic legislative changes, or unrealistic technical changes. Removing NTBs may also be difficult politically, e.g. because there is a lack of sufficient economic benefit to support the effort; because the set of regulations is too broad; because of consumer preferences, language and geography; or due to other political sensitivities.

**Free movement of people**

Lastly, on free movement of people, the extension of the US visa waiver programme to all Schengen countries and the disagreement around visa requirements for intra-company transfers of individuals remains to be solved. A major difficulty here lies in what to do with third country nationals, for example the Indian IT engineer transferred from France to San Francisco.

**Concluding remarks**

The scope and ambition of the agreement the current timeline is challenging. It is likely that the negotiations will be carried over to the next Commission, leading to a delay of around 6 months. To achieve gains from regulatory convergence, it is imperative that all players involved, the Commission, assisted by the EU delegations, and the Member States – engage proactively. What is needed are joint efforts at all levels to convey concerted messages to our strategic partners underlining the importance for our bilateral relationship of solving the barriers that exist. Support for businesses should include: awareness training on concluded FTAs with information on implications of FTAs provided.

11 October 2013
The British Screen Advisory Council welcomes the Committee for External Affairs’ inquiry into the Transatlantic Trade and Investment Partnership (TTIP). We are responding to your call for evidence on behalf of the audiovisual industries.

BSAC is an independent, industry-funded umbrella group bringing together many of the most influential people in the audiovisual industry. Our Membership includes Broadcasters, ISPs with content interests, games developers, film and TV producers and new digital media companies. We have a history of engagement with international trade negotiations. During the Doha Round, DG Trade requested that we act as a European advisory body for film interests and our work was actively supported by a broad cross section of audiovisual companies in the UK. We are particularly well-placed to advise on trade issues given the breadth of our membership across the audiovisual sector and our ability to draw on specialist legal and economic expertise where necessary.

Recognising the potential benefits for the EU in strengthening the already successful trade relationship with the US we recently commissioned two reports on the audiovisual sector to build the factual basis for negotiations. This is important as the audiovisual sector is a major creative and economic success story for the UK. We are a large part of the wider creative economy, which has been identified by Government as one of the areas with the greatest potential for future economic growth. Indeed, the DCMS estimated that the creative industries accounted for 10.6% of the UK’s exports in 2009. Against this background we wished to explore whether the sector’s historical position, where we are considered a special case and excluded from internal negotiations, remains valid.

The first report, ‘Review of the Trade Barriers in the US Audiovisual Market’, responds to requests from Government to identify any barriers to trade and the benefits of an agreement for the sector. Undertaken by the legal firm, Reed Smith, it found that there were no legislative and regulatory barriers that may restrict or impede the participation of UK firms in the US, and so there are no offensive interests for our sector. The second report was prepared in response to Government’s request to explain the economics of the audiovisual industries and how these bear on the proposed EU – US free trade agreement. The paper explains the economic characteristics of the sector, the nature of the public policy interventions and the future challenges in an industry that is changing extremely rapidly.

The conclusion of both reports is that there are clear benefits to retaining a ‘carve out’, as has been agreed in the opening mandate. We are aware that the ‘carve out’ emerged from pressure from the French. Having considered these reports we believe that the benefits of the current position may be even greater for the UK audiovisual sector, which already enjoys a healthy trading relationship with the US that would not be enhanced by the treaty and which needs to maintain maximum freedom of manoeuvre to adopt regulatory interventions as necessary across the sector in response to a fast-changing and uncertain market and technological developments.

16 September 2013
The Chairman: Lord Brittan, thank you very much for coming to give evidence to this inquiry. This is the first session of our inquiry into the Transatlantic Trade and Investment Partnership, and it is on the record and being webcast. We are very grateful to you for coming, because you have had experience of the subject that we are dealing with and, I hope, will be able to give us some guidance as to the likely obstacles, opportunities and other hazards on the way. My colleagues have all indicated a desire to ask one question or another, but I will kick off and ask why, in your opinion, past attempts to build an EU/US free trade agreement have not succeeded, what overarching lessons can be learnt so far as the present round is concerned, and what, if anything, is different this time.

Lord Brittan of Spennithorne: My Lord Chairman, I think the reason why things failed last time is very clear and very simple. It is that whereas the US Administration and the EU Governments were very interested in proceeding down this route, the real obstacle was the American regulatory agencies. The American regulatory agencies were not prepared to enter into an agreement whereby there would be mutual recognition of the activities of the
American regulatory agencies and the European regulatory agencies. Nor were they prepared even to allow there to be a kind of subcontracting arrangement whereby each side would apply the other side’s regulatory criteria as an agent. That undoubtedly was the stumbling block.

I remember very clearly the American Administration people saying to me that they simply were not able, they felt, to take on the regulatory agencies. They did not feel that the political support for doing that would be there, and the regulatory agencies were deeply respected and regarded as guardians of the American economy. That is why things failed.

The Chairman: Do you think there is any reason to suppose that the American regulatory agencies will be more accommodating on this occasion?

Lord Brittan of Spennithorne: I do not have any personal contact with them or knowledge of them, so I cannot say that I have any reason to think that it will be the same as last time, but I have not seen any evidence of a change either in their views or in their power. That may well be something that others are better able to judge, because I have not had any recent detailed contact with them or with those in contact with them.

Lord Trimble: We were told that the Americans are keen to get these negotiations concluded, or something substantial concluded, basically within the lifetime of the current President, within the next two years. Do you think this is feasible?

Lord Brittan of Spennithorne: If the obstacle that I have referred to no longer exists, the details of the agreement I think can be achieved in that time. I do not know the extent to which either side would want to make changes to the outlines that were agreed last time, subject to that blockage, but I would have thought that was ample time either to reach agreement or for it to be clear that no agreement is possible.

Lord Trimble: You mentioned there some things that were tentatively agreed last time, before the blockage came in from the US regulatory agencies. Was much achieved or how far did they get last time?

Lord Brittan of Spennithorne: Informally, let us say.

Lord Trimble: Yes, I appreciate that.

Lord Brittan of Spennithorne: I think both sides did feel that there was a realistic prospect of achieving an agreement, and I do not see why—granted they have come back with that experience—there should be any less chance this time.

Lord Trimble: There is quite a bit there that could be built on?

Lord Brittan of Spennithorne: I believe, yes.

Q225 Lord Lamont of Lerwick: You talked about the agencies. Does that also include public procurement? Was that an issue, and do you think that would be a big issue this time?
Lord Brittan of Spennithorne: I do not recall that as being one of the major issues, and I have no reason to think that. I just do not know whether that has come up more recently as being one of the bigger obstacles, but that was not the main one at the time.

Baroness Bonham-Carter of Yarnbury: Unlike previous free trade agreements, where the negotiations involved everything being concluded and agreed before anything was instituted, I understand that this TTIP is intended to be a living agreement: in other words, things occur as and when they are agreed. Does your experience suggest that this can work?

Lord Brittan of Spennithorne: I am a little sceptical about the so-called living agreement. It depends entirely on the procedures that are agreed for making the changes. If you have to go through all the same procedures as were required to set up the initial agreement, it is living in the sense that it can be amended, but the amendments are going to be no easier than the initial agreement. On the other hand, if there is going to be some arrangement for a greater degree of flexibility in the sense of fewer procedural hurdles to overcome in making changes to it once it has been agreed, that could work, but I am a little sceptical about whether there would be a real readiness to agree to that.

Lord Radice: What do you think is the most important political difficulty likely to occur that would block down an agreement or make an agreement more difficult?

Lord Brittan of Spennithorne: I do not have a particular one to identify, but obviously on the European side, the audiovisual thing is regarded as something that has to be excluded as far as the French are concerned, and whether that would be regarded as a deal-blocker as far as the Americans we do not know. This has already come out. I am not aware of any new particular things.

Lord Radice: But I wonder about the word “political” from the American side. Are the Tea Party likely to be a blockage, for example? Do they want to have an agreement? Do you know anything about that?

Lord Brittan of Spennithorne: To be quite honest, I do not know what their position is on this particular subject.

Lord Radice: We will be going to the United States, so we will probably find out.

Lord Brittan of Spennithorne: You will be in a better position to find that out than from me.

Lord Radice: For example, on the British side, do you think there are going to be any political issues?

Lord Brittan of Spennithorne: I think that Britain, on a multi-partisan basis, if I can put it that way, is going to be one of the most enthusiastic cheer leaders for this within the European Union and across the Atlantic.

Lord Radice: Do you think that even those who are strongly Eurosceptic are likely to be in favour of this agreement?
Lord Brittan of Spennithorne: You would have to be bizarrely and curiously fanatical in your Euroscepticism to object to an agreement between Europe and the United States when a lot of the Euroscepticism is founded on a preference for relations with the United States than with Europe, so I should be surprised if that happens.

Q226 Lord Foulkes of Cumnock: My question follows on from that, Lord Brittan. It is not just Euroscepticism, it is the whole question of Britain’s membership of Europe that is perhaps more uncertain now than it was when you were Vice-President of the Commission. Surely that is going to make a big difference. Does it not raise questions in the negotiations, and does it not influence the way we approach it from the UK Government’s point of view?

Lord Brittan of Spennithorne: It does, in a massive way. If people think that we are halfway out of the European Union, our influence on the negotiating position of the European Union in any negotiations with the United States would be much reduced. The Americans have made it quite clear that they very much want us to stay in the European Union. If they thought that we were halfway out, their interest might be reduced. I am less sure of that, but I am absolutely sure of the first thing.

Lord Foulkes of Cumnock: That is a very important issue. That is the key point you have made so far, I think. How should that then influence the UK Government’s approach to this, because to go in and to be looking over your shoulder at Farage and Bill Cash and everything behind you must weaken their position tremendously. How can they counteract that?

Lord Brittan of Spennithorne: By making it quite clear that they are not going to listen to those people and that they are going to continue to be members of the European Union.

Lord Foulkes of Cumnock: But how can they do that with a promise of a referendum two years after if the present Government gets re-elected?

Lord Brittan of Spennithorne: A referendum I assume that after a suitable discussion with our European partners and any modifications, agreed as a result preferably across the board and not specific to the United Kingdom, the then Government would advocate Britain to remain in the European Union.

Lord Foulkes of Cumnock: In order to make sure that we have some influence in the negotiations, the UK Government has to make that clear?

Lord Brittan of Spennithorne: I think the UK Government has more or less made clear the position that I have just said, and obviously whether you are talking to the Europeans or to the Americans, our influence is greater if they think we are going to stay there and diminished if they think we are going to leave.

The Chairman: Just pursuing what Lord Foulkes and Lord Radice said, unlike when you were doing it there are of course vastly more members of the European Union now. I would have thought it might complicate things from the EU side having to get 28 or whatever it is into line. Although it might be said that some of them have only quite a small interest in the outcome, some of them might also be very difficult. We have seen a whole range of other areas in which countries such as Cyprus and Malta can exercise a quite disproportionate influence in making things difficult if they are so minded. To what extent do you think the
much larger membership of the EU will make the Commission’s role as negotiator more difficult?

**Lord Brittan of Spennithorne:** Like with anything else the Commission does, it complicates things, simply because you have to listen to more voices and accommodate their concerns, but I think it will increase the enthusiasm for such a deal, because most of the new members, particularly the eastern European ones, will be quite enthusiastic for a deal of this kind.

**Lord Lamont of Lerwick:** Would it apply to the EEA?

**Lord Brittan of Spennithorne:** That depends on the negotiations. The answer is probably yes.

**Lord Lamont of Lerwick:** Right, so Norway could be included?

**Lord Brittan of Spennithorne:** Clearly it could be and it probably would be, yes.

**Lord Radice:** Norway of course would not have any say in the negotiation strategy.

**Lord Brittan of Spennithorne:** That is exactly its position with regard to other European matters now. It receives the fax and signs up to it.

**Q227 Baroness Coussins:** To what extent do you think that the EU’s capacity for economic growth through expanding trade with emerging markets such as China and Brazil would be either promoted or indeed inhibited by the TTIP? Indeed, is such a partnership the best way for stimulating more global trade, and related to that, what would you say would be the main impacts on the developing countries more generally?

**Lord Brittan of Spennithorne:** Clearly what would be best and what was attempted, before we return to this issue, is a global agreement, but we have not been able to reach a global agreement. The question then becomes: is a regional agreement of the kind that we are discussing today to be regarded as an acceptable second best, or is it to be regarded as undesirable? If by not reaching an agreement of this kind it were possible to reach a global agreement, or if it was substantially to maximise the chances of it and accelerate the timescale within which that would be possible, it would be reasonable to say, “Lay off this thing”, hold it out not as a threat but as a possibility that might otherwise happen, and concentrate on the global deal.

Unfortunately, the possibility of a global deal has been tested to destruction in the short term at least, and therefore whether a regional deal of this kind is in the interests of the global economy depends on the content of the regional deal. I believe and hope that partly, if you like, through British influence but I think through the desire of the European Union more generally, it would be possible to negotiate a deal that does not have adverse effects and could have positive effects on relations and trade with the rest of the world.

**Baroness Coussins:** Going back to the first part of my question, accepting what you say about a global deal not even being on the table, are there any risks that would inhibit our capacity to grow trade with emerging markets such as China and Brazil?

**Lord Brittan of Spennithorne:** I cannot say that there are no risks, but I think we are very well conscious of the importance of being able to continue and expand our trade with them,
and I cannot believe that it would be in the interests of either the United States or the European Union to include in any deal anything that would inhibit that.

**Earl of Sandwich**: Lord Brittan, the US is simultaneously entering a Pacific agreement. Do you think that is a distraction that is going to make things more difficult, or do you think it is a beneficial move?

**Lord Brittan of Spennithorne**: It is a distraction in the sense of knowing how these things work. The Office of the USTR is curiously small, even when I was there—I do not know how much it has expanded since—and it was almost embarrassing to be told that there are things they cannot administratively manage because they are quite small. It may have expanded greatly since then, and of course there is always the question of political as well as administrative and negotiating capacity. To an extent, any other arrangement, if given priority, would not inhibit but just possibly delay the ambitious timescale for reaching an agreement between the US and Europe.

**Earl Sandwich**: Do you think because it is a more straightforward agreement that that is the likely scenario?

**Lord Brittan of Spennithorne**: I do not know enough about it to be sure, but I suspect that it will not in practice turn out to be quite such a straightforward agreement as the optimistic voices, understandably and reasonably, who want it are suggesting at the moment. When the devil comes to the detail, I suspect that political will continue and there will probably be a deal, but the idea that is a shoo-in and an easy one I am a bit sceptical about.

**The Chairman**: Would you imagine that the two deals would have to go through Congress as separate items and that therefore there would be a danger within Congress of them being played off against each other?

**Lord Brittan of Spennithorne**: It is difficult to see them not having to be put through as separate items, for the very simple reason that they are separate items and would be separate items. What I do not feel I have enough current knowledge of is the detailed American political scene to know whether there are proponents of one who would wish to stop or delay the other in order to get one through and how any kind of trade-off between the two would operate.

**Q228 Baroness Young of Hornsey**: Lord Brittan, you said earlier that you thought that the eastern European countries that were member states would be quite enthusiastic about the TTIP. Are there any states you think would be less than enthusiastic about the potential agreement, and what advice would you give to the UK Government in trying to promote UK priorities with those member states with the Commission and US counterparts in pursuit of our priorities?

**Lord Brittan of Spennithorne**: Traditionally France is less than wildly enthusiastic about this kind of arrangement but I think would in the end go ahead as long as it thought its interests were protected. Similarly, as far as other countries are concerned, it is almost impossible to generalise, except to say that you have to look into the particular concerns of each one and try to accommodate them and have the usual sort of trade-offs, getting things that they want in return for acquiescing in things that they are less enthusiastic about.
Baroness Young of Hornsey: But you do not anticipate any kind of major opposition in specific states?

Lord Brittan of Spennithorne: I very much doubt it, if there is a collective agreement in particular with France to go ahead with this. Others will push their interests, but not to the extent of stopping an agreement, I would guess.

Lord Lamont of Lerwick: Do you think the European Parliament will play a role in this? Will there be any distinctive view from them and how can the UK Government and the Commission engage with them? Do you think there are lessons to be gained from the Anti-Counterfeiting Trade Agreement in this?

Lord Brittan of Spennithorne: On the last point, I just do not know enough about what happened to give a useful answer to that, but clearly the European Parliament is an important actor in this. The main suggestion I would give is that instead of regarding the European Parliament as a body that you have to deal with when it is all over, all parties concerned—whether we are talking about the Commission, other European Governments or our own Government—should engage with the European Parliament at an early stage and make them feel to an extent partners in the process, rather than residuary legatees whose approval is required.

Lord Lamont of Lerwick: Can I ask a general question? I am strongly in favour of this, but it is often argued that regional or bilateral deals undermine the multilateral approach in the WTO, yet on the other hand people talk about this being a WTO-friendly agreement. Is there in fact any conflict between the two, as you see it?

Lord Brittan of Spennithorne: Clearly the preference would be to have a multilateral deal that would not render this necessary. As we have already discussed, that is not available, so the question then becomes: if you reach a deal of this kind, is it inherently damaging to the global multilateral trading system or not? The answer is it need not be, and indeed could be a paving block and encouragement to further multilateral agreements, provided of course that any agreement is in accordance with the multilateral deals that already exist. I assume that neither the United States nor Europe would dream of entering into an agreement that was in breach of those rules. Provided it complies with the rules and bears in mind the need to be outward-looking and a paving block towards further multilateral rules, rather than an obstacle to them, I think that is a risk that can be avoided.

Lord Lamont of Lerwick: Is the WTO in favour of this?

Lord Brittan of Spennithorne: The WTO has no view as such. It consists of its members and would be unlikely to express a collective view—it would not be able to—but its concerns would clearly be that any deal does not conflict with its own rules. I am sure that is something that would be avoided.

The Chairman: If you think back to when you were engaged in these matters, is there anything that either the British Government or the European Commission—I mean quite separately, but both those bodies—did not do last time that was attempted in dealing with the regulatory bodies that they might be able to handle this time? I link that to the European Parliament, because of course regulatory bodies often lobby indirectly through the European Parliament.
Lord Brittan of Spennithorne: Yes. I think the most important thing that those handling this issue should do, whether it is the European Commission or the British Government in their influence on the Commission in the negotiating process, is to discuss informally—preferably before you get into the depths of all this—with the US Administration, which ex hypothesi will be wanting this, what they are doing to make sure that they do not run into the difficulties with the regulatory agencies that they ran into last time. Have they, to put it crudely, squared them? Are they prepared to accommodate them? Are they prepared, for example, to enter into an agreement whereby there would be mutual recognition of the application by each side’s regulatory authorities of the other side’s rules? I think only the Americans can deal with that, but the Europeans can probably best informally ask the Americans what are they doing to ensure that the obstacles from that side that arose last time do not come up again.

Baroness Henig: Other than this issue about the regulatory authorities, which sectors or horizontal issues do you think will be the most controversial on the EU side, and conversely which sectors and horizontal issues would be most controversial on the US side? I am thinking here particularly about agricultural exports, which it seems to me are going to be quite a thorny issue. I am just wondering what strategy you think the European Commission might be best advised to adopt, and what position the UK could take, particularly on agriculture, where perhaps our stance is a little bit—

Lord Brittan of Spennithorne: More relaxed. I have already mentioned audiovisual, so I will not revert to that. I think the best strategy, whether for the European Commission itself or for Britain in its influence on the European Commission, is to try to identify and focus on those things that will be most attractive for each side and to try to reach an initial tentative agreement building on those things, so that the attractions are sufficiently great to assist in overcoming the obstacles, and those who have to deal with the obstacles on each side of the Atlantic will be able to say to the broader constituency, “Look, we have something here that is really worth while”.

Baroness Henig: Such as?

Lord Brittan of Spennithorne: Each side will have its own particular interests, and I am not sure that I am sufficiently up to date to know what they are, but to say, “This is good, and surely in order to get this it is worth knocking a few heads or whatever is necessary to deal with it”. That is the broad approach I would adopt. I am sorry I cannot say the specific things.

Baroness Henig: Can I just ask whether the issue about genetically modified food came up last time, because I can see that might be a big issue this time around?

Lord Brittan of Spennithorne: I do not recall that. Perhaps we had not quite come to that yet.

Baroness Henig: That is what I am wondering.

Lord Brittan of Spennithorne: I do not recall that as being a deal-blocker last time, but it may just be because we had not come to it.
Baroness Henig: I can foresee that could cause a lot of problems on the European side.

Lord Brittan of Spennithorne: Yes.

The Chairman: There are some issues—the genetically modified food is perhaps one—where it is not just a question of what regulatory agencies think but the depth of public opinion. Some of the regulatory stuff is very technical and public opinion is not engaged, but GM food appears to engage very different emotions on this side of the Atlantic than it does on the other. Lord Boswell would like to come in.

Lord Boswell of Aynho: If I may, Lord Brittan—and thank you, Lord Chairman—I would like your take on how sensitive trade negotiations in your experience are to what you might call the economic conjunctures. Do we get on better when we are scared or worried that we are not going to get out of the recessionary period that we have had, or do people react more positively when they feel that growth is returning and there is a little more margin for understanding and tolerance?

Lord Brittan of Spennithorne: It is a very interesting point, because in my experience there have been occasions—I am not sure I can identify them without looking things up—on which things have looked bad economically and people have said that one of the few things that you could do if you do not feel that you can have a macroeconomic boost, that there are dangers in that or there is not support for that, is to reach a trade agreement that will at least boost the economies concerned. That has happened in the past and I think it is definitely a factor. Obviously that is something that is in the background, you cannot do anything in particular about that, but there have undoubtedly been occasions on which people have felt that at least we could do something on trade and expanding opportunities through that if we are faced with a difficult broader macroeconomic situation.

Q230 Earl of Sandwich: Coming back to the UK, I think you have covered the political side. If I was to ask you what the major political gain is, you would probably say, “Voting positively in the referendum”, so leaving political aside, what are the major economic gains for the UK, and what would we stand to lose if we did not have an agreement, remembering that we are the enthusiastic cheerleader, as you described us earlier on?

Lord Brittan of Spennithorne: The second question is easier to answer. We would stand to lose because the wider opportunities of a market deal in which we would be very active traders would not be available, so it is not a question of losing but of not gaining what we otherwise would gain. The first part of your question, sorry, could you—

Earl Sandwich: I was jumping over the first one, which was the political gain, but I am just keen to know what the adverse effects might be if the negotiations fail.

Lord Brittan of Spennithorne: If they were embarked on and failed, what the adverse effects are would depend on how and why they failed, and no doubt the blame game would be played on both sides, so it is difficult to predict. Clearly whatever happened, if they were embarked on and failed it would sour the atmosphere and make things in other respects more difficult, but the extent to which that happened would depend on the precise atmospherics and causes of the failure.
Earl Sandwich: Just taking the services sector, which seems to be a rather special case, 
how will the Europeans react to the compromises in the services sector?

Lord Brittan of Spennithorne: It is a very, very important sector, perhaps even the most 
important sector, and I do not think there is a generalised answer that one can give to that. 
Everybody will be negotiating for what they can get and worried about what they might lose, 
but I do not think there is a distinctive specific consequence of that. I think the service 
sector is one where there is most to gain.

Earl Sandwich: You do not think we are going to be prised further apart in our relations 
with the US as a result of the Europeans not backing us up?

Lord Brittan of Spennithorne: Put it this way: the political consequences of failure in a 
major thing of this kind are pretty unpredictable, but they are certainly not so predictable as 
to prevent us from first wishing to press the Europeans and the Americans to go ahead with 
this, and secondly going ahead with it.

Q231 Lord Lamont of Lerwick: Can I go back to this question of procurement—you said, if I remember rightly, that you did not think it would be a major issue—the TTIP aims 
to open procurement at all levels. As I understand it, there are problems on both sides of 
the Atlantic. In the United States at a state level, you have “buy America” provisions that the 
federal Government are not confident they can influence. At the European level, as I 
understand it, although procurement at a certain level is governed by Directives, below that 
threshold it is not governed by Directives, yet the aim is to open up all procurement. Is this 
not quite a knotty problem and is it not quite important?

Lord Brittan of Spennithorne: I think the answer to that question is yes, it is a knotty 
problem and it is important, but there are going to be lots of knotty problems in this. It is 
not a walk in the park, but while it is a genuine problem—and I am not trying to 
underestimate it—I do not believe that it is of such magnitude that one should say, “We 
cannot go ahead because this will prevent it”.

Lord Lamont of Lerwick: Of course not, no.

Lord Foulkes of Cumnock: Can I ask a follow-up? Do the federal Government in the 
United States have total control on this—

Lord Brittan of Spennithorne: No.

Lord Foulkes of Cumnock: —so that a state could say after this is concluded, “Buy 
Pennsylvania and procurement should just be in our state”?

Lord Brittan of Spennithorne: That did arise last time. For some things my counterpart 
just said, “Look, I simply do not have the power under our federal arrangements to deliver”. 
It is a genuine point.

Lord Foulkes of Cumnock: That is a matter for them. We cannot do anything about that.

Lord Brittan of Spennithorne: It is a matter for them, although the answer—it is not 
exactly an easy one for them either—is for them to square things internally to the extent
that they can. They would have to come back and say, “This we have been able to do and that we have not been able to do”. We would then know the limitations, but there is not much we can do about it.

Baroness Bonham-Carter of Yarnbury: But at least that is a situation that we know exists, so you go in with that.

Lord Brittan of Spennithorne: We know that, yes, all too well.

Baroness Bonham-Carter of Yarnbury: All too well, yes.

The Chairman: Just going back to the position of different member states, we have already dealt with France, whose traditional position is well-known, and the audiovisual point has arisen, but when you look at the others, which countries would you identify as being the most likely to be keen on bringing this to a successful conclusion? The Dutch I imagine, but who would you suggest?

Lord Brittan of Spennithorne: I think the keen ones will be the northern European ones on the whole. The Dutch and the Germans, who are of course absolutely crucial in this, will be pretty enthusiastic. I think the eastern European ones will be, although they will have particular interests of their own. Those are the ones who will be particularly enthusiastic. Some of the southern Europeans, quite interestingly, attach huge political importance to their links with the United States, and will have a slight clash between their economic protectionist tendencies and their political enthusiasm, which they will have to resolve themselves. But that is a broad-brush view of the position.

The Chairman: Thank you. Does anybody else have any questions? Lord Brittan, thank you very much indeed.

Lord Brittan of Spennithorne: Thank you.
Lord Tugendhat thanked Ms Bryan for agreeing to meet with the Sub-Committee. He asked her whether there might be a delay to the progress of negotiations on the Transatlantic Trade and Investment (TTIP) partnership as a result of the impact in Germany of revelations about US surveillance as suggested in a story in that morning’s Financial Times. Ms Bryan said that nobody was expecting a delay, and pointed out that Germany was in the middle coalition negotiations.

Lord Tugendhat invited Ms Bryan to talk the Sub-Committee through the process of getting any prospective trade agreement approved by Congress, and securing Trade Promotion Authority.

Ms Bryan pointed out that trade agreements are not treaties in the US system. The President does not have the authority to change tariffs. Tariffs are controlled by Congress, which passes implementing legislation. The implementing legislation for trade agreements is a revenue measure, which can become a “Christmas Tree” as legislators amend it to add unrelated measures. One of the reasons Trade Promotion Authority (TPA) was introduced was to avoid amendments, and create a straight “up or down” privileged motion. Extensive consultation with Congress about securing TPA was already underway, although there was a little bit of a tussle about whether Congress should propose it or whether the President should. TTPA would be required to finish a negotiation, not to start it, and the Trans-Pacific Partnership negotiations were closer to finishing.

The Earl of Sandwich asked whether securing TPA might be easier for the other agreements the US was in the process of negotiating, and what confidence the Administration had that they would ultimately secure TPA for a TTIP deal.

Ms Bryan replied that none of the agreements the US was negotiating right now was very straightforward, but that in the US system, the President would not start a trade agreement that he did not think the US could finish. The Administration had done a lot of due diligence, and the fact that they agreed to launch it was in itself an indication that they thought it was achievable and that they thought they could get it through Congress.

The Earl of Sandwich asked about whether the Administration agreed with analysis commissioned by the European Commission suggesting that the automotive industry on both sides of the Atlantic potentially stood to gain most from an agreement.

Ms Bryan warned that there would be no “low-hanging fruit” in the negotiations. Autos, including safety of automotive vehicles, was clearly a target. Procurement would be a two-way discussion. Agriculture would also be a two-way discussion. A robust agriculture agreement would need to be politically sustainable on both sides.

Lord Tugendhat invited Ms Bryan to set out what sectors would be of critical importance to the US.

Ms Bryan replied that what would be important to the US would be classic tariffs, but also behind the border barriers to trade. They thought there was room to work on horizontal and sectoral
Elena Bryan, Senior Trade Representative, United States Mission to the European Union—
note of the Sub-Committee’s meeting on 4 November 2013

commitments on the regulatory side. They had learnt from the past that negotiators do not make
regulations, regulators do. Trade agreements can push regulators to talk to one another, but the
regulators like to do their own thing. Whatever was done would need to be owned by regulators –
they could not deliver without them. The US would also be looking for an investment agreement,
and was interested in working together on globally relevant issues where there were common
challenges, such as illegal logging and state-owned enterprises.

Lord Maclellan of Rogart asked whether it was true that there were concerns about including
financial services in a TTIP agreement on the grounds that it might undermine Dodd-Frank.

Ms Bryan indicated that although market access would certainly be part of an agreement, they were
not convinced that a financial services regulatory discussion as part of TTIP would be appropriate or
a forum where they could deliver faster than what was already scheduled. Congress was indeed
concerned about prudential issues.

Lord Maclellan asked whether the US would support the establishment of machinery to
enable continuing consultation in the financial services sector.

Ms Bryan replied that the US wants lots of discussions across all the regulators, not singling
out the financial.

Lord Tugendhat explained that his understanding was that the US Treasury was not so keen.

Ms Bryan noted that some regulators are independent for a reason, and that the US’
financial regulators were independent, as was the auto regulator, the NHSA. Nonetheless, she
was confident that her boss and the regulator and the White House were all on the same
page on this.

Lord Tugendhat asked whether her sense was that the two Commissioners, De Gucht and
Barnier, were also of one mind.

Ms Bryan noted that the Commission was an unusual animal. It was interesting to watch, because
in the US system each Cabinet Secretary reports directly to the President. Here there were 28
independent politicians, one of whom is called the “President” of the Commission. Her impression
was that the Commissioners do go at each other periodically.

The Earl of Sandwich asked about the prospects of getting an agreement on procurement.

Ms Bryan explained that in the US’ federal system, the federal government cannot tell the states what
to do, but they can certainly seek to persuade them to sign up, as they had done in regard to the
relevant WTO agreement. They would certainly work on that. She explained that “Buy America”
was for the most part a federal issue, controlled by the Congress, and one would have to wait and
see. Congress feels fairly strongly about this, particularly in transportation. But procurement would
be a two-way discussion; there are things to look at on both sides, and the single market was not
perfect. There would have to be a lot of discussion here in Brussels about how the Single Market
really functions.
Elena Bryan, Senior Trade Representative, United States Mission to the European Union—note of the Sub-Committee’s meeting on 4 November 2013

37 US states were already signed up to the relevant WTO agreement, and the EU request was to broaden the coverage of the agreement in those 37 and to get more states involved. Ms Bryan’s own view was that this was one of the things they would need to look at very practically, taking a hard look at the economic gains and what could be afforded rather than getting hung up on the principle of 50 states.

Lord Maclellen asked whether there was a will in the US to get the deal done. If there was a will, there would be a way.

Ms Bryan confirmed that the White House was confident that it would have support in Congress. Their normal committees of jurisdiction were supportive. Although there was general support in Congress, there were also some concerns, as one would expect of an agreement with such a high profile. There were some in Congress who pointed out that they had seen this movie before, and that the ending was different, saying “let us know when you’re serious”. The Administration was nonetheless confident that with the right ultimate mix [in the agreement] they would get the support they needed. When they had decided to do a deal, they knew they would need to deliver on it, because if the US and EU can’t deliver, how could anything else get done.

The Chairman asked Ms Bryan what she thought the main sticking points would be in agriculture.

Ms Bryan identified market access and SPS issues. She pointed out that the Department of Agriculture had just lifted its ban dating back to the BSE crisis, and that in 90 days there would be beef imports again.

Lord Tugendhat noted that the time it had taken to lift that ban did not bode well. Returning to the subject of data protection, he asked whether there was an overt link between surveillance issues and the TTIP.

Ms Bryan emphasised that although the issues were real, what they heard in public was not what they heard in private. It was an election year in Brussels, and there would be grandstanding. That said, the ability to move data back and forth was very important to US services companies. She suspected they would find a broad solution to the data issue.

The Chairman observed with regard to the rhetoric around TTIP that he could not remember another occasion when people had spoken in such ambitious terms at one level, and yet there was such an extraordinary disconnect at the other, in regard to the detail of the agreement.

Ms Bryan agreed that it was frustrating.

Lord Tugendhat thanked Ms Bryan and her colleagues for their time.

Evidence Session No. 12   Heard in Public   Questions 128 - 136

THURSDAY 5 DECEMBER 2013

10.55 am

Witnesses: Gary Campkin and Alastair Evans

Members present

Lord Tugendhat (Chairman)
Baroness Bonham-Carter of Yarnbury
Baroness Coussins
Lord Foulkes of Cumnock
Baroness Henig
Lord Jopling
Baroness Quin
Lord Radice
Earl of Sandwich
Lord Trimble
Baroness Young of Hornsey

Examination of Witnesses

Gary Campkin, Director, International Strategy, TheCityUK, and Alastair Evans, Head of Government Policy and Affairs, Lloyd’s

Q128 The Chairman: Thank you both very much for coming here. It is the second time round, I realise. There are a couple of things to say at the outset. One is that this is a formal meeting, so what you say is on the record. We do not have too much time because we have another evidence session after this. If you are both in agreement, there is no need for you to both to speak, if you see what I mean, but if you both feel the need to speak I would not wish to inhibit you.

You have received a list of questions but let me tell you what underlies this. Both the Government and the industry have been very insistent that financial services should feature in TTIP even though the US authorities seem to be rather reluctant. Certainly that was the impression I gained in Washington. We need to be clear about why you think it is necessary

to have financial services in TTIP rather than proceeding along the already established financial regulatory dialogue and what tangible benefits will accrue if it is in TTIP that would not accrue if it was in the financial regulatory dialogue.

In responding to that, bear in mind that the Americans may be adamant and it may not end up in TTIP, in which case how much of what you would like to achieve do you think you will be able to achieve anyway in the different process? I am trying to separate the two. Bear that in mind as what we are trying to get to the bottom of in asking the questions that we are asking.

I think that opens the questioning. To what extent do you share the assessment of the mood in the US and in the EU, what are the implications for the pursuit of your priorities and what are the arguments along the lines that I have just asked you? Then my colleagues will build on that question.

Gary Campkin: Thank you, Chairman, and thank you for the opportunity to give evidence at this session. What I thought it was important to do first of all is to make it clear that we do not believe and do not support any ideas that this is about reopening Dodd-Frank, about lowering standards or about diluting any regulation. We think that if TTIP is to be ambitious and those ambitions are to be realised, an important part of the agreement must be to include regulatory coherence as part of the agenda. That is a very different agenda to the one that some in the US suggest is on the table.

That leads me to respond to your question about the assessment of the mood in the United States. Sometimes some commentators make the mistake of having a monolithic view of US views. They are by no means consistent across all parts of the US Administration. Indeed, one can identify parts of the Administration that reflect views of some US regulators. Other parts of the Administration are much more sympathetic to the views not only of the business community here in the United Kingdom but of the US business community. We are finding very strong support, very strong allies and a very strong coincidence of views between the US business community in the sector and ourselves.

On a visit I made to the United States a couple of weeks ago, it was very clear in the conversations that I was having on the Hill that leading members of the Senate Finance Committee and the House Ways and Means Committee were very much more positive about the inclusion of regulatory issues in the negotiations and of a properly comprehensive deal, which is the only way to realise the maximum amount of value out of the negotiations. In the statements coming out of USTR after the last round of negotiations in Brussels recently, there was the first sign of explicit willingness by the United States to discuss regulatory coherence in financial services. We believe that is an important sign and signal and we understand there are some offline discussions now going on in preparation for the next round and for the political stocktaking that will take place in the first part of next year.

You asked about European partners and European views. Given the way in which negotiating mandates are put together within Europe, it is not surprising that certain countries that have very specific interests will pursue those as part of the mandate. It is not surprising, because of the importance of the financial services and related professional services sector to the UK economy, that it is a key factor for the UK to be included in the mandate. The mandate is there. It includes our issues. It is encouraging that both relevant commissioners, Commissioner De Gucht and Commissioner Barnier, want these issues included in the final deal. Quite frankly, we do not know of any evidence that suggests that any other member state fails to support that view.

Q129 The Chairman: Just suppose that the United States and the Treasury are adamant, and the President either cannot or does not wish to overrule them. Are you saying that financial services are then down the tube or that you would still be able to make progress under the financial regulatory dialogue? You are in danger, if I may put it this way, of
indicating that if this is not in TTIP it is a great setback, whereas it may not be in TTIP but you will still wish to make progress. I would have thought that even if it is not in TTIP that does not mean that you cannot make a lot of progress down the road that you wish to travel.

Gary Campkin: I have some points to make, but I know Alastair wants to come in.

Alastair Evans: I would like to comment from the point of view of Lloyd’s. Our interest, as you will appreciate, is specifically insurance and reinsurance. The US is our major market. We write some £25 billion of premium income, but 40% comes from the US. We are active in that market as directly licensed insurers, as reinsurers and as surplus lines insurers. We have been following the EU/US insurance regulatory debate very closely through the EU-US FMRD for a number of years. Our view is that if reinsurance or insurance were not covered within TTIP, that would be very unfortunate. A degree of progress could continue to be made via the EU-US insurance dialogue, but our experience is that there has not been particularly impressive progress to date. We have had the insurance dialogue for a number of years. It struck us as being very opaque. We were always told after meetings by the Commission that very good progress had been made. It was not obvious to us what the concrete steps that were emerging from this were. I think, to be fair, there was a bit of a sea change a couple of years ago in our sector when, through the dialogue, a joint study was done, on both the European and US sides, that compared and contrasted aspects of the systems of regulation on either side of the Atlantic. There was an opportunity for stakeholder input and to comment, but this is the first time that has happened.

We would undoubtedly continue to seek progress through that forum, but I think what we are really looking for from TTIP is to anchor that process in a more formal and legal structure. We are really seeking greater transparency in the process, a formal commitment to consultation with stakeholders, which seems to be a bit haphazard and accidental at the moment. We would like to see timelines for achieving objectives that are clearly set out, a forward agenda so that we know what is coming up, and a joint body to review the progress being made. In other words, we would like a much more formal political overlay that clearly specifies what is expected of the parties and in which they are held to be accountable. Frankly, our experience, with the best will in the world, is that that has not happened with the dialogue up until now.

The Chairman: That is very helpful. Thank you.

Q130 Lord Jopling: Mr Campkin, just two points from what you said. First of all, on the renewed discussions next year, I understood that the third round of discussions was next week and I was rather surprised that you said discussions will be resumed next year. The second point follows what you said about there being no intention of reopening Dodd-Frank. We have had evidence from Professor Evenett who said, “I think it’s all in the implementation of Dodd-Frank, which is where you would want the Americans to think again. If I were trying to influence the process that is what I would want to influence”. It seems to me that you are ruling that out. Further, on Dodd-Frank, do you think there would be any wisdom in decoupling some of the issues, such as sub-federal issues in insurance or legal services, from the broad heading of “financial services” to try to avoid them getting held up in a possible standoff?

Gary Campkin: Let me deal with the first point. I think what I intended to say is that there are discussions going on offline in advance of the next round of negotiations, which will indeed take place this year. They start in Washington on 16 December. What I was referring to next year was the high-level political stock take that will take place after the next round. On Dodd-Frank itself, Professor Evenett is obviously entitled to his view. All I can say is that as far as the sector is concerned that is not our intention, and we have made that perfectly clear in both European level discussions and US discussions. I would echo the points that
Alastair made about the importance of having regulatory coherence and a regulatory dialogue within the ambit of TTIP. The FMRD does not work as it was intended to work, and Alastair put out some really interesting elements of what should be included. If you look at some examples of why the FMRD has not really done what it said on the tin, the issue of cross-border derivatives trading, along with the Volcker rule, now demonstrates why it has not worked for the industry. It is not mandated by any formal commitment, there is no scheduling and, as Alastair said, some of the issues related to what is on the agenda, how it is pursued, the feedback loops and so on are just not there. Having a system that looks at issues ex-post and ex-ante in a way that is part of a clear process would be of immense value to the sector. That is what we are looking to do. We are not using words like “convergence”, we are using words like “coherence” to ensure that the coherence is there that will add the value into the transatlantic relationship, which of course translates into jobs and growth.

Your third point was about decoupling. This is really a negotiating point and it is difficult at this stage to make a clear judgment about how those negotiations may or may not be pursued. You are right, however, to say that there are a number of dynamics to issues that include, for example, sub-federal issues in insurance and legal services, which are not within the realm of the federal Government and therefore the decoupling dynamic might well take place. However, it is important to have proper scoping ambition and regulatory dialogues within the ambit of the agreement, so at this point we need to focus on the fact that unless we sit down within a process and discuss these things with a view to getting effective results we are never going to deal with them and address them. For the financial services community writ large, and by that I mean strict FS and the related professional services that are closely aligned to that, it is very important that these issues are addressed in tandem and are part of the final deal.

**Alastair Evans:** I would similarly like to make it clear that from our perspective we do not see this exercise as being aimed at undermining Dodd-Frank at all. There is a chapter on insurance in the Dodd-Frank Act and we are very comfortable with it. It deals with the establishment of the Federal Insurance Office and covered agreements.

The particular issue we face as Lloyd’s and the European reinsurance industry is that under state rules, insurers that buy reinsurance from us are unable to take any credit on their balance sheets for the reinsurance they purchase from us. This ignores the long-standing, high-performing participation of non-US re-insurers in the market, ratings, the quality of the home state regulatory system, our claims payment record and so on, whereas full credit is given for reinsurance purchased from American reinsurers. This is a long-standing grievance of the European reinsurance industry and others, including the Swiss and Japanese. Dodd-Frank provides a mechanism for resolution of this issue in that it provides that the USTR and the Treasury can conclude a prudential agreement or covered agreement with other countries on recognition of their reinsurance regulatory system that would enable the FIO director to pre-empt state law, which is inconsistent with the covered agreement and treats non-US reinsurers less favourably.

The issue of sub-federal regulation has been mentioned. We do not take a view on that. We have no objection per se to regulation at sub-federal level. It is up to the US to develop its own appropriate supervisory architecture that meets its needs. What we do take exception to, however, is rules that clearly and unjustifiably discriminate against us as non-US reinsurers. We are finding at the moment that the states are finding it very difficult to resolve this reinsurance collateral problem because the NAIC model law is in all their individual state laws, so to reform them requires reform throughout the 50 states. Dodd-Frank actually provides a mechanism for universal and simultaneous resolution of this issue.
Ideally we would like the TTIP to accommodate a covered agreement, or, alternatively, to signal that a covered agreement would be an outcome of this process.

Q131 Baroness Coussins: It was very helpful to hear you say just now that you identified transparency as one of the specific elements of added value that TTIP could bring, over and above what might be achievable through other dialogues and processes that were going on. I think it would be helpful if you could say for the record exactly why that is. Is that because TTIP would be enshrined in legislation? I assume it is a given that transparency would be a good thing for the sector, including for consumers of the sector’s services, but why cannot that transparency be achieved otherwise? Is it the process and the mechanism of legislation that you are saying would provide that added value? We are trying to put our finger on what the elements of added value of TTIP are.

Alastair Evans: Our concern is that there should be transparency in this process. At one level you could say that it does not matter how it is delivered to us, but our experience up to now is that there has been a lack of transparency. We have been very dependent on the Commission choosing to tell us what has been discussed in this forum. Only recently have we had the opportunity to take part in public hearings to comment on analysis and input views, and it has been a very unsatisfactory process. Transparency seems to us to give opportunity to call our negotiators and regulators to account, to challenge them, to have a very open dialogue with them as to what we wish to achieve from this process, and we do not see this happening under the dialogues at the moment. Yes, I suppose one could make changes to the dialogue such that this is enshrined and recognised and anchored in the process, but TTIP would be a mechanism for achieving that. We feel that the quality of the debate and the likelihood of objectives being achieved would be so much higher if the process were more transparent.

Q132 Baroness Bonham-Carter of Yarnbury: Mr Campkin, you mentioned that you had recently been in the United States and had very good dialogue with the business sector on the Hill, and I know from your written evidence that TheCityUK has outreach work in the United States. But as we all know, it is a vast and diverse country and has states that are very different in outlook, as well as geographically, from Washington. What is the US financial services industry doing to put the case for the sector’s inclusion in TTIP to US audiences? To what extent can the UK count on that lobby sufficiently pulling its weight on the other side of the Atlantic?

Gary Campkin: Thank you for the question. I ought to say before I get into the meat of the answer that TheCityUK members also include the majority of the big banks and financial institutions that are inward investors here into the United Kingdom. Our policy positions go through a process that includes their input and when we speak on issues like this it is very much a transatlantic view.

I have a list of the evidence and statements that we are aware of from the sector and they range from the American Council of Life Insurers, the Coalition of Service Industries, the Financial Services Roundtable, the Financial Services Forum, the National Foreign Trade Council, the Securities Industry and Financial Markets Association and the big, broad cross-sectoral business groups like the US chamber with which we are in close dialogue. My view, having dealt with these issues for something like 30 years now, is that there is the strongest coincidence of views in the business community that I have ever seen and that now is the time to get something done and to be ambitious.

Baroness Bonham-Carter of Yarnbury: Is this across America, state by state?

Gary Campkin: This is the business community across the United States. You will be aware, because I understand you have had some testimony already on this, that there has been a very good report indicating the value to each of the 50 states of an ambitious conclusion to the TTIP. I am going to Washington again at the beginning of next week to launch what we
believe is a very important report written by the Atlantic Council, which we have co-sponsored with Thomson Reuters, on the danger of divergence in transatlantic financial reform. I would be very happy to send you a copy of that final report, because we believe this is a major contribution to the debate. The fact that we are launching it in the United States, in an event that includes a United States senator on Capitol Hill, with the full backing of US business, shows you the extent to which the sector is coming together on both sides of the Atlantic and urging negotiators to bring back an ambitious deal.

Alastair Evans: I will be very quick, Chairman. It is just to add that within the insurance sector, Insurance Europe, the American Council of Life Insurers and the American Insurance Association, which are leading bodies in the US life and non-life insurance industry, issued a joint statement on 26 November asking for financial services to be included in TTIP. My experience is that the people representing these organisations are not shrinking violets, so if they put their name to this statement you can be sure they will be propagating this.

Why are they saying this? They clearly believe there is mutual interest in this, and I think they probably see that with the emergence of global insurance debates on systemic risk, the regulation of international groups and the development of global capital standards by the International Association of Insurance Supervisors, under FSB oversight, it makes sense for an entity like the TTIP to create a forum where the major insurance and reinsurance markets can discuss and try to come to a common view on market access and regulatory issues.

I think their second motivation is that they want to ensure that they have continued full and unimpeded access to all European Union markets. The motivation may be somewhat different, but I think there is a mutual, shared overall objective here.

Q133 Lord Radice: There are already regulatory dialogues, for example at G20 level, the FMRD and the EU-US insurance dialogue projects. What gives TTIP its special utility? I think that is what we have to try and focus on. Is it that it is a mechanism and a framework, as I think you have suggested, which is not really there at the moment? Is it going achieve a breakthrough in regulatory coherence, at least set up some mechanism that is going to work? Is that the case for TTIP?

Gary Campkin: I think we have already mentioned some really quite important issues about the quality of existing dialogues.

Lord Radice: You are saying they are no good.

Gary Campkin: We are saying that they have not achieved their full potential. If you look at some examples, they have not helped and have provided some uncertainty for the sector, which is not very helpful. TTIP and the negotiations really do provide an opportunity to take these dialogues to the next level and to make sure that 21st century issues, as they are becoming known, are properly dealt with. This includes regulatory coherence. TTIP has a core objective of tackling regulatory divergence. In our view and the sector’s views it is pretty inconceivable with that as a clear kick-off point that our sector is not included within it. We have a great interest in ensuring not only that what are called the horizontal provisions are right and proper and fit for purpose but that the vertical provisions that will affect our sector are likely to be so.

This matters for the transatlantic marketplace. It is an incredibly important way of taking forward transatlantic integration, with all the benefits to the two economies that have been highlighted by the studies. Secondly, it is about providing a template for other dialogues and other global initiatives. I think Lord Mandelson touched on this in his evidence with you, and I support those views very strongly.

Lord Foulkes of Cumnock: Mr Evans, I want to follow up Lord Radice’s question. Some 40% of your business is already in the United States. Does that not indicate that the existing mechanisms are working not badly, as far as you are concerned any way?
**Alastair Evans**: That is a very good question. We have 40% at the moment. We are not denying that we have market access, but we are treated in a discriminatory fashion, as mentioned, and this generates substantial administrative costs for us and for the European sector. We think that if those needless costs were removed, we would have the potential to transact even more business. Lloyd’s trades in over 200 jurisdictions currently, and we are looking to increase our penetration particularly of the high-growth economies. We recognise the need for a more balanced kind of book of business, but the fact that we achieve a certain percentage of penetration does not mean that we are satisfied with the terms of that access, because we feel that we are having to participate with one hand tied behind our back in this market. I think it is a tribute to the commercial enterprise of the market that we are able to achieve that.

**Lord Foulkes of Cumnock**: But they are operating reasonably well at the moment, and the danger might be that if we put too much concentration on financial services it could scupper the rest of the deal. How high a priority is it? You are not doing badly if you already have 40%.

**Alastair Evans**: That is that 40% of our business derives from the US. I do not have the percentages here for our share of US markets, but there is obviously scope for improvement as it is the leading global economy and we are very keen to improve yet further the terms of our participation. Why be subject to needless capital rules? I should add that when American reinsurers trade into the UK, they are not subject to these statutory collateral rules. Indeed, in 26 of the 28 member states, American reinsurers are able to trade quite freely without any kind of equivalent discriminatory statutory collateral rules. So we are seeking fairness here.

**Q134 Baroness Young of Hornsey**: Both of you are actively involved in transatlantic dialogue, obviously promoting the inclusion of financial services in TTIP. Could you say something about what more constructive and concrete steps could be taken by both you and the industry as a whole and by the UK Government to promote engagement and to build trust between EU and US regulators? Perhaps you could also say something about how to engage with this problem of states acting independently of national regulatory systems in the US.

**Gary Campkin**: Maybe I can kick off with some general comments. I hope that our written evidence and my remarks to date have shown that TheCityUK has indeed stepped up to the plate. It is a majority priority for us and for me personally, and I think the sector fundamentally believes that this is an important moment in trade and investment relationships and that we need to get this right. The report that I mentioned will be launched next week and is the next stage of an educational campaign to ensure that there is clarity about what we want and what we do not want. I think clarity is quite important. You are right to put your finger on the need to be clear to everybody at the negotiating table about the expectations of the sector.

I will posit that the reason why US attitudes seem to have shifted a little bit may be because we have been clear when working with US business that this not about lowering standards in regulation or rolling back Dodd-Frank, about substituting trade officials for regulators in regulatory dialogues, or about forcing dispute settlement into the picture on substantive regulatory matters. It is to be clear about those issues and about what is at stake. I would, if I may, put on record that the Government—the Department for Business, the Treasury and the Foreign Office in particular—have been front and centre in arguing the case for the UK, and we have been very pleased and encouraged by the proactive stance that they have taken both within the European Union and in the United States.
Baroness Young of Hornsey: What about the issue of states that act independently of all that? I think you were saying earlier how difficult it was to make generalisations about the sector, particularly in the US and indeed in the EU.

Gary Campkin: Yes. The US constitution is the US constitution. That is the reality. The state/federal dynamic is very clear. I think what is interesting about recent trade agreements, the EU-Canada one for example, is that the Canadian provinces were engaged in the negotiations and were at the negotiation table, and the negotiations were concluded with their full and active support. There is a template out there that shows that it can be done if the willingness is there to move forward.

Lord Jopling: Fifty states are all that they stand to benefit, we understand that, but it seems to me that the difficulty would arise that the individual states would cherry-pick and take the things that suited them out of a TTIP agreement but fail to legislate on the things that were disagreeable to them.

Alastair Evans: While Mr Campkin is thinking of his answer to that question, perhaps I can just repeat the point I made earlier that under Dodd-Frank there is a mechanism that allows the USTR and the Treasury to negotiate a mutual recognition agreement on reinsurance. It was made very clear at the time Dodd-Frank was adopted in the joint conferees record that this was intended to address the long-standing issue of discriminatory reinsurance collateral. Dodd-Frank contains a mechanism whereby the Federal Insurance Office can pre-empt state law that treats non-US reinsurers less favourably, so there could be no element of cherry-picking if such a route were to be followed. It is enshrined within Dodd-Frank that the states would need to follow that sort of federal direction. This does not call into question at all the general principle that insurance is regulated at sub-federal level, but within this defined area there is a mechanism that would require the states to fall into line with federal direction following conclusion of such a covered agreement.

Baroness Henig: Pursuing the theme of clarity, is it possible for you to give us a shortlist of what you see as the low-hanging fruit? You have touched on this, but could you tell us what you think the barriers are that would be the least difficult to remove and what first steps would need to be taken to remove them? In a sense, Mr Evans has already touched on some of this, but it would be helpful to focus on what you see as the low-hanging fruit.

Gary Campkin: Let me talk about it again in general terms. I think the reality is that if these issues were easily solvable they would have been solved already and existing processes would have found a way to address them. The reality is that is not the case. There are obviously some things that are going to be more intractable than others, but unless we have a process that is ambitious and comprehensive and that can begin to address them, we are never going to get to the point of resolving them.

Baroness Henig: Are you saying in a sense that the low-hanging fruit is the process, setting up the mechanism?

Gary Campkin: I would say that it is very important that we have a robust process that allows us to deal with the sorts of issues that we identified in our written evidence, because a lot of them are very long-standing. This is an opportunity to address them properly and find a proper resolution to them.

Baroness Henig: Are you saying in a sense that the low-hanging fruit is the process, setting up the mechanism?
example, can you see any merit in that? I know Lord Trimble is going to follow up with another one on this subject.

The Chairman: As we have touched on the living agreement, do you want to get in two questions, Lord Trimble, which are rather conflated here?

Lord Trimble: I was thinking that so much of the evidence we are hearing is about the desire to have a structured process that has timelines or is going to be effective and all the rest of it, so I presume you would want to see that sort of structured process with regard to any living agreement.

Gary Campkin: Perhaps I could clarify what we see as a living agreement, because I think the term has been used in a number of senses. Up until this point, we have used the living agreement as the sense in which an agreement would include within it institutional provisions that would live on after the agreement is concluded. In regulatory coherence terms, this is some form of enhanced co-operative framework that would reduce or eliminate regulatory divergence, which would provide an ability to discuss issues, not just as they come up but before they come up. In that sense, the sorts of living agreement concepts would include strengthening financial stability, outcomes-based assessment of rules, avoidance of extraterritoriality, co-operation on prudential standards, effective enforcement, timelines, joint consultation on unintended consequences, and equivalence assessment guidelines data sharing. Those sorts of things seem to us to be the nub of a living agreement: a process that can take us forward.

We also believe that in order to make sure that it remains relevant, there need to be regular reviews and consultation, a clear forward agenda—again, picking up on some of Alastair’s points earlier about why the current dialogue does not work to best effect—and a mechanism for bringing some sort of joint body together on an issue by issue basis where it is needed. Again, that would fit into the Earl of Sandwich’s point about accountancy and so on: to define the issues, to scope them out and to put them into a process that can lead to the progress that the industry seeks.

Earl of Sandwich: Do you see TTIP as a way of kick-starting the living agreement?

Gary Campkin: Yes, I think it has to be. If we fundamentally believe that TTIP is about ambition and about ensuring that regulatory issues are included within its remit, a living agreement that encapsulates the sort of principles I have outlined in a way that allows issues to be properly addressed has to be a fundamental part of the result.

The Chairman: Thank you very much. That has clarified our thinking very helpfully and the points that came out in the last two questions for carrying the whole thing forward also will be helpful to us. Thank you very much indeed.
Chartered Institute of Arbitrators – Written evidence

Introduction

1 The Chartered Institute of Arbitrators (CIArb) is the world’s leading professional membership body for arbitration, mediation and alternative dispute resolution (ADR). CIArb promotes the use of ADR internationally through 13,000 professionally qualified members in over 120 countries.

2 CIArb has under its Royal Charter a duty in the public interest to promote and facilitate worldwide the determination of disputes by arbitration and alternative means of private dispute resolution other than resolution by the court (collectively called “private dispute resolution”).

3 CIArb welcomes the House of Lords EU Sub – Committee on External Affairs inquiry into the Transatlantic Trade and Investment Partnership (TTIP). The EU – US TTIP free trade agreement is set to be worth €300 billion to the global economy and €120 billion to the EU’s economy alone.¹

4 CIArb is submitting written evidence to the House of Lords EU Sub – Committee on External Affairs to express support in favour of the inclusion of investor-state dispute settlement (ISDS) mechanisms in the TTIP. ISDS allows investors to bring claims arising out of the mistreatment of their investment (whether through direct or indirect expropriation) by the State where the investment is taking place before arbitral tribunals.

International commercial arbitration

5 International commercial dispute resolution procedures play a key role in supporting global trade and give investors’ confidence that they will have access to redress across the world.

6 International commercial arbitration is underpinned by the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention"). The New York Convention, which entered into force on 7 June 1959, ensure states that are party to the convention respect arbitration agreements and enforce them by their court systems.² With over 150 countries signed up to the New York Convention, arbitration is therefore not restricted to specific geographic locations and disputes can be settled at locations across the world, subject to the lex arbitri – the procedural rules of the place of arbitration.³

7 London is the leading international centre for commercial dispute resolution. The value of legal exports to the UK economy is estimated to be worth some £4 billion per annum by TheCityUK, generating a trade surplus in 2012 of £2.85 billion.⁴ The two leading international arbitration bodies, the International Chambers of Commerce International Court of Arbitration and the London Court of International Arbitration, are EU based in Paris and London respectively. If the volumes of cases that the most prominent arbitration bodies are dealing with and their location ⁵, as well as assorted surveys of arbitration practitioners ⁶ ⁷, are taken as a benchmark it
can be estimated that over a third of arbitrations in the world that take place annually are seated in Europe.

**Investor State Dispute Settlement**

8 In relation to the TTIP there has been much scrutiny of the inclusion of Investor State Dispute Settlement (ISDS) mechanisms in any proposed agreement. It has been argued in recent years that the protections provided by ISDS have been abused by unscrupulous companies who are bringing unworthy claims, thus wasting tax-payer money and undermining democratic decision-making, whereby domestic courts are amply capable of handling investment disputes.

9 The examples used to justify such claims include the dispute between the tobacco company Philip Morris International and the Australian Government with regards to cigarette packaging, and that between utility companies and the Argentine government with regards to the latter’s decision to impose a freeze on energy bills. Unfortunately, this argument focuses only on a few highly publicised cases where ISDS might have allowed investors to bring claims whose worthiness may have been doubtful. Moreover, it is not clear that had they been brought before domestic courts, these cases would not have arrived at the same result and not cost as much, if not more, for the State to defend.

10 In truth however, the backlash against ISDS stems more from an ideological question than a legal one. The issue is one of liberalism: do we open government decisions and regulations to questioning and re-assessment by private companies, or do we carve out certain aspects of public actions from private interference. It comes back, in essence, to the distinction between jure gestionis (the state’s private acts) and jure imperii (the state’s public acts).

11 Private interference has advantages, in particular in a context such as that of trade and investment, where players are public and private parties. It provides for a system of checks and balances that prevent governments from acting solely in their own interest in a field where the interests of other non-public parties are also at stake.

12 ISDS is most of the time conducted before arbitral tribunals. While the advantages that used to be commonly advanced in favour of arbitration, low cost and speed, are subject to much debate nowadays, the main advantage of arbitration against domestic courts procedure remains: the independence and experience of the arbitrators. In domains as sensitive as trade and investment, it is extremely important that disputes be judged by persons who do not depend on the defendant state. Moreover, arbitrators in investment disputes are often extremely experienced and have a global vision of the problems at stake, including the need for states to be able to pass regulations for the public good.
13 Provisions can be included in the TTIP that will allow states to pass regulations and take decisions in the fields that should remain in their sole control as states (jure imperii). It should however be commanded that in domains where state have jure gestionis power, ISDS provides for checks and balances. For this reason, the Chartered Institute of Arbitrators supports ISDS in the TTIP.

Conclusion

14 Trade Unions and non–governmental organisations, including the Trades Union Congress (TUC), Greenpeace and War on Want, have demanded the exclusion of ISDS mechanisms from the TTIP. Following representations from the TUC, the European Commission will shortly be undertaking a consultation on this issue. The House of Lords EU Sub – Committee on External Affairs inquiry into the Transatlantic Trade and Investment Partnership is rightly focusing on ISDS in an evidence session on Thursday 27th February 2014. CIArb hopes this evidence in support of ISDS is of use to members as they scrutinise this important area of the TTIP.

References


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http://www.theguardian.com/commentisfree/2013/nov/04/us-trade-deal-full-frontal-assault-on-democracy

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February 2014
INTRODUCTION

1. The CBI strongly supports the negotiations for a ‘Transatlantic Trade and Investment Partnership’ between the European Union and the United States, officially launched at the G8 Summit on 17-18 June in the United Kingdom.

To tackle those trade and investment barriers that are of most importance to UK business, the CBI supports a comprehensive agreement that includes ambitious commitments to:

- Eliminate tariffs
- Liberalise trade in services
- Improve access to US public procurement contracts
- Reduce any remaining barriers to foreign direct investment, with provisions on access and protection.
- Reduce current non-tariff barriers to trade in key sectors upon entry into force of the agreement
- Prevent new non-tariff barriers to trade from arising in the future
- Simplify customs rules and administrative procedures to facilitate trade

2. The US is an extremely important trading partner for the UK, responsible for 16.2% of our total exports of goods and services in 2011\(^ {26}\). Moreover, the US is a crucial investment destination for UK businesses, with the UK holding more investment in the US than any other country in the world, $442 billion at the end of 2011 – substantially more than the next foreign investors including Japan, Holland and Germany, and 17% of the total $2.5 trillion of FDI in the US\(^ {27}\). This is a reciprocal relationship as US businesses have invested more in the UK than anywhere else, with US inward FDI to the UK standing at over £200 billion in 2010, almost double the stock of just 10 years earlier\(^ {28}\).

3. The trade and investment relationship between the UK and US is already functioning relatively well, but it is by no means complete. Businesses continue to face a variety of barriers and costs that could be avoided, many of which are attributable to regulatory divergences. An historic EU-US trade deal would open up new opportunities for business, delivering growth and jobs without any additional public expenditure.

4. Independent studies have projected that EU exports to the US would increase by 28% each year as a result of an ambitious trade and investment agreement, and that the UK

\(^{26}\) Office for National Statistics, United Kingdom Balance of Payments – The Pink Book 2012

\(^{27}\) CBI report August 2013, Sterling assets 5 – British investment creating U.S. jobs

\(^{28}\) Office for National Statistics, Business Monitor MA4, Foreign Direct Investment Involving UK companies 2010
The TTIP negotiations not only provide an opportunity to directly boost bilateral trade flows between the UK and US upon entry into force of an ambitious agreement, but also to help set global rules, norms and standards that can be conducive to global trade and investment in the long term. For example, in the wake of continued concerns about the enforcement of intellectual property rights in key markets, the EU and US should work to develop joint approaches on key global IPR challenges within the remit of the TTIP negotiations.

CBI priorities in detail:

A) MARKET ACCESS - GOODS

Eliminating tariffs and establishing clear rules of origin

6. According to WTO data, the EU and US apply low tariffs on goods, with simple average MFN tariff rates of 5.2% and 3.5%, and a trade-weighted average tariff of between 2% and 3% for EU exports to and imports from the US.\(^{29}\) However, given the sheer size of the trade flows between the UK and US, as well as the rising amount of intra-firm trade, the UK economy will significantly gain if all remaining tariffs are eliminated. Some companies are forced to shell out millions, tens of millions, and even hundreds of millions of pounds and dollars to customs authorities each year, which hurts consumers and diverts revenue away from much needed investment. High tariff costs affect UK companies exporting to the US as well as companies that source parts and components from the US.

7. As is the case for all other EU FTAs, tariff elimination on a zero-for-zero basis upon entry into force of the agreement should be the level of ambition. Any exemptions from this rule, such as the insertion of phase-out periods or partial tariff liberalisation, should be reserved for the most sensitive products only. The CBI expects all industrial tariffs to be removed upon entry into force of the agreement, and appreciates that some agricultural tariffs will be more sensitive due to the higher level of duty currently applied.

8. Rules of origin criteria should be clear for exporters to understand, notably avoiding the use of any traced value/list schemes that apply to the automotive sector under NAFTA. It is essential that rules of origin are as simple as possible for exporters to understand;

\(^{29}\) Centre for Economic Policy Research, Reducing Transatlantic Barriers to Trade and Investment - An Economic Assessment, March 2013.


\(^{31}\) WTO online statistics database, tariff profiles for European Union and United States
otherwise there is a risk that opportunities for companies to benefit from the elimination of tariffs will be foregone due to the incorrect classification of originating or non-originating goods.

B) MARKET ACCESS – SERVICES AND INVESTMENT

Liberalising trade in services

9. Services are highly important in the context of transatlantic trade, and the US and UK are the world’s top two exporters of commercial services. The CBI would strongly welcome horizontal commitments from the EU and US to bind existing levels of liberalisation and to grant improved market access and national treatment in all four modes of delivery, with the scope of commitments covering all services sectors.

10. State-level barriers to trade in services are particularly important to clarify and address. Just like the EU, the US is not a harmonised internal market for trade in services. As a first step, the CBI supports detailed clarifications of the barriers that apply at state-level, which are particularly prevalent in highly regulated fields such as professional services and financial services. There should be full transparency of all regulated professions and restrictions that apply at state level, going beyond indicative measures or general principles.

11. On mode 4, UK citizens with e-passports currently do not require visas when travelling to the US under 90 days due to the Visa Waiver Program, which is important given the high degree of regular business travel between the UK and US. However, for the temporary movement of persons over a longer term, problems have been reported relating to the predictability of the US visa regime. Given the importance of labour mobility for services trade, we support measures to reduce burdens and uncertainty for employers when visas are required for longer-term stays in the US, for example with the caps and conditions in force with the H1-B visa process, as well as the conditions for intra-corporate transferees under the L1 visa process, which both fall under the Mode 4 negotiations.

Sector specific market access issues

12. Sector specific market access priorities identified by the CBI for the services and investment negotiations include:

- Removal of ownership and control restrictions for foreign investment in US airlines (following the 2007 Open Skies agreement, a 25% cap still applies in the US compared to a 49% cap in the EU).
- Authorisation for EU commercial vessels to transport merchandise between US ports (currently vessels are required to be built, owned, operated and manned by U.S. citizens and registered under the U.S. flag).

32 WTO International Trade Statistics 2012
• Address lack of wholesale market access for competitors in US electronic communications sector, ensuring competitors have access to broadband networks and business access services at non-discriminatory, transparent and cost-based rates.
• Removal of discriminatory collateral requirements in the re-insurance sector.
• Reduced barriers for the professional services sector (e.g. allowing UK qualified professionals to take relevant US exams regardless of route to qualification in sectors like accountancy and legal services).
• Removal of nationality restrictions on ownership in accountancy and banking sectors.

Investment – increasing access and protection

13. Transatlantic investment flows are essential in achieving deep economic integration which explains the high degree of intra-firm trade between the UK and US. The CBI welcomes the shared EU-US principles on international investment that have emerged from the TEC process. The TTIP should promote the free transfer of capital, a level playing field for foreign and domestic companies, and protection for investors and their investments.

14. On investment protection and the specific issue of investor-to-state dispute settlement, the CBI supports the insertion of bilateral investment treaty provisions into the agreement, under the condition that commitments by both parties are consistent with the high levels of protection afforded in standard UK BITs to date. The objective should be to provide legal certainty that investments in the US cannot be discriminated against on grounds of nationality.

C) MARKET ACCESS – PUBLIC PROCUREMENT

15. The EU should look to open up US public procurement contracts to the highest degree possible, going beyond GPA commitments in terms of coverage and lowering existing thresholds due to the imbalance between EU and US commitments under the GPA. The agreement should include binding transparency rules for award process and national treatment, as well as clear criteria and deadlines in the selection and decision-making process.

16. Currently, ‘Buy America’ provisions prevent UK firms from being able to compete for US contracts due to local content requirements, whereas the UK market is considered one of the most open in the world, and no local content requirements are applied. The negotiations should seek to ensure that ‘Buy National’ criteria no longer exclude EU companies from competing for contracts. If these restrictions cannot be fully removed at state level, solutions should be reached to achieve a lowered and consistent percentage of local content requirements among the different states to prevent states from pushing forward with ‘Buy National’ legislation.
17. Without improved market access conditions in some sectors, benefits in public procurement will remain limited only to those sectors that are able to fully operate on both sides of the Atlantic. The CBI encourages the Commission to look specifically at NTBs in those sectors that are particularly relevant for the public procurement market.

18. Additional priorities raised by CBI members at the sector level include:
   - Removing restrictions on the sale of any textile product into the US for military use, including for mixed materials (Berry Amendment)
   - 'Buy American' provisions for High Speed Rail Projects and Transit Rail Projects that benefit from FRA and FTA funding respectively.
   - State laws that impose contracting preference provisions with higher domestic content requirements than those set forth in the federal law (e.g. the Stronger Transportation ‘Buy American’ requirements in California).

D) REGULATORY CONVERGENCE AND NON-TARIFF BARRIERS

Reducing current non-tariff barriers to trade in key sectors is the top priority for the CBI in the negotiations

19. The TTIP negotiations must take the work that has been done by TEC much further, and should bind in results. Making sure that regulatory agencies are on-board and fully engaged in the negotiations is absolutely essential to reduce the burden of regulation that is frequently seen as the biggest single barrier to transatlantic trade. Regulators must formally recognise compatible and functionally equivalent approaches to approving products and services in their respective markets.

20. Full regulatory harmonisation for most sectors will not be realistically achievable within the ambitious timeframe that has been set for the negotiations, and this applies to both trade in goods and services. As a result, EU negotiators should strive for as many economically meaningful mutual recognition agreements as possible, and to limit any discriminatory regulatory requirements that currently apply to cross-border trade and investment. The most important benchmark of success for the TTIP will be the extent to which new regulatory commitments can be delivered that make a practical difference to businesses on the ground, as opposed to solely focusing on future regulatory co-operation and compatibility, although this is also important. The TTIP also needs to ensure that regulatory commitments that are taken are fully implemented and held to account.

21. There is a strong sectoral dimension to the regulatory aspect of the negotiations. Counterpart regulatory agencies and standards bodies must work in conjunction with the relevant industry associations for each sector to ensure that costly and unnecessary duplicate testing procedures and regulatory divergence are avoided wherever possible. In some sectors, establishing stronger mechanisms for cross-border co-operation and consistency when designing or updating regulations is an important stepping stone to
future regulatory convergence. The level of co-operation and industry engagement needs to intensify following the formal launch of negotiations at the G8.

22. The CBI has so far identified the following sectors and regulatory issues for prioritisation:

**Automotive**

23. While the compliance procedures are fundamentally different (Type Approval in EU; self-compliance in US), motor vehicles that are safe to drive in one market should be considered safe to drive in the other. For key safety and environmental standards, there is currently duplication between the UN Economic Commission for Europe (UNECE) 1958 Agreement applied in the EU and the Federal Motor Vehicle Safety standards (FMVSS) applied in the US, which increases the complexity of product development, leading to increased compliance costs.

24. Proposals have been put forward by sectoral industry bodies in the EU and US to counter this situation, focusing on introducing mutual recognition agreements for key safety standards, and confirming equivalence for these standards. The TTIP negotiations should build and deliver on these proposals, making sure that meaningful commitments take effect on current barriers to trade. Furthermore, following the signature by both the EU and US on the 1998 Agreement, both partners should commit to adopt global technical regulations (GTRs), of which 11 currently exist on safety and environmental standards with others in the pipeline.

25. Concerns have also been raised relating to divergent emissions standards between different US states, and support has been highlighted for the re-entry of the US into the WLTP (Worldwide Harmonised Light-Duty Test Procedure) process given the importance of establishing a global test procedure to measure light vehicle emissions and energy consumption.

26. On future regulations and standards for the sector, the EU and US should agree to consult each other before introducing new technical legislation, and should create a process with the objective of harmonising divergent regulations (UNECE 1958 Agreement and FMVSS standards) leading to common future standards.

**Chemicals**

27. Sectoral industry bodies in the EU and US have presented joint recommendations on regulatory co-operation measures, stressing the importance to the sector of increased consultation and co-operation by regulators when adopting new chemicals regulations. This is seen as an important transitional step towards developing comparable chemical regulations thereby allowing mutual recognition to be applied, in a context whereby there may not be much scope to harmonise or amalgamate the main EU and US chemicals regulations (REACH and TCSA).
28. Within this context, priorities include:
   - systematic data and information sharing between EU and US regulators;
   - increased co-operation on the processes to prioritise and align chemical
     substances for review and evaluation, including classification;
   - common regulatory principles on how hazards and risks are characterised;
   - mandatory and improved transparency of information and rules to protect
     commercial and proprietary interests;
   - a mandatory transatlantic cross-border consultation process when drafting new
     chemical regulations to avoid future regulatory divergence.

29. New areas for regulatory activities like nanotechnology and endocrine disruptors
    provide more potential for regulatory convergence by defining common standards on
    criteria and common methodological approaches, which in the long-term could possibly
    be extended to other global trading partners.

Cosmetics

30. Divergent classifications of cosmetics and cosmetic ingredients between the EU and US
    create an unnecessary regulatory barrier to trade, and the CBI supports mutual
    recognition of classifications (e.g. for toothpaste, anti-dandruff, anti-perspirant) and of
    positive list materials (e.g. UV filters). There should also be mutual recognition of
    labelling requirements in cosmetics and sunscreens, and the INCI naming system for
    cosmetic ingredients should be adopted by the US.

Financial Services

31. Regulatory divergence between the EU and US presents the most pressing trade barrier
    for the UK financial services sector. The CBI is concerned that key rules set at the global
    level are being implemented by the EU and US in divergent ways, and hence we fully
    support the inclusion of the financial services sector within the negotiations on
    regulatory convergence. Inclusion of financial services is not about giving either party a
    loss of sovereignty over prudential frameworks, but about working with the other party
    towards the broad convergence of regulatory outcomes. Sub-federal regulators need to
    be incorporated within the process, given that key regulations are devised at this level,
    particularly for insurance. A reinvigoration of the current EU-US Financial Markets
    Regulatory Dialogue needs to take place, which can help the EU and US to implement
    global rules in compatible ways.

32. As part of TTIP, negotiators should look at barriers created by the extra-territorial
    application of rules which may make it difficult for financial services providers to supply
    their products. In this regard, measures announced in July by the EU and US to recognise
    joint approaches to the regulation of cross-border derivatives are welcomed, notably the
    ability for market participants to choose whether to follow EU or US rules for bilateral
uncleared swaps. Further co-operation and clarity on derivatives regulation is essential to prevent the extra-territorial application of rules by either party, and to ensure that EU and US regulatory approaches are compatible.

Food and drink

33. Divergent technical standards and sanitary and phytosanitary (SPS) rules are longstanding barriers to EU and US agri-food trade, with significant differences in policy in areas such as food safety, biotechnology, hormone growth enhancers, pathogen reduction treatments and import procedures. There is a clear opportunity to discuss pragmatic solutions to these barriers, with the agriculture and food and drink industry in the UK supporting the implementation of SPS rules in accordance with the science based approach.

34. As well as being a key market for UK exports, the US is also a source of agricultural raw materials used in EU manufacturing. The EU and US combined represent a third of global trade in food and drink manufacturing and an ambitious deal would afford significant benefits in terms of food security for consumers and security of supply for manufacturers. A major barrier to achieving this is the diverging outlook on food safety between the EU and US. Negotiators should seek to ensure a mutual recognition agreement on technical standards relevant to foodstuffs and an equivalence agreement on internal inspections.

Information and Communication Technologies

35. Information and Communication Technologies (ICTs) have experienced a radical transformation in the last decade with the development of the Internet as a common platform where convergent voice, data and video services are provided by a range of actors, not all subject to the same legacy regulations. A holistic vision with a common understanding of the ICTs ecosystem should be an objective for the EU and US which should be reflected in the TTIP, to ensure a level playing field among all actors involved in the provision of ICT services. As competitive dynamics change with the entrance of new players, the goal of ensuring open markets for ICT services across the Atlantic should come in parallel with a more flexible approach towards the provision of telecommunications services and healthy competition.

Medical devices

36. Negotiators should address divergences in regulatory procedures between the EU and US which will help speed up patient access to new medical devices and avoid duplicate regulatory requirements for companies.

37. Within this context, priorities for TTIP include:
   - acceptance of successful ISO 13845 audits performed in both the EU and US as the basis for the respective regulatory procedures;
• harmonisation of the technical documentation that provides evidence of demonstrating quality system compliance (based on the results achieved by the ‘Global Harmonization Task Force’, now the International Medical Device Regulators Forum);
• the development of a single model for a medical device marketing application with electronic submission capabilities.

38. In the long term, the EU and US should work to promote and accept a globally harmonised solution for a Global Unique Device Identification and associated databases for medical devices.

**Pharmaceuticals**

39. Proposals have been put forward by sectoral bodies to boost regulatory convergence in the pharmaceuticals sector, where the existence of duplicate regulatory requirements is a particularly costly barrier to cross-border trade. In particular, the CBI supports a mutual recognition agreement in the field of Good Manufacturing Practice (GMP) inspections for finished drug products and active pharmaceutical ingredients (APIs), which would give a clear boost to EU-US trade. Other priorities to be addressed include variations in the regulatory assessment of ‘changes’ in the manufacture and control of APIs, as well as divergent requirements for pharmacopeia (medical explanations for drug use) that do not reflect the globalised nature of the industry.

**Transport**

40. Issues have been raised relating to difficulties faced by UK-based companies in accessing the light rail sector in the US because of diverging standards. European and international norms (IEC) differ from US standards (ANSI) and are not recognised by the US certification agencies. The EU and US should improve co-operation when developing new technological standards.

**E) TRADE FACILITATION**

**The TTIP should simplify customs rules and administrative procedures to facilitate trade**

41. In 2012, the EU and US achieved a landmark agreement to mutually recognise AEO and C-TPAT trusted traders. This should be locked into the TTIP agreement with commitments to fully monitor and implement it, including clear benefits and incentives to certified operators, such as automatic known consignor status for cargo security, fast track processing through customs, permission to provide required documentation post-release, and an incentive structure of fewer inspections and validations for fully compliant traders.

42. In addition, the EU and US should:
• work together to establish account-based customs processing for trusted traders, as opposed to transaction-based collection of customs duties;

• create greater incentives for SMEs to take advantage of trusted trader programmes;

• eliminate and harmonise ‘pre shipment’ notifications and reporting requirements (Entry Summary Declarations in the EU and Importer Security Filings in the US).

• build the WCO Guidelines for the Immediate Release of Consignments by Customs into the TTIP agreement to ensure that goods traded between the EU and US are released immediately provided that all the conditions laid down by customs are met and the necessary information required by national legislation is communicated at a stipulated time before the consignments arrive.

43. On air cargo security, the CBI welcomes the June 2012 Air Cargo Security Agreement between the EU and US, and provisions should now be strengthened through steps to harmonise air cargo security regulations based on the new International Civil Aviation Organization Annex 17 framework. In addition, the CBI recommends the use of the U.S. Air Cargo Advance Screening (ACAS) program as a basis for EU-US cooperation on the use of advance data risk assessment.

44. Other issues to look into include the fact that the “de minimis” value threshold for the imposition of duties and customs requirements is lower in the EU than it is in the US. Reaching a common threshold would be to the benefit of both economies, particularly for SMEs who suffer from the additional financial and administrative burden imposed by low and differing de minimis value thresholds.

7 October 2013
The Chairman: Thank you very much for seeing us. I am sure you have been told what we are doing. We are the Sub-Committee of the House of Lords on EU External Affairs. We are doing an inquiry into the TTIP negotiations. We hope to produce a report in the first quarter of next year. Our target is by Easter; it depends how things go. We have been seeing a number of member state delegations—the French, the Germans, the Swedes and the Czechs. We have seen the Chinese and the Americans, so we have had quite a busy time. We are now seeing you and then we will see the negotiator. We are very grateful.

Karel De Gucht: He will tell you what it is really about.

The Chairman: My colleagues, I am sure, will ask questions. We have sent you a number. Perhaps I could begin with a very general one and then follow up with a more particular one. The general one is: in your opinion, what are the biggest political hurdles in the EU to reaching a successful conclusion and ratification?

Karel De Gucht: What is the biggest hurdle? Not what most people think, I believe. Most people think that, for example, hormone beef, GMOs and so on will be the biggest hurdle, but I do not think so, because we have recently concluded an agreement with Canada, which is similar, but TTIP is broader. The basic canvas is not so different. The Canadians get a quota on beef, so there were a lot of reactions by the French members of the European
Parliament, saying now all the hormone beef is going to come to Europe. No, they get a quota and what they are going to do is place a separate production line of hormone-free beef. That is what they are going to do. If we make an agreement with the United States, it would be exactly the same, the more so because you have a limited number of states that produce hormone-free beef already now. I could not name them by heart, but there are states that produce it.

It is the same for GMOs; there is legislation on whether you can commercialise it or not in the European market and also a law on cultivation. The one on commercialisation is a procedure. You have to go through that procedure and there are already 49 GMOs that have been agreed for animal feed stock and two for human consumption. Tomorrow, in the College, we have three cases. I have not read them yet, so I am not going to say anything on it, but obviously we have to decide what we are going to do. I could imagine that the procedure will be speeded up a little bit; that would make sense. The procedure and the requirements will not change, so the idea of Americans wanting this scientific evidence to automatically agree to the commercialisation of GMOs is not true. It will not be true after the agreement either. On the cultivation, there is a proposal on the table, on the desk of the Council and Parliament, whereby now, when you forbid cultivation of a GMO, that goes for the whole of the European Union. The proposal that the Commission has been making is that it could also happen for a specific member state, but for reasons other than environmental reasons or health and safety reasons, because that is part of the internal market package. For example, with proximity, for GMOs the proximity of the fields can mean that you have a higher risk of contamination. That applies to Austria, for example, but they could not do it for health and safety reasons, and environmental reasons. That is still under discussion in the co-decision procedure, but that will give an answer. In the end, I think we will get there.

What is the biggest hurdle? You will need a lot of political resolve to do it. I believe even more in the United States than in Europe. That is my feeling. In the end in Europe, we have a permanent fast track, which you do not have in the United States. They still have to ask for a fast track. I could imagine that, if they get the fast track, Congress is going to put a lot of conditions on that, which could make life difficult, I believe, especially in the United States. In Europe, we have this fast track. It is a big deal.

If you really ask me what would be most difficult, I believe that in the end public procurement and a number of services. That is my feeling. Public procurement in the US is at state and federal level. In Europe, you do not have that; it is one system. Also in the US, on the number of services, the Jones Act for example is very clearly a protectionist Act. You cannot say it is a risk for national security that European ships would be in the territorial waters of the United States. If that is the case, then you had better make no agreement at all. That is purely protectionist. That is the biggest problem for Europe: that we would not get enough on that. Your question is: what is the biggest problem in Europe? The biggest problem in Europe is probably that, for public procurement and for a number of services, it will be very tough to get anything.

The same goes for GIs, because the US is against GIs, geographical indications, and we have seen that also in other negotiations. To the extent that they can, they are certainly not cooperating and they would rather influence our negotiating partners so that they do not give in on GIs. We have also seen that with Canada and with Singapore. The Americans also protect it, but with trademarks. The big corporations have those trademarks. Of course, a geographical indication starts from the geographical origin of a product, like for example Parmigiano-Reggiano, which is because it has been made in that region. That is what it is about. You have two different visions. That was also not easy with Canada. I believe that, in the end, we got a fairly good result, but that will certainly be difficult.
Why is this an answer to your question? If we do not get at least partial protection of GIs, for example, it will make it very difficult for Europe to have a deal on agriculture. Recognition of GIs is a counterweight for concessions that will probably have to be made in beef, chicken or pork. That softens the blow. If you do not have that softer, it will become more difficult with the rest. That would be my prima facie answer.

Q100 The Chairman: Thank you very much. That is very helpful. I know my colleagues want to follow up on some of those. If I could just ask a detailed question about the Commission, perhaps you could explain. I am told that, in this particular negotiation, you are doing all the normal trade things, but that Commissioner Barnier has total control over the negotiating process within the financial services and that there is, as it were, a split responsibility with that part being hived off. I do not know if that is accurate or not, but perhaps you could explain how financial services fit into the negotiating framework.

Karel De Gucht: It is not only a detailed question; it is also a very difficult one. Europe wants financial services to be part of the negotiations in the services part. We really want it to be there. The United States is very reluctant about that and there are also different schools, one of the reasons being that they do not want to re-discuss anything that has to do with Dodd-Frank, because they see that, if you changed anything with that, you would open a Pandora’s box. That is why they want to keep it out of the negotiations, when Europe says it has to be in. What we have agreed, Mike Froman and myself, is that for the time being we will do it in parallel with the aim of bringing it into the result of TTIP. I can live with this as long as it produces something. I do not mind; I am not interested in the colour of the cat as long as it catches mice. That is not my point.

Now, there is also no misunderstanding at all between Michel Barnier and myself, because on financial services you also have market access, which would be on the agenda in any case and he would be represented. When it is about regulation, he has the lead and we are represented, so that we are very transparent with each other. That is not the point. The point is: will it work? Michel made a broad agreement—I mean “broad” in terms—on derivatives a couple of months ago. Now they have to put this into hard text, which demonstrably will be extremely difficult, because these differences of opinion remain. There the starting point was, on derivatives, you have Dodd-Frank and you have our own legislation. We leave them as we are and then we see how we can get to a common approach with respect to implementation. That seems to be very difficult in practice. I have no problem with the form as it has been agreed by now, but we will have to see whether we get anywhere with this. It cannot be a formula to put it off the agenda.

I could give you another example of that approach and that is with respect to data protection. There are obviously a number of problems with that. We know what we have been experiencing with NSA and so on. I have to say it is quite extraordinary that you spy on the mobile phone of the German Chancellor. This is very far-going; that is the least one could say. Of course, this is also a topic for TTIP negotiations, because you cannot make steps towards an internal market, which we are in fact doing in this agreement—it is not an internal market but it is going in that direction—and not have a sufficiently free flow of data between companies on both sides of the Atlantic, and also for the cloud, for example. You need to do that, but how can you do that?

You know we have this Safe Harbour agreement, which is not really an agreement. It means that the European Commission is giving a kind of label to an American company that they are a safe harbour so that, when you send data to that company, they are in a safe pair of hands. That is what it is about. We have seen, with the NSA and other matters, that a number of those companies have given data to the American authorities without the Europeans even being informed about it. The European legislation is still under consideration but, of course, given the present environment, it could very well be that it becomes a little
bit more stringent than before. That has to get through Parliament, and then you have to organise the free flow of data. That will be TTIP.

I would very much prefer that the basic negotiation on how the two legislations—the European and the America one—relate to each other is done by Reding. What I am interested in is how, on the basis of that, we can establish a system whereby you have the free flow of data. You secure the environment and then you organise a free flow. This is not a typical free trade agreement. We also work with a lot of other DGs in this. If not, it would simply not be possible to do it. It is an extremely complicated feature. That is a good approach. Also, the other Commissioners are concerned. From the European side, it is very important to get success, because it is a very difficult political environment. It could very well be that after the elections it is even more difficult. Also, the whole College is staunchly behind it.

Q101 Lord Lamont of Lerwick: One of the things we have also been talking about is how this is viewed by China and how it affects trade with China. I wondered if you could enlarge on—this is slightly unfair; forgive me—a remark you made to the German Marshall Fund in May this year, which I will just quote. You said: “It is our advantage that we have worldwide standards and they cannot impose standards on us”. You went on: “It is probably in our interest that China has a moderate level of anxiety”. What did you mean by that—that China has a moderate level of anxiety?

Karel De Gucht: Which meeting is that?

Lord Lamont of Lerwick: It was in May 2013, when you spoke to the German Marshall Fund. Not correct? I am afraid I do not know when, just May.

Karel De Gucht: Have I been speaking to the German Marshall Fund this year, in Brussels? Was this in an article, or what is it?

Lord Lamont of Lerwick: I am sorry if you did not say it, but it just struck me as very interesting the view that we have worldwide standards and China does not. That was really the point I was making.

Karel De Gucht: I can tell you what I think about it, but it does not seem that I would say that it is good that they have a moderate level of anxiety. Have you ever heard me saying that?

Lord Lamont of Lerwick: Maybe it was off the record.

Karel De Gucht: Even off the record, I would not say that.

The Chairman: One member state has said pretty much that to us during the course of the morning.

Karel De Gucht: Who?

The Chairman: Was it the Swedes? One of them did. It was the French.

Karel De Gucht: I can tell you what I think about it. I believe that the next big battle in trade is about norms and standards. That is what it is really about in the decade to come. I could be mistaken. Tariffs are historically low and, whenever tariffs are low and certainly when they disappear, the big risk is that you see surfacing a lot of non-tariff barriers, as we have also seen in Europe. Once we got the customs union in the 1970s and 1980s, we had to work on taking away non-tariff barriers, because when you have tariffs and you want to protect them, you raise them and it is okay. If you do not have that anymore, you have to apply something else and that is non-tariff barriers. We estimate that the cost of non-tariff barriers is 10% to 15% of the product, and tariffs, 5% to 10%, but it is not the same 5% to 10%. If you have 5%, you pay 5% and you can sell it. If you have a non-tariff barrier, you can say that the global impact is 10% but, for that specific product, the impact is 100%; you simply cannot export it. It is not the same kind of percentage.

Now, I do not want to impose norms and standards on China, but I want to create a situation where China cannot impose standards on us. That is my point, because the ones
Commissioner Karel De Gucht, EU Trade Commissioner, and Ignacio Garcia Bercero, TTIP Chief Negotiator, DG Trade, European Commission—Oral Evidence (QQ 99-112)

that will make the standards will have the market. You are operating in global markets more and more, so it is important that we have a great say in that. Let me give you the example of e-cars, electrical cars. We have been doing quite a lot of work on that in the Transatlantic Economic Council, the United States and Europe, and we made quite some progress. What we have seen is that, first, the Japanese joined in the debate and the discussion, and also the Chinese want to come in. We have no problem; we are in favour of global standards. We do not want to exclude anybody from our standards, but we do not want to be in a position in which they can impose them on us. That is crucial for our economic survival. Let us be very clear about that. That is what I mean.

I am a little afraid of putting this too much in a political geostrategic perspective. Of course it is geostrategic, but let us not mix the political and economic aspects of geostrategic importance. That is why I would never have used the word “anxiety”. I would never have said that off the record, honestly speaking, because that is not my view on it. It is my view that, if we want to count in the next generation, then we have to make sure that we have an impact on worldwide impacts. We will do that if we do it together; if the United States and the EU can make common standards, they will play a very important role worldwide, but we will do it in an open way and the others can join in. That is no problem at all.

Let me give you another example, which is already our approach now. The Chinese companies that are active in mobile networks, for example ZTE and Huawei, have access to our norms and standard-setting bodies. They can do that. Our companies cannot do it in China. I do not have a problem that they participate in our norms and standard setting, but they should do the same. That is one of my demands to the Chinese: “You should also give us free access to your bodies, and in a transparent way, so we really are part of the deals that you make”. That is what it is about. I do not think we have to be afraid of China.

Lord Lamont of Lerwick: Of course not.

Karel De Gucht: When you look, for example, at our trade surplus, it is going up year on year, for our goods, for services and for agricultural products. This is completely contradictory to the feeling that a lot of people have that we are not competitive in anything any more. It is either/or. That is not the point, but we have a duty to make sure that the European Union is used to forge a level playing field. I do not have a narrow idea of a level playing field; it is a complex thing. By the way, a playing field that is completely level cannot work either. You can forget about Ricardo. That is also obvious. We have to make sure that they respect a number of disciplines. That is my point.

Q102 Baroness Quin: I am going back slightly to what you said earlier. I have certainly picked up from the evidence that we have had so far that, within Europe, there is strong support for the Commission’s role in pursuing this agreement, and obviously the Commission has a lot of experience in negotiating trade agreements. We have picked up that, on the US side, there is more of a variety of views. At the event we were at in London last week, the US Ambassador to London seemed very optimistic about it, but that does not seem to be true of all US voices. I was wondering how important you consider the report that was done that showed advantages for each state in the US—whether that might help the cause of the agreement and whether you felt that there would be early discussions in the United States about giving fast-track authority, which would obviously help things hugely. The other point I thought about the Americans was to do with GIs, which you mentioned, and whether within the US there were any areas that would gain some advantages from the GI approach, or whether ultimately this will have to be an area where you agree to differ.

Karel De Gucht: I do not have a clear view on the level of support we have in Europe on this, because you have to look at different levels. It is obvious that the European Council and the Governments are staunchly behind it. However, as a result of this NSA question, even the President of the European Parliament, Martin Schulz, said we should suspend the
meetings; we should suspend the negotiations. I see no reason to do that. It is not that I agree with their behaviour—on the contrary. If you leave the room and you know you have to come back to that room, you had better, before leaving the room, have an idea of what you are going to say before you come back. I see no reason to suspend the negotiations. At a political level, yes; Governments, yes; in Parliament, I think there is a majority for this approach, but not across the board. By the way, it could very well be that the next European Parliament is much more diverse than it is now. It could very well be, which is not necessarily a problem. Sometimes when majorities are smaller you can better manage them. In the general public, there are some observations from the greens, more generally speaking. I am not limiting that to the Green Party but to the green movement, on GMOs, on hormone beef, on health and safety standards and all those kinds of things. Socialists? You have a number of them and most of them would say, practically everybody, that they are in favour “but…” and then the whole discussion starts on the conditions of this. You can have conditioning, but if you make that kind of deal you also have to believe that making that kind of deal is essentially advantageous for both parties. If you start conditioning it in 100 ways, you could very well end up with a bleak deal. That discussion would more or less be with the socialists. Liberals and Christian Democrats, largely speaking, are in favour of that. That is more or less the picture as I get it.

What I have also seen is that with social media all of a sudden something can flare up. We are not used to working with this and knowing how to counterbalance that. It may be a somewhat dangerous comparison, but you could compare it to a traditional war. In a traditional war, you have one army against an army, and you see each other. The social media and yourself, the political elite, do not know who you are fighting against and who you are defending yourself against. That is the difficulty. I have seen that in ACTA, which was voted down in Parliament for reasons that I still do not understand, honestly speaking. They claimed it was against the text, but it was failing so bluntly that it got out of control and a lot of politicians were scared. We had elections and so on, so we had to let it go. That is a little bit about the environment. The idea that it is clear-cut in Europe is not true either, I believe. It depends on one member state to another.

For example, in France there is quite some criticism and activism, maybe not against it but, in any case, they are trying to spread doubts about it, for example about transparency, with the French Minister asking me to render public the mandate. I got an official letter on that, published everywhere, probably also in Great Britain. Madame Bricq is asking for the text of the mandate. The result is that of course people say, “Why does she have to ask? This must be something secret. If something is secret, there is a reason it is secret, so there must be very ugly things in this answer”. I had to answer, “Look, I cannot give you the mandate because it is not my mandate. Ask your colleagues. You have been deciding it together with your colleagues, so ask them”. The Council did not agree and they refused to render it public. Do you see? This is activism to spread doubts. Now, she has also ordered a study on what? Madam Bricq recently asked for a study on the impact of TTIP on the French economy. There was even a more specific one that she asked for recently, a couple of weeks ago. She has been asking for a French impact assessment.

Ignacio Garcia Bercero: It is on the impact of TTIP on the digital economy.

Karel De Gucht: There are a lot of reports on that. A politician is not a think tank. There is enough available to have an idea of what the impact would be. If you want that kind of study, it is going to spread doubts. In France, it is a public debate where the Government is playing an activist role as part of the political discussion. The idea that it is clear-cut in Europe, I would not say that either, but that is not a reason not to do it.

Q103 Lord Maclennan of Rogart: Commissioner, at the beginning of this process, it seemed that the parties were broadly keen to get ahead. They got off the ground rather
strongly but, in the course of your remarks, you have talked about the difficulties. You have talked about regulatory convergence; you have talked about public procurement difficulties; you have talked about financial services and the attitude of the Americans. Is it possible that the Commission could give a boost to the momentum by indicating, after the next two meetings of discussions, what progress is being made and how you propose to tackle these problems in general? You obviously cannot reveal the detail, but you could, it seems to me, communicate a generally optimistic outlook.

Karel De Gucht: The reason I have given these answers is because these were the questions you put to me. The Chairman asked me where I see the biggest risks and I see this as a kind of parliamentary hearing in my office, and so I tried to answer the questions you put.

The Chairman: You answered very clearly.

Karel De Gucht: I try to be as transparent as possible in this. I get attacked for not being sufficiently transparent because the NGOs would like to be around the table with me. That is what they really want, but that of course is not possible. I do not try to hide that much. It is also why I do not mind whether it is on or off the record because, in any case, this will be discussed in the coming months.

Yes, normally we would have the second round a couple of weeks ago. It could not happen because the Americans could not buy tickets anymore, because of the shutdown. Imagine if that had happened in Europe. A lot of people in your home country would say, “This is the final end of the European Union”. I can already see Farage speaking about it, but that did not happen here; it happened in the US. This round will now take place next week in Brussels, so we will catch up and we have a third round on 16 December, just before Christmas and then the idea is that Mike Froman and myself do the first stock-taking. Where are we? The idea is, in early January, to sit together and say, “Where are we? Where are the difficulties? What will be our approach on regulation and all these kinds of things?” That is the idea. I will be very open about this with the European Parliament’s INTA committee, when they ask me questions about this. Wherever I go to make a speech, I am always very positive about TTIP, very clearly stating why I believe it is so important to do it. We will certainly come out with a first appreciation of where we are and also do this with full transparency with the European Parliament.

Lord Maclennan of Rogart: Do you get the impression that your opposite number in the United States would be willing to be as forthcoming and positive as you would be?

Karel De Gucht: He is not a complete newcomer to me because, in the previous Obama term, he was Deputy National Security Adviser for everything that had to do with macroeconomic and international economic matters, and he was also the Sherpa of Obama for the G8 and G20. He was already very heavily involved in trade matters. He has, together with his predecessor, been instrumental in drafting the interim report and the final report, so he is staunchly behind what is in those reports because he has been drafting them together with us. That is an advantage, I think. There is a lot of continuity in what he is doing.

He is a very sharp negotiator—of course, that is his job—just as I am, by the way. I am also not considered to be very soft. We are both results-oriented. We want to get results. We want to do a deal. That is exactly the same with him, but he has to work in his political environment and I have to work in my political environment. I already have a fast track; he has to ask for a fast track. I am not going to pronounce myself on what his position is or what he should do in the United States, but I am convinced that he is deal-oriented, very much so.

Q104 Earl of Sandwich: Nevertheless, I still get the impression that the Americans are pushing the EU towards an agreement, because there is a risk that the Americans will pull...
out earlier. Is it a correct assumption that the red lines for America are going to be much higher than ours? You have to look beyond that to see the effect of pulling out. For example, the Trans-Pacific Partnership is a deal that is distracting the Americans at the moment. It is going quite well; in comparison, this is going slower. There are going to be too many obstacles and then what happens? Do we see it as a partial trade treaty? Are you prepared to accept that it could have a partial result? In other words, you will see some results but will have to accept that it is a limited agreement in the end. You have to look that far ahead, do you not?

**Karel De Gucht:** I already tried to give an answer to that question on the first question that Lord Tugendhat put, because he asked me what the most difficult points for Europe are. I said that the most difficult points for Europe is that it would be very difficult for the United States to make an agreement on GIs, public procurement and the number of services, so that is my understanding of it. We also have a number of difficult topics in Europe, for example in agriculture, but I think they are manageable in a broader agreement.

Congress is also talking a lot about red lines, because they have no fast track. That is one of they reasons they are doing it. The Congress is still in the position that, whatever you reach, it has to go to Congress and then they can start handing in amendments. That is a non-starter, but they are still in that hung situation. It is obvious that, if you want to make a deal, it will not be on the basis of eliminating one against another on red lines. We will get nowhere. That is obvious. We are not going to make a hollow agreement. I am not going to make that. Maybe some might think that, because I said it is possible before the end of the year, that I am in for a hollow agreement so that I can say, “Look, we have an agreement”. I am not interested in that.

The best example is Canada. We had an agreement on 98% a year ago, and the last 2% took a year, because we said, “We are not going any further than that and this is what you have to do if you want a deal”. I see no reasons why the Americans would be in another position to us with respect to that, but that does not preclude you from being results-oriented. Also in business, if you want to make a deal, you have to be deal-oriented. When you discuss the merger of companies or an acquisition, you can always find reasons not to do it and those are the ones who never do a deal. You have the ones who say, “I want to make a deal, but I want to do it largely on my terms”. That is probably Mike’s idea and mine, and we can see whether we can meet each other somewhere. An empty deal, a hollow deal or a deal with a lot of exclusions and all that kind of thing does not add anything.

**Earl of Sandwich:** What about a gradual convergence as a second alternative? You would move gradually on a living agreement.

**Karel De Gucht:** It depends on what is meant by “a living agreement”, because that is a term that I have been using myself several times. You cannot do everything in this deal. Why? For example, on norms, standards and regulation, this is something that continues. My idea is that you will have what I would say is an actual agreement, where you agree on a number of things, with respect to tariffs, non-tariff barriers, norms, standards and regulations, intellectual property, public procurement and so on, and then you will have a living part, whereby you put into place structures that make sure that, in future, you will have much more common regulation than you presently have. That is the living part of it for me. That is the easy one to say, in the end, that we will agree on all industrial tariffs so that they go away. If we make an agreement, the industrial tariffs will go away, obviously. Why not first make a deal on that? That is a non-starter, because we can never make that kind of deal if, at the same time, there is not an agreement on what you are going to do on agriculture. By the way, it is exactly the same on the American side. To disentangle it simply because you can put it together in a global deal, so that you can resolve those matters—you cannot resolve them individually. You will never get there individually. For me, it is an actual
part, a living part, but for an overall embracing agreement. That of course will never resolve everything. That is not possible either.

That is, by the way, the risk of the Trans-Pacific Partnership, by the way: that they end up in a weak deal with the United States. Why? Because it is a negotiation between the United States, a mature economy, and economies ranging from LDCs to developing countries to emerging economies to mature economies. A negotiation with an emerging economy and a developing country, or with a developing country and a mature economy, is not the same. It is not the same in terms of percentage of trade covered by the agreement, with respect to disciplines on agriculture and on public procurement. You have problems with those kinds of economies with different industries and so on. It is not the same. By the way, we have also been trying to do that in the past with ASEAN and we had to stop, because it simply did not work. That was not the only reason. It was also because these are very different animals you are discussing, so that is why Lord Mandelson had to cut it into pieces. You are not negotiating with individual countries. The risk of a weak deal is there much more than it is with TTIP, because there you have two economies that are at the same level of development, not necessarily in all the nations, but generally speaking they have the same level of development. The risk of a weak deal comes down to consolidation of already-existing agreements, because we know in those parts of the TTIP you already have existing agreements. That is there much more than it is with us.

On the risk they would give priority to TPP, we had agreed from the start that we would have three negotiating rounds, so that they have covered themselves, with a proposal to catch up as soon as possible after this shutdown history. I do not know. You are all politicians; this can change in a fortnight. I am not a psychiatrist to dissect all that. I have a counterpart. I know what I want to reach. I imagine that he knows this as well, so we will see where we get. It does not help me much to have a clear view on the psychology of all this. In the end, it is a business deal.

Q105 The Chairman: Your answer to Lord Sandwich about achieving what can be done and the things that you have to continue was very clear. Will you set that out in the stock-taking? Will you make that point in the stock-taking or would it be premature to make it?

Karel De Gucht: We have already been discussing that. Mike Froman knows very well that this is my opinion. An actual deal and then a process would be the living part of the agreement. What exactly we are going to do in the stock-taking I do not know, because first we have to look at what the stock is that we have already reached. The idea is that we will discuss where we are and then see how we can best proceed. The idea is also that, by the end of the year, we have a clear view on what we want to do in the regulatory field, in the end. That is also the idea. Do you have something to add to that, Ignacio?

Ignacio Garcia Bercero: It is obvious that, by December, particularly on the regulatory issues, hopefully we will begin to get a better understanding about what is doable and what is something that may take a longer period of time. It is a little premature to say now exactly how much could be identified. We had a first discussion in July; next week, we will have a very intensive discussion about regulatory issues. We will know more about what the US views are on different parts of the regulatory components. It is clear that the regulatory part is the most challenging one, because we need to get the regulators actively engaged in the process.

Karel De Gucht: When you take a picture of their regulatory build-up and ours, ours is much simpler. I can assure you that the regulatory build-up in the United States is much more complicated. You have bodies that depend on the Government. You have bodies that depend on Congress. You have a number of individual private companies that have a special role in that and they have a market share. That is what private companies are supposed to have. Their build-up is much more complicated than ours.
Ignacio Garcia Bercero: Ideally, one would wish to be in a situation such that, by the end of this year, on the regulatory field with the most complex issues, we have a joint understanding with the Americans about the direction in which we want to go with the different components of the regulatory component. Ideally that is what one would wish to do. How far it is going to be possible or not—these are early days. We would need to see how the discussions move forward in November and December. For instance, the car sector is a sector where there is a lot of interest to try to be ambitious on the regulatory side, but it is critically going to depend on active engagement with the regulators. If we have reached a point by early January where this has happened or not, we will really need to see. As the Commissioner has said, perhaps it is more difficult on the American side, because the regulators on the US side have a strong tradition of independence and strong constituencies in the Congress. That means that, although most of them—not all—are part of the Executive, it is still a very tricky issue to get them fully engaged in the exercise. We would need to see, between now and the end of the year, how far they have been able to move forward. Obviously some areas are particularly challenging, such as financial services, because there are regulators that are clearly fully independent of the Executive. This is not the case in other areas.

Karel De Gucht: There is a basic understanding that you have a regulatory council made up of the most important people on both sides of the Atlantic, with respect to regulations. That would be a kind of steering committee and would also have a forward-looking view on regulation. It is more or less agreed that we would have that, but I would even go further and give that council the possibility that, if something has to be regulated, they could assign it to a common body, a common group of regulators, so that from the start we have common regulations. That is the best way to avoid disparities: to agree them together. The problem is that, once you have a text on both sides, everybody will be convinced that his own text is the best. It is only human. The best way to avoid that is, from the start, to do it together. We still have to discuss that. It is off the record what I am going to say now.

The Chairman: If there is no deal—God forbid; we all want a deal—what do you think the consequences will be for EU trade policy and world trade policy? It would be a hell of a setback.

Karel De Gucht: You could expect that I have been doing that. I believe that making a deal has rewards and could have a substantial reward, but not making a deal will have a price and could have a substantial price. That is obvious. It is not only for Europe, but for the United States. As I said a moment ago, the next big battle is about norms and standards. If we cannot reach a deal, it will certainly weaken our position in that activity, so it has a price if we do not get there. That is also the best guarantee that we get somewhere.

Q106 Lord Lamont of Lerwick: Is aviation an area that has much potential? We have not heard it mentioned much. America has very protectionist legislation on aviation. Is that in your sights?

Karel De Gucht: Yes, because our market is much more open that theirs.

Lord Lamont of Lerwick: It is a complete contrast. I assume they would argue that there are strategic defence interests involved here. I do not know what.

Karel De Gucht: There are no defence interests about a plane landing in JFK and continuing to Chicago. There is no specific security issue with that.

Lord Lamont of Lerwick: Not in our eyes.

Karel De Gucht: We shall try to explain that this should also be the case.

Lord Lamont of Lerwick: There is really no security issue with Dubai owning part of the New York docks.
The Chairman: We have heard written evidence from all sorts of people, but nobody has submitted evidence to us on aviation. There has not been any pressure coming up on aviation.

Karel De Gucht: We have been making it very clear to them that we want a breakthrough on civil aviation. Also, for example, it is rather the same kind of problem as the Jones Act. Of the number of sectors, of services, aviation is one of them. Recently, we reached a very good deal on civil aviation security.

Ignacio Garcia Bercero: It was a few years ago, I think.

Karel De Gucht: There we made a real breakthrough but, yes, they should open their market to intra-US flights, just as we do in Europe. By the way, there is no reason why we could not do that. It is always like that when you have a discussion on these kinds of deals. Public interest starts focusing on a number of issues; it is always about those issues. For example, Ignacio just said cars; we should also do a lot on machinery. They are more reluctant on machinery, because one of their standardisation bodies, United Laboratories, is a private company that is important in standardisation procedures in the US, but also in a number of member states of the European Union. It is a private company. Machinery will be very important. These are the classical type of NTBs that we have experienced for two decades in the European Union, for example the height of the first step of a tractor and all these kinds of things. Earlier on, I had a discussion with a large industrial corporation and they stressed the same point. I said, “Look, what you should do is sit together with your counterparts and come forward with an agreement on what should happen. At least putting building zones on to the table is a good starting point”. I certainly have not mentioned everything, and I could not by the way, but people have been waiting for me 20 minutes already.

The Chairman: You have been very helpful and we are very grateful.

Karel De Gucht: When do you make a report?

The Chairman: By Easter.

Lord Maclennan of Rogart: Can I just add a postscript?

The Chairman: We must not hold him.

Q107 Lord Maclennan of Rogart: The British Government have been very keen on this from the beginning and most of us are very keen on it. If you have any suggestions to make as to how we could be of help, we would welcome them, and I do not expect you to put them on the record now.

Lord Lamont of Lerwick: It is on the record.

Karel De Gucht: You could help yourselves very much by supporting it in different ways.

The Chairman: We do.

Karel De Gucht: I mean Great Britain could help itself very much in supporting it, in at least two ways. First, you obviously would be one of the big beneficiaries of such an agreement. Secondly, it would also help you in the discussions with your countrymen on your position in the European Union itself.

The Chairman: Absolutely. I think one reason why the Prime Minister is very keen is that he sees that.

Karel De Gucht: You are going to make a report by the third quarter.

The Chairman: We hope by the end of first quarter, by Easter.

Karel De Gucht: You will have to work through Christmas.

Earl of Sandwich: It would be easier if you published your progress report.

The Chairman: I think we will have to wait for that first.

Karel De Gucht: Thank you very much, everybody. There are some journalists waiting on the Eastern Partnership Summit.
The Chairman: Thank you very much. That was very kind of you. We have covered a lot of ground.

Ignacio Garcia Bercero: You have covered a lot of ground, but is there anything that you feel like asking?

Q108 Earl of Sandwich: Shall I just ask a question that I was going to ask the Commissioner next? There is this question of whether there is any secrecy about the negotiations, even between the Commission and member states. There is a little bit of suspicion we have picked up that maybe the Commission is worried that too much detail gets out. Therefore, this is one of the reasons that you cannot publish a progress report earlier.

Ignacio Garcia Bercero: First, every document that the Commission gives the United States in the context of this negotiation is a document that has been first consulted with the member states. The member states have all of those documents. By the way, the same goes for the members of the European Parliament, particularly within the INTA Committee, which is the Committee responsible for monitoring trade policy.

This being said, it is true that there have been some concerns about leaks. Obviously when you give documents to many people, there have been a number of cases where documents have leaked. This is regrettable and it is true that there is a concern mostly from the United States that they are worried that the documents that they give to us, in confidence in negotiations, they would be very embarrassed if those documents were going to leak. We are currently discussing this issue with the United States. We are explaining to them that, in the context of negotiations on trade agreements, it is very important for us to have a maximum of transparency vis-à-vis the member states and vis-à-vis the European Parliament. We are trying to reach some arrangement that will guarantee that those documents that we receive from the United States can be shared in a sufficiently secure manner. Certainly vis-à-vis the member states and the European Parliament, everything that we as negotiators produce is discussed with them.

One thing that is of course obvious is that you cannot negotiate without maintaining confidence between the negotiators, which means that normally the negotiating text and the negotiation proposals are in confidence. They are not public documents. What we have tried to do in this case, because there is obviously a lot of public interest in this negotiation and a desire to know what is being discussed, is try to make as many documents public as possible. This does not include negotiating proposals. For instance, in the July negotiating round, we published a number of what we called initial position papers that explained what it is that the European Union is pursuing in a broad range of areas of the negotiations.

As the negotiations proceed, we intend to continue to do as much public outreach as possible, in part also to take into account this concern that was indicated by the Commissioner that there is always a risk that, if misperceptions arise and there begin to be misunderstandings about what it is that is being negotiated, it is very difficult to counter those misperceptions. Yes, there is an element of confidentiality that is inevitable if you want to negotiate in confidence but, certainly vis-à-vis the member states in the trade policy committee and vis-à-vis the European Parliament, I would say that at least European positions are always clearly shared and discussed with them.

Q109 Baroness Quin: Is there any provisional timetable of discussion of these particular difficult issues? That is what I am not really clear about at the moment. When is agriculture likely to come up and particular issues in agriculture? I do not have a feel for that, at the moment.

Ignacio Garcia Bercero: Let me give you a little bit of a bird’s eye view about where we are and how we imagine that the negotiating process would evolve. Between now and the end of the year, we will be trying to cover the whole ground, so every single area of the negotiation
is being discussed, so that we can arrive at a position by the end of the year where we have as much common understanding as possible about how we are going to be moving forward in all the different components of the negotiation. We are putting a lot of emphasis on the regulatory issues, because they are the most complex ones. Once we have reached a common understanding about what it is that we are aiming to do, there is still going to be a process that is going to require sufficient time for the regulators to be fully engaged. That is why we are, perhaps, during this initial phase, putting a lot of emphasis on the regulatory part of TTIP.

This being said, any trade negotiation, at the end of the day, is also a classical market access negotiation, where you are going to have to negotiate about tariffs; you are going to have to negotiate about market access restrictions on services; and we are going to have to negotiate about procurement. These are, I would say, the three big market access components of the negotiations.

Where are we on that? On tariffs, for the time being, we are discussing when we will proceed with the change of an initial tariff offer. This possibly may happen either towards the end of this year or towards the beginning of next year. This will be, basically, an initial discussion of tariff offers. It is not going to be, at that point in time, about the most sensitive tariff lines, which are going to be segregated to the more difficult negotiations.

On services again, we are basically now discussing with the United States the basic modalities for an initial change of market access offers on services. In my view, that might take a little longer than the initial tariff offer, because one of the things that we would need to determine in that context—and I do not want to enter into very technical issues here—is whether we will proceed on the basis of what is called a negative list or a positive list. That is something that will require substantive work and discussions with the United States and then with our own member states.

Procurement, as we discussed before, is probably going to be, from an American point of view, the most challenging issue in terms of market access. What we are aiming for is that, by December, we will be telling the United States what our priorities are for central-level procurement. We are analysing with the member states and with industry what should be the priorities at the state level. It is clearly going to be politically the more complicated issue for the United States. We hope that, somewhere towards early next year, we should be able to indicate to the United States also what the priorities are on state-level procurement.

That gives you an impression. My own personal sense is that, throughout next year, if we manage to achieve a good common understanding on the regulatory issues by the time of the political stock-taking, it would be a very good basis on which to make as much progress as possible on the regulatory front. On the systemic issues, TTIP is not only about regulations; it is also about, in certain areas, seeing where we can agree with the United States certain rules that could potentially have some broader significance at a later stage. For instance, trade-related aspects of energy is a very important issue that we are discussing, not only because we have an interest in access to US resources, which we do, but also because, from a broader point of view, it is important that we can work together to promote open markets on energy. For all of those issues, I would expect that, throughout next year, we would be making as much progress as possible.

There is always going to be a moment in time when you have to discuss the most sensitive market-access issues, including the most sensitive tariff lines on agriculture. There are going to be sensitive tariff lines in the EU, but there are also going to be sensitive tariff lines in the United States. We should not have the perspective that, for the United States, free agricultural markets are always necessarily the point of reference. You know that some of their agreements totally excluded sugar. They also have sensitivities on dairy. On our side, the most sensitive tariff lines were part of the final deal with Canada. My own personal
impression is that those most sensitive issues on market access are probably to be discussed when we are getting much closer to the final phase of the negotiations.

Q110 Baroness Quin: Thank you. That has given me a much clearer idea of how you are going to progress. One thing that we have picked up is a possible reluctance on the US side to deal with financial services at all. Is this something that we should worry about or do you think that, in the end, it will be included?

Ignacio Garcia Bercero: As the Commissioner has indicated, the United States is not against including classical market-access issues on financial services. The reality, however, is that the issues across the Atlantic on financial services do not have to do with classical market-access restrictions on investment. The markets are quite open, from that point of view. The issues that matter in transatlantic trade have to do with the potential clash between the two regulatory regimes. You have to try to ensure that, to the largest feasible extent, regulations of both sides do not conflict. That is what really matters in terms of the financial services sector.

As the Commissioner indicated, there are a number of specific issues that are being discussed outside TTIP—whether it is derivatives, whether it is the Volcker Rule, or whether it is equity rules for banks. All of those specific issues are currently being discussed outside TTIP and one should try to see how far one can get a solution. What we are insisting on is that it would be inconceivable that we establish a transatlantic agreement that, to a large extent, is going to be about regulatory co-operation, without ensuring that there is close co-operation between financial services regulators. We are insisting very strongly on that in the discussions with the United States. The Treasury is there—the Treasury is engaged in the discussions—but I would not hide that, for the time being, their position is very sceptical. We are going to have to very much persevere and insist on this issue as the discussion progresses. I have no doubt that this question about bringing in financial services regulatory issues is going to be very difficult.

Lord Lamont of Lerwick: Could I ask how financial services were treated in the Canada agreement? How far did they go?

Ignacio Garcia Bercero: Generally speaking, I would say, on regulatory issues Canada has not gone as far as we would expect the United States agreement to go. In the case of Canada, we had the classical market-access components on financial services. We also had very extensive discussions with Canada on the whole question of prudential regulation, because Canadians are very proud about their regulatory regime and the fact that they have not been affected by the crisis, so we had very intensive discussions on this issue. However, we did not actually go very far, nor indeed try to establish a closer framework for regulatory co-operation between the Canadians and the Europeans. It is clear that this framework for regulatory co-operation is much more important when you are talking about the US regulators and European regulators.

From that point of view on this issue, our expectation is to be able to go with TTIP significantly beyond what we have done in Canada. I would say this applies across the board on the regulatory front. If you look into the Canada agreement, from a market-access point of view, it is quite useful. On some of the key market access issues, on agriculture, we managed to establish quite a reasonable deal. On procurement, it is extremely ambitious. It is the most ambitious deal that Canada has ever done, so that is a good pointer for the United States. On geographical indications, we managed to strike a very reasonable compromise between both sides but, on the regulatory side, the fact that we are talking about two economies with very different dimensions means that it was not really the best place to get into some of the more complex regulatory issues that we would hope to tackle in the context of TTIP.
Just one word on financial services: in my view, there are two problems. One is the big structural problem, which is that the US financial service regulators—the Fed, the SEC etc—are very independent. The idea that they would be included within an overall framework of co-operation with a third country is something that gives rise to a lot of anxiety on their side.

The other element, which we are trying as much as possible to dispel, is that the United States is still in a very critical phase in the implementation of Dodd-Frank. A lot of implementing rules have not yet been adopted; they are being discussed as part of their rule-making procedure. There is the perception, suspicion or fear that, if those issues are going to be discussed in the context of the TTIP, they would be part of a broader market access type of trade-off, which obviously financial services regulators are quite keen to avoid. That is why we are trying to emphasise that this is not about undermining Dodd-Frank; this is not about weakening financial services regulation. In any case, the specific issues that are there, which are significant, are not really being discussed in TTIP. What we are trying to do in TTIP is set up the overall framework to guide future co-operation in the financial services sector. My impression is that, yes, we can eventually prevail on this, but it is going to be a difficult discussion.

**Q111 The Chairman:** I have been very impressed by what you have said and by what the Commissioner has said, the very practical way you are tackling these very difficult problems and the kind of vision you have for the way in which the matter might proceed. What worries me is that there has been so much high rhetoric coming from Governments—the United States Government, the European Governments and certainly the British Government—that if you achieve what the Commissioner and you say you hope to achieve, that will be pretty good. It will be pretty good, but it will be modest compared to the rhetoric. It is going to be difficult to ensure that what you achieve is seen as an achievement, rather than as a disappointment.

**Ignacio Garcia Bercero:** You are right. We have been trying to be careful in terms of managing expectations.

**The Chairman:** You have, but Governments—

**Ignacio Garcia Bercero:** Each Government has its own way to communicate. I am not totally sure exactly how the British Government is communicating on this. First, let us have no illusions: it is never going to be possible to conclude this negotiation unless it is done at a rather high level of ambition. It is part of the political reality of the negotiations. Just as a simple fact, the United States Congress would never approve a deal unless it was very ambitious on agriculture. It is never going to be 100%, but you have to be very ambitious on agriculture. I do not think we would be able to get through in Europe a very ambitious deal on agriculture if there was not also a comparable effort by the United States on some of the key market access issues like procurement, GIs, etc.

At the same time, on the regulatory front in particular, we have tried to be careful in terms of managing expectations and making it clear that we need to be able to show we have achieved some significant cost savings in a number of key sectors. It is not going to be possible, within the framework of this agreement, to solve all the regulatory divergences between the US and the European Union regulatory regime. Indeed, there are many areas in which we would have to accept that the two regulatory approaches are different and that it is not possible to reconcile them.

My impression is that one cannot come to the conclusion of an agreement that is very ambitious—much more ambitious than any agreement that the United States and the European Union have so far concluded—with 100% of what the Europeans or the Americans would wish. One would have to be practical, at one point in time, and see how far it is possible to go on certain issues. My impression is that the Americans also look at this from
that point of view. They know there are certain issues that are not really going to change and that, at the end of the day, they would also have to make compromises.

**Lord Lamont of Lerwick:** Does that include, in keeping them separate, Basel III implementation, where there is a different European approach and a different American approach? I would have thought you could leave that well alone.

**Ignacio Garcia Bercero:** I am not an expert in financial services, but in my view it is perfectly possible to have different rules in the United States and in the European Union about Basel III and how much Tier 1 capital banks have to apply. You do not need to harmonise those things.

**Lord Lamont of Lerwick:** Do you think Mrs Yellen will make any difference?

**Ignacio Garcia Bercero:** It is a good question. The key person on regulatory issues in the Fed is Dan Tarullo, the Fed Governor who is responsible for regulation, who was appointed by Obama in the first administration. He is the Governor of the Fed who is responsible for regulatory issues. There is a general reluctance, I would say, among US regulators to see their processes being considered in an international agreement. I really do not know whether Mrs Yellen’s position on this is going to be in any way different from that of Bernanke, but I am convinced that the key resistance is with the independent financial services regulators.

**The Chairman:** I must say we have covered a great deal of ground. I really think almost everything has been covered at one time or another in these two sessions. You have given us a lot of time and I know you have a lot of things on your plate. We do wish you the very best of luck. I hope very much that you receive all the support you need from the British Government.

**Ignacio Garcia Bercero:** Absolutely. I think the British Government has been fully behind this exercise.

**Baroness Quin:** On a cross-party basis too, I should hope.

**Ignacio Garcia Bercero:** I was really impressed when I was in London. I think it is really very good that you have good cross-party support for the agreement, and in my view more generally within the European Parliament, it is also going to be important to maintain good cross-party support in order to get this through.

**The Chairman:** I can tell you one thing, in an exchange of information. I am going to the States next week. There is a regular British/American parliamentary group meeting, and the American side asked that the British side should have somebody who is particularly interested in TTIP, and so I am going. I do not know who we will meet or what will happen; I will learn that tomorrow. The fact that the Americans asked that we should have TTIP involvement perhaps gives some encouragement.

**Ignacio Garcia Bercero:** It does. Everything that you can do with the US Congress would be most useful.

**Q112 Earl of Sandwich:** Can I bring up one thing, which is in the news a bit at the moment: data protection?

**Ignacio Garcia Bercero:** I thought I had managed to escape that question.

**Earl of Sandwich:** The Regulation has been postponed. It is obviously not a good climate this week, but do you think that this is going to have a longer-term effect?

**Ignacio Garcia Bercero:** As the Commissioner said, the revelations about the NSA have made clear that there are some weaknesses in the current arrangements that regulate the exchange of data between the United States and the European Union—the Safe Harbour, which is the current framework for the interface of data. This is not an issue that we are going to address, but it does need to be solved. It is clear that, if the issue is not solved sooner or later, it is going to have negative repercussions on TTIP. I hope that the issues are taken sufficiently seriously by the US Administration and that there is a serious parallel
process to try to find an adequate response to concerns about the indiscriminate access to private citizens’ data. That is the key question. On Safe Harbour, there will be a Commission report on the matter and hopefully then there will be a process of discussion between both sides to see how problems can be solved. For the time being, our position on TTIP is that we are not negotiating on data privacy but, of course, if there was going to be a big problem in terms of the Safe Harbour arrangements, they would clearly have a major economic impact.

The Chairman: The Commissioner was clear on that.

Ignacio Garcia Bercero: We will see how this develops over the next few months.

The Chairman: Thank you.
Q35 The Chairman: Thank you very much indeed for coming to UKRep to see us. As I am sure you have been briefed, we are the External Affairs Sub-Committee of the EU Committee of the House of Lords. We are doing an inquiry into TTIP, and we will report at some point around Easter most likely. We are seeing a number of delegations and you are the first member state delegation, which is, given Germany’s position, very appropriate. I know we sent you a list of questions, but I will, if I may, start with one that is not on the list, which is of course the story in the Financial Times this morning. We realise that feelings are running very strong in Germany on this matter and that there are good reasons why that should be, but could this really unseat the TTIP negotiations, or will it be dealt with separately?

Christina Decker: First of all, thanks for inviting me, because it is a great initiative. It is really helpful to have Parliament here and to listen to what other member states are saying, so I very much appreciate this. I wish, to be honest, that the German Bundestag would follow this lead. It is an honour for me to be here. I am very grateful to be able to see you. I know that I agreed to speak to you on the record but, to be honest, if I say something on the FT article, I would prefer it to be off the record, because I am going to be very honest here.
Q36 The Chairman: Thank you very much. I am sorry to bowl that ball at you, at the beginning. Coming back to the questions, we may go out of order, so do not expect them to follow the sequence. To start with the first one, we have seen studies commissioned by the European Commission and the UK Government about the possible impact of an agreement on the EU economy as a whole and the UK economy within that. I imagine that the German Government have done a similar exercise, and I wonder whether you could give us an idea of the sectors where you think Germany stands most to gain and how this has been reflected in your approach to the talks.

Christina Decker: I did not bring the link here, but we commissioned a study by the Ifo Institute, which is a well-known research institute in Munich. It is available on the internet in English and in German. If you want to look at it, there is also a brief summary. To put our study into context and into place, several studies have been commissioned by other member states, but ours has some singular results in certain aspects. For once, we have the most optimistic results of all the studies commissioned, which puts us at the very optimistic end. The reason behind this is that we are looking at different scenarios, including one in which we would see or expect quite a number of NTBs to be eliminated. This is much higher than all other studies come to. Ecorys, for example, is the lead on NTBs, and even for the internal market in the EU we said that we have perhaps eliminated 5% of all NTBs. We thought we could achieve with the US around 10%, 20% or 40%. It may be out of reach, but we were very optimistic. This explains why our results are very optimistic. Secondly, this is one of the few studies that comes to the result that third countries are not suffering but do not really have gains from this. All other studies, especially the Commission study, says that we will have global gains and that everybody will have more trade flows resulting from TTIP. We did not see it this way. We have some countries like China and others that might lose a bit from trade. This is the second part where we stand out a bit from the studies.

Just to give you some of the figures, we expected, for example, a long-term increase in German exports of 80% with the US. That is quite a high number and far away from other studies. On the industrial sectors, we are quite broad. There is everything really: chemicals, machinery, automotives of course and agri-food. We are not so specifically focused on one sector; it is really everything. This is also welcome, so sectoral annexes are very broad. We are basically asking for sectoral annexes in all industrial sectors. The study is available, so I will give you just one interesting result on the welfare gains that we foresee. We say that globally it will be 3.3%. For Germany, it would be 4.7%. The highest winners in our view are the US and the UK—the US with 13.4% and the UK with a 9.7% increase. In our study, the UK is the country that will benefit most.

We also have some employment effects. We looked at it and we think that if we eliminate not only tariffs but NTBs, we will have an increase in Germany of about 110,000 jobs. For the EU, it was 400,000. This is also quite optimistic when you compare it to the Commission’s study. I might stop with this one. We looked at the SME context and multinational enterprises, and in our view both will benefit, but of course big enterprises will benefit more from the tariff reduction. In our view, the NTB benefits really go to SMEs.

Lord Maclennan of Rogart: I wonder whether, as a result of those inquiries, you are getting considerable support from industry.

Christina Decker: Yes. Looking at agri-food, we have some negatives, but you may come to this later. The agricultural sector is a bit different, but from the industry in total we have broad support.

The Chairman: We had a question on sticking points in agriculture.

Christina Decker: Agri-food, in our view, will also win quite a bit. We have a big confectionery industry where we see some gains, but we also have the usual problems with
sugar and starch. Here we have some quite defensive interests. So far, at least in Germany, the agricultural lobby has not been very vocal. The starch industry had some papers, but otherwise there has not been so much. It is more a question of SPS concerns, so GMO and these issues get a bit more public attention. Otherwise, we have not heard much against it from the agricultural side.

Q37 Earl of Sandwich: Where is the public with GM at the moment? You think something is going to happen and it has not.

Christina Decker: It is such a big concern in Germany. What the Commission says is reasonable: that we will look at procedures and not change the GMO legislation. Maybe in Germany there is also a lack of awareness that we have already legalised GMO than in the UK. It is such a difficult topic. We were one of the countries that lost the WTO case with a de facto moratorium. In this respect, consumer issues are quite high and concern is there. There is IPR, ACTA, GMO and maybe now data privacy, but on a different angle. These are the very tricky items on TTIP.

Earl of Sandwich: If the SDP had won the election, would there have been much more vocal opposition?

Christina Decker: Not only that. There is also the CSU. Even the Christian Democrats have a very conservative position on agriculture and GMO.

The Chairman: We have covered data regulation, but will you be trying to engage the European Parliament on these issues?

Christina Decker: Not for the time being, no. In a way, we were quite interested to see all the decisions on SWIFT, even though I am not sure it is legally feasible. We are trying not to incentivise all these sensitive items. We are not actively working with the Parliament on this.

Q38 Lord Maclellan of Rogart: What about the financial sector? Is that something to which the Government attach importance? We have heard that it is going to be discussed in parallel.

Christina Decker: Not really, to be honest. For us, of course, it was important not to have anything excluded per se, so we also wanted to see financial services in there. Looking at the mandate discussion, we had some issues with financial services and the way it was phrased. For our people from the Ministry of Finance, it is really important that we have the G20 commitments and that we look at how we best handle and implement them, but that we do not go beyond or change anything that has been agreed here. We were quite cautious about financial services. We do not want to exclude them, but they are not a big offensive interest on our side.

Earl of Sandwich: You are quite close to the US position: you would like to see it going forward, but not in terms of the agreement. Is that right?

Christina Decker: Yes, we do not want to see it excluded. There is that clause saying that the G20 has made commitments and we want to see it this way.

Lord Maclellan of Rogart: Do you have any thoughts on the structure that might follow agreements to enable discussions on the financial sector to continue?

Christina Decker: No, to be honest. We have also not made any proposals yet on structure and how we want to see it. The German position is rather to wait and see what comes, to be a bit cautious and maybe also a bit critical. We are not going to be the ones asking for a lot in this respect.

Earl of Sandwich: You must at least believe in mutual recognition and a process going forward. Can that not be declared at the time of the agreement? It is not going very far.

Christina Decker: On financial services?

Earl of Sandwich: On financial services.
Christina Decker, Counsellor, Economic Affairs and Technology, German Representation to the EU—Oral Evidence (QQ 35-43)

Christina Decker: Yes, probably. The only thing we discussed so far is not in German position papers. It was the mandate, and there we did not see too ambitious wording. We really wanted to see G20 wording. I am sorry, I cannot elaborate any more because we were waiting to see what would come out of discussions with the US. It is a fair question.

The Chairman: I imagine the Germans are very keen to have a small business chapter in the negotiations.

Christina Decker: We were interested, but it was not something that we raised as a first item. SMEs for us are always I will not say “the Holy Grail”, coming from the Ministry of Economics, but they are important. For now, we are at the beginning of the process. There is an e-workshop here that we attended, but for now we have not given too much input to this. We really gave input to the industrial sectors and different annexes. It is going to be important to us and we would like to see a chapter on this, but we have not focused on this one so far.

Q39 The Chairman: Do you share the view that TTIP could really be a potential template for standard setting in future trade agreements? If so, how should the EU manage its relationship with China in this respect, and not only China?

Christina Decker: It is a difficult question, because we are very reluctant on China and share the view of many that an FTA or anything is too early at this point. For now, to be honest, we would wish for something like mutual recognition on a broad basis and maybe global standards. We will just assume that countries like China with big export interests will follow these standards, or at least recognise them, or maybe go for a certain degree of harmonisation.

We were a bit more hopeful with respect to Japan, which is quite interested in what is going on, so we have regular contacts with our Japanese trade colleagues, who are looking into this, but we are not certain how China will follow this. I think you are aware of the study commissioned on third-country perception of TTIP. Although there was concern, there was also quite some interest in standards or benchmarks that might be set by TTIP. The problem is that our study is the negative one, so it is always cited that there will be negative effects from TTIP on third countries, which is not very helpful in certain regards. In general and if you look at global welfare effects and gains, we can say that it might give some positive impetus to the world economy. We are trying to argue this.

Q40 Lord Maclennan of Rogart: Do you think there are any areas where the German negotiating objectives differ substantially from other partner countries in the EU?

Christina Decker: We had some difficulties with audiovisual.

Lord Maclennan of Rogart: With the French?

Christina Decker: With the French, but we were also acting quite well with the UK in this respect in the Trade Council. We actually had a mixed position. We would have wished to be as open as the UK was, but because of concerns of the Bundesländer, of the states, we were somewhere in between. We still wanted to seek a mandate, but we could not be too offensive. At least we had quite a division with France when it came to the final text of the mandate. Otherwise, it may be financial services where we might be a bit more reluctant than other member states. Investment is an issue. I have to admit that I am not quite sure how strongly you feel about—I know you have also posed a question here about investor protection and investor and an investor-state dispute settlement, but here we have a very rigid negative opinion of the necessity of the chapter itself and of an investor-state dispute settlement.

The Chairman: Sorry, you have a negative view as to whether it should be included?

Christina Decker: Yes. We were quite vocal in saying that there is no necessity to have the chapter itself, per se. Also with the chapter, we did not really wish to have an investor-state dispute settlement. In my view, the way the mandate happened is that we had quite a silent
majority that had no interest, but maybe also not as much negative feeling as Germany had. Only a few member states supported the Commission in this respect, and these were the member states that already have an investment agreement with the US. They were the ones looking for improvement, but in our view it is quite an interest.

**Lord Maclellan of Rogart:** What is the danger, would you say?

**Christina Decker:** We were not happy with the Commission, because we think it is a general question and that the Commission is now trying to have investment protection with each and every FTA partner but is not looking at the merits. Investment protection history is about member state competency, and out of the member states I am not sure whether it is one or two member states that had an investment treaty with the US. We were negotiating with them and there was some reasoning not to have one. I am going to come to this. Now we have the Commission having a new competency and deciding that what the big member states did especially was not the right position, but that we need one. If we look at German investors, no German investor so far has asked for investment protection, so they feel quite well protected. We have lots of investment flows, so we do not see that improvement is really necessary to boost investment. We think it is already ongoing. We think the legal system is working well on both sides. Nobody from industry is asking for it.

On the contrary, the problem is that once we negotiate investment protections, the gold standard is to have an investor-state dispute settlement, so it is coming with the chapter in a way. Here we saw the difficulties with US hedge funds, which have shares in all the bigger German DAX companies. We know that US companies go into arbitration and litigation quite easily. Once we looked at banking and bailout measures, where we need policy space in the EU and Germany, we were quite concerned that whatever we do in the future, huge economic margins might lead to arbitration and huge awards. Arbitration is a game in a way. We have a big case in Germany right now, which is blocking one unit of 10 people who have been working on this one case since I do not know how long, and it has not come to arbitration yet.

**The Chairman:** You do not want to be caught up in the American judicial legal system.

**Christina Decker:** The legal system, yes, but not arbitration once we come to arbitration and an investor-state dispute settlement. We think that the legal system is enough and that we do not need the second track, which will lead to high damages and enable companies to question whatever policy measure we have. We have hedge funds everywhere, so whatever we decide they could take to court or the arbitration panel. This was a big concern, to be honest, and we are not sure that the Commission saw everything and all the possible consequences. Some member states agreed with these concerns, and this is why we changed the mandate in this respect. We are looking at the investment chapter, but we are still not happy and would prefer investment not to be in the agreement. We did not want to block it, this is the point. We did not want to put any stones in front of the Commission, so this is why we agreed to the mandate as it is right now, but we were not happy with the chapter.

**Q41 The Chairman:** You have been very helpful and we are most grateful. As I listen to you, I feel that, yes, Germany would like this negotiation to succeed and that you think the world would be a better place if it does, but basically you are quite relaxed. I mean that you wish it well, but this is not something that you are losing a lot of sleep over.

**Christina Decker:** TTIP per se or investment?

**The Chairman:** I mean over TTIP.

**Christina Decker:** Maybe I am too relaxed here. It is a big issue for us. If you look back at history and the German presidency, we already tried to incite something in 2007 and we finally ended up with the TEC. It is very important for us. This is why, whenever we have
these NSA spying allegations and the mobile phone issue, we immediately come to TTIP, because we know it is sensitive and it is so important for us. Maybe I am not losing sleep right now, but I probably will if there are more articles like the FT article this morning. I do not want to sound too relaxed. We were quite worried when the second round did not take place, as we really want it to work.

**The Chairman:** Suppose it all takes longer than people expect. Lord Mandelson gave evidence before us and he certainly seemed concerned about the timetable, and so did Lord Brittan: both of them have been around the course. If it is taking a bit too long but both sides want to show that the show is still on the road, that we are still talking and there is still hope, what do you think would be the best way of conveying that message, if it has not been possible to reach an overall agreement?

**Christina Decker:** We always say—and this is my personal opinion now and not the government position, which we do not yet have on the procedure—that substance is more important than time. We do not really want to give into any kind of time pressure. We had this with Canada, for example. We were quite vocal that we really wanted to see the agreement being right. This would also be our official position on the US, but to be honest we all know that the US is a special case. I have to admit that maybe we have not done everything that needs to be done, but the time limit is there. I think we will stop some time in 2015. Of course it has to be WTO-compliant, so if we do not manage tariffs we cannot have an agreement. Otherwise, if we have tariffs and maybe something on NTBs, my view will be that we take whatever we have because we need it to be finished at a certain point in time, looking at elections and the political situation. I would assume that we would never block anything on TTIP. I do not want to give away too much. This is my personal opinion, but I think this is how it is going to happen. I think it is going to end. We need tariffs and we cannot have something that is not WTO-compliant, but if we have tariffs we will probably take everything else at a certain point in time, and say, “That is it”, and move on with this kind of living agreement and try to have as much as we can.

**The Chairman:** Can I try to add to that?

**Christina Decker:** Yes.

**The Chairman:** Would you say in that context that there could be a statement by the two sides that financial services would be carried forward within the existing framework—the financial regulatory discussion or whatever it is called—with an emphasis on doing something or a statement of that sort? There would be further discussions about finding common ground over GM. Do you see what I mean? It is a bit like decorations on a Christmas tree.

**Christina Decker:** It is possible that we see this. It is my opinion that we need to end in 2015. If the US wants to end it, it will end it, so in autumn 2015 we will have something on the table and probably some declarations and a political intent to put in them. To be honest, and again this is my personal opinion, we would go along with it. We really want it to work.

**Q42 Lord Maclennan of Rogart:** Where do the Germans place themselves on regulatory convergence? The US seems very nervous about this.

**Christina Decker:** For us, it is the key issue in the negotiations. Whenever we talk to industry and stakeholders, this is what comes up and where they want to see a result. I do not want to neglect the fact that we have also fixed up with the chemical industry, which is quite interested in tariffs. We have a lot of intra-industry or intra-company trades in all sectors, so we would gain anyway from tariffs, but of course regulatory issues are key. I know that the US is also pointing a finger at Germany and saying that we also have some national standards that hamper US exports to Germany, so there is also something in this respect.
Christina Decker, Counsellor, Economic Affairs and Technology, German Representation to the EU—Oral Evidence (QQ 35-43)

We have seen problems with the US states and not really enough transparency. They were looking at the beginning for something across different sectors, a general approach on the internet—“Where do I find what standards if I come from the chemical industry?”—but also what the prerequisites are in certain states, which there is not always certainty about. Otherwise, we have common and quite helpful papers from the car industry, which helps a lot with environmental and safety standards. We have a European view, so we do not go the national way. If you look at what is in, for example, the ACEA paper for the car industry, it is also the German view, so the measures listed there are also quite important to us.

We have a bit more on the machinery. There it is a German federation, because it is quite difficult to find a European or US federation on the other side. There we had some national ideas on what could be done in future on testing requirements, but otherwise we pretty much go along with the European federations. We feel that our views are quite well represented in this respect.

The Chairman: Is there anything you feel we have overlooked?

Christina Decker: There were some quite difficult questions.

Q43 Earl of Sandwich: Do you think that the meeting coming up in Bali is going to a bit livelier because of TTIP? Will something come out of that with the BRICS, not just China?

Christina Decker: I do not know. We have prepared for this with our Trade Secretary, but I do not know how much of this we will discuss.

The Chairman: Do you think the Canada agreement has useful precedents for this or is Canada just a different ballgame?

Christina Decker: It is difficult to say, because on the two issues that we are very sensitive about we have not seen the real results and we are not too happy with what we have heard. This is investment again, because it is very dear to our hearts and this is the first time we have had an investment chapter, so we need to look at this. We have this famous umbrella clause, which has not been decided. It is a clause for investment protection, which refers to all the commitments taken in a project. We are probably not too happy here, or about the car package. We will have to see. I think it is very ambitious and very good to look at 99%: 0.7% on industrial tariffs might liberate it, which is quite good. You will have to look at this a bit in the sensitive areas. Of course, you can never compare Canadian cars, because there are basically none compared to what is going to happen with the US. Canada is a good agreement, but not a really good agreement, so we will have to look at it a bit more.

The Chairman: Listen, I think you have been tremendous.

Christina Decker: I have been too honest.

Earl of Sandwich: We know a little about coalitions now in the UK as well, so good luck.
INTRODUCTION

1. The Transatlantic Trade and Investment Partnership (TTIP) is a top priority for the Government. TTIP has the potential to be the largest bilateral trade agreement in history and bring significant economic benefits in terms of growth and jobs to both sides of the Atlantic.

2. TTIP should deliver deep economic integration of the world’s two largest economies. The EU and US account for about half of world GDP and one third of global trade flows. Aggregate investment stocks are in excess of £2 trillion. Each day goods and services of almost £1.6 billion are traded bilaterally; this could rise substantially. As the economic analysis commissioned by BIS sets out, an ambitious deal could yield an increase in UK national income of up to £10 billion annually. Most of the national income gains are attributable to lowering of non tariff measures (NTMs) in goods. Aggregate exports (to all extra-EU countries) are expected to increase by between 1.2 and 2.9%, and imports by 1.0 and 2.5%.

3. The UK’s strategic interests in TTIP are threefold:
   - Securing a boost of £10 Billion p.a. to the UK economy from an ambitious and comprehensive deal
   - Potential benefits to the UK and worldwide from the EU and US working together on developing rules and standards which can shape the global business environment
   - Providing impetus and opportunity to press forward on economic reform within the EU

4. This support for TTIP is pursued alongside the UK’s continued support for the multilateral system, and for a successful outcome at the WTO Ministerial in Bali this December.

CURRENT UK-US TRADE RELATIONSHIP

5. UK-US trade relations are already exceptionally close and deep. The US is the UK’s top export destination after the rest of the EU. In 2012, UK-US trade in goods and services alone was £135 billion, up 3.6% from the year before. Around 17% of British exports went to the US in 2012.

33 The £10bn figure is based on the most ambitious scenario in economic analysis carried out for BIS by the Centre for Economic Policy Research (CEPR). This is published at https://www.gov.uk/government/publications/trade-and-investment-agreement-between-eu-and-usa-estimated-impact-on-uk

34 Many of the non-tariff barriers referred to in this paper are based on the 2009 report “Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis” carried out by Dutch firm ECORYS and from here on referred to as the ECORYS study. This study is published at http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/
6. The US and the UK are each other's largest foreign investors. This investment supports over a million jobs in each country. US investment stock in the UK is £200 billion, eight times the US investment stock in China.

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<th>UK Exports of Goods to the United States</th>
<th>UK Exports of Services to the United States</th>
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<td>39.8</td>
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<td>2010</td>
<td>37.9</td>
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<td>2009</td>
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7. But UK businesses face difficulties from a large number of barriers to trade with the US, including tariffs, customs procedures, and in particular regulatory differences. The latter area can be particularly pronounced, given that exporters may have to face standards set both at federal and state level. In many cases these regulations address the same issues as EU regulations, for example in ensuring a car is safe, but entail significant costs, in design, building, and testing. These barriers are particularly significant for Small and Medium Enterprises (SMEs) as are unnecessary customs delays and costs, which could also be tackled. Addressing these barriers could lead to even greater economic gains for UK business.

THE ROAD TO TTIP

8. A trade agreement between the EU and US has been considered before. A Transatlantic Free Trade Area (TAFTA) was widely discussed between 1994 and 1996 but did not materialise in full form. While there were some forceful calls for negotiation, notably from the then Trade Commissioner, Lord Brittan, both Commission Services and USTR saw significant systemic risk, as well as a number of practical hurdles. At that time the priority was to ensure the stability of the newly formed World Trade Organisation (WTO) and to avoid creating a fault line in global trading patterns. As a result, a much more limited attempt at regulatory coherence through a Mutual Recognition Agreement covering six sectors was concluded in 1998. This had little commercial impact.

9. But in recent years it has become increasingly apparent that an EU-US trade deal is an idea whose time has come. Times have changed since we last contemplated such a negotiation. The potential for negative impact to low income countries from the TTIP is limited and there are potential gains for the global economy. Driving forward the TTIP will not be at the expense of the WTO agenda. The UK still prioritises multilateral negotiations and the UK will be vice-chairing the December WTO summit where we will be pushing for a deal on the Trade Facilitation package, worth $100bn per annum to the global economy.
10. Domestically, the economic situation is difficult. The economy is turning a corner, but the recovery is in its early stages and many risks remain. Globalisation and the rise of BRIC countries have intensified competition. So we must seize every opportunity to create growth and jobs, which has to come from business investment and from internationally traded activities in open markets. An agreement like the one we will negotiate will create both growth and jobs without taxpayers’ money.

11. There is a high level of political and business buy-in on both sides of the Atlantic, EU leaders are in agreement, and CEOs of major companies are calling for a deal. The EU and US are comparable markets in many ways: a deal with them does not raise the same difficulties (e.g. off-shoring, labour standards, environment) as agreements with emerging markets.

12. The EU is already negotiating an ambitious programme of bilateral trade agreements, including with Canada, India and Japan. But an EU-US deal would be on a completely different scale - bigger than all the other trade agreements. Meanwhile, the US is also engaged in negotiations beyond TTIP, most especially with the Trans-Pacific Partnership (TPP). All these negotiations will impact on each other (EU-Canada on TTIP, TPP on EU-Japan, etc). These overlaps, while potentially complicating matters, also present opportunities such as the pursuit of global standards that in themselves are trade liberalising.

13. The UK was instrumental in putting the TTIP on the EU’s negotiating agenda. With allies in the EU, we pressed the case and supported the creation of the EU-US High Level Working Group on Jobs and Growth (HLWG) in 2011 to identify ways to increase trade and investment across the Atlantic.

14. In February 2013 the HLWG published its final report recommending the launch of negotiations on a comprehensive agreement. President Obama and the Presidents of the European Commission and the European Council all endorsed the HLWG’s recommendations including proposed negotiations on: tariffs; services; investment; regulatory issues and non-tariff barriers; procurement; intellectual property; and rules (including customs and bureaucracy at borders). The EU agreed a negotiating mandate at a meeting of Trade Ministers in June and negotiations were launched the following week at the G8 summit in Northern Ireland.

15. The first technical negotiating round took place in July in Washington. Good progress was made, with a framework for negotiations agreed and an initial exchange of views on ambition and approach across each dossier. Future negotiating rounds are expected to take place approximately every two months.

16. US officials have said that they want to reach a deal on “one tank of gas”. We are supportive of this ambition and hope that negotiations can deliver a significant package of liberalisation within 18-24 months. It will be important however that mechanisms are put in place to ensure that, after this period, work can continue to address outstanding and emerging issues. Trade deals are never easy but there has never been a more favourable

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35 The HLWG report is published at http://ec.europa.eu/trade/policy/countries-and-regions/countries/united-states/
time to do this. The politics are right and both sides see the potential benefits to their economies and the transatlantic trade relationship.

**THE ECONOMIC BENEFITS**

**For the UK, EU and US**

17. As always before deciding to negotiate a trade agreement, the EU carried out an assessment of the potential effects of a deal. It looked at what might happen as a result of varying degrees of trade liberalisation between the EU and US. In every case, the overall outcome for the EU was positive; but what was clear was that the more liberalisation there was, the better the overall result.

18. In parallel with the Commission’s assessment, the UK also commissioned a similar study for the UK from the London-based Centre for Economic Policy Research (CEPR). These studies illustrate the potential economic effects of a trade and investment agreement for the UK, EU and the US.

19. An ambitious, comprehensive TTIP deal could over the long-term be worth annually up to:

- £10bn (0.35% of GDP) to the UK
- £100bn (0.5% of GDP) for the EU
- £80bn (0.4% of GDP) to the US
- £85bn for the rest of the world.

20. BIS analysis suggests sectors where UK output could increase:

- Vehicles - by 4.1%
- Financial services - by 1.1%
- Insurance services - by 0.7%
- Processed foods - by 0.5%
- Chemicals and pharmaceuticals - by 0.5%

21. Although tariffs between the EU/UK and US are already low overall, the sheer volume of trade means that dismantling them completely could save UK exporters almost £1 billion.

22. Savings would come from eliminating tariffs on oil, chemicals and automotive products and parts, leading to savings for a wide range of products. And although average tariffs

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36 BIS commissioned study by the CEPR
38 Study for the European Commission by the CEPR
39 Study for the European Commission by the CEPR
are low, there are still many products where the US has tariffs over 20% including many items of clothing and footwear, some trucks and some items of ceramic tableware and kitchenware to name but a few.

23. Overwhelmingly, however, the gains are expected to come from improving the coherence between EU and US regulatory systems, so as to eliminate unnecessary rules, differing standards for goods, different approval processes aimed at the same substantive outcome, and so on. The CEPR study suggests that 80%-90% of the UK’s gains could come from such measures in an ambitious agreement.

24. To achieve their potential, the negotiations need to be truly comprehensive. We hope that an agreement will eliminate tariffs and bring down the so-called ‘behind the border’ barriers in many areas, making it much easier for business to operate on both sides of the Atlantic.

25. We recognise that there will be individuals, companies and sectors that could be adversely affected by the greater competition the TTIP will bring. However, as the studies show, such short run losses will be outweighed by the benefits the TTIP will generate.

26. BIS analysis suggests that the losses in sectors that are projected to see a decline are likely to be modest, with only the metals and metal products sector projected to contract by more than 1%. The sectors which might see the greatest changes are:
   - Metals and metal products -1.5%
   - Other manufacturing (textiles, clothing, footwear, materials (e.g. ceramics, glass), furniture & misc manufactured items) -0.5%
   - Other transport equipment (ships, trains & aerospace) -0.4%.

27. These projected changes are not just the result of increased competition. They also reflect the assumption that as successful firms in other sectors expand they will tend to draw resources - capital, land and labour - away from less successful sectors. This redeployment of resources to more productive uses is one of the main drivers of the projected increase in UK GDP.

28. Alongside TTIP, the Government is working to achieve strong, sustainable and balanced growth that is more evenly shared across the country and between industries. The Government’s Growth plan involves a combination of macroeconomic measures such as fiscal responsibility, monetary activism and structural reform to deal with the budget deficit, support demand and equip the UK to succeed in the global race.

29. Through the Industrial Strategy we are developing long-term approaches in partnership with business, maximising the opportunities to align policies for growth, including at a local level.

For Small and Medium Enterprises (SMEs) in the UK
30. There are a lot of smaller firms in the UK which find it surprisingly difficult to break into the US market. The TTIP could really make a difference in clearing away the obstacles to businesses to invest and trade across the Atlantic.

31. The UK has consistently pushed for a comprehensive agreement that eliminates the vast majority of tariffs, addresses behind-the-border barriers across sectors and seeks to achieve regulatory coherence between Europe and the US.

32. SMEs would generally be expected to benefit more by a comprehensive TTIP that tackled NTMs as these are likely to be more significant in deterring SMEs from trading as they don’t have the volume to make it worthwhile investing in the time / cost to overcome such barriers. Cross-cutting measures such as improvements to trade facilitation and elimination of specific tariffs are likely to be of significant benefit to SMEs as companies look to export for the first time (or beyond the Single European Market for the first time) to a safe but nevertheless very competitive market.

33. Ensuring SMEs benefit from the TTIP should help ensure the spread of the benefits across most sectors of the economy and across the country. It should benefit specific ‘local champions’ (such as ceramics firms in the Potteries), and in doing so reduce the risk of TTIP only benefiting large multinationals.

For US States

34. Recent analysis suggests that an ambitious TTIP could benefit every US State through increased exports to the EU and higher employment. The greatest gains in exports would occur in States that are particularly well integrated into trans-Atlantic supply chains, especially those in the automotive and chemicals sectors.

35. When fully implemented, the study predicts under its assumptions an ambitious deal could generate more than 740,000 jobs in the US (c0.6% of current US employment). The four States projected to gain the most jobs are also the most populous: California (75,000), Texas (68,000), New York (51,000) and Florida (48,000). Motor vehicles would be the top sector for export growth in 19 States, chemicals in 13 States and metals and metal products in 7 States.

IMPACT ON THE MULTILATERAL TRADING SYSTEM

36. While the arguments against an EU-US agreement in the early 1990s rested on the potential impact on the nascent WTO, those arguments have now lost their force. The WTO agreements are widely seen as an essential platform on which further agreements can be added. Since 1994, notable among such agreements have been a large number of bilateral and regional free trade agreements, as well as the multilateral Financial Services agreement and the plurilateral agreement on government procurement. Further, the

WTO Dispute Settlement Understanding (DSU) is now widely respected as a quasi judicial method of resolving trade disputes, and a significant improvement on the General Agreement on Tariffs and Trade (GATT) panels that preceded it. While a failure to update the system through the Doha Development Agenda does have some impact on the system’s credibility, the system has nonetheless established itself as a sustainable part of the trade policy architecture.

37. Since 1994, the number of bilateral trade agreements has grown very rapidly, involving WTO members from across the development spectrum. They are now widely accepted, by developed and developing countries alike, as legitimate means through which to develop commercial interests. While TTIP would be, by some margin, the largest such agreement the principle is well established. Further, applied tariffs on bilateral trade, while already low in 1994 have fallen still further - so there can be little fear of "trade diversion", pulling trade away from other WTO members where tariffs are higher. Multilateral trade deals can sometimes be stalled by "preference erosion". This happens where WTO Members with preferential access to markets refuse to endorse multilateral tariff cuts because they would lose their advantage. Again, as applied Most Favoured Nation (MFN) tariffs are already low in both the EU and US, the danger of preference erosion being a block to any future trade deal is correspondingly small.

38. The main commercial value of TTIP lies in its ability to deal with behind the border measures. Eliminating non-tariff measures and achieving regulatory coherence is a complex task and one that has proved difficult to solve. For example, in the automotive sector, attempts to converge regulations through the United Nations Economic Commission for Europe (UNECE) have proved slow and ineffective. The political momentum behind TTIP, the fact that we have the two largest and most complex systems of regulation, and that the standards are broadly comparable, even if there are myriad differences in substantive detail and application, are grounds for optimism that we could make significant progress in regulatory coherence. Such progress would have two systemic benefits. First of all in the multilateral sectoral negotiations that take place in UNECE, the World Intellectual Property Organisation (WIPO) and many other multilateral bodies, it is frequently divisions between EU and US that block progress. If that can be unblocked it would provide a boost to sectoral negotiations across the multilateral system. Secondly, horizontal measures on transparency, participation and accountability in developing future regulations could be a basis on which to improve the WTO agreements on Technical Barriers to Trade and Sanitary and Phyto-sanitary (SPS) measures.

39. That said systemic risks remain. TTIP will not solve existing problems regarding dispute settlement in the trade system and may exacerbate them. An additional dispute settlement regime may add an additional layer of complexity. There is already uncertainty caused by co-existing dispute settlement arrangements in the WTO and in regional and bilateral trade agreements. For example, in the US/Canada disputes over softwood lumber the NAFTA panel and the WTO panel both considered the same facts and reached different conclusions regarding whether anti-dumping duties could be justified. While they were considering slightly different issues the decisions have the potential to create confusion.

40. Secondly, there is a danger that the regulatory lead that the EU and US show either on horizontal issues, or in specific sectors, conflicts with multilateral efforts and establishes
competing regulatory approaches. Far from encouraging multilateral coherence, this could deepen divisions between systems. This is also a risk that will need to be managed. Three ways to do that will be:

- rules of origin that are as open as possible;
- regulatory approaches that are based on existing internationally agreed best practice; and
- having an accession process to TTIP that encourages others to join provided that they can comply with the regulatory components.

IMPACT ON DEVELOPING COUNTRIES

41. The Joint DFID/BIS Trade Policy Unit commissioned analysis to examine the possible effects on developing countries of liberalisation between the EU and US as the result of a new trade agreement.41

42. The study identified some potential opportunities and risks for low income countries:

- In general, the potential for negative effects on low income countries was found to be limited because the exports from these countries to the EU and US are very different from the trade that the TTIP partners have with each other.

- There were some countries and products that may face increased competition as a result of liberalisation between the EU and US. These are Bangladesh, Pakistan and Cambodia (garments and footwear), Ghana (fish) and Nigeria (light oils). These impacts are small relative to the size of the exports of these countries in the products specified. The study also notes that the likelihood of trade diversion is low because these countries are highly competitive in the products specified and are likely to be competing in different market segments than EU or US exporters.

- There is potential for gains for developing countries if the TTIP results in greater regulatory cooperation. There is some risk of standards becoming more stringent through EU-US harmonisation, but there are development assistance funds available that could be allocated to help developing country exporters meet new standards. Furthermore, after an adjustment period, they would have access to a much larger market. If there is mutual recognition of standards through TTIP, it would be in the interest of developing countries for this recognition to be open to third countries that currently meet either EU or US standards.

- The report highlights the success of the EU’s preferential access to least developed countries. For non-oil exports from low income countries, the EU is almost twice as important an export market as the US.

TRANSPARENCY AND STAKEHOLDER ENGAGEMENT

41 The full report is published at http://r4d.dfid.gov.uk/Output/193679/Default.aspx
43. The European Commission conducts trade negotiations on behalf of the EU and, where appropriate, Member States. It does this, working closely with the Member States in the Council and a number of working-level committees and keeping the European Parliament fully informed. The European Parliament and the Council will both have to give their green light at the end of the negotiations before the agreement can enter into force. If the agreement is signed as a mixed agreement, all EU Member States will also have to give their agreement individually since they will all be parties to it in their individual capacities.

44. The UK government is working actively alongside the Commission to support a comprehensive deal which benefits UK interests. We have raised the importance of transparency with the Commission and will continue to promote openness throughout the process. Both the UK Government and the Commission will maintain close contact with industry, trade associations, trades unions, consumer organisations, and other civil society representatives. Lord Green has written to the European Scrutiny Committee Chairs of both Houses to confirm that they will be kept updated on progress throughout the course of negotiations.

45. Whilst it is the EU Commission that will do the negotiating with the US, the UK has been developing its own detailed priorities. Ministers, particularly Lord Green and Ken Clarke, and officials are undertaking an intense programme of stakeholder engagement to flesh out UK priorities and to ensure that we understand in detail the issues faced by particular sectors when doing business in the US. We will continue consulting key stakeholders, including in industry, civil society, and Parliament, to ensure UK interests are addressed in these negotiations.

UK PRIORITIES

46. These priority issues and sectors were drawn up following extensive and ongoing engagement with UK business and other key stakeholders, including the TUC and Which?, and detailed analysis of the evidence. They are based on an assessment of the likely value to the UK and achievability of liberalisation. As the talks proceed and we get a clear sense of which areas will be relatively easy to deliver and which are proving more challenging, our priorities will evolve. And throughout the talks we will continue to champion UK interests in other sectors.

- **Automotive:** highlighted in the analysis as a major beneficiary of TTIP, with the UK’s exports of motor vehicles estimated to increase by as much as 15% in the ambitious scenarios. The sector is well organised and strongly in support of greater liberalisation, with mutual recognition of environmental and safety standards being the top priority for the sector, followed by cooperation and harmonisation of future regulation and full tariff elimination.

- **Financial services:** the financial services sector contributes approaching half of the UK's total trade surplus in services. Further liberalisation of all elements of the financial services market between the EU and the US is therefore likely to be a significant win for the UK, more so than for any other EU member state. The priority here will be reversing the fragmentation of financial service regulation that has taken place during the process of regulatory reform following the crisis.
• **Agriculture, food and drink**: transatlantic trade in food and drink already benefits many UK businesses and therefore the industry is keen to maintain and enhance exports to the US. However, to unlock the full potential of the trading opportunities, the TTIP will need to tackle the issues of regulatory convergence and market access. The priorities for the sector focus on achieving better alignment on animal and plant health issues including opening the US market for UK beef and lamb. Moreover, the food and drink industry is one of the UK’s largest manufacturing sectors and one which includes many SMEs, who are likely to benefit greatly from a more efficient trading environment.

• **Procurement**: The scale of the market (including at federal level) and tackling the many ‘Buy America’ provisions across the US mean that this is very much worth fighting for. Our priorities will be to see more states open their public procurement and the range of commitments significantly expand. The Commission’s assessment suggests that around 10% of the EU’s potential gains could come from liberalisation of procurement.

• **Customs and trade facilitation**: reducing bureaucracy at the border is something that benefits all companies exporting or importing goods. Several major stakeholders have lobbied for the TTIP to work towards implementing uniform international principles of standardised customs procedures, efficient customs clearance and mutual recognition of customs and security related standards. An ambitious package on customs and trade is likely to be particularly beneficial to SMEs looking to export to the US for the first time.

• **Energy (Liquefied Natural Gas (LNG) and environmental goods and services)**: both energy markets are massive and undergoing a revolution in the development of, and incentives for, greater use of renewables. These factors, combined with the depth of energy relations and shared energy and climate interests internationally, suggest energy should be given a high profile in the negotiations, with a focus on increasing regulatory coherence across the energy spectrum including for green goods and services.

• **Chemicals**: although the statistics for UK exports in this sector are already impressive - UK chemicals account for 14% of the UK’s total exports to the US - our analysis suggests that this sector could see UK exports increase by up to a further 4% as a result of a TTIP deal. Much of this would be achieved by greater regulatory cooperation, improvements in the protection of intellectual property, and elimination of tariffs.

• **Intellectual property (IP)**: the UK’s creative and innovative sectors - including the UK music industry, which contributes nearly £5 billion annually to the economy - rely on IP protection to secure investment and returns on new products and ideas. UK IP priorities for TTIP include changes to US copyright law to ensure music producers and performers are properly rewarded.

• **Pharmaceuticals**: the US and EU markets account for nearly 60% of all medicines currently in development worldwide. Tariffs are already zero but given
the level of collaboration and intra-company trade and development, this sector should benefit greatly from the increased regulatory coherence the TTIP deal could achieve. More importantly, it is a sector where the UK is particularly strong and a key element of our industrial strategy.

- **Other advanced manufacturing sectors**: as the Government develops and implements its industrial strategy and prioritises high-value manufacturing sectors with significant growth potential for the UK (including aerospace, civilian security equipment, electrical, etc), it is clear that the TTIP could also boost these sectors by addressing barriers they face in the US. For example, TTIP provides an opportunity for the EU and the US to look carefully at the application of export controls and their impact, and to ensure that inconsistencies of regulation application are minimised.

- **Other services**: a comprehensive and ambitious services chapter in the TTIP will be challenging to achieve but central to the deal's relevance to the UK economy. 40% of UK exports to the US are in services, compared to an EU average of 27% and there are a wide range of important services sectors that are looking to the TTIP to address long-standing issues that restrict their ability to do business in the US. For example, UK exports of professional services are impacted by the US's non-recognition of foreign legal and accounting qualifications. A deep and comprehensive services chapter that genuinely creates new opportunities across the services sector is a key priority.

**CHALLENGES**

**Financial Services**

47. As Financial Services is an important industry on both sides of the Atlantic and is a backbone to trade in all other sectors, we have made it clear in both Brussels and in Washington that this is an essential component of an ambitious agreement. The largest gain will come from enhancing the coherence of financial service regulation. The priority and challenge will be to establish greater coherence and cooperation in transatlantic financial regulation.

**Public Procurement**

48. Procurement is mostly a state-level responsibility in the US and for this reason is particularly difficult for the US Administration. Our priorities will be to see more states open their public procurement and the range of commitments significantly expand.

**Regulatory Coherence**

49. As demonstrated above, overwhelmingly the gains from TTIP are expected to come from improving the coherence between US and EU regulatory systems, substantially reducing costs on both sides. The intention of regulatory coherence is to align regulations that aim to achieve the same outcome to ensure that products deemed safe in one geography will be deemed safe in the other, and that they only need to be tested by one fully competent authority. In many areas there are international standards bodies
which undertake this work, but progress is often slow. There is also a Transatlantic Economic Council (TEC) which is supposed to address these issues, but has only been able to make progress in a handful of areas. Given this, we believe that TTIP represents a huge opportunity, while the political will is there, to make significant progress. Business agrees, with groups on both sides of the Atlantic working hard to detail innovative proposals. Consumer groups have also expressed interest in whether this could improve competition. There is a more limited vision - some have suggested that TTIP should only include improved consultation mechanisms between the EU and US. This would however risk the large potential economic gains of TTIP.

Agriculture

50. Many of the key agriculture challenges relate to animal and plant health (Sanitary and Phyto-sanitary (SPS)) issues, which are likely to be sensitive as the EU and US positions can be highly politicised. The US will want the EU to commit to a more science-based approach and stop what they view as political interventions and an undermining of the European Food Safety Authority’s opinions on Genetically Modified Organisms, pathogen-reduction treatments, and other food safety measures.

OTHER ISSUES

Standards in employment, product safety, and environmental protection

51. There have been concerns expressed in some quarters that trade negotiations can lead to a race to the bottom in terms of standards be those in product safety, labour standards, or environmental protection. We are clear that this must not be the case in the TTIP negotiations or any other trade negotiations that the EU participates in. As always, HMG will be on its guard in this respect. Specifically regarding labour, the TTIP negotiations represent an opportunity to work with the US on the implementation of International Labour Organisation standards.

The NHS

52. Some have expressed concern that the TTIP negotiations may impact on the NHS. The UK has already undertaken some long-standing commitments at the multilateral level in terms of access to the health sector through the WTO General Agreement on Trade in Services (GATS, 1995). In principle, EU FTAs include commitments across all services sectors, including health services. The UK’s aim in relation to health services in FTA negotiations, including TTIP, is to maintain commitments that are broadly in line with our existing obligations under the GATS. The main features of our GATS commitments on health services are that we are open to overseas suppliers offering hospital services and health-related professional services through a commercial presence (for example, a branch or a subsidiary) in the UK. We also allow the entry of related key personnel (for example, senior managers and specialists). However, to work or operate here, overseas healthcare professionals and healthcare companies would have to comply with UK standards and regulations in just the same way as UK healthcare providers.

53. In terms of our broader reform programme for the NHS, it is for local NHS commissioners, not the Government, to decide which providers - whether from the
public, private or voluntary sectors - best meet the needs of their patients and deliver high quality care. The Health and Social Care Act, for the first time, prohibits the Secretary of State from discriminating in favour of the private sector. The core principle of the NHS to provide universal healthcare free at the point of use is in no way threatened by the TTIP or by any other EU FTA.

54. Meanwhile, HMG does want procurement to be included in the TTIP so that UK firms can more easily sell to the state in the US, including in the health sector, and inclusion of procurement could see the NHS get better value for money, for example, in the procurement of drugs and medical devices.

Data protection, data flows and data adequacy

55. This impacts on a variety of sectors, including the financial sector. The EU-US data transfer adequacy framework 'Safe Harbor' is under review by the Commission, and an EU Data Protection Regulation is also under negotiation in which international data transfers (including EU-US) is a key issue yet to be resolved. The UK Government wants to keep the negotiation of the EU Data Protection Regulation and TTIP separate, and we know there is some sympathy within the Commission for this too. What will be requested by business, what will be requested by the two negotiating parties and what will be acceptable to EU Member States and other parties in the EU and the US are all unknowns at this stage.

CONCLUSION

56. Having worked hard to get us to the starting blocks to launch negotiations, we must now keep up the momentum throughout the negotiating process, especially when it comes to taking decisions over challenging negotiating areas. Both sides will need to find ways to resolve differences and make our rules and regulations compatible. The UK is ready to be ambitious across the board. For these negotiations to succeed, we will need - above all - continued political will. As the Prime Minister said at the G8 summit “this is a once-in-a-generation prize and we are determined to seize it”.

10 October 2013
Inquiry into the Transatlantic Trade & Investment Partnership (TTIP)

When I gave evidence to your committee on 21 November I agreed to follow up with some additional information. Further to Lord Jopling’s question at the hearing, I hope the committee has now seen the reply I had sent to the EU Committee on 5 November.

I should begin by reporting to you that on Saturday 7 December, after five days of tense negotiations, 160 WTO members unanimously agreed the first global trade deal in 20 years, breathing life back into the WTO and at $100bn per annum, capturing half of the value of the Doha round. The deal, which cuts red tape at borders, is a welcome boost for the UK economy to the tune of £1bn annually, from which small businesses in particular will benefit. It also meets a major development objective; two thirds of the benefit goes to developing countries, and over 10% to Africa. There are special provisions to fast track agricultural goods to increase food security and reduce wastage. Lastly this will open a new chapter in multilateral trade policy as the impasse of the Doha round is broken, important context for our work on TTIP to which I now turn.

Lady Coussins asked about the **EU-Canada deal and its implications for TTIP**, in particular in relation to the investment chapter and ISDS.

The EU-Canada Comprehensive Economic and Trade Agreement (CETA) is an ambitious and comprehensive deal in which we have secured many wins for UK industry. This deal strengthens the EU’s negotiating credibility, demonstrating that we can conclude ambitious deals including those with strong agricultural elements. Once implemented, the agreement is expected to benefit the UK economy and businesses by over £1.3 billion a year in the long run. There is no reason to believe that the jump in exports we have seen to Korea following implementation of the EU-Korea deal cannot at least be replicated once the CETA comes into force.

The CETA will remove or alleviate barriers to investment both horizontally and in specific sectors. It will also improve legal certainty and predictability for businesses once they are established in Canada, protecting investors from discrimination, expropriation and other forms of unfair treatment. Underpinning the investment protection obligations will be a modern and effective investor-to-state dispute settlement mechanism. It is possible that the CETA’s approach to investment will have an effect on the EU-US negotiations. However, whereas many EU Member States have pushed for strong investment protection in the CETA because they have wanted to set a strong precedent for negotiations with partners where investment protection is more valuable to EU investors (for example, those with India), the early signs are that EU Member States are more motivated by defensive investment protection concerns in TTIP. It therefore seems likely that the EU-US negotiation will lead to a chapter that goes further to ensure that governments’ ability to regulate in the public interest is not compromised.

The CETA provides a precedent in many senses for the EU-US negotiations, including on a number of agricultural elements such as geographic indications. The deal additionally shows
EU stakeholders that adequate market access for non-hormone treated beef can be achieved in TTIP. There is also a precedent for securing greater access to both the federal and sub-federal procurement markets. The CETA also lays the foundation with respect to rules of origin.

You asked for a note setting out in more detail **what the EU is trying to achieve on financial services regulation**.

Financial services represent a major sector for both the EU and US, and this sector also has a fundamental role to play in the growth of both economies as the provider of credit and financial intermediary services to consumers and businesses. Further liberalisation of financial services trade between the EU and the US will lead to greater choice of service providers for EU and US consumers and businesses, lowering the costs and enhancing the quality of those services. It should also help to boost international trade in all other sectors.

The US and the EU share an ambition to enhance financial stability and market integrity through evidence-based regulation, with independent supervisory and regulatory agencies. We are also firm believers in the principles of the free market and free movement of capital.

Between the EU and US, there are relatively low market access trade barriers on banking and capital markets but there are significant regulatory barriers. Since the crisis, regulators have rightly introduced a series of reforms in the G20 and other international fora. The EU and US have sought to implement these initiatives consistently, but there are still significant differences, including in the scope of regulation and the nature of cross-border cooperation. Some of these differences can be justified on prudential terms given different national market structures. However others cannot, and present material barriers to free trade. Although we should continue existing discussions to resolve these differences, primarily the Financial Markets Regulatory Dialogues (FMRD) and the insurance dialogues, many of the most contentious issues are taking too long to resolve, creating uncertainty, increasing costs and presenting barriers to trade for financial services firms.

We believe that the TTIP is a unique and not to be missed opportunity for the EU and US to examine whether we can agree a framework for strengthened regulatory co-operation. This framework would seek to mitigate the impact that inconsistencies in transatlantic financial regulations have on trade and capital flows, while recognising the inherent differences in the structures of EU and US financial markets and the prerogative of regulators to take actions in order to enhance financial stability.

BIS’s economic analysis suggests that an ambitious TTIP agreement could lead to UK output in the finance sector increasing by 1.1% and by 0.7% in the insurance sector. UK exports to the US could increase by 3.2% for the finance sector and by 3.7% for the insurance sector.

I understand that since the evidence session you have received a briefing from Treasury officials on the benefits they expect to see in the financial services sector, and that they have agreed to provide the committee with a written submission. I also understand the European Commission plans to publish their negotiating papers on financial services in the near future. My officials stand ready to help should you require further assistance on this issue.
Lord Lamont asked whether it would be feasible for the EU to allow GMOs in some form, but with individual member states (e.g. Austria) retaining the right to place restrictions on them.

Currently all GM products are subject to an EU-wide risk assessment followed by a member state (political) vote before they are authorised for placement on the EU market.

Agreements between the EU and third countries become an integral part of EU law, which requires that Member States adopt the measures necessary to implement the agreements. If they fail to do this, or if they seek to impose additional restrictions, then our legal advice is that they could be challenged under EU law either as a breach of this requirement or as a breach of their wider Single Market obligations. Furthermore it is not clear that the EU could legislate to allow exceptions from free movement of goods provisions in the TFEU for Member States that wanted to place their own restrictions on approved GMOs. Even if the TTIP allowed for this, any such restrictions could be challenged by another Member State or prospective importer.

Member states do have a degree of discretion in establishing national rules governing the way in which approved GM crops are grown in their countries, so that they can ‘co-exist’ with conventional or organic agricultural systems. Some Member states have been calling for more discretion on GM seeds recently with many requesting some sort of new facility for banning the cultivation of EU-approved GM crops on socio-economic or political grounds. A legislative proposal to allow for this was introduced by the Commission back in 2010 but has been stalled in the Council since then and is unlikely to be concluded this side of the 2014 European Elections.

Lord Trimble asked for further detail on what is “do-able” as part of the TTIP and which issues are likely to prove intractable.

This negotiation is still at an early stage and it is too early to give up on issues we want to see addressed, even if they appear very difficult.

That said, in April the Atlantic Council and the Bertelsmann Foundation co-published a paper that was based primarily on a survey of trade experts in the United States and Europe who were asked to identify the likely TTIP issues and rank them from most important for a successful conclusion to least important. They were then asked to rank those same issues from most to least difficult to resolve. The results were then plotted in a matrix (Figure1).
Figure 1
Potential Sticking Points

Degree of Importance (5 being most important)

Degree of Difficulty (5 being most difficult)

- GMOs and Agriculture
- Regulatory Process Convergence
- Data Protection/Privacy
- Regulation of Manufactured Goods
- SPS Measures
- Financial Services
- Pharmaceuticals
- IP Rights
- Tariff Reduction and Elimination
- Joint Third Country Principles
- Energy Export Liberalization
- Geographic Indicators
- A/V Quotas
- Investment Liberalization
- Environmental Standards
- Labor Standards

Least important and least difficult

Most important and most difficult
This provides a good starting point for the consideration of which issues are likely to be achievable, and for example we agree with the assessment of tariff reduction and elimination as likely to be relatively achievable. By contrast regulatory process convergence is shown as both one of the most difficult to achieve, but also the most valuable to pursue.

**Timetable**

The third negotiating round will take place next week in Washington with at least five further negotiating rounds expected in the course of 2014. An important milestone will be the political stock take between the EU Trade Commissioner and US Trade Representative early in the New Year. We continue to work with the Commission toward agreement of a deal by early 2015.

**Publishing the EU Mandate**

Lord Boswell asked in his letter of 31 October what position the UK took at the recent EU Trade Council on the issue of publication of the EU’s TTIP mandate. Declassification of the mandate was raised briefly during the lunchtime discussion at the Council. The UK did not intervene. On the basis of the interventions that were made, the Presidency concluded that there was not the consensus required to agree to declassify. We are content with this result.

Finally, as I leave office today, may I take this opportunity to put on record my thanks for the support I have received from officials on trade policy. It has been outstanding, both here and in Brussels and Geneva. We take their ability, dedication, hard work and integrity for granted at our peril.

*December 2013*
Pia Eberhardt, Corporate Europe Observatory—Oral Evidence (QQ 237-248)

Evidence Session No. 21  Heard in Public  Questions 237 - 248

THURSDAY 6 MARCH 2014

10.05 am

Witness: Pia Eberhardt

Members present

Lord Tugendhat (Chairman)
Baroness Bonham-Carter of Yarnbury
Baroness Coussins
Lord Foulkes of Cumnock
Baroness Henig
Lord Jopling
Lord Lamont of Lerwick
Baroness Quin
Lord Radice
Lord Trimble
Baroness Young of Hornsey

Examination of Witness

Pia Eberhardt, Corporate Europe Observatory

Q237 The Chairman: Ms Eberhardt, first, thank you very much for appearing before us. As I think you know, this is a formal session of Sub-Committee C of the European Union Select Committee. We are conducting an inquiry into TTIP and we will have a number of questions to put to you. I hope that you will make whatever points you wish to make in whatever manner you wish to make them, but thank you very much for appearing before us. I shall kick off. We know that you have taken a very negative stance towards TTIP and that you have been critical both of the concept and the manner, but could you perhaps explain to us the position of Corporate Europe Observatory towards TTIP? Are there certain chapters that raise particular concerns, or is it the totality? Do you see any scope for positive benefits, economic or otherwise, and do you have specific concerns about disagreement or possible agreement as compared with previous free trade agreements negotiated by the EU? Do you put this in a special category, or are you firing on TTIP as part of a general assault on the free trade agreements?
**Pia Eberhardt:** Okay, thank you, and thank you very much for inviting me. I am very pleased to be your witness today. Corporate Europe Observatory has a number of serious concerns about the TTIP negotiations. One concern relates to the way that the agreement is being negotiated, so that means in secrecy and under undue influence from corporate lobby groups. Another set of concerns relates more to the substance of the agreement. Here, I would like to highlight two issues which we would see as probably two of the biggest threats posed by the agreement to the public interest. The first issue is one which you have already discussed at length: that of the investor-state dispute settlement. The second issue is that of regulatory co-operation. We can maybe come back to both of them. These specific issues, in particular regulatory co-operation, already outline the specific character of TTIP because they have never been negotiated by the EU before. Also, TTIP would be one of the first agreements where the EU negotiates the issue of investment protection. That really makes it a much more far-reaching and much deeper agreement than any other agreements that the EU has so far negotiated. You asked also about the potential benefits of the agreement.

If I look at the public corporate wish lists for the negotiations—they are public because public contributions have been made to them, in particular in the United States—and if I also look at the few leaked texts that we have seen coming from the negotiations and if I look at the growing number of economists who are starting seriously to question that this agreement will create the many jobs which the European Commission has promised us, I am afraid that I find it hard to believe that TTIP will actually bring benefits to ordinary people in Europe. I also think it has very little to do with trade. It is much more what we would describe as a power grab from corporations on our societies.

**The Chairman:** Thank you. You make TTIP appear to be unique, but I had the impression that, although TTIP is obviously between the two largest trading groups and in that sense is different from anything that has gone before, the contents of the negotiations are not so very different from what was negotiated between the EU and Canada for instance or perhaps between the EU and Korea. The one between EU and Canada covers much the same ground, does it not, as TTIP?

**Pia Eberhardt:** Yes. You are right to a large extent. Many of the issues negotiated are already enshrined in agreements such as the EU-Korea agreement; for example, tariff liberalisation, liberalisation of the services sector and intellectual property rights—all these chapters are very classical in trade agreements and appear also in TTIP. The EU-Canada agreement already goes a step further because it is the first EU-wide agreement that contains an investor-state dispute settlement clause. We, together with many public interest groups in the Canada and the EU, oppose this chapter in the EU-Canada agreement for the same reasons as we are critical of it in TTIP. But where TTIP would go even beyond the CETA, the EU-Canada agreement, is the chapter on regulatory co-operation. So, for me, the investment protection chapter and the chapter on regulatory co-operation are really at the heart of the TTIP agreement. You can also see when you look at lobbying papers that have been sent from companies to the European Commission that the issue of regulatory co-operation is really a key issue. The EU has never negotiated it to such an extent before. This is an expression of the fact that you have actually very few tariffs left in transatlantic trade, but a lot of regulations that will now be tackled in the negotiations.

**Q238 Lord Jopling:** Thank you. You are co-ordinating a campaign, the purpose of which you explained to us. Can you tell us who finances your campaign and your organisation? Can you tell us how you are organising that campaign and how much support you have beyond your own organisation? What have been the public response and the response among national Governments to the things that you have told us you believe in? How are you proposing to raise your concerns with the public and political groups? I think we would like to know more about what you are doing and how you are going to do it.
Pia Eberhardt: Thank you. First, on our funders, Corporate Europe Observatory to a small extent is funded by donations, so that is really individual citizens who like our work and chip in—I do not know—€15 or more. The much larger share of our funds comes from foundations, such as those that have an interest in funding work to strengthen democracy, because our main issue is corporate lobbying and what it does to our democracies and democratic debate. That is where the largest share of our funds comes from. We do not accept money from companies. Nor do we accept money from Governments, because we feel that this would probably have a negative impact on the work that we do, which focuses on the link between companies and government. When it comes to TTIP, for us as an organisation—you have to know that we are a relatively small organisation working together with other organisations in a much larger network—the key is really to feed into and trigger public debate, because this agreement is way too important to be left to a handful of people who are negotiating it with the ordinary citizen largely unaware of what is going on. We are trying to publish information that we receive from official sources—we have published a number of leaks that people have received by official channels but obviously they did not feel that these texts should remain secret so they have sent them to us. We also publish analyses of these leaks as far as we are capable of doing. We always try to produce facts-based analyses but analyses that are also understandable to a lay person, to a citizen. The response to the work that we have published, I have to say, has been relatively positive. We get a lot of positive feedback from other citizens’ groups or trade unions, for example, on the work that we have done on investor-state dispute settlement processes. They tell us that they first learnt about the issues through our publications. It is also normal citizens writing to us saying, “Thank you for the work that you are doing. You are writing about things that I am missing in the media”. Journalists appreciate our work a lot, as do policymakers. Policymakers include MEPs, some of whom are increasingly interested in the negotiations but are not on the international trade committee and therefore do not get certain information—I think that they appreciate our analyses—as well as officials from EU member states. For example, we have for the past year organised a series of debates on investor-state dispute settlement in Brussels. The room has always been packed with people from the national representations in Brussels. That is also because in member states there are issues where people start having more and more concerns. My feeling is that, so far, our work has been largely appreciated by different groups of the public.

Lord Jopling: Yes. You made it very clear that you are interested in transparency. Just so that we know where you are coming from, it would be very helpful if you could send us a note on who supports you, your budget, your financial sources—where your money comes from. If you could let us have that, I think it would let us understand better who you are and where you are coming from.

Pia Eberhardt: It is all on our website. Let me think of a British funder, whom I should know. The JMG Foundation is funding us; in the Netherlands, it is the Adessium Foundation funding us. That is all I can think of, but I can definitely deliver the link on our website, where you will find all the funders of the past year.  

Lord Jopling: Thank you.

The Chairman: Thank you very much. The next question is from Lord Lamont.

Q239 Lord Lamont of Lerwick: Thank you. My question is about transparency and accountability. You have made it very clear that you do not think that there is enough transparency, although someone may say that negotiating in public can be very difficult. I wonder whether I might zero in on a specific example. You said that you were concerned

42 Note by witness: http://www.corporateeurope.org/about-ceo
about regulatory co-operation. What is it about regulatory co-operation that concerns you?
I would have thought that regulatory co-operation in so far as it led to convergence was in
everyone’s interest if one accepts that maximising trade is in everyone’s interests. Why
should one be concerned about regulatory co-operation?

Pia Eberhardt: Well, I have to say that for us it is also a relatively new issue. As I said, the
EU has not negotiated regulatory co-operation in its trade agreements, so we are also in the
beginning of understanding it together with others; for example, parliamentarians in the
European Parliament. We have seen a leaked proposal from the European Commission
dating from December last year on what it intends to negotiate under this chapter of
regulatory co-operation. It is about putting in place institutions and procedures for the time
after the TTIP agreement is implemented—procedures and institutions that ensure that
existing legislation but also future legislation and regulations will be harmonised on a
transatlantic level. This could mean that many of the issues that people are concerned about
today—for example, more GMOs for Europe and chlorinated chicken—will not be found in
the TTIP agreement, but you will have the processes and the institutions in place to tackle
these differences in the future. Why are we concerned about that? As you rightly say, it
sounds relatively innocent, but if you look a bit more closely into the process, you will see
that it is a very complicated system that the Commission is proposing for future legislation in
the European Union. It would open up the policy process much earlier than is the case today
towards US interests, so that would be the US Government but also US stakeholder groups.
They could input very, very early and long before any Parliament in Europe—be it the
European Parliament or national Parliaments—would have any say on what is being
discussed. So the proposal first of all shifts policymaking to the pre-democratic sphere, the
pre-public sphere, to bureaucracies that would then negotiate these issues from the EU side
and the USA side.

Lord Lamont of Lerwick: But would that not apply in both directions? The EU could
lobby on US regulation as well.

Pia Eberhardt: Of course.

Lord Lamont of Lerwick: So what is the problem?

Pia Eberhardt: For us, it is a problem to disempower Parliaments. We consider ourselves a
democratic organisation, so we hope that a lot of the power over the legislative process
remains with elected representatives and not with unelected officials. The second problem
we see is that the Commission wants to open up very early entry points for compulsory
information to stakeholders. Stakeholders of course are in theory everyone. In the political
reality in Brussels, this is 70% industry and 10% trade unions et cetera. We fear under
regulatory co-operation very early opportunities for industry to water down, to delay or
even to kill legislation, providing strong consumer protections for example, that they dislike.
This is why I have highlighted regulatory co-operation as an outstanding issue for us but also
for other consumer groups and trade unions, which are becoming increasingly worried
because it might fundamentally change the way in which politics is being done in Europe. I do
not think it will be in favour of the weaker actors in society—consumers, workers et cetera.

Lord Lamont of Lerwick: Thank you.

The Chairman: Lord Maclennan has a supplementary question.

Lord Maclennan of Rogart: Can I take it that your opposition to this regulatory co-
ordination is because you believe that the regulatory agencies would have a legislative
power, and would it not be possible in the negotiations to require any regulatory bodies that
are set up only to implement what has already been agreed and, furthermore, to suggest that
they would have indicative powers but not enforcement powers in other areas where there
has not been a prior agreement?
**Pia Eberhardt:** In theory, that is possible, but that is not the Commission’s negotiation proposal that it tabled towards the US. There, it is, as you rightly say, about increasing the power of regulatory agencies, including future legislation and regulations—so not only the legislative body that is there once TTIP comes into place.

**Q240 Lord Radice:** You have been talking about the role of corporations. What role do you think they are playing in the TTIP negotiations, and are there changes that could be made to the current consultation mechanism which would convince you that a broader range of views is being taken into account?

**Pia Eberhardt:** We have looked very closely into the preparatory phase of the negotiations, because for that phase we have very good data. We know from public information that the Commission has released who participated in public consultations, who participated in public stakeholder meetings on TTIP but also who the Commission met behind closed doors on top of that. This is for the period 2012 and early 2013. When the negotiation agenda was prepared between the EU and the US was for us a crucial phase, because it is here that you decide which direction you are going to take in the agreement. That phase was completely hijacked by corporate lobby groups.

When the negotiations were announced in February 2013, the European Commission had not had a single meeting with an environmental organisation, a consumer group, a trade union et cetera, but it had had dozens of meetings with corporate lobby groups and individual companies. We counted 120 meetings in the preparatory period; more than 90% of the meetings for the whole period were with industry. We can also see that some of the negotiation proposals—for example, the Commission’s own proposal for regulatory cooperation—have been, if not copied and pasted, then strongly inspired by proposals that were made by BUSINESSEUROPE and the American Chamber of Commerce together. They went even further in their proposals. They basically proposed that industry should sit at the table with regulators when drafting laws and regulations.

The Commission’s own proposal does not go that far, but it has many other similarities with the proposals as they were written by business. For us, in this early phase of the negotiations, we have the impression that the Commission is negotiating on behalf of a certain group in society, which is export-oriented companies. There are other groups in society that will also be affected by the agreement; for example, small businesses, workers and consumers. They have not been listened to in the preparatory phase of the negotiations. This is changing at the moment thanks to the growing public interest and increasingly critical reports in the media about the agreement. We will see whether the Commission changes its practice. An important step for us will be the upcoming public consultation on the investor-state dispute settlement process that the Commission has announced for March. You asked what could be changed to ensure greater participation of more groups in society. The questionnaire for such a consultation will be key, because what we have seen so far in the Commission’s questionnaires for the public consultation are very biased questions. Do allow me to read one from an older questionnaire to show you what I mean.

One of the questions in the consultation last year was: “If you are concerned by barriers to investment, what are the estimated additional costs for your business, as a percentage of the investment, resulting from the barriers?” How on earth would an ordinary citizen respond to such a question? It is not meant for the ordinary citizen—and it is not the only question that is biased in such a way. Therefore, what the next questionnaire for public consultation on investor-state dispute settlement will look like will be very important for enabling or disabling the broader participation of people. This is something that we and others have made clear to the Commission. The questions need to be accessible and understandable to people: otherwise, they will not have a chance to participate. We will see what the Commission does.
The second change that could be made refers to what the Commission then does with the responses it receives. How will they be reflected in policy? Of course, that is not an easy question to answer. How will the Commission weigh the voice of a large industry organisation against the voice of a large consumer group? How will it factor in, for example, thousands of citizens participating in the consultation and saying, “No, we don’t want investor-state dispute settlement processes”? We hope, of course, that if that happens and there is such strong public participation, the Commission will also change its negotiation agenda. That would mean that it would be actually listening to the wider public. If it does not do that, I do not know what lesson we would draw.

The Chairman: Lady Quin and I both have supplementary questions.

Q241 Baroness Quin: Hello. I note what you said about the negotiations so far and how you do not feel that there has been wider involvement of the kind that you would like to see. However, I wonder whether your interests and those of the corporate sector are always at variance. It seems to me that responsible companies that abide by good regulations and often employ a lot of people might share some of your concerns. Therefore, I wonder whether you have had contact with some of the corporate bodies and big companies that you know are involved in this process.

Pia Eberhardt: This is starting now, but it is more that small businesses are contacting us and are wondering whether we have more information about certain issues. We have been contacted by small businesses because, as you might know, the Commission has now put in place a formal advisory body for the negotiations, reacting to criticism about the lack of participation and transparency. There are no small businesses on that group, so small businesses have called our office because they know that we research these kinds of issues. They ask whether we know where the group came from and who appointed the people. These contacts are starting at the moment and I think we will see them increasingly. I have seen more and more statements from small employer organisations raising concerns about the TTIP because, for example, they operate more in the European market. The transatlantic market is not really interesting to them, but they fear that they might suffer from competition from US companies. So there have been only a very few contacts but I think we will build on them in future, because you are right to say that there are concerns also in the business community that are similar to the concerns we have.

Q242 The Chairman: Could I ask you a perhaps slightly philosophical question? You seem to put corporates and the business community into a group, and then put consumers and trade unions and others into groups. Would you accept that a corporation is a body that employs a great many people—anyway, it is an employer—represents their interests, represents the interests of the people who have shares in it, including indirectly through pension funds, represents the interests of consumers, and therefore that it covers a wide swathe of society? So do other groups, but the individual citizen participates through a variety of different organisations. The way in which you seem to regard corporates as being something separate and distinct from the rest of humankind strikes me as a little strange.

Pia Eberhardt: When I was discussing this with colleagues this morning, they told me not to get involved in philosophical questions. So now you have got me in that trap. You are right that to a certain extent we are all working not only with industry, because some people are employed in the public sector, but mainly with people who work for small businesses or bigger businesses—so obviously you are right that there are many links between us and what I call the corporate sector. The products we consume are produced by corporations, etcetera. But we as an organisation have been working on EU politics for more than 15 years. For more than 15 years we have been watching how our financial markets are regulated at EU level, how EU climate policy comes into play, consumer legislation—all kinds of policy areas. Interestingly enough, on many of these issues you have large employer organisations—
not all of them, of course—with a distinctly different position from, for example, the trade unions that represent the workers in these companies, from environmental groups and from consumer groups. So there are links, but the interests are not identical.

In capitalism, whether we like it or not, the interest of the company is to survive, and that means making profits. That can be with very good products or very bad ones that kill consumers, such as tobacco. I think the distinction comes from our long experience with research on lobbying in the EU. We find these distinct positions again and again, and also in the trade negotiations.

If you look at who has concerns, just this week one of the biggest trade unions in Germany spoke out against the TTIP negotiations and called for a halt to them. The German employer organisation—the equivalent of the CBI—of course has a different position.

Q243 Baroness Coussins: Good morning. I would like to ask you about consumers in a bit more detail. Apart from their marginalisation from the negotiations, which you have already discussed, could you spell out for us in a bit more detail what you would identify as the potential dangers of TTIP for consumers—and whether you see only dangers or would concede that there might be benefits for consumers? We received evidence from previous witnesses suggesting that a TTIP could produce increased choice, lower prices and more jobs for consumers. I wonder whether you would dispute all those claims, and if so on what basis. Lastly in this area, would you see any benefit in a kind of long-term monitoring structure if and when TTIP is finalised that could monitor consumer impact and might be written into TTIP? In your view, would that be sufficient protection?

Pia Eberhardt: First of all, Corporate Europe Observatory is not a consumer organisation, so definitely there would be better persons to answer this question. None the less, we do work with consumer organisations and learn from their views. They have views on all the issues that you mentioned—but not always the same. One organisation with which we work a lot is Public Citizen in the United States. It has just published a report about its experience as a consumer organisation of 20 years of the North American Free Trade Agreement.

In that report, it writes: “The reductions in consumer goods prices that have materialised have not been sufficient to offset the losses to wages under NAFTA”. It states that for all three countries: the United States, Mexico and Canada. This does not mean that it is right; there are probably other analyses. However, I do not think it is that simple to say that TTIP would lower prices and would therefore benefit consumers. On top of that, I would see a number of issues as dangerous for consumer rights. The first is the long wish list of consumer rights that companies in the US want to see wiped away through the TTIP negotiations. That ranges from the labelling of GMO food to chemicals regulations and issues such as herbicides that are widely used in the US but banned in the EU—all kinds of regulations that protect consumers in Europe. That does not mean that all these consumer rights will fall in the negotiations. Some might, others might not. However, this again is where the issue of regulatory co-operation comes in. We fear that if it is not the way to wipe out important consumer legislation in future, it is definitely a good tool for industry to prevent progressive consumer legislation in future. When you attend industry events on TTIP in Brussels, they are very open about this; it is their goal in TTIP. So I would say that there are mixed elements, but quite a number of risks.

On to the last part of your question about the monitoring mechanism, I say that it is only as good as the agreement it can monitor. If the agreement abolishes certain consumer rights, the advisory committee that monitors the implementation of TTIP will not make a difference from a consumer perspective. It all comes down to what will eventually be in the agreement: will consumer standards be tackled, and what kind of procedures will be enshrined that will increase the power of companies over legislation in future?
Q244 Lord Foulkes of Cumnock: I have a lot of sympathy with the points that you are putting forward. What I am not clear about, though, is what you are saying to us. Are you saying that you want us to recommend in our report greater transparency in the negotiations, and safeguards for consumers, workers and the environment—or do you want us to say, “Abandon the whole idea of TTIP”?

Pia Eberhardt: We as an organisation are saying the latter: abandon the whole idea. If you take the sum of the negotiation chapters, and in particular regulatory co-operation and investor-state dispute settlement, there is not much left in the agreement that would benefit the ordinary citizen. However, parliamentarians—elected officials—have a role to play that is different from ours. Some parliamentarians in the European Parliament are making exactly those demands. They are calling for more transparency and more safeguards. It is important to take these negotiations seriously, and to get hold of negotiation documents and try to understand them and make up your mind. What is negotiated there will be enormously important, and there are far too few people out there who understand what is being negotiated.

Lord Foulkes of Cumnock: So you are saying that if you cannot persuade all of us to recommend abandoning the whole scheme, you would think that we would be making some progress by suggesting greater transparency in the negotiations involving organisations like yourselves, consumer organisations and trade unions and so on, including safeguards? Would you think that that was a step forward?

Pia Eberhardt: That would be a step forward, but the other step that I would really wish from your committee is a clear no to investor-state dispute settlement, because enshrining that in the deal is political madness. I do not want to be you in 50 years looking back to that after a flood of claims has come.

Lord Foulkes of Cumnock: We are going to come on to that later.

The Chairman: Can I ask you a different question, which Lord Foulkes touched on? You talked about the Commission, what it is doing, and the campaigns which you and others are mounting, but you do not very often refer either to the role of the European Parliament or to the role of the national parliaments. Is it not the role of the members of the European Parliament and the members of the national parliaments to represent a lot of the concerns that you are raising? The inference I would draw from what you have said is that you do not think that they are doing it very effectively. So there are three points: is it not the job of members of parliament to raise these concerns, are they doing it effectively, or are they having no impact?

Pia Eberhardt: I will respond on a different level. First, what power do Parliaments, be they on the European or the national level, have over EU trade policy? I would say very little. The European Parliament has no say on the EU negotiation mandate. It has issued a resolution, but it is not binding. Its grand moment comes at the end, after years and years of negotiation, and thousands of pages of text, and it can say yes or no. It cannot even say, “We like the agreement in principle but we have a big problem with the investor-state dispute settlement process. Can you not go back to the negotiation table and get that out?” So it does not have a lot of power; I would say that it is the same for national Parliaments. None the less, they are increasingly picking up the debate and reacting to the public concern that is growing in many European countries. You might have seen, for example, that the Dutch Parliament has passed a relatively critical resolution on TTIP, including on investor-state dispute settlement, and you have to know that the Netherlands traditionally is a country that is very proud of its strong investment treaties. So there, there is definitely a policy shift resulting from the change in public opinion. My feeling is that the slightly laidback attitude of Parliaments, particularly on the national level, is coming to an end with the public concern. In
that situation, of course you are right: Parliaments are important places where this opposition and questions can articulate themselves.

**Q245 Baroness Quin:** You raised some concerns about food safety, but it is true, is it not, that the Commission has said that this is about regulatory coherence and not deregulation? Given that you have on both sides of the Atlantic very strong food safety national and, in the case of Europe, European bodies, and given, too, that even though companies might have an interest for economic reasons in not wanting perhaps the highest standards—although I think that some do—for Governments, who at the end of the day are the ones who are going to agree the TTIP, it would be political suicide to compromise on safety when there are so many strong voices in favour of high standards. The electorate on both sides of the Atlantic would be extremely concerned if food standards were seen to be lowered.

**Pia Eberhardt:** Yes, you are absolutely right. I do not expect a final TTIP agreement that has the title “Chapter 3: More GMOs for Europe. Chapter 4: Chlorinated chicken for Europe”. Of course not—for the obvious reasons that you state. The Commission is not stupid and Parliaments and the public have already said, “This is not going to happen with us”. But this is again, first, where the issue of regulatory co-operation comes in—many of these things can come in the future in a much less obvious process—and, secondly, it is already happening. Let me give two examples. The TTIP is already now, before it even exists, in the face of the negotiation having an impact on legislation and policymakers. That is not new; it has happened in many countries with which the US has negotiated. It is trying in the course of the negotiations already to address certain issues that it does not like in their trading partners. One issue is beef cleansed with lactic acid—you have probably heard about this. There was a ban in the EU until a while ago. The US asked for that ban to be lifted as a nice signal to commence the TTIP negotiations and the European Commission did exactly that. Many member states were opposed—not enough to block the whole thing but quite a few—and the EU consumer organisation BEUC clearly stated that consumers in Europe did not want chemical treatment of meat. But there it is. That has to do with the TTIP negotiations. A second example that I have is from a member of the European Parliament who complained to me about the ongoing discussion at the moment in the European Parliament about meat from cloned animals. Here, the European Parliament wants to go further than the European Commission and ban not just cloning in the EU but also the import of cloned animal offspring. Secondly, it wants to put in place strict labelling for food from cloned animal offspring. You can now debate whether that makes sense, but the important point is that the European Parliament wants to go further than the Commission in its original proposal. What is happening now is that the European Commission and high-ranking officials are calling up the responsible people in the different parties for this dossier in the European Parliament, pressuring them to accept the Commission proposal, because otherwise the US will walk away from the negotiation table—it is not good for the mood in the negotiations. These are just two examples of things that have already happened. I have no idea but I guess that other legislation is ongoing at the moment where the reference to TTIP already plays a role. So it is not that hypothetical. The attack on consumer rights and on food safety issues might come via all kinds of different channels but related to TTIP.

**Baroness Quin:** Are there not, however, some advantages in the negotiations for food producers in the EU? I am thinking of specialist food producers who I have come across in my own part of England who find it incredibly difficult to export to the United States at the moment because of various rules and regulations which they hope will be tackled through TTIP. The issues that you have described would crop up anyway. Does TTIP not give us a framework for dealing with some of these issues?
**Pia Eberhardt:** Yes, this agreement is not a one-way street. The EU also has its interests on the other side. Some regulations might really be just a burden and if they get abolished no public interest will be negatively affected—for sure. I am not saying that all standards and regulations addressed in the negotiations have a public interest implication. But some do, and the question is then what will happen in the negotiation dynamics. At the moment, the European Commission is saying, “We are not going to move an inch on food safety”, but the EU also has offensive interests towards the US; for example, in financial services, where it is really demanding much more than the US. How is the EU going to get its offensive interests through if it is not giving in on anything else? It is all interwoven. Of course, I have highlighted the ones where I see the interests of consumers but also issues such as the fight against climate change et cetera are negatively affected.

**Baroness Bonham-Carter of Yarnbury:** I have a supplementary to your last answer where you talked about growing concern among parliamentarians and national Governments about public opinion moving against TTIP. I must say that I think our experience looking into this area is that very few people seem to know about it. Frankly, I do not find this to be a conversation among people on the streets here. Are you suggesting that that is not the case in other European countries and that there is a sort of public and a parliamentarian awareness that there is not here?

**Pia Eberhardt:** My impression is that awareness is by far strongest in Germany. That goes to wide sectors of the normal public. It has to do with a number of mainstream media reports that are reaching ordinary people—people who, for example, have questions about the impact assessments by the Commission that tell us that so many jobs will be created. There, it is really on the level of comedians on TV making fun of TTIP and the chlorinated chickens. There, it is really an issue of public debate, but it is also the result of very early networking and campaigning. The TTIP coalition in Germany was the earliest that I know of in civil society, and similar coalitions are being built in other countries—in France, in the UK, in Denmark and in the Netherlands. My feeling is that a similar level of public debate could follow as we see it Germany. But you are absolutely right: there are other countries where I guess you have absolutely no debate at all.

**Baroness Bonham-Carter of Yarnbury:** Do you think that what is happening in Germany and the Netherlands is feeding back into those who are negotiating?

**Pia Eberhardt:** It is definitely feeding back. I have already mentioned the European Commission’s public consultation on investor-state dispute settlement, which is clearly a reaction to the growing public pressure, particularly on this issue. The Commission obviously felt forced to say, “Okay, we have to halt negotiations on this issue and conduct a public consultation”. We will see whether that is more than a fig leaf and an attempt to get out of the light for a while, but it is one effect of the growing public awareness.

**Baroness Young of Hornsey:** I am trying to get to grips with comedians making jokes about the ISDS.

**Pia Eberhardt:** It is very funny.

**Q246 Baroness Young of Hornsey:** Your organisation has raised a number of objections to the ISDS, some of which you already alluded to earlier today. We have had some similar objections raised, but we have also had people saying that these fears are not necessarily borne out by past experience in the way the current system operates. What do you see as the particular risks that the inclusion of the ISDS mechanism in TTIP poses—some that you have perhaps not mentioned or gone into in any detail? How do you respond to the Commission’s argument that steps are being taken to mitigate those risks, particularly around stronger provisions on transparency, guarding against frivolous claims and, above all, this mechanism for carving out a public policy space? Do you think that the ISDS mechanism,
if it was able to offer these additional safety mechanisms, would be acceptable? Sorry, there is a whole load of questions in there.

**Pia Eberhardt:** But very good questions, so I hope that I can address them all. First on the risks of ISDS in TTIP, the basic risks are the same as you have in other agreements: that is, there is the risk of potentially high costs for public budgets. If a claim is brought and the state loses, it is the taxpayer who pays the compensation. As you might know, for example, a Swedish energy company is demanding €4 billion from Germany because Germany got out of nuclear power. That would be a lot of money for German taxpayers to pay if Germany lost.

The second stand-out risk is that of regulatory chill. Around the world, the threat of an expensive and reputation-damaging investor-state law suit is used by companies in battles over regulation. If you talk to insiders—to investment lawyers—they are very open that this has become an important function of the whole system. It is no longer just about providing a shield against unfair treatment by states; it is a powerful weapon in political debates about regulation.

**Baroness Young of Hornsey:** Following on from what you said just now, would that sort of regulatory chill be more effective in the emerging economies of some of the developing countries and less so in the blocs that we are talking about—the US and EU?

**Pia Eberhardt:** Well, no. The examples we have include some from Canada, which is a developed country. Canada has not implemented a number of legislative proposals because of lawsuit threats—or let us say that it is very likely that the lawsuit threat played a role in preventing legislation. Also from Germany there is the example of the first claim that the Vattenfall company filed against Germany—the current claim is the second one—which targeted environmental restrictions on a coal-fired power plant in the north of Germany. That claim was settled, and as part of the settlement Germany agreed to weaken the environmental restrictions. It was about how much water could be taken from the river to cool the power plant. So in that case, an actual claim that was settled led to a weakening of legislation in Germany, which of course is not a developing country. That risk applies also to the north.

On the specific threats of TTIP, I always get the question, “As we have all these investment treaties already, would TTIP make such a difference?” Definitely—it would make a big difference, for a number of reasons. The amount of foreign investment covered by an investment chapter in TTIP is beyond anything that there has ever been. Half of all foreign investment in the EU comes from the US, and in the US it is the same. Tens of thousands of companies are cross-registered. For example, US-based companies have subsidiaries in the EU, and EU-based companies have subsidiaries in the US. In total, there are 75,000 companies. Under an investment-protection chapter in TTIP, all of them could sue on both sides of the Atlantic—wherever legislation is stricter and they dislike it.

The third particular risk for investment protection in TTIP is that US investors have launched by far the largest number of investor-state disputes—nearly one-quarter. So they are very litigious—I hope that I pronounced that correctly—and they are supported by equally litigious law firms. US law firms dominate the global arbitration business. These factors together—the broadest agreement ever, with a lot of companies and investment flows being covered and a litigious industry—make it likely that we would be swamped by a litigation boom and a flood of investor-state law suits.

Coming briefly to the issue of the Commission’s reform proposals that you addressed, I will take a step back and ask why you would want to reform investment arbitration in the first place when you have very good national legal systems in the US and across the EU. Investment arbitration violates key principles of the rule of law; I am not sure if that has already been mentioned in previous discussions. It violates the principle of equitable access
to justice because only one party in a society has access to this justice system: the foreign investor. Domestic companies cannot use it, citizens cannot use it and the state cannot sue the investor. That has nothing to do with equitable access to justice, which I would defend as a key principle of the rule of law.

The second principle that is gravely violated is the idea of judicial independence, because arbitrators are not independent. These are not judges with a fixed salary, but private lawyers paid per case and per day. This means that when there are more claims, they make more money. It is an inherent conflict of interest to rule in favour of the one side that can actually file a claim: the investor. Whatever an independent judicial system looks like, this is the antithesis. So I ask why you would want to reform such a system. If you say you do not care about the rule of law, that equitable access to justice is not important and that judicial independence is gravely overrated, and argue on that basis, you can then think about enshrining safeguards at least to prevent these law suits attacking public policy. This is what the Commission claims it is doing. I am not sure if we are running out of time. We can go into detail, but the Commission’s claim that it has negotiated with Canada cannot be found in the Canada text. The so-called safeguards are either not there or are much weaker and full of loopholes. Already I see the investment lawyers finding their way through these “very strong safeguards.” So even within the system, the safeguards are too weak to protect the public interest.

Coming back to the general picture, I would argue strongly against allowing investors to bypass the good European court systems that we have in favour of this very flawed legal parallel universe.

**Q247 Lord Macleanen of Rogart:** You referred in earlier answers to dangers to labour and environmental standards. We have heard that the Commission takes the view that it would not impact on these standards, but your own statements indicate that you are fearful of this. Could you be more explicit in indicating what you consider to be the dangers? Also, if this negotiation goes ahead, how would you seek to mitigate those dangers?

**Pia Eberhardt:** I guess the answer here is very similar to the ones that I gave to questions about consumer rights. First, again, you have companies in the US that specifically target certain environmental regulations in the EU: for example, the fuel quality directive. They are unhappy with the EU chemical safety system, REACH. That has implications not only for public health but for the environment. So you see exactly the same standards identified explicitly on corporate wish lists, and the situation is the same with regulatory co-operation and the investor-state arbitration system. We know of cases such as the Vattenfall case that have targeted environmental protection measures. Again, specific regulations have been identified by companies, which want to see them wiped out. We fear that these potentially dangerous procedures and powerful weapons—investor-state arbitration and regulatory cooperation—would undermine strong labour rights and environmental protections in future.

**Lord Macleanen of Rogart:** Do you not think it might actually have an impact on improving labour rights in the United States?

**Pia Eberhardt:** We have discussed that with AFL-CIO. The issue is discussed among the trade unions. My feeling is that some trade unionists in the US have that hope, but other do not; they have a deeper understanding of what a trade argument would do to labour. I am not talking about an international labour agreement but about a trade agreement. A trade agreement is about doing away with and reducing barriers to trade to make it easier for companies to move their goods, services and investments. It increases their power and leverage in a society. I have spoken to quite a few trade unionists, including in the US, who understand TTIP in that way—maybe not so much when they talk to the US Government, because they want to be able to talk to the Government, but they have an understanding
that trade agreements increase competition between workers, which in the long term puts pressure on issues such as wages and labour rights.

Q248 The Chairman: Perhaps I could end by asking you what I hope you will not think is an unfair question. In response to Lord Maclellan and others, you gave the impression—at any rate to me—that you saw almost all change in terms of regulations and standards as being for the bad rather than for the good. Do you think that it would have been possible to negotiate the European single market with your approach to negotiations of this sort?

Pia Eberhardt: Probably not. My organisation, like many groups that we work with, has been very critical of certain elements of the single market—not least financial market liberalisation. I am not sure whether there would be many defenders of the financial market liberalisations that we had in the internal market, which contributed gravely to the economic crisis we are still having in Europe—even though people like you, living in the UK, and people like me, living in Germany, do not really suffer the consequences. But, yes, that would be my response.

The Chairman: Thank you very much indeed for the frank and open way in which you answered our questions—and for your stamina in doing so over such a long period.

Pia Eberhardt: Thank you very much for your interest.

Transcript to be found under Gary Campkin
Q9 The Chairman: Welcome, Professor Rollo—it is a long time since we have sat across the table from each other—and Professor Evenett. I do not think you and I have sat across the table from each other before. As you know, this is part of our formal inquiry into the Transatlantic Trade and Investment Partnership. It is on the record. We are very grateful to you for coming to give us the benefit of your wisdom and experience. We have a number of questions, but if you wish to make an opening statement, please do. If not, we can crack straight on.

Professor Rollo: I would like to say two very brief things in introduction in the sense of what I bring to this issue. The most current stuff is work I have done for the Department for International Development on the potential impact of TTIP on low income developing countries, a particular group but nonetheless a fairly large sample. The second thing is that I worked on this topic in the 1990s when the same set of agendas was around and some of the same political context, so I perhaps have some thoughts on what the difference is now. Those are the two things I would bring to the party.
The Chairman: We interviewed Lord Brittan earlier. He reflected back, and I think it is quite useful.

Professor Evenett: Perhaps in the same spirit, there are two things I bring to this. First, recently I worked with a group of researchers in different sectors looking at the potential for further regulatory co-operation. We went sector by sector through those issues, which is of course relevant for this discussion. Secondly, the first eight years of my career was spent watching trade policy very closely in Washington DC, and I can bring a transatlantic perspective to that.

The Chairman: I should say one other thing. By all means answer whichever questions you wish but do not feel obliged to have both people answer all questions if you agree with what the other person has said. You do not have to give a full account. I will kick off. How strong is the current level of regulatory co-operation between the EU and the US, and how likely do you feel it is that TTIP will make substantial progress in that regard? If it does, in which sectors would you favour an approach of mutual recognition of regulation or harmonisation and why? That is an all-embracing question.

Professor Evenett: I have found that the level of regulatory co-operation varies considerably across sectors and, indeed, the regulators will always tell you that they co-operate. What they actually do is much less than that. It always sounds much more than it is. They are quite happy to talk about best practices and about what they do, but they are rarely very happy to come up with common rules or procedures to facilitate co-operation during enforcement and the like. Sector by sector, we find in many cases that the level of co-operation, in any meaningful sense, is close to zero, and has remained that way. I think we should remember that we created independent regulators to take politics out of regulation, and as a result we have created a whole group of non-cosmopolitan regulators who have no intention of co-operating with others. They see their role as regulating within their own jurisdiction. Finally, they are also exceptionally suspicious of trade and policy types and trade negotiators who they think would sell their mothers for a good deal. As a result, the relationships typically between these independent regulators and the trade ministries are often very limited. Given that background, we should not be surprised to see that the talk about regulatory co-operation initiatives is beginning to fizzle out in the context of TTIP. The Americans have not even decided which sectors they are going to put on the table for potential future regulatory co-operation, and both sides have made demands of the other side that are implausible, given their constitutional legal structures. In that sense, I am afraid, it is a bit like a Russian doll: this part of the agenda is getting smaller and smaller as the months go on.

The next milestone will be in December, when the Americans are supposed to tell us which sectors they are going to facilitate co-operation in and discuss. I expect that a lot of smoke will be emitted at that time, that we will learn very little and that we will see that there is not much to this.

The Chairman: Lord Lamont would like to ask you a question before I turn to Professor Rollo.

Q10 Lord Lamont of Lerwick: That is a very interesting and rather shocking answer, but looking at this not just as the EU/US, am I completely wrong in thinking that the WTO tries to create some sort of forum for co-operation between regulators, and that the theory was that regulation should be discussed in the WTO forum?

Professor Evenett: Again, the WTO has agreements in certain areas where co-operation is encouraged, but one does not see the WTO used as a place where regulators come together in order to craft new rules. In many of the cases where rules have been proposed at the WTO for regulations, such as in the area of competition law, the independent regulators have deliberately sought to circumvent the WTO and create their own
independent international initiative, which they control. I would argue that the WTO’s contribution to serious regulatory convergence and harmonisation has been quite limited.

The Chairman: I think Lord Maclennan wants to ask a question and then I will ask Professor Rollo.

Lord Maclennan of Rogart: Is the opposition to regulatory co-operation entirely controllable by the regulatory agencies or could there be political pressure upon them to come up with a different approach?

Professor Evenett: Changing the status quo would require very senior political leaders to signal that they would be prepared to change the law and in some cases to change personnel at these key regulators if they were not to co-operate. That is quite hard to pull off, certainly in the United States context where the Administration does not write laws—Congress does—and each of these congressional committees that oversees a regulator sees it as their regulator, and so what one gets from those regulators is often what the congressional committee in charge of them wants. So it would be rather a tall order to be able to pull that off. There is much talk of a need for very senior political commitment to various aspects of this negotiation, but when it comes down to the regulatory side I think you will see that it is missing.

Professor Rollo: I want to say two things. One is that what Simon has said certainly chimes with the experience that we have had subsequent to the mutual recognition agreements that were made in the 1990s and so on. Those have not worked well in the transatlantic context and have not expanded fast, as I think people hoped in the 1990s. To that extent, I certainly agree very much with what has just been said. I think the political commitment issue is the key one, and that is going to be hard to manage in Brussels let alone in Washington. Particularly when you get towards issues such as food safety and so on, which are extremely neuralgic on both sides of the Atlantic for almost directly opposite reasons, it is going to very hard.

Q11 Lord Trimble: I would like to look at investment for a moment. If there is a TTIP, is it likely to increase foreign direct investment? Is it likely to change existing patterns of foreign direct investment? What would be the impact or the character of a strong investment chapter? Is it likely to have any impact on the behaviour of multinationals, for example?

Professor Rollo: I do not think either of us wants to answer that question particularly. It is an extraordinarily complicated area and the data on what the regulatory issues are that change the atmosphere for investors are very poor. You can make very broad statements. If we look at what happened around the formation of the single market, there was a big increase in direct investment. I think that was more about the questions of predictability of the regulatory regimes, and the trade regime for that matter. But those were fixed, so firms could plan better and make perhaps more rational decisions about where they are going to locate. From that background, the past seems to suggest that if there was a significant transatlantic agreement that had real content in terms of liberalising both trade and regulatory issues, you would reasonably expect firms to react to that. But I am afraid I cannot be more precise than that.

There is some stuff around on the sorts of barriers there are to direct investment, and even within the EU there are very different regimes in place. I think it is right to say that the OECD data, such as they are, tend to show the UK as being pretty liberal on this front and others being less so, including some aspects of the US regimes, civil aviation being an obvious example.

Professor Evenett: We do know that in the automobile and car sectors there have been signals from European manufacturers that they would expand their investments in the United States should this deal go through, with the intention of exporting back to Europe
from the lower-cost southern US states. In that sector, which is of course an important sector, there have been clear indications from the corporate sector about what they wish to do.

I would add one other point, which is that no one wants to make an investment expecting eventually to undertake legal action in the court, so in that sense I expect that the investment decisions will be driven by market, size and regulatory framework considerations. Therefore that tends to put the investor-state dispute settlement clauses in a slightly different light. They are perhaps not the drivers of investment that one might think.

My final observation is that we run into an interesting bureaucratic imperative here. As I am sure you are aware, the latest treaty in the EU gives the Commission the competence to negotiate in the area of investment and, I think, the Commission wants to play with its new toy, so I fully expect that it will try, if only to establish the precedent elsewhere. Let us not forget that it is trying to negotiate such a deal with China. I think it would be a little loath to leave a US deal without serious investment provisions.

**Lord Trimble:** If they were going to play with their new toy, what would they do?

**Professor Evenett:** I think they would want to establish the principle that from now on these trade and investment agreements would have substantial investment provisions in them, if only to establish their primacy in this area. In previous times, when we have given greater competences to Brussels in the area of trade, that is exactly what we have seen. I think you would see it again in the area of investment.

**Lord Trimble:** What would the impact be of the things they would want to do?

**Professor Evenett:** That is unclear. Indeed, as Professor Rollo has said, this is not an area where we have very strong evidence of the impact of investment provisions, per se. If you were to talk about effects, there is not much to go on.

**Lord Radice:** I was going to ask an idiot question. What would a strong investment chapter look like? What does it mean?

**Professor Evenett:** There would be several aspects to it. First, there are provisions relating to the openness of a foreign jurisdiction to investments: the so-called pre-establishment provisions, allowing for investments in certain sectors of the economy, for example. Then there would be provisions concerning the treatment of investors once they have invested, and that is where the investor-state dispute settlement comes in. Those provisions apply then. Normally those chapters have those two features in them and they are the key aspects.

**Q12 Lord Jopling:** Let us turn to how the negotiation might deal with the problem of getting better access to US government procurement programmes. We have been told by our Government that there is currently a standoff over that situation but ultimately with state-level procurement. How will that roll out, and do you see any prospect of the US Administration tackling the problem of opening up state procurement as well? Do you think it has the appetite to take the States on, and if it did, what are the prospects of success?

**Professor Evenett:** Let me start by saying that public procurement negotiations are typically a straight negotiation of reciprocal access to each other’s markets, so if Europe wants to get a lot it is going to have to give a lot. That is how that negotiation will unfold. You rightly note that there are levels of government and each level spends money. In the United States case, the states would have to be encouraged to be part of this deal, in which case we would have to ask what is in it for them on a state by state procurement basis. That would be exceptionally difficult to pull off. The previous experience we had at the WTO with the government procurement agreement, when it was negotiated in the Uruguay round, suggested that only a few US states were prepared to sign up to these obligations. So we would have to make it very attractive for them as well. It is not just a matter of negotiating with Washington but perhaps with the states with the biggest procurement markets that
Europe is interested in. It would have to be good for each one of those decision-makers and there would be very little leverage that Washington could exercise over those states, such is their constitutional structure on this matter. That would be quite difficult. That ultimately means that the negotiation will come down to access to each other’s central government contracts. Then there is the question of the appetite there for that.

**Lord Jopling:** Are there any other carrots?

**Professor Evenett:** Probably not. I think this negotiation will be seen very much as a balanced one within procurement. In principle one could say to the states, “There is so much else you are going to get from this particular agreement”, but as our embassy in Washington has pointed out in a report, which they circulated detailing the state by state benefits of the TTIP, only 10 US states gain substantially from this negotiation. So unless they are the ones whose state procurement purchases we want to seek access to, we might not have much leverage.

**Lord Maclennan of Rogart:** Would there be any possibility of bringing into these negotiations requirements about transparency of costs, which might assist mutual procurement or enable both the EU and the states in the United States to recognise and have made public what the savings are?

**Professor Evenett:** I hope you are right. I hope that people would be interested in value for money. Indeed, one can understand that as a compelling argument to be made. There is also another argument that we run up against, which is, “Our dollars should be used for our firms to create jobs in our state”. That reality might be a little hard to overcome. I would firmly support anything to increase transparency of these in this area, because we found shocking examples of overpricing of government contracts on both sides of the Atlantic when that has happened.

**Professor Rollo:** I would add only one thing. Professor Evenett talked about central government to central government, but the EU does not really have the equivalent of the Federal Government in the US. Some recent work on measures of how much public demand is met from imports suggests that is a very variable performance right across the EU. Based on those data, it is arguable that the EU is not quite as liberal as it thinks it is on public procurement, because it is partly run through the state aids end of the story. The other end is open tendering and so on. How it is implemented on the ground matters quite a lot in all this, and whatever we do in these agreements it will be a matter of opening up these issues and hoping that behaviour will change over time.

I think Simon is right: the Union has to think about which states it would really want to do a deal with, and whether they are open to it. In some sense, they may have to have a separate approach to them. I do not quite know how that works with the constitutional norms involved in these sorts of negotiations, but some of the states are going to have to be in the room at some point.

**The Chairman:** Yes. There is something essentially unreciprocal about 28 central Governments on one side and one central Government on the other side.

**Q13 Baroness Young of Hornsey:** It has been suggested that there will be a convergence to lower standards in both the environment and labour market, and that seems to be based on an assumption that the US has lower standards in those areas than the EU. But we also heard last week that in some areas of the environment and labour, US standards are higher. Whatever the case is, how do you think convergence will go? Will it go up? Will it go down? Will there be some effective compromises? How will that work in those particular areas?

**Professor Rollo:** You are quite right: you cannot have a single categorisation of one side having a higher quality regulation than the other. Again, for example, there are quite a lot of environmental regulations that happen at the state level in the US, so again you have to aim
off for that. It will be a messy compromise. It is very hard to understand what people want to do. When we did our work on what the impact might be for developing countries, we were basing ourselves on the high-level working group report, because none of the negotiating agendas were out or public. If you read that report on the regulatory side, it is very full of aspiration but it is not very full of concrete. My guess is that, like the way we did it in the EU, it will take time. Doors will be opened a bit and then a bit further and harmonisation will arrive. For example, there are some signs that the US is warming to aspects of the REACH directive, which they complained very bitterly about when the EU was both drafting and legislating it, because some of the issues in it are issues that they now feel they need to deal with their own industry. These are quite open areas and I do not think there will be very formal agreements at this point. There will be a lot more on the co-operation side, which sounds weak but the door needs to be opened somehow on some of these issues.

The Chairman: As a general principle, would it not be true to say that each side thinks that the other side's standards are lower and that that underlies the way they approach these matters?

Professor Rollo: I think that feeds back to the original point Simon was making about regulators. The regulators have their view. Most regulation is put there for some reason of public policy, and that justification is extremely important to the regulator because that is how they judge what the right behaviour is in particular circumstances. Even though regulators on both sides of the Atlantic may be aiming in some broad sense for very similar outcomes, the local legal and constitutional situation determines how they act in certain circumstances. That means that they see the other side doing things that they would think were perhaps close to illegal in theirs. So those issues are ones that are quite hard to harmonise in any strong way, certainly initially. As we see, within the EU we have the single market which goes way beyond anything that has been conceived of in the TTIP context, although there are hints about the same sorts of arguments. We do not have in the EU anything like complete harmonisation in a lot of these areas. On environment we have directives so that there can be locally higher standards. There are all sorts of rules and governance structures that will have to be brought together if TTIP is to succeed.

Baroness Young of Hornsey: Professor Evenett, did you want to say something?

Professor Evenett: I was just going to answer your point. I think that people who are very concerned about the race to the bottom and the falling standards have very effectively organised themselves and their position. I think that will act as a break on widespread deregulation, and together with the inertia that Professor Rollo talked about with respect to regulatory practices, will ensure that this negotiation will not lead to the gutting of major regulations. I would not worry about that.

Q14 Lord Lamont of Lerwick: I will, if I may, generalise my question rather than as it is put here. What do you think of the prospects for the financial sector? What are the upsides there?

Professor Evenett: In the preparation that I did for this meeting, it has become very clear that on the US side the key regulators are extremely reluctant about, if not outright opposed to, the inclusion of the financial sector in this negotiation. In fact the US trade representative refers to co-operation in this area going on in parallel with TTIP, not as part of TTIP. The opposition there comes from the key regulators: the Securities and Exchange Commission, as well as the US Treasury. Unless there is a strong presidential intervention I think they will prevail over the Office of the United States Trade Representative, in which case the financial sector part of this particular package is likely to be very thin.

Lord Lamont of Lerwick: Do you agree with that?

Professor Rollo: I have nothing to add to that. It seems a pretty good summary.
Lord Lamont of Lerwick: The Canadian agreement provides some precedent to this, does it not? What areas do you think could have gained?

Professor Evenett: From what I have read, in the area of pharmaceuticals, food and drug regulations—

Lord Lamont of Lerwick: Sorry, I meant in the financial.

Professor Evenett: In the financial sector, sorry. Could have gained?

Lord Lamont of Lerwick: Yes. If you were able to influence the American regulators, where would you say you would like them to think again?

Professor Evenett: I think it is all in the implementation of Dodd-Frank, which is where you would want the Americans to think again, because this is a colossal piece of legislation for transforming the regulation of the financial sector. The framework was put in place in the legislation, yet so much of the details were deliberately left for the post-legislative phase, and that is where all the action is taking place. If I were to trying to influence the process that is what I would want to influence. In my judgment, the regulatory agencies over there are not going to let us anywhere near that.

The Chairman: I think that is the end of the financial sector, is it not? Can I take a question out of order for a moment? You were about to answer a different question. The question you were about to answer appears on our list, which is: what are the most important benefits and costs associated with TTIP for the following three sectors: financial services, which I think you have dealt with, automotive, and UK agriculture, food and drink. I think that follows on from Lord Lamont’s question. You were just about to answer it before you were asked it, as it were.

Professor Evenett: Sorry for jumping the gun. From the study which BIS commissioned, it seems that the UK automobile sector will see quite a nice increase in output and in exports. So there appears to be potential there. In the area of food and beverages, we also see estimated gains, which are positive. Perhaps it is the second biggest sector in terms of gains. So at least in terms of empirical studies, there is some hope for benefits. In the food and beverages sector, as I was about to say, it appears that the US regulators are open to some type of collaboration to help streamline the regulatory processes. Then again, that is very much driven by the Food and Drug Administration, and if there is a change in its leadership we may get a different position from the Americans.

Professor Rollo: I have two general points to make. Automobiles is an area where there is liable to be significant impact, simply because even though we say that on average the tariffs in this relationship are small, there are tariff peaks around, and in automobiles there are quite a few tariffs around 10%. That is a non-trivial number. I think we would expect to see impacts from that point on both sides because the EU tariffs on automobiles are also in that range.

Lord Lamont of Lerwick: What about the exact figure? It is about 10%, is it?

Professor Rollo: It is about 10%. It varies very much by tariff line and it varies according to whether it is automobile parts or completed vehicles. That is a set of issues. The agricultural end of food production is quite open. Again, there are a lot of remaining barriers to trade on both sides of a fairly traditional sort. We in no sense liberalised agriculture in the Uruguay round and tariffs remain extremely high in that area. Negotiating them in any direction that looks like down is going to run into a lot of opposition on both sides of the Atlantic. Again, the food safety issues are pretty major in this. The American farmers’ organisations seem to think that the precautionary principle is a personal plot against them. That is one of the problems with regulation more generally: what to one side looks like protectionism to the other side looks like good public policy. Those different flavours to it determine just what the lobbying will go for. It is possible that there could be big benefits in the food and agriculture side, but there will be a lot of opposition to individual
bits of it. As always with trade policy you are down in deep detail, at 10, 12-digit product levels, which means at a level of perhaps 20,000 products in trade. So you are looking at very individual issues. It matters a lot to the people who are badly affected.

**The Chairman:** Lord Jopling has a supplementary question, and I will ask a supplementary as well.

**Q15 Lord Jopling:** The answer to the question you put is that the attitude of the Europeans is protectionist. There is no argument about it. But that is not the question I want to ask. I get the feeling that some of these statistics over the benefit to the European Union may be a bit dog-eared. Have you considered the impact of energy inputs into industry on both sides of the Atlantic and the US, with the extraordinary reduction in energy costs from fracking and the prospect here in the UK? We have just been told in the last two weeks that energy prices could double over the next few years. Are those two trends, which go in opposite directions, likely to screw up the figures of the advantages to the European sector in this negotiation?

**Professor Evenett:** There is something to what you say. Indeed, it was implied a little by my earlier answer concerning the automobile sector. One of the reasons why the automobile sector is so keen on investing in the United States after this deal is done is precisely because they expect energy costs to be much lower. On a separate track from this particular deal, there is going to be the question of energy prices and their evolution over time. As you say, they are likely to come down substantially, certainly on that side of the Atlantic. The impact of that price reduction may well create far greater gains and changes in trade flows than this agreement ever will. So that might be the first order issue: the price of that energy might be a far bigger issue than TTIP will be.

**Professor Rollo:** The bottom line is that this will happen anyway. This is not connected to TTIP in any sense. Other structural changes in the world economy, as well those changes, will also have their impact on this against that background. I am not a modeller so I am not going to try to go at it that way. To that extent, in the policy experiments that have been done on this, these issues are there in the background, but they are not being explicitly modelled.

**The Chairman:** My question falls now. Lady Coussins has two rather related questions.

**Q16 Baroness Coussins:** The first question is to do with the investor-state dispute mechanism. In the submissions that we have received from trade union and consumer organisations, the view has been expressed quite strongly that if this deal happens it should not need to include a dispute mechanism like this, as previous deals have, because we are talking this time about places where there are well established, sophisticated legal systems. Their concern appears to be that an additional layer for legal dispute could put an unacceptable amount of power in corporate hands to challenge public policy. I wondered what you think of that position and whether it is conceivable that a TTIP could happen without a dispute mechanism, and that any issues that needed to be resolved could be resolved through existing legal systems, not to mention what the WTO might have to offer in terms of resolution.

**The Chairman:** Which of you would like to lead?

**Professor Rollo:** Let me say something that is not a very detailed response to what you are saying. I think there is a set of issues around dispute settlement that goes wider than just the context of direct investment, and it has often been a major issue in big preferential trading agreements about where the disputes will be settled. One of the other problems that we have is that these preferential arrangements have inevitable impacts on the WTO and its role and standing. If the WTO could come in as the dispute settlement mechanism for these agreements, that would be one way of trying to deal with part of the drifting that is going on on
in the multilateral system, at least in my judgment at this point. That is not an answer to the very specific question, because frankly I have no competence on that.

Professor Evenett: Perhaps I can say two things. First, these investor-state dispute procedures, which of course empower an investor—this is what makes them different from the WTO, which is state to state—can be designed in lots of different ways. It is my understanding that the Germans are not very happy with the idea of including such a provision because it would be weaker than what they like to put in their traditional bilateral investment treaties, whereas other European states are worried about the wave of litigation that they fear could come. I think much depends on how you design these things: what grounds you allow for disputes to be raised, what levels of compensation can be paid, the terms upon which those disputes are evaluated and who does them. There is a lot in the design that could be done in a way that would mitigate some of these fears.

The second observation I would make is on likelihood, as I suggested earlier. We face a bit of a challenge here. I think the US Congress will insist on this. At the same time, the opponents to these clauses have done an excellent job in raising the issues, and I think their concerns will be heard. We will have to find a compromise that relates specifically to the design of this. It might not be a matter of whether we have one of these clauses but how we structure it and design it in a way that minimises the fears of those who believe that this is a backdoor way of gutting regulation, which is what I believe the trade unions and some of the NGOs have argued.

The Chairman: Lord Foulkes has a supplementary question.

Lord Foulkes of Cumnock: No, it is after the other question.

Q17 Baroness Coussins: My other question was to do with social impact assessment. We have seen lots of economic impact assessments that all come with a caveat about the best case scenario—and the more we hear, the more unachievable they all seem—but we have not seen anything that looks like a social impact assessment. Indeed, we have been told by people who have registered objections that there has not been one. Could there be one at this stage, or would it be just as fantastical as some of the economic assessments, and if not now, when?

Professor Evenett: I think it would be very hard to do any serious, comprehensive social impact assessment without seeing the proposed text. The devil is in the detail in all these areas, and you really need to have something specific before you if you are going to assess it. That means in effect that any such assessment would have to be done after the deal was initialled, and I can understand the concerns of people who raise social matters that once the deal is initialled it is very hard to go back on. So we have a bit of a conundrum here. I fully understand the concern.

Lord Foulkes of Cumnock: I want to ask another somewhat different question before we go on to the political and global context. I am slightly overwhelmed by the size of Professor Evenett’s file, which reflects the huge detail of this question. I am worried that if we just go ahead we will end up with a big compendium report that makes lots and lots of comments about hundreds of different aspects of this TTIP. What do you think we could usefully spend our time looking at and making suggestions that might just make some kind of impact and might just be helpful for the UK Government, in particular? What should we focus on? What should we concentrate on to be effective?

Professor Evenett: I have the file. I suppose I have to start.

Lord Foulkes of Cumnock: I was going to put it on Professor Rollo.

Professor Rollo: I am a little thinner.

Professor Evenett: I am struck by the lack of realism in the discussion about regulatory convergence. I think I hinted at some scepticism in that regard. I think it would be very helpful if you were able to discuss what is practically very likely here. What would it take to
facilitate regulatory convergence and to facilitate reducing unnecessary burdens on business? If you are able to identify in key sectors where there is a substantial amount of trade where opportunities for convergence could arise, that would be very valuable. I think this is going to come down to the art of the possible, and at that moment I am getting a sense that people have big picture ideas that are not particularly practical. That might be an area where a useful contribution could be made.

**Lord Foulkes of Cumnock:** I would like to hear Professor Rollo on this, because he has given a lot of advice to the UK Government over a long period of time and it would be helpful.

**Professor Rollo:** That is the key point in this. In a report I did for someone else I came to the very last paragraph and said, “Of course, it may never happen”. All the reasons for it not happening are the same reasons for it not happening the last time, so you have to ask what is different now. I think Simon is precisely right. First, this is going to be really difficult. It is not hard to see that. There are a lot of cheerleaders for it at the moment and a big buzz, but we have to get down to the hard pounding that is any sort of trade negotiation, and I will be very, very impressed if we can do a really complicated and detailed agreement by 2015 on that basis. What the Committee could do very helpfully for people is to pick out the difficult issues and what would constitute the first constructive steps. Lots of these agreements have best endeavours and rendezvous clauses that say, in effect, “We will have another look at this in a few years’ time”. That is a bit weak, but there may be other things that one can say more precisely on the basis of the evidence you have had from sectoral and regulatory interests.

**The Chairman:** Thank you, that is very helpful.

**Lord Foulkes of Cumnock:** That is very helpful, yes.

**Q18  Lord Lamont of Lerwick:** I wonder whether I could just go back a little to the very trenchant comments you made about convergence in the financial sector. In other sessions we have had, people have drawn a distinction between convergence and mutual recognition. I can understand the reluctance on convergence because you are talking about operating businesses that affect the overall financial stability of a country. One can see why people would be very reluctant to give that up. Mutual recognition might apply to, say, investment products: things that financial institutions sell in other markets. Is there any scope there? Do you see any distinction between the reluctance and convergence and mutual recognition, or is that a no go area too?

**Professor Evenett:** Let me be clear: I would like to differentiate between what I would like to see and what I think is going to happen. I am very sympathetic to the idea of increased cross-border competition and integration, so for those who advocate mutual recognition in areas I would like to see it. But I must say that when I turn to what is likely to happen, essentially I see in the financial sector a reluctance of regulators to trust the judgments and the procedures of other countries of regulators. In some cases, a regulator might also be unable to take a foreign regulator’s judgment into account because they may be under a legal obligation at home to demonstrate that they are satisfied that something has been done or that certain conditions have been met. Even in the areas of mutual recognition, where I am quite sure if we looked hard enough we could find plenty of areas where you could make improvements, there may be other constraints that prevent that. I must say that in the preparation for this session I did not see, other than from the financial sector itself, many signals from financial regulators that they were willing to think of such solutions.

**Lord Maclennan of Rogart:** Professor Evenett, you do seem extremely pessimistic about the outcomes. Would it be helpful if politically we articulated some of the goals that are related not entirely to businesses but also to the consumers and those who would be concerned about cost saving, not only in the transatlantic context but in relationship to
other competitive countries such as China? Can this not be brought out as a general principle? I am going back slightly to the questions about the social context.

**Professor Evenett:** Certainly, and my answer was going to go back to those as well. I think you could offer a certain degree of reassurance, because I do not think that social regulations and environmental regulations are going to be gutted, and that, as I said, is because those who support them are doing a very good job of defending them. I think one could offer reassurance there. I do not think we are going to see widespread reductions in consumer protection legislation either. I do not think that is on the table. Nobody wants to see that. So I can see that there is a group of constituencies one could offer reassurance to. There is another set of constituencies, which we should try to keep engaged in this initiative, or keep supporting this initiative if possible. Those are the people who see the value of this agreement for strategic reasons, trying to position the transatlantic powers as being able to help shape the rules for the global economy with the rise of the emerging markets. There is a group of people who would be very interested in that side of this particular initiative as well. In principle, there is a useful role that one could play there on this, but again when one goes from the objectives at 36,000 feet to the nuts and bolts, which is unfortunately what much of this file is full of, one sees a gap.

**The Chairman:** I think we have had some very useful exchanges here and I must say they fit very much with my own way of thinking, as I was sharing with the Committee before we began, but I think you have given us some substance. We have several questions to come, some of which have been answered to a large degree in the course of your previous answers, but we will if we can try to work through them in the time left to us. Lord Sandwich has the first one.

**Q19 Earl of Sandwich:** Can we widen it again a little towards the other trade agreements? I am not talking about the transatlantic or Pacific ones but the global agreements such as Doha, EU-South Korea, NAFTA and so on. Is this going to be beneficial to Doha? Is it one side effect? How strong are protectionist tendencies now compared to those in those other talks? A supplementary question is: which industries are most likely to succeed in the long run? That is a bit wider than the other one.

**Professor Rollo:** Perhaps we can kick off on the question of what impact it has particularly for the multilateral system at this point. This is extremely awkward because it seems to me there is a feedback mechanism at work here, in the sense that you can date the big shift in attitudes to bilateral agreements such as this one to the failure of the WTO Ministerial at Cancun when Robert Zoellick walked out saying, “I cannot do business with people here. I will go and find people I can do business with”. Then, as no doubt you will hear from Lord Mandelson in a moment or two, the EU in 2008 moved into the same territory. This was driven by the lack of progress in Geneva to some extent. The moment their eyes moved to the bilaterals that signalled that there was less interest in Geneva, and it seems to me that people have had no sense of urgency in Geneva probably since 2006-07. I fear that we are in a process of sidelining the multilateral system in this context. Certainly the new director-general of the WTO has a pretty stiff task in front of him, just given the general environment. The Transpacific Partnership is another important part of it. In some ways that points to a larger issue in the context of global politics, which is of course the rise of China, and to a lesser extent the rise of India, and what that means in these terms. From my reading of it, to some extent the problems in Geneva arise precisely because the Chinese feel that they did enough in 2001 when they joined the WTO and do not want to do anymore now. Others think, “This is a game about market access. If you are not going to give us more market access we do not want to play”. This is what this deal is about. In the end it is about market access.
One general point that must be clear is that the one group of people you can expect not to gain from any particular bilateral are those left out. If you are not in the room you are not going to get any share of the spoils in this context, to be brutally frank. That is the problem for developing countries in this context. It is not that in Geneva they are sitting around. They are in the rooms. They are not in the rooms for a transatlantic, which raises significant problems systemically in the story. They are not in a room for transpacific either.

**The Chairman:** Basically, the points you have just raised we were going to raise with you in questions 11, 12 and 13, and I do not know whether...

**Lord Radice:** I would like to ask question 11. Apparently we have just had a successful agreement between Canada and the EU. Are there any lessons for TTIP from this? Is there any read across? Can you help us here?

**Professor Rollo:** The only thing I would say on that is the EU/Canada agreement is not as all encompassing and detailed as the proposals on the table for TTIP. I think it is the first agreement that the EU has done with another developed OECD member that has not been in the context of enlargement or accession, so to that extent that says that it is possible to do that sort of deal. But Canada is smaller than the US in this context. It is a different scale of issue. I think it gives people confidence that some of the topics that will be difficult in the US can be dealt with. I also have to say that the whole thing stuttered last year. I think the Commission was quite surprised to find out that the Canadians were going to resist some of the things the EU wanted. If Canada, which is smaller and has smaller bargaining power and a smaller market, can resist, no doubt the US will be able to resist on things that are sensitive to it. So the whole question of how you handle sensitive products and sensitive sectors in this is moot.

**Q20 Baroness Henig:** Can I just start off by saying thank you for giving us such a good healthy dose of realism? I really do think that you have brought us to the practicalities of the here and now, and I appreciated that. My particular interest is in China and in India, to a lesser extent. As you absolutely graphically say, neither China nor India are going to be in the room, yet China is such a global player and such a big exporter, so I am interested in how you think China is going to view these and what actions it is going to be looking to do itself to try to neutralise or make sure that it is not being got at. I know in America there is already a lot of anti-Chinese rhetoric.

**Professor Rollo:** We are not short of it here either. When I saw the TPP and the transatlantic agreement coming up the agenda, my general feeling was that it was ABC—anyone but China—in that context. Clearly China will have its own policy, but it will probably feel that it has time on its side. In my time as an adviser in Whitehall, there were three countries that I always said it was bad to try to bet against because they usually pull things off. The US is one of those. Things may be difficult now, but I remember the 1970s and 1980s, when things were pretty bad in the US, and they bounced back. Japan was the problem then, not China, allegedly. Clearly China at every turn has negotiated some really difficult reform processes very well. The other one is Germany. Against that background, things will change over time and China will have its own policies at that point.

**The Chairman:** I think I cut you off inadvertently, Professor Evenett. Then Lady Bonham-Carter will come in.

**Professor Evenett:** Perhaps I can answer both together. There is one feature of this negotiation, which the Chinese will be very interested in, and that is that the EU and the US are very keen on writing tough rules on state-owned enterprises. Not because we have lots of them but as a standard for others. So that is already being cooked up in the works. I think the Chinese will watch it for that reason. Ultimately the question the Chinese will be asking is, “Does this make us willing to deal? What is in it for us?” If the answer to that question does not change, it will not rush to join in.
The Canadian deal links to what we said earlier. One of the areas of the Canadian deal that appears to be quite creative is in the investor-state dispute settlement mechanism, so that is one area you might want to follow up on as well. The text of this deal is still not public, so we really cannot go into this too much, but it appears that that is one area. If you are also looking for other models of things to work on, it seems that the EU/South Korea deal had very interesting material on regulatory convergence, and it would be interesting to see to what extent that could provide the basis for some useful suggestions that you might want to consider.

Q21 Baroness Bonham-Carter of Yarnbury: I think Professor Rollo talked about the detrimental effect on developing countries. We have heard from people speaking to the UK Government that they think that TTIP will enlarge the pie and have a beneficial effect by creating a larger market place. I wonder what your view on that position is. I take your point that if you are not in the room, you are going to be at a disadvantage.

Professor Rollo: That is correct. The first thing I would say is that for a lot of developing countries, particularly low-income developing countries, the tariffs that might be removed in transatlantic trade are not trivial for the products in which they are competitive and which are currently their major exports. Here we are talking about textiles and clothing, footwear and so on, where the tariffs that are in play in transatlantic trade are typically of the order of 10% to 25%. Those are not small tariffs, so when people say there is no tariff problem that is not quite right. There are very localised tariff problems. That said, in those areas, the EU and the US are not competitive in each other’s markets at this point. It is arguable that even a 10% or a 15% tariff preference would not make that much difference to the underlying competitive position. So in the places where you expect to see losses, there might well be some but perhaps not.

On the regulatory front, there are two parts to it. If you had harmonisation, even if you harmonised on a higher level of protection, so to speak, it might still be outweighed by having the two markets together and the economies of scale in you conforming to that new harmonised regulation. It is costly to conform. If you have to conform to two different regulations, that is twice the cost, so there is a trade-off. As always with preferential agreements, there are costs and there are benefits and you have to look at the net figure. That is the issue. That is why economists, perhaps unusually, have to be very realistic because it depends on the circumstances.

If we go back just a stage, mutual recognition agreements are extremely difficult to do and to bring into effect, as we have seen within the EU. However, one of the problems that may face developing countries is that mutual recognition agreements can be strictly preferential: i.e. they can be bilateral and you exclude other countries. Some of you may be as old as I am and remember the discussions in around 1992 about fortress Europe and single market issues. By and large, the Union went down a road of being non-discriminatory in its application of mutual recognition. That was a big and important point, and that is something in the context of developing countries we have to worry about.

The other thing that we have to think about quite carefully—and it is hard to think about them—is the technicalities around rules of origin. Any preferential arrangement requires a rule of origin to determine who qualifies for the preference. When we were liberalising towards central Europe in the 1980s, we did something called accumulation of rules of origin, meaning that other countries in the group could sell to an intermediary and then on to the EU, and that would all count for the rule of origin and the preference. We may need to be a bit creative in thinking about that for developing countries. I will stop there, because rules of origin are a very, very difficult area.

Baroness Bonham-Carter of Yarnbury: It is very interesting.
The Chairman: We have another witness waiting outside. Could I ask Lord Foulkes to wrap it up for us?

Q22 Lord Foulkes of Cumnock: Very quickly, some of us heard the cheerleaders for this agreement downstairs yesterday. As Baroness Henig said, you have brought some welcome realism. Some of the political hurdles on both sides of the Atlantic you have mentioned. Before you finish, are there any others that you would like to warn us about for this agreement to be concluded and to be ratified?

The Chairman: We would be very receptive to any further written evidence that you might wish to put to us.

Professor Rollo: We have touched on most of the issues that come up in this. The one thing I would say is that because in the 1990s we were very conscious of trying not to undermine the newly minted World Trade Organisation, I think people are less caring about that organisation at the moment. That is one of the things that may make it easier to do a deal rather than not. All the same things that were present then are present now, and it requires real political push on both sides of the Atlantic to deliver this.

Professor Evenett: In 30 seconds, on the US side follow Congress. Congress is the key player. It has the power on trade agreements and the committees in charge of all these regulators will determine whether or not co-operation happens. The messages from there are what you should follow. On our side of the Atlantic, watch Berlin.

Lord Foulkes of Cumnock: Berlin?

Professor Evenett: Berlin, because what is different now from in the past is that the Germans are very much behind this initiative. If they lose interest in this, I do not think the UK and Sweden can carry it.

The Chairman: You have really been very helpful indeed.

Lord Foulkes of Cumnock: Very helpful, yes.

The Chairman: It was a wonderful double act as well. Thank you both very much indeed.

Professor Rollo: I will treasure being called a realistic economist. It is almost a saying that most people think would be an oxymoron.
Dr. Elaine Fahey, Senior Postdoctoral Researcher, Amsterdam Centre for European Law and Governance (ACELG) – Written evidence

1. Enclosed herewith is a submission to the European Union House Committee in its deliberations upon the substantive content of the Transatlantic Trade and Investment Partnership (TTIP). In conjunction with my co-author at the University of Amsterdam, Dr. Marija Bartl, we have a forthcoming article, ‘Democracy and Legitimacy in the Institutional Design of the Transatlantic Partnership’, to be published in E. Fahey and D. Curtin (eds) Towards A Transatlantic Community of Law? Interactions between the EU and US Legal Orders (Cambridge: Cambridge University Press, 2014). I would like to share the ideas of this research in progress with the Committee. We have recently published an Opinion Piece in the EUObserver.com, entitled ‘Transatlantic Partnership requires open democratic debate’ (18 March 2013) on this specific topic.

2. We consider that through its prospective institutionalisation, the TTIP could exceed exponentially the value, form and output of the last major framework of Transatlantic Relations, the New Transatlantic Agenda (NTA) and thus warrants a critical examination of its evolution. It cannot be seen to be a routine international law trade agreement.

3. We argue that there are participation, accountability and transparency shortcomings in the entity under negotiation, as much as the conduct of the negotiations themselves. The presentation argues that legitimacy concerns result from these shortcomings, where unchecked market rationality prevails over democratic concerns. Historically, Transatlantic relations has given little place to “bottom up” participation in its rule-making. It reflects the fact that economic power has played a significant role in transatlantic rule-making and that non-institutionalised and non-transparent dialogues are perceived to have produced successful rule-making results. This remains less acceptable in contemporary times.

4. We argue in particular that considerable secrecy surrounds the initial development of the TTIP, which has continued in the negotiations, tempered only by limited actual transparency. Tremendous secrecy surrounds precisely how the rationale for the TTIP has evolved, for example, the precise composition of the High Level Working Group and influences therein or the entity ‘contracted’ by the Commission to formulate the economic rationale for the TTIP.

5. We suggest that far too much emphasis has been placed upon procedural accountability, such as the approval of an eventual agreement by Congress and the European Parliament. We question the ability of the European Parliament to provide
meaningful parliamentary accountability, given its access to “knowledge” for the purposes of assessing the TTIP. Late-delivered consent may not be an adequate mechanism for accountability in contemporary times, as the TTIP may well demonstrate.

1 October 2013
Food Standards Agency (FSA) – Written evidence

Executive summary

1. The FSA was established in 2000, as a UK-wide Government Department with a statutory obligation to protect public health and the interests of consumers in relation to food and feed. It is accountable to the Westminster Parliament and Devolved Parliament/Assemblies in Scotland, Wales and Northern Ireland through health ministers. Its responsibilities include: food safety, food hygiene, enforcement and representing the UK in European negotiations to develop or update EU food laws. Defra is the lead Department for trade in food and related Sanitary and Phytosanitary (SPS) matters.

2. The European Food Safety Authority’s (EFSA) independent scientific advice underpins the European food safety system. FSA collaborates closely with EFSA through formal mechanisms e.g. the EFSA Advisory Forum, and its scientists are members of EFSA’s Scientific Panels. FSA research, and much of the data it generates, on food safety risks feed into EFSA risk assessment studies.

3. FSA links to US regulatory authorities are good. Our experts meet US counterparts on an ad-hoc basis, and provide technical assistance to the European Commission for ongoing discussions to agree equivalence on a range of food related issues, e.g. on shellfish hygiene.

4. FSA continues to play an active role to support regulatory convergence through the promotion at EU and international level of proportionate risk-based food standards underpinned by good quality science and evidence. This approach facilitates convergence, whilst also ensuring that there is no diminution in consumer protection.

Role of the Food Standards Agency

We understand that the FSA is responsible for food safety, hygiene and some aspects of labelling, as well as enforcement of regulation in those areas, and that you also represent the UK Government on food safety and standards issues in the European Union.

Could you begin by setting out for us in a bit more detail how you work with the European Food Safety Authority (EFSA), what the broad balance of competences is between what is regulated at EU level and what is regulated at national level in these areas, and whether you or the EFSA currently have any contact with your counterparts in the United States?

The FSA was established in 2000, as a UK-wide Government Department with a statutory obligation to protect public health and the interests of consumers in relation to food and feed, following a series of high profile food safety issues such as Salmonella in eggs and BSE in
the late 1980s and early 1990s. It is accountable to the Westminster Parliament and Devolved Parliament/Assemblies in Scotland, Wales and Northern Ireland through health ministers.

FSA’s responsibilities on food safety, hygiene, and enforcement include representing the UK Government in European negotiations to agree, or update, harmonised rules. In the context of trade and imported food and feed, FSA is the central competent authority with responsibility for public health aspects of food and feed imported from outside the EU including imports policy and controls, and provides advice and support to local and port health authorities. Imported food legislation is harmonised at EU level. The FSA responsibilities include ensuring increased import controls are applied under EU safeguard measures when a risk to health has been identified for certain products not of animal origin, food contact materials and fishery products from specific non-EU countries. Defra and other UK Agriculture Departments are responsible for veterinary checks and animal health aspects of import controls of food products of animal origin. Local and port health authorities are responsible for official controls on food products imported from outside the EU, including monitoring and enforcing compliance with the requirements of food law.

EFSA was set up in January 2002 as an independent source of scientific advice, risk assessment and communication on risks associated with the food chain. It is funded from the EU budget and operates at arms-length from the European Commission, European Parliament and Member States. EFSA risk assessments are supported by expert panels on which a number of UK nationals, including some FSA staff sit. FSA is a member of EFSA’s Advisory Forum, the purpose of which is to ensure close collaboration between national risk assessment bodies. As the EFSA Focal point, it also acts as the interface between EFSA, Other Government Departments (OGDs), research institutes, consumers and other stakeholders. FSA funded research on pig meat inspection practices was integral to a positive EFSA Opinion that supported changes to the current inspection practices. The outcome of subsequent risk management discussion in Regulatory Committees of the Member States was adoption of a Commission Regulation that better protects consumers and reduces burdens on businesses. FSA also shares much of the data it generates with EFSA e.g. on the occurrence of chemical and microbiological contaminants in food to help inform their developing opinions and contribute to EU-wide databases.

EU food law is a shared competence, and is covered by a fairly comprehensive set of harmonised rules for food and feed safety. Some national rules do exist but are limited e.g. to quality standards which are a Defra lead.

FSA has good links with the US administration in a number of areas including collaboration on food defence, multilateral negotiations in the Codex Alimentarius Committees, scientific and policy exchanges, occasional bilateral visits and ad-hoc contact via the British Embassy in Washington, US Embassy in London and the US Mission to the EU in Brussels.

EFSA also maintains close contact with the U.S. Food and Drug Administration, as evidenced by the formal agreement it signed in 2007 with the FDA on the assessment of food safety risk. Based on the Transatlantic Economic Partnership agreement, it is designed to facilitate the sharing of confidential scientific and other information between EFSA and the FDA.
**Regulatory Dialogue**

Evidence submitted to our inquiry suggests that there are significant differences in regulation on each side of the Atlantic in policy areas such as food safety, biotechnology, hormone growth enhancers and pathogen reduction procedures, and that the TTIP provides a “clear opportunity to discuss pragmatic solutions to these barriers” (CBI written evidence). The CBI and the Food and Drink Federation have both suggested that the way forward lies in mutual recognition agreements on technical standards relevant to foodstuffs, and the CBI has also proposed that an equivalence agreement on internal inspections should be pursued.

Would you agree with the CBI’s assessment of where the main areas of regulatory divergence currently are, and that mutual recognition/equivalence should be the preferred way forward? How realistic would such an objective be, compared for example with your experience of convergence/harmonisation within the EU?

The CBI and FDF assessment correctly highlights two key differences between EU and USA regulatory systems. FSA’s responsibility is limited to assessing and regulating potential food safety risks, e.g. the residues that might be found in foods produced using hormone treatment, or subject to a pathogen reduction treatment. FSA’s experience of negotiating harmonised rules in the EU or Codex would indicate that convergence on pathogen reduction treatments is already occurring, but that the use of hormones and other substances (e.g. beta agonists) as growth promoters is likely to remain unacceptable for meat intended for the EU market. Based on FSA work, the UK Government played an important role in EU negotiations that eventually supported the proposal to authorise lactic acid treatments of beef carcases. The proposal was underpinned by a positive EFSA Opinion, which included data provided from FSA funded research. Conversely, there are no plans to authorise the use of hormones and other substances for growth promotion purposes in the EU. FSA experience of discussions in the Codex Alimentarius Commission on a proposal setting a Maximum Residue Limit (MRL) for Ractopamine (beta agonist) would indicate that there is little prospect for an EU/US SPS equivalence agreement on this issue. However, the recent EU/Canada (CETA) negotiation has shown that ambitious free trade agreements are deliverable where there is enough political desire, it is worth noting that the issue of hormone treated meat was overcome by offering Canada generous quotas for non-hormone treated animals, which allows for cost effective separate production lines for the EU market. The issue of non-safety related labelling to inform consumer choice is another area that the EU/US do not see eye-to-eye on, and is a Defra lead.

**Is there any regulatory dialogue between the EU and US already underway on divergent technical standards and sanitary and phyto-sanitary (SPS) rules?**

FSA plays an active role in the development of international standards adopted by the Codex Alimentarius. Its experts continue to contribute, alongside those from member countries, including the US, to the development of Codex standards and guidelines, including on Hazard Analysis, Critical Control Point (HACCP) systems, risk assessment and risk management methodologies, food additives, contaminants, animal feed, and methods of analysis and sampling. Ongoing discussions between the EU and US under the EU/US veterinary agreement included assessments of the sanitary requirements for the production
of meat, milk and shellfish to determine whether the systems in place are equivalent. Agreement that systems are equivalent has not been possible because of certain prescriptive differences, e.g. the US’s requirement for a vet to be present in an establishment every time meat is processed, and their interpretation of HACCP. The UK has been instrumental in helping the EU in carrying out these assessments, and in the case of shellfish, the FSA has contributed substantially to the process which has paved the way for an agreement to be reached that the systems are broadly equivalent; the assessment has identified which additional requirements for shellfish harvesters in the EU wishing to export to the US will need to comply with.

**Living agreement**

A number of witnesses have suggested that as part of a TTIP deal, institutions and processes should be put in place that would allow the EU and US authorities to jointly identify and tackle “greenfield” areas of regulation, so as to pre-empt further divergence in future.

Can you identify any areas of food safety regulation that might lend themselves to such a process? Do you see any value in setting up new institutions or processes in this area, and if so, what features should they have to add genuine value to what exists already?

The EU and US have comprehensive food safety regulations in place which means “greenfields” are likely to be few and far between. Food safety regulation is however subject to review and updating on both sides of the Atlantic. The US Food Safety Modernization Act was described as the most comprehensive overhaul of US food safety laws for 7 decades, shifting the emphasis from reaction to prevention and embedding HACCP principles, leading to some convergence with EU rules. The EU is also currently overhauling its Official Food and Feed Regulation in an exercise that involves the consolidation and simplification of 4 sets of regulations. Institutions and processes already exist to promote regulatory convergence, e.g. the Codex Alimentarius Commission adopts standards that are recognised by the World Trade Organisation and SPS agreement. The Food and Agriculture Organisation (FAO) plays a role in wider issues that may affect food supplies, by providing independent assessments of a situation and facilitating discussion among member countries. For example, the FAO has recently decided to hold an expert consultation on the issue of low level presence of unauthorised Genetically Modified (GM) materials in internationally traded commodities. While this initiative will not involve the elaboration of agreed standards, it provides the opportunity to assess the nature and scale of any problems that can arise when a GM crop is approved in an exporting country before it has been evaluated and approved in others.
**GMOs**

It was suggested to us by Commissioner De Gucht that genetically modified organisms (GMOs) would not pose quite the hurdle that some expect, because a procedure for commercialisation of GMOs already exists and has resulted in authorisations. He went on to suggest that any compromise with the US would lie in speeding up that existing procedure rather than removing or changing any associated requirements.

Could you talk us through the existing procedure for (a) commercialising, and (b) cultivating GMOs, including the stance the UK tends to take and how it compares to that of other member states? What is the pace at which authorisations happen, in your experience?

The procedure for commercialising food and feed from GM crops is laid down in EU legislation\(^43\) and involves a pre-market safety assessment by the European Food Safety Authority (EFSA), after which an authorisation decision is presented for a vote by Member States. In addition, the company that is seeking the authorisation must provide a suitable test method that is capable of detecting and quantifying the GM food or feed. Before a new GM crop can be authorised, the test method must be validated by the EU’s reference laboratory for GMOs.

Applications for cultivation of GM crops are normally dealt with under the same legal framework as GM food and feed products, but in this case GM crops undergo an additional environmental risk assessment as part of EFSA’s overall evaluation\(^44\).

The UK supports the science and evidence based approach to the authorisation of GMOs, as carried out by EFSA. This means that the UK will support the authorisation of GM products where there is a positive risk assessment from EFSA’s GMO Panel. This approach is also followed by a number of the other MS but others are opposed to GMOs, primarily for political reasons. No authorisation decisions for GM food and feed have attracted the necessary majority of votes since this framework was introduced in 2004. In this situation, where there is no clear majority for or against authorisation, the decision reverts to the European Commission, who will act on the basis of the scientific advice.

Regarding the pace of GMO authorisations, the relevant EU legislation stipulates that:

- EFSA should complete its safety assessment within six months, with provision for “stopping the clock” if EFSA seeks additional information from the applicant;

- the Commission should a draft decision for a vote by Member States within three months of the EFSA opinion.

\(^{43}\) Regulation (EC) No.1829/2003 on genetically modified food and feed

\(^{44}\) In addition to Regulation 1829/2003, GM cultivation applications may also be submitted and processed under Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms. Although the EU assessment and decision-making procedure is different in each case, the same principles are applied, i.e. decisions should be grounded on a science-based risk assessment either undertaken or overseen by EFSA. Defra is the UK competent authority for Directive 2001/18, and works with the FSA to determine the UK position on GM cultivation applications being processed under Regulation 1829/2003
This might suggest that authorisation decisions should be made between one to two years after a valid application is received. In practice it usually takes much longer to authorise GMOs than this timeline would seem to indicate for the following reasons:

- EFSA invariably has to ‘stop the clock’ during the 6 month period of the safety assessment to request more data from the applicant, often on multiple occasions.
- Discussions at Standing Committee can be prolonged when MS question the conclusions arrived at by EFSA.
- The Commission may also delay presenting draft decisions at Standing Committee and/or adopting its proposal after an inconclusive vote.

Delays in reaching decisions have been particularly marked in relation to the cultivation of GM crops, with some applications for approval having been in the EU system for over ten years without a resolution. Indeed, the EU is about to vote on the authorisation of a GM insect-resistant maize for cultivation, and if this is passed it will be the only GM crop approved for food production in the EU since 1998. The UK Government (via Defra) has been arguing for cultivation applications to be processed without the extended delays which to date have been the norm.

It is our understanding that Defra does not expect the cultivation of GMOs to feature strongly in the TTIP negotiations (because the main focus for the US will be its ability to export harvested GM commodity crops), and the EU’s difficulty in reaching GM cultivation decisions could affect international trade in GM seed.

Do you share the Commissioner's assessment of the likely compromise with the US? Have you any sense of whether it is realistic in light of the stance of the US, and other member states, respectively?

As a non-Ministerial Government Department, FSA cannot speculate on the political importance of the various topics that might be discussed as part of the TTIP negotiations, or on the stance of other Member States.

(i) In your experience, what is UK consumers’ attitude to GMOs?

(ii) Can we infer anything from EU consumers’ apparent willingness to consume GM products when in the US?

The FSA has commissioned various studies looking at consumer attitudes to genetic modification and other innovations in relation to food.

We have carried out a “tracker” survey at regular intervals over the last 10 years, where samples of the adult UK population are asked the same series of questions about attitudes to food and food safety. One of these questions asks what, if anything, people are concerned about in relation to food safety. This is asked as an open question, where respondents can mention issues that are on their mind. They are then shown a list of potential concerns, including GM foods.
Results from this survey indicate a gradual decline in consumer concern about GM over the last 10 years; unprompted concern has fallen from 12% to 5%. The level of “prompted” concern has fallen in a similar fashion from around 40% to 20%.

FSA research into public attitudes to GM labelling was published in January 2013 and this also suggests a low level of concern, with only 2% of participants spontaneously mentioning that they looked for information about GM content when buying food products for the first time.

The use of genetic modification is a complicated issue and it is notoriously difficult to predict how responses to questionnaires translate into purchasing behaviour. Currently there are very few products on the supermarket shelves that contain GM ingredients and there are no practical opportunities to discover whether UK consumers would avoid such products, if they were on offer.

The FSA is not aware of any data that would allow us to draw conclusions from this. The ‘apparent willingness’ to consume GM products when in the US may simply reflect consumer ignorance of the fact that many foods on sale in the US may contain GM ingredients. Food labelling rules in the US are different to those in the EU and there is no requirement to indicate whether ingredients are from GM sources.

**Consumers**

The FSA has a particular remit to protect consumers. From that perspective, could you offer us your assessment of whether regulatory convergence between the EU and US on food safety and labelling would be likely to result in a higher or lower level of protection for UK consumers?

Protecting consumers from food safety risks is at the heart of FSA’s mandate. FSA and EFSA scientists would provide opinions on the level of protection, and whether or not equivalence might be declared. Equivalence by definition would mean that there would be no increase or decrease in public health protection. FSA experts stand ready to assist in the facilitation of equivalence in relation to SPS food safety requirements.

16 January 2014
Ignacio Garcia Bercero, TTIP Chief Negotiator, DG Trade, European Commission and Commissioner Karel De Gucht, EU Trade Commissioner—Oral Evidence (QQ 99-112)

Transcript to be found under Commissioner Karel De Gucht
Q174 The Chairman: Thank you very much for waiting and thank you very much, Mr Bercero, for coming on for a second time, as we have already had you in conjunction with the Commissioner. You know the form, I think. If I could just remind you that it is a formal session. We are taking evidence, we are recording it, and everything you say is on the record. I would like, as I think you overheard me say, to go through the list of questions we have sent you concerning the EU-South Korea agreement and then, at the end, just ask you to update us a little on what is actually happening over TTIP. Not next week but the week
after, I shall be going over to Washington with a number of my colleagues, and we will meet the Treasury, the USTR, various people in Congress and so forth.

I will kick off. How comparable do you feel the EU-South Korea trade agreement on the one hand and TTIP on the other are in their substantive content, for example in terms of potential economic consequences, sectors under negotiation, focus on regulatory alignment and level of ambition? Of course, South Korea is a much smaller place than the United States and that obviously is a massive difference but, that said, how comparable do you think they are?

Ignacio Garcia Bercero: I start by saying that I am very happy to have a second opportunity to give you testimony, focusing now a little more on my old responsibilities as the chief negotiator for the EU/Korea FTA. Let me go straight to your first question.
The core agreement that we concluded with Korea was by far the most ambitious that we had concluded at that time. Now I would tend to think that Canada is at a similar or even higher level of ambition. In terms of the chapters that would be part of an agreement with the United States, there is a lot of similarity. A lot of the issues that we negotiated with Korea we would also negotiate with the United States. By the way, it is interesting to note that the US also negotiated a free trade agreement with Korea. If you compare the two agreements, you will see that there are quite a lot of areas of commonality.

This being said, Korea is Korea; the United States is the United States. We are talking here about a much bigger economy. Particularly in the regulatory field, I believe that in the case of the United States the dynamic is going to be very different from the dynamic that we had in the Korean negotiations. Probably also the ambition is going to be broader. In the case of Korea, we focused very much on two or three sectors where there were some very specific concerns for our stakeholders and those were the areas where we actually went further in our regulatory commitments, whereas in the case of the United States we will probably be looking at a broader set of sectors and stronger horizontal provisions.

To give you an example, when we were negotiating with Korea, you can understand that Korea was fundamentally defensive on agriculture, where we were fundamentally on the offensive on agriculture with Korea. The situation with the United States is going to be much more balanced. There are going to be offensive and defensive interests from both sides. To give you an example, in the agreement with Korea we do not have a very substantive chapter on SPS matters. Nor by the way does the United States in its own agreement with Korea. We would expect this to be one of the important issues that we will have in the negotiation with the United States.

In terms of the structure and issues to be considered, yes, there is a lot of similarity, but the level of ambition in the case of the United States would have to be deeper, particularly when we are talking about the regulatory issues.

Q175 The Chairman: When you look back over the negotiation, have any elements in the agreement turned out to be a particular disappointment, with difficulties you had not foreseen, or the reverse? Are there things that have turned out to work much more smoothly than you had originally envisaged?

Ignacio Garcia Bercero: Our evaluation is that the agreement is working in a satisfactory way. Our trade since we concluded the agreement has expanded significantly, much more than our exports to other countries. Actually, for the first time in 15 years, we have a surplus with Korea. Now, there are many factors behind that, but I think that in overall terms this agreement has been working quite satisfactorily.

We also have the sense that the commitments that we obtained from Korea on the regulatory field are being implemented. Of course, the big difficulty with regulatory issues is that this is a continuously shifting perspective, because both Korea and the European Union—indeed, any country—continues to regulate. One of the big challenges in these
negotiations when we tackle regulatory issues is to ensure that as new regulations develop we try to avoid regulatory incompatibilities or obstacles to market access as much as possible. There have been a few problems with Korea. We have been putting in a lot of energy and effort to resolve them, and we hope to have some good news on some of the issues that we have been discussing with the Koreans in the short term, but the overall picture is that the agreement has been working satisfactorily.

Obviously there are always things in an agreement that, with the benefit of hindsight, you realise you might have done a little differently. I do not know whether you recollect this, but one of the issues that was most sensitive when we were negotiating with Korea was the issue of duty drawback, which attracted a lot of anxiety, notably from our car industry but also from other industrial sectors. All the evidence that we have had since the agreement was concluded is that this has not really been the problem that was anticipated at the beginning.

Baroness Henig: I wonder whether you could talk us through the timeline of the EU-South Korea agreement from inception to conclusion and implementation. How does that compare to the timeline for TTIP?

Ignacio Garcia Bercero: Let me start with the timeline for Korea, because it was quite a fast negotiation. I think the negotiations were launched in May 2007 by the then Commissioner Lord Mandelson, and they were basically politically concluded in July 2009 by Baroness Ashton. If you count, it is a little more than two years: two years and four months, I think. That was quite a fast negotiation, taking into account that again it was a very comprehensive agreement and we had to tackle a few issues that were quite politically sensitive, either on the Korean side or on the European side.

The agreement was approved by the Council a little more than a year later in September 2010, because as you know there are procedures that need to be followed before the agreement goes to approval by the Council. The consent by the European Parliament was in February 2011 and the agreement was in force in July 2011, so I would say that it was quite a fast negotiation—a little more than two years. It is a bit difficult for me to say at this point in time how this compares with TTIP, because of course TTIP is not yet concluded, but if anything this shows that it is not unfeasible to negotiate a comprehensive trade agreement within a timeframe of two to three years, which has sometimes been mentioned as a possible target for TTIP.

Baroness Henig: Given the scale of TTIP, which is presumably much more ambitious, I would have thought that would have impacted on the time element.

Ignacio Garcia Bercero: The length of any negotiation is always a combination of two factors. One is the technical complexity of the issues, which need time to be properly prepared and properly digested by both sides. The other is the political sensitivities—finding the right moment to tackle the politically more sensitive aspects of a negotiation. The time of a negotiation is a combination of both factors. As I said, the political sensitivities in Korea were different from the political sensitivities in the case of the US. You obviously know that there were a lot of concerns on the part of the European car industry, and that was the big political sensitivity on our side, whereas on the Korean side the main political sensitivity had to do with agriculture. Inevitably, the last phase of the negotiations, which took a number of months, was to try to find the right balance on a number of difficult issues on agriculture and some issues affecting the car sector.

In the case of TTIP, yes, it is probably going to be a more complex agreement on the regulatory side, because we would want to go to a broader set of regulatory issues than the ones that we did in Korea. From that point of view, you are right that the technical complexity is greater. In terms of the political sensitivities, it is a question simply of finding the right political moment for those sensitivities to be addressed. Personally, I do not think
that a timeframe that is a bit longer than two years is unfeasible, but yes, it is going to require a lot of commitment and dedication from both sides.

**Q176 Lord Lamont of Lerwick:** How comparable are the politics of TTIP and the EU-South Korea free trade agreement? To what extent are the EU member states’ interests aligned in what they are trying to get out of it? How does that compare with TTIP? To what extent did you see engagement politically at the highest level on each side?

**Ignacio Garcia Bercero:** One thing that is clear is that TTIP is politically an agreement that attracts a much higher degree of public attention than any of the trade agreements that we have negotiated so far, so from that point of view I would say that the politics of TTIP are much more complex than the politics of the Korea negotiation. There were certainly some very difficult discussions in Europe, mostly because one of the most important sectors of the European economy was very sceptical, if not negative, about the agreement. That was the case of the car industry.

Luckily we do not have that situation at all in the case of TTIP. I would say that from the point of view of European manufacturing, we have very strong support for this agreement, and very frequently we have an alignment of views between industries across the Atlantic. This applies, by the way, not only in manufacturing but to a large extent in key service sectors, with a few important exceptions. From that point of view, that aspect of the politics of TTIP is more favourable than Korea. It is clear that because the issues relating to TTIP attract a much higher degree of public attention than in the case of Korea, this implies that it is much more important to maintain a high level of political engagement throughout the negotiation, including at the highest level.

Of course in the case of Korea, to give you my recollections, both Lord Mandelson and Baroness Ashton were very actively engaged in the negotiations. I can remember at least five or six meetings between Baroness Ashton and her Korean counterpart, and two or three between Lord Mandelson and his counterpart. There was quite regular political involvement in the negotiations. As we got to the final phase where the most sensitive issues were involved, yes, President Barroso and the political level of the member states, including some of the key member states, had to get more politically involved, but it was perhaps only in the final phase of the negotiations.

The other element that is quite different is the role of the European Parliament. The European Parliament, at the beginning of the negotiations with Korea, adopted a resolution that was quite supportive of the FTA and it was actively promoted by a British parliamentarian, David Martin. During the negotiations proper, there was relatively little interest from the European Parliament in following them. It was only really when the negotiations were concluded and we had to go to the Parliament to explain the agreement and to seek their consent that the European Parliament became very actively engaged, and we had a lot of important discussions to assure them about the benefits of the agreement. In the case of TTIP, I would say that this involvement of the European Parliament and indeed of national parliaments is something that is very much happening throughout the negotiating process.

**Lord Foulkes of Cumnock:** I wonder if I could add a supplementary. You said the member states got involved. Could you elaborate on how they were involved?

**Ignacio Garcia Bercero:** Obviously the negotiations were done by the Commission throughout, at all phases of the procedure, but in order to conclude the deal you need to be sure that you get the necessary political support from the member states. You need to be aware of what their sensitivities are and you need to have contacts at the political level to see that the member states come at the moment at which they know they also have to do their own national arbitrage, because there are different interests in both. At some point in time politically, the member states need to give their signal to the Commission, as
negotiator, that they feel what is there as a potential deal is something that they feel they can politically support. This is particularly important in the final phase of the negotiations, because that point in time is when the difficult decisions need to be taken. The Commission, in those circumstances, always makes sure that many channels of communication are maintained with the member states, not only the formal one in the Trade Policy Committee, but through dialogue and contacts at the political level with member states, particularly to discuss areas that are of particular sensitivity.

I would not hide from you, as I mentioned before, that the critical element to get the agreement with Korea concluded was to find a deal that was in the interests of the car sector, so that key member states that had important car industries felt that the deal was something that, even if their own industry had some doubts, they could say was in the broader interests of the member states concerned. When you are getting to the critical final phase of a negotiation, that is always very important.

Lord Foulkes of Cumnock: Those would be key member states. On the car industry, it would be, what, France, Germany and Italy, for example?

Ignacio Garcia Bercero: The car industry happens to be an industry where practically all member states have an interest. Of course the UK is a very important car exporter, so I am sure that the UK would also see itself as being a very important member state in terms of the interests of the car industry. The UK was not particularly sensitive in terms of the car sector at that point in time, but my impression is that, probably at this stage, the car industry would be one of the key sectors where the UK would also want to be sure that the outcome of the negotiations was as solid as possible.

Q177 Lord Trimble: Moving from politics to public opinion, I wonder whether there was any domestic opposition or any significant lobby groups that were concerned about the free trade agreement.

Ignacio Garcia Bercero: There was never any particular opposition from NGOs to the negotiation with Korea. Only at the very last phase was there some debate about some of the commitments that Korea was taking on some environmental standards, which attracted some degree of questions from some environmental NGOs. That was only very much at the final phases of the negotiations. European agriculture was very strongly supportive of this agreement. Actually, they saw it as a very good opportunity to improve their exports to Korea. This was also the case with financial services, telecommunications and legal services. In all these areas, we obtained some important results in the negotiations. In the case of the manufacturing industry, the large majority of European manufacturing was also very supportive of the agreement. This was the case with the chemical sector, machinery and pharmaceutical; all of them were strongly supportive.

From the very beginning, we knew that we had to tackle the very difficult situation that the car industry was basically not keen on having the negotiation with Korea. It was because of that that we also dedicated particular attention in the negotiation to trying to obtain a result that was as satisfactory as possible for the interests of the car industry, but I would not hide from you—it is public—that until very late in the process the car industry was lobbying very intensively against the agreement. I still remember when we had to go to the European Parliament for the first time to present the agreement, and the representatives of the European car industry were indeed very negative. That of course was one of the big challenges in the process of ratification of the FTA: how to reassure parliamentarians. At that point in time, the agreement of the member states was already there. If you see the process, the Council had already signed, but then we had to go to the European Parliament to get its consent. At that point in time, a lot of the effort was to show with facts and with agreement why there were also potential benefits for the car industry and why some of the
concerns that had been expressed, such as the issue of duty drawback, were not necessarily as significant as they were sometimes presented to be.

**Lord Trimble:** Looking after the agreement, what do you feel about the state of public opinion on how the agreement is working out in practice? In particular, are consumer groups comfortable with the outcomes now?

**Ignacio Garcia Bercero:** I have not heard any kind of complaint or concern expressed by consumer groups about the agreement. Sometimes trade unions are a little disappointed. One of the things that we tried to do with this agreement was to create a mechanism for civil society dialogue with the direct participation of trade unions and NGOs, and I know that members of the trade union movement are not very happy about how this is actually being implemented by the Korean side. No agreement is perfect, but I would say, generally speaking, that there is support for the agreement within public opinion in the European Union.

**Q178 Baroness Quin:** You have just stressed quite a bit the concerns about the car industry. Following Lord Trimble’s question about what has happened since, can you tell us a little about what has happened in the automotive trade between the two countries and whether any of the fears expressed by the European car industries have turned out to be justified?

**Ignacio Garcia Bercero:** The basic data are that since the agreement was concluded, our exports of cars to Korea have increased substantially. I think there has been an increase of 40% compared with the situation before the agreement was concluded. At the same time, yes, there has also been a significant increase in the export of Korean cars to the European Union. It is something like a 50% increase, so Korea has also been deriving benefit from the agreement. At no point in time is there any experience that this increase in imports has resulted in conditions that would justify the application of the safeguard clause.

One of the ways we wanted to reassure the industry, and this was done through the process of parliamentary ratification, was by making sure that we had a legal instrument that, in the case of a surge of imports resulting in injury or threat of injury, gave us the possibility, on a temporary basis, to increase tariffs. Despite the fact that we are monitoring the market very closely—we are collecting data on a very regular basis—yes, there has been an increase of imports, but there is no evidence that this is actually leading to injury to the industry. Now, I will not pretend that the car industry is happy about this agreement. It continues to be critical of it, but at least some European car producers certainly seem to be doing quite well out of the agreement.

**Earl of Sandwich:** Could you develop the argument about core labour standards? Do you not think that the agreement was a little optimistic on this subject? Considering how the United States is going to react, do you think there are any lessons there?

**Ignacio Garcia Bercero:** The agreement was the first time that in any of our free trade agreements we had a chapter on labour with substantive commitments on core labour standards and a mechanism for monitoring the implementation, which implies that once a year there is a meeting between the Korean authorities and the European authorities, where the issues are discussed. There are also meetings between European civil society, including the trade unions, NGOs and industry, and Korean civil society, where the issues can also be discussed in an open manner.

What is a little disappointing is that Korea is not necessarily bringing to these discussions all representatives of the Korean trade union movement, and that is the element that I believe has attracted some degree of disappointment from our trade unionists. Certainly, that is something where we believe one should do better in the agreement with the United States. Now, I do not think that in the case of an agreement with the United States, it would be a problem getting the AFL-CIO and the US trade unions actively engaged in the
implementation of the free trade agreement. I have to say that we attach a lot of importance in the negotiations on TTIP to maintaining a very fluid dialogue, not only with the European trade union movement but with the US trade union movement. When I was in Washington in December, I had a very useful occasion to have meetings with AFL-CIO and to try to see how their concerns can also be taken into account in these negotiations.

Baroness Young of Hornsey: Do you have any concrete evidence that consumers have benefited from the deal, either in lower prices or increased choice?

Ignacio Garcia Bercero: It is clear that Korean imports in the European Union are cheaper than they used to be, and they have expanded in a number of areas. Of course, so many factors influence prices, particularly taking into account the economic situation in Europe over the last two or three years, that it is very difficult to differentiate the impact of the Korea FTA from the impact of broader macroeconomic developments. By the way, I would not pretend that all the trade data I have mentioned to you before, such as the fact that for the first time in 15 years we have a surplus with Korea, is just a mechanical consequence of the free trade agreement. Part of it is a consequence of the free trade agreement; part of it is a consequence of broader macroeconomic developments, and structural changes. For instance, some of the flagship products from Korea in the electronic sector are no longer being produced in Korea, because Korea has been shifting production to other countries in Asia, so there are many factors that influence trade flows.

I would say that it has certainly had a positive impact. I tend to think that it is a little early to make a more detailed analysis about how far these trade benefits have also been translated into lower prices. At least, I am not aware of that study, but I will ask my colleagues if there is more information about this. As you probably know, I am no longer responsible for these negotiations. I have shifted my job at least three years ago.

Q179 Lord Jopling: I wonder whether we could now turn to the problems of trade and regulatory alignment. Could you tell us whether the regulatory alignment problems between the European Union and South Korea are comparable to those in the current negotiation over TTIP? Could you compare the level of ambition for alignment between the two deals and to what extent it will be possible, bearing in mind the problem of states’ rights in the United States, with the danger that individual states might cherry-pick the bits out of a deal that suited them, to take advantage of those and leave aside those things that they do not particularly like?

Ignacio Garcia Bercero: That is a very important question that has several dimensions attached to it. Let me start by talking about the similarities and the differences between the two agreements in terms of “regulatory compatibility”, a term I would prefer to use rather than the words “regulatory alignment”. Let us take the instance of the car sector. The car sector was most certainly a critical sector in terms of regulatory issues in the negotiation with Korea, as indeed it is in the negotiations with Japan, and it will be one of the key sectors in the negotiation with the United States. We already have an understanding with the United States that one of the sectors where we would have to include concrete regulatory commitments is the car sector.

We obtained a very ambitious result with Korea. For around 60 Korean regulations, it accepted that technical regulations based on the standards of the UNECE could be considered to be equivalent to the Korean regulations. For around 30 cases, there would be a progressive process of Korea changing its regulations to incorporate the UNECE regulations instead. This was a very ambitious result in the car sector. We hope to obtain an ambitious result in the negotiations with the United States, but it is going to be somewhat more complicated because, for instance, the United States is not a party to the UNECE 1958 agreement, whereas Korea was. Therefore, both sides could agree to the principle that the common reference for any equivalency was the rules of the UNECE.
This is an approach that we need to be clear is not going to be workable with the United States. For the United States, we will need to look much more into, on the one hand, US technical regulations and, on the other hand, UNECE technical regulations. Can they be considered to be equivalent? That needs to be based on evidence that is going to be provided in part by the car industry, so it is clearly a much more complex exercise in the case of the United States than it was in the case of Korea.

On the other hand, and this is what perhaps makes the US example interesting, we have here a situation in which the two industries are fully behind this idea of trying to get as much equivalency and mutual recognition as possible, whereas in the case of the negotiation with Korea the Korean car industry and the European car industry have very different perspectives in the negotiations, and were lobbying their respective authorities very much in an opposite direction. This tells you that, yes, some of the issues that we are going to be discussing are similar but that at the same time the US-European Union context is very different from the one that took place in the negotiation with Korea. That has some advantages, but it also has some added complexities. I have given you that example.

Another example that I also mentioned is the issue of SPS. I have to say that I personally think what we achieved with Korea on SPS was disappointing. If you look into the SPS chapter in the Korea agreement, you will see that it mainly talks about reaffirming the provisions of the WTO and creating a committee. By the way, if you read the agreement that the United States negotiated with Korea, you will see that it is even less. This was because Korea was very defensive on SPS. It was very difficult to get it to agree to high-level SPS commitments. It is clear that in a negotiation with the United States, an SPS chapter would need to be much more substantive, because both sides have offensive interests but also, of course, important issues to preserve in terms of their domestic regulatory regimes. That gives you an indication that the negotiations would be quite a different dynamic from the ones that we had with Korea.

**Lord Jopling:** Could you deal with the question I raised over states’ rights? Is there evidence in the South Korean deal that states have picked out of the deal what suits them and ignored the things that do not suit them?

**Ignacio García Bercero:** Sorry, you are right; I forgot to answer that question. It is clear that the issue of states’ rights and state-level commitments is much more important and much more challenging in the case of the negotiation with the United States than in the case of the negotiation with Korea. For instance, it is clear that it is critical for the balance of the agreement that we obtain sufficient commitments on public procurement at the state level. We also, by the way, obtained some commitments from Korea also in terms of cities and municipalities, going beyond the central level. That was an important plus of the Korea FTA, but the issue did not have the same economic relevance and importance that it will have in the negotiations with the United States. We are certainly going to continue to make very clear to our US colleagues that substantial commitments at the state level on procurement are critical.

The issue of state level is not only relevant for procurement; it is also relevant in some service sectors, such as the professions. One of the things that we will need to explore in the negotiations with the United States is how we can try to see whether a better framework can be created to facilitate mutual recognition of professional qualifications, which as you know are basically regulated at the state level. In other sectors like insurance, we now have a better framework because, as a result of Dodd-Frank, even if the regulatory competence is with the states the authorities of the Treasury have a mandate that would allow them to negotiate on behalf of the states. Yes, it is certainly going to be much more complex in the negotiation with the United States than in the negotiation with Korea.
Q180 Baroness Young of Hornsey: What is your assessment of how well the mechanisms for regulatory co-operation that have been set up with the South Korea deal are working in practice? Could you say something about how it is progressing in terms of moving through from regulatory coherence, perhaps through mutual recognition or even perhaps as far as harmonisation? Is there any sort of sense of progress towards that particular goal? Finally, are there any useful precedents for what is happening in TTIP?

Ignacio Garcia Bercero: First, our sense is that the commitments that Korea took are basically being implemented. The commitments that they took to align their regulations with UNECE, to ensure equivalency or to avoid duplicative inspections in the case of electronic products—there were also a number of commitments in the service sectors—are all being implemented. Of course, there are always differences of view. In some cases, there are some discussions where we think that certain measures taken by Korea are perhaps in accordance with the letter but not the spirit of the agreement, so there have been some intensive discussions on certain issues. Broadly speaking, I would say that what they have committed to do they are implementing.

Of course, what perhaps is not so much developed is how to deal with new regulatory challenges as they emerge, and there are mechanisms in the agreement to deal with that. We have committees that look into that matter, but that is perhaps an issue that in the context of TTIP we would need to improve, because the breadth of the regulatory commitments is going to be broader and because, to be clear—one can be quite straightforward on this—most of the regulatory commitments in the agreement with Korea implied some adjustments to the Korean regulatory regime, but there were practically no regulatory commitments that implied adjustments to the European regulatory regime. If you take the example of cars, which I mentioned before, the principle was equivalency by reference to UNECE, but we had already done that before the negotiation started. We had already adjusted our own regulations to ensure that we had incorporated UNECE regulations. In the case of the US, as I mentioned before, it is certainly going to be an issue where some adjustments would need to be done by both sides within the framework, which is feasible, and under our respective legal and regulatory regimes.

Q181 Baroness Coussins: I wanted to ask you about the investor-state dispute settlement mechanism within the agreement. We have had some representations to our inquiry from both sides of the Atlantic, mainly from trade unions but not only from the unions, expressing very serious concerns that the ISDS mechanism has the capacity to undermine Governments’ democratic control over public policy. I wondered whether you could say whether similar representations were made during the negotiations on the Korea deal and how the mechanism that is part of that deal responds, if at all, to those concerns; and whether the mechanism has been invoked at all to date and, if so, in what circumstances. Do you think that the TTIP deal needs a similar mechanism and, if so, what aspects of the Korean mechanism might we learn from?

Ignacio Garcia Bercero: Thank you very much for the question. Let me start with Korea and then I will go back to the point that you made about the debate on this issue in the context of TTIP. The first thing to clarify, in the case of Korea, is that there is no investor-state dispute settlement mechanism, because when this agreement was negotiated the negotiated mandate given to us by the Council did not include issues relating to investment protection and investor-state dispute settlement. As you know, by the way, investment protection issues are a new competence of the European Union linked to the Lisbon treaty. When we negotiated the agreement with Korea, although Korea thought that it would be interested in having this, because it had it for instance in the agreement that it had just negotiated with the United States, we explained to it that this was not part of the mandate, so there is no investor-state dispute settlement in the agreement with Korea.
The first agreement in which we will have an investor-state dispute settlement and investment protection commitments is the agreement with Canada, which is not yet totally completed, because a few more technical aspects still need to be finalised and our Canadian colleagues will be discussing this with us next week. The first case where we would have investment protection and an investor-state dispute settlement in one of our trade agreements is the agreement with Canada, although we are also quite advanced in the discussions with Singapore, and of course we are also negotiating with a number of other countries in Asia. Indeed, we are just starting also a negotiation with China, which would include this issue.

In terms of the concerns that have been expressed, first let me be very clear. We take those concerns very seriously and we have indicated on many occasions our willingness to engage in a public debate on the issues, ensuring that we can find adequate responses to the concerns that have been expressed by different organisations. You mentioned trade unions, but there are also environmental groups and consumer organisations. We would certainly very much welcome more public debate on the issue.

It is important that these discussions also start from the right factual basis and that it is understood that the investor-state dispute settlement is not a new issue that is suddenly now arising in the negotiations with the United States. At this point in time, there are more than 1,400 bilateral investment treaties with member states, all of which include investor-state dispute settlement. Eight member states have those agreements with the United States, and despite that there has been no single case where regulatory policies have been challenged under those agreements. This being said, we certainly know that there are concerns.

One of the things that we have been trying to do in our negotiations with Canada and in our negotiations with Singapore is to improve the current system to ensure, for instance, that the rules of investment protection are much clearer so that there is less scope for arbitrators to come to conclusions that are not predictable, so we want to have much clearer rules to ensure that non-discriminatory regulatory policy cannot be successfully challenged under the investor-state dispute settlement. We are also aiming to improve the transparency of the arbitration proceedings, because some of the criticisms that are often made are that all these arbitration proceedings happen in secret; civil society organisations cannot intervene and cannot present amicus curiae and all these things. In the agreement that we are about to conclude with Canada, there will be very strong provisions on transparency and provisions to avoid a conflict of interest. We have tried as much as possible to improve the system of investor-state dispute settlement to make it more transparent and legitimate and to avoid it being abused to challenge legitimate regulatory policies.

Our mandate asked us to explore this issue with the United States and to discuss with it the issue of investment protection and investor-state dispute settlement, but only to come to a definitive conclusion towards the end of the negotiations about whether or not this should be part of the agreement, because it depends on many factors, including the readiness of the United States to find an adequate response to a number of concerns that have been raised. That is perhaps what I wanted to say more specifically on TTIP and just to signal to you that we are certainly very aware of a lot of public debate on the issue. We have already engaged in a lot of public discussions on the matter and we will continue to do so.

By the way, for the time being we have not yet put forward to the United States any proposals on investor-state dispute settlement. In the discussions that we have been having so far in the last year with the United States, we have been basically trying to understand its own proposal better, because it has a proposal that it calls a model bilateral investment treaty, so we have been putting a number of questions about its own proposal to try to
understand better exactly what it implies in practice. I have to say, by the way, because it is important that issues are not mischaracterised, that the United States is also very much of the view that the investor-state dispute settlement system should not be subject to abuse. In evolving its position on this, it has been putting a lot of effort into how to give guarantees against the risk that a non-discriminatory regulatory policy is subject to unjustifiable challenges. All those elements are going to be important in the discussions, and we intend to continue to engage very actively in this debate.

Q182 Lord Maclennan of Rogart: It is our general understanding that the treaty arrangements with South Korea were most significant and most ambitious, and the most ambitious concluded so far by the European Union. I wonder whether you could display these for us, set them out for us and give us some indication as to whether you think that degree of liberalisation could be achieved in TTIP.

Ignacio Garcia Bercero: First, let us look into some of the key elements of what we achieved in Korea and what we could aim to achieve in TTIP. In terms of duty elimination, Korea, yes, went very far. Practically all duties were eliminated and a lot of them were eliminated very rapidly at entry into force and in three years. This being said, we also need to be fully conscious that from an agricultural point of view Korea had an exclusively defensive interest and we had an exclusively offensive interest. Therefore, it would not be right to imagine that our tariff commitments in agriculture in TTIP are going to be of the same type as the ones that were there in Korea.

From that point of view, my sense is that Canada is a much more useful reference point. Canada was also a very ambitious outcome on tariffs, with a lot of elimination of duties very rapidly. We should be able to do that as well in TTIP. In the case of agriculture there were a few highly sensitive tariffs on both sides, or on one side or the other, that were not subject to full duty elimination, but there were meaningful commitments taken in the form of tariff rate quotas. That relates, for instance, to some sectors that are sensitive in Europe, of course, but that are important for the US and Canada, such as pork or beef. If you want to look into the tariff aspects of the deal, I tend to think that Canada is perhaps a more relevant reference point than Korea.

Lord Maclennan of Rogart: May I just intervene briefly? Perhaps I did not make it absolutely clear that what we were particularly interested in in this area was financial services and investment.

Ignacio Garcia Bercero: Sorry, I thought you were talking globally. On financial services, the first point is that the Korean market before these negotiations started was significantly more restricted than the US market is at this point in time. A lot of the things that we tried to achieve in the negotiations on services and investment with Korea—to a large extent, I would say that this was basically a combined effort, because very similar interests were promoted by the United States and the European Union in these negotiations—were about opening a number of sectors that were not open previously. This was the case with telecommunications, and with legal services and certain aspects of financial services.

In the financial sector, the main issue of interest to our industry was to be sure that data could be freely transferred between branches and affiliates to headquarters. By the way, we are still waiting to see exactly how Korea implements that issue, because it had a transitional period in order to adapt its legislation. In the case of the United States, its services market is much more open, but of course there are some deep pockets, if I may call them that, of protection of maritime and aviation services, which we know are going to be extremely difficult in these negotiations.

On financial services, in the case of the discussions with Korea, we do not necessarily have the same interests that we have in the discussions with the United States. In the case of the United States, there are no significant market access obstacles in the financial services
sector. The problems have to do mostly with potential incompatibilities between our respective regulatory regimes and to try to be sure that, to the largest extent feasible, regulators from both sides develop much closer co-operation to avoid incompatible regulations. That is the fundamental interest that we have in the case of the negotiations with the United States. That was not an issue that was prominent in the negotiations with Korea. It is clear that in the case of the United States, the challenge that we are facing on this is more complex than in the case of Korea, because it implies also discussing a framework for closer co-operation on the regulatory field. You know obviously that this is one of the sensitive issues in the negotiations. We continue to discuss this issue with the United States at all levels. I am sure that Commissioner De Gucht, when he meets Ambassador Froman in a few weeks’ time to take stock politically of the negotiations, would also convey very clearly why this is very important from the European side.

Baroness Quin: I understand that audiovisual services were excluded from the agreement with Korea. Were they excluded because of similar considerations that have excluded them in TTIP?

Ignacio Garcia Bercero: This is a consistent policy of the European Union in multilateral or bilateral agreements not to make commitments in the audiovisual sector, and this policy was also maintained in the negotiation with Korea. Indeed, it was not particularly controversial, because Korea also has a policy for the promotion of cultural diversity similar to the policy of the European Union. Something that is a little special in the case of Korea, but I think is very different in other countries, is what we call a cultural co-operation protocol, which is annexed to the agreement and which identifies a number of activities where both sides have an interest in further co-operating, including joint ventures, et cetera. This was very specific to the Korean context. We do not have it in any of our other trade agreements. By the way, in the case of Canada too, the audiovisual sector would basically be excluded. Indeed, that is also very much the position of Canada in all its trade negotiations.

Q183 Lord Foulkes of Cumnock: Señor Garcia Bercero, you have mentioned SPS on a number of occasions. We are particularly interested in how you overcame the problems with sensitive areas like GM products and food safety standards, and whether there are any lessons that can be learnt here for TTIP.

Ignacio Garcia Bercero: Again, for this particular issue, Canada is much more relevant than Korea, because in the case of Korea, as I indicated, Korea basically had no offensive agenda on SPS whatever. It had a purely defensive agenda. Its own system of SPS is an extremely burdensome system where, in order to be able to export to Korea, many steps have to be followed. It is a very complicated system, and one of the things that we wanted to get from the negotiation was better transparency in how the system operates. We came to the conclusion that it was very difficult to go very far on this matter with the Koreans. We are also taking into account, to be very frank, that the United States itself has not really been pushing Korea very hard on this. If you look into its agreement with Korea, you see that its chapter on SPS is extremely minimal. I am sure that it will follow a different approach in its negotiations with us, but a good example of the sensitivities that you have reflected is Canada. Canada has very similar concerns to the United States’ on issues like hormones or GMOs. You will probably remember that Canada was a co-complainant with the United States against the European Union on GMOs in the WTO. Despite that, we have been perfectly able to conclude a deal there with Canada, in which of course our ban on hormones is in no way affected, but Canada has obtained a tariff rate quota on beef, which is sufficiently meaningful and significant for them to be able to make use of those standard market access opportunities—and, of course, the beef that they will sell to us will have to be hormone-free.
Again, we have always been ready to talk to our trading partners about GMOs. We have, for instance, been discussing for some time with both the United States and Canada how to ensure that individual GMO applications that have been processed through our regulatory regime make progress in an efficient matter and that the process is not unduly delayed. This is, by the way, why we lost the case in the WTO: it was not because our legislation was at fault but because of the way it was actually implemented, or not implemented, with long delays in the procedure. We were engaged in that discussion with the United States and Canada even before these negotiations started, and we will continue to be engaged. Of course, what is not going to change is the legal regime that has been established in the European Union on GMOs, which is stricter than the one that applies in Canada or the United States.

There are quite a few issues in the SPS field in which it is possible for both sides to solve problems and to do it in a manner that does not put the regulatory framework in danger. We had an interesting example on the European side last year where, for the first time in the case of beef, an antimicrobial treatment other than water was approved for the treatment of beef carcasses: lactic acid. This was very important from the point of view of US and Canadian exports to the European Union. We asked here for an opinion of EFSA. EFSA gave a favourable opinion, and on that basis we put a proposal to the Council to authorise the use of lactic acid. Following our regulatory procedure, this was done.

By the way, we also have an interest in that the US moved on its side. You know that an issue that has been a problem for too long is the ban on imports of beef due to BSE. After a long time, the US has now approved a final rule that would make it possible for Europe to export beef to the United States on the basis of the OIE conditions. We are following this closely, because although the rule would be implemented in two months’ time, we still need to be sure that all the procedures are in place so that exports can resume. This is also an example of the fact that it is perfectly feasible to find practical solutions to SPS problems without of course putting into question the level of protection. The level of protection in Europe on certain issues is different from that of the United States. I mentioned hormones and GMOs. In certain issues, it is the United States that has a different level of protection. The US has a zero-tolerance policy on Listerine, for example, which is very different from the one that applies in the European Union.

The Chairman: Mr Bercero, I am very conscious that this meeting was allocated an hour and that we have overrun already. I do not know how much more time we have. We could skip the next question on the automotive sector, because we have done that. I would like to be able to ask you about the living agreement, and I wonder whether you would have time to say something briefly about the progress of TTIP. How much longer can we keep you?

Ignacio Garcia Bercero: My next commitment is at 12.30, so I am perfectly happy to stay here for the next 10 to 15 minutes, if that is okay for you.

The Chairman: Okay, I will ask my colleagues to restrain themselves on supplementaries, so we could take the question on the living agreement from Baroness Bonham-Carter and then have a few moments on what is happening in TTIP. If you could be brief on the living agreement, we will deal with TTIP.

Q184 Baroness Bonham-Carter of Yarnbury: Quite a lot of my question has been answered already to Lord Sandwich and Baroness Young. It has been suggested to us by some of our witnesses that the best way to proceed with TTIP is through a living agreement. The EU-South Korea FTA has set up structures, as you have mentioned, for long-term sustained co-operation through working groups that intend to meet once a year. I think you said earlier that you did not think this was wholly satisfactory, so can you just say if they are
working as envisaged? Do they include the regulators, and what can we learn from them to set up useful structures for TTIP?

**Ignacio Garcia Bercero:** I will try to be brief, but what we have set up in Korea is effective and efficient to ensure that the commitments that have been taken in the agreement are implemented. That is the basic objective of these different working groups that meet during the year: to see that the different commitments are implemented. Yes, regulators from Korea and from the European Union are involved and participate in these working groups.

In the case of TTIP, we should do better, because it is not just a question of making sure that the concrete commitments that are in the agreement are implemented, but of seeing how, over time, those commitments can be deepened. We would need, in the course of the negotiations at some point in time, to make a judgment. A lot of regulatory issues can be discussed. As the regulators look into the issues, they will identify that some issues are ripe and can be concluded by the time this agreement is ready. Some issues will probably require a longer timeframe because they are more complex. For those, let us agree on a work programme that allows us to achieve these goals within a certain timeframe. That is basically what the living agreement implies. We did not do a lot of that in Korea. Korea was much more just the first issue: the concrete commitments that had to be implemented.

In the case of TTIP, we should take a combination of both. To give you the example of cars, hopefully through our discussions we will identify a sufficiently substantial number of technical regulations where we can come to a conclusion on equivalency, but let us not be unrealistic; it is not going to be all. There will be a number of areas where the differences are important and where one needs to develop other type of approaches that inevitably take more time. In those cases, where you can do it, you agree on an objective, you agree on a working method, but you would need to continue to develop this after the agreement has been entered into force. That is what the living agreement implies. Of course, we still need to develop all elements of this concept and how it would apply to TTIP.

**Q185 The Chairman:** That concludes the questions we had wanted to ask you about Korea. In the time remaining, if you could be kind enough, just tell us what has happened, in your opinion, on the TTIP negotiations since last we saw you and what you think the timetable is going to be now. Please bear in mind that we will be going to Washington in the week after next. Then I think we can let you go. We are very grateful for the fullness with which you have dealt with the questions we have asked you, and thank you for that.

**Ignacio Garcia Bercero:** Thank you very much. As I said, I really appreciate the opportunity to bring you testimony again. The last time we met was in between the second and the third round. We had a successful third round, in which we actually looked into all the components of the TTIP agenda. In a nutshell, this is where I think we are. In general terms, we have finished the first phase of the negotiation, which is the phase where you need to be sure that you fully understand the position of your trading partners. You also have a good understanding about the similarities and the differences between our respective regulatory regimes. Since the regulatory issues are very important in these negotiations, this is particularly critical. We have taken a lot of time on that. Then you also lay the technical groundwork to proceed to the textual negotiations and the exchange of market access offers, which are going to be the new elements to come into these negotiations, starting with the next negotiating round, which is still to be totally determined but will be during the month of March.

In a nutshell, on the market access front we now need to move to the exchange of market access offers. There will be an exchange of tariff offers within the next few weeks. We still need to reach some understanding with the US, which is necessary to proceed to an exchange of services and investment offers. Those issues are still being discussed. We have also made clear to the US what our expectations are on procurement and we now expect
to have a clearer reaction from the United States about how it intends to move forward on procurement, both at the central and at the state level. If you want, this is the core market access part of the negotiations—tariffs, services, investment and procurement.

On the regulatory issues, first, we have done a lot of good groundwork on sectors. We have at this point in time identified a number of sectors where both the United States and the European Union have an interest in working together and developing concrete commitments on regulatory issues. How deep those commitments are is going to be the challenge next year, because we need to have intensive discussions between the regulators on both sides. By the way, they are totally engaged in it, but these issues are obviously technically very complex, and that takes time.

On the horizontal issues, we have at this point in time a rather good understanding about our respective regulatory regimes, the European objectives and the US objectives. Now we need to start to see how all these can be brought together into text and common approaches. I would say that a lot of good groundwork has been done on the regulatory field since the negotiation started, but we are now going to get into the more complicated discussion of reconciling interests and positions, and the complexities of the different technical regulatory issues that need to be addressed.

Finally, there are rules, and I think that at this stage we have in practically all areas a sufficiently good understanding about what each side wants. We have also been comparing what we have been doing in previous agreements, by the way, in many cases using as a reference point the Korea agreement, because it is the more recent comprehensive FTA for both of us. I would expect that starting from the March negotiating round, we will begin to negotiate on concrete textual proposals.

Between now and the March negotiating round, there will be a political stocktaking. There will be a meeting between Commissioner De Gucht and Ambassador Froman, where they will review all the key areas of the negotiations and give some further guidance to the negotiators about how to make progress during the rest of this year. I expect that a lot of the discussion in this political stocktaking is going to focus on two issues. One is market access, where we have an interest from the European side to be sure that there is balance between the three components of the market access package: that is to say, tariffs, services investment and procurement. Tariffs are important, of course, and we will exchange tariff offers soon, but we will certainly not wish to see a situation in which the service investment or the procurement negotiations do not progress at the same pace and with a comparable level of ambition. This would certainly be something that I am sure Commissioner De Gucht would want to discuss with Mike Froman.

Then there are the regulatory issues. Because these are both economically very important and technically very challenging, we want to be sure that on the regulatory side there is good progress in the rest of 2014. As I said, we also want to be sure that regulators from both sides continue to remain fully engaged, because as you get into some of these issues that I mentioned before, they are very technical. One can only make progress if the regulators are fully engaged.

I believe that Commissioner De Gucht would probably also want to raise with Ambassador Froman the issue of transparency. We certainly think that this issue is very important, so that as the negotiations proceed we can keep a maximum of information flowing to the public, while of course respecting the need to have confidentiality in the negotiating proposals. That is inevitable, but we would want to discuss with the United States what further steps can be taken to promote more transparency in the negotiations. You know, by the way, that we still have a problem to which we do not have a solution, which is how to share with member states and the European Parliament negotiating proposals that we have received from the United States. We have not found a solution to
that issue, but we hope to be able to have found an understanding with the United States soon.

The Chairman: Mr Bercero, thank you very much. We have overrun considerably. You have been very generous with your time and it has been most helpful. On behalf of the Committee, could I thank you and the colleagues you have with you?

Ignacio Garcia Bercero: Thank you very much. It was a real pleasure to have the opportunity to talk to you again.
GMB – Written evidence

Introduction and Background

GMB is the UK’s third largest trade union with approximately 620,000 members across a wide range of sectors, both public and private. We welcome the opportunity to respond to this call for evidence, and confirm that this response is on behalf of our GMB members.

GMB has long been active in campaign work around EU and international trade issues.

The development of comprehensive global trade agreements through the World Trade Organisation (WTO) has broken down in the past decade and instead, an increasing number of bilateral trade deals and deals between groups of countries and the EU are being negotiated and agreed.

GMB has been critical of these agreements and continues to campaign for better trade union involvement in the process and for clear conditions on labour standards, human rights, employment rights and protections, trade union freedoms and protection of public services and utilities to be an integral part of any trade deal.

The EU and US have now formally launched negotiations for a Transatlantic Trade and Investment Partnership (TTIP), which negotiators would like to see completed within the next two years. This is a wide-ranging agreement and GMB has major concerns about the threat it poses to our members and the wider UK and EU economies on a number of levels.

Below is the GMB response to the questions raised in the House of Lords call for evidence. GMB urges the House of Lords to give serious consideration to the issues of concern raised and would be happy to provide additional information or discuss further any of the points made in this submission.

GMB Responses to questions in the House of Lords Call for Evidence on the Transatlantic Trade and Investment Partnership (TTIP)

The TTIP

1. What are likely to be the most challenging chapters of the TTIP and why? What is the minimum level of ambition necessary in each chapter? How can the ambition of each chapter be maximised?

GMB maintains serious concerns about the TTIP more widely but in particular with chapters regarding investor-state dispute settlement, services and investment (healthcare, social services and the financial sector in particular), public procurement, and sustainable development (employment and social rights, and labour and environmental standards) and the impact on sectors, in particular chemicals and automotive.

As the largest and most ambitious international trade deal, the standards set in the TTIP will naturally influence all other bilateral, multilateral and global trade agreements to follow. The potentially negative implications therefore go far beyond the scope of the TTIP and if left unresolved will have an adverse effect on the future standards and conditions of workers worldwide. The stakes of the current TTIP negotiations could not be higher, and it is vitally important that we get it right.
**Investor-State dispute settlement**

The proposed introduction in the agreement of the investor-state dispute settlement (ISDS) (whose legitimacy continues to be called into question) is an extremely dangerous provision. It effectively limits the power of national governments and public authorities whilst giving unelected and unaccountable foreign businesses and investors unprecedented control to challenge state actions which they perceive to be a threat to their private investment. It gives them far more rights within our legal system than are currently afforded to domestic investors, let alone public authorities or community and civil society organisations.

Foreign investors have already extensively used the mechanism to challenge measures adopted by sovereign states to promote social equity and improve employment conditions, foster environmental protection and protect public health. Some examples are: Veolia v. Egypt for government-mandated increases to the minimum wage, Lone Pine v. Canada for Quebec’s moratorium on ‘fracking’, Philip Morris v. Uruguay and Australia over the countries’ anti-smoking laws, Achmea v. the Slovak Republic for the government’s reversal of health privatisation policy.

In fact, at least 15 different EU Member States have already faced investor-state challenges, and with 20 claims, the Czech Republic is the fifth most sued country in the world (in 2003 it had to compensate the Central European Media Enterprises corporation $354mn – the equivalent of the country’s entire health budget). Despite this shocking evidence, the European Commission continues to promote the ISDS with false claims that no EU Member State has been challenged.

According to the latest figures from the UN Conference on Trade and Development (UNCTAD), 62 new ISDS cases were initiated in 2012 alone, the highest number of claims ever filed in one year, and increasing the total number of known cases to 518 (and the number of countries affected to 95).

Countries currently signed up to the ISDS have faced claims of up to $114bn, with 70% of disputes resolved in favour of the investor and the highest damages to date – $1.77bn – awarded to Occidental Petroleum against Ecuador after the government terminated the US oil company’s concessions for violating its contract and selling 40% of its production rights without obligatory government pre-approval. Furthermore, this case, as many others under the ISDS, will have been arbitrated in secret backroom proceedings by a relatively small group of unaccountable, specialist lawyers whose impartiality is called into question and who earn such a significant income from these disputes that they have a very real incentive to produce rulings that will allow even more business in the future.

The risks therefore to the UK and other EU Member States if the ISDS is introduced in the TTIP are massive. The mechanism takes away the ability of Member States to decide what services should remain in the public sector and hands power instead to unaccountable and often tax-avoiding multi-national corporations. Faced with the risk of multibillion dollar corporate law suits, many States may simply decide no longer to regulate in the public interest (the introduction of the living wage, respect for collective agreements, etc all risk being cast aside), undermining crucial public authority accountability and control over how public services are set up and run.

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The threats to our **NHS** are particularly serious. Powerful US private health insurance corporations are already maximising opportunities under the Coalition Government’s large-scale privatisation of the NHS, to the extent that their infiltration of the health service draws into question our ability to hold on to the crucial principle of a healthcare service free at the point of delivery. It risks this principle being legally challenged in the same way Veolia tried to challenge the core principle of the minimum wage in Egypt. People in the UK will not stand for this and should be warned if this is one of the risks of signing up to the TTIP in general, and the ISDS in particular.

Despite this large-scale undermining of the powers of sovereign states and local authorities, UNCTAD notes that no systematic and independent assessment of the ISDS as regards its legitimacy, impact, feasibility, effectiveness and implementation has ever been carried out – concerns fully shared by the GMB.

GMB is also alarmed by the ISDS myths being propagated by the European Commission itself: that no EU Member State has ever been challenged, that foreign investors need stronger legal rights to protect themselves against the “bias” of national courts and that legislation is not at risk. The EU Commission should base its judgement on the fact that no EU Member State in the midst of an economic crisis and austerity measures can cope with the threat of a multibillion dollar lawsuit.

GMB cannot support an agreement that will undermine the ability of national governments and public authorities to make decisions in the public interest and allow the future of the NHS and other vital public services to be decided outside the UK, in secret by a group of unelected and unaccountable lawyers. GMB urges the UK Government to call instead for removal of the ISDS in any agreement, or to opt out from the mechanism entirely if it is introduced.

**Services and investment**

**Healthcare** is only one of the areas where a major liberalisation and privatisation of services can be expected if the TTIP is agreed.

GMB has concerns about the increasing liberalisation and privatisation of public services in general and sees the impact of trade agreements putting further pressure on these trends.

GMB urges the UK Government to prioritise the guarantee of universal access to high-quality, safe and affordable services for all, to put these principles at the centre of decision-making on services and to ensure that public / government control over these services is maintained.

Further **financial services** liberalisation under the TTIP also risks undermining a whole body of work already carried out in the EU and US in response to the financial crisis. The financial industry lobbied hard against these reforms and it is not surprising that they are now trying to weaken them by having financial services included in the scope of the TTIP. In light of this, the negotiators must ensure they take a concerted approach to strengthen further regulatory reforms that have been developed in the EU and the US, and avoid any erosion of reforms that have already been put in place to curb the excesses of the financial services and avoid future crises.

The negotiators should also use these discussions as an opportunity to agree on and increase coordinated EU-US action on putting a decisive end to **tax fraud**, avoidance,
evasion and the use of tax havens, and on creating a worldwide Financial Transaction Tax to oblige market traders to contribute to fixing the financial crisis they played a big role in creating.

The main aim of the TTIP – driven as it is by business interests motivated by liberalisation and privatisation – seems to be to remove both tariff and non-tariff barriers to trade as a way, it is claimed, of promoting economic growth; yet more sustainable and socially responsible growth could actually be achieved by increasing tariffs on a mutually agreed basis to the benefit of exchequers on both sides of the Atlantic and to counter the transfer of pricing and tax avoidance scams that would undoubtedly increase significantly otherwise.

Public grants for **culture and the arts**, which currently allow museums to offer free entrances, could also be threatened by the agreement and must be protected.

**Public procurement**

GMB wants to see **public services** excluded from the scope of the agreement, which will otherwise only pave the way for even more liberalisation, privatisation and outsourcing of public services (such as water or waste management). GMB firmly believes their organisation and delivery should remain firmly within accountable local authority control, as the only way to ensure public services retain high levels of quality, safety, affordability, user rights and universal access.

The award of public contracts should be for the good of the public and based on quality, fairness and sustainability – never on the lowest costs, which will only lead to a race to the bottom in terms of the quality of services and working conditions.

The EU must ensure that the social, environmental and sustainable development considerations as currently being revised in the **Public Procurement Directives** become the standards for EU/US regulations on procurement. GMB is particularly concerned that the US has not ratified basic ILO Conventions on labour standards or trade union rights and freedoms, referred to in the EU Public Procurement Directives and which must be a prerequisite before negotiations proceed any further.

The TTIP negotiators must also ensure that under the general clauses of the agreement, the deal does not pave the way for liberalisation by the backdoor, through any kind of ‘negative list’ or ‘ratchet clause’ approach.

**Employment and social rights / labour standards**

The TTIP brings with it the very real risk of our hard-won European employment and social rights being levelled down to often much lower American standards – a country which has not ratified even the most basic **ILO conventions**, including on rights to freedom of association and collective bargaining, and in which fundamental labour rights are persistently violated. Contrary to the rosy predictions made by TTIP advocates that the deal will boost employment and create thousands of new jobs, in reality it could actually lead to increased unemployment and mass social dumping as EU companies relocate to the US to take advantage of their weaker labour laws, or US companies choose to operate only in the poorer EU Member States, where wages and conditions are lower and trade unions weaker.

Some have argued that the TTIP may be an incentive to level up employment rights but GMB feels that given current economic pressures, there is far more risk of these being levelled down.

**Environment and health and safety**
Our higher EU environmental standards also risk being watered down to poor US levels under the TTIP. Already, the US has refused to match strong EU legislation on dangerous chemicals (REACH), which adds value and quality to the products produced in the EU and allows the EU to compete on a higher level. If US industries refuse to level up and comply with our body of vital EU health and safety standards developed over the past two decades, this will lead either to unfair competition for EU sectors which apply more positive and progressive standards and conditions or to an extremely dangerous levelling down of the standards we Europeans currently enjoy.

The great deal of work the EU and individual Member States have put in over the past decade to make European energy consumption more sustainable and to limit the impact of climate change also risks being severely jeopardised by the lack of strong and concrete US policy and action in this area. The US has rejected outright the EU’s emissions trading scheme (ETS), the first and biggest international system of its kind and a cornerstone of the EU’s work on fighting climate change and finding a cost-effective way of reducing industrial greenhouse gas emissions.

EU negotiators should ensure that the ETS and other exemplary EU legislation such as REACH are used as best practice and a minimum standard for protecting worker health and safety, the public and the environment.

2. Is the time-frame of completing negotiations within two years realistic? If not, when is it realistic to expect a deal to be agreed, and what can be expected to be achieved in the next two years?

GMB has fundamental concerns about the proposed agreement in general. The speed of the negotiations and time-frame within which they must be completed should not be the issue at hand. If there is to be an agreement, it must be a good agreement which puts resolving public threats and fears as its top priority. A two-year time-frame would seem over-ambitious and the negotiators must at all costs avoid making rash decisions and compromises simply in order to keep the momentum going, or to desperately fulfil unrealistic target dates.

Given the secrecy under which the negotiations have currently been and are likely to continue to take place, GMB senses that the speedier the process, the less transparent it will be and the harder it will become for trade unions and other civil society organisations to monitor and influence the process. Trade unions are persistently calling for the process to be made more transparent, open and accessible, and for the negotiators to embrace trade unions’ views more fully than they have done in previous international trade agreements. This is a crucial issue and one that will have to be met for the agreement to receive any trade union support, even if the time-frame for reaching agreement will have to be extended to accommodate this.

3. How should the Commission most effectively conduct the negotiations in terms of ensuring appropriate transparency and communication, as well as full consultation with stakeholders, NGOs and EU Member States?

The trade union movement both in Europe and the US must not only be kept fully and continually informed of the negotiations, but must be allowed to play an active and central role at all stages of the negotiations towards the final agreement – and beyond, in monitoring its impact and implementation too. The terms and demands set by the ETUC and AFL-CIO
trade union confederations must be at the core of the final agreement for it to have any credibility and receive any support from the EU and US workforces.

GMB is concerned that EU trade unions are already being side-lined from the process – US negotiators have been far more open and public than those from the EU, with Congress allowing US trade unions to intervene in hearings and consideration of the agreement whilst European trade unionists have been kept entirely in the dark as to the negotiation mandate and proceedings. Similar access as ‘privileged stakeholders’ for European trade unions must be made a prerequisite at EU Commission and Member State government level before the negotiations continue any further.

4. How will TTIP negotiations be affected by relations with third countries, such as China, and also developing countries, including in relation to existing and pending bilateral trade agreements? How do you anticipate the TTIP interacting with the Trans Pacific Partnership and NAFTA, for example?

Trade unions will only accept bilateral trade agreements based on high labour standards, trade union, employment and social rights, and which do not undermine existing conditions on labour rights, public policy or public services provision.

EU trade agreement negotiations must be more strongly guided by human rights and sustainable development as top priorities. Currently, labour rights and decent living standards are not being seriously addressed but robust measures to improve these should be seen as crucial, rather than an afterthought and a burden. A key question for GMB is who really gains from FTAs? So often dressed up as benefitting 'the people', the reality is too often the opposite.

Past experience shows us that free trade agreements are rarely based on the motivation for sustainable development. Too often the main beneficiaries are large transnational corporations in whose interest they are signed. For example, the NAFTA deal put out of business an estimated 2 million Mexican farmers who simply could not compete with heavily subsidised agricultural products dumped on their market from the US. Farmers in Colombia are similarly feeling the effects of their country's free trade agreement with the US for the same reason, and have embarked on a nation-wide strike that has been brutally repressed. Human rights and labour clauses in FTAs have also shown themselves to be ineffective because it is not in the interests of transnational companies motivated purely by profit to enforce them. A claim made in 2008 against Guatemala under the Central America Free Trade Agreement took 5 years to resolve and the AFL-CIO had previously denounced labour chapters as being of little use. Consequently, GMB has little or no confidence in pledges of sustainable development or in the efficacy of human rights and labour clauses in the context of trade agreements.

To date, EU and international trade agreements have paid little more than lip service to these crucial issues. It is not enough merely to state these aims in the agreement; its success will be measured by the processes set up to monitor and enforce implementation.

GMB will not accept more empty promises or ‘window dressing’, for example in existing EU free trade agreements with Colombia, Peru and Central America. In these countries, enforcement of labour standards and human rights has been shamefully poor, and GMB will not accept an agreement that furthers market freedoms and financial gains at the expense of fundamental human and workers’ rights and with no benefit to ordinary people.

48 ETUC position available here: http://www.etuc.org/a/11228
The EU has agreed a number of trade deals with other countries and regions and continues to exert pressure on ACP members to sign up to Economic Partnership Agreements despite protestations from governments and civil society organisations who rightly perceive that they are primarily intended to benefit European capital at their expense.

Recent agreements in Colombia and Central America have been overwhelmingly and shamefully ratified by the European Parliament in the teeth of fierce opposition from those in agricultural sectors who stand to lose from a fresh influx of subsidised products from the EU in addition to those from the US. The net effect of successive trade deals will ensure that displaced small farmers will end up looking for work in already crowded city slums or seek opportunities further afield in richer countries in the North.

Moreover, human rights considerations in Colombia, Guatemala, Honduras and other republics have been largely ignored and subsumed in bland statements from the EU Commission about free trade promoting democratic ideals in those troubled republics. Away from the rhetoric, the real aim is to remove all barriers to capital accumulation by big business and if signed the TTIP would effectively create a free trade area encompassing large parts of the Americas, Europe and South Korea because of other existing overlapping agreements in a way that would severely hinder nation states in developing alternative economic development models.

Significantly, China has been excluded from taking part in any trade talks with the West and another unspoken aim of the TTIP is the creation of a huge trading bloc to counter the country’s influence. GMB believes that none of this is either desirable or necessary and deviates from the pressing need to use trade responsibly for mutually beneficial development across the globe.

GMB also has considerable concerns about the major implications of the TTIP for Cuba, which have as yet to be addressed in any shape or form by the negotiating team. The US’ trade embargo has cost the Cuban economy at least $105bn and caused immense hardship and suffering for the Cuban people. The US sanctions have also been damaging for EU businesses: for example, European car companies can only access the US market if they can prove that their vehicles have no trace of Cuban nickel, and several European banks have had to pay fines to US authorities for carrying out transfers to Cuba.

The principle concerns GMB has with the TTIP are similar to those we have with the ongoing EU-Canada trade negotiations. We wish to see the ISDS removed from the EU/Canada agreement before it is adopted, and completely removed from the TTIP. Furthermore, the EU/US agreement will only be acceptable to us if it is based on high labour standards which do not undermine current conditions on labour rights, public policy space and public services provision.

As mentioned previously, the TTIP will set the framework for all future bilateral and multinational trade agreements. It is therefore more important than ever for the negotiations to get it right, or risk creating a domino effect of negative consequences on all other trade agreements – and workers – worldwide.

5. What is the potential impact of TTIP on consumers, whether in the UK, EU or US?

The mass liberalisation of services that the TTIP negotiators are hoping to achieve would have severe consequences on the quality and accessibility of our existing public services:

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49 According to the Cuba Solidarity Campaign: http://www.cuba-solidarity.org.uk/appeal/index.asp
market pressures would dominate over the public interest and undermine crucial public
authority accountability and control over how these are set up and run.

We can expect more and more of these services to be privatised under the deal, leading to
lower standards and poorer working conditions for workers across both the EU and the US.

The European Commission claims every EU household will be €545 a year better off due to
cheaper goods and services offered by the TTIP. Yet this figure is divisive as it tries to
suggest that each citizen will be allotted equal amounts of the extra €119bn from which
studies claim the EU’s GDP will benefit each year (for example, from an apparently additional
€187bn-worth of exports of EU goods and services). The reality, as we know, is that any
financial benefits will not go to the workers or households but rather into the pockets of
companies and their shareholders. There needs to be more honesty about such figures being
bandied about.

These figures are also based on a supposedly ‘best-case scenario’ where all tariff and a
quarter of non-tariff barriers for goods and services (50% for those linked to procurement)
will have been removed in the final agreement, which even the studies themselves agree is
highly unrealistic. The figures are moreover misleading as they are based on 2027
projections, a less than solid base for calculations, so any suggested benefits would in any
case not be seen for another 14 years (or in most cases not at all).

The studies also state that liberalising procurement and services will only lead to a maximum
of 0.5% increase in exports and imports, which seems a small figure compared to some of
the ambitious predictions made about the agreement in general.

Jobs

Major claims have been made about the potential increase to employment the TTIP could
bring. However, the reality is that rather than creating jobs, the agreement is actually much
more likely to intensify further competition in already struggling sectors (such as
automotive) both in the EU and US, with mass redundancies, social dumping and a race to
the bottom in standards, terms and conditions for workers as companies looking to make a
profit relocate to the US or other European countries with lower wages, social protections
and weaker trade unions, in an attempt to undermine EU social and employment rights.

Money, made by cutting red tape and production costs, will go directly into lining the
pockets of the companies, CEOs and shareholders. UK workers and consumers are unlikely
to come out of this process as winners.

Products and services safety and sustainability

Our higher EU environmental standards also risk being watered down to poor US levels. Already, the US has refused to join the EU emissions trading scheme (ETS) or to match
strong EU legislation on dangerous chemicals (REACH), and if US industries refuse to level
up and comply with our EU health and safety standards, this will lead either to unfair
competition for our more tightly-regulated industries, or to a forced and extremely
dangerous levelling down of standards. EU negotiators must instead ensure that EU policy
and legislation such as ETS and REACH, as well as EU models of social and employment
rights are used as best practice and to set minimum standards of workplace health and safety
and environmental protection.

50 ‘Non-Tariff Measures in EU-US Trade and Investment – An Economic Analysis (Ecorys, 2009)

51 ‘Reducing Transatlantic Barriers to Trade and Investment – An Economic Assessment (CEPR, 2013)
Impact of the TTIP for the UK

6. What aspects of the negotiations will be of the greatest significance to the UK, including its component parts?

The consequences of introducing the ISDS would be disastrous for the UK, and indeed the rest of the EU, especially as regards our NHS – which could see dominance by big corporate US health companies, undermining the very essence of the service.

Service liberalisation in general will affect all aspects of our lives, from health to transport, the environment to access to culture and the arts.

As already stated more fully in our response to question 1, GMB firmly believes that the organisation and delivery of public services should remain firmly within accountable local authority control, as the only way of guaranteeing high levels of quality, safety, affordability, user rights and universal access.

If these are privatised and fall into the hands of companies looking only to make a quick profit whilst spending as little as possible, it will only lead to a race to the bottom in terms of services quality and working conditions, and the TTIP will make it nigh on impossible to reverse this situation afterwards.

UK workers also risk seeing a major erosion of their employment rights and conditions under the TTIP unless concrete action is taken by the EU Commission and Member States governments to guarantee that our hard-won European labour rights will not be levelled down to the unenviable standards of America, which has not even ratified the most basic of ILO Conventions and where fundamental labour rights are violated on an almost daily basis.

Flagship EU policies for fighting climate change and global warming, most notably its emissions trading scheme (the first and biggest international system of its kind in the world) and high environmental safety and protection standards from which we benefit in the UK thanks to advanced EU legislation in the area (such as REACH regulations on dangerous chemicals) are also at risk of being decreased to the again dangerously low American standards. This is of particular significance to our UK industries such as automotive, chemical or processing (the sectors that currently account for the most trade between the EU and US), which could be forced into unfair competition against their deregulated American counterparts which could eventually erode higher EU standards, or which could suffer heavy job losses as companies decide to relocate to the US or other countries with similar weak labour laws. Either way, it is bad news for UK workers, consumers and home-grown industry.

7. For UK consumers and business, where are the greatest gains to be made and where could they be disadvantaged? What are the most significant non-tariff barriers for British exporters and importers?

Wild projections have been made on both sides of the Atlantic on the benefits workers will supposedly reap from the TTIP. According to the European Commission, the agreement could lead to the creation of thousands of new jobs.

GMB would like independent jobs, social and employment impact assessments to be carried out before the UK or any other Member State agrees to proceed with the negotiations.
The negotiators must start being honest about what UK workers can expect from the deal: a levelling down of our employment, health and safety and environmental protections to the dangerously low American standards, and further competition in already struggling industrial sectors, with ensuing mass redundancies, social dumping and a race to the bottom in standards, terms and conditions.

The EU Commission also suggests that there will be a €119bn yearly increase in the EU’s GDP – amounting to €545 more each year for every European household. However, these figures are divisive, based as they are on vague and unsubstantiated assumptions and suggesting as they do that households will receive the benefit of these sums. We know this will not be the case and that the lion’s share of any profits will continue to go to lining the pockets of companies, CEOs and shareholders instead.

The EU Commission seems particularly confident that we will see major job increases in the automotive sector. In GMB’s experience, this sector has been subject to widespread and major restructuring on a continual basis over the past two decades both at EU and global level (with the US also over-capacity), something that is still ongoing today. We need to know who will be the real winners and losers from the TTIP in this and other sectors. Will the important UK chemicals and pharmaceuticals sector be undermined by US refusals to meet UK and EU regulatory standards and force unfair price competition instead? We need concrete and evidence-based answers to all these questions before we can even think about giving any support to the TTIP negotiation process.

8. What are the political and practical challenges within the UK to an agreement?

One of the major challenges for the UK in the agreement is the planned inclusion of the ISDS. The mechanism, of dubious legitimacy, risks pitting national governments in an extremely expensive losing battle against private business investors challenging sovereign powers on such fundamental rights as social equity, wages and employment conditions, environmental protections and public health policies.

Services liberalisation under this system generally poses a massive threat to the UK and its ability to regulate in the public’s interests and determine which services remain within public control. Access to and the quality of our existing services risk becoming severely undermined, with market pressures trumping all other concerns, even such fundamental rights as decent working conditions and access to public healthcare. Protection of our key services is critical, such as the NHS – which already faces large-scale privatisation due to the Coalition Government’s 2012 Social Care Bill.

The UK Government will also need to ensure that the agreement protects and is of benefit to our chemical and process industries and automotive sector. If the US is allowed to maintain its woefully low labour standards and conditions, to violate persistently fundamental labour rights, to continue not to ratify basic ILO Conventions and to flout regulatory product and environmental standards that the UK and EU as a whole uphold, our industries will end up either subjected to unfair competition from their deregulated American counterparts (with many jobs likely to be lost as companies relocate to the US to take advantage of its weaker labour laws) or see pressure to erode standards to the dangerous levels practiced by the US (for example on dangerous chemicals, as the US refuses to match the EU’s high quality REACH legislation), which would be bad news for workers, consumers and industry leaders, and would unravel years of progress on EU employment and environmental protections. The UK should make resolving these issues a prerequisite for further negotiation.
US authorities will also need to address far more seriously European concerns following this summer’s revelations of the US’ National Security Agency (NSA) spying on EU institutions and Member States. The UK is also implicated, and public opinion in the UK and EU is very critical of this intrusion. The UK will need to work with the other negotiating partners to resolve this. Maintaining the EU’s high level of data protection in the TTIP is absolutely vital and the agreement should only be concluded once the issue has been fully resolved and the EU receives concrete assurances that its citizens’ fundamental rights will be fully respected and protected from now on.

9. How can the UK seek to maximise its influence at EU level as the TTIP negotiations progress?

The UK’s current ambivalence about the EU is not helpful. The more the Government questions our future relationship with the Union, the less other Member States and the US will consider us a key player and take our views seriously. The only way for the UK to maximise its influence and ensure the best possible representation and results for its workers is for it to build up better relations and increase cooperation with the other EU Member States and remain centrally involved in the EU decision-making process.

The more the UK moves towards the side-lines, the more isolated and inconsequential it will become. David Cameron speaks of creating stronger ties between the UK and US, but even US President Barack Obama has signalled in no uncertain terms that our countries’ great relationship will last only as long as we remain in the EU, and the US will certainly be in no hurry to negotiate separate bilateral agreements with the UK if we leave.

10. What might be the potentially adverse effects for the UK of a failure of the TTIP negotiations?

This will depend on the quality of the agreement at the end of the negotiation process. If the ISDS is not taken out, key services are not protected and no concrete assurances are made to protect and improve our employment rights and other social issues, the UK would remain substantially better off outside the deal.

The European Union and other Member States

11. How could the Commission seek to ensure that the interests of the Member States are represented, and that a satisfactory outcome with regard to Member States’ interests is secured?

Truth, trust and transparency are key issues that remain to be addressed in the negotiation process. The EU Commission and other key interests have played up the positive potential of the TTIP in an exaggerated and unsubstantiated way. The focus now has to be on the likely reality of the agreement and to plan, defend and negotiate on this basis.

The real interests of ordinary people in the EU must be fully represented by allowing trade unions to play an active and central role at all stages of the negotiation process as well as in monitoring its impact and implementation afterwards. European trade unionists must urgently be given the same ‘privileged stakeholder’ access from which their American counterparts already benefit as a prerequisite at EU Commission and Member State level for the negotiations to have any credibility and receive any support from Europe’s workers.

The EU Commission must also step up the pressure on the American authorities to fully address and resolve European concerns following the revelations of NSA spying on EU
institutions and Member States, and ensure that the TTIP and the negotiating partners all respect the high level of data protection from which EU citizens benefit and which the Commission in particular has been working to increase.

12. What are likely to be the most significant potential gains and difficulties for other Member States? How do UK interests and those of the other Member States coincide or run counter to each other? What would you identify as areas of common European interest?

The risks posed by the TTIP on UK workers are the same for those in the other EU Member States too, in particular as regards the ISDS, access, quality and control of public services, and the potential levelling down of employment and environmental standards we all commonly share – issues which are covered more extensively in our responses to the questions above.

What the TTIP negotiations must strive for above all else is concrete assurances to protect and improve the employment and labour rights and health and safety and environmental standards for workers across the EU and in the US as well.

Only with these guarantees could EU and US workers hope to benefit from the TTIP.

13. From the EU perspective, what are likely to be the biggest political, institutional and practical challenges to a deal? How can they be overcome?

As already covered extensively throughout our response, one of the major challenges for EU Member States in the agreement is the planned inclusion of ISDS. The mechanism, of dubious legitimacy, risks pitting national governments in an extremely expensive losing battle against private business investors challenging sovereign powers on such fundamental rights as social equity, wages and employment conditions, environmental protections and public health policies.

Services liberalisation in general poses a massive threat to EU Member States and their ability to regulate in the public’s interests and determine which services remain within public control. Access to and the quality of our existing services risk becoming severely undermined, with market pressures trumping all other concerns, such as public health or decent working conditions.

US authorities will also need to address far more seriously European concerns following this summer’s revelations of NSA spying on EU institutions and Member States. Maintaining the EU’s high level of data protection in the TTIP is absolutely vital and the agreement should only be concluded once the issue has been fully resolved and the EU receives concrete assurances that its citizens’ fundamental rights will be fully respected and protected. None of the assurances made in the final agreement will be of any real value or significance if the Americans do not first work to regain European’s trust.

This must also be done by making sure the negotiation process is fully transparent, open and accessible to all stakeholders. Trade unions must not be kept in the dark (as is currently the case at EU level) but given an active and central role at all stages of the negotiations and have their demands met and views acknowledged more fully than has been the case for previous trade agreements. Concrete assurances of this must be a prerequisite at EU Commission and Member State government level before the negotiations can continue any further.
The United States

14. From the US perspective, what are likely to be the biggest political, institutional and practical challenges to a deal? How can they be overcome?

The US has not ratified even the most basic ILO conventions, including on the fundamental rights to freedom of association and collective bargaining, and without swift adoption of these conventions and an end to the persistent violations of fundamental labour rights in the country, GMB will not support the TTIP. Without these fundamental protections, the agreement risks undermining crucial and hard-won European social, employment and health and safety rights and could lead to a race to the bottom in terms of standards and conditions as well as increased unemployment and mass social dumping as EU companies relocate to the US to take advantage of their weaker labour laws. It also devalues other trade agreements in which these ILO Conventions and public procurement laws are referenced.

The US will also need to give assurances that it will match strong EU legislation on environmental standards, such as its emissions trading scheme to fight climate change and global warming, and its REACH legislation on dangerous chemicals. If US industries refuse to level up and comply with our EU health and safety standards, this will lead either to unfair competition for our more tightly-regulated sector, or to a forced and extremely dangerous levelling down of standards.

US authorities will also need to address far more seriously European concerns following this summer’s revelations of NSA spying on EU institutions and Member States.

As already stated, GMB also has considerable concerns about the major implications of the TTIP for Cuba, which have as yet to be addressed in any shape or form by the negotiating team.

15. What would be a mutually beneficial solution for the EU and US? Is that the same as a mutually beneficial solution for the EU and UK?

GMB feels that the risks of the proposed agreement outweigh the potential benefits. If it does proceed, the best solution for the US, UK and other EU Member States will be the levelling up of all employment, environmental and other social standards and conditions to the highest possible level both to protect and develop the progress already made in these areas and to act as the standard defining all future bi- or multilateral deals.

ISDS must be removed from the agreement entirely to protect the interests of all the partners and to ensure the powers of good governance and public interest policy rest with those democratically elected to judge such decisions, rather than commercial lawyers motivated only by profit and business interests.

October 2013
Efraim Gómez, Ministry of Foreign Affairs, Swedish Permanent Representation to the EU and Josefine Holmquist, Trade First Secretary, Swedish Permanent Representation to the EU—Oral Evidence (QQ 85-98)

Evidence Session No. 9.  Heard in Public. Questions 85 - 98

TUESDAY 5 NOVEMBER 2013

2.05 pm

Witnesses: Josefine Holmquist and Efraim Gómez

Members present

Lord Tugendhat (Chairman)
Lord Lamont of Lerwick
Lord Maclennan of Rogart
Baroness Quin
Earl of Sandwich

Examination of Witnesses

Josefine Holmquist, Trade First Secretary, Swedish Permanent Representation to the EU, and Efraim Gómez, Ministry of Foreign Affairs, Swedish Permanent Representation to the EU

Q85  The Chairman: Thank you very much for coming. I am sure you have enough to do in your own Parliament without devoting time to somebody else’s, but we are very grateful to you. As I think you know, we are the House of Lords Sub-Committee on EU External Affairs. We are doing an inquiry into the TTIP negotiations. We hope to produce a report in the first quarter of next year. We are here in Brussels meeting a number of delegations from member states—the French, the Germans, the Czechs—and the Chinese and the Americans as well, and we are going to the Commission after this. We will be together for 45 minutes. You have seen a number of questions. We may not ask them in the order in which they are here but, if I could begin with the first one—

Josefine Holmquist: Could I just ask you? Are you making an official report that we can read afterwards?

The Chairman: We will be reporting in the first quarter of next year and it will be a public document. We will be reporting to the House of Lords, but it will be published and a public
document, so you will see the fruits. We have seen studies from the Commission and the UK Government about the possible impact of TTIP, and we know that the French and the Germans have done similar studies as well. I wondered if the Swedish Government had done that and what it showed in terms of which sectors of the Swedish economy stand to gain most and which aspects of the dossier you are most nervous about.

Josefine Holmquist: For us, this has been a priority for a very long time to have a free trade agreement or something with the US. We have been working on that for many years, obviously the past 20 years. In Sweden, we have a National Board of Trade, which is an authority mainly dealing with external trade issues and the internal market, and it has written a number of reports about the relationship with the US. It prepared one a year and a half ago, evaluating the economic effects, not going that much into different sectors, but it has also done a lot of work on global value chains, which also shows how important this relationship is between Sweden and the United States. If you look just at goods, you cannot really see how important this economic relationship is. Therefore, we think it is very important.

If you ask if we are nervous about something, we are not, because we have been very much a free trade country for a long time. For instance, in the 1970s we had problems with the shipbuilding industry, we tried to support them, but then we realised it did not really make sense to do that. Also when you look at the textile industry, with the competition from third countries, it is not possible to have the same kind of industry, but nowadays we have a very important textile industry, which is more competitive in other areas, because it is more technical than the one in Asia, for instance. The agreement will have a number of effects, but we do not fear that it will hurt certain sectors. We think that the overall assessment is that society will benefit in the long run from this agreement.

Q86 Baroness Quin: Is there much political interest in the agreement in Sweden? Is there much public interest?

Josefine Holmquist: Yes, I think there is. I know our Minister of Foreign Affairs has said that it is not only a trade agreement; it is something much bigger. It is about the transatlantic relationship, so I think there is a very strong interest in this agreement. As I said, it may be different between Sweden and other member states, but the whole society stands behind this free trade approach that we have. The trade unions are also supporting this and we have been working for this for many years. We have different organisations being involved finding a way to push this.

Efraim Gómez: Sorry, perhaps I could introduce myself. I am stepping in here for our COREPER ambassador. We have this interregnum and I am his deputy usually, so I am just stepping in for him. It is worth saying in that sense that there is a strong parliamentary majority for this, too. The biggest opposition party is behind it too, so we expect to pursue these negotiations as long as it takes, with the same intensity that we have today from the Swedish Government’s side.

Q87 Lord Lamont of Lerwick: When you quote your Foreign Minister as saying it is not just economic—it is about the transatlantic relationship—do you think that that could fuel Chinese fears that this is actually hegemonic, that this is actually about containing China?

Josefine Holmquist: Of course, we all hear some rumours. There can be such a fear, but we see that, even though this relationship is very important for us, our main focus is as a multilateralist. Of course we would prefer to have more advanced multilateral negotiations, so we think that this agreement can be a step so that other countries could come in and participate and we can also advance standards and other things that would then be applied all over the world. Other countries will benefit from this as well. Even the Swedish economy is doing quite well, but we have a lot of problems. Strength and growth in Europe and the US will increase.
Lord Lamont of Lerwick: How precisely do you see the other countries as benefiting? Supposing we are talking about mutual recognition or convergence of standards, would third countries simply not have to take it or leave it? They would not have any say in the negotiation. How would they benefit from a new standard between Europe and the United States?

Josefine Holmquist: For instance, if they are exporting to Europe and to the US now, and they have different standards, it makes their production more complicated.

Lord Lamont of Lerwick: Supposing the United States and Europe agree on some new safety standard for cars, which is different from what was before, a third country might have a fourth standard, but they are not part of the negotiation in any way. When you say they can join in, they just have to accept what has been negotiated. I just wonder to what extent this is really—

Josefine Holmquist: I do not know if this is really a formal Swedish position, but I could just say that this is my personal view. If you see what the other case would be, there would be three or four different standards. Even if you say they impose, they still impose today in order to export to fulfil American or European standards. I am not really an expert on this kind of issue, so that is why I am saying I am not 100% sure.

Efraim Gómez: In general terms, TTIP should not be something that makes us rescind from the ultimate goal of having a multilateral regime that can cover all things. In the present circumstances, we have difficulties even reviving the Doha round. We have to work on that front too. We do not see them as exclusionist.

The Chairman: In the meanwhile, we do what we can.

Efraim Gómez: Yes, we do, exactly.

The Chairman: We cannot do the best, so we do what we can.

Josefine Holmquist: It could also increase interest from other countries.

Q88 Earl of Sandwich: I understand you to say that it is preparing the ground for a longer-term arrangement, so the idea of a living agreement might be merged into the third countries. To take the car industry as an example, Sweden being very strong in this sector, is it right your sales are slipping a little bit in the US market? Are you looking for a material advantage in this sector or is it just more or less like any other?

Josefine Holmquist: Not maybe only the car sector, but more like the motor vehicle sector is important for us in general. I am not updated on the statistics, but it is still an important sector for us. We have a large number of important sectors, but it is one of them.

The Chairman: Which would be the other ones?

Josefine Holmquist: We have such a long list.

The Chairman: Which are the top two or three sectors?

Josefine Holmquist: I have not really seen those kinds of priorities. We look at sectors, but there are some different fields. We have tariffs, which we want to go down, and non-tariff barriers, and then we have more services.

Earl of Sandwich: Can you say more about deregulation in the automotive industry? Is that really a target for you or is it going to be mutually recognising your standards as they are?

Josefine Holmquist: This is such a detailed question, so I think you had better ask the people dealing with that in Stockholm, because I am not an expert on this.

Q89 Baroness Quin: Can I ask if you are happy so far with the Commission’s and the European institutions’ approach? Do you feel that you are engaged in that process? Do you feel that that process is going to work well with you and that your interests coincide, for the most part, with wider European interests?

Josefine Holmquist: Our general approach to this negotiation is that we want broad agreement. Of course, when we discussed the mandate, it is not a secret that we were a bit disappointed with the French, who wanted to limit it to a certain extent, with the audiovisual
sector. We do share a lot of common interests with other member states and we have a very good dialogue with the Commission and the other European institutions. It is well functioning.

Baroness Quin: Obviously we have had some discussion about the audiovisual sector in our earlier meetings. I also wondered what you felt was the importance you would attach to financial services, as part of the agreement.

Josefine Holmquist: It is one important sector. I do not know how high I would put it. I am not sure that we have the same interest as the United Kingdom, but a lot of trade between the US and Sweden is a part of business services, and financial services are part of it.

Baroness Quin: You would support its inclusion and be unhappy if it was not included.

Josefine Holmquist: Yes, but I cannot give you the details of exactly what we want and our red lines.

Q90 Lord Maclennan of Rogart: I was wondering what your thinking was about agriculture. Do you feel that there is a particular Swedish interest in this and are there any red lines you have that are shared by other countries?

Josefine Holmquist: We have quite a big food industry, so we have a lot of interest in certain bits, like cheese and non-alcoholic beverages. There is a very long list. I do not really know if you refer to this GMO/hormone debate or is it more what kinds of products we are interested in. When it comes to this GMO or hormone beef question, both the EU and the US have been very clear that we are not going to deregulate. We are going to be able to keep this. When it comes to agricultural exports, we have interests both in being able to export to the US, but also to import intermediate goods. We have bioethanol, which is very important to some of our industry and the global value chain. Of course, if we have better intermediate goods our industry will get stronger and be able to export and use bioethanol, starch or other kinds of products.

Lord Maclennan of Rogart: Have you anticipated what the outcome might be for Sweden, if those changes were made?

Josefine Holmquist: How do you mean?

Lord Maclennan of Rogart: In terms of increased exports.

Josefine Holmquist: For the agricultural sector, I cannot give you any numbers, but I think we have looked into it. I can maybe add that, even in agriculture, our policy is for free trade and we are not as concerned as other member states about it.

Efraim Gómez: Especially on the tariffs, you will probably know that, before we entered the EU, we had basically a zero tariff on agricultural products and then we have to reinstate it when we joined the EU. I would like to add to your question, Baroness, on the services. We have been one of the principal champions, together with the UK, on the internal market. In the deregulation of professionals, the professions, et cetera, we see a lot of benefits. For the EU, it is an extremely important growth market, both within and on the outside. We need to increase competitiveness. Across the board, it represents 70-75% of the GDP of the EU and 70% of the workforce, so it understandable that people are afraid, but we need to start working on both the internal and the external sides of the services market in the EU. We are staunch supporters of this, absolutely.

Q91 Baroness Quin: On GMOs, just to pick up on the point, are you supportive of the European line on that or is there any debate within Sweden about whether GMOs might be good rather than bad?

Josefine Holmquist: We support the European position. If we compare to other countries, such as France or Austria—I do not know about the United Kingdom—there is not much
debate about GMOs, I would say. We have some research and we may be more positive about GMOs than most member states, but I would not say it is something that is discussed very much in Sweden.

Baroness Quin: It is not a burning issue, as such.

Josefine Holmquist: No, not at all.

Q92 Lord Lamont of Lerwick: This is more of a political issue, but it impacts on the talks, the questions of alleged spying and surveillance. I imagine that is a bit of an issue in Sweden, but do you think it will have any effect on these negotiations and in particular about data protection?

Josefine Holmquist: We wanted to keep these as two separate issues and that has been the Commission's view so far. This topic is involving a lot of time, but so far we stand behind that position.

Efraim Gómez: Generally speaking, you could say that there is a text and then there is a context. The context is we need to rebuild our trust, but the text of the agreement should not be in conflict. That is our principal view on it. It is turning into a political fact and a political reality among a couple of the leading member states and we are going to have to deal with it in some fashion. Our entry point to this is that it should not contaminate, at least not the text.

Q93 The Chairman: We asked you about China earlier, but to what extent do you think, if there is an agreement, it can be a template for standard setting for future trade negotiations, whether multilateral or bilateral? There has been some concern expressed—we were talking about this earlier—that we are doing this on a bilateral basis and the prejudice is multilateral. You were saying, and I agree, that it is a step, but how do you see this acting as a template? Do you think the Chinese and others would accept that?

Josefine Holmquist: This is a special relationship also. We have just finished CETA with Canada, which is one of the most ambitious trade agreements that we have reached so far. The TTIP is going to be something even more ambitious. If you say that you would use it as a template when we negotiate with China, I do not know. It is in the future maybe. We are going to launch the negotiations with China on investment issues, but not on this broader agenda.

Efraim Gómez: I think that the Earl of Sandwich was going into this too and we have been discussing it. This is probably the trickiest part to manage. As we just mentioned, the best possible should not be a hindrance to the best achievable at any one moment. It is important. Also from the US side, they are trying to see how they can engage with Mexico and it is also important for us to have them on board. We all have to deliver our different constituencies, but when we have one big constituency that is not directly linked to us, like China for instance, we would need to find some way of channelling their concerns and taking them into consideration. Maybe if we use it intelligently, we could spur them to sign similar agreements with us. The sooner they engage in those agreements with us and we do with them, the more influence they will have on the standards. It is a competition of standards of sorts which, in the long run, should be healthy.

Q94 The Chairman: It has been suggested to us that the Commission is going to produce—and we will ask them—a sort of situation report at the beginning of next year, setting out where they are and what they hope to achieve. Do you have a clear view as to what you would like to see in that report or are you willing to wait and see what the Commission thinks is appropriate?

Josefine Holmquist: Of course we have an interest, because what is not in that report will not be dealt with in the final agreement. We only had the first round of the talks. There will be a second round next week and then a third round in December, so it is maybe a bit
premature to point out right now exactly what we want in the report. We will look into that very carefully.

The Chairman: Something that strikes me and some of my colleagues is that there is a lot of very high language surrounding all this, about the importance of the talks, the scale, and what it will mean for Europe and transatlantic relations, and yet, as soon as one gets into the detail, it becomes extremely complicated. It does seem to me that there is a disconnect between the political rhetoric and the negotiating reality. At some point, these are going to have to come together, because the negotiations are not going to move at the speed and to the destination that the rhetoric is suggesting.

Josefine Holmquist: I do not know. Now when we have these rounds quite frequently, there is a lot of technical work being done. These are complicated issues and they take time, but we are advancing both and there is really a strong political will.

Q95 Baroness Quin: Sweden has a reputation for having both high environmental and labour standards. Is any discussion of this within TTIP likely to cause concern? Is it an area that you are monitoring closely, given your own internal situation?

Josefine Holmquist: As I said, the trade unions are very positive about this, so there is not much concern regarding that. When it comes to the environment, of course it is important. If you come back to CETA again, it is the first time that Canada had a sustainable development chapter in the trade agreement. One of the questions was what you can draw from CETA. We can have certain provisions in the agreement that we would be very much in favour of, when it regards sustainable development.

Efraim Gómez: There is a bit of a difference too between the environmental standards and the common standards within the EU. It is difficult for us to depart, but labour standards are still a national competence. Since we are discussing a free trade agreement and not the movement of citizens, it probably comes less into play. That is probably why trade unions are less concerned about this particular. If we extended it to persons too, then maybe they would.

Lord Lamont of Lerwick: You do not have defensive sectors, do you, like you had in the 1970s and 1980s? You talked about shipbuilding and textiles. There are no sectors in a comparably vulnerable situation today, are there, in Sweden?

Josefine Holmquist: No, I would not say so. I just read yesterday that the Commission said that Sweden is the most innovative economy in the EU.

Lord Lamont of Lerwick: That is a great accolade.

Josefine Holmquist: Our approach is more that we have to adapt to the world. We have to develop our industry in a way that can compete and, if we cannot compete, maybe we should do something else.

Lord Lamont of Lerwick: I was just making the point that there is much less to be afraid of than there was previously.

Q96 Lord Maclellan of Rogart: Do you have any hierarchy of goals? There are so many matters being considered—non-tariff barriers, public procurement, regulatory convergence and financial services. This is a lot to deal with in the space of time that has been adumbrated. Do you feel that, if we make progress on one or two of those fronts, we should retain some sort of position to go on and take the rest through, or do you think it has to be one or the other?

Josefine Holmquist: As I said at the beginning, we wanted broad agreement. If you have the technical discussion, there are a lot of people coming when they have these negotiations, but just because we have progress on financial services does not prevent us from having progress on agriculture, for instance. I have not seen a list or something coming from Stockholm, if we have priorities. We have a lot of important issues in many areas.
Lord Maclennan of Rogart: We are talking about 18 months to two years, and that kind of thing. It may just not be possible to fit everything in. Would you want to see some system in place that enabled the discussions to continue, assuming that certain decisions had been made?

Josefine Holmquist: That is a question for when we have had more discussions with Americans, so we can see how we can proceed. It is a bit too early to say now if we would be able or not and what kind of system. If you start to talk about not fulfilling the objectives too early, then we will not. We have to try to reach the objective and that is to fulfil the negotiations.

Q97 Earl of Sandwich: After innovation, can I suggest that developing countries have been a big concern in Scandinavia, and you have a big record in aid giving? We have mentioned China, but there are many other third countries in the sort of intermediate category. We are told that the very poorest countries are going to go on being cushioned by the ACP agreement with the EU, for example, but what about India, the subcontinent and some of the south-east Asian countries? Do you have any experience of how they are going to be affected?

Josefine Holmquist: I think there has been quite a lot of research done on this, and there are many reports of how it will be, not in Sweden, but by the Commission and different institutes. Certain numbers are not what we believe in, nor the Commission, that third countries would be very hurt by this agreement.

Earl of Sandwich: Your general conclusion is that they are not going to be advantaged by it.

Josefine Holmquist: Yes, I said that those studies that showed that they would be hurt by the agreement we would not support.

Earl of Sandwich: Would you stand by that conclusion? You do not think that the general improvement in trade in the world is going to bring some benefits.

Josefine Holmquist: Yes, of course we think that. We do not support those very negative kinds of reports. We think that the agreement will benefit the world in the long run.

Lord Lamont of Lerwick: Do you think a lot of the effect will be on global supply chains and intermediate deals within parts of, say, a multinational? Do you think that is one of the big effects? I suspect it might be for the UK.

Josefine Holmquist: Yes, I think that is one. Production has really changed, so that is how the world looks.

The Chairman: On the investment chapter, you have strong ties to the United States; do you attach weight to this? What significance do you attach to the inclusion of the investor-state dispute settlement mechanism?

Josefine Holmquist: We do not have an investment protection agreement with the United States, and we have not so far seen it as being useful to have that kind of agreement. I know the United States wants to have an investor-state dispute settlement. We can accept it, but it is not something that has been among our priorities. At the same time that it is not one of our priorities and we have not seen the need for it, but we are not afraid of it either. We have bilateral investment agreements with a number of countries and we have not seen that they have been a disadvantage for us, even if they are traditionally more useful in markets where the legal system is not as predictable as in the United States.

The Chairman: Thank you very much indeed. We are going over to the Commission now and, as I said, we are very grateful to you for giving us your time and your insight into this. We will be producing our report in due course. Thank you.

Josefine Holmquist: It will be very interesting to read it.
Q208  The Chairman: Lord Goldsmith and Dr Poulsen, thank you for coming before us, and thank you for coming at an earlier time than originally envisaged. As you both know, this is part of our inquiry into TTIP, the Transatlantic Trade and Investment Partnership. We have been conducting this inquiry for quite some time now, and we are getting quite near the end. An issue that has arisen, not so much in the evidence that we have received but in written representations that have been made to us, concerns the investor-state dispute settlement provisions. We have received quite a number of representations on that. The Commission has now announced a consultation, but it seemed to us that there is a sufficient
Lord Goldsmith: With pleasure, Lord Chairman. I shall say one word by way of background. It is important to understand that the investor-state dispute settlement procedures—the ISDS—are simply a mechanism for giving effect to substantive protections which are agreed. The concept is that investment treaties, which are typically bilateral, although some are multilateral, set out between those states that join them, the protections which each will agree to accord to the investors from the other state. The ISDS is not in itself a substantive measure of protection; it is a mechanism for providing a dispute resolution process where there are questions about whether those protections are being provided. Once upon a time, investors were protected by their national state through diplomatic protection or, in even earlier times, through military protection. Gunboats were how investors were protected. Then it moved into diplomatic protection, which has a lot of issues connected with it, such as the politicisation of what are in fact investment disputes. Bilateral investment treaties are a more recent development. We think the first BIT was concluded in the late 1950s in which an EU country—Germany—was very much involved.\(^{51}\) There is now a very substantial number of bilateral investment treaties. The Lisbon Treaty gave jurisdiction to the EU to conclude those agreements and started the process of the EU taking over bilateral investment treaties, the Regulation\(^{52}\) grandfathers those which are already in place until new agreements are concluded. That is the background to how they came into existence. The Committee may well come on to this, but they are very heavily used by investors from many states including from EU states. I am happy to elaborate on that, if and when you want it.

The Chairman: At whose instigation are they generally?

Lord Goldsmith: Generally, it is the capital-exporting countries that instigate them because it is their national companies and individuals from their countries who generally are investing in the capital-importing countries, and therefore they are the ones who want to see the protections in place but they are reciprocal so they work both ways. Although the majority of investment arbitration claims are still brought by investors from capital-exporting countries, increasing numbers are brought by nationals from developing countries, so that gap is narrowing.

The Chairman: Dr Poulsen?

Dr Lauge Poulsen: I have nothing else to add.

Q209 Lord Lamont of Lerwick: Building on what you said, can you tell us what has been the experience of EU member states as regards these mechanisms? In particular, what sorts of claims have been brought against them and what sort of outcomes have resulted? How have EU investors taken advantage of them? Have they put the agreements to wide use against third countries?

Dr Lauge Poulsen: In terms of claims against European states, the vast majority of investor-state arbitrations have been claimed against new EU member states, eastern European

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51 Note by witness: The first BIT was concluded between Germany and Pakistan in 1959.
52 Note by witness: Regulation (EU) No 1219/2012 of 12 December 2012 establishing transitional arrangements for bilateral investment agreements between Member States and third countries, OJ L 351/40
countries, where a vast range of government measures have been targeted by investor-state arbitration. For instance, in Poland, there was a range of claims in the 1990s around Poland’s environmental regulation. In the Slovak Republic, there have been claims regarding the roll-back of the liberalisation of the national health insurance market. In Hungary and Romania, there have been claims concerning the roll-back of state aid in the electricity sector. Western European EU members have also been subject to claims. For instance, Germany has been subject to two quite notable claims, both by Vattenfall, the Swedish energy company, and Belgium has been subject to a very large claim by a Chinese investor. Greece has been subject to claims for the measures it took during its financial crisis. Spain has been subject to claims. So, there have been a wide range of measures that have targeted not just eastern European members but increasingly western European countries as well, including Germany.

Lord Lamont of Lerwick: Why western European countries as well? When you say “increasingly”, one can understand why there would be eastern European countries, but why is it suddenly becoming more west European countries and on what sort of issues?

Dr Lauge Poulsen: To go back to what Lord Goldsmith mentioned before, these are reciprocal agreements, so when you have an increasing inflow of capital from developing countries, suddenly developing-country investors can also use these agreements to file claims against western European Governments. In the case of Germany, the claims were under not a bilateral investment treaty but under the Energy Charter Treaty, which was entered into by European countries and Russia in the early 1990s.

Lord Lamont of Lerwick: Are these disputes always about public policy, or could they be against a private entity as well?

Dr Lauge Poulsen: No, these would typically be disputes about government regulation. They could deal with decisions of courts or legislation. They are not commercial arbitration proceedings between private companies or between a private investor and a Government acting in a commercial capacity.

Lord Goldsmith: Dr Poulsen has talked about claims against EU states. I think it is important to put this in context. EU member states are among the most prolific users of investment protection in looking after the interests of their nationals. If you look at the number of cases started between 2008 and 2012—all investor-state cases across the world—more than half of them were initiated by EU investors. Classic claims are about expropriation, nationalisation, the removal of licences without compensation and that sort of thing. It is true that some claims have been brought against EU states. They tend to be eastern European states. It is worth the Committee remembering that claims can be brought, but that does not mean that they will succeed. Claims have to be for a breach of one of the specific protections which the treaty provides for, whether it is bilateral or, as Dr Poulsen says, multilateral, like the Energy Charter Treaty. Claims often concern expropriation (except for a proper public purpose and with proper compensation or reasonable compensation—the words differ), for fair and equitable treatment, non-discrimination and those sorts of areas. Ultimately, it is a claim against the treatment by the state, but it would not necessarily be about public policy; it could be a claim that an investor has been treated unfairly, even as a result of the way that the courts have operated. There are claims against the United States, for example, under the North American Free Trade Agreement arrangements, which include claims resulting from judgments of the United States courts which were found to amount to a denial of justice.

Q210 Baroness Quin: That is very helpful, but I am just thinking about the number of cases that there have been. In the Polish case, which I think you said was about a challenge when the Government wanted to roll-back some liberalisation in the health sector, which seems quite pertinent to some of the concerns that have been raised here, did the outcome
involve a subsequent change in government policy or was it simply to do with some aspect of compensation to a particular investor?

Dr Lauge Poulsen: It was a case against the Slovak Republic, not Poland. The investor won about £18 million, which was paid out by the Slovak Republic. Later, the constitutional court in the Slovak Republic also decided that the measures were unconstitutional, but another claim has been brought by the same investor trying to pre-empt additional reforms in the Slovak national health sector for insurance. This is still pending, and we do not know what the outcome will be.

Lord Goldsmith: I understand that this is a case which causes concern. It is the Achmea case. It is worth bearing in mind that the actual challenge was on the ban on the expatriation of profits, as opposed to the concept of nationalisation or renationalisation and, as Dr Poulsen said, it turned out that under Slovak national law what had taken place was unlawful. The constitutional court declared it unlawful.

Q211 Baroness Coussins: You said that not all claims succeed, but can you say what the success rate has been so far in terms of claims against EU member states and whether there is any differentiation between the success in claims against eastern and western European countries?

Dr Lauge Poulsen: On the exact statistics for western European member states, I am not quite sure. One has to remember that we are not entirely clear how many claims are made against EU member states and others because some claims can be pursued under arbitration rules that do not necessarily require that the fact that there is a claim should come to public knowledge. In general, about 30% of claims have been resolved in favour of investors, a little less than 30% have been settled—the content of those settlements is typically unknown, but many can be assumed to be in favour of investors, and the remaining approximately 40% have been decided in favour of the state. Without knowing exactly, I think that the statistics for European countries could be about the same. That is the general picture.

Q212 Earl of Sandwich: We have heard in evidence that the UK for some reason does not get into so many disputes and that there are not so many settlements. Can you explain why that might be?

Dr Lauge Poulsen: Sure. The main reason is that the United Kingdom has traditionally not entered into investment treaties with major capital-exporting states, so when we think of the potential scenario that could result from the EU-US agreement, the more relevant set of experiences for the United Kingdom to consider is that of Canada. Canada entered into an investment treaty with the United States in the 1990s, which was Chapter 11 of the North American Free Trade Agreement. Following that agreement, the last time I checked Canada has been subject to 34 or 35 claims. About a handful of these claims have been lost and a couple of other claims have been settled. A couple of these settlements have been in favour of the investor, and I do not think there is any reason to expect the UK not to be subject to a similar number of claims as 8% of US outward foreign direct investment stock is in Canada while 13% is in the United Kingdom. Bearing that statistic in mind we would expect more claims against the United Kingdom, all else being equal. All the top 100 of the top 500 companies in the United States operate in the United Kingdom in all sectors of the UK economy, ranging from services, manufacturing and finance to natural resources. And it is difficult to claim that the UK should somehow be exempt from claims by US investors when Canada was not.

Lord Goldsmith: I disagree with that very strongly. I think that is an odd way of looking at it. I think the reason why the UK is not subject to successful claims is the nature of the

53 Note by witness: Achmea v Slovakia, PCA Case No 2008-13, Award of 7 December 2012 (not public); Achmea press release, "International arbitration tribunal rules in favour of Achmea", 7 December 2012.
protections that exist already under UK law and practice. Claims can be brought only where there is, usually, an arbitrary or capricious action of the state in relation to an investment, and there is a range of reasons why that does not happen here. We have a strong democracy, and we have strong scrutiny by Parliament of measures such as expropriation. We have the Human Rights Act and the European Convention on Human Rights, which provide strong protection against those sorts of events. We also have a very objective, fair justice system that deals with claims where people have issues. So I would not expect there to be significant claims under ISDS. Claims may be brought against the UK—to date, there have only been two publicly known investor-state arbitrations involving the UK—and successful claims would be very limited.

Q213 Lord Trimble: Lord Chairman, I think my question 3 follows on very naturally from what Lord Goldsmith has said. It refers to written evidence from the TUC about the ISDS, but the substance of the view is that we have a robust legal system in the United Kingdom—in which case do we actually need to have these dispute settlement systems?

Lord Goldsmith: The point is that it is a reciprocal arrangement. We cannot say, “You do not need protection against what we do, but we want protection against what you do”. I think you have to recognise the reciprocity, and therefore you have to accept that in order to get protection for our nationals in other countries.

Lord Trimble: I accept that, but in your opening comments you said that the ISDS is merely a process for handling claims and that the really important thing is the substantive protections in the treaties. You mentioned a couple of things such as protection against expropriation and unfair treatment. Is that the sum total, because it seems to me that the really important thing is, as you say, the substantive protection in the treaties, and the ISDS is just a matter of enforcing that? I therefore wonder what the full extent is of the protection that is in the treaties.

Lord Goldsmith: That is a matter for agreement. There are some principles of customary international law that are likely to be included, but they are to do with expropriation except against compensation. Typically you would include expropriation, direct or indirect. Fair and equitable treatment is commonly included, but you can define what you mean by fair and equitable treatment. What we have seen of the proposed Canadian-EU free trade agreement defines fair and equitable treatment quite closely, and one of the things that it will do, therefore, is not touch so much perhaps on the regulatory space. You can provide for a most favoured nation clause—that is quite common. No discrimination will be quite common as well. Those are the sorts of areas that will typically be included in an investment treaty, but it is a matter for negotiation and agreement.

Lord Trimble: And presumably the TTIP negotiations have not reached the point of discussing these things yet.

Lord Goldsmith: Yes, that is right.

Q214 The Chairman: Dr Poulsen, I think that you were going to add something, but I did not turn to you.

Dr Lauge Poulsen: I have a couple of comments. First of all, I am not quite clear why we should not expect similar experiences in the UK that Canada has experienced. Canada is also a strong democracy. Canada also has strong protections for foreign investors. I have seen no evidence to the contrary. Canada also has independent courts that are effective in adjudicating disputes, so I am not quite clear where the systematic differences between Canada and the UK are so that we are in the position to say that the UK will be insulated from claims. Canada is no banana republic.

When it comes to why we should include these sets of provisions in a US agreement, again I am not quite clear what the actual problem is in protecting foreign investment in the United States. The United States has a strong tradition, just like the UK, of protecting capital. It has
independent and efficient courts. So it is not entirely clear what exactly the political, economic or institutional rationale is for providing an additional set of protections to what is already there in the United States.

**Lord Trimble:** Look at the way BP was treated by the American Government and courts. That was pretty indefensible.

**Dr Lauge Poulsen:** First of all, in any court system we can come up with instances where an individual investor or person has been disgruntled about how they have been treated by a court system. What we need in order to justify an internationalised dispute settlement mechanism that allows investors to sidetrack domestic courts is systematic and concrete evidence that courts in the United States, or even courts in Europe, are somehow systematically biased against foreign investors. I have not seen that evidence thus far.

**Lord Goldsmith:** I just see that as a misunderstanding entirely of the need for protection. First of all, the UK is a party to, I think, 90 bilateral investment treaties. As far as I know, there have been only two claims against the UK, one of which was withdrawn, the other was complicated and to do with the Channel Tunnel. I think there is experience already as to how this operates as far as the UK is concerned. With the US, there are issues. The Committee may know about the Loewen case. In the Loewen case, a Canadian investor was sued in the courts of Mississippi on a commercial dispute for about $5 million—that was all it was. The Mississippi court, with a judgment by jury, came up with a judgment of hundreds of millions of dollars. The Canadian investor was, he believed, very badly mistreated in the Mississippi court and had been accused of all sorts of things by counsel. In order to appeal, he had to put up a bond that was a multiple of the judgment, which was virtually impossible. He ended up spending $125 million in a settlement, because that was all that could be done. That would not happen in a London commercial court. I do not think it would happen in New York either, but it can happen in parts of the United States, unfortunately, without reasonable protection.

**The Chairman:** We need to get on to some other questions, but Dr Poulsen, you wanted to comment.

**Dr Lauge Poulsen:** A brief rebuttal. First of all, after that claim there was tort reform in Mississippi to try to address that problem. Secondly, investor-state arbitration based on NAFTA did not help the investor in that case, so I do not think it is a useful anecdote to bring in to justify investor-state arbitration.

**Lord Goldsmith:** I will send the Committee a note as to why that is not actually a relevant comment.

**Q215 The Chairman:** Can I just ask one supplementary question before we go on to the next question? Who generally bears the costs of litigation?

**Lord Goldsmith:** It is normally both parties, although there is an increasing tendency for the unsuccessful party to bear some of the costs of the arbitration. That is not specifically provided for in the ICSID system. It can easily be provided for in a treaty if one wants to, but generally the losing party should pay, or generally both parties should bear their own costs. On the whole, investors are not ordered to pay, but states quite frequently are.

**The Chairman:** But if the state wins, presumably it does not pay.

**Lord Goldsmith:** No, it would not pay if it wins, unless it has been thought to be guilty of some unreasonable conduct in the conduct of proceedings.

**Q216 Lord Foulkes of Cumnock:** Lord Chairman, this is much more interesting because the two witnesses disagree with each other. They are by far the best we have had so far.

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54 Note by witness: Ashok Sancheti v United Kingdom, UNCITRAL (1976) (confidential)
55 Note by witness: Loewen Group, Inc. and Raymond L. Loewen v. United States of America, ICSID Case No. ARB(AF)/98/3, Award, 26 June 2003
Lord Sandwich has also anticipated the first part of my question, but that helps because Dr Poulsen said we can expect more claims against the United Kingdom. It has been suggested to us that if there are claims to—to use your phrase—“protect private capital”, that could create problems. Let us take a scenario in the United Kingdom in which there had been lots of American investment in the NHS and we wanted to pull back. Would that cause tremendous problems for a Government wanting to reverse policies on the NHS?

**Dr Lauge Poulsen**: I think that the potential scenario would depend in part on the sorts of promises that are made to American investors in the sector and whether the measures taken would undermine the business of those American investors operating there. Again, a potentially relevant case is the case against the Slovak Republic trying to roll back the liberalisation of the national health industry. The Slovak Republic lost about £18 million which, related to the size of the UK economy would be about £0.5 billion against the UK. And as economists would say, £0.5 billion here and £0.5 billion there, that adds up to real money in the end.

As to whether we can expect there to be significant problems for the NHS, I do not think that we should exaggerate that risk, but it is difficult to sit here and argue that it can be ruled out.

**Lord Foulkes of Cumnock**: Lord Goldsmith was shaking his head. He might be advising the next Government.

**Lord Goldsmith**: I am quite happy to do that, if asked. The Slovak case was ultimately decided not on the question of the change in policy but on the question of the prohibition on the repatriation of profits, which is quite a common problem in international trade. The Canada-EU agreement proposes a number of specific protections which are carefully drawn up so that you maintain the regulatory space and protect public health and things of that sort. That is why it is very important that the substance of what is agreed is more important than the mechanism for dealing with it.

It is also important to note that it has never been impossible for states to nationalise. It is common that it happens. It is the classic example. It is nationalisation on a discriminatory basis or nationalisation without compensation which causes the problem in investment protection. I do not know whether this is the reason that we disagree, but the firm in which I am now a partner does a great deal of investment protection work across the world and therefore we have seen many examples of how states can act in a way which creates legitimate claims and cases where people would like to make claims but are unable to because the protections do not cover the particular conduct and the Government were justified in doing what they were doing.

**Q217 Baroness Henig**: Can I change the focus to United Kingdom investors? To what extent have they taken advantage of these mechanisms in existing UK and EU investment treaties and how would you weigh up the costs and benefits to them of the inclusion of this mechanism in TTIP?

**Dr Lauge Poulsen**: We are aware of around 30 claims that have been filed by UK investors. The first bilateral investment treaty claim was under a UK investment treaty with Sri Lanka. In a couple of these cases, UK investors have been successful, for instance, against Argentina for measures it took after its financial crisis. But I would like to add—and Lord Goldsmith and I are going to disagree again—that the fact that UK investors have used these agreements and have occasionally been successful in obtaining compensation is not necessarily evidence that these agreements are necessary for UK investors to protect against political risks, such as expropriation. If a UK investor is genuinely concerned about expropriation in a country like India, for instance, it can take out political risk insurance against those acts, from either the UK Government, MIGA, which is an insurance provider under the World Bank, or the large private market that insures against political risks, such as
expropriation. The sorts of risks that are included in insurance do not cover the totality of the risks that are covered by investment treaties but it gets quite close.

Secondly, if you are genuinely concerned as an individual UK investor about the operation of the courts in the host state, you have the ability to negotiate an investor-state contract with that Government that provides for recourse to investor-state arbitration. I am not saying that investment treaties are not important for the protection of foreign investment, but that they are not necessary for the protection of foreign investment because there is already a series of layers of protections available to UK investors and others.

Lord Goldsmith: UK investors have ISDS this in a number of areas. I think that there are two fundamental things that investment protection is providing. One is a guaranteed level of protection. Even if a national law provides for protection, it is open to the nation state to remove that protection. I have examples of where countries have removed protections that they had promised and had put into agreements but were just removed because it is all subject to national law. First of all, it provides a level of protection under international law, and secondly, it generally provides an opportunity for having your dispute determined by an objective independent tribunal, rather than by a national court. Sometimes national courts act against an investor because they are not prepared to act against their own Government, and sometimes it is simply because the Government passes laws which the national courts have no option but to obey.

Insurance may be available—it is a very interesting observation—but the other suggestion is that investors can negotiate investment agreements. They can from time to time, but unless they also provide for the application of international law and for an international dispute resolution mechanism, they do not achieve anything. That is only saying that you have a private investment treaty rather than a public investment treaty. I do not really see the benefit of that. That is why the protections are there.

Baroness Henig: I am trying to get a handle on what is causing the differences between you. Would it be fair to say—it may not be—that Dr Poulsen is telling us what should happen and Lord Goldsmith is telling us what actually happens? Is that where the difference is coming from?

Dr Lauge Poulsen: I would strongly disagree with that statement. There have also been comments before to the effect that the reason I take this position is because I sit in the ivory tower, whereas Lord Goldsmith is out in the real world. I am not quite sure that that is true.

The important point is that the Committee is supposed to be discussing the necessity for these sets of protections, not in general but in an agreement with the United States. It is up to the proponents of investor-state arbitration to provide us with strong political and economic justifications for why these sets of provisions are necessary in the United States.

Secondly, even if you disagree with all the criticisms that are occasionally made against investor-state arbitration, the fact of the matter is that there is strong and growing discontent with the prospect of allowing all American investors to sue all EU Governments outside European courts. While you may disagree with that perception, the discontent—which, incidentally, we saw in the House of Commons just two days ago—is important because the agreement has to be ratified. So ultimately you need very strong justifications for why we would want to risk the political support for the transatlantic trade agreement as a whole derailing because provisions are included that, in the case of the United States, are not even necessary.

Lord Goldsmith: I have not set out to disagree with Dr Poulsen at all. I have set out to try to assist the Committee in an important task. To my mind, the fundamental point is that no one has yet come up with a better system for investment protection than a system of protections that are negotiated between the member states or groupings of member states accompanied by an independent, objective system, such as international arbitration, to
enforce them. I am sure that the Committee would do a great service if it were to make observations on the extent of protections and on whether it finds, for example, that there are aspects of the Canada-EU free trade agreement which would be valuable to bear in mind when negotiations take place. I do not think it is for the proponents. Investment protection is there because it serves a very real purpose because it is better than diplomatic protection. Diplomatic protection, even when it moved away from military protection, still politicised these disputes in an unsatisfactory way. There may be arguments about elements that could be negotiated or should be changed, but I do not see that there is a better system than this sort of agreement.

Q218 Baroness Young of Hornsey: Before I ask the question that I have down before me, I have a question that kind of follows on from what Lord Goldsmith said. In the written evidence we have received from the TUC, it notes that Australia has recently reaffirmed its refusal to include any such provisions in any future trade agreements. Would you like to comment on that, especially in the context of what you have just said about the necessity of having ISDS?

Lord Goldsmith: I thought that it was the other way round. I must check. I thought what happened was that Julia Gillard’s Government announced that they were no longer going to include ISDS in their trade agreements, but that was then reversed under the new Government, but I had better check that in the light of what you say.

Baroness Young of Hornsey: Even if that was the case, it would still be interesting to know what your view is on why that decision had been arrived at.

Lord Goldsmith: There are a number of theories about why Julia Gillard’s Government reached that view. One of them may have been the very controversial case brought by Philip Morris, which challenged the Australian plain-packaging requirement. We do not know whether that case is going to succeed because that arbitration is still continuing. If that is an area of concern, one can cover that by the protections and carve-out, as the EU-Canada trade agreement seeks to do. For example, it carves out protections for the benefit of public health. One can do that. Whether that was the reason for it, or whether it was some other reason, I do not know.

Dr Lauge Poulsen: I think that one of the reasons was that, according to the Australian Government of the day, there was a perception that you should have very strong justifications for giving all foreigners the right to sidetrack domestic courts. In the 2005 investment treaty between Australia and the United States, the Australian Government argued that there was no need for an additional adjudication mechanism at the international plane when we talk about Australian or US courts. That was the justification for excluding those provisions in the US-Australia free trade agreement, and the United States hesitantly agreed to exclude them, which is important to keep in mind. It is the same justification that the European Parliament is using when saying that the EU can include these sorts of provisions in free trade agreements but only when necessary and justified. And I would challenge proponents of investor-state arbitration to tell me why it is necessary when we talk about the United States of America, given its court system and its existing levels of protection.

Q219 Baroness Young of Hornsey: Thank you. If I may I will now go on to my other questions. Lord Goldsmith, where do you think there are legitimate causes for concern in the mechanism, and which concerns are less well founded? Perhaps you have already elaborated on some of those. Is there a way of reconciling public concerns with an ISDS mechanism?

Lord Goldsmith: If I may say so I think that is absolutely the point. A number of criticisms are made of investor state dispute resolution and ISDS that are ill founded, such as that this is a secretive process or is not objective. One looks at the way tribunals are constituted.
There is greater transparency in any event in, for example, ICSID—the International Centre for Settlement of Investment Disputes—which is the principal system through which these disputes get resolved. Generally the decisions are in fact produced. It is true that in certain other systems they are not. There is about to be a new regulation on transparency in the UNCITRAL system, which is the other very popular system for investor state arbitration. That comes into force this year. So I do not think that those are justified concerns. The area where there is legitimate scope for discussion as to the extent of the protections relates to how the regulatory space of a particular country may be affected, but that is something you reconcile—if I may use your term, Baroness Young—by the substantive protections that are provided. I come back to the Canadian-EU example, where people obviously thought very hard about how you carve out the areas that matter. You cannot just say, as some people do, that the state should be allowed to do what it wants. I have examples of cases that I have been arguing against states that have simply taken assets without compensation. Belize has taken a telephone company but has still not paid compensation years after taking it. It was entitled to nationalise the telecommunications, if that is what it wanted to do, but not without any compensation. That dispute still rolls on. It is important to have the substantive protections, but you reconcile those areas. The principal area, to my mind, is interference in proper regulatory activity by the state by the substantive protections that we put in place.

Dr Lauge Poulsen: Very briefly, first, I doubt the cases referred to by Lord Goldsmith were the US refusing to pay compensation for expropriation. Secondly, there is a range of criticisms against investor state arbitration. I do not think we have time to go through all of them here, but the most important question one has to ask oneself is: why can you not find a single serious economist who can tell you that it is useful to give one class of investors—that is, foreign investors—rights that domestic investors do not have, the most important right being recourse to investor state arbitration? That is institutionalised inequality, and it would be very hard for you to invite any economist to come here and tell you that that is somehow a useful idea. That is the most important criticism of this regime. The key thing that we are talking about today is an agreement with the United States. Why is this necessary? I do not think we have heard answers to that question.

Baroness Quin: I do not know whether Lord Goldsmith wants to respond to that.

Lord Goldsmith: I would much rather hear your question, Baroness Quin.

Q220 Baroness Quin: My question follows on from Baroness Young’s question. In two lots of written evidence to us, the phrase has come up that ISDS creates “a regulatory chill” that stays the hand of government to regulate in the public interest for fear of litigation. I just wondered whether you are aware of concrete examples of this.

Lord Goldsmith: It is suggested that there may have been that effect as a result of the Philip Morris case against Australia in relation to a couple of countries that were thinking of introducing plain packaging for cigarettes. I am not sure that there is empirical evidence yet that that is the case, but that is the sort of area that one would look at. The case has not been decided, so I cannot judge what it will be, but it is a pretty extreme case of an investment claim. It has created a lot of controversy within the community that deals with these cases all the time as to whether it is a legitimate claim or not. It was not an expected claim. That is why I think it would be legitimate when one is negotiating an arrangement with the United States to look at whether there are carve-outs or definitions of what fair and legitimate expectation may be.

56 Note by witness: UNCITRAL Rules on Transparency in Treaty-based investor-State Arbitration will apply in relation to disputes arising out of treaties concluded on or after 1 April 2014.
Let us take Dr Poulsen’s point about courts. Anyone who does any business close to the United States knows that there are issues in relation to state courts and to jury awards, some of which have been corrected and some of which have not. I gave the Mississippi example. Maybe that has now been corrected by legislation. Still, it was a very difficult issue for the investor involved. If you define carefully the level of protection to be accorded to investors, you can give legitimate protection. I do not know whether Dr Poulsen is right that no economists have come before this Committee to explain the benefits, but I have always understood that the principal benefit of investment protection is that it encourages foreign investors to invest. They do not have to invest in these countries. If they do not think their investment is protected or if they think it will be taken away, that is the argument for why they need protection. Maybe one could do something else, but that, I think, is the reason for it.

Q221 Lord Jopling: You have both referred at various times to the Canadian agreement. Let us turn to that agreement and discuss it in terms of its relevance to the TTIP negotiation. I think it would be helpful if you could draw your various points together and tell us the extent to which you think CETA highlights various problems that have been expressed over particular innovations and the key features of it, with what you know of the Canadian agreement. How much of it is relevant and helpful, and what other arrangements would you like to see in the TTIP negotiation that would improve the Canadian deal?

Lord Goldsmith: If I may, I think the most important thing about CETA is that it demonstrates that the question of what protections you have is a matter for negotiation and agreement, and therefore one can deal with concerns in that way. To my mind, the most important elements are, first, the definition of fair and equitable treatment. That can be quite a broad concept and you can legitimately ask what exactly that means in the hands of the body of arbitrators. CETA defines that quite carefully—at least, that is the intention behind it—so it would apply only if there was a denial of justice in criminal, civil or administrative procedures, a fundamental breach of due process or manifest arbitrariness: things of that sort. You would identify clearly what an absence of fair and equitable treatment is. It also, importantly, picks up the question of what is meant by the phrase “full protection and security”. That is quite a common phrase in investment treaties and it can be open to different interpretations. CETA says that that will apply only to the physical security of investors and investments and would not cover protection against changes in laws and regulations. That is the sort of thing that the negotiators could look at.

It also provides for some novel ideas in relation to the arbitral tribunals. That is less important in my view, but again there are things that could be looked at, such as both parties having to agree all the arbitrators. Normally both sides choose their own, subject to the obvious disqualification that they are then in place and the two will then choose the third arbitrator. It is suggested that a list should be agreed between the two parties—the EU and Canada—but that the arbitrator should be chosen by agreement. There are a number of features of that sort that are worth looking at when the negotiations take place.

Q222 Baroness Coussins: We have not seen the final text of CETA, of course, and I do not know whether anybody has, but we have been led to believe by earlier witnesses to this inquiry that it includes a new approach to this mechanism, including aspects such as binding arbitration, cost control, more transparency and a form of words that excludes legitimate public policy areas. Dr Poulsen, if those innovations were also made part of TTIP, would they overcome your reluctance to accept that this kind of mechanism was important? Would they get rid of your concerns and criticisms?

Dr Lauge Poulsen: No.

Baroness Coussins: You would still be worried, even if there were all those things.
Dr Lauge Poulsen: The Commission has to be applauded for all the initiatives that it has taken in further clarifying the substantive standards that Lord Goldsmith spoke about and for useful language when it comes to the procedural provisions for the arbitration process. But that still does not go to the heart of the matter, which is why, when a Canadian investor runs into a dispute with the UK Government, should that Canadian investor not go through UK courts? I am not quite clear why a Canadian investor should have recourse to another adjudication mechanism when running into disputes with the UK Government that UK investors do not have. As I said before, the fundamental question of why foreign investors should have access to domestic courts that domestic investors do not have has not been answered by the European Commission. So while I agree that many of the provisions on the table in CETA are useful, they have not provided an answer to why this is necessary in the first place when we talk about the protection of investment in the UK or the protection of investment in Canada.

Lord Goldsmith: That answer illustrates the real difference between us. I think that Dr Poulsen is a proponent of the Calvo doctrine, which is that if you invest in another state you have to subject yourself to the remedies of that state and nothing else. That is a legitimate point of view, but I think it is discredited today as a way to promote investment. People will not do that.

Dr Lauge Poulsen: I think I have to add to that comment. I have seen no evidence that the absence of an investment treaty with the United States means that UK investors are not investing in the United States because of concerns about political risks. I have seen no evidence that US investors are investing less in the UK because of the absence of an investment protection agreement. I would challenge anyone who says that they have seen such evidence. I would very much like to see it. Secondly, I am not saying that there is no justification for an internationalised dispute settlement process if there has been a fundamental denial of justice in domestic courts, for instance. Then it makes sense. As we see in the European Court of Human Rights, you have to go through a domestic court first, then if something goes wrong you can take it to the international level. But in CETA Canadian investors do not even have to go through the UK courts. Now Lord Goldsmith is telling us that that the absence of this mechanism will somehow mean that there will be less Canadian investment in the UK. I am not quite sure that is the case.

The Chairman: Are we saying that we need better protection for our investments in the United States, and that therefore there is a price to pay for that?

Dr Lauge Poulsen: Again I am not sure, Lord Chairman, that UK investors need better protection in the United States than is already available in the United States.

Lord Goldsmith: Just do not go to Mississippi.

Q223 Baroness Bonham-Carter of Yarnbury: I think my question has already largely been dealt with. It goes back to CETA and whether it proves a useful precedent, which I think Lord Goldsmith has answered, but I will expand it a bit. Bearing in mind the difference between the EU and Canada in the US, as it were, do you think it is possible to negotiate a similar deal between the US and the EU to the CETA one? We know about the CETA one.

Lord Goldsmith: I am not party to or even close to the negotiations, or the pre-negotiations, that have taken place, so I have no idea where the differences may be. My fundamental point is that if one believes that it is right in general to have a system of protection but one is concerned about particular aspects of how that protection operates, the right way to approach it is then to negotiate. I am not saying that CETA is necessarily absolutely right, but it illustrates the sort of things that one can do in negotiation, and this Committee can through its expert opinion guide the negotiators in a particular direction, which I think would be very valuable.
Dr Lauge Poulsen: The United States has traditionally been very hesitant about departing from its model bilateral investment treaty. Whether it is going to be the case in these negotiations is, again, not something that I am privy to. What is important, as I have highlighted before, is that the United States has historically been willing to exclude investment protection from its agreements, provided that there is no justification, as in the case of Australia, or in some other cases when the other party has tried to insist on provisions that depart from US treaty practice. One can speculate that if the EU is trying to use CETA as a precedent to negotiate with the United States, we could have a situation where ultimately the United States says, “We would rather have no agreement on investment protection than an agreement that follows the Commission’s proposals”. But, again, that is speculation.

The Chairman: Okay, well thank you both very much. We have come to a conclusion a little earlier than we had expected, but thank you both for the fullness of your replies and for the diversity of them from time to time.
Rt Hon. Lord Goldsmith QC – Supplementary written evidence

1) TTIP, ISDS and the Development of International Trade and Investment

A summary of the main points I made during the course of my evidence before the Committee, supplemented by some additional clarifications, are set out in outline below:

- The main purpose of ISDS is to provide protection for foreign investors against political risks when doing business abroad by providing an objective, independent and neutral means of resolving disputes with host governments. The alternative to ISDS is to require investors to petition their own governments to enter into politically contentious state-to-state diplomatic negotiation or dispute settlement (e.g. before the International Court of Justice or the WTO) on their behalf. The “de-politicization” of investment disputes under ISDS diffuses what may otherwise be contentious state-to-state disputes, and as such, it promotes the broader aims of international peace and security.

- European states have been at the forefront of the development of ISDS. They have pioneered the system: European states have negotiated the most ISDS agreements, while European investors have brought more than 50% of all known ISDS claims.

- ISDS mechanisms do not provide additional substantive protections or guarantees beyond those negotiated and agreed to in the investment treaty between the parties, but simply provide a means to enforce the standard of protection which states have freely entered into.

- No dispute resolution mechanism is perfect. Some have expressed concerns about the present functioning of ISDS. In particular, some have pointed to the potential of ISDS mechanisms to curtail the policy autonomy of states. However, opponents of ISDS have been unable to propose an effective alternative to the system, or a viable solution to the very real risks faced by foreign investors. While it is clear that ISDS has its difficulties, it is also clear that it serves a real and legitimate function in protecting the rights of investors and upholding the rule of law. Therefore, the question should not be whether to include ISDS provisions or not. Rather, the question should be how ISDS provisions can be best tailored to meet the aims and objectives of the parties and how to balance considerations of investor protection with the legitimate policy concerns of states.

- The effective response is to draft the substantive investment protections in international investment agreements more carefully in order to accommodate and affirm the sovereign right of states to regulate in the interest of their populations. Provisions are now being drafted better to strike an appropriate balance between the rights of investors and the legitimate policy objectives of states. TTIP provides the opportunity to create a “gold standard” ISDS provision which can achieve these goals, and serve as a precedent in future negotiations.

- In addition, while the correct response to concerns about national regulatory autonomy is better to define the investment protections and public policy exceptions, it should also be added that fears about “regulatory chill” have not been substantiated.
One commentator discussing the impact of NAFTA on Canada opined: “Although certainly creating some limitation on policy space there does not appear to be sufficient evidence to suggest investor-state claims under NAFTA to date have significantly undermined Canada’s domestic rules for health/safety or education, nor substantially inhibited Canada’s ability to propose and implement essential environmental regulations.”

- The existence of an ISDS mechanism does not mean that either (a) states will necessarily be subject to a large increase in claims or (b) if more claims are initiated, that the investors will be successful, provided that the state does not treat investors in an arbitrary manner and complies with the provisions of the investment agreement.

- Furthermore, the position of Australia, which was often cited by opponents of ISDS, has also evolved. Despite the initial position of the Gillard government on the removal of ISDS mechanisms from investment agreements, the new administration recently committed to considering ISDS clauses on a case by case basis and included an ISDS provision in its most recent free trade agreement with Korea, concluded on 5 December 2013.

- While the remit of the Sub-Committee is to consider the implications of TTIP for the UK, the wider political and negotiating context cannot be ignored. TTIP not only concerns the relationship between the US and the UK or the US and the most developed EU states, but necessarily includes all EU states. It is to be expected that the US will be focused on ISDS, not because of countries like Britain and France, but because of the wider EU membership (and the new member states in particular).

- ISDS is a reciprocal arrangement. The UK and EU would expose themselves to a charge of hypocrisy if they fail seriously to consider the inclusion of ISDS in trade agreements with other developed countries, when they insists on these same provisions when negotiating with developing countries. The legitimate question to consider is, if ISDS is not appropriate for the US or EU, why should developing states accede to these provisions. This political issue is likely to affect the ability of the UK and the EU to negotiate ISDS provisions in future trade deals (in particular, with countries with high political risk).

2) Clarification on the Loewen Case

At page 13 of the transcript of evidence, I indicated that I would provide further information about the Loewen v US case, an investor-state arbitration initiated under Chapter 11 of the North American Free Trade Agreement (NAFTA).

As the Sub-Committee will recall, the Loewen Group, a Canadian funeral services company, was sued in a Mississippi court by a local competitor in relation to a commercial dispute valued at approximately $5 million. The case was heard before a jury which proceeded to issue an unheralded award of $500 million in damages. Over the course of the proceedings, the opposing counsel referred only in passing to the contractual issues underlying the

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58 The Loewen Group Inc and Ray Loewen v United States of America, ICSID Case no ARB(AF)/98/3.
dispute and instead sought to portray the Loewen Group as an upper-class and corporate predator, in contrast to the “local” plaintiff.

In order to appeal the judgment, the Loewen Group was required under Mississippi law to post a supersedeas bond equal to 125% of the total award within seven days. Confronted with this insurmountable hurdle, the Loewen Group settled the case for $175 million. The Loewen Group and its director Ray Loewen proceeded to file an investment arbitration against the United States, alleging numerous violations of NAFTA, including the duty to provide fair and equitable treatment, full protection and security and the prohibition against discrimination.

The NAFTA arbitral tribunal came to the “firm conclusion” that the Mississippi trial amounted to a “miscarriage of justice” and a “manifest injustice”, citing among other factors, the xenophobic, racist and class-based insinuations made by counsel for the other party at trial, the trial judge’s failure to prevent these statements and to ensure due process. In practice, such jury trials expose foreign investors to biases in favour of local litigants against large, multinational corporations. Furthermore, the state procedural rules on stay of enforcement pending appeal effectively operated in such a way as to preclude the Loewen Group from exercising its right of appeal, forcing it into settlement.

Ultimately, the NAFTA tribunal dismissed the case for jurisdictional reasons unrelated to the Loewen Group’s treatment before the Mississippi court, namely the claimant’s failure to exhaust all available local remedies and its “loss” of Canadian nationality: the company became insolvent in the aftermath of the Mississippi judgment and, during court-approved bankruptcy reorganization, the assets of the Canadian company were transferred to a US one.

In sum, the facts of the Loewen case powerfully illustrate that, even in a country with a highly developed and sophisticated legal system, foreign investors are not always guaranteed fair and impartial treatment. The importance of the case lies not in the final decision, but on the fact that such a situation can manifest itself in a country with an established legal system in the first place. The state later reformed its tort laws and placed a cap on the amount of damages available. However, subsequent revision of tort laws does not obviate the need for effective investor protection and affords no retrospective remedy to a claimant that has been wronged. Moreover, the availability of ISDS no doubt contributed to the movement to reform the Mississippi rules, in light of the huge publicity generated after the Loewen Group initiated arbitration in 1998.

3) ISDS in the EU Context

At page 4 of the transcript of evidence, Lord Lamont of Lerwick asked about the experience of EU member states as regards ISDS mechanisms. I would like to make a few more clarifying observations on this issue. It is evident that EU investors have derived great benefit from the existence of investor-state dispute resolution mechanisms in international investment agreements. EU investors frequently have recourse to investment-treaty arbitration: in recent years, over half of all registered investor-state disputes were initiated
by claimants established within the EU. Conversely, EU member states appear far less frequently as respondents in investor-state arbitrations, and the majority of arbitrations brought against EU member states in 2012 involved the newest EU member states. However, once again, EU investors are the primary instigators of this trend: our survey of recent UNCTAD data on investor-state arbitration indicates that over 70% of disputes against EU states from 2007 to 2012 are intra-EU arbitrations, in which both parties are from the EU. Similarly, of the 16 investor-state arbitrations brought in 2013 against EU member states pursuant to the Energy Charter Treaty, 13 were brought by EU investors.

With the Treaty of Lisbon, foreign direct investment was integrated into the EU’s common commercial policy for which the EU has exclusive competence. The common commercial policy is responsible for driving international trade and economic relations across the EU. Therefore, when considering whether an ISDS mechanism should be included in the TTIP, discussion must not be confined to the benefit for UK interests and investors but must have regard to the costs and benefits for the EU as a whole. The European Commission has, however, indicated that if an EU member state is found liable in an investor-state dispute, financial responsibility will be fairly allocated to the party responsible for the acts which gave rise to the foreign investor’s claim. In this regard, I draw the Sub-Committee’s attention to the European Commission’s Proposal for a Regulation establishing a framework for managing financial responsibility linked to investor-state dispute settlement tribunals established by international agreements to which the European Union is party (COM(2012) 335 final).

21 March 2014

59 The European Commission states that between 2008 and 2012, 113 out of 214 new ISDS cases initiated were brought by EU investors. Twelve of these cases were initiated pursuant to the Energy Charter Treaty; the remainder were brought under bilateral investment treaties. See European Commission, Factsheet: Investment Protection and Investor-to-State Dispute Settlement in EU agreements, November 2013, available at: http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151916.pdf

Furthermore, in 2012, the most recent year for which data is available, 60% of the 58 investor-state claims registered worldwide were initiated by investors established in EU Member States. See UNCTAD Database of Treaty-based Investor-State Dispute Settlement Cases, available at http://iiadbcases.unctad.org/

60 By the end of 2012, 94 investment treaty claims had been initiated against EU Member States. 64 of these claims involved just five countries, namely the Czech Republic (20 investor-state claims), Poland (14), the Slovak Republic (11), Hungary (10) and Romania (9). See UNCTAD, Recent Developments in Investor-State Dispute Settlement, May 2013, available at: http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf


62 Article 207 Treaty on the Functioning of the European Union
Lord Green of Hurstpierpoint, Minister of State for Trade and Investment, and Edward Barker, Head of Transatlantic & International Unit, Department for Business, Innovation and Skills—Oral Evidence (QQ 113-127)

THURSDAY 21 NOVEMBER 2013
10.05 am
Witnesses: Lord Green of Hurstpierpoint and Edward Barker

Members present
Lord Tugendhat (Chairman)
Baroness Bonham-Carter of Yarnbury
Baroness Coussins
Lord Foulkes of Cumnock
Lord Jopling
Lord Lamont of Lerwick
Baroness Quin
Lord Radice
Earl of Sandwich
Lord Trimble
Baroness Young of Hornsey

Examination of Witnesses

Lord Green of Hurstpierpoint, Minister of State for Trade and Investment, and Edward Barker, Head of Transatlantic & International Unit, Department for Business, Innovation and Skills

Q113 The Chairman: Lord Green, thank you very much for coming before the Committee. I know you are nearing the end of your time as a Minister and therefore this is a very good opportunity for us to get an overview from you, as well as to put a number of specific questions. As I think you know, this meeting is on the record and it is part of our inquiry. We have sent you a list of questions, but it is only fair to say that a number of other questions will arise. I will also draw on some of what I learnt in the United States last week, so we will follow this line of questioning, but there will be others as well. One or two of my
colleagues, and I think they are quite right, would be very grateful if before we ask you questions you could just give your sense of where TTIP is and how you think it might evolve in the coming months.

**Lord Green of Hurstpierpoint:** My short answer to that question is that it is very early days. The negotiations have barely got going. There have been two sessions. The first one was a “getting to know you” session, and the second one, which was delayed because of the government shutdown, was essentially about process: how we do these things. A third one at official level is due on 16 December, which is the first time when it is likely that anyone will table any kind of substantive proposals, probably focusing mainly on tariffs, because they are the easier part of all this. They are also the less significant part. The first meeting at political level between Messrs Froman and De Gucht will take place on a date that has not finally been fixed, but I think it will be in late January, so it is early days.

I think in later questioning you will be asking about my sense of the American mood in the business community. My belief is that those who think about it get interested in it, but there are an awful lot of parts of the American business world that do not think very much about TTIP and are not terribly fired up about it. The prize is enormous, of course, if we can get one done, and therefore it is worth working very hard at this. The ambition of having it completed by the end of next year is probably exactly that: ambitious. If this turned out to be a deal that was largely identified by some time in the spring or summer of 2015, I do not think that would in any way a failure; on the contrary, it would be a remarkable achievement. The summary point is that we have a long way to go and we are barely off the starting blocks.

If I make one other point, it is that we need to remember that both on the American side and on the European side, there are other major preoccupations for those leading the negotiations. The Americans want to wind up TPP by the end of this year, if they can, and Bali is coming up in one and a half weeks’ time, which will be my last hurrah, where the trade facilitation deal is on the table and everybody is focusing a lot of effort on getting that done at the moment. These other preoccupations are probably not helping a very single-minded focus on the TTIP at the moment. I think and believe that it will be in the next six to eight weeks, however, because after the end of the year TPP will theoretically have been initialled and a closer focus on TTIP will be possible.

Q114 **Lord Foulkes of Cumnock:** I thank Lord Green for the answer you have given the Chair and say how pleased I am to see you at this Committee. You are obviously very enthusiastic about this TTIP. You are very knowledgeable, you are right on top of it, and yet you are about to resign. Why?

**Lord Green of Hurstpierpoint:** I will have done this job for three years by then, which is a year longer than I said I would do it for as a minimum, and it is three times the average length of time of the last nine Trade Ministers. I believe that if you are coming in from outside, as I have done, you have either made an impact over that sort of timeframe and it is time for somebody to take it on to the next phase, or you have failed to make an impact. The conclusion is the same in both cases. Added to which, I might have a conversation with my wife, if I were not careful, about the amount of travel that goes with this. I have been in 56 countries in three years.

**Lord Foulkes of Cumnock:** What do you do now, after this?

**Lord Green of Hurstpierpoint:** I am going to spend Christmas in Singapore with my grandchildren.

**Lord Foulkes of Cumnock:** Are you prohibited from getting involved in any activity that might be associated with the TTIP and other related activities?

**Lord Green of Hurstpierpoint:** I do not see why I should be prohibited, no.

**Lord Foulkes of Cumnock:** Is there not some ministerial code that says you should be?
**Lord Green of Hurstpierpoint:** Prohibited?

**Lord Foulkes of Cumnock:** For a period of time.

**Lord Green of Hurstpierpoint:** I will certainly comply with whatever the ministerial code is. I thought you meant, were somebody to ask me to help the cause in some way, would I be willing to be of service? The answer would be yes.

**Lord Foulkes of Cumnock:** For payment?

**Lord Green of Hurstpierpoint:** No, I will not do anything for payment.

**Q115 Lord Jopling:** There is some disquiet on this Committee because of the failure of you and your department to respond to letters that this Committee have sent. We wrote to you in November, you were reminded in March, May, August and since, and we wrote you a letter on 31 October saying, “We invite you to explain why we have not received a response to a letter we sent you 11 months ago”. I understand that we have not had a response—certainly the Committee has not received a response—to the letter of last November, nor has it had a response to this letter written three weeks ago.

We take a pretty poor view of your control of your department, and it seems that you are surrounded by too many second-class civil servants, because this is quite intolerable. We had a similar case with another of the European Union Committees which I was involved with, where Liam Byrne also spent a year in response to a letter. For his trouble, he was denounced by the then Leader of the House, which in all my years in Parliament is the first time I have ever known a senior Minister denounce a junior Minister. Whilst, as far as I know, you are not likely to be denounced by the current Leader of the House, at least I think you should know that this Committee is pretty dissatisfied with your management of your department and the way you treat this Committee.

**Lord Green of Hurstpierpoint:** Well, I can only apologise. I am not aware of this. At least, I have no memory of this correspondence. I will certainly apologise if we have not replied. If we have not, we would owe you a profuse apology, and I will immediately look into it.

**Lord Jopling:** One is inclined to ask you whether you have ever heard of Sir Thomas Dugdale.

**Lord Green of Hurstpierpoint:** Yes I have.

**Lord Jopling:** You have. You will remember that because his civil servants let him down, he said, “Well then, I must resign”. It seems that your saying that you were not aware of it underlines the lack of professionalism by your civil servants.

**Lord Green of Hurstpierpoint:** First of all, as I said, I have no memory of it. My memory is not always perfect. First of all, I profusely apologise, and secondly, I will look into it immediately after I have left this room.

**The Chairman:** If you could undertake to reply, certainly before you depart as soon as possible—

**Lord Green of Hurstpierpoint:** I shall reply. As I say, I will look into it immediately I leave this room and will reply immediately.

**Q116 The Chairman:** Turning to the questions at issue, the United Kingdom Government attach great importance to including financial services in TTIP. My impression is that in the States there really is a great resistance to that on the part of the Treasury. It was said to be ideological by one of the people we met, and there does seem to be quite a widespread feeling that it is going to be very difficult to get financial services into TTIP. What I am not clear about, and this has not emerged from any of the evidence we have had so far, is what exactly the United Kingdom believes we stand to gain from having financial services in TTIP rather than continuing it within the regulatory discussions that take place now. Why is there this emphasis in pounds, shillings and pence, as it were? What do we stand to gain?
Lord Green of Hurstpierpoint: First of all, it is not just the United Kingdom. I think we sometimes talk about this issue as if it was only a United Kingdom hobby horse. The French are equally keen on this. It is also worth remembering that this is not just about banks; it is very importantly about insurance. In the case of insurance, which is a state-regulated matter in the United States, there would be very considerable gain for British, French and other European insurance companies in their ability to compete more seamlessly across the United States.

In the case of the banks, there are at the moment significant differences between Dodd-Frank and the current CRD proposals, which will make convergence genuinely difficult. There are two levels of concern about this. One is that convergence will be a good thing in its own right and there cannot be more than one basic right way of regulating banks. Secondly, it means that there is not a level playing field depending on exactly how those different regulatory treatments impact the ability of banks to do business on the opposite sides of the Atlantic respectively.

This will be very difficult. There is no doubt that in the US there are several different regulators with different perspectives on this topic. A regulatory dialogue that did not include financial services between the EU and the US would seem very odd, given the importance of financial services to both sides, and therefore I do think that we should continue to press for its inclusion.

The Chairman: Certainly I picked up when I was there, and others have too, that we need to reassure the Americans—I do not know if you would agree with me—that in seeking to do this, we are not seeking to undermine Dodd-Frank. That seemed to be a point that came through very clearly. Even after listening to what you have said, I wonder whether it would be possible for your department to let us have a note setting out the practical advantages. You have spoken in rather general terms. My impression, although you are much more experienced than I am, is that the reason why British and other European banks have not prospered as much in the United States as United States banks have prospered in Europe is not really much to do with a level playing field; it is that one lot of banks have been more effective than the other lot of banks. The problems of the Royal Bank of Scotland and so forth enter into this. Even in the case of insurance, my impression is that European insurers have operated quite effectively in the United States and that, inasmuch as they have been held back, I have not in the past heard it said that it was because there was an uneven playing field. If your department could let us have a note setting out in practical terms what the benefits would be, that would be helpful.

The other point I would put is that it is a difficult question, and I wonder whether it might not be advantageous to see this as something where we get as much as we can in this round but where we have a process in place for further progress down the road. Those are two points.

Lord Green of Hurstpierpoint: On the first point, I would be very happy to arrange for an informal briefing by the Treasury, which is the responsible department for financial services. We can provide an informal note or indeed they can come and provide an informal briefing; I am very happy to arrange that. On the second, in any scenario, this is going to be a matter of a continuing regulatory dialogue in financial services, as in other sectors, which will be part of the living agreement discussion framework that has been discussed as a way forward on this. Nothing that gets signed between here and, let us say, the spring or summer of 2015 is going to eliminate regulatory discrepancies between the two sides of the Atlantic on financial services.

Q117 Lord Lamont of Lerwick: The Chairman has really asked the Minister the points I would have wanted to make, but it does seem an immense task when you consider that regulation is still being formed on financial services on both sides of the Atlantic. The
banking Bill is going through this House at this moment. The detail of Dodd-Frank is being worked out in Congress amid huge controversy. This mass of legislation has produced an explosion of public feeling about it. Banks are very unpopular in the United States, even more so perhaps than in this country, as you obviously will be extremely well aware. It seems most improbable that you could, in a short timescale, get a harmonisation of regulation in this area. Is what we are talking about some glide path to future co-operation over a very long term? Given the attitude of the Treasury and the Fed, very big resolute institutions, is this really realistic at all?

Lord Green of Hurstpierpoint: I do think it is a matter of a glide path or, as I mentioned, a discussion as part of the framework of a living agreement going forward. We will not achieve substantial accord on a number of quite specific points in the context of this agreement. That would be implausibly ambitious. But it is important to have that dialogue. Quite apart from the trade aspects on which you have challenged me to say how much the real benefits are, it has to be a good thing in principle to have a regulatory approach to the financial system that is reasonably harmonious on both sides of the Atlantic. Fundamentally, the issue of having a financial system that is part of an economic system and is robust, profitable and makes a contribution to the real economy is the same on both sides of the Atlantic.

Lord Lamont of Lerwick: Could I just ask one other little point? You said you thought that the French were keen on financial services being included. Are you absolutely sure about that? I only ask because at least one person suggested to me that the French were really not very keen on this but that they would go along with it as a British objective provided that was not trumpeted too loudly.

Lord Green of Hurstpierpoint: My belief is the French are quite keen on this. They are focusing on it more from an insurance angle than from a banking angle.

The Chairman: When we were in Brussels and we met somebody from the French delegation and somebody from the German delegation, the chap from the French delegation certainly did support the inclusion. The woman from the German delegation we thought was rather more reserved on the matter.

Lord Green of Hurstpierpoint: I think it would be true to say that this is higher in the priorities of the French and the British than of other countries.

Baroness Quin: Is this a priority for us, and do you and your department have an interim idea of what you would like to achieve in the various stages for financial services? Are there some specific goals that you are trying to achieve in the course of these negotiations?

Lord Green of Hurstpierpoint: This is a bit of a moving target because CRD is not finalised and nor is Dodd-Frank, and both of them are subject to review through the BIS process next spring. I do think it is important to continue the dialogue for two different sorts of reasons. One is that it just seems to be a good thing in principle that you should have a level playing field and an open market in services generally, and financial services are an important part of that. Secondly, as I mentioned, for prudential reasons it seems to be a good idea that the two major economies of the world, the EU and the US, have a broadly similar approach to the best way of ensuring a viable, sustainable, robust financial system. I recognise that those are all rather general words but that is because this is deeply complex. I think the right aspiration for us is to see this as something that will get treated in discussions in the regulatory framework as part of the living agreement, rather than to expect specific changes either to CRD IV or to Dodd-Frank in the context of the agreement itself that gets initialled sometime in the next two years.

The Chairman: Would you think that the prospects for regulatory convergence are any more promising in the insurance and re-insurance sectors than in banking?
Lord Green of Hurstpierpoint: In some ways I think it is possible, yes, because of the recent changes made to Solvency II. I think that opens up the possibility for a useful dialogue on insurance.

Q118 Lord Trimble: Clearly, insurance seems to be a large part of where you expect to see some gains coming in financial services, but insurance is a state matter, is it not?

Lord Green of Hurstpierpoint: It is indeed, and that is one reason why this will be very complicated.

Lord Trimble: There is no chance of all the states agreeing. In fact, is there any chance of any of the states agreeing?

Lord Green of Hurstpierpoint: It is one reason why this will be a very complicated discussion. There are other matters that are state matters, which I am sure we will come on to in the discussion—procurement, for example—where we will have the same issue of corralling states, and that will be a challenge, as of course it was, on a smaller scale, in the case of Canada with the provinces.

Lord Trimble: They are quite different, are they not? The United States is quite different in this respect from Canada, and the states in the United States are not going to agree to this. There is no prospect of that.

Lord Green of Hurstpierpoint: It would be unwise for us to go into this discussion assuming that we cannot get agreement on these areas.

Lord Trimble: You should go into this discussion having some coherent idea as to how you are going to tackle your biggest problem.

Lord Green of Hurstpierpoint: I do not think it is our biggest problem. It is one of a number of objectives in the context of TTIP. As you are well aware, it is the Commission that will do these negotiations, and the Commission wants to keep financial services in. I believe that a regulatory dialogue that left out financial services would be incomplete, but we plainly should not be naive about the ease with which we will come out with a useful outcome. A counsel of despair up front does not seem to be the right way of going about it.

Lord Trimble: Can you indicate what plans you have and how you are going to tackle the problem? You have not given any indication of that.

Lord Green of Hurstpierpoint: It is the Commission that will tackle it, of course. I do not know the answer in the case of insurance. I do not think anybody knows yet what it will be possible to get by way of an agreement that involves the states. It is plainly one of the issues that anything that were to be agreed on insurance would require a state sign-up. I think it is extremely unlikely that you will change the way in which insurance is regulated. I see no prospect of it becoming a federal matter rather than a state matter, if that is the question. I do not think there is a possibility of making that change, but that does not mean to say that you cannot have a dialogue.

Lord Lamont of Lerwick: You do not have passporting in mind, do you? Is the object of convergence passporting? Surely that would be too ambiguous.

Lord Green of Hurstpierpoint: Yes, it would be both ambiguous and ambitious. We have two choices: we can agree that it is all too difficult and not even start, or we, the European Union, can go into a regulatory dialogue with the United States that has two ends in mind; one is ensuring that we both think alike so far as is reasonable on the prudential aspects of financial services regulation, and the other is that we create a market in which both sides can trade reasonably flexibly in the other’s markets.

Q119 Lord Foulkes of Cumnock: May I turn to the banking sector? Can you understand why the Americans are a bit sceptical about our sincerity in taking and agreeing firm action on the regulation of the banking sector, given what we saw with RBS and HBOS and indeed HSBC when you were executive chair? In the United States, they fined HSBC over $1 million.
Lord Green of Hurstpierpoint: It was a bit more than $1 million.
Lord Foulkes of Cumnock: It was more than $1 million for laundering drugs money, I think you may recall. Now, in America, bankers end up in prison for defrauding people, but they get away with it here. Can you understand the Americans’ reluctance and scepticism on this?

Lord Green of Hurstpierpoint: There are important differences between Dodd-Frank and CRD IV, and in a couple of key areas they are tougher than the current CRD IV proposals. It will be very difficult. Nor should we seek that kind of convergence. Leverage ratios are the most obvious difference, where CRD IV proposes 3% and Dodd-Frank proposes 5%. That is a quite significant difference. I do not think it is the right objective to seek a convergence of the two. So far as this Government are concerned, we are always in favour of stronger standards rather than weaker ones. There will certainly be differences. This is certainly not a project about getting Dodd-Frank aligned with CRD IV. That would be neither possible nor wise.

Lord Foulkes of Cumnock: I find it strange that someone whose main qualification appears to be being an ordained Minister with no banking qualifications becomes chairman of a bank. How did that happen? I am not thinking of Mr Flowers.
Lord Green of Hurstpierpoint: I could not imagine who you might be referring to in that case.

The Chairman: We are deviating a little bit. Before we leave this—we have several other subjects, and Baroness Young will ask you a question on public procurement—can I just go back to something I said earlier? We understand the intellectual thrust of what you are saying. We understand, in a sense, the importance of having financial services within TTIP and not dealt with separately. If we are to deal adequately with this subject, we need evidence that we can use rather than simply private briefing. It would be very helpful for us to have something from the Treasury that is usable in a report, because even now I certainly cannot measure—I do not know about my colleagues—the significance of this issue in real terms as distinct from political and psychological terms. We need something hard that will enable us to do that, so could you ask the Treasury to provide us with that in a manner that the Committee can use in its report?

Lord Green of Hurstpierpoint: I would be very happy to do that. I will perhaps make one addendum on insurance. We know that the USTR is talking actively to US state governors about insurance regulation, but we would be very happy to arrange a paper and, if you wish, an informal briefing from the Treasury.

Lord Radice: Just one further thing on all this. I am listening as a non-expert in any of this, except I was the Chairman of the Treasury Select Committee in the House of Commons. As far as I can understand, you are aiming for some kind of dialogue on these issues, and we could have that now, could we not, without going through a lot of drama about it.

Lord Green of Hurstpierpoint: There would be a value in this dialogue, whether or not TTIP was being discussed, yes.

The Chairman: That is why some people have said we might make more progress outside TTIP than in, but no doubt the Treasury will be able to tell us about that.

Q120 Baroness Young of Hornsey: You have already referred to the challenge of public procurement, and in fact we have heard and read slightly different perspectives on the extent to which it is a barrier to TTIP. Could you expand on your statement that you would wish to see, as a priority, more US states open their public procurement and the range of commitments significantly expand?

Lord Green of Hurstpierpoint: Yes, happily. There are 13 states that as of now are not covered by the World Trade Organisation government procurement agreement, but the others are covered by it—I can give you a list of those—and that means that they feel under
no obligation to consider bids from international suppliers at all. Even for the ones that are covered by the World Trade Organisation GPA, there is the Buy American Act, which requires them to give price advantage to local suppliers. This is an area where the Commission has calculated—I do not know quite how they get these numbers—that the openness of the EU is at 90% versus 38% for the US. Frankly, the 90% sounds a bit high to me, but in any event the discrepancy and directional difference is clearly correct, and therefore it is a significant prize in terms of the EU interest, as well as the British interest of course as part of that. What is more, of course, it is a prize from the point of view of the US state taxpayer, who would get better value by opening up some of these procurement opportunities.

Baroness Young of Hornsey: What sort of areas do you think will be likely to benefit the EU the most?

Lord Green of Hurstpierpoint: This would be across a range of sectors and would include the provision of architectural services, railway contracts, anything involving government procurement. It is quite a broad range.

Baroness Young of Hornsey: I was hoping for a little more detail. Could you comment, then, on whether you think it is a significant barrier? According to some of the things that I have read, it seems that there is not such a clear-cut division between states that have the “Buy American” dictum and what government is saying. There is a relationship. It is not just about the individual state, it is also about what the Government say, so it is not as clear cut as federal/state.

Lord Green of Hurstpierpoint: There is also federal procurement as well as state procurement, and both of these are important. Federal procurement is under a “Buy American” framework too, although it is different from the state level. But the totality of state procurement is very large and at the moment is effectively not very open. The prize is there on both sides. I did not mean to diminish the significance of federal procurement. That is there too. Some sectors are going to be off limits. Plainly, the defence sector will be off limits and is not part of the discussion, but across a range of other activities—the construction of schools, hospitals, railroads, and the services and the physical equipment that go with that—there are opportunities that we should press for very strongly. To go back to our previous discussion, this is an area where there are much clearer benefits to be had from achieving a reasonable deal, and indeed if we failed to do a deal on government procurement in the TTIP, that would diminish its significance quite considerably.

Baroness Young of Hornsey: What is in it for the US side, then?

Lord Green of Hurstpierpoint: Opening up more EU procurement. The numbers that I quoted to you suggest that there is some way to go in opening up more within the EU in practical terms. To be clear, I think in government procurement, the benefit is not equally distributed. There is a bigger benefit to the EU than there is to the US from the government procurement discussions, and therefore the quid pro quo will have to be, from the point of view of the US, in other areas than government procurement to a large extent.

Q121 Baroness Quin: If we could come on to the agriculture, food and drink sectors, it seems from our evidence so far that there would be a lot of opportunities for UK producers and other EU producers if some of the existing hurdles to exporting in these sectors could be overcome, but obviously there are also a number of tricky areas that need to be negotiated. I will ask, first, about the protection for geographical indications, which does not seem to appeal much in the United States but is obviously of concern to a lot of sectors within the EU. What way forward do you see on this, and does the agreement that the EU negotiated with Canada have some sort of precedents that could be actively pursued in negotiations with the United States?


**Lord Green of Hurstpierpoint:** Baroness Quin, I think it does. The Canadian deal is very helpful in this regard. We have a good deal on geographical indicators there, and it is a recent precedent that will undoubtedly be helpful. Had we failed, or not yet done the Canadian deal, I would have made the converse point: that failure to do a deal in Canada would have been a very significant reverse for a deal with the US, but we have done it. The geographical indicators are important to a number of European countries. I have had to dispel a sense in Brussels and elsewhere that this is not particularly a British concern. It is very clearly a concern of the French, Italian, Spanish and others, but I consistently make the point that we care about this too. We have a number of important geographic indicators, not least Scotch whisky, of course, and a number of others too. I do think there are opportunities for more exports from the food and drink business in this country in the US. It is an important preoccupation for us.

**Lord Radice:** What do you expect to be the US’s top objectives, or requests of the EU, in discussions on agriculture, and is this going to pose problems for us in the UK?

**Lord Green of Hurstpierpoint:** They will focus very strongly on GMO. That is an issue for some member states, as I am sure this Committee is aware. Our position is clear, and I think it has always been clear, that we are in favour of science-based policy-making on GMO, but that view will not necessarily be reflected in other member state capitals. They will press strongly for this. They will also press strongly on some quite technical matters, such as sanitary and phytosanitary areas, in order to support exports of poultry, hormone-treated beef, the approval process for these in general and genetically-modified organisms in particular. These will be all be a focus of American demands. They are not issues that cause us in this country a great deal of difficulty, but they certainly do in some other member states, and the Commission will have quite a challenge to corral member states to support an agreement in this.

**Lord Radice:** Do you think that concessions by the EU are going to be critical to, for example, the US Administration’s ability to sell an agreement to Congress?

**Lord Green of Hurstpierpoint:** I think concessions in agriculture will be critical to selling a deal in Congress, yes.

**Q122 Lord Jopling:** You have accurately pinpointed the fact that we are rather on the American side in some of these negotiations on GM and growth-promoting hormones, for instance. I ought to declare an interest, because I receive funds under the Common Agricultural Policy. What are we doing to try to persuade European member states to climb down from what I would describe as their Luddite approach to these issues? The more that the UK Government can work within the Council and in the Commission to try to break down the very much defensive standpoints that so many of those European states are taking up, and have taken up, the better. Years ago, when the growth-promoting hormone thing was banned in Europe, I was the only Minister, actually, who opposed it, because it seemed ridiculous and against the science. What are we doing to try to persuade the Europeans to move towards the American position?

**Lord Green of Hurstpierpoint:** We continue to try to persuade other member states to see the right approach as being a science-based one and not an emotional one, if that is the right phrase. There is a continuing need to persuade. It remains the case that the official positions of a number of EU states are passionately opposed to GMO.

**Lord Lamont of Lerwick:** Am I right in saying that the restrictions on GM exist both at the EU level and at the individual country level in Europe? Would there be any possibility in your view, if that is correct, of getting a liberalisation at the EU level while retaining, for example, the right of a country like Austria, where I know there are allegedly strong feelings, to maintain its own restrictions?
Lord Green of Hurstpierpoint: I probably need to take advice on the legalities of the answer to that question. In practical terms, first of all the Commission can negotiate this without reference to the member states, if it chooses to. It would not be wise to ignore sentiment amongst a whole range of member states.

Lord Lamont of Lerwick: But are there not national restrictions as well as EU ones?

Lord Green of Hurstpierpoint: I would need to come back to you on that. I would also need to come back to you on this, because this would be a legal matter. I find it difficult to imagine the Americans would accept a deal at EU level that was then not implemented, and overtly not implemented, in a number of member states. Whatever the legal position is, which I would need to clarify with you—

Lord Lamont of Lerwick: Could you come back to me on that?

Lord Green of Hurstpierpoint: I will, certainly. In practical terms, I do not think that we should be thinking of that as a possible way through this dilemma.

Q123 Baroness Bonham-Carter of Yarnbury: I just want to come back to Baroness Quin’s question about geographical indicators. I was reminded of reading about your meeting, Lord Chairman, the farm bureau in the United States. According to the note, it finds EU attitudes mind-boggling on this, and a particular opponent would be Kraft, maker of a popular parmesan product. How are the French going to respond to that? It seems a rather large problem.

Lord Green of Hurstpierpoint: It is one of those areas that is going to have to be intensively discussed. There is no doubt that the EU mindset is in a different space than the American mindset on geographic indicators, and I include us in that. We should not think that this is a problem that is created by other member states. We too believe in the importance of geographic indicators. This was a big theme in the Canadian discussions. It was one of the apparently intractable areas in the Canadian discussions, and in the end we got a deal that was probably painful to some parts of the Canadian industry, and we will press—or the Commission will press with a lot of EU member support, including ours—for a robust protection of geographic indicators.

The Chairman: This is a purely personal judgment, but the states that feel most strongly about GMO are also the states that feel most strongly about geographical indicators. If an agreement is to be reached on the totality, a deal on GI and GMO is absolutely essential. I think you have replied on that to Lord Jopling, but the states concerned on GMO and GI are where concessions are going to be required on both sides.

Lord Green of Hurstpierpoint: I do agree with that. This is an illustration of a more general feature of trade negotiations, which is that the more valuable they are, the more painful they are to negotiate. I am afraid that this is an example of the point: that this will be a painful discussion.

Earl of Sandwich: Minister, you have mentioned whisky already. What are your priorities for the food and drink manufacturing sector, and are you going to actually reach the objectives set?

Lord Green of Hurstpierpoint: I cannot confirm definitively whether we will reach the objectives set. Our priorities are for the relevant geographic indicators to be protected. I do not know whether we have a list of specific ones. Scotch beef, Scotch lamb, Welsh beef, Welsh lamb are geographic indicators by way of examples.

Earl of Sandwich: They are very devolved examples.

Lord Green of Hurstpierpoint: Stilton, just to keep to England, and West Country farmhouse cheddar would all be geographic indicators that are in our list of priorities for the negotiation.

Q124 The Chairman: Can we move on to the automotive sector? This is another UK priority, and a number of our witnesses have said that they think that the prospects are
quite good in that area. What do you see as the next step, and are the regulators engaged? Again, can you give an idea of what practical benefits will flow? A point that has concerned me is that basically you have the same companies producing automotive products on both sides of the Atlantic, and decisions about where to export and which markets to serve are basically decisions taken within the company. People put plants here to service the European market, and they put plants in the United States to service the United States market. Nissan, Honda, Ford and other companies that produce on both sides of the Atlantic may very well get lower costs as a result of an agreement, but it is not clear to me that it would necessarily influence trade flows very much.

Lord Green of Hurstpierpoint: The analysis is that it will influence trade flows quite a lot. You are clearly correct that many of the major automotive producers have manufacturing facilities on both sides of the Atlantic. Sometimes, part of the reason why they have a manufacturing facility on both sides of the Atlantic is because of the different regulatory and other non-tariff barriers that exist, so that it might over time lead to a redisposition of investment. Our analysis is that there will be a significant gain, particularly for the British automotive sector, because it is more at a premium end. I think the benefits for the commodity end of the automotive sector are likely to be less significant. It is an area where the benefits to the EU are probably on balance greater than the benefits to the US. In fact, our calculation is that the EU's vehicles sector output could increase by about 1.5%, whereas the US's sector would probably go down slightly, and that will be a reminder that this will not be a straightforward negotiation.

The real prize in this area, and actually this becomes a familiar theme across sectors, is some form of mutual recognition of regulatory standards: mutual recognition, rather than convergence. There are different ways of defining an appropriately safe car. You do not have to have the same process, but you need a mechanism that recognises that each has a good mechanism for defining a safe car, and therefore an export from here to there would be regarded as acceptable under British or EU standards. Close to all the benefits that come from the discussions on automotive will be about those kinds of questions, and not about straightforward tariff barriers.

The Chairman: On the living agreement, you talk about a process with financial services, and I was wondering whether you think that that idea of reaching an agreement on what we can agree on and establishing a process that will enable things to go forward in the future might apply in other areas as well as in financial services.

Lord Green of Hurstpierpoint: I think it will. Indeed, in automotive, we are unlikely to have solved all the issues for the automotive sector within the context of the agreement, and the pharmaceutical sector is another one where you want to work towards some form of mutual recognition of health and safety standards, where there is a lot of detail, not all of which will have been exhaustively discussed by the time the heads of agreement are completed.

Q125 Baroness Coussins: I wanted to ask about the investor-state dispute mechanism. We have had quite strong written evidence from both sides of the Atlantic that expresses serious concerns about whether that mechanism is needed in this case, because in both the EU and the US there are already well established and reliable legal systems for dispute resolution. It has been reported to us as well that the Canada deal might have found a suitable way to modify the clauses on the dispute mechanism, but because the final text of that deal has not yet been made available, we cannot have a look at it. I wondered whether you might enlighten us and either confirm or clarify how the Canada deal approached the dispute mechanism at question and whether, whatever the Canada deal said, you, and indeed the department, share the concerns of some organisations and some member states, I think
including Germany, as to whether such a mechanism should be included in TTIP in the first place.

**Lord Green of Hurstpierpoint:** I might get my colleague to answer the specifics on Canada, although it is important to recognise that the Canadian deal has not been finalised yet on the question of investor protection. Some principles are embodied in the political agreement, but the detail has still to be negotiated. It is an area where a number of member states are nervous. Germany has been the most vocal about it, but it is not alone. There is a nervousness about how this would be used in practice. In our case, we are a bit open-minded about this. We do not think it is sensible to go into the agreement refusing to talk about this, and indeed it would not be possible to go into this agreement from the American perspective refusing to talk about this. We, the EU, have investment agreements of one sort or another with a whole number of other states around the world. What is the basis for the nervousness? It is that there is a degree of fear of litigious activity. That is certainly in the minds of the Germans in particular, so I do not know where we will come out on this, other than that the Commission is clear that we should at least not leave this out of the discussion, and indeed we cannot. The Canadian deal, assuming that when the detailed negotiations are complete they will embody the political principles stated, will indeed provide a helpful approach, because it is a template that has been agreed. Do you want to say anything about the details, and how that compares with other investor protection agreements?

**Edward Barker:** Certainly. The first thing I should say is that although you probably have received representations from both sides raising concerns about including ISDS, at the moment the US negotiators’ position is that they want ISDS, which is why it is an issue for us. In terms of Canada, as Lord Green said, there is political agreement, and fairly well progressed, detailed negotiations on the substance of the mechanism. We know some things about it. We know that it is not as strong a provision as the UK has in many of its existing bilateral investment treaties, which tend to be with emerging and developing countries. We know that the Canadians have sought to put in extra measures to limit its application in Canada. It is also fair to say, though, that because the stock of Canadian investment in Europe is a lot lower than the US investment in Europe, European member states were less exercised about this issue in the Canadian context. There are precedents that we can draw from it, and there may be a model that is certainly different from the model we have used in our other bilateral treaties, but there are also quite significant differences.

**Baroness Coussins:** When are we likely to be able to see the final text of the Canada deal?

**Edward Barker:** That is a very good question. We do not have the final text of the Canada deal yet, and indeed it will take many months to scrub the legal texts and translate them in a form that all member states recognise. It could be many months before we have a definitive text of the Canada agreement.

**Baroness Coussins:** Before we leave this area, if there were to be an investment chapter in TTIP, what other principles would you want to see embedded in there?

**Lord Green of Hurstpierpoint:** We would want to see a level playing field. You would want to see transparency, and clearly you would want to see appropriate legal protections. The sensitive issue is not about all that. The sensitive issue is about the right to sue a member state, and the concern is inchoate. There is a perception—I do not know whether it is well founded or not—that this might impede policy formation or put policy formulation at risk to a later suit from an aggrieved investor. You can understand why various member states are reluctant to get into that position. It is hard for me to envisage an investment protection agreement that did not have some kind of right to sue either the EU or member
states. I cannot believe the Americans would accept any such deal, so this is one more area that is going to be complex to discuss.

Q126 Lord Lamont of Lerwick: One of the things we found slightly surprising is that very little emphasis has been placed on aviation, by which I mean not the manufacture of aircraft but air traffic. The American market is very restricted, and there are restrictions that are not on a level playing field on investment in airlines by Europeans. The limit is higher this side of the Atlantic. Quite apart from the question of investment, I am slightly surprised that this rather problematic area of freedom of airlines to fly within the market of the United States or the market of Europe is not one of the big issues.

Lord Green of Hurstpierpoint: It is on our list of priorities, but it is true to say that it is not very high up it. That has reflected the sort of input we have received from the aviation industry. I do not want to be misunderstood. We are not saying it is not a priority, and it will form part of the negotiations, and raising the level of foreign investment in American airlines is an objective. The more we can do that, the more the cabotage question either diminishes in significance or falls away completely. It will be part of the negotiations. I was asking my officials the same question as to why we have not made a bigger deal of this, and the answer has been because the companies have not made as big a deal of it as perhaps we might have expected. But it will be in the negotiations.

Lord Lamont of Lerwick: Maybe we ought to stir the companies up a bit.

Lord Green of Hurstpierpoint: We will negotiate, but the Commission certainly has this on its brief in any event. It would be wrong to assume that the Commission is going to be cavalier about this. On maritime, I think the chance of removing the Jones Act is minimal.

The Chairman: Can I just revert to something that came up earlier? On the living agreement, it would be helpful to the Committee if you were able to give us an idea of the timetable for the ongoing dialogue and how political pressure could be maintained on such a process after the spotlight of TTIP has gone. You may feel that that would be better done in writing, because I realise there are implications in it, but do you think that would be possible?

Lord Green of Hurstpierpoint: We can certainly give you in written form our understanding of how the timetable will work. It is clearer in the next few months than it is further out, obviously. I think the question of lobbying in the United States is a pretty important one. I know that you, Lord Tugendhat, were there quite recently. I have seen your report on it, and it is sobering. I think we need to do our best to raise consciousness there. My general impression is that there is a greater consciousness of it on the eastern seaboard than there is anywhere else in the US, and the further you get into middle America, the less people are even aware of it. There are some key opportunities for influence, and one of them comes up in January, when the mayors’ convention takes place in Washington involving 220 mayors of American cities. I had a session with the mayor of Philadelphia quite recently. He is a former president of that convention, and he would be very happy to work with us to get a keynote speaking slot on it. I think that would be the sort of very targeted opportunity that we should make use of, and we, the British Government, will make use of it. There will be others in the months following that.

Baroness Quin: If TTIP is going to be successful, it seems that Britain is capable of playing quite a key role, because of the quite similar interests that we have to those that the Americans want to pursue. Yet, at the same time, it seems to us that the Commission sees us as an ally in trying to push things along. I just wondered what political importance is being given within the Government at the moment to this, and what sort of cross-departmental discussions are going on to actually look at these issues, both overall in giving a political push and in looking at the sectoral interests that are involved?
**Lord Green of Hurstpierpoint**: On the political point, I can assure you that very considerable political interest comes from no less a person than the Prime Minister, who, every time I see him, is always asking how well we are doing on TTIP. Ken Clarke is spending a lot of time on this personally, both in Brussels and in Washington, and will continue to do so. At official level, my colleague Edward Barker’s department is primarily responsible for providing the official support for this sector by sector. Financial services in particular are a Treasury matter, so Edward is responsible for ensuring that the cross-government linkage is appropriate. Last, and absolutely not least, at the other end UKREP is extremely focused on this, and Ivan Rogers, the new UK representative, is very keen to see that we maximise our influence.

You are right that the present Commissioner regards us a philosophical ally, and in almost all cases we have the same instincts that he has, and the directorate has. He, of course, has the unenviable task of corralling member states on a whole series of issues where not everybody is always well aligned, but we keep at this, and in the various national capitals as well. I believe that we should, because your summary comment is correct: we have a greater chance as a bilateral influence point than any of the other member states.

**Baroness Quin**: In terms of the cross-departmental work that is going on, are there regular meetings of departments?

**Edward Barker**: Yes.

**Baroness Quin**: How frequent are they?

**Edward Barker**: I chair a meeting every fortnight. The next one is today, and there is also a monthly meeting chaired by Ivan Rogers and now Tom Scholar, as his successor in London.

**Lord Trimble**: Minister, there are a number of matters on which you have said you will write to us. I wonder whether you would give us an indication of the timescale within which you will write to us.

**Lord Green of Hurstpierpoint**: I will write before 9 December.

**Q127 The Chairman**: Lord Green, thank you very much. You started with a general comment. Could I ask you to end with a general comment? We all hope that these negotiations will succeed, but what do you feel is the price of failure? If they run into the ground, not only do we not derive the economic benefits, but it seems to me that this would be a big political setback both to the EU and to the US. It would have implications vis-à-vis the relationship with China. There are hopes that if this succeeds, it would encourage China into the multilateral framework more. You gave us a view at the beginning about how we might move. Could you just give us a thought or two about what the price of failure might be?

**Lord Green of Hurstpierpoint**: The price of failure at one level of course is the forgone opportunities. The existing trade and investment relationship between the EU and the US is very large, and that will not go backwards as a result of this, but it is an opportunity cost of considerable magnitude. More generally and more importantly, it will have an impact on overall dialogue at the global level on trade relationships and investment relationships that will clearly be deleterious. The optimist’s hope is that this will become something of a benchmark for regional agreements that can then feed into the overall multilateral process. This happens to be coming to the boil at a time when there is also a lot of focus on a transpacific deal, which is also an opportunity to set some benchmarks, and the trade facilitation deal in the WTO in Bali. All of these are important. Failure to do any of them would be a reversal. The longer-term implications for China’s relationships with the rest of the world are worth thinking about. They are clearly watching this very carefully. My guess and hope would be that as progress is made under those three headings, China will become more and more keen on becoming involved. They are already, of course, members of the WTO. They have now applied to join the plurilateral discussions on trade in services, which
is a very welcome development. It would be in our global interest to keep this momentum up and to gradually broaden the involvement of other countries, especially China, and failure in the US will not help that cause.

The Chairman: Lord Green, thank you very much indeed.
Geoff Grose, Chief Engineer, McLaren Automotive Limited, Mike Hawes, CEO, Society of Motor Manufacturers and Traders, Andrew McCall, Executive Director, Governmental Affairs, Ford of Europe and Chris Scott, Senior Manager, Global Automotive Safety, Regulations, Compliance and Homologation, Jaguar Land Rover—Oral Evidence (QQ 144-17)

Evidence Session No. 14  Heard in Public  Questions 144 - 157

THURSDAY 12 DECEMBER 2013

10.05 am

Witnesses: Mike Hawes, Andrew McCall, Geoff Grose and Chris Scott

Members present

Lord Jopling (acting Chairman)
Baroness Coussins
Earl of Sandwich
Lord Foulkes of Cumnock
Baroness Henig
Lord Lamont of Lerwick
Baroness Quin
Lord Radice
Lord Trimble
Baroness Young of Hornsey

Examination of Witnesses

Mike Hawes, CEO, Society of Motor Manufacturers and Traders, Andrew McCall, Executive Director, Governmental Affairs, Ford of Europe, Geoff Grose, Chief Engineer, McLaren Automotive Limited, and Chris Scott, Senior Manager, Global Automotive Safety, Regulations, Compliance and Homologation, Jaguar Land Rover

Q144 The Chairman: Thank you all for coming. You will have to put up with me as Chairman this morning in the absence of Lord Tugendhat, who has had to take his wife to hospital, so we shall not have him with us. This is a public session. It is being recorded. We shall transcribe the proceedings. You will be given an opportunity to see the first draft, and if there are any factual amendments that you think need to be made, if you would let us know as soon as possible, that would be a great help to the Committee. Is there anything else I ought to say at the beginning? No, that covers it.

Let us begin. As you know, we are embarked on an inquiry into TTIP. The Committee has already visited Brussels and will be visiting Washington in the next few weeks. Please do not
think that you all have to come in for every question. We will welcome whatever you want to tell us on an ad hoc basis. Could you begin by setting out for us to what extent the motor manufacturing industry on the other side of the Atlantic is as eager to make progress through TTIP as you are? What is your assessment thus far of how receptive the USTR and the European Commission are to your industry’s proposals? That is a pretty wide question, so who is going to start?

Mike Hawes: Thank you for this opportunity to respond to your questions. Our sense is that the level of support for this initiative is as strong in Europe as it is in the US. Specifically for the UK, given the strength and growth of the UK automotive sector over the past few years, where you have seen increased production, investment and sales, it represents a tremendous opportunity to develop the industry even further. Given the unique characteristics of the UK motor industry, with a tremendous number of small, niche, luxury manufacturers, this represents a real opportunity to support them further and ensure that they can access that market. Given that the US currently represents about 10% of UK automotive exports, clearly we can see that this will develop and that we can perhaps open up the market to new entrants from the UK. We want to ensure that everyone understands the importance of this to both the UK industry and the European industry as a whole. We know we have support from the regulators on the European side, and the discussions that we are having on an industry level through our European associations and the American associations are demonstrating that there is that degree of willingness of support at a political level on the American side as well.

Andrew McCall: This has been an example, which you do not often see in the auto industry, of where the European industry and the US industry have come together to develop a joint set of proposals, which have been put to the negotiators and the regulators on both sides. That is quite unusual, and I think that is a testament to the level of commitment that there is on both sides. There have been a number of meetings already with the negotiators, and I think the reason for that is the auto sector is seen as one of the real opportunities in this agreement. There are probably some other sectors that are more problematic, but the auto sector is seen as a real opportunity, hence the strong level of commitment. We will probably get on to what we specifically need to do to try to pursue that. There is certainly a long way to go to get the regulatory mutual recognition we are seeking, but the opportunity is there and I think that is recognised on both sides of the Atlantic.

The Chairman: Let me just follow that up. The types of cars that are produced in Europe and the types of cars produced in the United States have quite significant differences one way and another. I wonder where you think the balance of advantage is between the two if you were to get an agreement that created an open market. Which side do you think has most to gain?

Andrew McCall: I think it is too early to make that judgment. At the moment, both sides see opportunities. The numbers we have seen are really all about the beneficial effect of taking away the non-tariff barriers. The vast majority of the potential benefit of this agreement lies in taking away those non-tariff barriers. We would then see the potential for significant economic growth, which comes from the fact that we would all have reduced costs because we would be able to build to one standard rather than two, which is the current situation.

Q145 Lord Trimble: I was just looking at the evidence you submitted to us and something struck me about it. There is probably a simple explanation for this, so pardon my ignorance; the list of manufacturers at the bottom of the first page does not mention any of the Japanese manufacturers in the United Kingdom.

Mike Hawes: Those figures are the leading exporters to the US. The Japanese manufacturers based in the UK tend to export primarily to the European Union and
sometimes back to Japan. The list shows the leading UK-based manufacturers exporting to the US in terms of volume.

**Lord Trimble:** You say the majority of the Japanese exports go to Europe or back home to Japan, but you go down to volumes as low as 265 and even six. I am sure the Japanese get as far as six vehicles exported there, do they not?

**Mike Hawes:** What you are looking at there are the British brands, and when you are going into small volume brands, they represent a significant proportion of their global sales.

**Lord Trimble:** It is a bit ambitious to describe Minis, Land Rovers and Jaguars as British brands these days, is it not? They are manufactured in Britain, but on that basis the Japanese should be in there too. It just seems a bit odd.63

**Lord Radice:** If I may help my colleague, paragraph 4 talks about luxury, premium, low-volume manufacturers, so maybe that is what this table is illustrating. That is what it says, anyway.

**Q146 Lord Lamont of Lerwick:** What I want to ask follows on directly from what Lord Trimble has said. Given that so much of UK industry is foreign owned—as you have just said, the foreign owner can make a decision about where exports go—will the lowering of tariffs and the harmonisation of standards just lead to an increase in exports in any direction? Surely, that is a political-industrial decision that may actually be made by the companies themselves in order to fit in with their geographical distribution of production. In other words, could the freeing up of trade not have less effect on trade flows and much more effect on where people decide to locate their investment?

**Mike Hawes:** It is a good question. The decision-making around production investment clearly takes into account a number of factors. One of the primary ones is ensuring that you are producing close to where you are selling; it clearly makes sense to reduce your transport and logistics costs. That is what has been behind a lot of the investment into the UK over the last 20 years in the automotive industry. We see this potential partnership opportunity essentially as a way of freeing up some of the opportunities, especially for UK manufacturers to export into the US. That will be a clear benefit to UK production. Given the volumes that a lot of these small and niche low-volume manufacturers are having, they produce generally from one site, certainly the smaller ones. There is less likelihood of them upping sticks from one particular location to base themselves in the US. It is a critical market for them but it is not the only market, and it is certainly not the only growing market.

**Baroness Quin:** I notice that Lord Trimble mentioned that Ford is not on the table either, so I assume that backs up what we are talking about here: that this is largely the low volume, top-end manufacturers. Is the export potential largely limited to that part of the market, and is the other potential for standardising and mutual recognition more for the larger volume producers that are present on both sides of the Atlantic? Obviously Ford has plants in the US and Europe, and so does Nissan and so on. Is that the nub of the argument?

**Andrew McCall:** The nub of the argument is that the vast majority of the cost associated with the trade between the European Union and the US is about the non-tariff barriers—the regulations. The tariffs are a minor factor when it comes to the total cost, so the benefit likewise will be distributed relatively equally. There will be an opportunity for increased

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63 Note by Chris Scott: “Jaguar Land Rover employs over 25,000 people in the UK and invests in excess of half of its material spend in UK businesses. Jaguar Land Rover’s UK investment supports the employment of about 180,000 people in the UK. Jaguar Land Rover develops and designs all its cars in Britain and presently manufactures 99% of its global vehicle volumes in Britain. Jaguar Land Rover has its global headquarters in Whitley, Coventry. As we grow, we are expanding internationally but that expansion provides international growth and secures the firm’s substantial British investments and identity.”
trade flows from the European Union into the US, and the other way, simply because that is
the key benefit to be derived from the agreement.
Baroness Quin: Will production costs be lowered as a result of simplification and mutual
recognition?
Andrew McCall: That is the key benefit, because instead of building and designing to two
different sets of standards, which we will come to describe in a bit more detail in a little
while, we will be able to do that to one standard. There will be significant cost savings in
design, build and so on.
Baroness Quin: That would be for the whole of the sector, presumably.
Andrew McCall: Yes, it would. It would apply equally across the sector.
Q147 Lord Lamont of Lerwick: I am slightly surprised that you say that tariffs are of no
consequence, because certainly if you look at it from the US side, selling into the EU, the
tariffs on cars are much higher than the general tariffs. I would have thought that they were
significant. To ask the question that I am meant to ask, which is important: is the regulatory
regime any simpler on this side of the Atlantic, and to what extent, if any, have regulators on
both sides been engaged in discussions on TTIP so far? Whose responsibility is it to engage
them?
Chris Scott: The regulatory regimes ostensibly seek to address exactly the same principles
and requirements: to make sure that vehicles are safe and cause least harm to the
environment. Those are the shared and common objectives of both regimes. They have
grown up separately over about 50 to 60 years, so they have diverged, with good reason,
and there are differences in the system that is used to demonstrate compliance to the two
different regulatory systems. However, the overarching principle is that they are sharing the
same common objectives.
Lord Lamont of Lerwick: How easy is it going to be to harmonise them?
Chris Scott: Harmonisation is a challenge. Mutual recognition is more realistic. The
approach that has been taken by the study that the Automotive Alliance in the US and ACEA
in Europe are funding with an academic group to assess the safety standards, which is the
first and most important area to be studied, will reveal the ease of mutual recognition in
both regulatory regimes.
Andrew McCall: It is important to reinforce the point that this is not about harmonising; it
is about mutually recognising two different sets of standards and assessing them as equivalent
overall in terms of the outcome.
Lord Lamont of Lerwick: One of the concepts that Lord Mandelson put to this
Committee—he was talking generally about standards, not about the motor industry in
particular—was of a continuing dialogue whereby standards might, over the very long term,
converge.
Chris Scott: That is absolutely correct. If we look back over history, 50-plus years of
divergence should, with the benefit of this agreement, see a growth towards convergence
over time. As new technologies evolve on vehicles, the standards should seek to be one
standard for everybody so that manufacturers have one set of rules to follow that may be
applied in any market in which we sell vehicles.
Lord Foulkes of Cumnock: That all sounds very logical and sensible, but Leon Brittan told
us that last time round it was the regulators in America that scuppered the whole deal. As
we understand it, some of the regulation is at federal level and some at state level, so are
you not really unduly optimistic that this is going to get agreed, or even that there is going to
be mutual recognition?
Mike Hawes: I do not think we are unduly optimistic. We are hopeful and, accepting the
situation that you describe, this is really going to be about political will. Regulators will
respond to that political will, and we are trying to make sure that on both sides of the Atlantic people understand the support we are giving and the opportunities that are created. You mentioned the state versus federal level. I will pass to Chris on that to give a bit of explanation.

**Chris Scott**: Almost all state regulation seeks to govern how vehicles are used as opposed to how we design vehicles, such that the impact, certainly in the safety world, is significantly not a problem. TTIP gives us the opportunity to realise that mutual recognition, because it is national legislation—or, in the case of the EU, international shared legislation—that will be mutually recognised.

**Q148 Lord Foulkes of Cumnock**: In the Canadian discussions, which include regulation, the whole timetable was a number of years—four or five—and it is still not complete. It still has to be translated and have legal work done on it, and then a whole range of other things before it is finalised. Do you not think that the timetable for the whole TTIP, but particularly for your aspect of it, is also very ambitious?

**Andrew McCall**: I prefer to say challenging rather than ambitious. The difference here is that we have very strong commitment on both sides of the Atlantic at the political level. I do not think we have had that in the same way previously. That gives us an opportunity that we feel we need to take. On the question of getting the regulatory mutual recognition, that is precisely why we have this study with the University of Michigan, which is now under way: to establish a robust methodology for assessing the equivalence of these two sets of regulations. That will give us the opportunity to proceed with confidence from the regulators, consumers and so on. It will take some time, and it is not going to be easy, but we certainly think that puts us in a better position to make progress.

**Baroness Coussins**: Can I take you back to the question of terminology briefly so that we can get it right? In your written evidence you used the phrase “regulatory convergence”, and we have heard from a number of other witnesses that we should be extremely cautious about using that word—indeed, avoid it—and instead use words like “regulatory co-operation” and “coherence”. From what you have just been saying, it is perhaps convergence for your particular sector that you are after. Can you clarify whether convergence is the term that you are looking at, and whether the automotive sector is different from other sectors in that respect?

**Chris Scott**: Convergence is not something that we are directly looking at, but the analysis that is being completed that we have talked about may lead us down that path. Mutual recognition is something that we recognise as being more realistic, because the outcome of the standard is what we are seeking to achieve, not the mechanism in the journey that we use to get to the outcome. Can I cite an example of where there is mutual recognition that could be achieved in a very simple but effective way? We have probably all driven or drive cars. We have the instrument cluster in front of us, and often when we put the parking brake on there is an illuminated symbol indicating that you have put your handbrake on. That symbol is different in the United States: the instrument cluster must put up the word “Park”. It is a fundamental difference, but we have to design two separate solutions to meet the same objective outcome. If we had mutual recognition of that particular element of the regulations that allowed us to use what we design for Europe in the United States, we would not have to design a solution that had the word “Park” for America and a symbol for everybody else—a simple illustration of how mutual recognition is what we are seeking to achieve. Likewise, it would have to be reversed.

**Q149 Lord Lamont of Lerwick**: Paragraph 12 of your memo seemed to suggest that California perhaps has a leading role in the formulation of US regulations. Obviously, California is a very important state, but how would federal regulators be able to influence California? Do you know much about that?
Mike Hawes: You are correct that California is very influential within the regulatory settings of the US. It is a large car market within the States, but going back to the point that Chris made earlier, the regulations about the design and development of cars are set at a federal level, and at a state level it is often more about the use of the vehicle and how that can be affected. Talking about mutual recognition, we want the recognition of the federal regulations compared to those that apply within Europe.

Geoff Grose: There are emissions rules in California, but California is very receptive to setting up standards for smaller volume manufacturers as well. It already works towards creating a good regulatory environment.

The Chairman: We have had evidence on this point that while it is important to move in the direction of convergence, whether or not you use the word, it is important to avoid a situation after an agreement where there was divergence. One has to remember that that is something that an agreement would seek to deal with. I just want to go back to what Lord Foulkes said with regard to federal and state law. I was in the States not so long ago talking to the negotiators on their side and making a point about what a worry it would be—it might not apply too much to the motor industry sector of an agreement—that while every state, it is said, will benefit from a TTIP agreement, we have had suggestions to the Committee that there would be a temptation in each state to cherry-pick the issues in the TTIP agreement that suited them but fail to legislate, where they had the power to legislate at state level, on things that did not suit them. This could lead to a very unbalanced turnout of the agreement. Do you see that as a worry in getting an overall TTIP agreement?

Andrew McCall: I think that the key for the auto sector is the federal-level safety regulations. If we can solve that particular problem, that would be the main obstacle that we need to overcome. We do not see a significant problem at state level. In other areas of the agreement, such as the investor state dispute resolution, there may be more of an issue. For our sector, that would not be such a significant issue.

Chris Scott: You have actually described a risk today that the federal Government in the United States are already exposed to: states creating law that seeks to change, enhance or be different from that which is already available at a federal level. It is a current and accepted risk that the federal Government in the United States are very aware of. I believe they have mechanisms, although I am not familiar with them, for how to try to mitigate some of that activity.

Q150 Lord Radice: As we have been generally agreeing that what you are looking for is mutual recognition, could you tell us what are perhaps the two or three areas where there is a realistic prospect of achieving such mutual recognition?

Mike Hawes: As we have probably already mentioned, the main areas are safety and environment. The complexity around safety regulations on both sides of the Atlantic is intense. Among the regulations that have been put up for discussion for this consultant to look at and identify the areas, there is a long list of safety regulations. That is clearly one of them. Regarding environmental issues, globally you are seeing a convergence around environmental regulations, whether you are in Europe, the US or China. The pressure on the industry to achieve lower emissions is intense, and whatever the major markets we are seeing a degree of similarity across them. How you actually get there varies. That is the second area.

The third area that is perhaps a good opportunity for the UK is in what we call small series approval. There is a mechanism by which British manufacturers can produce and sell goods in Europe that does not exist in the US. It is very difficult for small low-volume manufacturers to have access to the American market that is effectively cost-efficient, given the level of regulation that needs to be adhered to, especially around safety. Those are probably two or three areas.
Geoff Grose: As a small manufacturer, we would seek to try to build a common technical specification as far as possible for all the different markets that we sell in around the world. We have no ambition to start making vehicles outside the UK, because that is part of what people like about our vehicles. Even with a common specification, we might be forced to retest a vehicle multiple times in order to demonstrate compliance for different markets, and the US is perhaps one of the most demanding in that respect. For the very small companies that can actually represent a barrier to being able to enter the market at all, because it is largely a fixed cost for certifying a model for that market, almost regardless of the volume you will then go on to sell.

Baroness Coussins: We have heard from a number of other witnesses that the EU-Canada and EU-South Korea free trade agreements have possibly set some helpful precedents, including for the automotive sector. I wonder whether you agree with that and can give any examples of what those precedents might be. It is quite frustrating not to be able to see the exact texts, but you might know from a sector point of view whether there is anything helpful that we can look to in either of those agreements.

Mike Hawes: For our sector, the two agreements that you cite do not represent an ideal. Taking first the South Korean one, we have had key concerns throughout the process that while the reduction of tariffs was straightforward, it was the non-tariff barriers that continue to exist and new ones keep being created. There is not the mechanism within that agreement to allow their removal.

On the Canadian FTA, again, while it is a step in the right direction, and clearly as a principle we are always looking for ways to improve trade and market access, our view is that the Canadian agreement was not very strong, and therefore the benefits that can be attributed for our sector were fairly limited.

Chris Scott: We always welcome the opportunity of having mutually recognised standards, so anything that pushes that forwards as a way of minimising the technical burden is appreciated. It is the way it is constructed and the way it can be enforced that is key, because if we do not have a mechanism of enforcing it, as Mike has said, the benefits are not realised because the ability to proliferate more localised standards is not prevented. Bringing them together is great, but they have to have the mechanism of enforcement within them.

Baroness Quin: To press a bit on the Canadian agreement, it sounds as though you do not feel that it has made a big step as far as your sector is concerned. Is that a fair comment?

Chris Scott: I understand there are 17 allowable alternatives within that agreement. For vehicles to be compliant in the European Union, 52 different regulatory standards must be met. That gives you a flavour for the difference. About a third is of benefit but two-thirds remain not of benefit, so it does not comprehensively cover what the TTIP is seeking to do.

Baroness Quin: Is there any mechanism in the Canadian agreement that can allow you to revisit the areas that are not yet sorted out?

Mike Hawes: I do not know. I am unaware of it, sorry.

Q151 Lord Trimble: In paragraph 11 of your written evidence you draw attention to the global technical regulations as an established process under the United Nations. I wonder whether you can tell us a bit more about what is happening in that process and how it might relate to what might happen under TTIP.

Chris Scott: The global technical regulations are a harmonisation mechanism. A number of nations are subscribing to a body to create new standards for new technical requirements that exist for products that will be sold into those markets, so the global technical regulations are a harmonisation mechanism for technical standards for the automotive industry. They do not address the back catalogue of regulatory requirements that exist today, so we still have two systems that have grown up separately over the years. However,
it is the journey towards convergence—to use that word—and it seeks to address the future technology and the new legislation that is going to support regulating that technology on a global basis.

Lord Trimble: It is new developments that are going to be caught in this rather than the existing ones.

Chris Scott: Yes.

Lord Trimble: That is a significant step forward anyway, is it not?

Chris Scott: It is. To be frank, it has been a very slow journey. It started with a 1998 agreement. Seven GTRs are published, and there are 11 in total, of which four are in development. Over 15 years, to have 11 is a little glacial in pace perhaps, and one of the benefits of TTIP is to give fresh political impetus from the EU and the United States. The member states of the EU are all subscribing parties to the 1998 agreement, such that the opportunity to develop with the speed required for the new technologies that are coming along is enshrined in that document and gives it that political will to make it a reality.

Q152 Lord Foulkes of Cumnock: While we are on other discussions that are taking place, the WTO discussions have been taking place in Bali. Has the automotive industry been included in anything there? Is it included in any of the agreements at the WTO discussions?

Mike Hawes: I do not believe it has been directly involved, but it is clearly affected by the potential that those would offer.

Lord Foulkes of Cumnock: How would it be affected?

Mike Hawes: The move towards what the WTO is trying to achieve offers some prospects of increased liberalisation, which is clearly going to be of benefit.

Lord Foulkes of Cumnock: There are huge potential markets in China, Brazil, India and so on, but you are concentrating on America. I would have thought that there is bigger potential in some of these other developing markets for some of the vehicles produced here than there is in the United States.

Mike Hawes: Absolutely. As a business, you are looking at all global opportunities. For many UK companies, China has had tremendous growth over the last five to 10 years. For some of our British brands and manufacturers, China is now the biggest market, with the US second, but both are critical markets. TTIP is an opportunity to strengthen the opportunities within the US, but it does not mean that any manufacturers are going to lose sight of an opportunity in China and the Far East markets, which have growing demand for mobility.

Lord Foulkes of Cumnock: But using your phrase—we have to get these words right—“mutual recognition” of the regulations, what is the position in all the major markets like China? Is there mutual recognition already, or do you have to achieve that? What about Brazil, India and so on?

Mike Hawes: They each have very different regulatory standards, so again to a certain extent it is one step at a time.

Chris Scott: The actual technical requirements are substantially similar. The actual things that we have to achieve are very much the same. I come back to my example of the instrument cluster and the warning symbol. That warning symbol is accepted in almost every other market in the world, but the system that is required to be utilised to demonstrate compliance is different. Although the technical standards may well be the same, as Geoff was saying there is a requirement to demonstrate compliance to the authorities in all those other markets. TTIP gives us a bit more leverage to say that mutual recognition is a way forward to one common understanding of regulations which are demonstrated differently, with the ambition of having it recognised globally.
Lord Foulkes of Cumnock: But you see what I am getting at. You could come back to us and say, “It is you who are discussing TTIP, so you are just as enthusiastic about it as we are”, but I am asking you, from your point of view as motor manufacturers wanting to increase your sales, how important TTIP is in the global sense. You say that you want the political will behind TTIP, but surely you should also be saying that you want the political will behind agreements with China and Brazil.

Andrew McCall: I think that the other aspect of developing a set of mutually recognised standards is that it would help to create some critical mass to take those to other parts of the world. That is actually quite an important part. You have hit on a really important point there, but we do view TTIP as an opportunity of making progress in that area.

Mike Hawes: The two biggest global markets are being increasingly aligned.

Lord Foulkes of Cumnock: That explains it, thank you.

Q153 Baroness Henig: Returning to TTIP, you said earlier that you thought that the issue of tariffs was a minor factor in the overall benefits to be gained. None the less if I might press a bit on tariffs, from your own evidence it seems that tariffs could be quite a significant issue. Two questions: what gains might flow from the removal of just the tariffs alone, particularly from a consumer point of view? We have not heard much about consumers yet, so perhaps I could bring them in. Secondly, do you anticipate any negative effects on EU producers from the removal of EU tariffs where they are higher than those imposed by the United States?

Andrew McCall: May I answer on the general point, and then Mike will come in on the specifics? We made the point that we make about the non-tariff barriers because it is very important that we remain focused on a comprehensive agreement. If people start thinking that a tariff-only deal is what we are after here, that will become the goal and we will lose the ambition and the vast majority of the benefit of the agreement. That is why we make such an emphasis on a comprehensive agreement. A tariff-only deal is not supported by any of the key players in the industry, so that is why we make that point.

Baroness Henig: It is obviously an important element within the big package.

Andrew McCall: It is a significant element, provided we have the comprehensive deal.


Lord Lamont of Lerwick: Surely, on these statistics, you would expect a big increase in US passenger cars to Europe, a big increase in US buses to Europe, and a big increase in EU light commercial vehicles to the United States. I mean, look at the figures; they are quite dramatic.

Mike Hawes: Is that in terms of the current tariffs that you are referring to?

Lord Lamont of Lerwick: Yes.

Mike Hawes: There is the point the Lord Chairman made earlier: that the demands for vehicles and the types of vehicles are different on different sides of the Atlantic.

Lord Lamont of Lerwick: But is not the United States sort of white-van man country? I would have thought there was a huge opportunity.

Mike Hawes: Perhaps not white-van man but certainly big-truck man. It comes down to the level of demand; the types of vehicles that are in demand and sold in Europe tend to be smaller and more fuel efficient at the moment. It is a different driving condition, and going back to one of your earlier questions, you produce close to where you sell, and a lot of the vehicles in the US are designed specifically for US customers. There is not that level of demand in Europe. Potentially, though, we are seeing increasing opportunities for European vehicles into the US, given the demand especially for premium vehicles into the US, which is a strong export market from the EU into the US.

Lord Lamont of Lerwick: What are the key features that you would want to see included in an investment chapter? Is there any force in what Professor Evenett, one of our
witnesses, said to us, which I was rather puzzled by: that EU manufacturers would expand their investments in the US with a view to exporting back to Europe from the lower cost southern US states?

Mike Hawes: I think we share your puzzlement. European manufacturers already have facilities in the US and export some models back to Europe, but they have invested in the US because it is close to the main market for those particular models. We do not see a tremendous change in that. A lot of the work that we are doing as an industry working with government through the Automotive Council is to ensure that there is a continued investment into the UK, and that that investment flows into the supply chain. Any opportunity where we can bolster existing vehicle production in the UK is going to benefit the supply chain, and the US presents that opportunity to help bolster that particular sector.

Geoff Grose: With the small manufacturers, although we are small, there are quite a lot of them. Their supply chains are predominantly European-based as well, so it all adds up to quite a large number of companies that would not be looking to relocate to the US, because being in the UK or Europe is an important part of what they are about.

Q154 Lord Radice: A number of witnesses have talked to us about how TTIP should be a living agreement. Could you tell us what you think about the idea of a living agreement? What is its definition for the automotive sector, and would you establish new institutions and so on? Have you thought about that?

Andrew McCall: It comes back to recognising that we are talking about two parts here, going back to the earlier question. For existing regulations, we are saying that this is about the mutual recognition of the two systems, but for new developing regulations we need a quicker, more streamlined system for agreeing a harmonised approach. That is the global technical regulations and UN process that Chris was describing. We need both elements, and we have a good example in the area of electro-mobility, where we are already developing standards. We have two interoperability centres established between the EU and the US, which are looking at developing new standards for electric vehicles, charging between the grid and so on. There is a good example of that, but I think that is the way we look at it: it is the two things.

Lord Radice: There is already an institution, you were saying, in this area?

Chris Scott: Yes, correct.

Lord Radice: Would you want to have more of those kinds of institutions?

Chris Scott: There is the well established mechanism of creating the technical standards within the UN. It is well supported by both industry and Governments all over the world, and as a result to create another institution perhaps—

Lord Radice: You do not need to.

Chris Scott: No. The other element, just to augment Andrew’s point, is that TTIP as a living agreement should seek to prevent the independent generation of regulations by one or the other parties, such that there can be no singular continued divergence. There must be a pulling back together, so the GTR process and the existing institution are exactly the right forum, with the political will to make it work faster.

The Chairman: Lady Henig raised the issue of consumers, but I think we need to pursue that a little further.

Baroness Young of Hornsey: I was just thinking how the average consumer would regard all these discussions about TTIP, but, seriously, what kind of benefits do you think will accrue to consumers as a result of a deal should it go through in your sector? I am particularly interested in that in relation to the niche areas and whether a consumer would notice any difference at all. I think, Mr McCall, that you said earlier that you would expect there to be a lowering of production costs, and I was wondering to what extent the
lowering of those costs might be passed on to the consumer. Also, do you foresee any kinds of disadvantages for consumers should the deal go through?

**Andrew McCall:** Perhaps I could start on the disadvantages. I do not actually think there will be disadvantages. There has been some comment that this is about reducing levels of protection for consumers. It absolutely is not about reducing levels of protection because we are not generating new standards. We are mutually accepting standards that we assess to be equivalent. I look at it like this: you get in a car in the US or the EU and you think it is safe, and it is regarded as safe by both sets of regulators, so it is not about reducing the levels of protection. I think that is the first and most important point.

On your point about other direct benefits for consumers, I think it is too early to say. We expect reductions in cost from being able to build to one standard instead of two. There has to be a benefit there across the board, but it is too early to say how that will materialise. Of course, one can say as well that there will be an overall benefit for consumers as citizens in that we will see economic growth and we will see more jobs through this agreement. There should be a general benefit in that sense.

**Geoff Grose:** I mentioned before these barriers being a barrier to entry for some manufacturers, so there will be a benefit in more companies within the UK and Europe being able to export to the US in the smaller volumes. Currently, they are prevented because of this additional cost of retesting their model for the new market before they can sell in the US, so there will be more choice.

**Baroness Young of Hornsey:** I was just going to say there should be more choice, should there not, because presumably that will operate in the other direction and give you more competition?

**Geoff Grose:** Yes, more choice absolutely, and, as I mentioned, a benefit for the size of the company here as well in terms of our own staff and employees from the growth in an important market.

**Mike Hawes:** Competition in this industry is absolutely fierce. While we all sit here and talk on the same level, we will walk out of here and everyone will compete. Any opportunity to take a competitive advantage into the marketplace and get more consumers would certainly be taken on.

**Q155 Baroness Coussins:** One issue that you flag up in your written evidence that also relates to consumers is the question of product liability, which you suggest could be an obstacle—or a “challenge” as you put it—in the achievement of TTIP. This is obviously an issue that is relevant not just to your sector but to food and drink, and pharmaceuticals—other sectors that stand to gain from TTIP. Can you say a little more about it? Is the potential obstacle the fact that the US legal system has the tradition of class actions and we do not? How do you see this obstacle being overcome in the negotiations? Are you talking to your counterparts in other sectors, like food and drink, about this?

**Andrew McCall:** We do recognise it as an issue because, as you say, it is quite litigious in the United States. We do not yet have a solution to it, but clearly we need to get to the point where, if your vehicles are built to European standards and those are mutually recognised as acceptable in the United States, that does not make you any more liable for any legal action, and vice versa. That is the point we need to get to and that is the challenge, and as you say it is not only our sector that faces that challenge. That is something the negotiators are going to have to address and find a way of dealing with. It is certainly something we need to look at.

**Baroness Coussins:** Are they getting anywhere or is it loggerheads on this at the moment?

**Andrew McCall:** Again, it is one of those things where it is too early to say. We have only just started the negotiation process. The third round is coming up, but we are just at the beginning of that process.
Baroness Quin: I want to go back to an earlier question that is still puzzling me. Baroness Coussins and I raised the Canada agreement. I got the feeling that you said it was limited and that you were quite disappointed. Was that because your issues were not given a high enough priority in the negotiation? Was there not a political push, or was there resistance from the Canadian side? Thinking of the relevance of it to TTIP, if you get a good settlement from TTIP and achieve your objectives, I wonder whether that would not be another way of putting pressure on Canada, given the closeness of the US and Canadian markets.

Mike Hawes: That is a good point. We are not saying that the Canadian agreement does not have merit; it is just that we do not believe it sets the template for TTIP, for the reasons we outlined earlier. Certainly, if you can get to the stage where the European and US markets have mutually recognised standards, that is clearly going to open up further opportunities for Canada.

Baroness Quin: Do you think your issues got enough priority in the Canadian agreement?

Andrew McCall: I think the auto industry generally has very much welcomed the EU-Canada Free Trade Agreement, but the focus was not so much on the harmonised, mutually recognised standards as it is in TTIP, and as Mike has said it is TTIP that gives us the opportunity to really make progress on that. There is some limited progress in the Canada agreement on that, but the bulk of that was really about the tariff dismantling over time.

Baroness Henig: I am conscious that on the European mainland there are some major motor manufacturers, and I am just wondering whether you have been in touch with them and whether there is any shared interest, or whether in fact their interests in this are different from yours.

Mike Hawes: We are regularly in contact with the European side. Obviously, a number of UK manufacturers are part of the European Association. On a trade association level, we have regular dialogue with others. The position is the same, effectively, and what is critical is that the European industry is aligned with the American industry in promoting this as a real boost for the sector.

Baroness Henig: That actually gives us some strength for the negotiating position.

Mike Hawes: Correct.

Earl of Sandwich: Sorry I had to come in late. I just wanted a very quick clarification from Mr Hawes. Looking through the SMMT trade policy principles, you have eight principles in your evidence. Only one of them is a negative. I just wondered why you said that, “sectors should not be traded against each other”. What sort of bad experiences have there been?

Mike Hawes: It is a principle. We mentioned earlier the free trade agreement with Korea. As a sector and as an industry, we do not believe that the interests of the automotive sector were assured by that particular agreement. There may have been benefits in other sectors, but they certainly were not as strong benefits in our area, so clearly any agreement should ensure that it is going to deliver a benefit across all sectors.

Earl of Sandwich: That is the outstanding example, and there are no other examples in recent times.

Mike Hawes: A number of other agreements are in discussion rather than on the books, and we are trying to make sure that principle is applied within those as well.

The Chairman: I must say, I had some experience years ago of negotiations under the common agricultural policy. It seems rather a pious hope to me to maintain that principle. This is the last moment for my colleagues. Are there any other points? I see none. Thank you all very much for coming; we really appreciate it. You have been very helpful, and I think some of the exchanges towards the end have been particularly valuable in putting
together our report, which we are now going to discuss in private. Thank you all very much for coming.
1. We note the committee’s request for evidence discussing “the minimal level of agreement necessary to make the negotiations worthwhile to the UK and will explore and evaluate the UK and EU’s priorities in the negotiations.”

2. The Center for Transatlantic Relations has undertaken research into both the economic implications of TTIP and the geostrategic aspects of any agreement. We have undertaken a number of projects on this. Shoulder to Shoulder: Forging a Strategic US-EU Partnership, argued for a transatlantic economic agreement as the means to invigorate the US-EU strategic relationship. Our foresight exercise Transatlantic 2020, examined the trends shaping Europe and the USA and how they would impact on the success or failure of any attempt at a transatlantic economic deal. We are currently undertaking a third project that draws out in more detail some of the geopolitical implications we discuss below.

3. The transatlantic economy is the largest and wealthiest market in the world. It accounts for over three-quarters of global financial markets, 50% of world GDP in terms of value and 41% in terms of purchasing power, generates $5.3 trillion in total commercial sales a year and employs up to 15 million workers in mutually “onshored” jobs on both sides of the Atlantic. The U.S. and EU are each other's most important trade and investment partners, each other's most profitable markets, and each other's major source of “onshored” jobs. The dynamic interaction between investment and trade distinguishes the transatlantic economy from all others. Transatlantic investment flows of nearly $2.7 trillion dwarf those among any other continents. US and European companies account for 60 percent of the top R&D companies and 69 percent of private R&D spending in the world. We are literally in each other's business.

4. The US-UK commercial relationship is among the most integrated in the world. Over 2 million people in both countries owe their jobs directly to bilateral investment flows; US affiliates employed over 1.2 million workers in the UK while the UK employed over 900,000 workers in the US, according to 2011 estimates. Estimated sales of US and UK affiliates in each other’s countries totaled $1 trillion. US investment in the UK over the past 12 years was more than 11 times larger than US investment in China. Since 2000, US firms have invested more in the UK alone than in South and Central America, the Middle East, and Africa combined. US affiliates account for 6.4% of the UK’s total output, and the UK accounts for 25% of total U.S. affiliate output in Europe. Nonetheless, a variety of barriers inhibit even further economic opportunity.

5. There has already been substantial work assessing the economic benefits of TTIP. The removal of tariff barriers across the Atlantic is estimated to be worth five times the US free trade agreement with South Korea, and removal of non-tariff barriers across the Atlantic is projected to provide three times as much in economic benefits for the US and Europe as completion of the Doha Round. Opening up the transatlantic services sector – where most UK and US jobs are yet where almost 20% of combined US-EU GDP is protected from competition -- would be equivalent
to 50 years worth of WTO liberalisation of trade in goods, according to the European Centre for International Political Economy. An independent study by the Centre for Economic Policy Research, London, forecasts that an ambitious and comprehensive deal could see the EU gaining €119 billion a year once fully implemented. EU exports to the US could rise by 28%, earning exporters of goods and services an extra €187 billion annually. Consumers will benefit too with an average family of four living in the EU being €545 better off every year. Even partial success could have significant positive benefits for jobs, trade and investment.

6. TTIP is not only about trade. The US and Europe are allies in NATO, partners in addressing global political and economic problems, and account for 80 percent of all development assistance around the world. We are democracies, market economies, and leading supporters of the rules-based international economic order. TTIP is as much about how the US and the EU can reposition themselves for the new global political economy as it is about opening up the transatlantic market.

7. TTIP encompasses a strong geopolitical dimension. By this we mean the ability of the US and EU to draw on their enhanced relationship to affect wider global changes to trade, international norms, and politics. It can help them manage their relations with emerging powers and ensure stability as the international order faces a period of substantial change.

8. With regard to the committee’s specific questions, we feel we are in a position to provide answers to the following:

9. *Question 4: How will TTIP negotiations be affected by relations with third countries, such as China, and also developing countries, including in relation to existing and pending bilateral trade agreements? How do you anticipate the TTIP interacting with the Trans Pacific Partnership and NAFTA, for example?*

10. Viewed historically, TTIP may be viewed as an attempt by the transatlantic alliance, for so long the centre of global power, to manage a world which is no longer centred so exclusively on the North Atlantic. A combination of sheer size and political leadership would turn TTIP into a means by which to lift and align transatlantic standards to drive broader international cooperation. Making the standards negotiated by the U.S. and EU into the benchmark for global models, would reduce the likelihood that others will impose more stringent, protectionist requirements for either products or services. Mutual recognition of essentially equivalent norms and regulatory coherence across the transatlantic space, in areas ranging from consumer safety and intellectual property to investment policy and labor mobility, not only promise to improve the lives of the people in the USA and Europe but form the core of broader international norms and standards. Transatlantic market-opening initiatives in trade, clean technologies, and services could also be extended to WTO members who are willing to take up the same responsibilities and obligations covered by such agreements.

11. TTIP is therefore likely to be a bellwether of how the US and EU are likely to engage other influential actors and the degree to which rising powers choose to challenge the prevailing order or accommodate themselves within it. The stronger the bonds
among core democratic market economies, the better their chances of being able to include rising partners as responsible stakeholders in the international system. The more united, integrated, interconnected and dynamic the international liberal economic order is—shaped in large part by the US and Europe—the greater the likelihood that emerging powers will rise within this order. The looser or weaker those bonds are, the greater the likelihood that rising powers will challenge this order. This underscores the need for such an agreement to be open and outward-looking, rooted firmly in common norms and standards that can help shape the broader international order and question of global governance.

12. Further work needs to be undertaken into the specifics of how TTIP is likely to shape relations with specific countries and regions. There are already signs that TTIP is causing countries such as Brazil to consider how they might engage in trade liberalization without being left in the cold. Japan's decision to join the Trans-Pacific Partnership was due not just to inner-Asian dynamics but Japan's concern that the start of TTIP negotiations among the other major industrialized countries could left it isolated. With the EU now also negotiating a bilateral trade agreement with Japan, both the U.S. and the EU are in direct talks with Tokyo about opening the Japanese market -- a goal that for decades has seemed unattainable. China itself has changed its position and signaled a willingness to join plurilateral talks on services. Its motivations remain unclear, but there is no denying that TTIP and related initiatives are injecting new movement and energy into efforts to open market and strengthen global rules.

13. One weak element to the TTIP thus far is that governments have not stated whether and how the agreement, once concluded, might be open to accession by others willing and able to commit to similar goals and ground rules. Framing the TTIP as an 'open architecture' accessible to others could give the West tremendous leverage in terms of ensuring ever broader commitment to the high standards and basic principles governing modern open economies, much as NATO and EU enlargement gave the West significant leverage over transitional democracies in central and eastern Europe. The overall effect would be equivalent to the Atlantic partners effectively offering the world a super-Doha, an offer which would keep the flame of free trade burning, now that the process appears to be flickering.

14. Questions 9 and 10. How can the UK seek to maximise its influence at EU level as the TTIP negotiations progress? What might be the potentially adverse effects for the UK of a failure of the TTIP negotiations?

15. The UK plays a central part in TTIP, both economically and geopolitically. Compared to some states in Europe, and certain parts of the US, the British government leads the way in appreciating that the notion that we can “decouple” from each other's economic fortunes is mistaken and can lead to serious policy errors. The North Atlantic economic and financial crisis compels us to develop an integrated transatlantic strategy to bring debt and deficits back to sustainable levels, to meet the budgetary challenges of demographic change, and ensure sufficient room for fiscal manoeuvre in the future.

16. However, from the US perspective, the UK could pose a number of challenges to TTIP, for example through concerns about its impact on the NHS or UK agriculture.
One particular US concern, and also for other members of the EU, is that TTIP could become caught up in the UK's attempts to renegotiate its relationship within the EU. Britain's relationship with the EU is often seen as one of the key benefits it can offer in the UK-US relationship. As noted above, the UK's outward looking economic agenda is a strength, both in its relations with the US and to the EU. But the UK's debate about its EU membership risks turning the UK inwards. Here the UK should never lose sight of the US-EU relationship and what British policy towards the EU could mean for this much larger transatlantic relationship.

17. The idea the UK could hold a referendum and quit the EU is currently a background concern for TTIP, but not one that has passed unnoticed. If TTIP negotiations were delayed into 2015 then there is the possibility they could become caught up in a British General Election, also occasionally suggested as an earlier date for an in/out referendum. Any delay beyond the middle of 2015 could find TTIP negotiations taking place at the same time as the UK and EU begin attempts at a renegotiated relationship. While a TTIP without the UK would not be impossible – indeed, the US and EU have warned this could happen – it would be more difficult and a lesser deal if secured. It might also be a more difficult sell to the US Congress.

18. At the same time, a collapse or significant delay of TTIP negotiations caused by one or more of Britain's EU partners, could fuel calls for the UK to quit the EU. Eurosceptics have long argued the EU holds Britain back from negotiating its own trade deal with the US. But there's a twist. TTIP is predicted to weaken Britain's economic relationship with Europe in favour of its already strong transatlantic economic relations. While other EU states would also experience this, their political commitment to some form of political union is not reflected in the UK where, at least in public debate, the economic dimension has always come first. A weakened UK-EU economic relationship could help push the UK further towards an EU exit.

19. No doubt a UK outside the EU could secure some form of partnership within TTIP, indeed a geopolitical aim of TTIP should be to broaden it beyond the US-EU relationship. However, this relationship could, at least formally, be no different to that offered to other partners such as Canada or Brazil. Both the EU and USA would both be uneasy at allowing the UK anything less than a backseat in TTIP: TTIP will clearly rest on a Washington-Brussels axis.

20. Any discussion of the UK joining NAFTA, seeking a stand-alone free-trade bilateral deal with the USA, or seeing TTIP as a purely trade and investment agreement, overlooks the US desire for a wider geopolitical relationship with Europe, and in particular here, the EU. The US has long expressed concerns at what is sees as the EU's lacklustre geostrategic thinking on issues beyond its near-abroad, to say nothing of the EU's struggle to follow thinking with action. A UK withdrawal that weakens EU efforts to think in a more geostrategic way, or which complicate or undermines TTIP, would only dampen what hopes Washington still has that Europeans – Britain included – can act as effective partners. For the US this would be a lose-lose scenario: reducing the geopolitical position of Britain, one of its closest allies; and changing the EU, Europe and the transatlantic relationship in ways which could be detrimental to US interests and hopes. Any weakening of the links between the two
sides of the Atlantic – the core of UK foreign policy – would also be a spectacular home-goal by the UK.

21. **Question 12. What are likely to be the most significant potential gains and difficulties for other Member States? How do UK interests and those of the other Member States coincide or run counter to each other? What would you identify as areas of common European interest?**

22. EU member states share strong interests in using TTIP to open US public procurement and services markets, reduce trade barriers, provide for freer flows of people across the Atlantic, and align regulatory standards in ways that could substantially reduce costs for companies and consumers. They also share a strong interest in reaching agreement with the US on a host of standards and norms, cutting across many economic sectors, which could form the core of global standards in ways that avoid lowest-common denominator outcomes when dealing with rising powers that may not necessarily share the same such standards with regard to health and safety, or consumer, worker and environmental protection.

23. **Question 14. From the US perspective, what are likely to be the biggest political, institutional and practical challenges to a deal? How can they be overcome?**

24. The most important hurdles to greater transatlantic commerce are “behind the border” regulatory differences rather than “at the border” trade barriers. Regulatory barriers are at the core of the current lack of integration of the transatlantic market. They can be used, and actually are used, as non-tariff barriers in transatlantic exchanges. Accounting rules have proved peculiarly difficult to accord. Health and safety regulations are profoundly different, witness the resistance in Europe to genetically modified foods. Patent and intellectual property systems are contradictory. Approval of drugs and medicines often put American and European authorities at loggerheads. Issues such as food safety or environmental standards have strong public constituencies and are understandably sensitive in the domestic political arena.

Services are the sleeping giant of the transatlantic economy, where modest progress can lead to substantial gains, but here barriers remain high. Most American and European jobs are in the services economy, which accounts for over 70% of U.S. and EU GDP. The U.S. and EU are each other's most important commercial partners and major growth markets when it comes to services trade and investment. Deep transatlantic connections in services industries, powered by mutual investment flows, are also the foundation for the global competitiveness of U.S. and European services companies. Yet protected services sectors on both sides of the Atlantic account for about 20% of combined U.S.-EU GDP – more than the protected agricultural and manufacturing sectors combined. There are also investment barriers, especially in terms of national and state infrastructure and transport sector ownership, which will be difficult to change. Removing barriers in these sectors would be equivalent to 50 years’ worth of GATT and WTO liberalization of trade in goods. Opening the
transatlantic services market could also trigger plurilateral negotiations to include other partners.

25. TTIP will also have to face a series of complex questions connected to energy and climate change. TTIP could become a means by which both sides of the Atlantic shape each other’s approach to these issues. The possibility that TTIP could further enhance US energy exports to Europe is likely to have significant implications for relations between the EU, its member states, Russia and the Middle East. European environmental concerns might also shape US approaches to tackling climate change and the development of renewable energy. Both sides have enormous interest in maintaining leadership in energy innovation; TTIP could spark greater transatlantic investment in this area.

26. Institutional differences between the US and Europe will be difficult to overcome. With responsibility for regulation in the EU split between European and national levels, and in the US between the federal and state governments, simply getting the right people into the same room will be a challenge. The large differences between the administrative and regulatory systems of America and Europe make the practical task of implementation difficult, even if the political will is there. Tax rules are very different in America and Europe: one need only remember the general rejection of VAT in the US. Competition oversight is judicial in America and administrative in Europe and resolutions are often contradictory.

27. Strong political will can overcome these barriers, but the task will not prove easy. It is one thing to want the free movements of goods, services and capital and quite another to harmonize legal and administrative prerequisites. A starting point will be for TTIP to identify “essentially equivalent” regulations for mutual recognition and promote “upstream” regulatory cooperation for new technologies.

28. **Question 15. What would be a mutually beneficial solution for the EU and US? Is that the same as a mutually beneficial solution for the EU and UK?**

29. A mutually beneficial solution for the EU, US and UK would be a transatlantic partnership that restores a sense of common cause to the US-EU relationship. While the NATO alliance remains crucial, and at the heart of both US and European security, it alone is an insufficient means by which the two core parts of the West can manage the rise of new powers and non-traditional security threats such as climate change, fragile states or international terrorism. TTIP offers a second anchor to the transatlantic partnership.

30. On the economic front, full transatlantic trade and investment liberalization could lead to more efficient resource allocation, reinforced competition, more intense and better-quality research and development activities, and increased innovation. Such a move would boost economic growth, increase per capita income and create more and better jobs both in the EU and the US. A transatlantic marketplace could further reduce barriers within the European market and push EU member states to implement their own Directives, such as on services, something the UK and US are both keen advocates of. This could stimulate competition within Europe and between the US and Europe. A British withdrawal or disengagement from the EU could
reduce the potential for TTIP to affect such changes. But TTIP is not about promoting unchecked economic competition or mindless deregulation. It is an effort to harness the potential of the transatlantic partnership to strengthen each side’s capacity to help shape the global rules-based order. The mutually beneficial gains for all sides become clear when we contemplate what could be the outcome of a failure to secure TTIP: growing protectionism, U.S.-EU rivalry in third markets, and the triumph of lowest-common-denominator standards.

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November 2013
Mike Hawes, CEO, Society of Motor Manufacturers and Traders, Geoff Grose, Chief Engineer, McLaren Automotive Limited, Andrew McCall, Executive Director, Governmental Affairs, Ford of Europe and Chris Scott, Senior Manager, Global Automotive Safety, Regulations, Compliance and Homologation, Jaguar Land Rover—Oral Evidence (QQ 144-17)

Transcript to be found under Geoff Grose
HM Treasury – Written evidence

Financial Regulation in the TTIP

What do we want and why?

1. The financial services sector (including insurance services) is by far the single largest contributor to the UK’s trade surplus in services (£45bn\(^{64}\) in 2012, accounting for half of our total trade surplus in services). The US and the EU together account for 65%\(^{65}\) of UK trade in financial services, in 2011 our financial services trade surplus with the US was £11.8bn\(^{66}\) and with the EU (27 member states), £17.8bn\(^{67}\). Therefore, further liberalisation of the financial market between the EU and the US is likely to be a significant win for the UK.

2. Market access barriers to trade are relatively low between the EU and the US. However, regulatory barriers are significant and growing. ‘Regulatory coherence’ in financial services across borders increases the ability of the EU and the US markets to interact and function effectively, while inconsistency or incoherence may lead to regulatory arbitrage, financial instability, lower competition and higher compliance costs being passed on to households and firms.

3. Since the crisis, regulators have rightly discussed deep and comprehensive financial reforms in G20, FSB and other international fora, this has led to a whole set of non-binding and high level principles being agreed internationally. The EU and the US are seeking to implement these initiatives consistently. However, despite these good intentions there are still significant differences, including in the scope of regulation and the nature of cross-border cooperation. Some of these differences can be justified on prudential terms given different national market structures. However, others cannot be fully justified on prudential grounds and present material barriers to free trade.

4. Currently, there are existing fora for bilateral regulatory dialogue: mainly the Financial Markets Regulatory Dialogue (FMRD) and the EU - US Insurance Dialogue. These dialogues are long standing and have been helpful over their lifetimes, especially before the crisis, in establishing trust between transatlantic regulators. However, following the crisis and especially over the past 18 months or so, progress has slowed. Areas of disagreement have become increasingly contentious and what should be technical discussions have become more politicised. In some ways this was inevitable as the regulatory emphasis moves from agreeing high level standards to detailed technical implementation. Differences in the financial market structures and

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\(^{64}\) ONS Pink Book 2012

\(^{65}\) ONS Pink Book 2012

\(^{66}\) TheCityUK - economic contribution of UK financial and professional services

\(^{67}\) TheCityUK - economic contribution of UK financial and professional services
legislative frameworks and processes between the EU and the US mean that it is unrealistic to expect the EU and US to develop and implement identical rules.

5. Following the financial crisis we have had significantly upgraded financial regulation on both sides of the Atlantic without upgrading the mechanisms for regulatory cooperation. We believe there is considerable scope for EU and US regulators to coordinate and cooperate closer with each other in order to ensure that we develop consistently high standards, and where consistency is not possible we discuss and agree how different rules would work across borders – reducing the unintended consequences of inconsistent regulation.

EU proposal for financial regulatory coherence within the TTIP

6. The EU sees financial services (both market access and regulatory aspects) as an integral part of the TTIP negotiations. To date, the EU has initiated detailed discussions on financial regulation with US negotiators in all three rounds of talks in 2013. The UK strongly supports the EU’s ambition to seek greater regulatory cooperation with the US in financial services.

7. We do not believe that EU is seeking a harmonisation between transatlantic regulatory standards in the TTIP or even through the TTIP. The EU and the US have different financial market structures and legal frameworks and our rules should reflect these differences. The EU and the UK are also not interested in unpicking the progress that the US or EU have made on financial reforms since the crisis. The EU has not proposed to discuss any individual financial regulatory issue within the TTIP negotiations.

8. What the EU would like to achieve is stronger and more formal dialogues between transatlantic regulators, for example, to examine areas of differences and work-out how rules could work across borders. This could be built on the existing bilateral dialogues however the UK would like to see:

   o **More emphasis on ex-ante cooperation** between regulators, create systematic and ongoing dialogues for EU and US regulators to: notify each other of their intentions to develop new regulations; carry out joint consultations and impact assessments; and, understand each other’s market structures and discuss how rules need to work across borders. This should help regulators to avoid damaging regulatory differences emerging at the last minute when legislative processes on both sides are already far advanced.

   o **Faster resolution of EU and US regulatory differences**, with greater accountability for regulators to take account of the international dimensions of their rules and to work constructively with international regulators.
- **Greater focus on technical co-operation** amongst regulators and ensuring the right technical regulators are involved, minimising the need for political interference in technical discussions.

- **Greater alignment with the discussions at international fora** – greater EU-US co-operation both in the implementation of international agreements and efforts to resolve EU-US differences ahead of international discussions.

9. This depth of dialogue does not exist today between the US and EU, and is not served by other international regulatory fora in financial services (given competing agenda-items and wide international attendance across multiple jurisdictions). The EU has proposed a framework within the TTIP which we believe has the potential to achieve the objectives above. We expect the Commission to publicly release details of the EU proposal on financial regulation shortly.

### Does this have to be achieved in the TTIP?

10. The TTIP is a once-in-a generation trade agreement and the result of unprecedented political commitment and will from both sides of the Atlantic. Regulatory coherence in other areas is a key aim.

11. It would be a shame if we failed to seize this rare opportunity to increase regulatory co-operation and coherence between the two largest financial markets in the world. We believe now is the right time to take stock, examine how we can enhance bilateral dialogues, making them stronger and more fit for purpose in the post crisis environment.

*January 2014*
Josefine Holmquist, Trade First Secretary, Swedish Permanent Representation to the EU and Efraim Gómez, Ministry of Foreign Affairs, Swedish Permanent Representation to the EU—Oral Evidence (QQ 85-98)

Transcript to be found under Efraim Gómez
1 Introduction

1.1 The Transatlantic Trade and Investment Partnership (TTIP) negotiations between the US and the EU-28 is a highly ambitious regional trade agreement which is targeted as an ambitious, comprehensive, and high-standard trade and investment agreement that offers significant benefits in terms of promoting international competitiveness, jobs, and growth in the partner countries. TTIP aims to liberalise, as much as possible, trade and investment between the two blocs in the 20 areas that the agreement is expected to cover. Launched in February 2013, the negotiating parties completed a first round of talks in Washington in early-July, and the second round of negotiations was scheduled to be held in Brussels in the second week of October.

1.2 A CEPR study estimated that an ambitious and comprehensive agreement could bring significant economic gains for the EU as a whole (approx. US$ 88.7 to 155.1 billion a year through 2027, depending on the level of ambition in the negotiated agreement) and the US (US$ 64.4 to 123.5 billion a year), while also increasing global income by almost US$ 130 billion annually as a result of increased bilateral trade. The most ambitious and comprehensive agreement which eases behind-the-border impediments to trade and investment is likely to increase the annual GDP of both parties by 0.5 to 3.5 percent, depending on the degree of integration. Together, the US and the EU already account for almost half of global GDP and a third of world trade; each day, goods and services worth US$ 2.7 billion are traded bilaterally. The stock of shared direct investment adds up to more than US$ 3.6 trillion.

2 Key Challenges and Concerns

2.1 As much as 80 percent of the total potential gains from the TTIP are estimated to come from cutting costs imposed by administrative procedures and divergent regulations (so-called non-tariff barriers or NTBs), as well as from liberalising trade in services and public procurement. Although tariffs between the US and the EU are already low (on average 4 percent), the cost of dealing with unnecessary bureaucracy can add a tariff-equivalent of 10-20 percent to the price of goods, which (although usually borne by the consumers) affect the competitiveness of both domestic producers and exporters in highly cost-sensitive modern global value chains. Ecorys estimates that eliminating even half of the NTBs to trade caused by regulatory divergences could increase transatlantic GDP by half a percent, or US$ 150 billion. But tackling the NTBs is not easy, and the two trade partners

68 Bruegel is an independent Brussels-based economic think tank. It contributes to European and global economic policy-making through open, fact-based and policy-relevant research, analysis and debate. Bruegel takes no institutional standpoint.
69 Negotiations due to take place this week in Brussels was apparently cancelled due to the US government budgetary situation.
70 CEPR (2013): “Reducing Transatlantic Barriers to Trade and Investment: An Economic Assessment”.
71 Statistics taken from DG Trade website
have been discussing regulatory harmonisation in key traded products/sectors for nearly two decades now, since the adoption of the Transatlantic Declaration in 1990. Furthermore, as most of the gains are expected to emerge from eliminating bilateral regulatory and beyond-the-border barriers (the impact of which on increased trade flows is both difficult to measure and attribute), the inability to reduce the NTBs imply that a large part of the projected trade gains may remain unrealised.

2.2 Reducing the remaining tariffs will be harder than imagined: the reason why high tariffs in sugar, textiles and garments, steel, and trucks have existed for so long is because of powerful vested interests that are loath to forgo their advantages, and negating which calls for a political appetite to challenge key constituencies at a time of weak economic prospects. Finally, the TTIP negotiations are not all encompassing; they will not cover agricultural subsidies or subsidies to aircraft manufacturers, movement of temporary workers, nor comprehensively cover IP rules and financial sector regulations. Hence, and despite different studies having already outlined the economic and strategic benefits of TTIP, the debate on the feasibility of a deep trade agreement and even its desirability is still an open issue.

2.3 More critically, the TTIP has rather ambitious negotiation targets, aiming for a ratified pact before a new European Commission takes office in November 2014, which is in conflict with the level of ambition on the substance. In the run up to the second round of TTIP negotiations, negotiators on both sides seemed committed to press for an ambitious outcome on a number of key issues and seek provisions that will make the EU and US regulatory systems more compatible and help shape global rules on trade without watering down the existing set of rules and regulations. Current negotiations and roadmaps aim to be able to establish the "common foundations for an ambitious and transformative TTIP", and it is hoped that a commonly agreed outline of the regulatory and rules component of the TTIP will be ready by early 2014. Since the European Parliament is involved in trade negotiations, the May 2014 election can be considered as another deadline.

2.4 Concluding a reasonably ambitious deal in the next six months thus may be difficult to achieve as it calls for arriving at a mutually accepted modality for implementing transatlantic regulatory cooperation and coherence. Transatlantic efforts to recognise each other’s regulations have been a work-in-progress since 1990, some notable recent achievements being: (1) Mutual Recognition of Certificates of Conformity for Marine Equipment (2004), (2) Regulation of Civil Aviation Aircraft (2011), (3) Common Understanding on Regulatory Principles and Best Practices (2011), (4) Partnership on Organic Trade (2012), (5) Trusted Trader Program (2012), (6) EU waiver on exports of Active Pharmaceutical Ingredients (APIs) from the US (2013), (7) US acceptance of EU

73 The TTIP is expected to generate new momentum for multilateral liberalisation and provide a boost to trade and economic growth in the EU and the US, as well as reinforce the global influence of the two parties as international standard and rules setters. This directly reflects the unease in the industrialised world from the turbo-charged rise of the developing economies in the earlier decade, and the fear that the global order is no longer dictated by the West, whose ability to stand up to an increasingly powerful China is eroding with the latter’s rising economic heft; the present turbulence in the emerging markets is not likely to change the trend.

commuter and high-speed trains safety rules (2013)\textsuperscript{75}. A Transatlantic Economic Council (TEC) set up in 2007 has the mandate to guide work on economic convergence and harmonise regulations on: Cloud computing, E-vehicles, E-health, E-mobility, Energy efficiency, ICT trade principles, Innovation action partnership, Nanotechnology, Small and medium enterprise best practices, etc.

2.5 However, despite the rising mutual trust and cooperation between transatlantic regulators on standards-related issues and exchange of information, experiences in important sectors like automotive safety and emissions standards indicate that the long-delayed, much-needed standardisation is not easy to achieve\textsuperscript{76}. Dialogues with the goals of reducing NTBs have continued at varying levels of alacrity and with different structures, frameworks and roadmaps, but binding agreements have generally been indefinitely postponed, as a review of the official statements from US-EU summits and high level meetings reveal\textsuperscript{77}. The review indicates that the recent upward swing may not be enough to achieve meaningful mutual recognition agreements (MRAs) in the short TTIP timeline. Credible progress in view of the ambitious timeline thus calls for acknowledgment that there exist key differences between the two regulatory regimes; the latter has critical implications for the modality choice for achieving regulatory coherence. Recent experience at the US-led Trans-Pacific Partnership (TPP) negotiations has also clearly shown US business sectors’ unease with the possible sacrifice of ambition in the interest of a timely conclusion of a trade agreement\textsuperscript{78}.

2.6 The remainder of this note presents an assessment of the most viable modality for achieving transatlantic regulatory cooperation under the TTIP and the third-country impact of such convergence, in particular on large emerging markets like China. This is based on ongoing work at Bruegel\textsuperscript{79}, and has benefitted from the July 2013 Bruegel Workshop\textsuperscript{80} entitled “The Transatlantic Trade and Investment Partnership (TTIP): Towards regulatory convergence?”

\textsuperscript{75} The FRA confirms that its railroad safety advisory committee, Amtrak, the federal government’s passenger rail operator and others are working on safety design standards that would allow multiple units to operate in the US market. “There is broad consensus on the path forward,” it says. Source: Wright, Robert (2013), “US commuters: Land of the freeway starts to steer clear of the car”, 27 May, The Financial Times.

\textsuperscript{76} Current auto NTBs between US and EU are equivalent to an ad valorem tariff of 26.8 percent [Source: Ecorys (2009), \textit{op cit}], eliminating which would call for FTA negotiators to recognise among other things both countries’ standards in car-safety tests, viz. US and EU accepting vehicles that adhered to the ECE standard as well as America’s FMVSS regulations.


\textsuperscript{78} Tom Donohue, the head of the US Chamber of Commerce, has said he was concerned that in the rush to get a deal done before the end of the year the US might give up too much ground on key intellectual property and investment provisions: “this is going to be a great deal when it gets done. Let’s just not rush it.” Source: Donnan, Shawn (2013), “US business groups warn against compromises in Pacific Rim trade talks”, 26 September, The Financial Times.


\textsuperscript{80} The workshop was conducted under Chatham House rules; consequently this submission will not directly attribute the views expressed.
3 Unravelling the regulatory maze - what can be expected to be achieved by end-2014

3.1 Past research undertaken by Bruegelscholars shows that FTAs by EU and US tend to entrench the regulatory philosophy and practice of their respective trade hubs as these practices are exported to the partners, in effect fragmenting the world into a de facto dual regulatory zone. For example, in the case of automotive safety standards, because the US is not a signatory to the international 1958 UNECE agreement, UNECE regulations do not apply in the US. The US developed its own standards in parallel, the Federal Motor Vehicle Safety Standards (FMVSS), while in the EU, the commercialisation of vehicles is based on a type approval system that relies more and more on UNECE Regulations partially replacing EU legislation. These differences in regulatory environments give rise to many costly measures that hamper trade for EU firms to the US, and vice versa, and in turn for the rest of the countries in their individual hubs. The potential overall gains from regulatory congruence in TTIP from harmonised practices between the two trade partners are significant.

3.2 An ambitious WTO-plus chapter on Sanitary and Phyto Sanitary (SPS) and Technical Barriers to Trade (TBT) measures, monitorable disciplines on regulatory coherence and transparency, and regulatory compatibility in specific, mutually agreed goods and services sectors will turbocharge regulatory cooperation and enhance the two trade partners’ competitiveness vis-à-vis other emerging market (EM) competitors, in particular China. However, the problem lies in identifying the mutually acceptable binding modality of such cooperation and coherence. Industry (and consumers) are keen to see regulatory standardisation and mutual recognition in key traded sectors, not from deregulation and the lowering of standards, but through the elimination of wasteful and inefficient rules – both existing and future – by sensibly recognising each other’s standards and procedural streamlining where possible, but never at any cost to safety. In the contentious auto sector for example, there is an industry-led call for mutual recognition, which would ostensibly be some kind of reciprocity agreement whereby the US and EU would accept vehicles built to either standard.

3.3 In light of the past interactions between EU and US and drawing on Europe’s internal market experiences, it is clear that dramatic change in legislation (which would be entailed in case of harmonisation or convergence of existing regulations) on either shore of the Atlantic is not feasible. However, meeting the rather over-ambitious timeline and the scope of negotiations is possible if the partners agree to recognise unilaterally and unconditionally the other’s standards, procedures and conformity assessment tests; there is strong evidence that

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82 The estimated increase in US-EU bilateral auto trade associated with the elimination of tariffs and NTBs alone accounts for more than 1/3 of total estimated increase in bilateral trade flows associated with a successful TTIP negotiation. Source: CEPR (2013), op cit.
US and EU product safety regulation is likely to be deemed “compatible”\textsuperscript{84}. Negotiators in the European Commission agree that although the two sides have different but similar safety requirements when it comes to lights, door locks, brakes, steering, seats, seatbelts and electric windows, many of these could be formally recognised as providing the same level of safety\textsuperscript{85}. But attaining it calls for a regulatory cooperation agreement that more than states “intentions” and outlines “best practice objectives”.

3.4 What is called for is a “living” (as in progressive and not a one-time commitment) agreement on regulatory cooperation with a horizontal (cross-sectoral) template for coherence and conformity assessment and a detailed monitoring mechanism, with a few selected sectors put under immediate implementation. An agreement to avoid further fragmentation will call for cooperation when setting new rules, by motivating regulators to cooperate at an early stage as well as through the life-cycle of a regulation. The Ecorys (2009) study finds that 75 percent of total potential TTIP benefit (combined cost reductions for the EU and US by reducing divergence and partially aligning regulatory regimes) are in four sectors: motor vehicles (31 percent); chemicals, cosmetics, and pharmaceuticals (19 percent); food and beverages (14 percent) and electrical machinery, including medical devices (11 percent). Evidence also indicates that regulatory regimes and sectors that have the potential to provide the highest level of benefits and cost savings are likely to be regulatory regimes in the product safety area. Having corresponding regulatory agencies in both regions undertake Transatlantic Regulatory Impact Assessments (TARIA) on significant existing and pending product safety regulations in these sectors will further help in attaining regulatory coherence\textsuperscript{86}.

3.5 As for a viable model of arriving at regulatory coherence, lessons from the EU single market suggest enshrining the need for hard legal oversight and unconditional mutual recognition. Discerning \textit{ex-ante} the optimality of a regulation would be a complex and perhaps impossible task. Experience from the Australia-New Zealand FTA and the European Services Directive’s mutual recognition exercises clearly show that unconditional mutual recognition works best in integrating markets with developed standards and consumer expectations/cultural preferences, and that recognition must precede harmonisation efforts. Implementing regulatory coherence in a meaningful way in the near future thus calls for mutual recognition and equivalence that sets clear goals to overcome the (largely known and well documented) differences; the key steps to follow are setting (1) clear equivalence principles, (2) an enforcement mechanism, and (3) transparency of processes. In particular, transparency should be its guiding principle, with strong public oversight and involvement of industry and consumers. Without such legitimacy, it would be hard to guarantee that the application of standards would converge.

\textsuperscript{84} Based on 20 case studies and 3,000 observations of risk-reducing regulatory decisions in the US and EU, it is concluded that overall risk stringency is about the same, with several of the case studies showing divergence explained by protectionism and local rent seeking. Source: Wiener, Jonathan B. \textit{et al} (eds) (2010), \textit{The Reality of Precaution: Comparing Risk Regulation in the United States and Europe}, RFF Press.

\textsuperscript{85} This also calls for easier rules of origin in MRAs. Excessively constraining rules of origin have proved problematic for some of the EU’s previous recognition agreements.

\textsuperscript{86} Morrall, John F. (2011), \textit{op cit}. 

3.6 Clearly, creating a usable regulatory cooperation template with the horizontal elements which can be tested immediately in selected sectors is where the transatlantic political capital needs to be invested during the next few months, and generating an early momentum is necessary. To meet the targeted TTIP timeline, without sacrificing the ambition of scope, the regulatory cooperation agreement needs to be “living” and have “unconditional mutual recognition” as a key pillar of setting equivalence principles. The fact that there is a healthy fear of Chinese standards thwarting future market access prospects and “full political support” across the Atlantic makes the regulatory cooperation prospects under TTIP brighter than in the past. In the case of TTIP, past preparedness is waiting to be translated into a clear and implementable roadmap.

4 Impact on third country markets – Convergence in emerging market product standards

4.1 An important concern is whether the TTIP regulatory harmonisation will positively influence standard setting in large emerging markets (EMs). Assuming that the TTIP (and TPP) implements a deep liberalisation and achieves regulatory coherence in the near future, a consequential restructuring and/or fragmentation of global supply chains remains a real threat for the large EMs, in particular China and India. These economies may then react in the following ways. First, they adopt and upgrade to these new rules, regulations and industrial standards, even at some financial and political cost, in order to reduce the business costs of serving a world market. China took this approach when it adopted and pre-committed to stricter WTO disciplines during its accession process, which helped it to become the world’s most competitive economy. Indian exporters treat these costs as fixed before making the decision to export to industrialised country markets, often simultaneously meeting both the US- and EU-led standards’ compliance requirements (that are much higher than domestic standards) in order to avoid rejection of consignments. Chinese and Indian experience of the past decade has shown that pragmatically accepting and adapting to new realities bears fruit.

4.2 Second, they selectively refute the rules and production standards, based on domestic interest and the perceived market for their products in the new global economic architecture where developing countries and their domestic markets account for almost 40 percent of global economic activity at current US$ levels, and more than 50 percent at US$, PPP87; by 2050, it is estimated that six of world’s seven largest economies will be outside the OECD group. A more likely possibility is that the EMs may operate on a sui generis dual regulatory regime in the medium term in key areas such as product standards and intellectual property (IP). Taking the example of the TTIP negotiations, even if the EU and US manage to harmonise and upgrade transatlantic regulatory regimes as a defence against export competition from the rising Asian EMs, especially China, it is uncertain that they will be able to entice them into adopting those rules simply out of fear of exclusion.

4.3 The compelling reason for these economies to not unilaterally upgrade to the higher standards and rules, albeit harmonised, arises from the medium-term demand structure and purchasing power of the mass consumer in these economies. In 2011 the per capita GDP of Brazil was US$ 12,594, South Africa US$ 8,070, China US$ 5,445 and India US$ 1,489, while the average per capita GDP in OECD countries was US$ 41,225, with the US per capita GDP being US$ 48,112\(^{88}\); the demand pattern is thus necessarily different. Middle-class demand growth is also expected to be higher in the EM markets in the next few decades. In such a situation, given the effective demand from the price-sensitive large emerging middle-class is likely to remain high at home and in similar developing countries that they can easily serve, a mass domestic upgrading to the costlier, “higher” regulatory standards, albeit desirable, may not seem optimal to the Chinese and Indian policymakers. A more likely medium-term outcome is the possibility of the creation of a dual regulatory regime in EMs, with the export-oriented firms in these economies adopting the higher standards, while a large part of the remaining producers servicing the domestic market continue to use the old, less rigorous standards and IP regimes; this will further fragment regulatory regimes across the world. If the latter consumer group is significantly large (although difficult to quantify, this share is likely to remain around two-thirds of the total population in China and India for the next decade according to various estimates), the incentive for national EM governments to upgrade/sign up to more rigorous regulatory standards will diminish, at least until the majority of domestic consumers can afford to pay the quality-premium on the higher-standard discretionary products and services.

10 October 2013

\(^{88}\) Despite the high EM growth rates, the real wage and purchasing power gap is expected to continue in the medium term, and this coupled with the forecasted exponential growth in the lower-middle classes would in turn re-shape the global businesses. Source: Kharas, Homi (2010), “The Emerging Middle Class in Developing Countries”, OECD Development Centre Working Paper No. 285.
Linda Kaucher, Independent researcher: EU’s international trade agenda – Written evidence

Section A: Preliminary and overall comments
1. Herewith I present the reasons why the TTIP should be rejected outright by the committee.

‘Trade’ and ‘trade agreements’
2. While it is universally recognised that ‘trade’ is potentially beneficial overall, ‘trade’ and the nature of currently negotiated ‘trade agreements’ are very different.

3. Trade-in-goods commitments are to reduce at-the-border tariffs. However trade-in-services now predominates for the EU and for the UK and commitments on trade-in services grant rights to transnational corporations while correspondingly disallowing states from regulating corporations. Inherent trade-in-services rules of National Treatment and Market Access rules ensure this.

4. The EU is now including Investor State Dispute Settlement (ISDS) provision in its trade deals, including the TTIP. ISDS allows corporations to sue governments directly for any action (e.g. legislation) that negatively affects their future corporate profits. This greatly increases the rights of corporations in relation to the rights of states to regulate. ISDS already in operation elsewhere has either had a chilling effect on legislation or has led to big pay-outs. (See below for more on ISDS)

The TTIP
5. In the TTIP, beyond trade-in-goods tariff reductions, trade-in-services corporate concessions and even ISDS, the central tenet of the agreement is ‘regulatory harmonisation’. This may seem like a trade technicality. However our society is framed by legislation and regulation and they are vehicles for the manifestation of the democratic will. Although posed as a supposed ‘trade’ issue, ‘harmonising’ EU and US regulation has huge implications for all our lives, and for those of future generations, as trade agreements are effectively permanent.

Critically examining the source of the go-ahead for the TTIP
6. Some questions posed in the Call for Evidence can be seen as seeking information as to how to ‘sell’ the trade deal to the UK public.

7. It is a concern that the enquiry takes the issue of how to progress the TTIP as a starting point rather than critiquing the worthiness of the sources that have provided the go-ahead for the deal.

8. The decision to officially launch the TTIP supposedly hinged on the final report of a High Level Working Group on Jobs and Growth (HLWGJG).
9. Despite the name, Freedom of Information requests have revealed that, apart from bearing the names of EU Trade Commission Karel de Gucht and (then) US Trade Representative Ron Kirk, the HLWGJG just consisted of the usual EU Trade Commission and US trade bureaucrats who are employed to promote trade deals and are shown to be heavily influenced by the transnational corporations, especially financial service corporations, which stand to gain from this agreement, regardless of losses to others.

10. The other sources of backing for the TTIP are the Centre for Economic Policy Research (CEPR) reports produced for the UK government and for the Trade Commission, showing ‘gains’ from the TTIP. The pro-free trade think-tank’s stance brings into question the claims for gains in the reports, less than impressive anyway and undermined by other research, bringing into question how seriously the think-tank’s reports should be taken.

11. So these two sources of backing for the TTIP that have been brought to the public sphere are both biased and lacking in credence, yet the committee appears in its Call for Evidence to be accepting them as justification for the pursuance of such a monumental ‘trade’ deal that will affect our society so profoundly.

More on the High Level Working Group on Jobs and Growth and on harmonisation

12. Firstly note that the phrase ‘jobs and growth’ is the current spin phrase included in output from the Commission, the UK government, the US administration and even the Mayor of London. Recognising this ‘spin’ should alert suspicions as to why it is being used.

13. The HLWGJG was set up at the start of 2012 supposedly to report on the best way forward for transatlantic economic relations. Whereas economic integration of the US and EU had been a priority topic in bilateral summits prior to the financial crisis, focus at that point shifted away from it, as financial integration was a main factor in the crisis. However there was then a refocusing on economic integration as the supposed remedy to the economic crisis, with the façade of the HLWGJG. So EU/US economic integration and the nature of such integration have clearly been on the agenda for much of this last decade.

14. The final report of the HLWGJG (composition explained above), due in Dec 2012 but delayed until Feb 11th 2013, inevitably ‘recommended’ an ambitious trade deal.

15. Two days later, coinciding with the US State of the Union address, presidents Barosso and Obama jointly announced the intention to proceed with the trade deal, which was then officially launched at the G8 Heads of State meeting in Northern Ireland in June 2013.

16. However, on 1st Jan 2013, i.e. 6 weeks prior to this, David Cameron announced that the official launch of the TTIP would be the centrepiece of his chairmanship of the G8 meeting. Thus the intention was clearly well established before the HLWGJG final report.
17. The report and the leaked EU Commission mandate to negotiate this deal both emphasise the central role of ‘regulatory harmonisation’, with the intention that TTIP ‘rule-making’ will become a global model, and that harmonisation is likely to be most effective in the formulation of new regulation.

18. As the initiation of the deal rested on the recommendation of those who would implement it, the intention to launch the deal was there throughout, behind the pretence of waiting for the report of the HLWGjG.

19. Under these circumstances the harmonisation of new regulations will have been activated for some time before the HLWGjG report. The fact that the UK Health and Social Care Act was passed in December 2012 strongly suggests it was formulated in this way.

**Investor State Dispute Settlement (ISDS)**

20. A major concern is the inclusion in this deal (and all currently negotiated EU trade deals) of Investor State Dispute Settlement, allowing corporations to sue Member State governments and possibly the EU for the loss of all future profits, called expropriation, resulting from government action – at any level of government.

21. Government action most likely to negatively affect future corporate profits is social protection legislation e.g. for the environment, labour rights or social rights.

22. Where ISDS has been in force elsewhere e.g. in the North American Free Trade Agreement (NAFTA) or in member states’ existing Bilateral Investment Treaties (BITS), it has led to huge pay-outs or has had a chilling i.e. inhibiting effect on the legislative process, negatively affecting countries’ right to regulate.

23. The trade dimension of the proposed (later abandoned) UK cigarette plain packaging legislation is an example. The dispute at the WTO of the Ukraine (on behalf of Phillip Morris International) v Australia, re the TRIPS agreement, meant that the free trade UK government could not possibly implement legislation that would have effectively supported the pro-public health but ‘anti-trade’ (intellectual property rights) stance of the Australian government.

24. This indicates how trade agreement considerations affect national legislating.

25. Notably, even though ISDS is being included the TTIP and in EU trade agreements that are further advanced, questions of legal and financial responsibility, when the EU has competency for and makes trade commitments but MSs ‘fail’ to meet these commitments, is not yet settled within the EU.

26. It is also notable that these commitments, with potentially severe economic consequences for MSs, are being made on behalf of MS citizens without their knowledge.
27. For all these reasons ISDS must not be included in the TTIP.

**Public services**

28. Public services should be excluded from the TTIP, and particularly the NHS which should have a broad exemption covering all aspects of public health.

29. Public concern on the NHS in relation to this trade deal is now high and increasing. There is a growing awareness of the permanence of trade commitments and how the regulations for the national-level Health and Social Care Act, effectively enforcing competition, will not be reversible once the TTIP is signed, however disastrous the effects of the Act.

30. The broad exemption of the NHS must include exemption from the investment chapter of the TTIP where ISDS will be embedded if it is included in the TTIP.

**Secrecy**

31. The secrecy of the Trade Commission’s negotiating is a great concern. The offers being made on our behalf and the texts of the agreement will remain secret until the deal is finalised (frozen) before the European Parliamentary consent process. There is no need for this secrecy, as those on the other side of the negotiating table have full knowledge of the offers. It is only the EU public, on whose behalf the negotiations are supposedly taking place, who are not allowed this information. This despite the Trade Commission’s high profile claims to ‘transparency’ in relation to this agreement.

**The anti-democratic process of ‘provisional implementation’**

32. The Trade Commission now provisionally implements trade agreements after it has obtained European parliamentary ‘assent’ but before they have been ratified by MS parliaments when there is ‘shared competency’. This seemingly emasculates any decision-making capacity for Member State parliaments, further undermining democracy.

33. Which parts of trade agreements are still within Member States’ competency post-Lisbon Treaty, and the meaning and power of MS parliaments’ ratification or non-ratification of agreements are shrouded in secrecy.

34. Clarity is urgently needed on competencies, implementation and powers, including on provisional implementation and where there are opportunities for democratic intervention. The committee is in a position to obtain such clarification.

**Who benefits, who loses and the way forward.**

35. The TTIP is promoted, for their own benefit, by transnational corporations active on both sides of the Atlantic and especially transnational financial service corporations, the same financial corporations that have destroyed the nation’s economy with profligate corporate gambling.
36. The EU's priorities in the negotiation are the demands of transnational corporations. These corporations are not necessarily 'EU' e.g. the American Chamber of Commerce has a great deal of influence on EU trade policy.

37. UK input to EU trade policy comes directly from the financial services lobby via TheCityUK’s Liberalisation of Trade in Services (LOTIS) committee in a process that bypasses government, parliament and the public. In the LOTIS committee, representatives of major banks and insurance companies give their orders in relation to the UK position on EU trade negotiating directly to the UK trade and Industry bureaucrats who then attend the fortnightly meetings of the EU's trade policy committee.

38. These orders, in the interests of financial corporations, are likely to be against the interests of the public and workers in the EU and here in the UK, hence the secrecy, yet they are taken forward as our national input into EU trade policy.

39. The House of Lords is the second parliamentary chamber working for the interests of British people. For the reasons given here, including the biased backing that has been used to push forward the TTIP, the TTIP should, in the public interest, be rejected outright by the sub-committee, the House of Lords European Union committee and the House of Lords.

Section B: Responses to the specific questions in the Call for Evidence

40. Q 1) It is inappropriate that the committee is looking for the minimal way to make the agreement acceptable. It should critically examine where the public justification to pursue the deal has come from.

41. Investment (ISDS) and harmonisation are the most challenging chapters. Neither should be included. Other chapters of concern are Sustainable Development, when standards e.g. on food safety will be overridden, Services where e.g. where localisation will be targeted and Mode 4 accessible to any company established in the EU or US, and Public Procurement.

42. Q 2) The time frame is threateningly short for an effectively permanent world-changing ambition, intended to set global rules. The attempted rush indicates the destructive nature of the deal and the vested interests. The nature of the intended deal demands full public information and discussion on its implications and thus a much longer time frame.

43. Q 3) As an initial step towards transparency the Commission's negotiating mandate should be officially published. Public information should not rely on leaks.

44. Q 4) The TTIP is intended to dovetail with the TPP to achieve the global hegemony in international 'trade rules' that the more democratic WTO context prevented. The plurilateral Trade in Services Agreement (TISA) and Global Procurement Agreement (GPA)
within the WTO (despite the illegality of plurilaterals within the multilateral WTO) are further mechanisms for this hegemony.

45. Finalising the EU/India FTA, in which the single Indian government demand is for Mode 4 concessions allowing Indian firms to supply cheap labour into the EU (but mainly the UK) may be boosted if the TTIP overrides the US H1B visa quota as this would give the much-sought access for cheap skilled temporary Indian labour to be supplied into the US via the TTIP. However if and when the EU/India agreement is finalised, it will be devastating for skilled UK workers (nb already a million unemployed UK graduates).

46. **Q 5)** There is no doubt that international trade agreements allow the expansion of global companies to, or towards, a situation of monopoly. This is ultimately bad for consumers, especially for public services consumers as transnational firms monopolise these investment opportunities.

47. But the question should incorporate the reality that consumers, for the most part, are only consumers if they are working in decent jobs. Rather than the TTIP increasing jobs for people in the UK, there is great potential for jobs and labour standards to be pushed down. Corporations from any other country established in either of the partners’ states will be able to take advantage of the Mode 4 inclusion and to utilise their global production chains, but also any other country can join the TTIP if it agrees to the same rules, regardless of its geographical location. The TTIP is therefore likely to entail the entry both of lower wage workers and lower wage states. Undercut, displaced and unemployed workers are not well placed to be ‘consumers’.

48. **Q 6)** Among the many effects on people in the UK, the effects on the NHS are of most immediate concern as awareness increases.

49. **Q 7)** Reference to SME interests are inevitably included in trade agreement rhetoric, however trade agreements actually benefit transnational corporations and disadvantage purely domestic firms and SMEs, which tend to be squeezed out by transnational corporate domination of business. Only transnational firms can utilise ISDS.

50. Among the Non Trade Barriers targeted in this agreement the EU’s ‘precautionary principle’, which contrasts with the US need for ‘scientific proof of harm’ principle, is at risk, as are EU achieved standards on food safety, environment, and labour. EU resistance to Genetically Modified (GM) imports and crops, EU REACH regulations on chemicals and SPS e.g. chlorinated chicken and hormone-treated beef are considered as targeted NTBs.

51. Mutual Recognition is likely to be the only way forward for existing (as opposed to new) regulation. This will mean de facto acceptance of US standards which are generally lower. These are massively backward steps for what has been achieved in the EU. While this may
be to the advantage of some ‘British’ importers, which are not likely to be British anyway, it will certainly be to the detriment of the UK public.

52. This downward harmonisation will apply to all future regulation. In tandem with this will be the ISDS threat whereby the UK public will be massively disadvantaged in paying financial compensation, but, even more seriously in the restriction on the right to regulate.

53. It will be disadvantaged by the irreversibility of public services liberalisations which inherently prohibit the reversal of privatisations.

54. **Q 8) The main political challenge to the agreement would be an informed public. There should be an informed public.**

55. **Q 9) The ‘UK’ in the form of City of London-based transnational financial services corporations already has maximum influence over the negotiations on both sides, bypassing parliaments, governments and the public. However the UK public is excluded from influencing the negotiations, and should have ready access to information.**

56. **Q 10) The abandonment of the TTIP would be beneficial for the UK.**

57. **Q 11) The discussion papers produced by the Commission and passed to Member States must be made public in the UK. More consultation occurs in some other MSs.**

58. **Q 12) The areas of common interests among the publics of MSs are for more information and real transparency. Within the EU it is the UK that is pushing hardest for this deal on behalf transnational financial service firms, not for the UK public.**

59. **Q 13) The biggest political and institutional challenge at the EU level is an informed public and MEPs and MPs active in the interests of their constituencies. Why would the committee seek to overcome this?**

60. **Q 14) For the US, the forced opening of labour entry quotas disadvantaging US workers and the reaction of responsive representatives are likely to justifiably present a political challenge. Why seek to overcome what people in the US want for their country?**

61. **Q 15) If this deal goes ahead, transnational corporations will benefit while people both sides will lose, as has occurred with the banking crisis across the US, the EU and the UK. This is why there should be no TTIP.**

*October 2013*
Zhang Kening, Minister (Economic and Commercial Affairs), Mission of the People’s Republic of China to the EU —Oral Evidence (QQ 52-60)

Evidence Session No. 6.    Heard in Public.    Questions 52 - 60

TUESDAY 5 NOVEMBER 2013

9.58 am

Witness: Zhang Kening

Members present

Lord Tugendhat (Chairman)
Lord Lamont of Lerwick
Lord Maclennan of Rogart
Baroness Quin
Earl of Sandwich

Examination of Witness

Zhang Kening, Minister (Economic and Commercial Affairs), Mission of the People’s Republic of China to the EU

Q52  The Chairman: Thank you very much for seeing us. It is very kind of you to do so and very much appreciated. As I think you know, we are the House of Lords Sub-Committee on EU External Affairs. We are conducting an inquiry into the TTIP negotiations. We expect to report in the first quarter of next year. We are here in Brussels to meet a number of member state delegations, but we have also met with the United States and now we are meeting with you, as the two major external powers. If I might begin by asking you which aspects of the TTIP are of most interest to China, what you perceive to be
the benefits of this negotiation and what concerns you have, my colleagues will then ask a number of questions.

**Zhang Kening:** Thank you very much. It is my great pleasure to receive you in our office and I would like to welcome you on behalf of the Chinese Mission. We are very pleased to have such an opportunity to exchange some views with your Committee, as your Committee plays a very important role in the House of Lords. We appreciate your considering the Chinese position and the Chinese view of the US and EU partnership and relationship. Once again, I welcome you to our office. This is the Trade and Economic Office of the Chinese Mission to the EU; our permanent Mission is located at another location at Boulevard de la Woluwe, so this is a part of that Mission. The team here is working especially on trade and economic issues with EU institutions, particularly in Brussels.

I know you are interested in many questions. I received a list. I think that these are very interesting questions and I will try to communicate and answer your interests. As you mentioned, TTIP has been launched between the EU and US, and you want to know the positive benefits to China. You know that, in the current work, there are various processes of trade liberalisation. There is the bilateral way and the multilateral way. China is quite open to the form of trade liberalisation, but China believes that the multilateral process is most important, because it is of a universal nature benefiting all countries, all members, of multilateral international institutions, such as the WTO.

Of course, during the current negotiations of Doha Round, you know that they have some difficulties and, in that case, many members are seeking other alternative arrangements—like bilateral or regional economic co-operation—to accelerate the trade and investment liberalisation process a little. This is why China is quite open to seeing both bilateral and regional co-operation, but China believes that such a process would not substitute for the multilateral efforts. They can play a role as complementary efforts towards the multilateral
process, but we believe that the final objective or the final interests of all members of multinational organisations would be the multilateral process, which will help the final trade and investment liberalisation.

Regarding the TTIP, I know this is a process between the US and the EU, and we also need to recognise that any bilateral process has an exclusive nature. That means that any bilateral agreement would not apply to others as Most-Favoured-Nation treatment: two have their own agreement, their own treatment, which is not automatically applied to third parties. This is why we can see that there is always something outside of an agreement that is exclusive. Those will provide some impact.

So far China has no such analysis to see what would be the positive impact or negative impact. We have not done that. I guess that we have to do that with the progress of the process, because we need to see what would be the possible achievements. Based on that, we can see the impact more clearly—positive or negative. We know some assessments have been done by the EU side. We even think there are some studies encouraged by the EU saying that there will be some benefit for third parties outside of the agreement. They even have some figures like €99 billion of benefits to the EU and the US trade partners, in the future. They also explain some benefits from the further liberalisation of the two sides. I think this figure—since there is not a specific analysis of particular countries, like China and other economies—is difficult to comment on. It is difficult to see a clearer picture from that figure.

We think this is probably an indirect so-called “positive impact” because, as I explained about this study, with further liberalisation, a third party could probably access EU and US markets more easily. With these regulatory arrangements, third parties may have some facilitation to accept or reach US and EU standards. Those are some studies. We cannot see so far in terms of real benefits or interests. Those indirect impacts may be positive, but we
are far from seeing what finally would be recognised by the third party. Of course, China is a big trade partner of both the US and the EU and we will certainly watch closer the development of negotiations to see what would be the exact achievements of the negotiations, and then would assess those positive elements. As I explained, all bilateral agreement arrangements will certainly be exclusive vis-à-vis the third party, because they do not apply.

Q53 Lord Lamont of Lerwick: Your Excellency, do you think you could see an EU/China trading agreement? Would that be a possibility after this or would you be against that, because of your support for multilateral approaches?

Zhang Kening: Of course, if there is another bilateral between China and the US, or the EU, that could be a complementary effort to reduce such exclusive effects. For the time being, we do not see the immediate possibility of such an FTA between the US and China, or the EU and China; at least, there has not been an effort to launch such a process. We feel that there will be mostly negative impacts of TTIP on China. “Negative” means, for the direct interests, we may lose our opportunity because, with the increased relationship and trade and investment relationship between two economies, the third party will compete between these two. We will certainly lose something—opportunities or competitiveness. Of course, this also needs concrete analysis.

Q54 Baroness Quin: You said that sometimes bilateral agreements could complement the multilateral approach but, in order for that to happen, you would probably need to feel engaged with the process. I just wondered what your formal engagement with the EU is over the EU/US trade agreement. Do you have regular meetings with the Commission about it? Do you also have regular meetings with United States counterparts about it? Do you feel engaged in the process in some way? Secondly, given what you have said about multilateral trade negotiations, do you see ways of unblocking the Doha impasse? The impetus behind
this EU/US agreement is the frustration that is felt about the failure of the Doha round to really make progress.

**Zhang Kening:** I do not know what the other parties feel regarding the EU and US relationship towards TTIP, but I thought that most of the first reaction is that, if the EU and US—those two big players in the multilateral trade system—conclude their own agreement, most of the parties will doubt their interests in the multilateral process. The least amount of effort they want to make, compared to the previous contribution and efforts, is that they will certainly review their energy and interest to push forward the multilateral process. Whether EU and US TTIP will contribute and complement the multilateral work is still unclear. This is still a question. We should say that, whether the US and EU can continue to support the multilateral process without reducing their energy and interest, or that they are only interested in their own bilateral or small-scale—I mean “small-scale” in terms of the number of countries—activities, this is something that members of the WTO, even China, will look at: the effect.

On the other hand, the US and EU say that their agreement or negotiation will contribute to the multilateral process. That means some elements they were negotiating could, in their final result, be a model or example for the multilateral agreement. That means they will do something further or something new and then will introduce those elements into the multilateral framework. This is an intention from the US and the EU. This is not automatically the common understanding from other members, because we know that the multilateral system serves all members. It tries to reach an objective benefiting all members. The EU and the US, those very big players with their very advanced development capacity, how can they convince other members that their result will be suitable to others, particularly the multilateral trading system, the WTO, when this organisation consists of various layers of development as economies?
Q55 Earl of Sandwich: Can I take you back a few years to when China joined the WTO, because there was a big expectation? We have heard some evidence that China lost interest in the multilateral process. Obviously you do not think that is the case, but can you give me some examples of how China really contributed and benefited in those years?

Zhang Kening: Do you mean after accession?

Earl of Sandwich: After accession.

Zhang Kening: I cannot agree with the view that China lost its interest in the multilateral process. I believe this is totally a misunderstanding. China's accession to the WTO, after such a long time of negotiation, reflects its determination and interest in the multilateral trading system. China also feels it benefits from this system. Also, we continue our efforts to support the Doha round. Of course, the Doha round met with some difficulties. It is not easy to explain the concrete elements of these difficulties, but one sees the Doha round as a development round as decided by all members. The difficulties are that objectives could not meet expectations from respective members. That means that some members, like industrialised members, want the Doha round to be their vision and, for other members like developing countries, the WTO is not exactly the device; it is an interest group. Most developing countries want the Doha round to contribute to their development as an outcome. This understanding causes some difficulties for our members. This is why the Doha round cannot reach its schedule, as foreseen. China, as a developing country, believes its efforts in the Doha round will contribute to the development objective, as decided by a ministerial meeting in Doha, with the launch of the round. There was no reason to see that China, on the one hand, benefited from the multilateral trade system. On the other hand, they cannot continue to support this system in this direction.

Q56 Lord Lamont of Lerwick: One argument that has been put to us is that this bilateral negotiation has become necessary because the WTO has run out of steam, largely
because tariffs have been reduced and now it is a matter more of making regulation coherent and having mutual recognition and having convergence, above all convergence of regulatory standards. Would it be as easy for the United States and Europe to aim to do that with China—regulatory convergence—as it is to do it between Europe and the United States? Would it be more difficult to do that, given some differences in our political and economic systems?

**Zhang Kening:** This is a very difficult question, because I believe that the first objective of the liberalisation of trade is trying to eliminate the tariffs. The reduction of the tariff rate is the first objective of multilateral trading systems, as well as any bilateral arrangements. Afterwards, the second objective is the so-called “behind the border”; those would be non-tariff barriers, as well as some harmonisation or standardisation. This is only because each country could have its own standards, so converged or harmonised standardisation is a very challenging job for any country. Also, industrialised development, which means development of industry, determines the level of their standard. If this is difficult between industrialised countries like the US and EU, then it will be more difficult between industrialised and developing countries, because they have quite different regulations. Different development levels give them different expectations, different practices and different ways of regulation. This is why, if now China and the EU, or China and the US, start to talk about their convergence or standardisation it could be something more difficult, I believe personally.

**The Chairman:** It is more difficult.

**Zhang Kening:** It is more difficult.

**Q57 The Chairman:** One area where there is a difference in economic systems is state-owned enterprises. These are a much more important part of your economy than they
are the EU economy or the US economy. One area that TTIP will perhaps cover is state-owned enterprises. Do you have a view on that point?

**Zhang Kening:** This is also a question from us to see what would be the objective of US and EU negotiations on these elements. As you say, state-owned enterprises in the US and EU may be less than in China, for instance; as to why this has become such an important part of the negotiation between two big economies, we saw some explanation from the beginning from the EU. They want state-owned enterprises to be a settlement, so agreement between the US and the EU could be a model to show others or ask others to follow. That could be a possibility for the US and EU to renegotiate some other bilateral arrangement to introduce this element. That would also be a possibility of introducing this idea into the multilateral negotiations.

As I explained, what the EU and US are interested in is their own business. If someone wants to introduce it to another bilateral framework, it is the business of him and his counterpart, another bilateral counterpart. If they want to introduce it into the multilateral system, it is up to the members of these organisations to say whether this is appropriate, whether it is already good or not yet. We cannot make too many comments on that, because this is a bilateral process; it is none of the others’ business. If the intention is to be influencing others, any others will see whether this idea is a good or bad one for third parties.

State-owned enterprises still play an important role in China’s economy, and we have also engaged many reforms in this area. We hope that this will not become, for the time being, an international topic, because different countries have different situations. China has its own situation and it will try to make reforms to let their state-owned enterprises adapt to market economy pressure to follow market economic regulations and practices. This is our objective from reform, so there is no reason to raise a particular subject stating or targeting a group as a state-owned enterprise as a big international topic. Different countries have
different domestic situations, so this is why we certainly follow closely negotiations between the EU and the US, in this regard, and we will obviously be interested in whatever the possible intentions are of the US and EU.

Q58 The Chairman: Can I deviate a little and ask a different question? How do you assess the future of Chinese economic relations with the United Kingdom itself?

Zhang Kening: We always think that the UK plays a leading role in trade and investment liberalisation in the European Union, and this is why we feel China doing business with the UK is much easier than with others, although the European Union has the same trade policy framework. Investment is still a little different among the EU members. I can give a recent statistic provided by the United Nations Conference on Trade and Development. For the first half of this year, the attraction of investment has declined in the European Union, but the UK is an exception. The UK has become the largest FDI attraction in this period. That showed that the UK is very open to trade and investment liberalisation, and this is why we feel that the business relationship between the UK and China is going well, and we believe that there is more potential and opportunities in the future.

Q59 Baroness Quin: I wanted to ask a little bit about—given that these bilateral negotiations are starting—what your own immediate priorities are in terms of negotiating with the EU and the US, particularly in making progress towards dealing with non-tariff barriers, harmonising and co-ordinating, and what sort of prospects you see for China making progress on those kinds of issues, both with the EU and the US.

Zhang Kening: China is also engaged in many bilateral FTA negotiations, and mostly with its neighbour countries, with ASEAN, New Zealand, Australia, Singapore and Korea, and with Japan and Korea (as three party negotiation). Some FTA experiments have also been made with European countries like Switzerland, which are outside the EU—the EU is one bloc, a union—and with Iceland. This is also a Chinese trade development strategy to liberalise
trade and investment with more trade partners. The Chinese view on developing countries FTA development is that this can only go in this direction, step by step. “Step by step” means that they can go further once they believe that their conditions and environment become appropriate. This is why China has had its FTAs firstly with some developing neighbour countries and then will extend them to others, and try to conclude something with industrialised countries, like New Zealand, Australia and others.

With the US and EU, this is also our hope in the future, particularly if we see that the multilateral process cannot go further, because the trade and investment liberalisation process will continue, with or without your attention, but China cannot miss any opportunity to develop trade relationships with other partners. All those engagements need a lot of effort. You can imagine that, between the US and EU, you have too many issues to resolve. We can foresee many difficulties once a FTA between a big industrialised economy and China as the largest developing economy. Anyhow, we already have an idea of how to engage in such a process with the EU. Our leaders raised questions about that to EU leaders with a view to the FTA study towards concrete negotiations. So far, we feel that the EU has reservations.

**Q60 Lord Lamont of Lerwick:** Could I just ask one question? You expressed your anxieties about the US/EU trade agreement; do you have similar parallel anxieties about the proposed Pacific Partnership? Secondly—I hope you will not be embarrassed by my asking this question—does China feel that there is a political agenda in these bilateral deals, on the part of the United States?

**Zhang Kening:** China’s FTA strategy is based on the whole development situation, because China has to look first at its needs, to what extent they can liberalise and to what benefit they can have this with which partners. It is difficult to see whether it is good or not already with the EU and the US, because there were good objectives for a long term, but when both
sides can engage and start such process is still a question that needs a lot of assessment and analysis.

Regarding the Pacific process, we know there is the TPP in the Pacific area and some others. China is open to that. China also assesses the possibility of participating in some of this process, because you know that China already has an FTA agreement with the ASEAN. China supports ASEAN 10+3 and now 10+6 (RCEP), so TPP is another framework and China would be interested in looking at it closely, but we have not decided whether to join, because beside the TPP there are many others. With US participation, there will certainly be some different requirements and ambitions to meet, so we need to assess that carefully.

**The Chairman:** Excellency, thank you very much. We must go to our next appointment, but you have been very generous with your time and very frank with your opinions, and that is a great help to us in preparing our report. Thank you very much indeed.

**Zhang Kening:** You are welcome. I hope that our thoughts will be helpful, and we hope you have a very successful mission in Brussels. Good wishes for you and for your mission.
MONDAY 4 NOVEMBER 2013

5.35 pm

Witnesses: Maria Eleni Koppa and Robert Sturdy

Members present
Lord Tugendhat (Chairman)
Lord Maclellan of Rogart
Baroness Quin
Earl of Sandwich

Examination of Witnesses

Maria Eleni Koppa, Member of the European Parliament for Greece, and Robert Sturdy, Member of the European Parliament for the United Kingdom

Q61 The Chairman: As you know, we have embarked into an inquiry into TTIP, and we are here for formal, on the record meetings with a number of delegations, but also of course with the European Parliament. I recognise that it will be a different Parliament by the time these reach their climax, I guess, but it seemed to us that we should meet the Parliament at an early stage in the proceedings. We sent the questions, but we will not necessarily keep to the order in which we sent them.

The first question that I would like to put is that your resolution identified a number of sensitivities, including agricultural issues, intellectual property rights, geographical indications, personal data protection and audiovisual. I would like to be clearer than we are as to what particular concerns the Parliament has over the prospective agreement and what you think would be pragmatic solutions to these issues in the light or not of the Canada agreement.

Maria Eleni Koppa: Thank you. Let me introduce myself. I am Maria Eleni Koppa, a Member of the Socialists and Democrats Group in the European Parliament. I come from Greece, and I am a Member of the International Trade Committee and the Foreign Affairs Committee. In these capacities, I was in Washington last week with the Foreign Affairs Committee to discuss, among other things, TTIP.
Let me just that what impressed not only me but other members of the delegation was the level of preparedness from the American side concerning TTIP. They have done a lot of work that we have not. Let me just mention that on the European Commission side there are 20 people who work on TTIP, while on the American side there are 3,500 people. This shows a difference not in involvement or interest but in the level of preparedness on the different sides. The United States has prepared a very analytical outlook on the consequences for each particular state. There is a small booklet, which we received, showing the priorities in Texas, in Oregon, et cetera, by sector, by everything. We are not there, as Europe.

You know very well that the discussions here are secret. There are secret negotiations between the Commission, of which we do not know all the details. What I will try to present to you is what we discuss at the Parliament and what our wish is, but we have not had a concrete discussion on the outcome of the negotiations until now.

In terms of sensitivities, agriculture is one of the main issues and there is a problem for my group at the moment. We are against the use of hormones in meat. We are against the use of chlorine in poultry. We are against the use of clones concerning animals and GMOs, of course. GMOs may be the most important issue that separates us. To this I must add intellectual property, where there is a very big debate. You know that Parliament’s position is to keep audiovisual out of the discussion. This can be good or not, because to keep it out means that it is uncontrollable. To keep it in means that there is a possibility that European cinema, music, et cetera will vanish in big American productions. Anyway, there is an issue there, as there is of course with the position and role of NGOs.

In all this we are very much concerned about data privacy and protection. My group believes that data protection should not be a part of TTIP, because it is non-negotiable. In the light of recent developments, which we had the possibility to discuss at length in Washington, we are totally convinced that we must keep data protection out of any negotiation. We have our standards, we have our rules. We want them implemented. We ask the American Government to take certain measures concerning European citizens. It is non-negotiable, so it cannot be in such a treaty. The EU/Canada agreement is a promising precedent, as it is the first free trade agreement between the EU and a G8 country, so of course it is. I hope I was not too long on that. Thank you again, and we can come back to any point you wish.

Q62 Earl of Sandwich: We will move on to clarify maritime and air transport. We have not had that much evidence about this, but it comes from an EP resolution highlighting US restrictions, so can you say what you regard as the barriers in this area?

Robert Sturdy: Would you like me to give a quick presentation first, and then I will mention that? I will go through the items as you have itemised them. You highlight a number of priorities on TTIP. I have to say that I work with the ECR Group. I am Vice-Chairman of the International Trade Committee. I am one of the members of the Steering Group of the Parliamentary Conference on the WTO, and I am very much pro international trade and open trade. Even though I am a farmer by trade, I still think that open and fair trade is the way forward. There are a number of people in the European Parliament who are putting in place issues that may well cause problems.

I disagree with you on the audiovisual. I think it should never have even been thought about. It should not have been brought in and it was a particularly French issue. It shows sometimes how national issues cloud the real issue, which is an open, fair and free market, as much as it can be. While I am on this subject, I also think that the US did not do itself any favours over Angela Merkel’s phone. We laugh about it, but I expect that will be brought up by people like the Greens in the discussions. That is just an opening starter from me.
On the automotive and financial sectors, the automotive sector is expected to do extremely well. I will give you some figures in a minute. In the financial sectors, there is considerable concern on the part of the US over what you might know as the Dodd-Frank Act. They believe that they have just reformed their financial sector with the Dodd-Frank Act, and consequently their concern is that there could well be a further attempt by the European Union to reform it. There is no way that we would even consider that. We are trying to get an agreement on that—it is a big issue with financial services—for the European Union. We should make it absolutely clear that we have no intentions whatever of interfering with their process on the Dodd-Frank Act.

I have some figures on the automotive sector. Figures are figures, but at the moment there would be huge gains for the sector if TTIP agrees to eliminate tariffs to as little as 10% of existing non-tariff barriers on both sides. This would increase EU vehicle and parts exports to the U.S. by 71%, so you see there is a huge opportunity there. Forgive me for saying this—some of you may be very anti-European, but I happen to be reasonably pro-European—but could you imagine the situation, and this is a national issue and not necessarily a European issue, if the United Kingdom were to leave the European Union? We have a fairly large auto sector employing a lot of people in the United Kingdom. What would happen, particularly in your area? Just think of the north-east. What would happen? Would Toyota, Honda, et cetera still continue to be in the UK when suddenly exporting out of the UK is not tariff-free and the EU without the UK is opening up markets? That is just a little point.

You mentioned sensitive issues: agriculture, intellectual property, geographical indicators, data protection, audiovisual. All these issues—I touched briefly on audiovisual—are sensitive, and it is going to take a great deal of will to sort it out, particularly the situation you mentioned with regard to chlorinated chicken. I do think that we are wrong if we start importing beef that has been injected with hormones. We got rid of that. As a farmer, I know that we used hormones in cattle for quite a long time. Hexestrol was a product that we injected into cattle. It was banned and I accepted it. I do not think there is any need for it personally. I think we are wrong about little things such as banning washing beef in lactic acid. Lactic acid occurs naturally in the body, but we prefer to wash in water. These are all issues that will continue to be a problem in the negotiations.

GMOs will be a big problem. Again, I believe that we should look at perhaps rethinking our position in Europe about GMOs. We do not want to be Luddites. The rest of the world will move on, in my opinion, and continue with GMOs.

Data protection is a big issue. We had a debate in Parliament in the Trade Committee, and it was a huge issue that people are deeply concerned about. I do not think I have ever had as many e-mails on a subject as we did on that particular issue. ACTA was huge. We were in favour of ACTA, your group was not. That will be a bit of an issue. I am just briefly going through them.

You mentioned the EU/Canada agreement. It will set a bit of a precedent. I think it is a good move. We have a positive list of geographical indicators. There is an opportunity hopefully to get the Americans to agree to it. They are now talking about Napa Valley wine, which is already a recognised geographical indicator, so consequently they are beginning to come to it. We can hopefully get a reasonable level of protection. They have just announced this weekend, as I am sure you are all well aware, that the ban on beef from the European Union has been lifted. That was as a result of BSE, so we are starting to see movements.

You asked about the maritime situation. That is going to be another very important issue. Please do not think that I am trying to rush over it, because there are so many issues, but it is very important. For those of you who do not know, at the present moment people can
export to the European Union. I use DHL as an example, because I have spoken to them about it. They take their products in their planes to the United States. They drop them off at Kennedy Airport or wherever—it could be any airport—but they cannot fly their products anywhere else inside the US. They have to be taken by a US plane or a US shipper. That is wrong. It is not the same in Europe. It is going to be difficult.

With regard to all these issues, there is going to have to be some sort of trade-off. I always say when we are discussing this, and we have outlined a number of issues, that nothing is agreed until everything is agreed. That is the situation. You said right at the beginning, Lord Tugendhat, that it is going to be an ongoing process. It will go through two Parliaments, this Parliament and the next one, and probably two Commissioners. I think you are absolutely right. I know from private meetings with him—these are off the record discussions—that De Gucht would like to have a form of framework agreement, some form of structural agreement, in place by the end of the year. That is the situation. He is pretty pessimistic, I think, as much as he realises that he may not be the Commissioner again for trade. I do not know who will be and it would be wrong of me to speculate. A number of people want it. Probably when you were here the REX Committee was the Trade Committee.

The Chairman: Yes, but everything was much smaller.

Robert Sturdy: The REX Committee then went into the single market. I cannot remember which Committee it went into, but it joined it. About two terms ago, maybe 10 to 15 years ago, it came out. I was on the REX Committee and I worked for the farmers’ union on the Uruguay round. My involvement in international trade began way before I was a Member there, but it has suddenly become a very important Committee and everybody suddenly wants to be on it or wants to be Chairman of it, because they realise how important it is. I was a negotiator and rapporteur on the first EU agreement post Lisbon, which was the South Korea Trade Agreement.

Agriculture is going to be a big political hurdle. I think we have to have a mutual recognition. We have talked about some of the issues, but we need to look at a mutual recognition of some sort of standards. We will just use SPS as an example. We have an SPS standard here, whereas the US probably uses a benchmark standard. I will give you a classic example: in the motor industry, the US crash-tests its cars with dummies without seatbelts. In the European Union, we crash-test cars with the seatbelts on. That does not mean to say that the American car or the European car is safer or not safer. Their argument is that people do not wear seatbelts in the US, so they have to crash-test them with no seatbelts on.

Q63 Baroness Quin: I do not want to sidetrack you, because what you were saying was very interesting, but you said that nothing is agreed until everything is agreed. We got the impression, certainly at an earlier stage in the inquiry, that it would be possible to agree particular dossiers or chapters and then it would be a cumulative process, rather than one huge package that had to be agreed at the end.

Robert Sturdy: Absolutely. What I meant was that if you were to take agriculture, for example, it had to be an agricultural package. You cannot agree individual parts of that package. I am sorry, you misunderstood what I meant. It is the same with, for example, the shipping or transport parts: you cannot just sector each individual bit out.

You are absolutely right about the other problem, which brings it round a bit further, which is that the United States is a sector by sector country. In other words, certain states have a different set of standards from others. We found that in the Canadian agreement. For example, Quebec was very protective of its dairy products and its agriculture, so we had that problem with Quebec province standing out. It was not until right at the very end that we managed to get a deal on it. These are all issues. We are very much in the early stages of it. It is an exciting prospect and, I believe, a huge opportunity. It is an opportunity for
Europe. I say “Europe” because we are part of Europe, but it is an opportunity for Europe and particularly—forgive me for saying this—for the United Kingdom.

Earl of Sandwich: Can I pick Mr Sturdy up on a couple of points? For one of them, he might be interested to know that we have a farmer on our Committee, Lord Jopling, who is not here. You know Lord Jopling. You said you had a personal reservation about beef hormones. In fact, he says it depends on whether it is for the calf or the bull, because you will never know the difference between the hormones in one and the other. Anyway, that is by the by. He will tell you more about that another time.

Robert Sturdy: I understand what you are saying, but we injected female hormones into male animals.

Q64 Earl of Sandwich: The other point is on Dodd-Frank. You said that we really should not interfere. What is therefore the way forward? Maybe I could ask you the same thing about financial services. Is there going to be a parallel structure, as we have been trying to find out so far today?

Maria Eleni Koppa: I will answer that by picking up very briefly two or three things. The first is maritime. The problem is that the American side is very protectionist, and we are trying to open it up. There, we are in a totally different line. That is the problem with maritime.

I absolutely agree that nothing is agreed until everything is agreed, and most of all because it has to pass from the Parliament. When a deal has to be passed by the Parliament, you never know. For example, let us say that TTIP was agreed and it was supposed to come to the Parliament in the plenary of November after the whole surveillance debacle. It would be outvoted, so the atmospherics of the Parliament count. We must be reasonably optimistic but take each step at a time. For the moment, the message that we have from the American side is, “Please do not jeopardise TTIP because of this problem with surveillance, et cetera. We do not know what Snowden has in his case. Please let us concentrate on the agreement”.

We do not know. It is definite that we need time. It was absolutely correct and I agree that we may need two Commissioners or two legislators. The problem is that we expect from the next European election that we will be faced with the most anti-European Parliament ever, with a rise of extreme forces on the left and mostly on the right. An extreme-right party, xenophobic and very nationalist, will rise and be very high. This will definitely influence the position of the Parliament in this respect. This must always be taken in mind. What is a little difficult is that it is a secret negotiation. Up to now, we have no clue. The report that you have seen from the Parliament is mainly a wish list, but we have not until now had a discussion to know exactly where the negotiation stands. We are trying to understand and smell where we are a little, but it is not easy.

On financial services, to come to your last point, you understand that, for the European Union in the middle of its most severe crisis ever, financial services are very important. It is also a process of restructuring, not only for the countries in the programme but in general. It is a crucial sector and we are going to see how this will develop. It is something that we will follow very closely, because of all the problems that the financial sector has undergone in recent years in Europe. I do not know about financial sectors, but it is really a sensitive issue, especially when many countries are in deep recession.

The Chairman: Do you mean that you would like to see it in the TTIP?

Maria Eleni Koppa: Yes, absolutely.

Robert Sturdy: We all agree on that.

Earl of Sandwich: What track would it follow, in that case, if it was?

Robert Sturdy: How do you mean?

Earl of Sandwich: I mean if the Americans will not actually have it in the agreement.
Robert Sturdy: They are saying that they have reformed their financial services and they do not want to take any further reform. It is up to the negotiators to make it absolutely plain that we have no intention whatever of trying to interfere with the US under Dodd-Frank. We want it to be part of the package so we have access to the market. That is what we are aiming for, not necessarily to say that they are right or wrong, or that we are right or wrong, but to have access to their market.

I just want to pick up on what you have just said, because this far-right situation is quite worrying. I was brought up in a society where everybody was equal. It did not matter what their colour, creed, religion or whatever of the person was; everybody was equal. You have no idea of the xenophobia and problems that the far right could bring to this next Parliament. I am not mentioning any names, but they are all very similar. They may have professed to have different views about this, that and the other, but the way they vote in this Parliament is absolutely clear. The situation with the Parliament is that the Lisbon treaty has given it much more power.

The Chairman: We know that.

Robert Sturdy: That is why we are talking about the fact that the Parliament can stop an agreement.

Q65 Lord Maclellan of Rogart: There is a horizontal issue that we are interested in, and that is whether or not an agreement that risks undermining European labour and environmental standards might scupper the whole process.

Robert Sturdy: The US is quite keen on our environmental and labour standards.

Lord Maclellan of Rogart: They are not as high as ours.

Robert Sturdy: Exactly, so we would bring their standards up. A lot of the NGOs are very keen on our standards, so there will be some sort of levelling off. You are absolutely right: they are not as high, although I do not know about their environmental standards. They are pretty high.

Lord Maclellan of Rogart: That is not likely to be something that causes the European Parliament to have a difficulty. The Americans might try to drag us down.

Robert Sturdy: No, there is no way that would happen. We would not come down in our standards. It is one of those red lines that is absolutely clear. Where we will have problems will be on agriculture. That is going to be a big issue.

Q66 Baroness Quin: Can I ask how much interest is being taken in this process by the world outside: in other words by industry and people in your own constituency and both of your own countries? Are you being lobbied about it? Have people woken up to it yet or not?

Robert Sturdy: I am being lobbied unbelievably. Unfortunately, I have a family funeral on Wednesday, so I have to go back, but I have about 10 appointments with different organisations wanting to speak to me about TTIP, basically pushing it through. Industry and business are very pro-TTIP. They see it as an opportunity. Also, it is an opportunity for jobs in Europe. You are right about the labour standards in the US. It is also a different culture. The culture of labour in the US is different. They do not take the holidays that we take. They have a different approach to things. I do not see it as necessarily being an influence on us. As I said earlier, we have to accept their standards. We cannot just say, “Hang on a minute. We are not going to have the negotiations because you have this and we have this”. We need a mutual meeting somewhere in the middle.

Maria Eleni Koppar: I agree that the EU will not give up its labour and environmental standards. That is for sure. Agriculture is a huge problem, I think. We agree absolutely on that. It is a huge opportunity for both the EU and the US, because when we say “the crisis” it is not a global crisis: it is a crisis of the Western world, so the crisis of the US and of Europe. The rest of the world—China, Brazil, India—is doing absolutely fine. We have to
get out of this crisis and that is why both parties are so committed to moving forward through this. It is a huge opportunity to create jobs and growth.

In the south, coming from a country in the periphery, a country that is for the sixth year in recession, TTIP is not a priority. People know nothing about it. I never get lobbied. There are no stakeholders with whom to discuss it. For example, I was thinking that after the meeting I would put something on my Facebook page and on my site about this meeting, and then I thought, “Will they understand what it is about or should I write something more?”.

The Chairman: We were told that in Spain in particular it is a high priority.

Maria Eleni Koppa: In Portugal, it is not at all. In Italy, it is very small. Spain, because it is a bigger country and the stakes are bigger, may be more motivated to do so, but we need to engage on that and make the public become conscious of the huge importance of this agreement. Only if the European public becomes committed can we move forward on this.

Q67 Baroness Quin: Can I just follow up a little on the political points you make? Like both of you, I fear the rise of a xenophobic right, but I wonder whether a trade agreement with the US would be something that they would necessarily oppose. For example, I have often heard UKIP people in the UK saying, “We do not want to trade with Europe. We want to trade with America”. This would of course facilitate trade with America. I am just wondering whether, on this particular issue, there would necessarily be right-wing hostility to it, even though I agree with you about the general fears about what they would do.

Robert Sturdy: You mentioned UKIP. UKIP virtually always abstains. I have managed to persuade the Earl of Dartmouth to vote tomorrow, which is I know against your group, on the GSP situation, which is a priority for the UK Government and for both parties, by the way, not just the Conservatives. They would normally always abstain, because they reckon that their position is not to support anything in Europe but to abstain or vote against. It is all very well for Farage to say that he thinks we should work with America rather than Europe, but America does not want to work with the UK. When I was negotiating on behalf of our farmers—in the periphery, not in the centre of it—on the Uruguay round, America was not interested in the UK; it was interested in Europe. It is a big group, it is a package, and that is why it is important. Farage can say what he wants, but he has no powers. He tends to be a destroyer. As we all know in public office, it is very easy to be anti, but very difficult to be constructive. If you want to win votes you can be anti and that is the way you get ahead, but to be constructive and put forward ideas people then start to say, “I think you are wrong”. It is very easy to tear it down, but we are trying to build something here, which is an opportunity for Europe.

Maria Eleni Koppa: To follow on exactly the same lines, these people will vote against everything that is European just to say “no”, because they work for the destruction of the whole European project.

The Chairman: The opportunity for the European Parliament to play a very constructive role is obviously very limited, because if you have a large number of people like Mr Wilders and so forth in the next Parliament, the scope for the European Parliament to influence national Governments and the Congress in favour of this negotiation will necessarily be rather curtailed.

Maria Eleni Koppa: It will be limited, but I see in all major issues all the anti-European forces moving against the European project. The EPP and the S&D can come together. We have a possibility of finding consensus. We do not agree on everything, that is sure, but we have a culture of working together and of finding solutions. This will be much more obvious during the next period.

Robert Sturdy: You have the two big groups. My view is we should still be in the EPP, but that is another story. It was a political decision and I support my party on it as a political decision. The EPP and the socialists will have to work together to get this through, and I
think they will. Generally speaking, there is pretty much agreement between the two of us here, maybe not on some of the minor issues, but they will be sorted out.

**The Chairman:** We have covered a very large proportion of the questions we had down.

**Maria Eleni Koppa:** If I may make one last point, the power of the biggest groups in the European Parliament is that we work for more Europe, not less, and we think that this is the recipe for the solution of the crisis and of the problems. This is the line. If you agree to this line, you find solutions to minor disagreements.

**Earl of Sandwich:** I was just thinking about the states that have come recently into Europe. You perhaps have more experience of visiting them. How do they view this? Considering that the single market was holding out such a prospect for them, how much a diversion is it going to be, because it may be a long time before it brings them a benefit?

**Maria Eleni Koppa:** You are right, but most of the countries that entered the EU after 2004 are strongly pro-American. All of Eastern Europe is. An eventual move that will bring them closer to the United States is considered beneficial in each and every one of the former eastern countries. I think it will work fine.

**Earl of Sandwich:** Throughout the former Yugoslavia, would you say the same of the states that are joining?

**Maria Eleni Koppa:** From the former Yugoslavia, Slovenia and Croatia I absolutely agree. The others are candidates for the moment, but Bulgaria, Romania, Poland, Czech Republic and Slovakia are the most pro-American delegations in this House, so I do not fear that there would be any problem from there. It is easy to pass the message to the citizens.

**Q68 Lord Maclennan of Rogart:** What do you think about Germany at the moment? I have just finished reading a biography of Angela Merkel by a *Süddeutsche Zeitung* journalist, and she was thought to be passionately pro-America.

**Maria Eleni Koppa:** As most Eastern Germans were at the time.

**Lord Maclennan of Rogart:** What is happening?

**Maria Eleni Koppa:** I think German/American relations are passing a difficult moment. This was very clear during the discussions, but the common interest is to overcome it, because the problem is not between Germany or other European states and the Americans; it is between the western world and those who want to destroy our model of life and our values. The common interest will prevail at the end of the day.

**The Chairman:** How do you feel about the Commission’s engagement with the Parliament on this matter? Are you satisfied with that?

**Maria Eleni Koppa:** Commissioner De Gucht has done a great job, I think. I do not know who will be the next; I do not know whether he will have the same commitment, but I think it worked rather well. The problem is the process in this TTIP negotiation. I do not know whether it was possible to have any other procedure, but the fact that we are totally in the dark about what happens and about the details of negotiations is not helpful, at least for those of us who want to be supportive and go out in public, support it and make a campaign for the importance of TTIP. In the United States, they work differently.

**Lord Maclellan of Rogart:** Would it help the European Parliament if there was a report at the end of the year with structural indications?

**Maria Eleni Koppa:** I think so, or at least an indication of direction and where we have problems. It would be very good, it would be very helpful, because now those of us who want to support it and work on it do not have the instruments to do so.

**Robert Sturdy:** I have regular meetings with De Gucht as one of the co-ordinators, and he is actually a very good Commissioner. You are absolutely right: he listens. Unlike one of his predecessors—I will not mention any names—who we never really got any information from, De Gucht is a huge step forward.
You picked up on the German situation. I just briefly mentioned it. I agree with you: I think it is very damaging to the personal feelings of Angela Merkel. If I was President of the United States, I would have the sense to make a full apology, blame some lower down person who had done it and make sure that the Germans are on side, because they are good allies. Mother Russia is still there and I chair the international Trade Committee Monitoring Group for Russia, so I know exactly the problems that are there and how they feel. That is why they are on side about TTIP.

Maria Eleni Koppa: Just to continue on the same lines, we see how Russia is now present, for example, with the Vilnius summit. The obstacles and problems which Russia presented at this summit shows that Russia, even at the commercial level, can be present and pushy.

Robert Sturdy: Also as a member of the WTO, of course.

The Chairman: You answered a whole lot of questions before we asked them, so thank you very much indeed. Of course we wait to see what happens with the new Parliament. It is obviously going to be a very different ballgame.

Robert Sturdy: You could not come back as a Commissioner, could you? There will be a vacancy, I think.

The Chairman: I am too old.

Maria Eleni Koppa: Would you like to come back?

The Chairman: No, I think that has passed.

Robert Sturdy: He was a very good Commissioner and very highly thought of.

The Chairman: Thank you very much indeed. You have been very generous with your time.
Andrew Kuyk, Sustainability Director, Food and Drink Federation and Phil Bicknell, Chief Economist, National Farmers’ Union—Oral Evidence (QQ 158-173)

Transcript to be found under Phil Bicknell
Q137 The Chairman: Good morning, Mr Lawton. I am sorry to have kept you waiting, but I think you heard some of the last evidence. Before that we had the Treasury, so we have had quite a busy morning and have covered quite a lot of ground. If you feel that some of the questions put to you are rather discordant or inconsistent, it will be because people are referring back to something that came earlier or filling a gap that remains. As I think you are aware, this is a formal session, so it is all on the record. If an issue arises on which you feel you would like to reflect and send in written evidence, we would be perfectly happy to deal with that.

The final point I would make, which I made to the other people and which is now much clearer in our minds, is that until this morning we were very struck by the emphasis that the British Government and the industry placed on including financial services in TTIP, but we were equally struck by the lack of tangible reasoning that lay behind that. I think we have a much better grip now on the reasoning and why people want it, but we want to be clear
about the extent to which having financial services in TTIP is essential to making progress or whether, if the Americans remain adamant, one can make equal progress through the existing financial regulatory rules: in other words, whether the process is absolutely crucial to getting the result or whether one could hope for the same results through a different process. That is just a preliminary.

As a first question, please talk us through what mechanisms already exist and what processes are already under way when it comes to regulatory dialogue, and explain how TTIP might fit into the dialogue under the G20 and other levels.

David Lawton: Thank you very much, my Lord Chairman. Good morning, everybody. An important point to emphasise at the start is that there is no single regulatory dialogue; there is a multiplicity of dialogues. That reflects clearly the very diverse and complex nature of financial services, but also of course just the multiplicity of actors on the stage, the number of regulatory and legislative bodies that exist globally.

The second point to make is that most of the important regulatory dialogues are genuinely multilateral within which the Europeans and the Americans are participating, but they are not solely focused on an EU and US interaction. The pinnacle of those multilateral dialogues is the Financial Stability Board, which brings together representatives from finance ministries, central banks, prudential regulators and markets regulators. There are also sectoral multilateral groups such as IOSCO for securities Commissions and market regulators, there is a parallel insurance group and of course there is the Basel committee that is working on prudential standards. Most of the key regulatory issues that affect cross-border markets are being discussed, at least in part, in these multilateral dialogues, in which of course the Europeans and the Americans participate and interface, but they are not solely EU-US dialogues.

In the EU-US context, there are a range of interactions. There is the financial markets regulatory dialogue, which brings together the European Commission on the European side, the US Treasury and, I think, the SEC and the Federal Reserve on the American side. Member states are not involved in that from the European side, and national regulators certainly are not. There are other interactions in relation to specific pieces of legislation, so there is a multiplicity of interactions. Most of the issues are multilateral, but within that there are some specific EU-US conversations.

The Chairman: That is a very clear exposition, thank you.

Q138 Lord Jopling: We are grateful for that overarching description of this, but let us just turn to the details of the US regulatory regime and the EU one, which is dealt with in Dodd-Frank. Could you give us a brief outline of what the differences are between the two and how the two regimes differ in their approach to cross-border issues and extraterritoriality?

David Lawton: Yes, of course. I will illustrate that question by talking specifically about the arrangements for derivative markets, which have been a particular point of focus for regulators in the US and Europe recently, but I think that will serve to illustrate some of the more general points. Most European capital markets legislation, certainly the legislation that has been developed over the last 10 years, has explicit provision in it for how to deal with third-country access. The basic proposition from the European side is to say, “We have established some agreed rules from a European perspective. Non-European firms, non-European actors, can access European markets, but only on the basis of being subject to broadly equivalent rules”. The European legislation typically sets up some process—typically again for the European Commission—to make some determination jurisdiction by jurisdiction as to whether equivalence pertains in relation to that piece of legislation. If you had a sector, a piece of legislation where the Commission had determined that the US was
equivalent, US firms will be able to participate in Europe with no further ado and would be supervised by the US regulators against the US rules that had been deemed equivalent. The US approach to those sorts of issues had traditionally been rather different, which has been to say that participation in US markets needs to take place on the basis of adherence to the US rules, so typically third-country firms who have wanted to participate in US markets have had to register with US regulators as if they were US firms. One particular example of that has been the approach to exchanges that trade shares and equities. The SEC has always said that non-US exchanges that trade shares can only do business in the US if they register with them as a US exchange, and because that carries implications for the rules that apply to the companies that trade on those exchanges, exchanges have refrained from doing that. That is at the hard end of the spectrum.

Within the US regime, there is typically provision to switch off specific rules if they are found to be equivalent to the US rules—it is called substitute compliance in the US terminology—but unlike the European approach I described earlier, it is not a holistic whole-jurisdiction assessment, it is a rule by rule assessment, so you have a bit more of a patchwork approach from the US side. Third-country firms can participate in US markets if they adhere to US rules, with an ability for the US regulators to switch off specific rules if they deem the European approach to be equivalent, but not typically a jurisdiction by jurisdiction approach.

**Lord Trimble:** Looking at the question of including financial services in TTIP, we have been told by other witnesses that key US regulators such as the Fed and the SEC are distinctly cool on this situation. What is your assessment of that, and what sort of relationship do you have with those US counterparts?

**David Lawton:** Let us take that second question first. Based on the myriad regulatory dialogues that I described at the outset, we have lots of contact with our US counterparts. It is constructive and we engage very effectively together. We are obviously talking about our individual rule-makings and in some respects have firms active in both our markets that we share supervisory perspectives on, and from time to time we work jointly on sharing information around enforcement cases. I think the relationships are constructive and very vibrant.

We have had no dialogue with our counterparts as to their views on TTIP, so I am afraid I cannot speak from personal experience as to what they might be.

**Q139 Baroness Young of Hornsey:** Does the FCA have an official position on TTIP? That is one question. You have mentioned already that you have a very strong dialogue with your US counterparts but not specifically on their views on TTIP. Are you engaged in discussions about TTIP with the UK Government and the Commission? Also, has the tenor of the conversations and the dialogue that you have been having with your counterparts elsewhere changed as a result of engaging in TTIP?

**David Lawton:** The FCA does not have a view on TTIP. We have no mandate in relation to trade, so we have no position on TTIP. We have had no dialogue with the European Commission or other member states about TTIP. We have had some engagement with the Treasury around some of the technical aspects of how some of the existing regulatory dialogues are operating and how they might fit into a TTIP proposition, but beyond that, no. In answer to your final question on whether it had any impact on our other engagement, no, it has not.

**The Chairman:** Presumably the FCA would not have a separate and distinct position from that of the Bank of England.

**David Lawton:** I suspect that both of us would say that trade is outside our mandate. It is very much a European community competence, and while it is clearly part of the broad context in which we operate, we would not expect to be involved in any of the discussions or negotiations.
Lord Foulkes of Cumnock: I do not understand that. Why are you here then?
The Chairman: He is here because we invited him.
Lord Foulkes of Cumnock: I know that. Why did we invite you? It is called the trade agreement, but we are talking about financial services within the trade agreement. It is what we are discussing.
The Chairman: I think it is important for us. Mr Lawton has explained very modestly why he is not central to this negotiation, but it is useful to get the Financial Conduct Authority’s views on the issues that we are raising with him, so I am very grateful to him for coming.
David Lawton: May I attempt an answer to that question?
Lord Foulkes of Cumnock: Yes.
David Lawton: The FCA does not have a view on TTIP. We are not, as I say, an organisation that engages with trade and its mandate, but clearly there are some discussions going on about whether it would be useful for the TTIP agreement to have some sort of arrangements within it that provide for an enhanced dialogue between Europe and the US. I think that part of that justification reflects some concern or dissatisfaction with how the existing dialogues have been going. The dialogue that I have most experience of is the detailed implementation of some of the G20 commitments around the OTC derivatives markets, which are being promulgated through Dodd-Frank in the US and a couple of pieces of legislation in Europe.
I would say in relation to that exercise that two things have in retrospect generated the most challenge. First, the different legislative timetables have been different. The US Congress moved early with Dodd-Frank, but the European side has been slower to develop its legislation. Therefore, as we get to the nitty-gritty now of comparing our regimes and deciding whether they are equivalent or comparable, the US has moved early and is therefore inevitably a bit reluctant to want to reopen or change things, and Europe has not yet reached the finishing line, and from the US perspective the US is saying, “It is very difficult for us to know whether you are comparable or not because you have not finished yet”.
Lord Foulkes of Cumnock: But I could not understand why, when Lord Trimble said, “Have you been talking with your counterparts?”, you said no.
David Lawton: We have had no conversations with our counterparts about whether TTIP could play any role in this process or what might feature in it. We have extensive dialogue around the implementation of the G20 commitments in our respective jurisdictions.
Q140 The Chairman: Just taking up Lord Foulkes’ question, one of the things that comes up a lot in evidence is the role of the US regulators and how unhelpful some people feel that might be. Also, the US regulators apparently, we are told, do not wish to see financial services included in the TTIP; they wish them to be dealt with outside in the established dialogues that you talked about earlier. Do you think, therefore, that it would be helpful to progressing this negotiation if regulators on this side of the Atlantic such as you, but above all you in London’s position, engaged, and do you think there is a contribution that you might be able to make in view of the alleged attitude of your United States counterparts?
David Lawton: I would not want to comment on the views of my US counterparts, partly because, as I was saying earlier, I do not know what they are because we have had no conversations around TTIP. Perhaps I could answer the question more constructively by exploring what sort of features would be useful in the TTIP in relation to financial services issues. This perhaps comes back to the question that we were talking about earlier. There are probably three or four elements that would be essential, and then two or three points to think about or questions to explore. The first element goes back to what I was saying earlier: that it is critical, where financial services industries are global, that any EU-US dialogue recognises that fact. In relation to the implementation of the G20 agreement, for
example, not just the US and Europe but the huge Asian markets are clearly going to become bigger over the next few years, so any framework within TTIP for discussion about financial services also has to recognise the broader global dimension.

The second thing I would say is that the right people have to be around the table. One of the weaknesses with the financial markets regulatory dialogue, as I would see it, is that from the European side it only engages the Commission. It does not engage any of the relevant technocrats. A challenge, of course, is that there are a lot of different technocrats and regulatory organisations, so if you want to cover financial services en bloc you will need a big room. That clearly has some disadvantages in terms of the efficiency, but you need to involve the technocrats.

The third thing is that you need to be clear about the basis of the conversation. Is it a conversation around just generating a greater understanding of where each side is coming from, or is it a bit harder-edged? Is it around committing to common implementation dates, or is it around committing to exploring the rough interfaces between different existing rules? Even more hard-edged, is it a dialogue that has some sort of mechanism within for resolving differences and disagreements? It definitely needs to reflect the multilateral element and to have some process for including technocrats, but it also needs to be clear about what it is a dialogue about and what the nature of the conversation is. Is it just a conversation or is it some sort of harder-edged decision-making process, and if so, what are the elements of that decision-making process?

Q141 Baroness Young of Hornsey: In a way, that has covered my question. In a sense, you have just said that you thought that the main area thus far identified as a priority within TTIP was the establishment of an agreed mechanism for having discussions and having them conducted in the future, and that you have to recognise the broader global dimension and having the right people around the table. These are clearly what you see as the priorities for this agreement. I suppose I could ask, therefore, whether there are other bigger prizes, which perhaps are slightly more intangible, that would indicate that a good deal had been struck. You have featured on the realistic, the pragmatic, but is there anything over and above that?

David Lawton: It is consistent with what I was saying earlier about the FCA not having a view on TTIP per se: that we have not thought about the issues in those terms, about market access or a good deal and so on. We have done no analysis that has produced a league table, if you like, of parameters in the terms that you have been describing. I would say, to echo what we were saying a few moments ago, that if we understand correctly that what is being talked about within TTIP is some sort of arrangement for enhanced dialogue, it is important—a priority, from our point of view—that those arrangements have the features that we were talking about earlier.

Earl of Sandwich: You are saying some of the same things but using different terminology. You probably came in when we were discussing the idea of a living agreement earlier. If there are things that seem to be intractable, like accounting methods, why have we not over so many years come nearer to common accounting methods? Those things are going to be out of reach almost at TTIP, yet we have to have regulatory convergence somewhere—that is the bottom line—to make any progress. What does it mean, this living agreement? The Trade Commissioner is using the term already as though we are not going to get anything in TTIP in that sector.

David Lawton: I am afraid I am not familiar with the term “living agreement” so far, but it is clearly the case that regulation, and within that financial services regulation, is an ongoing activity and that financial markets are continually evolving. If by living agreement it is meant that arrangements need to be kept under continuous review in order to ensure that they remain fit for purpose and are dealing with the markets as they exist and are likely to evolve,
then I would say that that is what any dialogue would need to be about and would need to provide for.

Earl of Sandwich: So in TTIP terms, that means making the best of a bad job?

David Lawton: Let us step right back. There are two immovable features of the legislative and regulatory world that any TTIP would have to recognise. The first, as we were saying earlier, is that any jurisdiction, having established a framework of regulation for what happens within its jurisdiction, is always going to want to have an eye to the regulatory requirements that apply to firms from outside that jurisdiction that want to do business within it. That is the basic approach that you will find from any legislature or regulatory authority, so then that narrowly focuses already on a set of questions around what does equivalence mean and how do we evaluate it.

The second immovable object is that within each jurisdiction, certainly in the larger ones, there is a philosophical starting point, if you like, that you need to work out what works for your jurisdiction first and foremost, and within that your regulatory authorities have some degree of independence. Any TTIP arrangements have to hang between those two pillars. Although we are not involved in elaborating what they might be, it just seems to me, looking at it from the outside, that one has to be realistic that those are two walls within which the TTIP has to be built.

The Chairman: Do you think there would be scope for the regulators to have impact studies on regulatory issues concerning transatlantic relationships?

David Lawton: There is certainly scope for impact studies to be done. Whether the regulators need to lead those or whether it could be done by Governments or industry is perhaps an open question.

Coming back to the example that we have been talking about this morning, the implementation of the G20 commitments on derivatives markets, one of the concerns is that there is dual regulation or dual oversight, so in other words the G20 has committed to implement certain changes in derivatives markets and the US and Europe have gone away and implemented those in their respective jurisdictions. One would have expected that that would have produced a similar outcome in each market, so the need to have dual regulation or dual oversight of transactions or firms is an extra cost that is not needed. Some sort of impact study looking at those sorts of questions could be useful to feed into a regulatory dialogue.

Q142 Baroness Coussins: You said that the FCA does not have an official position on TTIP, but given that consumer protection falls within your remit, I am hoping that you have given some thought at least to what the likely benefits or negative consequences might be of the kind of regulatory coherence that TTIP is meant to be about. I wondered whether you could outline what you see as the potential advantages and disadvantages of having the financial services sector included within TTIP from the consumer perspective.

David Lawton: Two of our statutory objectives are to ensure an appropriate degree of protection for consumers, but also to enhance competition in the interests of consumers. Trade agreements generally have been seen as ways of broadening both competition and consumer choice. In general terms, the FCA could see that trade arrangements could contribute positively to the context in which we operate and positively help indirectly pursue those two statutory objectives.

On the opposite side though, of course one would need to be careful that those arrangements do not result in a diminution of the previously agreed standards, so it would be a retrograde step if, in the interests of promoting coherence or convergence, we had standards that defaulted to the lowest common denominator. I do not sense, in the conversations that are being had around the role that financial services could play in TTIP,
that that is in any way the intention. Rather, it is about establishing a process for discussion. The substance of that discussion comes later.

**Lord Foulkes of Cumnock:** Just following up Baroness Coussins’ excellent question, you said that we would not want to go to the lowest common denominator with regulatory harmonisation. Does that mean that if we adopted some of the procedures that they have in the United States, for example, bankers who defrauded their customers in the United Kingdom would be in prison now, as they are in the United States?

**David Lawton:** That is a series of stages beyond the level of conversation that we have been having around the nature of the TTIP arrangements. The discussions around regulatory coherence and regulatory harmonisation have been about getting coherence in the standards that apply within each jurisdiction, as opposed to extending the reach of one jurisdiction into the other. I think that is a different dialogue completely, and indeed one of the perceived benefits of greater regulatory coherence is that its jurisdiction sees less of a need to reach out into the other jurisdiction because it has greater confidence that the arrangements that pertain in that second jurisdiction match its own.

**Q143 Baroness Young of Hornsey:** I am not quite sure whether you have answered what I am going to ask you, but my question relates to and follows on from that. You talked about choice and competition for the consumer, and in earlier evidence we heard the same two things as being part of the benefits. Then there are concerns about standards always being expressed in the negative, it seems to me, such as, “We hope it will not go down”, or, “We intend for it not to be diminished”, rather than thinking, “We would to make it in such a way that consumers could feel much more confidence in financial services”—confidence that, as you will be well aware, has been absolutely shattered over the past few years. Do you think there is an opportunity to take perhaps a more positive stance on the confidence aspect of consumers’ engagement with financial services?

**David Lawton:** Undoubtedly. It seems to me that the conversation about TTIP has two elements to it. The first element, which is the one we have focused on mainly this morning, is, “What is the process?”. Once you established the process, you could use it for a variety of things. You could go up, you could go down, you could stay the same, but that entirely depends on what you use the process for. All I was saying earlier is that in general terms, free trade agreements are held to be beneficial for competition and choice. The regulatory standards that apply in a regulatory dialogue are open to discussion. It entirely depends on the outcome of the discussion. The only point I was making in relation to those is that simply setting up a dialogue should not lead to any presumption that regulatory standards would be driven downwards. Indeed, speaking from an FCA point of view, I do not think that would be a good outcome.

**Baroness Young of Hornsey:** I suppose all I would say is that the notions of competition and choice have not particularly served the consumer well in financial services over the past five or six years.

**David Lawton:** That is why financial services are regulated.

**The Chairman:** Mr Lawton, thank you very much indeed. I think you have helped clarify our minds, and it may be that after consultation with the clerks we have one or two additional questions to ask you.

**David Lawton:** Yes, of course.

**The Chairman:** Thank you very much for coming before us.

**David Lawton:** My pleasure.
Lord Livingston of Parkhead, Minister of State for Trade and Investment, Department for Business, Innovation and Skills, and Edward Barker, Head of Transatlantic and International Unit, Department for Business, Innovation and Skills—Oral Evidence (QQ 249-269)

Evidence Session No. 22    Heard in Public    Questions 249 - 269

THURSDAY 20 MARCH 2014

10.05 am

Witness: Lord Livingston of Parkhead and Edward Barker

Members present

Lord Tugendhat (Chairman)
Baroness Bonham-Carter of Yarnbury
Baroness Coussins
Lord Foulkes of Cumnock
Baroness Henig
Lord Jopling
Lord Lamont of Lerwick
Baroness Quin
Lord Radice
Earl of Sandwich
Lord Trimble
Baroness Young of Hornsey

Examination of Witness

Lord Livingston of Parkhead, Minister of State for Trade and Investment, Department for Business, Innovation and Skills, and Edward Barker, Head of Transatlantic and International Unit, Department for Business, Innovation and Skills

Q249 The Chairman: Lord Livingston, thank you very much for coming. As I think you know, this is a formal meeting of the Committee in pursuit of its inquiry into TTIP. It is, in fact, the last evidence session that we will have. As Edward Barker knows, we heard from your predecessor at an earlier stage, so it is appropriate that we end with you. We have quite a number of questions to ask you, and no doubt there will be quite a lot of supplementaries as well. If you wish to say anything at the outset, please do, otherwise we will kick straight off.

Lord Livingston of Parkhead: I thank the Committee for moving the date. The Prime Minister had to cancel his trade visit because of the floods and, when he rearranged it, it
clashed with the original date. I thank the Committee for making that change; it was most helpful.

Q250 The Chairman: I think we all understand the exigencies of the service. This is of course all on the record, as I am sure you knew anyway. Can I kick off with quite a general question? What is your latest estimate of the likely timetable, first, for the US Administration securing a TPA and, secondly, for reaching political agreement on the provisions of TTIP? Is there a point beyond which one might conclude that the negotiations have stalled or run into the sand?

Lord Livingston of Parkhead: I shall take TPA first. As you know, TPA and TPP both have to be done for TTIP. There was a not unexpected but reasonably negative comment from Harry Reid about the view of a number of Democratic Members of the House regarding TPA. I think the general view from the US side is still positive to getting TPA, but not this side of the November mid-terms. While there will be some work to be done before then, I suspect that we are looking at after the mid-terms, which practically speaking will probably take us into the first quarter of the next calendar year in order to get TPA. On TTIP generally, it is and always has been an ambitious timetable, and one of the things that we have to accept is that there is nothing wrong with having ambition. It is, probably by its nature, going to take longer than any given timetable. If you speak to people in the EU Commission, they use phrases such as “breaking the back of it before the autumn period”, “during the autumn” or “getting to political agreement in give or take 12 months from now”. As always, the difficult thing with estimating a timetable for TTIP is that by its nature the easy stuff is done first, and now we are getting into the difficult things. We do not know what the political environment is going to be. The best estimate, if I can express the aim, is to get to it by the first quarter of next year. Again, in terms of getting political agreement, there is a lot of work to be done beyond that. Is there a point at which you would say it had stalled? I am sure that there will be but we are not there yet. If you compare it with how long other trade agreements have taken, including TPP, it has gone remarkably quickly so far. It would be wrong to take the missing of a very aggressive timetable by a few months to be the same as having stalled. I think the Commission and the US negotiators are right to set a very aggressive timetable; it means that they will do this remarkably quickly, even if for slightly longer than they had timetabled.

The Chairman: It is always dangerous for outsiders to comment on someone else’s political process, but I was at a breakfast for the American ambassador yesterday and I asked him a question about this. If I understood him correctly, he said that they were worried about going for the TPA too soon on the TPP, because if they lost it on the TPA that could screw it up for TTIP. I felt that I understood what he was saying, but how would you respond to that?

Lord Livingston of Parkhead: I think TPP is probably more controversial because of the nature of some of the other countries that would be on the other side of it. Certainly the warning signs generally say, “Don’t try to do it before the mid-terms”, because there are too many people worried about their seats. As always with trade agreements, it is easier to see the losers than the winners. Both these things point to it being at the end of this year or the beginning of next.

Baroness Quin: In advance of the TPA and further political impetus, can a lot of progress be made on technical matters in the meantime?

Lord Livingston of Parkhead: Yes. We have to work on the basis that we are going to get the TPA. The US has, I believe, a TPA for every trade agreement that they have ever done bar one—I wish I could remember which country it was; I think it was Jordan—so we have to work on the basis that it will get there, in much the same way that the US has to work on the basis that it will be ratified by the EU. We certainly could not seek agreement with the
other parties if it was not in place in due course, but I think these processes have to run in parallel.

The Chairman: I turn to Lord Trimble, who has to leave early.

Q251 Lord Trimble: Assuming political agreement, could you take us through the steps and timescale for carrying it through the Council and the European Parliament, and is there a role in this for national parliaments?

Lord Livingston of Parkhead: Because this is complex, we thought about handing out a little crib sheet about the process. To put it in context, I think EU/Korea took two years to do in total. I do not think it will be as quick as that; this will be far deeper. This is probably going to be a three or four-year process in terms of total implementation. However, bits can be done. Basically, once you have political agreement, the next stage is signature, and you need a decision of the EU Council for that. Because some bits of this will have member-state competence, you need a Council decision to be agreed unanimously. In the UK—I cannot speak for other countries—we would go to the various scrutiny committees to get that. You would then go for ratification. In parallel with that, we would go to the House and you would need ratification there. It would be a bit like the TPA; it would be debated but not clause by clause, which I think is reasonable.

There is still work to be done beyond that on final scrubbing but some measures, particularly in areas that are solely an EU competence, can be put in first. There are also some things, such as the tariff reductions, that you could run with in the provisional agreement. On the time period from start to finish, Canada is probably not going to be that dissimilar—I think three to four years.

Edward Barker: It was two years for Korea.

Lord Livingston of Parkhead: I think this will be longer because it is more complex.

Q252 Lord Foulkes of Cumnock: If the 18 September referendum goes the wrong way, will it produce complications?

Lord Livingston of Parkhead: As I think we would both agree, Scotland would cease to be a member of the EU, so the rest of the UK would carry on having the agreement. It would produce big complications for Scotland, in that when the actual physical act of separation happened it would not be able to access any of the existing free trade agreements. In terms of the UK Parliament approving an EU-US trade agreement, I do not think that would become complicated. I think the challenge would come with tariffs that might be imposed on all the other trade agreements that already existed. That would be problematical.

Lord Foulkes of Cumnock: It would be a loss to Scotland, not to the rest of the United Kingdom.

Lord Livingston of Parkhead: I think it would be a big loss to Scotland. It would affect the rest of the UK in terms of trade between the two countries, but Scotland exports twice as much to the rest of the UK as it does to every other country combined. The Scotch Whisky Association relies heavily on a lot of the trade agreements that have been completed already. I struggle to understand how it could rely on that if it was not a member of the body that actually made the agreement.

The Chairman: Can I put a slightly less sensitive political question?

Lord Livingston of Parkhead: I think we are all agreed on this issue.

Q253 The Chairman: Again, it is difficult to comment on other people’s politics, but I have the impression that if the nationalistic populist parties do well in the European elections—in France, the Netherlands and so forth—that might have two consequences, which perhaps you could comment on. One might be that the European Parliament would be a much higher burden than would otherwise have been the case, because people like Madame Le Pen’s party would be more sensitive to any concessions. The other, of course, is that it might influence the way in which the Governments of the countries concerned
approached the negotiations. It might limit their freedom of action and, although of course the Commission is the negotiator, that would have a consequence when the deal came before national parliaments. Do you have a view on that?

**Lord Livingston of Parkhead:** I think that is a very fair comment. Of course, there are different shades among the parties; some of them may be anti-EU but pro-free trade, while others are very nationalistic in every sense of the word. That could make it more problematic and it is one of the challenges in anticipating what the timelines will look like and the scale of ambition. As we stand just now, I think that every country is very much strongly in favour of TTIP in principle. The challenge is that they all have things that they do not like within it. If you add up all of them, they come to quite a lot. Dealing with all these sensitivities is going to be very important. That goes to a discussion that we might have later about selling the positives; it is always far easier in these cases to identify the losers than the much larger group of winners. If we saw a very strong nationalistic vote coming through, that would be challenging, although it might also be a reminder—that is something that the UK would say we feel very strongly about—that the EU should be focusing on growth, trade promotion and other things that countries feel more inclined to agree on than perhaps some of the other things that have affected the powers of national parliaments.

**The Chairman:** Baroness Henig raised a point earlier about Germany.

**Q254 Baroness Henig:** Perhaps I can bring it in here. I heard recently that Germany was now strongly objecting to the inclusion of the ISDS mechanism. What is the latest update on that? If that is the case, how are the British Government going to deal with that?

**Lord Livingston of Parkhead:** I was in Hanover 10 days ago, I think it was, with the PM, Angela Merkel and number of other people for the opening of CEBIT, which is a big German trade fair that the UK was the partner country of. I met a number of senior German politicians and heard speeches by them, and it was interesting that every single one of them raised the issue of data protection. The German government are obviously very sensitised about data protection, and that is impacting on some of the thoughts about TTIP. That being said, Germany could be one of the biggest gainers from TTIP. On ISDS, there is certainly a slightly anti-corporatist movement; the Germans have issues with it. We will talk in more depth about ISDS later, but there is a consultation process on ISDS that will go on, and that should help. The problem with ISDS is that it gets described in ways that I do not recognise. What it looks like and how it is properly explained, rather than the way that it is being made out in places, will help significantly, as will reminding people that there are lots of ISDS clauses.

**Baroness Henig:** As you say, we will get to them.

**Q255 Lord Jopling:** Could you help us with ministerial responsibility over TTIP? You have your role and we understand that Kenneth Clarke has a role. Can you explain how those roles differ and how the thing works within the ministerial community?

**Lord Livingston of Parkhead:** Of course it helps with Ken being in a different House from me, but Ken was given the role of a sort of special TTIP representative, which means that he can be a very strong cheerleader for TTIP and spend a lot of time on it, which he does extraordinarily well, explaining the benefits and having a lot of meetings. My responsibility is more on the technical and the EU side of things, so I attend the trade meetings with other Trade Ministers and the advisory work in terms of the EU's positioning in matters such as that. On the one hand, I represent the House of Lords and he represents the Commons, but we also spend a lot of time talking to each other about what we need to do on it. In such an unusual position, I certainly appreciate having someone with Ken’s background and, frankly, available time. His political weight is a big help in doing this. So I am more on the technical side while Ken is more on the pushing for it and raising its profile.

**Lord Jopling:** Where does your Secretary of State fit into all this?
**Lord Livingston of Parkhead:** I have two Secretaries of State. That is a whole other matter. I report to the Foreign Secretary—in fact I talked to him just yesterday—and to Vince Cable in BIS. Both are keen to see progress. I talk to them about this as I do about a number of issues.

**Baroness Henig:** As one of the first issues to be discussed, clearly financial services are of major importance to the UK. We are briefed on this area and we know a lot of the problems that exist in this area. I wondered whether you could set out for us the state of play on the inclusion of financial services regulatory matters. Where are we on this one?

**Lord Livingston of Parkhead:** As you say, not just the UK but the EU generally is very positive on financial services. We probably have to remember that financial services are not just banking but cover insurance as well, and there are issues with state-based insurance as being a challenge. The US, on the other hand, is very negative—or, rather, some people have made statements that are very negative, particularly the US Treasury. They have the sense that we are trying to unwind Dodd-Frank, which we are not. Bear in mind that what financial regulators on both sides of the Atlantic should be doing is executing generally agreed principles, and we are trying to get a better coherence between them. I think there will be processes to do that. I do not think they will be perfect but they will be similar to other coherence processes by which regulators discuss and try not to have situations where they have slightly different versions of the same rule for the same purpose unintentionally. That would be a big help, particularly going forward. I do not expect we will have anything unwound from the past. It is about how things are done going forward and how companies can operate either side of the Atlantic with the appropriate rule set. This is certainly going to be one of the challenging issues.

**Baroness Henig:** Are there any other areas that the United States has already ruled out? Press reports suggest that there are some areas that, as far as they are concerned, are no-go areas.

**Lord Livingston of Parkhead:** I think they would rule out the unwinding of Dodd-Frank but, again, we are not seeking to do that. As a general comment, on both sides of the Atlantic people are talking about a lot of red lines, and some of that relates to negotiating. Some of it is also because the people who are against are also the ones who are speaking out. We should not assume that anything is being ruled out in this. We are being accused of wanting to do something that we do not, and people are saying, “We won’t allow you to do it”. I think that we can make progress. Proper discussions between the various regulators would be a major step forward, as would an understanding of what is trying to be achieved. Insurance is going to be interesting, because the UK has great strength in that and the US is more state-based, although we tend to talk about capital rules and banks and the like. The Treasury spoke to you in some depth about where we were, but it is important to stress what we are not trying to do, which is rather what we have been accused of.

**Baroness Bonham-Carter of Yarnbury:** This might be more of an observation than a question, but when we were in Washington it was not just the Treasury that was being negative about this.

**Lord Livingston of Parkhead:** I was just saying “for instance”.

**Baroness Bonham-Carter of Yarnbury:** Obviously the Treasury was incredibly negative, so it is going to be a very tough area. There was a very strong sense of “no”.

**Lord Livingston of Parkhead:** You are right. I raised the Treasury in particular in contrast to the UK Treasury, which is very keen to find ways of working with this. I share your view about the toughness, but to a certain extent that reflects an incorrect assumption about what is being proposed.

**The Chairman:** Can I try to lead you on this point? As Lady Bonham-Carter said, we were very struck by how adamant the opposition was. Quite apart from whether they want it in
the negotiation or not, the nature of this negotiation between two equals, as it were, seems to be such that it would be quite contrary to the spirit of the negotiations for one side or the other simply to say that one chapter was not for discussion. There is all the difference between saying that one chapter is not for discussion and failing to reach agreement on a chapter. It seemed to me that the position the US was taking when we were in Washington was contrary to the spirit of this negotiation.

Lord Livingston of Parkhead: I am not sure, though, whether the trade negotiators are taking that position.

The Chairman: We did not see Mr Froman, but we saw Ambassador Sapiro and she seemed pretty tough. What struck me, having dealt with Governments for a very long time, is that when you have two Ministers or departments using identical language, that suggests there is a pretty deep-seated position. Ambassador Sapiro and Sharon Yuan from the Treasury used identical language.

Lord Livingston of Parkhead: As I said, generally the issue of people red-lining things is a problem. That is true on both sides. Financial services are big issue, but you could say the same about cultural products about being a challenge. From the UK’s point of view, we would certainly press for issues such as these not being taken off the agenda, and Commissioner De Gucht would absolutely say that he did not feel that it was off the agenda and that we will have discussions on it. Again, it is the perception about what Europe might be seeking. If you go back to Glass-Steagall, America has felt that things were unwound over time and that was problematic, and they do not want the same thing to happen to Dodd-Frank. We just have to carry on the discussions. We do not see it as being red-lined at the moment.

Q257 Baroness Quin: Can I follow that up? Obviously the Commission is doing the negotiations for the EU but, given the importance that we attach to financial services and the closeness that we have with the United States, do you feel there is a special responsibility for the UK to be active in this particular part of the negotiations? If so, how would you propose to do that?

Lord Livingston of Parkhead: I think it is true in a number of areas where, given the relationship that we have with the EU, we can make a difference. A lot of discussion is going on. Our embassy in the US has been particularly strong and the Treasury has been heavily involved. I know that there have been a number of meetings that have taken place, and they will continue to take place, to discuss the issues with some of the rejectionists as well as some of the people who are positive about it, explaining particularly what we would want to see. I think the UK has a special position, both within the EU and in relation to the US. The EU would still say that financial services were a critical part of concluding TTIP, so we are unusually consistent with the rest of the EU on this one.

Baroness Quin: I will also ask the question, which I think you have already seen, about the process of the dialogue on financial services. It seemed that one of the advantages of TTIP would be not just what was agreed as part of the agreement but that it would be able to set up a structure for future dialogue. If the negotiations stall on this, how do you feel about settling for improvements to the existing financial markets regulatory dialogue? Would that be very much a second best, in your view?

Lord Livingston of Parkhead: Yes, and at this stage I would certainly not go for second best. The FMRD has not been particularly successful to date. It is interesting that there seems to be a bit more enthusiasm about it recently, almost as if to say that the existing structures actually work reasonably well. Some of the aims of the FMRD were right but the question is the process by which it happens. I would not like to say, “Well, all it is now is that we just look for a slightly better FMRD”. It has to be more significant—on the look-
forward basis, as I say; I do not think we can go back and start unpicking laws on either side of the Atlantic on major things.

**Q258 Baroness Coussins:** I want to take us back to the ISDS mechanism. Last November, when Lord Green gave us evidence, he said that the UK was open-minded about whether an ISDS mechanism should be included in TTIP. Of course, since then that area of negotiations has been put on pause while the consultation goes on. As we heard earlier, some member states, notably Germany, have made their opposition much clearer. I am not sure that Germany is the only one; we heard that there was a statement last week from the Dutch Parliament about it as well. With the background of that consultation, could you tell us how the UK position has developed up to this point? Given the well established legal systems on both sides of the Atlantic, unlike the scenario with some other free trade agreements in the past, what would really be lost to this agreement if it did not have an ISDS mechanism in it?

**Lord Livingston of Parkhead:** One of the problems that the ISDS has suffered from is people saying, “It is going to mean that you can’t have the NHS as a result of it”. People make statements about the ISDS that are not correct. As this Committee will know, there are already a large number of ISDS clauses in many agreements. One of the interesting things is that in 2012, 60% of ISDS cases came from the EU compared with 8% from the US. Actually, the EU tends to be a quite heavy user of ISDS cases. It would be preferable to have an ISDS clause; it would help with confidence for investment and protect against the “what ifs”. We also have to remember that state-based law is not quite as consistent as federal law. We tend to think of the legal system in terms of federal and country law in the EU. A lot of the ISDS clauses that have been taken out have been against Argentina, for instance, where there has been expropriation—exactly what it was meant to cover. The important thing with ISDS is, first, the consultation work. One of the problems is that it has suffered a bit from being in the dark. I hope that the EU will commence its consultation work shortly and have an open discussion about it. Secondly, the EU put out a very good paper in November, which I am not sure the Committee has seen, which set out what an ISDS clause should look like. I thought that it answered a lot of the allegations about ISDS. If the Committee has not seen that, I would be very happy to send it round separately. It tried to make the whole process of ISDS more open, making it clear what it did not prevent countries from doing but that it is about discriminatory behaviour, and so on. It tried to put barriers around ISDS. There may be some badly written ISDS clauses; it is interesting that some of the more celebrated cases, which have not even gone one way or the other, have been almost treaty-shopping, where you have a US company using a Hong Kong treaty with Australia to raise an issue, and you suspect that that may well reflect some badly worded clauses. However, on both sides of the Atlantic the willingness to have the right ISDS clause is absolutely there. Frankly, the more that we talk about it, expose it and make it an open process, the better. When one looks at some of the Canadian discussions and so on, I think that we could get a very acceptable ISDS clause that would help companies both in the EU investing in the US and vice versa; it would give them certainty and support, and it would answer many of the charges regarding ISDS clauses and show that they were not correct.

Meanwhile—this might be the next question—one of the objections that are often raised is that it would stop us doing things in the NHS. I do not think it would do, but if, for instance, there was a private hospital operator from the US, and if the hospital was nationalised without compensation, that is where ISDS should come in, in exactly the same way as if there was a private operator in the US whose hospital was nationalised without compensation. It should have rights. I would be supportive of ISDS. It has certainly been a populist touchstone and an NGO touchstone, and that is partially through a lack of people in
the EU and the US being open about what it would look like and its limitations. That will be very important.

**Q259 Lord Radice:** In a sense, we have answered some of the questions that I was going to ask, but I have some others. The consultation process seems to me to be rather important, particularly given that it is now becoming very controversial. When is it going to begin, and when is it going to end? You say that the whole point is that it should be more transparent and so on, yet you have this consultation process going on that means that people will say, “Well, we can’t say anything until the consultation process is over”. This is actually becoming rather important.

**Lord Livingston of Parkhead:** It should be starting any time soon. It is meant to be a three-month process. Do you think it will start in April?

**Edward Barker:** We are hoping it is going to start in the next week or two.

**Lord Radice:** I see. Is it going to be a long consultation?

**Edward Barker:** The Commission has said three months.

**Lord Radice:** So it should come out around the end of the summer, as it were.

**Lord Livingston of Parkhead:** Yes. As I said, if the Committee has not seen that factsheet from November, it would be good for you to have that as well. It sets out quite well some of the EU’s existing views on ISDS clauses. The consultation should come out shortly thereafter, I should hope. We have certainly been pressing the EU to have a very open and transparent discussion.

**Lord Radice:** Is it the case that most ISDS dispute mechanisms have been not in trade agreements but in investment agreements?

**Lord Livingston of Parkhead:** In BITs, yes.

**Lord Radice:** When people quote the existence of thousands of such agreements, they have not actually been in trade agreements. Is that right?

**Lord Livingston of Parkhead:** There are some in trade agreements, most of them I think in bilateral investment treaties.

**Edward Barker:** That is right. The “thousands” number refers to bilateral investment treaties. In the EU, only recently has the Commission acquired the competence to negotiate this as part of a free trade agreement. Canada will be the first EU free trade agreement that includes this sort of measure.

**Lord Radice:** So in a sense, this is why it has come up in the way that it has and has become a rather controversial issue. It has not actually been there before, or at least not in trade agreements.

**Lord Livingston of Parkhead:** Not in EU trade agreements, as has been pointed out to me. I do not think that alters its effectiveness. It raises the fact that bilateral investment treaties probably do not get, shall we say, quite the publicity. I do not think it is an issue of effectiveness as to where it turns up, but it has certainly attracted a lot more attention. As we said, there are a lot of ISDSs around that people can take action against countries on. The UK, for example, has never lost a case.

**Lord Radice:** So your argument is that we would benefit more from having an ISDS inside TTIP than we would if it was excluded. Would we lose if it were excluded?

**Lord Livingston of Parkhead:** I think so. It is a good ISDS, I would say, and I think that is the sort of direction that the EU is going in.

**Lord Radice:** In what way?

**Lord Livingston of Parkhead:** With all these things, there is speculation about what might happen at some time in the future. For example, as we referred to earlier, states in the US have quite a lot of legislative authority, and that authority is not always executed in a way that we would recognise as entirely being due process. For instance, US state procurement has very much a “buy local” policy. You could envisage certain situations. You could even
say, and I am being careful here about what I say, that the treatment of some corporations outside the US has been worse than their US counterparts might have encountered. One thinks of recent oil spills, for example. I hope that no one ever feels the need to use the ISDS, but the question is whether having a backstop that gives you certainty when you invest—a mechanism by which the laws that are being signed effectively in the agreement between two countries—gives you a mechanism by which you can take action in the hopefully unlikely event that there is a reason to do so, with restrictions regarding frivolous actions, costs and things like that. That may apply particularly to some of the smaller companies. It is one thing if you are a major corporation to be able to be in court for a very long period, but if you are a medium-sized company this might give you more back-up. I hope that it is just a back-up and no more, but there is advantage in the fact that it will give confidence in doing so.

Edward Barker: I would just add that if the EU were to pull it out of the negotiation, we would certainly pay a price for that within the negotiation. It would also create some difficulties as a precedent for our negotiation of the investment agreement with China.

Lord Radice: Yes, I have heard that.

Q260 Lord Jopling: We shall come on in a moment to the reservations that we have heard from organised labour on both sides of the Atlantic, but there is one issue that is relevant here. The TUC has suggested to us that health services might be carved out from investment protection provisions. Do you think that is a runner?

Lord Livingston of Parkhead: The US model bilateral investment treaty seeks to preserve the rights of government to regulate in the public interest in civic sectors such as health, so there is some sort of carve-out. Going back to the comment I made earlier, though, if we took discriminatory action against a foreign investor that was in the private health sector, let us say, that is something that you would rightly think should be looked at. I will give an example. I know that a UK company is building a hospital in Australia just now, and if someone just announced that they were taking it over, it would be right that the UK company could take some action if it was not given any compensation. The clarity about Governments being able to legislate in a non-discriminatory way on public health matters would be an important part of the agreement. I do not see us having a carve-out for the NHS per se. Remember also that we have European obligations, but then we have had a lot of European-wide obligations. I have seen nothing in the ISDS clause that has an impact on the health service as it stands today. It has never been made entirely clear to me what exactly people are concerned about regarding the existence of an ISDS clause.

The Chairman: I have one final question on this subject. It has been suggested that the EU hopes to use the investment provisions in the agreement with Canada as a precedent for discussions with the US on this subject. How do you think the United States would respond to that? Might it in fact wish to drop the investment protection for the provisions altogether rather than depart from raising its standard bilateral investment treaty?

Lord Livingston of Parkhead: I am not sure that the Canadian approach is very different from the US approach, although it would probably be better for the discussions if they were not presented as, “You can have what we did with Canada already”. The EU approach is consistent, obviously, but Canada’s approach is not going to be terribly different, so getting a new model ISDS treaty and having it between Canada and the EU will not look dramatically different from an EU-US treaty. I am not sure that will be a great problem. With the caveat that for some countries it has become a sort of principled issue about ISDS, perhaps from certain lobby groups and NGOs, I am not convinced that the actual content of an ISDS agreement will be the most problematic issue between the negotiators. We just have to shine a light on what ISDS is and is not. Again, it gets accused of being a lot of things that are not correct. For instance, there is an idea that it will be used only for American companies.
As I said, the EU has actually been the biggest user. There has been a lot coming out from Holland, for example, and from Dutch companies. There is also a sense that it is only for big companies. Actually, it might be something that medium-sized companies in particular would like to rely on. So sorting out the Canadian one would be very useful as a basis for two developed countries, both with multinationals, to set out the rights and the limits of that ISDS, particularly with regard to the issue of transparency. One challenge that has been made about ISDS clauses that is right is that the whole process is not terribly transparent with regard to someone taking action. We think, and I think the Americans would share this view, that future clauses should have a transparency obligation for people utilising the clauses.

Q261 Baroness Young of Hornsey: You indicated in your written evidence that the TTIP negotiations “represent an opportunity to work with the US on the implementation of International Labour Organisation standards”. Could you clarify for us whether labour standards on either side of the potential agreement are actually on the table in TTIP?

Lord Livingston of Parkhead: The US has included labour provisions in all the bilateral and regional FTAs that it has negotiated since 1994. In principle, the US is in favour of them. However, it does not have a great record on implementing individual clauses, and some of its ratification processes are challenging. I do not believe that we have implemented all the agreements either. Do I think that an agreement would push the US to ratify more elements of its ILO agreements? No, I do not. On the other hand, I do not think it will impact workers’ rights in the EU at all. People talk about this being a chance to have lower-paid workers and so on. The average wage in the US is higher than the average wage in Europe by some distance. I think there will be a restatement of some of the fundamental principles, but I do not think we can expect the US to start ratifying more sections of it. By the same token, I do not think there is any evidence to back up the issues raised around a race to the bottom on workers’ rights or pay, particularly if you look at the wage in the US manufacturing sector. That is something that many EU countries would love to strive for.

Baroness Young of Hornsey: That is interesting. Obviously averages can mask a whole heap of inequalities.

Lord Livingston of Parkhead: In both countries.

Baroness Young of Hornsey: On both sides, absolutely, so that can sometimes be a bit misleading. Going on to this issue of lower wages, nevertheless there are some concerns about this—that if tariffs and regulatory barriers are reduced as part of TTIP, there will be some lowering of standards in some areas, not necessarily right across the board, but in terms of lower wages in some areas levels of labour, regulation in the US might lead to jobs being lost to the US. Do you think that such concerns can be warranted?

Lord Livingston of Parkhead: There is an expectation among economists that you will see wages rise across Europe as a result of it. Also, the Federation of Small Businesses did a report, which I think might be on the optimistic side, that said that it thought this would create 400,000 jobs.89

Baroness Young of Hornsey: Can I just ask you about that? You said that there is an expectation, and that the FSB’s estimate is slightly optimistic. On what is that based? It sounds like it could be just speculation.

Lord Livingston of Parkhead: It is based on the fact that production will go up. Take the car industry: if you reduce tariffs and make it cheaper to produce cars, you allow production to go up and there will be a pull on wages. Some of it will come through more jobs and some through higher wages, as our economists have modelled. I always put in a caveat about

89 Note by witness: The Federation of Small Business welcomed a report published by the Bertelsmann Foundation that estimated TTIP would lead to the creation of 400,000 jobs.
economic forecasts. I think JK Galbraith said that the only purpose of economic forecasts was to give astrologers a good name. With that slight caveat, though, the expectation is that it will raise living standards across Europe, and some of that will come through more jobs, some through higher wages and some through lower prices. There will be some sectoral losers; we need to be clear on that. In the car industry and certain other sectors, they might have greater competition and we will lose jobs. However, the net on both sides of the Atlantic should be higher living standards overall.

**Baroness Young of Hornsey:** That is a pretty big claim. I wondered whether there were precedents on which that claim was based. Is that the result that has come from other trade agreements?

**Lord Livingston of Parkhead:** The World Bank did a survey and said that countries that open themselves to free trade grow three times as quickly as countries that do not. As a general principle, trade tends to lead to higher overall living standards for a country. That is the basic principle that we have worked on. The single market has certainly been a success, in my view. It would be nice if we could complete it, but as far as it goes it has been a success and has helped businesses. Any aid to free trade will ultimately raise living standards, particularly because we are talking about two developed countries that have wide-ranging interests. You have to protect more emerging economies and have more asymmetrical trade agreements, and we do, but between two developed countries free trade, the removal of tariff barriers and a reduction in having to produce two different types of cars, for example—there are many other examples—will yield overall benefits and an increase in living standards. You can debate the numbers; there is a figure for the overall gain to the UK of £10 billion—I do not know if that is right but it seems ambitious—while the EU has talked about €545 per family. In all the studies the debate has been about how much the gain will be, but there is no question that there will be some losers.

**Baroness Young of Hornsey:** I have one last question on that. We are not talking about two countries, of course, we are talking about the US and the EU, so do you think there will be a difference between the benefits experienced in some countries that are already quite highly developed within the EU and others that have some way to go? Who will be among the losers?

**Lord Livingston of Parkhead:** I think there will be different sizes of winners. The UK is thought to be worth £10 billion, which is slightly less pro rata. Spain and the Republic of Ireland are likely to be two of the big winners. When I have gone around European countries, with the exception of certain sectors, I have not heard anyone say that they did not want one of these. I think that the challenges will be sectoral. For instance, there are definite worries among some countries such as: if you have just got an agreement with Canada, and you might have an agreement with Mercosur, and then you get an agreement with the US, what does that mean for beef, for instance, and in particular what is allowed in? I think it is sectoral rather than countries. I think that all countries overall will benefit, and I have not come across one that has said, “We actually don’t want it as a matter of principle”.

**Lord Foulkes of Cumnock:** You make it sound very rosy in terms of jobs and living standards, but the evidence that we had from the TUC here and from the AFL-CIO in America was that they were very sceptical about it. Why have you not be able to persuade them?

**Lord Livingston of Parkhead:** I think the TUC is more positive. The AFL-CIO does not like free trade more generally. I think the TUC has concerns about part of TTIP but I do not believe that they are against it in principle, as a notion of free trade. They would have different views on whether there should be more worker protection and whether there should provisions on the NHS, but in the UK a lot of the groups such as the Consumers’ Association are positive. I paint a rosy picture because I think it is very positive. What I
cannot guarantee is the numbers, not least because we do not actually know what might be excluded from the agreement. However, free trade will help both continents, and at a time when we are scratching around for a 0.1% growth in GDP this is really important. The comparison is the single market. If you look at the UK there will be very few people, even those who do not want to be in the EU, who think that the UK should not be part of the single market.

Lord Foulkes of Cumnock: I think you have more work to do to convince the TUC.

Lord Livingston of Parkhead: We do have more work to do. It is not a big corporate thing. We have to talk about the benefits for smaller companies and for the consumer. The charge of not having made the case adequately yet is a reasonable one.

Q262 The Chairman: Can I come back to Baroness Young’s question and phrase it in a slightly different way? It does not seem to be a case of one side of the Atlantic gaining and one losing per se. However, if the regulatory barriers break down, then corporations—the motor industry would be a particularly good example of this—will have much greater flexibility in shifting production from one side to the other in response to other changes, such as currency changes. At the moment, if you have regulatory barriers and the dollar/euro exchange rate or the dollar/sterling exchange rate move is significant, it might be difficult to shift production because you cannot export stuff from one side to the other. However, the lower the regulatory barriers, the more the freedom of action the company has to shift location in response to other changes in circumstances, of which the currency is one that comes particularly to my mind.

Lord Livingston of Parkhead: I would actually argue the opposite. If you have different regulations in different countries, that makes them more inclined to shift production to meet local demand locally as opposed to meeting it globally, so I would argue that the reduction in the barriers will mean that you can produce more globally. You see that in countries that have local production requirements and in countries that have situated in the EU in order to be inside the single market, so I think that trade barriers probably do cause companies to consider more having a plant et cetera with local content and therefore not be subject to tariffs. If we remove the tariffs and you can manufacture a global standard from one plant, it would probably tend to lead to less of a shift.

Of course, the UK has been a big beneficiary of shifts generally; we are the largest recipient of FDI in Europe. We saw only yesterday that the headquarters for Hitachi to make trains is going to be in the UK.

Q263 Baroness Bonham-Carter of Yarnbury: I am shifting the subject again to geographic indicators. In the CETA negotiations, the matter of GIs were concluded, I think to the satisfaction of the EU countries. Again, on our trip to Washington, it came across loud and clear that we were not going to get that level of agreement in the US and that it is determined that its Kraft parmesan is going to be called parmesan, but it did seem to understand that maybe parmiggiano reggiano could be ring-fenced. To what extent do you think that will satisfy some of our EU partners?

Lord Livingston of Parkhead: It is a very difficult subject. I think people feel pretty happy with composite names: Scotch whisky as opposed to whisky. I was pondering the notion earlier today that if you take GIs to their ultimate conclusion, are we going to allow only hamburgers from Hamburg, Vienna Schnitzels from Vienna and cheddar only from Cheddar?

Baroness Bonham-Carter of Yarnbury: Of course hamburgers are not made from ham; they came from Hamburg.

Lord Livingston of Parkhead: Yes, and frankfurters obviously—we can go through a list. But we can have West Country farmhouse cheddar and Scottish smoked salmon—these composite names. Unquestionably there will be issues. Greece feels particularly strongly about feta—
Baroness Bonham-Carter of Yarnbury: And yoghurt.

Lord Livingston of Parkhead: —Greek yoghurt, as opposed to other yoghurts, and Italians feel particularly strongly about parmesan, although possibly not so much about Bolognais sauce; I do not know. It will absolutely be a challenge. The composites, I think, are easier. I have heard in the EU some suggestions from some EU members that clarity about where it is from might help. Would “parmesan cheese from Parma” clarify things in the sense that it is? At least you could take legal action on that. I do not know whether you will ask me at some point about some of the most difficult areas, but GI, out of all proportion to its size, will be a touchstone among a few countries. There will be protections for a number of composites. It is the non-composite names that will be the problem.

Q264 Lord Lamont of Lerwick: Apologies for arriving so late. One of the concerns that have been expressed is that as part of the idea of having a living agreement, TTIP might not enshrine lower levels of regulatory protection but that the whole idea of the living agreement would set up processes that would enable vested interests to get at the Government. I think this was particularly expressed about the United States at what they call the pre-democratic stage—the pre-consultation stage—thus enabling corporate interests to water down consumer protection and environmental regulation et cetera. This view has been expressed. Do you think there is anything in that?

Lord Livingston of Parkhead: Not immensely. If you look at a number of regulatory things, we have situations where regulation is decided on a global basis: in areas such as telecoms, which allow us to call from one country to another. We do not seem to think that is a big challenge. I was very struck by a comment made by my Finnish colleague at one of the EU trade meetings. He said, “One of the things that we need to remember is that we are talking about potentially creating a global convergence of standards around EU and US standards and not Chinese standards”. That is something that we should have in the back of our minds, even though we might disagree about certain elements of it.

The challenge—and I think it is a challenge—in the question is how in the future you get regulators converging, or not diverging unnecessarily, without impacting the democratic process. Of course, consultation processes on regulation are quite normal on both sides and are, I think, a good thing. In my experience, the NGOs that I have seen lobby—I think most of the questions that have been put to me have been from NGOs—are probably at least as effective lobbyists as corporates. However, what the Americans cannot have is a seat at the EU table; they are not a member of the EU. But we have to try to establish mechanisms that get regulators together. In certain sectors, perhaps, we have a single regulator because that happens already. The Americans are not part of it but we have a regulatory body and international accounting standards boards that go well beyond the EU and create global standards. While we have to recognise where the EU or countries in effect have their own competence, we must find a mechanism by which we can debate and discuss the nature of future regulation without impacting the democratic process, so that the consumer benefits overall. I do not think there is a view on either side that says in effect, “Our aim is to reduce regulatory standards”, but I know that the EU would certainly say that there are areas of US regulation that they do not want to take. I think Commissioner de Gucht talked about this, and it was agreed that neither side would change each other’s religion on these matters. But the US also feels quite strongly about certain aspects of EU regulation. We have to try to find places where we do not dilute either strand but make it consistent. Car manufacturing is one of the areas where standards were different but not necessarily worse on either side.

The biggest gain in TTIP is going to be in regulatory coherence, more so than in reducing tariffs. Because this is deeper and wider than ever before, finding a process by which we do that and get greater ability to produce and sell in both countries is important, without diluting EU standards. I think the Americans would make the exact same comment; they
would not want to see dilution. This is about getting that mechanism and that mutuality. It has to be two ways, as Americans look at things, and maybe about an obligation on regulators to consider just that in their impact assessment. If they take the thing away from an international standard, there will be an impact in higher prices, for instance. If you produce something only for the UK, it costs more than if you produce it for the whole EU. If you produce it just for the EU as opposed to producing it globally, it will probably cost more. This is about trying to find a way in which the consumer benefits and trying to ensure that the process does not unintentionally cause consumer harm.

Lord Lamont of Lerwick: You said as an aside that a lot of telecoms regulation was determined globally rather than at the EU level. How far do you think that is true of standards more generally?

Lord Livingston of Parkhead: You see it the more technical standards become—as in the internet, a lot of engineering standards and some of the ISO standards. I think there are mechanisms where that is happening. I think it would be unrealistic to expect a global set of standards in issues such as food safety and fuels, but in some of the more technical standards we can mimic bodies that already exist. If we continue to have regulators on both sides, which I think we will for many, many areas, and this applies to financial services as well, we have to ensure that they do not move apart unintentionally because they have a principled difference as to how something should be done.

With the TTIP discussions we are trying to get rules that are different but not at different levels and that are managed together. Populations have different cultures and different views. As it is, we of course already have issues with the EU—data protection is one example of an issue on which the UK and Germany might have different views—and that causes some challenges. But I do not think there is any appetite in the EU to somehow allow the US to intervene in the democratic process of the EU in any way.

Lord Lamont of Lerwick: The democratic process of the EU?

Q265 Earl of Sandwich: Minister, my question is about your public relations strategy, so it looks like a very easy question but actually it is quite complicated, in view of the whole ISDS consultation. Obviously it is a very good move to go into a consultation. You said that Ken Clarke was a political weight and was very upbeat at the beginning, which set the tempo, but everything seems to be slowing down and there is trouble on every horizon. We have not mentioned GM, but it seems that Defra does not think that is going to be trouble after all. Can you set out what you think is a sensible strategy—this Committee is obviously going to be part of it—and how you spread that over the next 18 months, remembering that Germany is going to have its own difficulties? How will you relate those to what we have? Are they going to be the same?

Lord Livingston of Parkhead: You are right that this is not an easy question, but I do not think we should be surprised that things have got more difficult, because the first three or four rounds were in a sense quite easy—you could have failed, but you absolutely could not have succeeded. Things will get progressively more difficult because we have done the easy bits first, and that is the truth in so many things. Also, the agreement is so wide-ranging and in-depth, and if it was that easy it would have been done before. So, first of all, we need the political momentum from President Barroso and the EU Heads of Government—including our own Prime Minister, who is very strong—and from President Obama and his top team. Keeping up the momentum is very important.

Secondly, although I do not think that anyone has done a particularly good job on this, we need to get the message out that TTIP is not about a big corporate deal. Just because big corporates want it, that does not mean that it is only for big corporates or is wrong. Getting that message out is very important. Our embassy in the US—if you will pardon me—did a wonderful Buzzfeed thing on TTIP as explained by corgis; it used corgis as a motif to explain
what TTIP is, why we are having it, what it will do, how we will benefit et cetera. That may sound silly in some ways, but it has been retweeted and sent around to a lot of people and it brings the issue down to “Why does this matter to me?”, which I think is the thing that we have not answered well. People are far clearer about the difficulties than they are about the benefits, but we have done some good work in the US state by state. Telling people about what the benefits could be for them as individuals is very important, because talking about £10 billion does not mean anything to people. If we can talk about how it might impact on prices and increase choice, that would be good. For example, it has been good to see the Federation of Small Businesses come out in favour, and the Consumers’ Association has also been positive about it, with some caveats. However, we need to be more public.

In dealing with my opposite numbers from other countries, we talk about that quite a lot. I was slightly disappointed that when the meeting of Trade Ministers had a panel session on TTIP, all the panellists were in favour of the agreement—it was a bit like Prime Minister’s Question Time, but with questions only from your own side—whereas I think it would have been far better to bring in some others, because although some of the challenges about TTIP are reasonable, some of them are based on misconceptions that we have to deal with. I have also met my Greek and Spanish counterparts and I have had seen a lot of German Ministers recently—the concerns about data protection came over to me clearly. I have met my Irish counterpart, and when I was in the V4 countries recently—the Czech Republic, Slovakia, Hungary and Poland—I met my opposite numbers there, as I did also in the Baltic countries. So we try to engage at different levels politically, including on a one-to-one level.

However, the UK and the EU also need to ensure that we do two things: first, we need to be clear about the benefits of the agreement and, secondly, we need to be more transparent. There has been a bit of a disagreement between the US and the EU about transparency. On the one hand, clearly you cannot go into a negotiation with your bottom-line position being made available for everyone to see, but where there is no need for secrecy, there should be no need for secrecy. We should try to make things as open as possible, such as in the consultation on ISDS. I think that there is a lot of work to be done, and it will need to go on for quite some time.

You will have seen a couple of things that BIS produced, such as the booklets giving key facts, so we need to make sure that interested people have those. You will also have seen Ken Clarke’s response in the Guardian.

Q266 Earl of Sandwich: I want to press you on agriculture, which surprisingly has not really been mentioned. Are you relieved that the NFU has not gone along with the other unions? The NFU seems reasonably enthusiastic.

Lord Livingston of Parkhead: Agriculture will be problematic—it always is in trade agreements, I think—but Commissioner De Gucht has said publicly that he will do nothing that changes EU laws, so I do not think that we will accept things like hormone-treated beef. The efficient agriculture producers are quite excited about some of the possibilities, but there is also a worry because America has some very efficient agriculture production. Agriculture, whether it be GIs or GM, will be high on the list of “Difficult to do”.

Baroness Henig: May I ask a supplementary question? The communication strategy is very interesting, but it strikes me as being rather cerebral, if I may put it in that way. When we took evidence from a strong opponent of the TTIP agreement a couple of weeks ago, it became clear that the communications strategy in Germany was so effective at reaching what one might call the parts of the electorate that others would not reach that comedians on television were actually making jokey references to TTIP. We are talking, if you like, at a different level. What sort of PR or communications strategy might BIS be able to develop to reach out to people? What you have just said is all very worthy, but that is not going to reach the sort of people who I think we would all want to be informed about this.
**Lord Livingston of Parkhead:** My corgis are not that cerebral. We will send you the Buzzfeed article—believe me, you will not accuse us of being cerebral there. However, that is a challenge. Germany in particular has been impacted by the Snowden thing, which I think has been the biggest issue there. That has absolutely reached the public consciousness, so I do not think we should underestimate the impact that has had on the relationship with the US and, therefore, the impact on TTIP. However, you are right that we need to ask how we make it less dry and more real. We need to find real examples of real things. At a basic level, one could almost say, “Well, you have been to the US and you have seen how cheap prices are”. We need to express it in that way. Working with groups such as the Consumers’ Association will be very important—I will be seeing the Consumers’ Association in the next couple of weeks.

One problem, of course, is that a lot of these things are not in the agreement, although people make accusations that they are. In a recent parliamentary debate in the House of Commons that I read, someone who was against the agreement remarked that the UK financial institutions were so pleased with the existing text that they will not lobby further. That is bizarre, as there is no text. They also said that the NHS will not be safe as a result of the agreement. The challenge, of course, is that the accusations are often less cerebral. But your point is well made. We have to make sure that we can express the issue in ways that make sense to people so, to a degree, beyond the basics of why this is a good thing, we will need to get a bit further down the line. At the very least, we have to try to offer some challenge. To be fair, I suspect that in the UK, if you asked, 90% of people would not know what TTIP is.

**Baroness Henig:** Ninety per cent? More like 99%.

**Lord Livingston of Parkhead:** You are probably right. Most people will probably not know what it is. As the American ambassador said, it is a lousy name for an important agreement.

**Q267 Baroness Coussins:** You have said that, in your view, the concerns about the lack of transparency were quite well founded in some areas, but you have also suggested that some of the criticisms are based on misinterpretation and misunderstanding. In your view, are there any legitimate criticisms or challenges to TTIP that you consider should be seriously addressed?

**Lord Livingston of Parkhead:** There are certain things like making sure that the ISDS clause is a good clause. Some of the challenges about certain ISDS clauses in other agreements may have some points. For instance, there are no transparency clauses in a lot of the ISDS agreements in some of the BITs. That is a good point, and we have to incorporate that in there. That is a fair criticism.

**Baroness Young of Hornsey:** There are criticisms around the arbitration mechanism as well, perhaps.

**Lord Livingston of Parkhead:** Perhaps, although I am less persuaded by—

**Baroness Young of Hornsey:** Okay, but are there any criticisms that you think are legitimate apart from those?

**Lord Livingston of Parkhead:** It depends where you stand. If you feel strongly about hormone beef, then of course it is a legitimate criticism. As it happens, I do not think that anyone among the major EU powers will want to see hormone beef in. Many criticisms have been unfounded. I am trying to think of cases. I guess there are three categories. First, there are criticisms that are not actually correct because we are not in that position, which have been a lot of the criticisms that we have seen. Secondly, there are criticisms that we in the UK just do not particularly agree with, for instance on GIs; we may not have the same view as our Italian friends about GIs, but that just means we have a different view, not that they are actually wrong. Thirdly, I am sure there are some areas where the criticism is genuine. A good example of criticism that was right was that the US offer on tariff reductions was not
very good. Some people said, “There’s no point doing this because the US has offered only a 60-something per cent reduction in tariffs”. Some of that was reasonable, but that is what happens during the course of negotiations.

**Q268 Baroness Quin:** On agriculture, as you know, the NFU gave evidence to us and was generally favourable. I wondered whether Defra, for example, had done any more detailed work that might help us with this inquiry. I have spoken to some producers in my own part of the country, the north-east of England, who are not able to export certain products at the moment and would like to, but I do not feel that I generally know about the position in detail across the UK. If there is any information of that kind, it could be useful to us.

**Lord Livingston of Parkhead:** Are there any more detailed Defra things that we can send?

**Edward Barker:** We can certainly provide some further information on that. There are a number of things that we are looking for regarding greater access to the US market for UK agricultural and processed food products, and we could provide them to you.

**Baroness Quin:** Is there any sort of assessment of the likely benefits if agreement were reached in those areas?

**Edward Barker:** I think that goes back to what Lord Livingston said earlier: until we have a better sense of what might actually be agreed, it is quite hard to put any precise figures on that. But we can share with you what targets we have and what we expect the benefit to be.

**Lord Livingston of Parkhead:** You are right, though, there are restrictions on exports from the UK and issues of traceability that would be targets for us.

**Q269 Lord Jopling:** I want to come back to this business of the relationship during negotiations between member state Governments and the Commission. In my view, you must be right—at least, I think this is what you were saying earlier—that in a negotiation, transparency is all very well up to a point, but when you are into the detail of a negotiation you really cannot and must not be totally transparent; you mentioned the bottom line and so on. To what extent is there transparency and total frankness between the Commission negotiators, who are actually at the sharp end of it, and individual member state Governments, in the Council or wherever? I ask this question because I remember being enormously critical of the Commission years ago over an official negotiation that it did which many of us on the Council of Fisheries Ministers thought was badly handled. To what extent are member state Governments there to say to the Commission, “Hey, you can’t do that. We really cannot allow you to negotiate in the way you are now proposing. It’s just not acceptable.”?

**Lord Livingston of Parkhead:** I met Commissioner De Gucht for dinner for about three hours fairly recently, and we had the Trade Ministers meeting shortly thereafter. I have to say that the member countries were not backward in coming forward about what they did not like. Actually I had a concern that they were putting so many red lines around it that it would remove a lot of things from the agreement.

With regard to pushing the Commission strongly about what the member states want and do not want, there is a pretty good process. Getting some of the level of detail in some of the text is a little less clear, particularly because US likes to push not to release things. There is a feeling that if you send it to 28 countries it might become public, and there is some truth to that. Commissioner De Gucht is in no doubt how people feel, and there is going to have to be balance. He will also remember that you need unanimous approval on things that are within country competency. I do not think that he has a doubt as to where the issues are. His real challenge is going to be to balance questions of GI, data protection and other countries not wanting to open their clothing industry or financial services and get a sensible net result. We are pushing the EU for greater transparency, though, subject to the caveat that you made about the bottom line. Edward, I guess that you have it day to day. Is there anything you want to add to that?
Edward Barker: I think your characterisation is right. We know the individuals who are leading for the EU on different aspects of the negotiation, and there are people in my team or in other parts of Whitehall who will speak to those individuals. I think we have established pretty open and constructive relationships. We have good access to the EU papers; indeed, we helped to write some of them. It would be nice to see the US papers—that would make our job a lot easier—but we cannot have everything.

Lord Livingston of Parkhead: There is a big push and a big discussion about the lack of access to the US papers. That is something on which the EU feels much the same as we do, as it happens. That is probably a bigger issue in terms of transparency.

The Chairman: We have had some criticism, some of it really not very reasonable, about the lack of transparency in the Commission. To your knowledge, has there been criticism in the United States about a lack of transparency on the part of the USTR?

Lord Livingston of Parkhead: I am not aware of any, but that is that I am genuinely not aware, as opposed to not thinking so.

Edward Barker: I do not think so. My understanding is that the USTR has a rather more established mechanism for sharing information about these sorts of negotiations, so many of the people who would have an interest in it know how they would access information that they want. For this negotiation, the Commission seems to have developed a lot of new ways of communicating about progress, but it is not quite as widely adopted.

The Chairman: It is a much more difficult role for the Commission, with 28 member states, than it is for the USTR.

Lord Livingston of Parkhead: Absolutely.

The Chairman: Obviously one can speak only of one’s own experience, but I thought that when the commissioner and the trade negotiator appeared before us they were remarkably open. They had actually volunteered to come to us, as well as us asking to go to them. I also thought that the Commission office in Washington was both very open and well informed.

Lord Livingston of Parkhead: And I think the public stocktake was very good. There was a press conference and it was pretty open.

Lord Foulkes of Cumnock: I know that there is an all-party group dealing with this. Presumably you keep in touch with John Healey.

Lord Livingston of Parkhead: And I read the debate that they had recently, yes.

Lord Foulkes of Cumnock: Do you keep in touch with your opposite number in the Labour Party to make sure that the next Government are signed up to this?

Lord Livingston of Parkhead: When I became Minister, I made sure that one of the first things that I did was see Iain Wright and Ian Murray, because I wanted to see my long-term opposition. I genuinely believe that trade is largely a bipartisan matter and that we all want the UK to trade, so I continue to keep in touch with them. In fact, I speak at the All-Party Trade Group pretty regularly, and it is probably time to have another discussion, not just on this issue but generally, because I genuinely do not feel that this is a major party political issue.

The Chairman: The fact that the chairman of the all-party group is a former Labour Minister speaks volumes, does it not? We have kept you for an hour and a half. You have been very open and frank. I thank you very much indeed.

Lord Livingston of Parkhead: Thank you for your interest.
Q23  **The Chairman:** Lord Mandelson, welcome to the Committee. Thank you very much for giving us the opportunity to question you on the basis of your considerable experience in this area. I am sorry to have kept you waiting. We had a very good session a moment ago with Professor Rollo and Professor Evenett, who are now in the public seats waiting to hear what you have to say. As you know perfectly well, this is on the record and part of our ongoing inquiry. We have not yet been to Brussels, which we are going to do next week. We have not yet been to the United States, which we hope to do in January—although I will be going to the United States next month with the British-American Parliamentary Group because they particularly asked to have a TTIP input. Would you like to make an opening statement or shall we go straight in?

**Lord Mandelson:** Let me make one or two comments, if I may, Lord Chairman, to make it clear at the outset that I support the objectives of this negotiation. I think that the negotiation is timely and if it can be concluded at an ambitious level and standard it will considerably advance the cause of trade liberalisation, not only between the United States and the European Union but in offering a template for a new sort of agreement in
international trade, which we will hope to provide as an example to others and for others to follow and, hopefully, to multilateralise a number of the features and standards achieved in the agreement. So, I support it. It would not have been right for me to have pursued this negotiation or launched it when I was the European Union’s trade commissioner. In those years, up until 2008, both the EU and the US were the main proponents and had been since 2001 of the Doha round. It would certainly have been contradictory. In my view, it would have sent a damaging signal if at the time of the world trade talks we had suddenly gone off on our own and started negotiating with each other.

In any trade negotiation—I just have to share with you my experience—the achievement that you make almost always does not correspond to the aspiration and the ambition with which you started the negotiation. I am afraid it is just one of those facts of life of trade negotiations that no sooner have you launched it with great bravura performances from the chief negotiators, you quickly find conflicts of interests and logs being rolled at you, both from those with whom you are negotiating but also different conflicts of interest emerging from those you are representing in the negotiation.

There is also an opportunity cost in a trade negotiation, particularly one which is as big and complicated as this one is. The opportunity cost is that there are only so many hours in the day, your negotiating capacity is limited and, therefore, you are foregoing other opportunities. You have to accept that, realistically. Secondly, failure is not cost free. If this negotiation were to break down, there would be acrimony. A large blame game would ensue and it would poison relations between two very important trading partners.

All that notwithstanding, I do believe that the current attempt is the right one. I think that, if conducted properly and successfully, it stands the chance of expanding the trade envelope and seriously advancing the frontiers of trade liberalisation and the agreements that underpin this. Essentially, what it would be doing would be taking an agreement way beyond the elimination of tariffs to new areas, almost virgin territory in international trade negotiation. As I said at the outset, that has the potential to offer a real precedent and template to the rest of the international trading community.

**The Chairman:** Thank you. I think that is very helpful. It certainly renders the question I was going to ask you unnecessary, so I can go straight to Lady Bonham-Carter.

**Q24 Baroness Bonham-Carter of Yarnbury:** You used the word “ambitious” in that introduction. One of the things that seem to be particularly ambitious, among many other things, is the timeframe and what might be feasible to achieve in the timeframe of two years. Does your experience suggest that a living agreement could work? We had evidence from Lord Brittan, who was very sceptical about that idea, and I wonder what your position is.

**Lord Mandelson:** First of all, to complete a negotiation of this kind within two years—I hesitate to use the word “unimaginable”, but you would be pushing it. I launched quite a number of bilateral trade negotiations when I was commissioner. Only one and a bit have been completed since 2005-06. The one that was completed was EU-Korea where you knew right from the start what the objectives were, where the areas of potential agreement were, and where the likely compromises were going to be struck. You were faced with a very serious negotiator on the other side of the table. When I left in 2008 I knew exactly where that agreement was going to land within the next six to nine months.

The other bit is EU-Singapore. Why EU-Singapore? I launched a trade negotiation with all the south-east Asian countries. They were very good in scoping it and very good in launching it, but they thought that was the end of the process once the negotiation had been launched and I did not see anyone come to the negotiating table after that. I decided to divide them up and I went for Singapore because they were the most enthusiastic, and that has been completed. We do not have agreements with any of the other south-east Asian countries. In
my view, it will be a long time until the completion of the EU-India negotiation. I launched
that in 2006 or 2007, I cannot remember. I just refer to it as a benchmark.
A living agreement, again, would be a completely new approach. I do not think it is right for
people to say that because we have never achieved it before, it would stand very little
chance of being achieved in the future. What it would require is the following. It would
require an acceptance that what we are trying to do between the EU and the US is to create
a new approach to trade investment rules, non-tariff barriers and regulatory matters, rather
than a one-off negotiation. Most trade negotiations and trade agreements are snapshots of a
period in time. What we would be trying to do in creating a living agreement is to convert
the snapshot into a movie. Therefore the movie would be an integral part of the agreement,
and there would be successive negotiating rounds every five years or so, with work done
between those rounds as part of the process—an approach that is unprecedented but I do
not think is impossible.
To be successful it would have to be institutionally underpinned in some way. If it were
simply a wish or an aspiration that “In five years’ time we will meet again”, there will be
plenty of other things in the mean time, and plenty of other things happening in five years’
time that will crowd out this revisiting, this reunion of negotiators. In my view it really does
have to be underpinned in a much more serious way if it is going to stand a chance of being
successful. We would have to develop habits of collaboration, which at the moment do not
exist. In a sense you would be launching a process with an initial rebooting of whatever
regulatory convergence there is, with whatever agreement on non-tariff barriers you could
achieve in the first instance. Once you have rebooted, in the first phase you would have to
agree that you were going to revisit and that the rebooting would take place every five years
or whatever it is.
All I would say about regulatory convergence—and no doubt we will come back to that
during the course of our conversation—is that old habits die very hard among regulatory
agencies. Whereas I can see how you might be able to put in place a process that would
make possible a regulatory convergence among greenfield areas of regulation, trying to
harmonise regulatory rules and standards, which are already established in a brownfield way,
would be quite different and quite challenging. As part of your living agreement, if you can
find a way to anticipate what the next greenfield areas are where you will want to achieve
regulatory convergence, there is a distinct potential there; whereas, as I say, trying to
harmonise existing brownfield areas of regulation is a different category.
**Q25 Baroness Bonham-Carter of Yarnbury:** It sounds to me that you feel that this
would be the way forward, but do you think it is a practical possibility?
**Lord Mandelson:** I think it is a practical possibility. But like everything else in this
negotiation, it depends on political will. If people really want to invent something new—new
skills, new habits, new frameworks of negotiation, a new template of agreement—they can.
They can if they have the will. It is not beyond our wit to do so, but both sides really will
have to want to do so. In a very real sense in this negotiation, in my view, we are playing for
the future, not just for the short term or the present. In playing for the future, you are trying
to adjust the direction when it comes to all the entrenched existing regulatory standards,
rules, structures and agencies that exist both in the European Union and the United States.
You are trying to alter the direction of a supertanker here and you are not going to do so by
pulling a lever or pressing a button but by means of very, very painstaking negotiation and
compromise, without knowing at the outset what exactly the new course is that you want to
take. We are talking about virgin territory here, which is why it is both exciting and
challenging.
**Baroness Coussins:** While we are on the structure of the agreement and things that have
never been done before, I would like to raise the issue of the investor-state dispute
mechanism. We know from consumer groups and trade union groups that have given us evidence that they are very concerned about such a mechanism. They are worried about too much power being put in corporate hands to challenge public policy. I wonder whether you believe that it is possible to envisage such a deal as this without a dispute mechanism built into it, as there has been in all previous agreements; whether in this case, because we are talking about two existing sophisticated legal systems, that is enough for legal dispute and resolution to happen; or whether there is a way of designing in, as we have heard from an earlier witness, particular aspects to the dispute mechanism that would allay the fears of the unions and consumer groups. Apparently, the EU-Canada agreement did look at the dispute mechanism in a new way, and I wonder how and whether we could learn lessons in this case.

**Lord Mandelson:** They have looked at it in such a new way that, even though I left my own job only three or four years ago, I am not familiar with it. This is the sort of innovation that is taking place, which I think we have seen to a certain extent in the case of the EU-Canada agreement, a negotiation that I both pushed and then stopped because in my view the Canadians were not showing sufficient ambition. They were not showing a preparedness to force their provinces to come on board with the agreement and to enable it to go to a sub-federal level. I put that in parentheses because the fact that they have now got provinces on board I think is a good augury for this negotiation.

To go back to your original point—because I am not familiar with the machinery that is under consideration—I would make two points: first of all, we are not talking about deregulation. We are talking about the harmonisation of existing regulation and the convergence of approaches in future regulation. Therefore, we are not talking about stripping away consumer and workplace rights, or anyone else’s rights and protection in commerce. We are talking about reconciling and knitting together two quite distinct and different approaches. Secondly, it is going to be very, very hard to do that in this agreement, certainly in an initial rebooting, but the point of a living agreement is to enable you to revisit it in years to come. During that time, where you have reached some agreement, you are going to have disputes. It is reasonable that everyone—not only those who are directly party to a dispute but others who think their interests are going to be affected—have their say and are part of the process. That is the best approach I can offer. I think that consumer groups and trade unions are right and entitled to put up a sort of orange card here, but the job of the negotiators is to make sure that everyone’s interests are properly accommodated in the event of a dispute.

**Q26 Lord Lamont of Lerwick:** Thank you very much. A very interesting statement indeed. Could I come back to this concept of the virgin territory and the harmonisation of regulations, which you have conceded is extremely difficult? We have had evidence that is really very pessimistic in some areas. For example, we were told earlier today that in the area of financial services there was opposition, almost complete opposition, from both the SEC and the Treasury. We also hear in the area of public procurement how many of the powers actually reside with the individual states in America. Of course, on the EU side you have all the different states within the EU, not all of whom are perfectly liberal in their public procurement decisions. Taking those two areas, it would seem very difficult to make very much progress in the short term. Are you saying we should not attempt this but should sidestep it for what you call a rebooting process—trying to get some agreement for future approaches to this? Judging by what we have heard, even that might be too optimistic.

**Lord Mandelson:** I have to try to think of a helpful way of putting this. You have to see this whole area of non-tariff barriers rooted in different regulatory approaches, different technical standards, which have developed over a considerable period of time as a result of intense debate and process respectively in the United States and the EU—quite separately, without any bridge between the two—over a considerable period of time by two blocs, one
country and one union, who are both robust, insular and self-confident entities. You are trying to bridge those two and get them to see eye to eye about how they have done things differently before and now want to take a similar or joint approach. Between two such insular and self-confident parties, you are asking for a great deal. But if you look at the three spheres or areas of this, you are talking about different levels of ambition. The lowest and one that offers a greater prospect in the short term of achieving some change is what I would call mutual recognition of, broadly speaking, equivalent standards. It was something that, even at the relatively low level of ambition, completely eluded the negotiators in their last attempt—the last time the EU and the US embarked on this.

Lord Lamont of Lerwick: We were told that this time mutual recognition would be hardly acceptable either.

Lord Mandelson: That is the lowest level of ambition. If you go up a tier, you are going basically to harmonisation: from mutual recognition to harmonisation of existing brownfield standards and rules pertaining in the different jurisdictions. Essentially, what you are asking the negotiators to do is to unpick what exists already to create something afresh, something that is harmonised, and then having that freshly created rule or standard or approach transposed into the legislation of both the US and the EU. That is extremely hard.

The third level is more medium-term and long-term and I would describe it as convergence. It is anticipating where in different fields of commerce and economic and market activity you know that both spheres are going to have to develop a regulatory approach, or technical or other standards, and that in anticipating them they work together to find as much convergence as they can possibly achieve, so that when it comes to—I am trying to think of an example—the hybrid electric cars of the future, for instance, which everyone assumes will become a big feature of automotive production and travel, let us think now, before we go down our separate routes, what the single route is, what the single approach is, and how we can make sure there is a convergence in our regulatory approach as we anticipate regulatory needs in future. That is what I would call the greenfield area of regulation where there is no legacy that you are trying to unpick.

If you really force me to put my money in this negotiation on where I think we are most likely to make progress, it will be where there is no legacy, where we are talking about greenfield regulation, where we are talking about convergence of approaches in the future, where I think the scope for ambition and achievement is much greater, frankly, in practical terms than in either mutual recognition or harmonisation. I think it should be possible with the best will in the world to find some mutual recognition. We did that in the case of the EU and Korea. Therefore, there is experience of it on the European side and I suspect there is also experience of it on the US side, probably in relation to Korea as well, but possibly in some other context of other agreements as well. In a sense, the more forward-looking you are, the greater is the possibility of convergence as long as, as I say, you have the habit of collaboration growing, the negotiating skills and political will that will bring you to that negotiation, and the institutional underpinning that makes it possible. I do not know whether that is too optimistic or too pessimistic, to be frank, but I do think it is probably realistic.

The Chairman: Do you want to move on? I think it is really covered.

Lord Lamont of Lerwick: Yes, I think so.

Lord Mandelson: In the case of finance, by the way, there must be an enormous amount of regulatory fatigue among those who are trying to find a way of governing financial services. To go round the track all over again, this time with each other, might be a bit challenging for them.

Q27 The Chairman: Could I just ask you a technical point? Your experience with the Commission is much more recent than mine. I will have to ask this question in Brussels, but I
was told that the mandate for this negotiation is not entirely in the hands of the trade commissioner. Barnier has a separate responsibility so far as anything to do with financial services is concerned. He will be in charge within the Commission of setting the policy in relation to financial services, whereas the trade people will have everything else. Now, as I say, that is something we will have to ask in Brussels but, if that is so, it struck me as a rather strange arrangement and not characteristic of the way in which the Commission worked when I was there.

**Lord Mandelson:** I did not have a single market commissioner or internal market commissioner riding shotgun with me in any negotiations. Of course, I was joined at the hip with the agriculture commissioner, a mutual devotion that we sustained through some very difficult and tense negotiations.

Look, in the case of the EU, you are, I am afraid—no, I am not afraid; it is just a fact of life and it reflects the nature of the organisation—negotiating with yourselves in a sense almost as much as you are negotiating with the people opposite you, because you are arriving at a single mandate, a single set of negotiating objectives. You are knitting together the different priorities of different member states that they want to see reflected in the approach that the trade commissioner is taking. You also have to have a sense of where the compromises are going to end up, in a way that does not fracture the continuing support you need from your member states. I think that it would be a good question for you to ask whether the trade commissioner is having to operate as part of a team effort or whether in this case is he out there interpreting the mandate, which needs to be clear and agreed, which the commissioner then has to follow, of course, but will have some flexibility in his ability to extemporise. If the commissioner had to come back every time in a very difficult area and get licence or permission from another commissioner to make a move, I think that would create a problem. I am not saying that the trade commissioner should be indifferent to the views of the single market commissioner; of course he should not. Of course the trade commissioner represents the Commission as a whole, but it would need to be a fairly delicate balance that was struck.

**The Chairman:** Thank you. I am not at all surprised by your answer and I think it leads on to Lord Trimble’s question.

**Q28 Lord Trimble:** Yes. Leaving aside financial services, partly because of what has just been mentioned and also what we heard about the attitude of the American regulators and the US Treasury, I am looking at it from the point of view of the United Kingdom Government. As I say, leaving aside financial services, we have been told that we have very few defensive battles to fight, that we are in the happy position that very few industries are saying to us that they are really worried about this. Other countries are not in that situation. What do you think the United Kingdom Government should be doing in its dealings with the Commission and with other countries in terms of encouraging concessions that will be necessary in certain areas?

**Lord Mandelson:** We will have priorities. We may not be defensive about agriculture or cultural goods, but we certainly have priorities. You will be familiar with those; you have taken evidence from the government side. London’s approach to this is that we have to make sure that the foot is kept down on the accelerator. We have to use our role, our influence, our allies and the coalitions that we have created to support this agreement. We have to make sure they remain in place, and that, as I say, our foot is pressed on the accelerator, because there will be other member states who are slightly more defensive or nervous who will sometimes want to put the brake on and, if they have the opportunity, possibly derail the thing altogether in extremis.

On the other hand, I do not think that London should be trying to own this negotiation and to own this agreement. The Commission’s job is to negotiate on our behalf and, if we are
trying to go so far ahead in defining the terms of the negotiation or setting the objectives, I think we will spark a reaction from other member states that would not be helpful to the negotiation. I do think that we have a role in helping generate goodwill and confidence among different interests in the United States, but, equally, we must remember that it is the job of the Commission primarily to represent Europe’s interests. I would beware of creating a cacophony of member state voices in Washington, which with the best will in the world might serve to eclipse or drown out the main voice that is speaking, which is that of a Commission that represents a single market of 500 million-odd people. That is, of course, why we have this negotiation in the first place—because that’s the scale on which we matter.

Lord Trimble: What you are talking about is the manner in which we do things. Of course we should be as diplomatic as we can in the manner in which we do them, but I wonder whether you have any ideas about what things we want to be doing. I am asking about what your views would be as to what should be the United Kingdom’s priorities.

Lord Mandelson: The United Kingdom’s priorities are reflected in our commercial and economic interests, whether it be financial services or cars or food and drink. I would have thought these are the negotiating priorities. Of course, what we are always trying to do in the European Union is to maximise our influence as a country inside it to ensure that to the greatest extent possible it is our interests and our priorities that are being reflected in the approach that the EU and the Commission on our behalf are taking. That is why relegating ourselves to some sort of backwards place, some sort of peripheral role or position in the European Union, is completely self-defeating. It means that we are deliberately setting ourselves apart, reducing our influence and our voice, and reducing the leverage that we have in making sure that the approach the Commission takes as far as possible reflects what we think will best serve our economic interests, whether it be cars or financial services or food and drink or insurance or whatever it is. We have to make sure the whole time that we are on the Commission’s case. I do not mean in a heavy-handed or bullying way, but there is a co-ordinating committee. In my day it used to be called the 133 Committee. It was a committee of representatives of each of the member states that met every week to discuss trade matters. They co-ordinated their positions and communicated those to me as the commissioner. My representative was also there to guide them and to help resolve their differences.

There will also be a need, at member state government and head of government level, to make sure that at that level—that higher political level—they are reconciling differences or conflicts and creating a clear, united position for the EU to take. Very often, that is the job of a Prime Minister or a Chancellor or a French President. When your interests are so much at stake, you have to send in your heaviest hitter. That is why, in the last ministerial meeting on the Doha round, when France was the incoming presidency, the President of the Republic, Mr Sarkozy, was so exercised to try to ensure that, as the chief negotiator, I reflected the French perspective. You may remember that at one point he tried to call me to Paris from Geneva, to leave the negotiation in order to refresh my mandate—as it was put—and I did not leave Geneva and I did not go to Paris because I did not want my mandate refreshed, thank you very much. I knew what my mandate was and I simply wanted to get on and negotiate it. There will be these tensions, and our job in Britain and the job of our Government and our Prime Minister is to make sure that in as congenial and collegiate a way as possible our interests are reflected in what the EU says and does.

The Chairman: I think that leads very directly to you, Lord Jopling.

Lord Jopling: My Lord, I hesitate to drag you into the debate or the political arena in the UK.

Lord Mandelson: I will find that very hard.
Q29 Lord Jopling: Yes, I thought you might. Let us turn to the current domestic political debate as to whether the UK should remain part of the European Union. Given that argument, to what extent do you think it might influence the UK’s approach to these negotiations, and also to what extent might it influence the work of the EU as a whole in conducting the negotiations? What I am asking you is: do you think the activities of the Eurosceptic element, who wish to take us out of the European Union, are going to be detrimental to the United Kingdom in the TTIP negotiations over the next few years?

Lord Mandelson: Yes, because ambiguity of the UK’s position in the EU always works against us. It works against us in relation to other member states. It also works against us internationally, because the greater the ambiguity of our position inside the European Union the less likely our fellow member states are going to listen to us and the less likely other international players like the United States are going to consider us as influential players within the European Union. So far London has done a great job, frankly, in getting TTIP on the agenda and agreed. It did not do it by itself; it did it with Berlin and other supporters. London now has to realise that it cannot deliver TTIP on its own. It needs a considerable galvanising and sustaining of effort among the member states as a whole. We need allies. We need to sustain the coalitions that we have created behind and within TTIP.

When we create the appearance, as we are doing and as the Eurosceptics are determined to do, that our position in the European Union is in question or that we are trying to pursue our point of view but with our hand always on the exit door, it works against us. First of all, it empowers those within the European Union who do not agree with our position, who do not like what we are asking for or our specific negotiating objectives in pursuit of this agreement. The more ambiguous we are in our position and our approach, the more empowered alternative views among the member states will be, but also it makes it harder for the UK to convince US constituencies that we have the weight within the European Union that will swing the final shape of the deal. They will just think that we count for less. This is important because in a negotiation like this where you are constantly trying to build belief in it and what it is trying to achieve, you are trying to generate confidence in it; you are trying to win people’s trust; you are trying to get them to a position where they really feel it is worth their while throwing themselves into it and striking compromises when that needs be. They need to be given encouragement in that. They need to feel that they have people on the European side who understand their point of view. Similarly, it would be helpful if we had people on the American side who understand our point of view and gave us confidence that there will be give and take in this. To the extent that we are deliberately setting out to create an ambiguity about our position, as I say, it empowers those within the EU who disagree with us and it will create doubts among those who look to us to play a helpful and positive role and who think that we have the weight to swing the final shape of this agreement. That is how damaging it is.

Q30 Lord Foulkes of Cumnock: I am going to move away from these contentious issues and ask Lord Mandelson—

Lord Mandelson: Why break the habit of a lifetime?

Lord Foulkes of Cumnock: Indeed. I do not want to fall into the trap set for me by Lord Lamont. An agreement between these two huge blocs is going to have a big impact on those, as were described earlier, who are not in the room—unlike at the WTO, where they would be in the room. Could you anticipate what kind of effect it is going to have on third countries, particularly the developing countries and particularly also China?

Lord Mandelson: I think that it is going to have less effect on third parties than might be imagined. Obviously, it depends on the areas of agreement and the level of ambition. Where third parties will be concerned is if we are creating between us, between the EU and the US, a completely privileged, preferential set of trading conditions when it comes to tariff
elimination between us that will in a sense artificially create a fantastically privileged position for the two of us, buying and selling into each other’s markets, to the exclusion of those who will have seen their own access and their own tariff preferences eroded by the elimination of tariffs between us. Why do I think that that is not quite so relevant or not so important? It is because there are not actually that many remaining tariff barriers between the EU and the US. I therefore think that the risk of diversion of trade and distortion is lower.

Secondly, we are tending to trade between us, and I am making a generalisation here, more at the top end of the value chain, at least for manufactured, non-agricultural goods. The reality is that many of the emerging economies, certainly most of the developing countries and certainly all of the least developed countries, are not competing with us in those markets at that top end of the value chain.

I also think that where we are negotiating in relation to investment rules, regulatory convergence, trade in services, they are frankly not that interested in negotiating in those areas. They are at a different stage of development. They are in different parts of the market. They do not have the scale and kind of investment, and the rules governing both that trade and investment, that are relevant to us in Europe and to the United States, because we are that much more developed, that much more sophisticated and that much more open already to each other than any of these other countries who are further down the value chain. They are not going to remain permanently at that end of the value chain, they are going to move up it, but it is going to be some decades before they do.

Therefore, I think that those who argue that this bilateral negotiation is sucking the energy out of the rest of the international trading system, or that it is potentially introducing a huge diversion of trade or grossly distorting the terms and conditions of trade for the global economy as a whole, are greatly exaggerating to make their point. If I may say so, I think they are arguing from a rather purist point of view, which in practice falls down, given the differences between us that I have described. Much of what TTIP will focus on is a very long way from where most of the other negotiating countries are trading and where they will wish to negotiate, both with the EU and the United States.

I should also say that already the least developed countries have complete tariff-free, quota-free access to European markets for everything but arms. In the case of Africa, they have the AGROA legislation in the United States that similarly gives them market access and rights, which will not be diminished by anything that is potentially going to be agreed between the EU and the US.

The Chairman: That enters into your terrain a little bit, Baroness Henig.

Q31 Baroness Henig: It does a little. Thank you for that. Perhaps I could ask about China. Obviously, China to some degree is sidelined here while these negotiations are going on, and obviously it is going to have an enormous interest in what is negotiated. I just wondered how you felt that the United Kingdom and the EU could handle, in particular, Anglo-Chinese relations in the next year or so.

Lord Mandelson: Our trade relations are conducted at the European level. Obviously, we promote trade and investment to benefit British producers and investors and service suppliers, but trade policy is negotiated between the EU and China. I would say that, give or take the odd scrap, dispute or falling out over solar panels and whatever, the relationship between China and the EU is not that bad. I think it has known better times and I think it has the potential to rise, but it is not in a desperate or critical state.

The second point I would make is that the United States, but not so much the European Union, is pursuing what to my mind is a fairly clear policy or approach of encirclement of China. What they are seeking to do is to reboot or grow the level of trade liberalisation ambition among the countries and markets in China’s neck of the woods in order to exert
some pressure on China to raise its own game to promote the openness of its markets and to create new market access in a way that it is not showing great enthusiasm to do at the moment.

Therefore, I think the policy objective of the United States is basically to say, “Through the transpacific partnership and all the negotiations that we are pursuing with everyone but China, we hope not only to create greater market access among those who are party to TPP but in so doing we are trying to get some pressure put on China to fall into step and to raise its game”. I do not think China takes this pressure that seriously. I think it is pretty sanguine in its view of what the upshot of the transpacific partnership negotiation is going to be. I do not think China is looking for any consolation prize either from the US or from the EU for being left out in this way. One of the responses they are making in order to get a little bit of the American pressure off their backs is to create—and they have announced this recently—a Shanghai free-trade zone, which liberalises trade and investment within a part of the city of Shanghai, which they are describing as a pilot test, as a way of road testing what liberalisation would do, what advantages it would bring both for China and for those trading with and investing in China. They are, in doing so, creating a bit of a three or four-year breathing space both, as I say, to get a bit of American pressure off their backs but also to still a domestic debate about how far and how fast trade liberalisation, and currency liberalisation for that matter, should go in China. They are basically saying, “We hear what you say. We have this fascinating experiment that we are mounting in Shanghai. Let us pilot test and see what the outcome is and see whether, if it works, we can then roll it out to the rest of China. But please hold your breath and exercise a little patience and get off our backs in the mean time”. It is an interesting response.

Baroness Henig: Thank you. That is very interesting.

Q32 Earl of Sandwich: Lord Mandelson, I am puzzled because you have set out how there are no adverse effects on third countries and developing countries and yet right at the beginning—

Lord Mandelson: It is much smaller and less than people are suggesting, yes. I did not say none. I said much less than people are speculating.

Earl of Sandwich: At the same time at the beginning you used the word “template” for world trade and, therefore, you do see the agreement as a way towards something much wider. I just wondered whether this deal could be structured to make it a catalyst for world trade and, indeed, other multilateral institutions. Does it affect the WTO process directly? Is that an ambition?

Lord Mandelson: It certainly should do. What I would like to see in TTIP is the creation of a platform of liberalisation, of regulatory convergence and of collaboration between two major trading partners that can then be copied and emulated by others, that can then be multilateralised by means of the WTO itself. That in my view would be one of the chief advantages and benefits from TTIP: not just the benefits that we enjoy ourselves from this agreement but how it will change the ambition that others have in their approach to trade liberalisation; how it will introduce, as I say, new skills and a different template of trade agreement that others might want to join; and, most critically of all, how it will make clear that what we are trying to create in our approach is not a closed shop for Europe and America to serve and suit each other but an open architecture that others can join and emulate and which, as I say, will create ideas and skills and approaches in trade negotiation and liberalisation that others will follow.

I was recently in Beijing again and I had an interesting conversation. I asked about the Chinese view, just going back to Lady Henig’s question. How do they see TPP? Well, they are pretty sanguine, pretty relaxed about it. “How do you see TTIP,” I said. “Well, it will be very interesting to see how you two big gorillas make out and we will see what you are able
to achieve at the end of the day”. As somebody else remarked to me, they will watch TTIP quite carefully because they think it has the potential to define global benchmarks both for investment protection and investment liberalisation, which they themselves either might aspire to themselves or will find others trying to force on them. They are looking at it pretty carefully, not because they see a direct threat to their commercial and trade interests but because they see something possibly emerging from this negotiation that is going to change the character or change the scenery of trade liberalisation and negotiation in the future.

**Q33 Baroness Young of Hornsey:** What do you think are likely to be the main practical and political challenges on the US side to securing an agreement? We have heard quite a bit about the issue of individual states and their power and interests. Perhaps the political will of the Administration is in question. Given what you said earlier that London should not feel that it owns the process, the negotiations, do you think it would or would not be appropriate for the UK to engage directly with our US counterparts on this particular matter?

**Lord Mandelson:** One thing I am clear about is that the White House has to want it and own it or face the fact that it is going to die. If the White House is really not joined in this thing, if it is really not using up its political capital and really putting its shoulder to the wheel in this negotiation—

**Baroness Young of Hornsey:** Do you think it is?

**Lord Mandelson:** —there is absolutely no chance of it going anywhere beyond the day after tomorrow.

**Baroness Young of Hornsey:** What does it look like now?

**Lord Mandelson:** It looks to me as if the White House is committed. I might say, though, that they are committed to the extent that they have shown during President Obama’s first and second term a remarkable lack of interest in and indifference to trade matters, policy and liberalisation. Basically, the policy of President Obama has been to step out of and walk away from the WTO and find alternative means of trying to raise the bar and level of ambition in trade liberalisation by bilateral negotiation using the negotiating muscle and leverage of the United States in order to get others to open up. We can debate whether that was realistic or inevitable, and we all have to face the fact that the WTO for this period at any rate is ceasing to be the forum of trade negotiation and liberalisation that we have looked to it to be in the past. It failed to be so conclusively in the case of the world trade talks, which are now suspended. Therefore, we can debate whether the United States is right to say, “Look, we have to find alternative means of pursuing trade liberalisation”. The WTO, for whatever reason, is not being allowed by the Chinas and the Indias and the Brazils and the South Africas and the others of this world, as the United States would put it—paraphrasing the argument that they would use—and therefore we have to use other bilateral means and instruments and levers to raise the level of ambition in the international trading system. I think many in the EU would feel a sneaking sympathy for that point of view, given the disappointment of the multilateral trade round.

Where I think we would differ from the United States is that we still take a rather more positive and proactive attitude towards the WTO. If we find fault in it, it is in order to repair those faults, not to walk away from the institution. We would place great emphasis, possibly more than the United States, on making sure that anything that we achieve in TTIP will then, over time and by whatever means possible, be multilateralised through the WTO—using the WTO not just as a means of making rules and enforcing them and settling disputes but as a forum again for serious global negotiation. We would take a less sceptical view, I think, of the WTO’s ability to revive the role that it had. The United States, I fear, is taking—has taken—a rather settled and negative view of the WTO and its future negotiating role, which I find alarming. If this is the case in the White House, it is the case in spades on the part of
Congress, which also needs to sign up to this negotiation, because it is Congress that licenses the US trade representative to negotiate on its behalf. They are very keen on jerking and keeping the USTR on a fairly short leash and when they feel the USTR is straying too far away from American interests, as Congress would see them, they will give a sharp jerk on the leash and bring the USTR to heel in a way and a manner that the trade commissioner does not have to experience in his or her own backyard. Yes, we have member states. Yes, we have a European Parliament, increasingly important and powerful in relation to trade, but the Commission is a free agent. It has greater flexibility to conduct negotiations than the USTR has.

Now, beyond the White House and Congress you then have the states, and that really is herding cats, because the states retain a fair bit of power, for example in financial matters in relation to insurance, which is very important to Britain. If in respect of that regulatory activity and public procurement in other areas, both the White House and Congress are unable to bring the states behind them, again that is going to bring down the scope of TTIP and the level of ambition it finishes up with.

**Q34 Baroness Young of Hornsey:** Do you think that there is any way in which the UK Government could usefully or appropriately make some sort of intervention in a direct way?

**Lord Mandelson:** Britain is listened to, is influential and heeded in a way that many other member states of the European Union are not, for reasons of history and relationship that we are very familiar with, but Britain should not exaggerate its role and influence in Washington. To the extent that people take Britain seriously in Washington, it is because they think Britain can influence the rest of the European Union. If we set out to reduce our influence in the European Union, we will matter less and count for less in DC.

**The Chairman:** Lord Mandelson, thank you very much indeed. I think that brings us to a natural break. You have been very generous with your time and with your experience. Thank you very much indeed.

**Lord Mandelson:** A pleasure.

**The Chairman:** Thank you, and I thank my colleagues for their staying power.
Andrew McCall, Executive Director, Governmental Affairs, Ford of Europe, Geoff Grose, Chief Engineer, McLaren Automotive Limited Mike Hawes, CEO, Society of Motor Manufacturers and Traders and Chris Scott, Senior Manager, Global Automotive Safety, Regulations, Compliance and Homologation, Jaguar Land Rover—Oral Evidence (QQ 144-17)

Transcript to be found under Geoff Grose
OurNHS openDemocracy – Written evidence

Our response addresses the following points:

5. What is the potential impact of TTIP on consumers, whether in the UK, EU or US?

6. What aspects of the negotiations will be of the greatest significance to the UK, including its component parts?

7. For UK consumers and business, where are the greatest gains to be made and where could they be disadvantaged? What are the most significant non-tariff barriers for British exporters and importers?

8. What are the political and practical challenges within the UK to an agreement?

Our NHS has the following concerns:

1. That the TTIP will restrict government’s right to intervene and regulate healthcare, not only for public health and safety purposes, but also to ensure quality and equitable and sustainable financing of health care.

2. That it could have significant detrimental impacts on the domestic regulation of health services, pharmaceutical policies, standard-setting, health promotion and health protection.

3. That trade and investment agreements could severely restrict the ability of the UK’s national governments – and indeed those of the home nations i.e. Scotland and Wales - to control costs and regulate outsourced health services, and the ability to bring services back in house if commercialisation fails. A shift in policy away from health care markets could be challenged in the context of commitments made on ‘investment liberalisation’ or ‘investor protection’.

4. That the agreement could seriously open up the risk of corporate challenges and compensation claims from legitimate public health regulation, health protection and health promotion policy measures. For example, expropriation claims have already been used by the tobacco industry to challenge Australia plain packaging law, and have been raised in relation to a Canadian national court decision on a medicine patent.

5. That clauses on intellectual property and pharmaceutical policies could limit scope for using pricing and reimbursement policies, and technology assessment, to achieve better economic and clinical value from pharmaceuticals. We note that a background study for the negotiations of EU/US agreement has suggested pricing policies and technology assessment as potential areas for negotiation interest. Technology assessment has been crucial, for example, for the work of National Institute for Health and Clinical Excellence (NICE).

6. Noting that the United States trade policies have put pressure on countries who take legitimate public policy measures to control drug costs, we are concerned that the
policy could limit access to lower price or generic medicines, an issue for developed
countries as much as for poorer ones, particularly in relation to high cost cancer
drugs for example.

7. We are concerned that public health measures - for example on marketing of
tobacco products, on food labelling, on pesticides and chemicals, or other potentially
toxic or unhealthy products - could be restricted. This is a particular concern given
the favouring of a narrow risk assessment approach and a shift away from the
broader precautionary principle that is established in the EU.

8. We are particularly concerned that the introduction of an investor-state-arbitration
mechanism, giving corporations broader right to sue governments using a specific
arbitration mechanism, will create further challenges for public interest,
environmental and public health regulation in other sectors. Even if excluded from
investment and services liberalisation, ‘investment protection provisions’ could make
it more difficult and costly to shift back to public provision. When such measures
would reduce future investment or profit opportunities for private companies, this
could be challenged as direct or indirect ‘expropriation’ from the point of view of any
company operating in UK health care markets. The worst case scenario for the NHS
would then be that commercialisation becomes “locked in”, sealed by the threat of
huge compensation claims by investors.

9. Without appropriate exemptions, a governments’ ability to regulate professional
standards and qualifications could be restricted. Whilst there could be a place for
improving professional mobility between states, it could be dealt better with
cooperation between administrations responsible for oversight on professional
practice and qualifications within countries, than as part of trade and investment
agreements. The impacts of professional mobility have already resulted in a WHO
Global Code of Practice on the International Recruitment of Health Personnel.

10. Lastly, negotiation practices appear to seek to include all services on the basis of
their existing legislation with a ‘standstill’ on any further regulation not compatible
with treaty provisions. This is particularly inappropriate for recently commercialised
sectors, including, increasingly, the English NHS – it is in fact more, not less,
important, for the government to retain the right to regulate the providers of such
services.

11. Most broadly we are concerned that the overall thrust of the debate - and indeed on
these questions - appears to be on the rights of businesses, with citizens’ democratic
rights to protection in crucial areas like health and other public services, coming a
very poor second.

12. It is entirely possible – and from health policy perspective desirable - to exclude
health services from commitments made in relation to trade in services, investment
liberalisation, government procurement and domestic regulation.

13. It is also entirely possible to remove both health services and other health-related
regulations from investment protection parts of the agreements or substantially limit
the scope and use of expropriation clauses. Whether this is done in practice is
ultimately a political decision.
This report has been prepared drawing on the published work of openDemocracy by a number of academics, most particularly Professor Meri Koivasalu. Please see appendix for more detail.

OurNHS is a dedicated section of openDemocracy.net, which has over a decade of experience in publishing breaking investigative work and campaigning journalism. Our editorial board includes our board includes: Dr Clare Gerada, Chair of the RCGP, Prof Allyson Pollock, professor of public health research and policy at Queen Mary, Prof Sir Al Aynsley-Green, former Children’s Commissioner, Dr Ingrid Wolfe, honorary research fellow at the London School of Hygiene and Tropical Medicine and Gabriel Scally, former of the DoH, now an IPPR fellow.

We work in partnership with a range of organisations including 38 Degrees, Keep Our NHS Public, CHPI – a new health think-tank led by Professor Colin Leys, Social Investigations, Richard Murphy’s Tax Research UK, SpinWatch and NHS Support Federation.

Appendix

Please consider the following articles submitted as an appendix to this submission

http://www.opendemocracy.net/ournhs/david-owen/lord-owen-condemns-%E2%80%9Cconspiracy-of-silence%E2%80%9D-on-eu-us-trade-deal

9 October 2013
Q186 The Chairman: Thank you very much indeed for agreeing to give evidence to us. As I think you know, this is part of our inquiry into TTIP. We felt that it would be helpful to look at some of the past agreements to form a view on this one. We have a number of questions. I think we have an hour and I hope we will not run over that. I am extremely grateful to you for agreeing to appear before us. I shall kick off—my colleagues will then come in—with a very straightforward question: how do the Canadian agreement and TTIP compare in their substantive content? Obviously, the size of Canada and the United States is very different, but in terms of substantive content, potential economic consequences, sectors under negotiation, a focus on regulatory alignment and the level of ambition, how would you compare the two?

Mauro Petriccione: First, I hope that my reply will be helpful to your work. Yes, the economies are different. The expected gains are different. The expected gains from the TTIP are about 10 times what we expect from Canada. Still, from Canada we are expecting...
upwards of €11 billion in gains for the European economy, so it is not negligible. The other thing to be borne in mind is the difference in the structure of the two economies. Canada is very much a transformational economy, very dependent on the United States, to the point that while you could say that while the United States makes things, there are many cases where Canada participates in the production of things made in the United States. That, for instance, is very much the case in the automotive industry. So the interests are sometimes different and that makes the comparison—when you come to concrete commitment—sometimes a little awkward and sometimes clearly inappropriate. In terms of the structure of the agreement, its coverage and the level of ambition, they are obviously comparable because all our agreements, at least in their initial intentions, are comparable. We take into account the level of development of our partners in the level of ambition for what we aim to achieve at the end, but that is clearly not an issue between Canada and the United States. The level of commitment that we expect from North America is the same as we would expect Europe to be able to take. There is similarity in the level of ambition.

The greater relevance is sometimes not only in the difference of the economic structure but sometimes, in spite of economic integration, in the difference in legal traditions and in administrative structures. That sometimes makes a great difference between what we have done with Canada and what we might be able to do with the US.

Q187 Lord Foulkes of Cumnock: Mr Petriccione, thank you very much. This deal with Canada was agreed in October. As I understand it, it has not yet been approved by the Council or Parliament. Are there any problems?

Mauro Petriccione: No. What we had was an agreement in principle. Now we are busy translating much of it. Some if it was already in the form of legal language. Much of it, especially the parts that were agreed in October, was in the form of an agreement in principle, where we listed the elements of substance in various areas. Now we have to translate that into binding legal language.

Lord Foulkes of Cumnock: So when do you expect to go before the Council and the Parliament?

Mauro Petriccione: Not before the end of the year.

Lord Foulkes of Cumnock: Not before the end of this year?

Mauro Petriccione: Absolutely. What we call the legal scrubbing process is very long and tedious. We will have to translate it into all the official languages. Canada wants to verify all our official languages so they will have to be equipped for that. This will take a little while.

Lord Foulkes of Cumnock: Would that be the same for the TTIP?

Mauro Petriccione: It would be slightly the same; it is the same for all our agreements. The agreement with Korea took a little longer than two years between the political breakthrough and implementation by the Council. We have agreements with Central America that took a bit more than two and a half years. We expect this to take about two years.

Lord Foulkes of Cumnock: But we are told that you hope to conclude the TTIP by the end of 2014. There is a big gap between April and autumn, when the institutions are being reformed. Is it not a very optimistic timetable?

Mauro Petriccione: I will not speculate about a negotiation I am not in charge of. Negotiations are very variable. With Canada, we had political blockage on some key issues, which made us lose about a year and a half. It took us four years but could have taken two and a half if we had not hit that obstacle. We were doing some new things with Canada. It is very unpredictable. It can be done but do not ask me whether it will.

Q188 Lord Lamont of Lerwick: I think you have partly answered the first part of my question, about how the level of ambition—the scope—was sustained on both sides. How
were the EU member states and the Canadian provinces brought into the negotiations? Are there lessons to be learnt from that for TTIP? Could you say a word about the UK’s contribution to the negotiations?

**Mauro Petriccione:** As far as member states are concerned, there is no change. We have a system that is enshrined in the treaty and we have decades of experience in running it through the Trade Policy Committee and the Council at a political level. So this was run, as far as the member states were concerned, like every other negotiation. That is how TTIP will be run. As far as Canada was concerned, it was innovating. A basic political decision was taken by the Canadian federal Government that they would involve the provincial Governments directly this time. Traditionally, the Canadian federal Government negotiate the areas of federal competence directly and consult the provinces privately on the areas of their competence. They often refuse to negotiate international agreements in those areas. In this case, we made the point that some of the areas of provincial competence would be indispensable for a balanced agreement, and the EU would not be interested in an agreement that did not cover those areas. So the Canadians took the decision to consult the provinces and, this time, involve them directly in the negotiating process. In a way, they had to invent mechanisms for consultation similar to those that we have in the treaty for consulting member states. It has been a bit of a messy process but, in the end, it was very effective. We had a reasonably solid assurance that the provinces will implement the outcome in full for the areas of their competence.

As far as our internal set-up is concerned, particularly the role of the UK, the UK has been one of the strongest supporters of this agreement from the very beginning—before it was launched. For the rest, we have consulted the UK in the same way that we consulted other member states. I think there are some areas where the UK has had difficulty with some of the Canadian requests. I think we have found an outcome that is acceptable. Sometimes our Canadian friends have not been very satisfied. However, overall they seem to have worked as well as with any other member state.

**Q189 Lord Trimble:** I turn to the question of public opinion and the media and ask in particular if there was any domestic opposition on either side when you were negotiating the Canadian agreement, and what sort of relationship there was with civil society organisations.

**Mauro Petriccione:** Perhaps opposition is too strong a word. Certainly there were concerns. It is difficult to say what the motivation for these concerns is—you are not in people’s minds. My impression over the years has been that the concerns were more about this being part of our general trade policy, and were therefore concerns that we all know part of civil society feels about trade policy and liberalisation rather than anything specific to Canada. From what I could see travelling through Canada and visiting some of the provincial Governments, there was a very similar situation there, more focused on what more trade liberalisation would do to the Canadian economy than specifically on more trade with Europe.

One set of concerns that was certainly less pronounced than with other countries was in respect of labour rights. The level of protection of labour rights is very high both in Europe and in Canada, so we never had any substantive difference. We have had difficulty in expressing this consensus in a situation where we have different legal traditions and different instruments, so it has been complicated rather than difficult. Environment has been a bit more difficult. The current Canadian Government have a slightly different view from us on issues such as environmental protection and climate change so it was a bit more difficult to achieve consensus there. On the other hand there is a debate in Canada, as in the EU, and many of the provinces liked our position.
Finally, culture was another issue where there was concern on both sides. Canada, because of its geographical position and its cultural proximity to the United States, has perhaps even greater concerns than do some of the member states. They expressed a need for maintaining policies based in more areas than we normally do. Again, there was no disagreement on substance there but rather a need to accommodate different traditions and different instruments. The fact is that we have some interests in culture. If I take book publishing, we have considerable interest in the Canadian market both as far as the English-speaking and French-speaking publishing is concerned. We wanted to preserve that while leaving Canada the policy space that it requires. I think that we managed, but I would call it more fiddly and complicated than difficult, both in the relations between the two parties and with civil society.

**Baroness Henig:** To follow on from that, you have just said that a substantial level of labour rights and environmental concerns are negotiated into CETA. Could similar provisions be negotiated into TTIP, and does the CETA agreement put any structures in place to monitor the long-term social impact of the deal or the consequences of it for consumers?

**Mauro Petriccione:** I should make a premise here. Anything we have done in predicting the impact or the precedent value of anything we have done in CETA for TTIP is highly speculative, so I beg you to consider that. Even when you have very similar legal structures and a very similar situation, negotiations develop in a very different manner, and the United States is not Canada. Certainly what we have done with CETA will inform our starting position in TTIP. We will do different things if we have a reason to do them.

As far as labour rights are concerned, we have a consistent policy. Perhaps what we have done with Canada is a more solid outcome than what we have achieved in other cases, but our starting position was very much the same and is likely to be the same in TTIP. We have agreement with Canada that core obligations in the field, in particular ILO conventions, have to be implemented in law and in practice, and that both parties need to maintain the right to keep their level of protection for workers, their legislation and labour rights and their margin of manoeuvre. At the same time, we both agreed that this should not be used as a disguised means of protectionism. We have a robust review mechanism based on government consultation, civil society involvement and third-party review. So we will start from the same position with the United States. All I can say—even though I am not in charge, but knowing what I know about the position of the US—is that I think we will have a similar consensus with the US on the objectives. The US legislation on labour is not exactly the same as Canada’s. I cannot predict the actual solution we will find to express this consensus in a way that works for both sides, but I can predict a similar convergence of interest, if you like, in this field.

As far as monitoring is concerned, we have two aspects. One is the day-to-day monitoring. With CETA we will organise, as we did for Korea, a domestic advisory group for civil society that will advise us, and the Canadians will do likewise. As with the Korean agreement, there will be regular meetings between the two sides; we have a Committee on Trade and Sustainable Development. That committee will also meet regularly with the two advisory committees. We have innovated with Korea in the sense that we and the Canadians decided to open up the participation; it will not just be the members of the domestic advisory group that will participate but the meeting may be open to a broader participation from civil society from both sides. Again, the Canadians were more amenable to this kind of mechanism than were many of our other partners.

For longer-term monitoring, the Commission has initiated a review of its policy and has taken a decision of principle that all FTAs will be subject to a full ex-post evaluation on a regular basis. We are now setting up a methodology to do that, and we ran a pilot project
for the agreement with Chile, which has been reasonably satisfactory. We will now refine the methodology in examining the agreement with Mexico, so by the time we will have enough implementation of CETA for an evaluation to be meaningful we will have a solid, tried and tested methodology to do so.

**Q190 Lord Jopling:** Can we turn to the technical barriers to trade and technical alignment? Can you point out the differences over this matter between the negotiation between the EU and Canada, and the EU and US? How comparable are they, and will the EU and US negotiations be significantly more difficult? How were the negotiations with the Canadian regulators handled? It seems to me that if I were a state legislator in Iowa, let us say, a whole lot of these matters are within state powers, not federal powers, and my temptation would be to pick the ones that suited us and to ignore legislating over the ones that did not, cherry picking them. Could you explain that? I think that you said earlier that you thought there was a good deal of hope in getting the individual provinces to row in and conform. But it seems to me that that is quite a problem. Finally, could you say a word about how the conformity assessment works, as that area will be important in this context?

**Mauro Petriccione:** I think you are describing not a state legislator but human nature in general. We are all good at cherry picking if we can. Part of the trade negotiations is precisely persuading each other not to do that. When we talk about regulation we have to look at different avenues for different types of regulation. I will start with product regulation. You mentioned conformity assessment, but the result we got on that in Canada was very tentative, largely because Canada has very little autonomy in terms of product regulation when it comes to health and safety of products or consumer protection, because of its integration with the North American economy. There is very little independent manufacture in Canada, so de facto you have a system of North American standards which are not entirely dictated by the US, although the US is the dominant partner. We did what we could, for instance in terms of Canada recognising international standards that we also adhere to as the basis for our respective regulations. But it was recognised early on that we could only go further if the US was involved. So we have a number of specific review clauses which will reopen parts of CETA if and when we have an agreement with the US. Canadians will be very interested. We have provisions that will enable Canada and us, if we establish a good regulatory co-operation mechanism with the US, to plant Canada in that process, which will in the end be in the interests of everybody, both in Europe and in North America.

On conformity assessments specifically, we could go further. There we have a protocol on performing assessment which has been finalised. We are now discussing with Canada which areas this can be applied to immediately and which areas require more technical work, and which can therefore be brought in only over the life of the agreement. That simplifies what we used to have as mutual recognition agreements with Canada on conformity assessment. I will try not to get too technical, but essentially, our accreditation authority and the Canadian accreditation authority will establish a dialogue to explain to each other what the respective requirements are to accredit laboratories as conformity assessment bodies. On that basis our accreditation laboratories will accredit European laboratories to certify to Canadian standards, and vice versa. This should be applicable, at entry into force of the agreement, for up to half a dozen sets of regulations, and we plan to expand it over time.

That is certainly an option for the US. Whether it will be the option is impossible to say at this stage. US regulations are similar to Canadian ones but they are not identical. Their regulators’ mandate is not exactly the same and they do not have the same system of accreditation as we or the Canadians have, so it is impossible to say at this stage whether this model can be replicated with the US, although it can certainly be explored. Certainly, something that achieves the same purpose will be necessary—I can say that with a certain confidence.
In other areas of regulation things are very different. On financial services, which is now a very important area, we took a traditional negotiating approach with Canada, trying to concentrate on opening market access and achieving reciprocity in national treatment. We quickly realised that both parties were not prepared to go very far. That area has become much more delicate than it was five or 10 years ago. With the US we will take a different approach. We will focus on regulatory co-operation first, to make sure that both sides are confident about how financial services are regulated on the other side, which will open the way to greater recognition, reciprocity and market opening.

So I do not think that we can talk about regulation in general terms. The only general statement I can make, in conclusion, is that this will be indispensable with the US, and we will go as far as possible in terms of regulatory co-operation to try to achieve convergence among regulators, because the regulatory objectives of Europe and the United States are very similar. The means have been different—that is the obstacle we have to overcome.

**The Chairman:** It sounds as though it will be much more difficult, in this field, than it was with Canada.

**Mauro Petriccione:** That is hard to know, but US regulators are at least as competent as ours. Persuading regulators that there are different ways of doing the same thing and achieving the same result is not always easy. We have a better record of that in Europe, because we are used to doing it among ourselves.

**The Chairman:** The next questioner is Baroness Quin. You have touched on one of the things she was going to ask you about, but I turn to her.

**Q191 Baroness Quin:** Good morning. The Commission, as far as we understand it, estimates quite considerable GDP gains for the EU because of market access in terms of services and investment. You mentioned financial services a few minutes ago. However, we do not have many details of what exactly was negotiated in these areas. Can you say more about what significant achievements were made in the financial services and investment chapters, and—following up on your comment that with the United States you would tackle some of the regulatory problems head-on—whether, if successful, that might in turn have the effect of further opening up the Canadian market?

**Mauro Petriccione:** All those matters are very hard to predict. In the services areas the Canadian regulations are more different from those of the United States than they are in the fields of industrial products or agriculture. Certainly, if we had better mechanisms for regulatory cooperation in TTIP than we have achieved in CETA, we would have an interest in importing them into CETA. In CETA we have explicitly built in a number of review clauses—in agreement with the Canadians—to import anything that comes out of the TTIP that both sides find useful. The Canadians are as eager as we are to have, in economic terms, as smooth an interaction as possible between Europe and North America. So if we manage to go further there will be avenues to bring it back, though it will not necessarily be very automatic. In the area of product regulations, on the other hand, while it has not been entirely automatic, once we have gone further with the US than with Canada the Canadians will want to adopt the same regulations very quickly.

Let me give you a quick round-up of areas we have covered. We start from the fact that the European services market is much more open than the Canadian market. As a result we have not granted Canada any new liberalisation in Europe in any sector. We have guaranteed to Canada, on a bilateral basis, the maintenance of our existing liberalisation, which is valuable for legal certainty and investor confidence but will not require us to change our laws or regulations to admit Canadian service suppliers or investors. On the other hand, Canada has committed to some new liberalisation towards us. Thus there has been a substantial rebalancing of the situation on the ground.
With regard to telecom services, Canada is reserving its current situation but has agreed, through a ratchet clause, to commit to the EU every future liberalisation, and the Canadian Government is embarking on a process of liberalisation of its telecom market. We will benefit from that when it happens. Similarly, in relation to maritime transport we have achieved some very useful commitments on filtering services and on dredging services, which will be useful to some of our member states.

Many provinces have made commitments on the kind of conditions they put on investments in natural resources—oil, natural gas and mining. Canada will remove its requirement to have a Canadian partner in uranium processing. On postal services, likewise, Canada will not immediately liberalise its market but has bound any future liberalisation to a ratchet clause. Here again there are plans for the liberalisation of postal services, from which we would benefit.

We have obtained commitments from some provinces, notably important ones such as Alberta, on insurance and reinsurance. We have also obtained commitments on airport operation and ground handling and on outbound international mail.

On investment, of particular importance is the fact that Canada is perhaps the only developed country that still has an investment control mechanism for economic reasons. The Investment Canada Act gives the Canadian Government the power to block foreign investment above a certain threshold if it is not of net benefit to Canada. Virtually every other developed country only has investment controls for national security reasons. Canada will not abolish this mechanism, but will raise the threshold below which investment will not be scrutinised from 300 million Canadian dollars to 1.5 billion Canadian dollars. This will ensure that no routine European investment will be subject to scrutiny. Investments above 1.3 billion euros are bound to attract some scrutiny in any country. I think we are satisfied with this level of liberalisation.

All in all, therefore, the service and investment deal with Canada is a rather ambitious one, through which we have succeeded in bringing Canada very close to the level of liberalisation that Europe has achieved itself. We would like to have the same arrangements with many other countries, but usually find it very difficult to achieve.

**Lord Lamont of Lerwick:** I refer to that point about the investment control system, which you say that Canada, alone of developed countries, retains. You go on to say, “Well, they’ve upped the threshold, and anything worth $1.5 billion would be bound to attract attention in any country”. However, is not this mechanism highly protectionist for Canadian companies? I remember that there was a bid for the Toronto stock exchange that was just blocked. I remember also that there was a large bid for one of the mining companies, and that was also just blocked. Is this not a mechanism for protecting Canadian companies, and is it not quite anomalous and unique?

**Mauro Petriccione:** Absolutely. I could not agree more. You do not get all you want in a negotiation. It was a hard decision for us to scale back our request from a complete exemption for European companies to acceptance of this increase in threshold. The comment I made is that, as a practical matter, this should fix the problem for our companies. As a matter of principle we would have liked to see this legislation go, or at least to have obtained a complete exemption for European companies.

**The Chairman:** Thank you very much. That is a very clear answer.

**Q192 Baroness Coussins:** Good morning. I would like to ask you about the investor-state dispute mechanism. Just this week we heard that this issue has been taken off the table at TTIP, at least for the time being. We have also heard that the CETA agreement on this issue was very innovative—it broke new ground, although we do not know in what way. Was this issue also controversial in the negotiations for CETA, and did the ways in which
you managed to break new ground address the concerns of NGOs and trade unions that were raised in relation to TTIP? Does TTIP need an ISDS, or can it do without one?

Mauro Petriccione: I will just collect my thoughts, because it is a very complex question. I will start with the principle in CETA. No, the principle of ISDS was not a very controversial issue between Canada and the EU. Some member states questioned whether we needed an arbitration mechanism to protect our investors in a developed country like Canada which has a functioning legal system. The answer has been “yes”, notably because of certain practices we have seen at the provincial level. We have had cases—admittedly rare—of provincial legislation overturning current legislation to allow a specific expropriation that would not have been allowed under the generally applicable rules. In one of these cases the European investor involved was fortunate enough to have invested through a US subsidiary, and was able to obtain a remedy through the North American investor-state dispute mechanism. So we quickly came to the conclusion that it was useful to have one.

The difficulties were twofold. The first was different legal traditions, complicated by the fact that we are still merging the legal traditions of investment protection in member states. The first negotiations we have had on investment protection and investor-state dispute settlement at the EU level have been with Canada and Singapore. Our precedent comes from 1,200 agreements by member states that are not very different from each other but are far from identical. So there was a complication in terms of how you write a bilateral mechanism in legally sound terms for both sides.

The second complication was that we were aware of the concerns of civil society about the transparency of these proceedings, about their relationship with domestic court proceedings, and about the need to avoid frivolous claims or abuses by unscrupulous investors. It took a while to persuade Canada of the wisdom of making changes to their model in this respect. However, we fully persuaded them, and then the discussion became a difficult legal discussion but a very productive one.

Provisions agreed include a stipulation that the ISDS between Canada and the EU will be fully transparent; the hearings will be open; all the documents will be made public; interested parties will be able to make submissions; the parties will retain controls over the substantive rules. The EU and Canada will be able to agree on binding interpretations, so that if we see that arbitrators are interpreting the agreement in an unintended way we will be able to clarify the matter and bind the arbitrator to what we intended with those provisions.

There will be lists of arbitrators that will be chosen by the parties so we will be able to ensure their competence, honesty and seriousness. There will be strict controls on costs. There will be a strict application of the “loser pays” principle, which should be a powerful disincentive for investors to bring unfounded claims. We have seen many cases under NAFTA of frivolous claims being rejected. So far in investment agreements the question of cost has not been very clear, and we have had winning Governments having to pay part of the cost. In this agreement it is clear that the loser pays the cost, so that if an investor brings an unfounded claim it will cost them dearly. It will be easier for arbitrators and they will be encouraged by a number of legal rules to dismiss frivolous claims before they go too far.

At the end of the day, to state this precisely, this is an arbitration mechanism. The real question is: what are the substantive rules that they have to apply? The substantive rules on investment protection have been improved in a very clear manner. I shall give you two of the biggest examples that have caused controversy, and which in our view are the foundation of some of the societies concerned. There is the notion of fair and equitable treatment, which is not defined in most bilateral investment treaties. Some investors have made extraordinary claims about unfair treatment, and sometimes it is complicated to reject these. We have clearly defined fair and equitable treatment and disagreement. An investor can demonstrate that they have been treated unfairly or inequitably only if there has been a denial of justice; if
there has been a fundamental breach of due process; if there has been manifest arbitrariness; if there has been targeted discrimination or manifestly wrongful grounds such as gender, race or religious belief; or if there has been abusive treatment of the investors, such as coercion, duress or harassment. Legitimate expectation would be a cause for complaint only if the state had made a specific promise to the investor, on the basis of which promise the investment was made and that promise was not honoured. We have restricted the application of this very important principle to the same situation where basically any court in Europe would take a case.

Likewise, we have defined indirect appropriation in a way that clearly identifies a situation where an investor can claim to have been expropriated indirectly. I shall give you some important elements of that. A legitimate public policy measure cannot constitute indirect expropriation. Compulsory licences for access to medicine, according to the WTO, cannot be considered an expropriation. Changes of lower regulation per se cannot be considered an expropriation. The fact that new laws increase costs for investors cannot be considered an indirect expropriation. Shell companies will not enjoy protection against expropriation.

Some of these rules should also go a very long way towards discouraging frivolous claims and enabling or even forcing arbitrators to throw them out early on without having to waste too much money and time.

Baroness Coussins: So would you recommend that TTIP should adopt similar terms?

Mauro Petriccione: This will certainly inform our initial position. The United States has a similar model to Canada but it is not Canada. It has very similar final objectives, if you like, to those of Canada and the EU, but has a different legal tradition and has to negotiate a different agreement. I will not speculate on where that will end up, but certainly this position will inform ours in all our negotiations on investment protection.

Q193 Lord Lamont of Lerwick: When you answered my question earlier, you referred to the United States sometimes using national security concerns to block investment. That can be a highly protectionist thing, can’t it? For example, there was the attempt by Dubai Ports World to buy port facilities in the US, notwithstanding that Gulf states provide dock facilities for the American Fifth Fleet. That seemed rather asymmetrical, to put it mildly, and was simple protectionism, was it not?

Mauro Petriccione: That is a difficult question to ask a civil servant. I will try to answer it without insulting any of my partners. The United States has a legal process for national security controls that is rather clearly defined. Obviously, when it comes to national security there is a point beyond which transparency is difficult to ensure, but that is common to all countries, including ours. The Dubai Ports World case did not go through that process. That investment was a legitimate one that had not been chosen for scrutiny by the Committee on Foreign Investment in the United States, which is the body charged with such examination. Dubai Ports World abandoned the investment after persistent voices in the US Congress had raised questions about it so, strictly speaking, it was not an application of national security controls. It is not the only case where that has happened. Many countries have alleged that the US abuses national security controls. In the past we have expressed concerns about the criteria that the US uses and the preoccupation that economic considerations may creep in. The US has consistently tried to reassure us on that score, both publicly and privately, and the recent reform of the CFIUS mechanism has gone some way towards enshrining those reassurances in the law. We constantly monitor the application of national security controls by our partners precisely because, given the confidentiality of the proceedings, you can never entirely exclude the risk of protectionist considerations creeping in.
The Chairman: This is a very interesting answer, but I am conscious that we have only about 10 minutes of our allocated time left and I think we are getting way from the Canadian agreement.

Lord Lamont of Lerwick: But it sheds light on this. The purpose of discussing Canada is to shed light on the negotiation with America.

The Chairman: Yes, but we have a number of other questions.

Q194 Earl of Sandwich: If we may, we will move swiftly on to agriculture and the SPS. We are encouraged by CETA that you have made significant progress. I am interested in what the pragmatic solutions are that would develop to overcome the divergent SPS regimes. Perhaps you could quote the example of France, which after all has a lot in common with Canada, and whether that is a precedent. If I can ask a second question, we heard from Commissioner De Gucht about the quota system for sensitive agricultural products. How is that working in practice, and does it offer a useful precedent? The provisions focus primarily on high-value cuts of meat with negative consequences for the rest of the meat—does that create a wrong precedent?

Mauro Petriccione: On SPS first, we have a view with the Canadians that the basis of our relationship in this field remains the WTO SPS agreement. Then, in the implementation of that, we follow somewhat different paths. In this field, Canada is constrained by the fact that their system is very similar to that of the United States and that if they were to change it radically, they might block North American trade in this product. That severely constrained what we can do. In the end, we concentrated on consolidating and achieving legal guarantees for some of the features of the Canadian system that were trade facilitated. The Canadians have gone a long way in trying to make the system work smoothly for importers. They have regulated the time limits for examination by authorities. They have tried to adhere to international standards, which we also adhere to. All this was done on a voluntary basis. As a matter of fact, we have not had any serious SPS problems with Canada for along time. We have achieved basically a legal consolidation of a de facto situation.

The US has a very similar system, but the trade in the US looks different and we have had more problems in exporting to the US than we have had with Canada, so it is very difficult to know whether this is transposable. Also, with Canada we had a long-standing veterinary agreement that had been very useful in solving any problems that arose in the meat trade, for instance. That agreement has been incorporated into CETA so we will benefit from greater transparency from its dispute settlement mechanism, and it is being updated at the same time. We have a work programme to achieve a similar level of co-operation with the Canadians on plant and plant health matters. So it is not a revolutionary outcome, but it is a consolidation in legal terms of much useful work that has been done bilaterally with the Canadians over time and a work programme to continue that work in a situation where we have not really had major SPS-related problems with Canada in the past decade.

Quotas are a very common instrument in trade agreements. They are the traditional instrument to obtain some real additional market access for products that are considered very sensitive and for which a country is not prepared to grant eventual tariff liberalisation. The problems that were sensitive between us and Canada are the same that are sensitive with a number of other countries, and were similarly sensitive in the multilateral negotiations. In those negotiations, too, the outcome that had been sketched out was that of tariff rate quotas. As a matter of fact, in 2008 the Council gave the Commission, if not a strict mandate, at least an envelope of liberalisation for the products that the Commission could exploit in trade negotiations.

We have been working within that envelope. I would say that Canada has obtained its fair share of that envelope. We have granted Canada tariff-rate quotas on beef and pork. Canada had a similar problem on dairy produce, particularly cheese. It has granted us a tariff-rate
quota on cheeses, which is largely—90%—for high-quality cheeses. Basically, imports within these quotas will be at zero duty, whereas outside the quota imports will remain free but will continue to pay the applicable duty, which is, in both cases, rather high. We have more than doubled our access to the Canadian cheese market. We are currently exporting around 14,000 tonnes of cheese a year as our share of the multilateral quota that Canada has granted. We have obtained an additional 18,500 tonnes of cheese, of which 1,700 tonnes are industrial grade. The rest is high-quality cheese. That is a 130% increase in our exports. We will fill that quota immediately; our export capacity is up to it.

We have granted Canada a bit more than 45,000 tonnes of beef, to which we have had to add a quota that we already owed the Canadians, giving a total of about 50,000. In total, 31,000 tonnes will be fresh beef; the rest will be frozen. The quota does not distinguish between prime cuts and other pieces of beef. There will be no way to restrict it or to channel it. The concern of European industry is that mostly the Canadians produce high-quality beef. They will concentrate on exporting prime cuts, which have a much higher value added.

Having said that, the channels for trade are not infinitely elastic. It is virtually impossible that Canada can export only prime cuts. The whole quota represents 0.6% of EU consumption, so we are reasonably confident that the impact on European industry, if any, will be limited. The same largely holds true for pork.

The Chairman: I am very conscious that our hour is up. We still have some more questions that we should like to ask you. How much longer can you be with us?

Mauro Petriccione: Another 15 minutes.

The Chairman: We will try to get through them; thank you very much indeed.

Q195 Baroness Bonham-Carter of Yarnbury: I want to ask you about GIs—geographical indications. We heard evidence that CETA had struck a very good deal on GIs. However, as you will know, Commissioner De Gucht judges that this is a potentially big stumbling block for TTIP. We have had news of a debate in the French Senate where, picking up on cheese, one of the senators said about TTIP, “We may be solving the champagne war, but it would not be responsible to start a camembert war”. Does CETA offer the EU a good deal on GIs? Do you agree with that? What were the key Canadian demands? Can a similar deal on GIs be negotiated in the TTIP?

Mauro Petriccione: It is a very good deal. We already have a wine agreement with Canada that grants protection to our geographical indicators in the area of wines and spirits. The WTO TRIPS agreement already provides for good protection for GIs. The wine agreement has implemented that and provided the practical means to achieve that protection. The same has not been true for other food products. The main achievement with Canada has been to extend the same protection that we enjoy for wines and spirits to other food products. We have a list of—I should know but I have forgotten—in the region of 160 or 170 names, the great majority of which will be fully protected with no conditions. The protection is enshrined in the agreement, so it is not dependent on changes by Canadian legislation. If Canada wishes to have national legislation to provide that kind of protection, it is free to do so. In that case, we will monitor it. However, the obligation to protect, the level of protection and what has to happen on the ground are enshrined in the agreement. That is a first for the EU. It is a much more solid level of protection than having to rely exclusively on domestic legislation in a country that is not entirely persuaded of the value of geographical indications.

We have found reasonable compromises, of different types, for about 15 or 20 controversial names. We had a handful of GIs where the problem was co-existence with existing trademarks in Canada. As a matter of fact, the existence of those trademarks prohibited European exports using the same name. The biggest example was Parma ham but other
Italian, Hungarian and French products were also involved. Now we have achieved co-existence and those four products can be lawfully exported to the Canadian market and will be protected against everybody except the holder of those prior trademarks. I think our exporters are extremely happy, because they reckon that their superior quality, with an appropriate media campaign, will enable them to capture the market, especially in Canada, where it is fractured across ethnic lines because of the large immigrant populations. They do not fear the competition from the trademark-holders.

In a number of cases, we have granted a transitional period for users of those names in Canada to phase out their production. The most difficult cases were products that the Canadians insisted until the last minute had become generic in Canada, and therefore were not deserving of protection under geographical indications, notably five cheeses: feta, three Italian cheeses and a French one. We achieved a compromise which leaves current users of the name in Canada—both users of the name in Canada and importers—free to continue to use it but no new uses will be allowed unless accompanied by terms such as “style”, “imitation”, “kind” et cetera. Again, it is a compromise. We fully protect these names in Europe against all users but we have to live with the fact that things have evolved differently in a number of countries, especially those with very strong European immigration, where people have brought their traditions, products and names. Many of the owners of these geographical indications in Europe are not necessarily happy; they will not enjoy exactly the same protection as they do in Europe. On the other hand, we have to recognise the sorrier reality.

Baroness Bonham-Carter of Yarnbury: There is already a taste for them, I suppose.

Mauro Petriccione: Absolutely. Canada did not have many demands in this field, except the basic one: go away and leave us in peace. We did not and, in the end, we persuaded them that this was an indispensable element. We will have similar issues in the United States. As a matter of fact, some of the problems in Canada come from US imports. Will the US wish to go as far as Canada? I am sorry, I simply will not speculate.

Baroness Bonham-Carter of Yarnbury: What about the issue of different states?

Mauro Petriccione: This is not a provincial competence in Canada; this is a federal competence.

Baroness Bonham-Carter of Yarnbury: No, I meant in the United States.

Mauro Petriccione: Likewise. I do not know what competence there is in the US to regulate this. I do not know whether it is a federal or a state competence. In Canada, I am sure that it was a federal competence. In fact, some provinces are introducing their own system of geographical indication modelled on ours.

Q196 Baroness Young of Hornsey: My question is about public procurement, which clearly has some issues in common with what we have just been discussing around GIs, notably the issue of state versus sub-federal regulation. With regard to public procurement, we have been told that in the CETA agreement there have been some notable developments. We are wondering exactly what was negotiated on public procurement. What were the challenges for the management at sub-federal levels of government and how were they addressed? Also, what lessons can be learnt for TTIP?

Mauro Petriccione: This was one of the conditions for us to have accepted at the beginning of these negotiations. We made it very clear to Canada that if it was not prepared to engage, one way or the other, on procurement—not only at the federal level but at the level of the provinces and municipalities, our economic interests in this negotiation would probably not pass the threshold required to obtain a mandate from the Council. The Canadian provinces collectively took a political decision early on—it must have been at the end of 2008 or the beginning of 2009—to issue a public reassurance that they would engage in this negotiation and make commitments. I have to say that they have participated fully in the negotiation.
They were present, they were consulted by the Canadian Government and we have obtained very satisfactory commitments at all levels of government.

On the question of the routes applicable to procurement, that has never been a huge problem. Canada, like us, in negotiation advocated more transparent rules and more detailed procedures, so it was reasonably easy to agree on a bilateral set of rules, which is WTO-plus. The question would be: what contracts would be open to foreign bidders? There we were basically able to offer the Canadian participants an internal market if they would match it. As it happened, the commitment we obtained from Canada—between the federal Government, the provinces and the large municipalities—is, we reckon, between 70% and 80% of the Canadian procurement market. This is very speculative, because nobody has any precise figures on this market. So we then scaled down our offer to match, in agreement with Canada. In addition, once Canada had taken that step, it agreed to something that was not in the negotiating mandate—to adopt the same kind of tender database that we have developed in Europe to give access to tenders across the European Union. The Canadians are now developing the same database using software that we have supplied, and this will be interconnected with the European database. So not only do we have very solid legal commitments, we also have a very practical means, which we have tried and tested in Europe, to make it accessible to people who live and operate thousands of kilometres away.

In the end, this was a very difficult discussion but it ended up having one of the more satisfactory outcomes.

We are also extremely interested in the US procurement market. In the US it is similar. The situation is the same everywhere; in every country, the responsibility for procurement is split between national, sub-national and local authorities. We are capable of offering access to all levels if our partners will do the same. Time will tell where we end up with the US.

Q197 Baroness Young of Hornsey: Do you think that the differences between the sub-federal level in the USA and that in Canada are too great to make a comparison in terms of what can be gained from TTIP?

Mauro Petriccione: The differences are not legal or administrative. If you look at European countries, even those without a federal structure have local autonomies in procurement. The money is spent by the authorities who have the power to do so, whether they are national or at a local level. So that is not a big difference. The big difference is whether a federal Government is capable of committing sub-federal levels of government with or without their consent. In both Canada and the US, we understand that the federal Government is not in a position to do so without the consent of the local authority.

In Canada that consent was given in advance, partly because the Canadian provinces realised that they were losing out. You have to recall that Canadian protectionism at the level of local procurement is a reaction to the United States. It is retaliation against the US. Throughout the negotiation, we had to be very careful that the commitment that Canada made could be strictly—in law and in fact—limited to European companies. Canada is certainly trying to obtain more now from the United States in the TTIP negotiations.

The Chairman: Mr Petriccione, thank you very much. We have exceeded our time and you have given us very full answers and a great deal to think about. If there is anything we need to follow up, perhaps we could write to you for further clarification. Thank you very much for the thoroughness with which you have answered our questions.

Mauro Petriccione: You are very welcome. I am happy to be of help.
Dr Lauge Poulsen, Research Fellow, Nuffield College, University of Oxford, and Senior Research Fellow at University of London, SOAS and Rt Hon. Lord Goldsmith QC—Oral Evidence (QQ 208-223)

Transcript to be found under Rt Hon. Lord Goldsmith QC
I would like to thank the Committee for the opportunity to offer written comments on the basis of the oral evidence I provided before the Committee on February 27th 2014. During the same session, Lord Goldsmith QC presented a number of justifications for including investor-state arbitration in the Transatlantic Trade and Partnership agreement (TTIP) based on his work in the arbitration industry. Let me use this opportunity to expand on a number of points that became subject to debate on that occasion.

For a more extensive discussion, I refer to the report I co-authored with Prof. Jason Yackee and Dr. Jonathan Bonnitcha for the Department of Business, Innovation, and Skills (BIS), in which we analyse the costs and benefits of investment protection provisions in the TTIP. Of course, neither my comments here nor our report should be taken as necessarily reflecting the opinion of BIS.

**JUSTIFICATIONS**

**Justification 1.** Past experience with British bilateral investment treaties imply that American investors are highly unlikely to bring investment claims against the British government. The Canadian experience with the North American Free Trade Agreement (NAFTA) is not relevant for the United Kingdom.

As mentioned during the session, the main reason the United Kingdom has not been subject to a considerable number of claims is because shifting British governments have refrained from signing investment treaties with large capital-exporting states.

To support the argument that the Canadian experience is irrelevant, Lord Goldsmith emphasized that the United Kingdom is a democracy with independent courts and strong legal protections for private property. Yet, all those characteristics naturally describe the country of Canada as well.

Pages 22 to 25 of the abovementioned report discuss the Canadian experience with investment claims filed by American investors, several of which were successful. It is recommended that the Committee carefully consider this experience, not least since there is significantly more American investment in the United Kingdom than in Canada.

**Justification 2.** British investors do not have sufficient protection in the United States.

To sustain this view, Lord Goldsmith referred to cases from his own practice, where governments had expropriated without providing compensation. This would be potentially useful evidence for the Committee, except for the fact that those cases did not involve the United States. The specific example mentioned by Lord Goldsmith was a case in the Latin American country of Belize.

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Pages 18 to 20 of the abovementioned report discuss the protection of foreign investment in the United States in more detail. As mentioned during the session, I am not aware of any evidence that British investors are systematically mistreated in the United States.

**Justification 3.** American courts cannot be trusted to adjudicate disputes with British investors.

With reference to the *Loewen* dispute, Lord Goldsmith questioned the ability of the American court system to offer foreign investors a fair hearing. As mentioned during the session, the Committee should note that the events surrounding that dispute led to reform of the local judicial system in Mississippi in 2004. In addition, the resulting investment arbitration may reflect part of the reason why the United States has never lost a NAFTA arbitration or any other investment treaty dispute. After the case, one of the arbitrators went on record stating that he had met with US Department of Justice officials before the claim. They told him: ‘You know, judge, if we lose this case we could lose NAFTA’; to which he replied: ‘Well, if you want to put pressure on me, then that does it.’\(^91\) Loewen lost the claim on a technicality. This should be kept in mind when the Committee heard evidence from Lord Goldsmith referring to investor-state arbitration procedures as inherently objective and independent from government pressure.

The more important point, however, is that there is no evidence that the *Loewen* dispute is reflective of the general experience of foreign investors in American courts. On the contrary. With hundreds of disputes before United States courts involving foreign citizens and companies every year, the Committee should be careful not to base their judgments about the United States court system on a single anecdote. Proponents of investor-state arbitration go to great lengths to stress that claims, where arbitrators have been overly adventurous or pre-disposed to a certain conclusion – as with Mikva in the *Loewen* case itself - should not be taken as reflective of the regime as a whole. It would be prudent for the Committee to be equally suspicious of unrepresentative and anecdotal evidence presented before it, when considering the functioning of domestic courts in the United States.

**Justification 4.** There is no risk that investor-state arbitration in the TTIP will cause the British government to refrain from taking regulatory or other measures it finds to be in the public interest.

This, too, is questionable as there is indeed suggestive evidence that investment arbitration has made developed countries roll back existing measures on several occasions, or refrained from initiating policies in the first place. Let me mention three examples.

Lord Goldsmith himself highlighted the *Phillip Morris* dispute under the Hong Kong-Australia investment treaty, which has made the New Zealand government postpone plain packaging regulation.\(^92\) Note in this regard that the same day of the evidence session, it was reported

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that British American Tobacco is considering legal action against the United Kingdom government over proposals to enforce plain packaging regulation.93

Secondly, in the first Vattenfall claim against Germany the resulting settlement allowed the investor to proceed with operating a coal-fired power plant based on less stringent environmental requirements than initially intended by German authorities.94 Third, in the well-known Ethyl claim against Canada, the dispute was settled with the investor. Apart from paying approximately $16 million in damages, the Canadian government subsequently withdrew the environmental measure that had been targeted in the dispute.

Although one should not exaggerate the risk of ‘regulatory chill’ as a result of investment arbitration, there is again little reason to expect that the British government should be insulated from similar events as those experienced in countries such as Australia, Germany, and Canada.

Pages 37 to 41 of the abovementioned report discuss this issue in more detail.

**Justification 5. Without investment treaty protections, there will be less foreign investment into the United Kingdom.**

It was implied on several occasions by Lord Goldsmith that provisions on investor-state arbitration are ultimately intended to promote investment. The Committee should be aware that empirical evidence strongly suggests that investment treaties have little impact on where, and how much, investment is made abroad. There is no evidence to support the view that American investors invest less in the United Kingdom due to the absence of an investment treaty. Nor is there any reason to expect that to be the case.

Pages 13 to 18 of the abovementioned report discuss this in more detail.

Combined with the oral evidence presented at the session, I would suggest that Lord Goldsmith did not make a convincing case for including investor-state arbitration provisions in a trade agreement between the European Union and the United States.

**POLICY OPTIONS REGARDING DISPUTE SETTLEMENT**

Let me now turn to policy recommendations the Committee could consider making to the British government. Based on his justifications for investor-state arbitration, the preferred option by Lord Goldsmith was to use the Canada-EU Trade Agreement (CETA) as the starting point for the TTIP and make clear that the National Health Services is ‘carved out’ from the agreement. I agree with Lord Goldsmith that carefully tailoring and restricting the substantive standards on investment protection is important, as indeed the European Commission aims to do.

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Carving out key areas of public policy, such as health or environment, can also be prudent. But simply exempting the NHS from the investment chapter is an ad-hoc solution to a more general concern with a treaty intended to be in effect for decades. A few years from now, concerns may relate to other sensitive areas of public regulation, the development of the British shale gas industry, foreign investment in the education sector, etcetera. Instead of picking individual areas to carve out from an agreement based on the political concerns of the day, it is preferable to target the underlying treaty design.

As the evidence session mainly concerned investment arbitration as a process, let me focus on provisions on dispute resolution. Four options are proposed below, one of which is to simply exclude an investment protection chapter. Of the two options that include recourse to investor-state arbitration, the Committee would be well-advised to support suggestions made by the European Commission on transparency and a ‘loser pays principle’, for instance, as they address important concerns with the existing adjudication regime.

**Option 1. Include substantive investment protections backed up by state-to-state arbitration.**

Private investors do not have to consider public policy implications before filing claims against governments. As an example, the Hong Kong government can be assumed to have been less likely to file a politically sensitive claim against Australia’s tobacco regulation than Phillip Morris. Similarly, even when they do espouse claims on behalf of private companies, governments will be careful to avoid legal arguments inflating standards in ways that would contradict their own policy objectives. Investors have no such incentive under investment treaty arbitration.

Inter-state dispute settlement is the only option in the international trade regime. If American exporters are concerned about trade regulations in Britain, they must ask the United States government to file a claim on their behalf under the World Trade Organization (WTO). The same principle could govern investment protection in TTIP, as indeed it does in the Australia-US Free Trade Agreement where investment disputes must be settled through state-to-state arbitration.

**Option 2. Include investor-state arbitration but allow the home state to block disputes.**

Based on similar reasoning as above, another option is to allow the home state of the investor (e.g. the United States) to screen claims before they are filed. This, too, is not a radical option. It is used for expropriation disputes relating to taxation measures under NAFTA for instance. Here, a dispute cannot be filed if competent authorities in both home and host states agree that the measure does not constitute an expropriation.95

If this option is chosen, the American government would have to agree before disputes can be brought against the United Kingdom. This will reduce the risk of particularly controversial disputes over sensitive areas of public policy, such as claims regarding health or environmental regulation previously faced by other developed countries.

**Option 3. Include investor-state arbitration but require the exhaustion of local remedies.**

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95 NAFTA Art. 2103
It is not clear why British courts should not be allowed to hear claims by American investors, and vice versa. Much of Lord Goldsmith’s evidence in favor of investor-state arbitration was based on the assumption that there are no reasonable local remedies available to the investor. As outlined above, this is not the case in the United States or in the majority, if not all, EU member states.

It is a generally recognized principle under international law that domestic courts should have the opportunity to prevent, or putting right, breaches of international law before a claim is filed to international courts or tribunals. The European Convention of Human Rights, which also includes protections against uncompensated expropriation, requires exhaustion of local remedies for this reason.96

In case this option is chosen, the European Commission should impress upon the United States that the TTIP should be followed up with implementing legislation by the United States’ Congress so as to allow American courts to uphold protections in a treaty that under United States law may not be considered self-executing.

**Option 4. Exclude substantive investment protections.**

The economic benefits of a transatlantic free trade agreement could be considerable for the British economy, but none of those benefits are likely to accrue from the investment protection chapter. Excluding such a chapter may thereby be politically prudent, as it prevents further opposition to the TTIP based on a set of rules, which are not necessary to protect American investment in Europe or European investment in the United States. The Committee should recall that many Free Trade Agreements refrain from including chapters on investment protection altogether – including those entered into by the European Union in the past – and UK-US investment relations have thrived since the end of 2nd World War without an investment protection treaty in place.

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96 Although difficult to reconcile with his strong opposition to having foreign investors go through domestic courts before filing international claims, it is worth recalling that Lord Goldsmith initially highlighted the Convention as a useful instrument for the protection of foreign investment in the United Kingdom.
The Chairman: Thank you very much for coming. I think you know the purpose of our meeting. We are the EU External Affairs Sub-Committee of the House of Lords. We are preparing a report on the TTIP negotiations. We are here in Brussels to speak to a number of member states. We have spoken to the Germans and the French, and now you. We have also spoken to the Americans and to the Chinese. We have sent you a number of questions, which we will ask you in not necessarily the same order.

If I could begin with a very general question: the European Commission and the United Kingdom Government have both done studies about the prospective impact of this agreement on the EU and on the UK, and the French have done the same. I imagine the Czech Government has also done this. I wondered which sectors you hope to gain most from and which sectors seem to you to create the most difficulties for your country.

Jan Procházka: At the very beginning, I appreciate this opportunity. It is very nice to see that the Parliament is doing substance and is interested in substance of trade policy. On your question, we have not conducted a study. We usually conduct a study when the negotiations are finished, before we sign the Agreement. That is the normal practice, as we do impact assessment studies. Nevertheless, there was some analysis published by the NGOs in the Czech Republic. Not all of them were comprehensive, but all of them showed that the impact of TTIP would be positive for the Czech Republic. At the Government level,
the Ministry of Industry and Trade, which is responsible for TTIP negotiations, formed a so-called expert team, where they invite all the ministries that are involved, but also all the stakeholders, chambers and all the other stakeholders that would have any idea about TTIP, and they meet regularly. This is the way how to get information from industry and the other involved ministries.

From all of this, I can tell you that we expect the priority for TTIP to be among others the elimination of tariff peaks. We know that generally tariffs are quite low, but there are some quite important tariff peaks. Secondly there is the elimination of non-tariff barriers, especially by addressing them in the form of mutual recognition, especially in areas such as the automobile sector or medical appliances. The opening of public procurement in the US market is also very important, and finally the liberalisation of trade and services.

**Q74 The Chairman:** That is a very clear statement. Are there any aspects in the EU/Canada trade agreement that seem to you to serve as useful precedents in this area?

**Jan Procházka:** You probably know that we have just finished the negotiation on CETA and we received the details of the agreement just a week ago, so we are still studying that. I can tell you that we see the agreement not just with CETA but also with Korea as a useful precedent in scope for the way that trade barriers are removed. Both agreements, CETA and the FTA with Korea, address non-tariff barriers, with specific focus on automotive, pharmaceutical and medical appliances. They have specialised annexes in the agreements that tackle NTBs in specific sectors. We believe this is a very useful precedent for TTIP.

**Q75 Baroness Quin:** I wanted to ask about agriculture, which is a tricky subject in the negotiations. Are there specific agricultural issues that the Czech Republic is concerned about for creating possible difficulties? Are there, on the other hand, some specific agricultural sectors where you see some clear advantages to trying to seek agreement with the US on specific aspects?

**Jan Procházka:** To be honest, usually agriculture is not the most important area we look for in the FTA. We are most interested in industrial goods, but indeed we have an interest in agriculture. For us, the most important part is to discuss and find a solution to longstanding SPS issues, which everyone expects to be probably the most difficult part of the negotiations. We indeed insist upon keeping EU food safety untouched. We are in line with the position on the prohibition of a market for hormone beef or chemically treated meat in the EU.

On the specific agriculture products in which we would be interested, they would definitely be dairy products, processed agriculture products like confectionery, food and cereal preparations and indeed the protection of GIs. We have some Czech GIs that we would like to be protected—for example, Czech beers like Budweiser. I know it will be very difficult in the US, but we have some others like cheese or hops, so this is also our interest in agriculture.

**Q76 Lord Maclennan of Rogart:** Are you comfortable that the Commission is aware of the issues that you are concerned about and the issues that you are positive and hopeful about? Do you have any sense, in these negotiations, that you are allied with other countries?

**Jan Procházka:** The Commission is usually very well aware of all member states’ interests, because we have so many opportunities to discuss them. We have regular meetings within the TPC, before each round and after each round. We have expert meetings. To be honest, the interests of member states are usually revealed in all the negotiations. They are very close in all the negotiations. In general, the Commission knows very well what our interests are and, indeed, it is our role to give them our offensive and defensive interests. We normally, at the beginning of each negotiation, send to the Commission the list of offensive and defensive interests. During the negotiations, before and after each round, we give them
our insight into what has been reached. They are well informed about our interests. On allies, it is clear that the Czech Republic belongs to like-minded countries in the trade area, together with the UK and some others. It is not a secret that we have regular meetings with like-minded countries, and we very much appreciate the co-operation we have. In trade, we need allies and our interests are very close. We use that to full potential.

Baroness Quin: I was just wondering whether, because I know there have been recent political changes in the Czech Republic, there are differences between the parties on these issues or if there is likely to be continued support for the process, despite the recent changes.

Jan Procházka: This is a very tricky question. You are probably informed that we are just a week after the elections and, unfortunately, the situation with the Government is very unclear, to be honest. There is no new Government at the moment and my expectation is that it will take some weeks or months to get a Government. I can tell you, right now, that they are mostly interested in internal politics and not about the EU and world issues. From my previous knowledge, I guess that all our political parties very much support the negotiation with the US on TTIP. When there was a discussion in Parliament, full support for the negotiations was across the parties.

Q77 Lord Lamont of Lerwick: There has been very little mention in the sessions we have had so far of small businesses, but I understand there has been a suggestion there should be an SME chapter in the negotiations. Do you think that is a good idea and what sorts of things do you think it might deal with?

Jan Procházka: Generally, it is a very good idea and it would be good to have in all the negotiations, because multinationals usually have enough resources to penetrate a market and to open new markets. I can just give you a small example. For example, lobbying in Brussels, we have discussed with one of the FMCG companies here in Brussels and they told us that they have 40 people, just in their Brussels office. If you compare to the small member states Permanent representation, it is more like the same. To have special treatment for SMEs is therefore crucial.

Lord Lamont of Lerwick: What could it be? How can you improve market access in both directions for small businesses? Some small businesses do, but you have to be a very enterprising small businessman to go from London to Kentucky or from Kentucky to London.

Jan Procházka: Yes, you are absolutely right. I know it is not an easy business, but I guess we should try to do something. I do not have anything specific in mind at the moment, but it would be very helpful to show them that, even for small businesses, TTIP brings some new opportunities. As I said, in the team for TTIP, we also have the association that gathers SMEs, so they brought some ideas and interest. For example, they called for the elimination of tariffs again and the NTBs, and recognition of international standards and certificates, and also public procurement. It is not an easy business because, if you have five employees, you do not have a lot of money to waste just to go to some trade fair in the US and try to find an opportunity there.

Q78 Earl of Sandwich: I am sorry you do not have a Government, but do not be depressed, because the Germans have not formed a Government yet and other people have had trouble. If we go back to the automotive sector, you have mentioned it twice, so I think there is a keenness. You do not have to wait for politicians; you can carry on talking to the industry. It is a well established industry in the Czech Republic; what are they saying? Are they saying, “We are already on good terms with our American importers”? What is the climate for them? Are they keen?

Jan Procházka: You can imagine that we have regular contact with our automobile industry, on the national but also the European role, because ACEA, the European automotive
association, is very active in Brussels and because the former General Secretary of ACEA was Czech by nationality. We have regular contact with ACEA. Just tomorrow there will be another meeting, when ACEA will call the trade counsellors to discuss issues on TTIP, implementation of the South Korea FTA and Japan FTA. Honestly for TTIP, I think most of the industry is very satisfied. They fully support it, which is not always the case. For example, in the case of Japan, they were very reluctant and very against. On TTIP, they very much support the negotiations.

Q79 The Chairman: You convey the message that the Czech Republic is in favour of this and hopes that it will succeed, which is very welcome, but I imagine that you have some red lines, some defensive interests. Could you say a little bit about where they are and to what extent they coincide with those of other member states?

Jan Procházka: I have mentioned some of them when we discussed agriculture, but it is difficult to say in general. We are very liberal in trade policy, so we are usually not the member states that first call for awareness when we discuss red lines. Usually, other member states will secure our red lines, because they have much stricter red lines than we have. Yes, we indeed have some red lines in agriculture. I expect that there will be some red lines on services and investment. I can also imagine that we would have a red line on the Investment Canada Act, which we would like to be withdrawn. That would be it in general. I think we will discuss investment later, so I will not do it now, but we would be very interested in having the investment agreement included in TTIP. Those would be some of the red lines. I understand they are quite general but, as we are not discussing the specific texts now, it is difficult to say right now.

The Chairman: Would you like to see financial services included in the agreement?

Jan Procházka: Financial services are not a major interest of the Czech Republic, I have to say, but nevertheless we support the inclusion of financial services in the agreement. It is not the top priority for us, but we assume that the creation of a common EU/US regulatory framework will reinforce global stability and have a positive influence on mutual trade relations. We know that financial services is one of the sectors where expectations are high, because there will be a big benefit. According to studies we have, just the current customer equivalent is around 32% in financial services and 19% in insurance services so, indeed, if there was an agreement it would help significantly, but this is not a top priority for us.

Q80 Lord Maclellan of Rogart: This, we have been advised, is the biggest trade negotiation ever and the complexity of the issues is very great. If it cannot complete the agenda in the time that has been set out, would you be willing to see some agreements and then have a continuing process, a sort of living negotiation, or do you think that the political consequences of not getting enough done in a short time would lead to a break? Secondly, do you see this as a template for other trade negotiations, particularly with China?

Jan Procházka: Your first question is difficult to reply to, because it depends what the partial agreement would cover. We always try to have a comprehensive agreement as much as possible. You know that there were some studies before we went to TTIP if there would be a possibility, for example, of going just for a tariff elimination agreement, which is not what we want. If there was a broader agreement, which would not cover one particular issue, like investment or some others, then we would probably be willing to go this way, but not if there was only agreement on tariffs, let us say.

On the second, agreement with China and other economies, you know that the European trade negotiation agenda is very ambitious at the moment. I have just witnessed this personally because, when I arrived in Brussels five years ago, there were very few negotiations. Most of the focus was on the multilateral agenda and now we have much more on the bilateral agenda. With China, indeed we support the situation, finding a positive agenda and not just always discussing trade irritants like solar panels, anti-dumping on wine
or some others. Indeed it would be better to have a positive agenda. We do not see room for FTA negotiations at the moment. We know that China is interested, which they have said quite clearly, but we believe we should first start with the investment agreement negotiations, which would now be launched at the summit. In the longer perspective, we would be willing to conduct the feasibility studies, but not at the moment.

**Q81 Earl of Sandwich:** Can I take you back home to the supermarket in Prague? Imagine you were a consumer thinking about this trade agreement with the US. What is going to be the impact on them of environment and labour standards, for instance? Is there going to be a reaction or is there not enough awareness of the treaty? I am thinking about agricultural products, GMs and issues that are coming up.

*Jan Procházka:* To be very frank, I do not think that local people shopping in supermarkets would be well informed about the TTIP negotiations. They would look for some benefits from them. I do not think they are well informed. It is not an easy task, but in some of the issues that are well discussed within politics and within the press, for example GMO or hormone-treated meat, people are interested. In the Czech Republic, still a lot of people are only concerned about price. Usually all the information is written in very small letters somewhere on the back side of the product. Until we change this practice, most customers in Czech supermarkets will only care about price. Indeed, there are now a lot of campaigns about eating Czech food, after a lot of problems with imported food from some of neighbouring countries I do not think that people would distinguish very much between US and Canadian beef.

*Earl of Sandwich:* What about the media? Is there going to be discussion in the media? What about consumer magazines?

*Jan Procházka:* Not much. The media is now fully occupied by local politics and, unfortunately, they do not really inform about EU affairs, to be honest. Just one example, when we have the trade council here in Brussels or in Luxembourg, usually not one single Czech media is interested in what we discuss there. Also, Czech politicians mainly discuss internal home issues, not the EU issues. I think we are missing some kind of discussion with the public but, if you really think for example about specialised magazines on food, there could be some insights on whether to use US beef or not, but it is not a general discussion.

**Q82 Baroness Quin:** I have two not very related questions. The first one is: is there a debate about GMOs in the Czech Republic, or does the Czech Republic largely accept the majority view in the European Union about GMOs? My second question is on something completely different, data protection issues. Is there concern in the Czech Republic about those? There has been such a lot of publicity about spying, mobile phone hacking and so forth. They are two rather different issues, but I would be interested in your take on them.

*Jan Procházka:* On spying, we are not among the member states that were very vocal on that. We always try to keep the trade and political agenda separate but, indeed, it is difficult, because we had a lot of difficulties with the leaks when we negotiated the Canada agreement and also with the US. I understand that it is very difficult to negotiate if all your negotiations are publicly available. It is difficult to negotiate, and we had a discussion at the last Foreign Affairs Council on whether to make public the negotiation directive. Even though we are not very vocal at the political level, it is indeed important to somehow find a way of addressing this issue with the US, otherwise we would not be sure that they have all our red lines before the meeting. It is important, but we are not among the member states that are calling for some strict measures or postponement of the negotiations. We believe these negotiations are very important for both sides and we cannot afford to postpone them. On GMOs, again I would not say that the discussion is very vocal, but it is indeed a very sensitive issue. I would not say that it is as sensitive as in Poland or France but, yes, it is important. As I said, it is one of the red lines we will keep.
**Q83 The Chairman:** Earlier, you mentioned the investment chapter. There is not a great deal of investment between the Czech Republic and the United States or the other way about, and most of the investment in your country is within EU countries, but what significance do you attach to the inclusion of this chapter and do you have a concern about the investor-state dispute settlement mechanism in this chapter?

**Jan Procházka:** As I said, this could be one of our priorities for TTIP. We believe that we need an investment chapter in TTIP, at least for three reasons. The first is that we always look for a comprehensive list. From the very beginning, once we had the name of TTIP, including investment, we can hardly avoid having an investment partnership. That is the first reason. Secondly, we believe that TTIP should serve as the model agreement for others, for the negotiations with some other big emerging economies. We believe that, if you want a model agreement, it would have investment in it. Finally, it is also important because currently we have a bilateral agreement with the US on investment, and it is quite outdated, so we believe this could be a good opportunity to update it and put it into the partnership. We believe it would be a good idea to have it in.

On investor-state dispute settlement, this is a fundamental component of investment protection in all agreements, but it has to be well crafted and adjusted to the partner. We know that, with the US, as the EU we did not have a lot of difficulties so, indeed, it has to be adjusted to that case. We know that the US and EU both have a well functioning domestic juridical system, so ISDS should not be drafted in a way that would allow investors to circumvent available domestic remedies. Indeed, we want the investment chapters to provide member states with safeguards against frivolous claims, of which we have quite a big experience in the Czech Republic.

**Q84 Lord Maclennan of Rogart:** I wondered if I might revert to our earlier discussion. I seemed to understand you to say that the Czech Republic largely relied on the European Commission’s analysis of the benefits that would flow to the Czech Republic, and then you went on to say that there was very little coverage of all this in the media and little public awareness. Is it too late for the Czech Government to do some of its own research and come up with indications of the potential benefits of these negotiations, which might enhance the communication with the public? The second question you have answered to some extent already but, because of the complexity of these issues, there is not going to be a lot of time and it does seem that we need to have some momentum if these things are going to be carried forward. If the Czech Republic is relying on the Commission and other countries, perhaps it will not be able to inject its own momentum into it.

**Jan Procházka:** To be well understood, I do not believe that by not conducting the impact assessment study we would not have enough interest in the negotiations or we would not identify enough interest in the negotiations. We have not conducted a study; that is right. I have mentioned that some of the NGOs did, but our established practice is to do it after the negotiations. What we did and what we are currently doing is that we have set up a special expert team around the ministry, which involves all the stakeholders—for example the car association, the textiles association, the chamber of commerce, et cetera. They identify their interests; the ministries identify their interest and we input that in our negotiations with the Commission. We also send their interests to the Commission. I do not think that we are lacking the identification of our offensive and defensive interests in the negotiations. What I mentioned is that not just the Government but also the NGOs did quite a lot of seminars. For example, three weeks ago, there was a conference in Prague, on TTIP, where Commissioner De Gucht was present and some other distinguished guests. What I was saying is more, that the local press is not really interested and local people are really not interested, because they do not see a real benefit. You can imagine that local people are interested in benefits that come quickly and directly, which is not usually the case for trade
negotiations. It could be that, after four years, they will buy cheaper tobacco. That may be, but I do not think that they will know that that is because of TTIP.

Baroness Quin: I am sure that is true of our own population as well, by and large.

The Chairman: Thank you very much for your frankness and thank you for coming here and explaining the Czech position so clearly. Thank you very much.

Jan Procházka: Thank you very much.
Producers Alliance for Cinema and Television (Pact) – Written evidence

Executive Summary

1. Pact welcomes the opportunity to put forward a submission to the Lords EU Committee (Sub-Committee on External Affairs) inquiry on the Transatlantic Trade and Investment Partnership (TTIP). The US is the most important and largest market for the UK TV and film sector.

2. Overall, Pact is supportive of the negotiations to finalise an EU-US trade agreement and supports the overall objective to agree policies and measures to increase US-EU trade and investment in order to promote job creation and economic growth.

3. However, an initial exemption for the audio visual sector has been agreed in the negotiating mandate and it is important that this is maintained as negotiations progress. Pact urges the UK Government to protect this exemption during negotiations.

4. The regulatory framework in the UK and EU in the future should be one that allows the TV and film sector to grow and thrive and maintain its cultural diversity whilst responding to developments in the digital market.

5. Pact attaches importance to effective EU agreements with third countries, like the EU-US free trade agreement in the future but to bilateral agreements also, such as the current co-production treaty between the UK and Brazil. There is further scope to agree similar bilateral agreements and more formal co-production treaties in the future.

Introduction

1) Pact is the trade association that represents the commercial interests of the independent television, film and digital media production sector in the UK. The sector produces and distributes approximately half of all new UK television programmes as well as content in digital media and feature film.

2) Pact works on behalf of its members to ensure the best legal, regulatory and economic environment for growth in the sector.

97 Ofcom, Communications Market Report 2010: independents produced more than 50% of qualifying network programming by hours and 46% by value
3) The UK independent television sector is one of the biggest in the world with revenues of nearly £2.8 billion in 2012.98

4) The British independent TV production sector is extremely successful internationally. The UK is the second largest exporter of TV content in the world (after the USA)99 and at £838m in 2012, international revenues now account for 30% of total sector revenues in independent TV production.100

5) For a further year, the USA remained the UK’s largest export market with sales up +11% to £475m in 2012. Exports to the USA contributed the greatest actual increase. North America represented 45% of total export revenue in 2012, with Europe contributing 27% and Rest of World contributing 28%101.

6) It is important that the EU-US trade agreement retains the audiovisual exception in the negotiating mandate. Pact argues that this is necessary for the continuing growth and success of the sector.

7) As well as submitting this response on behalf of our members, Pact has contributed to the work of the British Screen Advisory Council (BSAC) in this area.

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House of Lords EU Committee (sub-Committee on External Affairs)
Transatlantic Trade and Investment Partnership (TTIP) - Call for evidence

Overall approach

1.1 On the whole, Pact is supportive of the EU-US trade agreement negotiations and supports the overall objective of the original EU-US High Level Working Group on Jobs and Growth to identify ‘policies and measures to increase US-EU trade and investment to support mutually beneficial job creation, economic growth, and international competitiveness’.

1.2 The US is the UK’s largest export market for the TV sector, with sales up +11% to £475m from 2011102. It is important for the UK’s independent TV and film sector that the EU-US negotiations support and develop this relationship rather than hinder any future growth.

1.3 In addition to the US market, the EU-US agreement should not reduce the UK’s access to the European markets in any way either. Whilst North America represents

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98 Pact Census Independent Production Sector Financial Census and Survey 2013, by Oliver & Ohlbaum Associates Limited, July 2013
99 Mediametrie Television Year in the World 2013
100 Pact Census 2013
101 Pact & UKTI UK Television Exports Survey 2012
102 Pact & UKTI UK Television Exports Survey 2012
45% of total export revenue in 2012, Europe contributes 27% (and the Rest of World 28%). After the US, the EU is one of the most open and free major global markets for the UK, for feature films in particular.

1.4 Pact supports the move that the audiovisual sector has been excluded from the EU-US negotiating mandate. This is an important exception which should be protected as the negotiations progress.

1.5 The EU-US agreement also has important implications and potential knock on effects to other agreements; both bilateral agreements between the UK and other countries (e.g. UK and Brazil) and the pending trade agreement between the EU and China. The shape of the EU-US deal will have an impact on how the EU/China deal will eventually look and negotiations on this deal are due to start in 2013.

Importance of supporting the future growth of the UK TV and film sector

2.1 The UK’s creative and digital sectors (including audio visual) make a substantial contribution to GVA in the UK and it is important that we protect and maintain this success. The UK is second only to the US in terms of creative industry exports, and is significantly ahead of other European countries in this regard.

2.2 The UK TV sector in particular has been enjoying high growth rates recently with international revenues now accounting for 30% of total sector revenues in independent TV production. The success of the British audio visual sector is due to the sale of films and finished TV programmes but also to the sale of TV formats globally. In some areas, such as TV formats, the UK even outperforms the US. Protecting this success is important to future economic growth in the UK.

The TTIP

1. What are likely to be the most challenging chapters of the TTIP and why? What is the minimum level of ambition necessary in each chapter? How can the ambition of each chapter be maximised?
2. Is the time-frame of completing negotiations within two years realistic? If not, when is it realistic to expect a deal to be agreed, and what can be expected to be achieved in the next two years?
3. How should the Commission most effectively conduct the negotiations in terms of ensuring appropriate transparency and communication, as well as full consultation with stakeholders, NGOs and EU Member States?
4. How will TTIP negotiations be affected by relations with third countries, such as China, and also developing countries, including in relation to existing and pending bilateral trade agreements? How do you anticipate the TTIP interacting with the Trans Pacific Partnership and NAFTA, for example?
5. What is the potential impact of TTIP on consumers, whether in the UK, EU or US?

Key points in response

3.1 In terms of the individual aspects of the TTIP, the initial exception for the audio visual sector agreed in the negotiating mandate should be retained. Pact is aware that this issue
could be revisited during the negotiations given that the US view is that no area should be excluded from the talks. The French still hold a veto on the negotiating mandate however and could apply this veto again should the need arise.

3.2 If the exemption for audio visual is not protected then this may act as a challenge to the BBC licence fee. The licence fee is worth £3 billion a year and is an important investment in both the UK economy and in UK intellectual property which is exported around the globe and to the US as the UK’s biggest market. The essential tax credits for film, high end TV and animation should be retained in the UK also. These are important subsidies and tax incentives that will reap important rewards and promote innovation within the industry.

3.3 The reasons to retain the audio-visual exemption have been articulated by BSAC (British Screen Advisory Council). The obvious issue is that US companies benefit from a much larger domestic market than in the UK (it is five times larger, in terms of population) which enables them to achieve the necessary economies of scale in their home market and use their scale to export their content successfully around the world. Many forms of visual content have high set up costs, particularly with new trends towards CGI and 3D meaning that with such high fixed costs, companies need to be able to exploit economies of scale.

3.4 Pact would also reiterate comments made by BSAC in the same paper around the risk to cultural and linguistic diversity. With the growth of internet delivered services such as Netflix and digital platforms, arguably consumers have more choice and flexibility than ever before. There are risks that the digital distribution of audio visual content is dominated by large global non-European players who have in the past not shown any appetite for investing in new European content. This poses a problem for the protection of national and European cultural identity meaning that policies in this area are still important.

3.5 From Pact’s point of view, there could be important repercussions for the trade agreements that the UK holds bilaterally (e.g. a successful bilateral agreement with Brazil and a recent agreement between the UK and Moroccan film industry) and around the impact of the EU China trade agreement, negotiations for which will start in 2013. Any model agreed between the US and EU could have implications for the content of the EU China agreement.

3.6 In terms of Brazil, a co-operation agreement signed by Pact with the Brazilian government agency for audiovisual works, Ancine; the Brazilian organisation for independent producers, ABPITV; and the British Council in March 2012, has facilitated access for British producers to the Brazilian television market. Given the rate of growth in this important market (up +21% in sales over the last year) agreements such as this have great value to the UK economy.

3.7 However, a formal co-production treaty between the British and Brazilian Governments is needed in order to enable British producers to access the benefits of operating in the Brazilian market, including access to public funding for television production. This would bring significant economic benefits to the UK independent production sector.

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103 UK Position on EU/US Free Trade Agreement: Request for information from DCMS. Response from the British Screen Advisory Council (BSAC) 19 April 2013
104 http://www.ancine.gov.br
105 Pact UKTI UK Television Exports Survey 2012
Impact of the TTIP for the UK

6. What aspects of the negotiations will be of the greatest significance to the UK, including its component parts?

7. For UK consumers and business, where are the greatest gains to be made and where could they be disadvantaged? What are the most significant non-tariff barriers for British exporters and importers?

8. What are the political and practical challenges within the UK to an agreement?

9. How can the UK seek to maximise its influence at EU level as the TTIP negotiations progress?

10. What might be the potentially adverse effects for the UK of a failure of the TTIP negotiations?

Key points in response

4.1 If the EU/US agreement fails altogether then, in terms of the impact on independent TV and film, the UK would continue to exploit its existing links to the US as the biggest market and to Europe also.

4.2 In terms of barriers, BSAC sought legal advice on trade barriers in the US Audio visual market. Trade barriers can exist in a variety of forms e.g. tax incentives and production subsidies available only to domestic firms. The report concluded that although tax incentives and some funding subsidies exist in the US, the view was that they did not act as barriers to trade. This is reinforced by the fact that ITV, BBC Worldwide and several UK independent production companies have acquired or established production companies in the US.

4.3 The report concluded that only the restriction on foreign ownership of a US terrestrial TV broadcasting licence could be described as a true barrier. However, even if this barrier was removed, UK firms would find it extremely difficult to enter this market. Such licences are awarded on a localised, not a national basis.

4.4 We urge the UK Government to work with Pact, BSAC and other bodies in the creative sector to ensure that the negotiations are fully informed. Pact also works closely with its sister organisation for independent TV and film producers in Europe, CEPI.

4.5 We urge the Commission to take note of the analysis prepared by BSAC calling for a framework between the EU and US that allows UK and EU companies to continue to have the freedom to adapt their business models, compete in globalised markets and innovate with new forms of content and digital distribution.

The European Union and other Member States

11. How could the Commission seek to ensure that the interests of the Member States are represented, and that a satisfactory outcome with regard to Member States’ interests is secured?

106 Review of Trade Barriers in the US Audiovisual Market: Advice provided to BSAC by Reed Smith LLP (June 2013)

107 Future Proofing a Great British Success Story: The economics of the audio visual sector and the implications for the proposed EU-US free trade agreement, Prepared for BSAC by Inflection Point, 10 June 2013
12. What are likely to be the most significant potential gains and difficulties for other Member States? How do UK interests and those of the other Member States coincide or run counter to each other? What would you identify as areas of common European interest?

13. From the US perspective, what are likely to be the biggest political, institutional and practical challenges to a deal? How can they be overcome?

5.1 Finally, Pact would make the point that so far in negotiations the UK has been allied with other Member States in protecting the audio visual sector and united under the banner to protect cultural and linguistic diversity. The UK TV and film industry plays a strong role in exports but is significantly ahead of other European countries in terms of creative industry exports. It is important that this British success story is preserved into the future.

October 2013
Professor Jim Rollo, University of Sussex and Professor Simon Evenett, University of St Gallen—Oral Evidence (QQ 9-22)

Transcript to be found under Professor Simon Evenett
Reconciling the timetable and ambition of the TTIP negotiations

On the face of it TTIP is the most ambitious proposal for deep economic integration between large and similar sized developed countries ever tabled, outside of Europe. The target date of 2015 is also ambitious given the potential complexity of any agreement. The historical precedents are not propitious for a quick and comprehensive agreement.

Relevant examples of complexity and ambition are the making of what has become the European Union and the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) signed in 1983 after a short negotiation and implemented by 1990.

Lessons from the EU

THE ambitions of the EU are clearly greater than those of TTIP but two episodes in the history of European integration may be relevant in this context. First the EU customs union, the simplest leg of the integration process, took from 1962 to 1992 to be completed, delayed by politically sensitive national quotas on imports of clothing and textiles, Japanese cars and bananas. The single market initiative took almost a decade to reach its target date of 1992 but was far from complete when it got there. The completion of the single market was sold as an event but was and remains a process. It was none the less a credible process as the wave of FDI that accompanied, and preceded, it showed. That credibility rested on three legs, first strong political commitment from the member states buttressed by the charismatic leadership of Delors. Second was a very detailed legislative programme founded on the comprehensive and realistic white paper drafted by Lord Cockfield. Third there was a timetable culminating in 1992 that while stretching looked possible.

That seems to suggest that, even with strong political support, strong existing institutions designed to deliver integration and careful legislative programming, national and sectoral interests remain a formidable barrier to rapid progress. As things stand TTIP is stronger on political commitment than on either institutional infrastructure for economic integration or a detailed negotiating agenda. The expectation are plausibly that that it will take longer than planned to negotiate.

Lessons from the Australia New Zealand Closer Economic Relations Agreement

ANZCERTA also looks like a precedent for a quick ambitious agreement between countries that are broadly at equivalent levels of economic development. It was signed in 1983 after a short negotiation and implemented by 1990. It contained a wide ranging mutual recognition agreement but with significant exceptions notably services and aspects of food safety. However:

- There was an existing if incomplete FTA and thus an institutional basis in which on which to build
- Both partners were in the process of radical supply side reform which used trade liberalisation as a major force for change so the agreement had strong domestic drivers.
The disparity in economic size and the close and strong political links between the partners made agreement easier not least because bilateral trade was more important to New Zealand.

Despite these advantages it took till 1990 to agree to include services and till 1995 to reach a parallel agreement on food standards. Liberalisation on FDI has progressed in stages with the latest revision to the investment protocol to ANZCERTA being agreed in 2011.

Thirty years after the first stage agreement was signed, ANZCERTA remains the foundation of economic relations between the two countries and is the basis for the project to create a single market. There is a political and bureaucratic structure in support of the single market project including quarterly meetings of officials which aims to keep the integration process moving.

Again this seems to indicate that even where there is an existing agreement to build on, the political circumstances are auspicious and there are only two partner’s progress can be slower in areas where regulation is dense.

**Conclusions**

TTIP promises much but is not in such a good starting position as either the 1992 process in the EU or the ANZCERTA negotiations and has a much tighter timetable than the EU and a potentially larger and more complex agenda than the original ANZCERTA negotiations.

The experience above points to designing TTIP explicitly as a process to deliver what might be considered relatively low hanging fruit early but setting a credible forward agenda with ambitious but not impossible timetables and setting up sectoral negotiating processes to carry TTIP forward. In terms of sequencing liberalisation of tariffs and quotas look to be generally easier to agree although there are some difficult corners to negotiate notably on agriculture. Automobiles, both on tariff abolition and standards convergence also seem easier ground. Evidence to the Committee will no doubt suggest other sectors/topics for early progress and others that may take longer to deal with.

There are potentially big prizes from TTIP. The fear must be that in trying to cover too much too soon it ends in failure. This is not a counsel of despair but rather a plea to add careful and credible planning of integration to strong political will. That was the formula the negotiators of the Single Market initiative and Australian and New Zealand economic integration applied so successfully. We should not be afraid to learn from them. The Committee is in a good position to help that learning process.

*November 2013*
The Chairman: Gentlemen, thank you very much. You have had the benefit of hearing at least some of the evidence that went before, and I know that one of you was here earlier, but I had better just repeat the mantra that this is a formal session of the Committee. It is one of our evidence sessions on the Transatlantic Trade and Investment Partnership. We are nearing the end of our inquiry and have received responses on this not so much during the evidence sessions but from people who have written into us. Questions have arisen about ISDS and it seems to be an issue that we ought to take a look at before concluding the inquiry. This morning’s efforts are really designed to do that. So we will continue straight on where we left off. You are both welcome to respond to questions, but if one of you has responded and the other agrees, the other should certainly not feel under obligation to repeat what has gone before. I do not want to inhibit either of you.
Owen Tudor: I should say in advance, Lord Chairman, that you will probably find less of the entertaining disagreement. I am particularly concerned that Lord Foulkes will not be getting his money’s worth out of the next hour’s session in terms of conflict.

The Chairman: I think that we have one member of the GMB on this side of the table.

Lord Radice: Could I declare my interest as a member of the GMB?

Lord Foulkes of Cumnock: I, too, am a member.

Bert Schouwenburg: I will look forward to nice easy questions from you two gentlemen.

Owen Tudor: And if anyone else wants to join up during the meeting or afterwards, we will be happy to do it.

Q225 The Chairman: In your interesting written evidence, you outline the possible dangers of including an ISDS mechanism in the TTIP. Can you elaborate on that and set out the risks in more detail as well as saying whether you agree with the European Commission that there are steps that can be taken to mitigate these risks and to redress perceived deficiencies in past provisions? Perhaps you could talk around those issues.

Bert Schouwenburg: As you will have seen from our written evidence, EU member states have not been immune from the effects of ISDS. Indeed, we put in our evidence that the Czech Republic is the fifth most sued country in the world. However, as far as we are concerned, there are no additional measures that could alleviate what we consider a particular problem. We have a fundamental difference of agreement here with the proponents of ISDS. As we heard in evidence earlier this morning, we do not agree that corporations should have the right to overturn the decisions of Governments of whatever stripe. Neither do we believe that that would necessarily put off investors in other countries, because they are more than capable of putting a premium on their investments to cover them. There are numerous examples of companies that have invested in areas that would not normally be considered as safe as western Europe or the United States. We also think that there is a difference between the aims of Governments around the world of whatever stripe and the aims of multinational and transnational capital. Governments ostensibly are there for the interests and well-being of their people, whereas corporations and joint stock companies exist for only one purpose—to make money. We see a fundamental conflict between those two aims and therefore we have never agreed with ISDS in any free trade agreements, whether or not they include the European Union, and we see no reason to change our mind in the case of the United States.

Owen Tudor: I agree with what Bert has said, but I refer to the concern that we have about the impact on democratic decision-making. In part, Lord Goldsmith was arguing earlier that this dealt with arbitrary use of state power, but our concern is that actually the way in which ISDS investment chapters exist in free trade agreements is a broad-brush exercise to restrain the democratic exercise of government decisions. I do not see in most of the investment chapters that I have read that there is any distinction drawn between the arbitrary use of state power and something that was a manifesto commitment put through an election that represents the considered view of the people of a democracy. That is partly the concern—that they constrain not just arbitrary acts of government but democratic acts of government taken with the full support of their people. There are ways normally in domestic legislation to challenge those arbitrary acts where they exist. We maintain that, as Dr Poulsen said, if you are talking about the parties to the agreement currently under discussion, those rules already exist.

The Government answered a Parliamentary Question from John Healey MP in the other place a week or so ago where he asked what provisions currently existed to protect US investors in the UK, and the Government gave the list of appropriate Acts of Parliament that guarantee those rights and which, as far as we understand, have led to the position that there has not been a problem for a couple of hundred years between the US and the UK in
investment—and, we would suggest, probably vice versa, although we have not tested that. But we know that rights against expropriation in the United States are written into the constitution since the adoption of the fifth amendment to the constitution—slightly more famous for its role in Hollywood witch-hunting, but the end of the fifth amendment is clearly about expropriation.

We are also concerned about the chill factor that you explored towards the end of the last set of evidence. It is difficult to come up with empirical evidence that people have slightly changed their behaviour in terms of the regulations that they put forward because they are worried about ISDS provisions, but it would be unreasonable not to act in that way if you felt that there was more likelihood of decisions being challenged.

You asked about mitigation. I recognise, as Dr Poulsen did, that the Commission has gone a long way to argue the case of mitigation and the various steps that you could take. There are further steps that you could take. In our concerns about labour standards and what can be done to protect them, for example, you could require both parties to the agreement, both in the US and the EU, to abide by international labour standards. You could require of the investors that they abide by those standards in their operations before they can take advantage of ISDS procedures. But partly because of our principled objection to creating a different class of court for a different class of litigant and partly because of our concerns about democratic space, probably if you mitigated the provisions of ISDS sufficiently to satisfy those principle points you would end up with an ISDS that would not be worth anything to anybody.

Q226 Lord Foulkes of Cumnock: In your written evidence, in paragraph 8, you make an interesting suggestion that if ISDS is there to provide protection for the investors, what about the workers and consumers and the environmental interests, and you suggest some kind of redress for them. How would that actually work? You do not spell it out.

Owen Tudor: We do not spell it out, but we were trying to make the point as forcefully as possible that this was creating a separate judicial system for one particular group of people—not just investors, but only foreign investors in that case. We wanted to draw attention to the fact that many other people could be affected by the impact of trade agreements, such as those you mentioned, who do not have a means of redress. It probably would be relatively difficult to identify how that means of redress would operate, not least because the costs of going to arbitration are probably outwith the means of anything other than a corporation in that sense. So the reason why we included that paragraph was to draw attention to the disparity between the different classes and point out that you can have a system in ISDS that deals with the concerns of foreign investors but it would be very difficult to construct a system that compensated all the other people who could be disadvantaged.

Lord Foulkes of Cumnock: You mentioned international labour standards. When we were in Washington, the AFL-CIO was concerned about that and about the standard conditions being reduced by any kind of agreement—not necessarily the TTIP but some of the other agreements. If, as Lord Goldsmith said, this is a mechanism that we are talking about and you have to include in the agreement something that the disputes mechanism is there to deal with, could you include in the TTIP adherence to international labour standards? Could that be codified and spelt out? If that was not done, in the case of a developing country, for example, you could then take court action; there could be some kind of similar procedure.

Owen Tudor: There are of course the ILO’s own procedures, which we can go through, although I do not think that even the ILO would maintain that they were fantastically effective in ensuring that those rights work. The ILO and the WTO have produced documents looking at how the provisions of multilateral trade deals and international labour standards could usefully interact to improve the ability to enforce ILO standards, although
not with any great impact or likelihood of success in that area. Of course, we have in various free trade agreements around the world a number of provisions that address how you deal with breaches of those international labour standards. However, the European Commission—I suspect that it is the Commission rather than the European Union—has always resisted making those elements of free trade agreements as enforceable as other elements, not just ISDS but intellectual property rights, for instance. There are normally quite hefty enforcement mechanisms built into free trade agreements, but we only get letters of condemnation out of free trade agreements when labour standards are breached.

Q227 Lord Jopling: On the impact of ISDS and TTIP on the UK, you have told us about your reservations and, to begin with, perhaps you could just say a word as to how you regard the example that Lord Goldsmith gave of the Mississippi case, which seems to be an argument contrary to the ones you have put to us. Extending on what you have said to us already, perhaps you could expand on the risks that you see by including an ISDS in TTIP and be specific on that. Also, you have submitted evidence saying that you think an ISDS mechanism could be a potential threat to future policymaking on national health surveys. Do you think there are any steps that could be taken in the negotiations to get rid of those dangers?

Owen Tudor: If I could come at that the other way round, the main mitigatory step that could be adopted, other than dropping ISDS completely from the agreement, would be to exclude health services from the agreement. Not only for ISDS reasons but for other reasons, I think that would be a particularly helpful step forward. There are ways of mitigating those risks by changing the way that the agreement might be written.

Lord Jopling: Are there any other exclusions you would like as well as that?

Owen Tudor: Health services are the most pressing but public services generally are inappropriately included in the deal. We have already seen the French insisting on audio-visual systems being excluded, which our unions in the entertainment industry strongly support, as do those in the US as well. This is not a matter of disagreement over the Atlantic on that issue. In terms of the threat to future policymaking on the NHS, our main concern, which you already heard about this morning, is that it might restrict the ability of a future Government to redraw the boundary over what is provided publicly and what is provided privately in the National Health Service because of, in particular, the way in which companies will have factored in future earnings and claim that those future earnings would be therefore taken away by a change in the way that the NHS is structured. In terms of the Mississippi example, I await with great interest Lord Goldsmith’s explanation of why Dr Poulsen was wrong to say that the provisions in TTIP would not have solved the Mississippi case in the first place. As I say, I think there are ways of dealing with what you might call arbitrary abuses such as were outlined in the Mississippi case in domestic laws in the US, which is what I think Dr Poulsen was saying. You change the law; you can appeal up the court system. You can deal with those issues inside without necessarily imposing a new system of arbitration outside the domestic systems.

Q228 Lord Lamont of Lerwick: Can ISDS really inhibit a Government from redefining the boundary between public and private in health? The fact that contracts were there would surely just mean that under the ISDS they had to pay compensation, just as happened in cases of nationalisation, but instead of it being an ordinary court process it would be the ISDS.

Owen Tudor: I hesitate to say this, Lord Lamont, but I think you underestimate the creativity of the US legal profession in extending the boundaries of what is being expropriated through the system. It is difficult to say what this ISDS would provide because we have not seen what it is. I recognise that this is necessarily a speculative point, but we are aware that some of the US corporates involved in this process take a view beyond contract.
I accept what you say about contracts and that where contracts are entered into they have to be honoured or compensated, but they have maintained that their business planning is based not solely on the length of a particular contract. They have expectations of earnings beyond that contract when the contract is renewed, extended or whatever, and if you redrew the boundaries in that way you would be expropriating those future speculative earnings for that company and they would sue on that basis. Now, whether they would be successful, I do not know, but I would not want to be the British Health Minister who took a punt with the Treasury that they would not be successful.

*Bert Schouwenburg:* Perhaps I could just say that there are cases in other ISDS litigation whereby, as Owen describes, awards have been made on the basis of not only the breaking of a contract but on the future projected profits of a particular private company. So, as you will appreciate, this could be a fairly open-ended process in terms of assessing damages.

*Lord Lamont of Lerwick:* But that might be put to a court anyway as an argument.

*Owen Tudor:* It might, so why not? Why not let it be put to a court rather than go through a different system?

*Lord Lamont of Lerwick:* I just cannot see a great difference.

*Lord Trimble:* You say why not put it to the court. The ISDS mechanisms are invariably arbitration. So you prefer courts to arbitration.

*Owen Tudor:* I would not want to necessarily say in all circumstances in all jurisdictions. I am not an enormous fan of arbitration as opposed to court systems where you have a fundamental disagreement between two parties. Our experience in industrial relations is that sometimes arbitration works and sometimes it does not.

*Q229 Lord Trimble:* The question that I am going to move on to is to refer to the fact that it appears that UK investors have, particularly in recent years, made regular use of the arbitration mechanism in bilateral investment treaties against third countries. In what sense might UK investors stand to lose if ISDS provisions are not included in TTIP? Would that have ramifications for your members?

*Owen Tudor:* There is an economic question about whether it might have ramifications and a moral question about whether those ramifications should be acted upon. There are lots of things that British companies do abroad where some of the earnings are passed on to our members. I do not think, for instance—I am not suggesting that you are suggesting this, by the way—that it would be acceptable to say that British companies can benefit by bribing other countries’ Governments: that that would benefit our members and so we should be in favour of British companies being allowed to bribe people in other countries. We think the exercise of ISDS provisions is wrong in all trade treaties. We therefore think that it is wrong for British companies to use those ISDS processes externally to their benefit in developing countries. We would therefore consider that the potential financial benefit that that would produce to the workforce of those companies would be, in some sense, illegitimate. Yes, it is entirely possible that British companies would make more money if they were able to abuse the trade deal system in other countries, and they might pass some of that to our members.

*Lord Trimble:* When you say “abuse the trade deal system”, you heard Lord Goldsmith say that the ISDS is just a mechanism. The really important thing is the nature of the protections in the treaty. He outlined the things that are in there, such as protection against unfair treatment, protection against expropriation without compensation and so on. In what way are those abusing the other country?

*Owen Tudor:* I think that those problems are better dealt with by using the democratically legislated arrangements in those countries. I recognise that there are problems where you are dealing with a country where the rule of law does not exist, or it is not a democracy, and things like that. In those cases, Dr Poulsen made the point that you should make other
arrangements for protecting your assets in those circumstances rather than relying on ISDS systems, which I think are fundamentally flawed.

**Lord Trimble:** But the other private sector methods, such as providing through insurance and so on, will simply add to the costs of the operation, and consequently that is going to have an impact on the extent of investment.

**Owen Tudor:** I am always enchanted by the desire of entrepreneurs and risk-takers to minimise in any way any risk that they might possibly be engaged in, but it is actually the function of taking those risks that you weigh the costs and benefits of that activity. If you find that those costs outweigh the benefits—

**Lord Trimble:** Hedging the risks is a very sensible thing.

**Q230 Baroness Coussins:** Could you say what you make of what we have all heard is in the CETA, in terms of the approach to the ISDS mechanism? You said earlier that you would welcome an exclusion for health services and public services generally; I am not sure if CETA spells it out that far, but we have heard that there are certain exclusions for public policy. Are there other aspects of what we reckon might be in CETA, such as binding arbitration, more transparency and so on, that would make you feel more comfortable with an ISDS mechanism for TTIP?

**Bert Schouwenburg:** Like your good self, we have no idea what is in the legislation because we are not allowed to see it, which is part of an overall problem with trade agreements—there is a complete lack of transparency. Whatever is in CETA, I do not think that it would help us. To return to my original argument, we do not think that ISDS should be present in any treaty anyway. You may be aware that we have written to Commissioner De Gucht on this point because, as you know, there is going to be a wider consultation just on the ISDS part of TTIP. We think that this should be extended to all pending trade negotiations because although the Canadian agreement has been initialled—I think that is the correct term—it has not been agreed. We think that when that investigation takes place, CETA, the Singapore agreement and any other pending agreements should be looked at as well so that the whole thing is taken in the round.

**Owen Tudor:** I agree with Bert on that. From what I have heard about CETA, it is better than some other agreements but is probably worse than the sort of agreement that we would want to see. It is very difficult to be more specific than that. There is one question, though, about how you write these agreements and how much people know about them before they are agreed. It is very difficult. One of my concerns, and one of the reasons why I take rather a strong line on whether there should be ISDS arrangements at all, is that it is very difficult to predict from the text of the investment chapters of the treaty agreements exactly what the risks are for democratic decision-making and so on. How do you tell from the language of that treaty arrangement what the impact is eventually going to be? That is something that Commissioner De Gucht is conscious of, in terms of not being certain about what the outcome will be. It is very difficult even if you have those texts in front of you before you make a decision; it is even more difficult when those texts, as Bert says, are clouded in secrecy before you agree to them. That makes it much more difficult to work out what impact an agreement is going to have.

**The Chairman:** Lord Radice, a change of subject.

**Q231 Lord Radice:** Yes, in a sense this is a change of subject. It is a more general question about the impact of TTIP on jobs and labour standards. You have a concern about this, as the evidence from both the TUC and the GMB shows. When we went to Washington, the AFL-CIO shared this concern. Could you perhaps talk a bit more about that? The possibility was raised with us that in the United States jobs might be sent offshore to low-wage EU countries and then, vice versa, EU companies might go to US right-to-work states. Could you perhaps tell us a bit more about your fears and concerns?
**Bert Schouwenburg**: Companies will gravitate to areas where they can make most money, and therefore they will go to areas where costs are lower. That will usually include areas where trade unions are not particularly active. We have already seen in the European sphere that companies will relocate from more expensive member states to ones where labour is cheaper. If we then extend that to the US, the problem becomes even worse, particularly when you look at the state of industrial relations in the US. I think that it is fair to say that the old post-war consensus of social contracts in Europe has fallen into disrepute and there has been something of a pushback by what could be called neoliberal forces, but nevertheless industrial relations, compared with those in the US, are conducted in a civilised manner—certainly in the UK and Europe. The US has not signed up to the core ILO labour conventions; in fact, I think that it has signed up to only 14 of them out of 190. An extremely confrontational attitude is demonstrated by employers there, union-busting is permitted and we should also note that the Congressional Republican Party has said that under no circumstances will it accept standards being raised to European levels in terms of labour legislation. So yes, we see this as a very grave problem indeed, and it is difficult to see how it could be addressed. There is a very recent case that your Lordships might have heard of where one perhaps more enlightened European company, Volkswagen, went into Tennessee and allowed the trade union in to canvass for a trade union contract. There was an onslaught of opposition from local Republican politicians and the union was unable to secure a contract because the workforce voted it down. The union is seeking redress in the US courts, but I mention this to show you a graphic example of the differences that exist either side of the Atlantic. They would seem at this stage to be insurmountable and therefore to be a fundamental barrier to the signing of any agreement.

**Owen Tudor**: It is worth mentioning, by the way, that if the US wanted to get GSP-plus status out of the EU, it would not be allowed to. It is that far behind on international labour standards. The EU insists that you sign all eight core conventions before you get GSP-plus status, and the US would not be entitled to that.

**Q232 The Chairman**: Could I just ask about an economic problem? You say that companies will automatically go to the areas where costs are lowest and you imply that that is a bad thing, but surely the result of going to places where the costs are lowest is that you bring investment and raise standards. If you look at this country, when the foreign-owned motor companies started up, they put plants down in areas where there had not previously been motor manufacturing. That has spread wealth in the country and enabled parts of it that were previously disadvantaged to gain. Likewise, in the US, the foreign-owned car companies have gone to states that had not previously had much industry, as a result of which they now have industry and are better off than they would have been. The implication that it is a bad thing to go to lower-cost areas seems questionable to me. It may actually be very beneficial to the people who live there.

**Bert Schouwenburg**: Yes, I can see that argument. You could certainly say that there would be some gains to the parts of the country or the region where a particular industry had shifted. Where there is a gain, though, there is a loss as well. If we are looking at the automobile industry, we have only to look at Detroit, which is a shell of its former self. When the automobile industry has gone to the southern states or to states where there is more favourable legislation—if it has not shifted to Mexico, which is another story—the terms and conditions of its employees are far worse; they earn far less money than they would have done in the unionised plants in Detroit.

Experience shows that free trade agreements lead to a net loss of jobs. Probably the best example of this is the North American Free Trade Agreement, an agreement that Noam Chomsky memorably described as a lie. He said that the only truth about the “North American Free Trade Agreement” were the words “North” and “America”, because it was
not free, it was not about trade and it was not an agreement. The serious point is that an estimated 1 million jobs have been lost by companies going down to Mexico. In turn, there were other effects of the free trade agreement that led to some 1.5 million Mexican farmers being put out of business by subsidised agriculture in the United States being sent south of the border. We are extremely wary of free trade agreements in general, if I may be allowed to divert a little from your main point.

**Q233 Baroness Quin:** My question follows on from that of the Lord Chairman. We are trying to find whether there is also a potential upside in TTIP in that it might be used to secure higher levels of protection for union members, particularly in the US. The comments that you have made prompted me to think of my own experience in the north-east of England, where some of the foreign investment that we have had, particularly from other parts of Europe, has brought in companies that in some instances have treated their employees better than before in terms of consultation, information and even remuneration levels and so on. So I wonder whether there is a potential upside as well as some of the problems that you have been describing.

**Owen Tudor:** I think that there is that possibility. We are always being told that we should be ambitious about the TTIP, so I am going to be ambitious now. The case that Bert mentions involving Volkswagen is interesting. The union had to conduct that approach under US rules, so, in some senses, it was a clash of cultures between Volkswagen management and the administrative board in Germany, with the strong involvement of IG Metall, running up against the National Labor Relations Board rules in the US. We would very much like to see—and I know that you will have picked up in Washington the fact that the AFL-CIO would very much like to see—an extension of the sort of provisions for the workers' voice that exist in European arrangements being extended into the US arena. One way of doing that is precisely through European companies operating in the US adopting a more European style of industrial relations in those environments. Anything that can be done within the Transatlantic Trade and Investment Partnership to foster that arrangement would be beneficial, one aspect of which is precisely that we would like to see the US adopting a more European approach to the international labour standards and core conventions of the ILO. As Bert mentioned, the US is well below those at the moment. It is part of the acquis communautaire that all European countries sign up to the eight core conventions before joining. We look forward to the US adopting a similar approach.

**Bert Schouwenburg:** I should say that not all the European companies share the enlightened attitude of Volkswagen and are more than happy to avail themselves of the climate in the USA to indulge in some union-busting themselves.

**The Chairman:** I thought that Volkswagen had been trying to promote unionisation.

**Bert Schouwenburg:** It had. What I am saying is that not all European companies follow its example. If you look at Serco, for instance, which has a lot of contracts in this country, you will see that its behaviour in the United States has been appalling and it has been involved in union-busting itself.

**Q234 Baroness Henig:** If I could try to summarise the last three questions, am I right in concluding that your view is that the risks of this outweigh the benefits? That is what you seem to be suggesting. The second part of that is, if you are arguing that the risks of partnership outweigh the benefits, you clearly do not see a role for this mechanism in trying to bring the United States side up the European standard.

**Owen Tudor:** No, we do. I am sorry if we have given that impression.

**Baroness Henig:** Well, that is what I am trying to elicit.

**Owen Tudor:** I think that it is a bit difficult at this stage to know how far the risks outweigh the benefits without having gone a little further in both cases in looking at the balance. We are only at the very earliest stage. We understand, but I could not point you to any evidence
of this, that ILO standards were discussed at the third round of negotiations between the parties, when the European Union argued the case strongly for ILO standards and the US negotiators did not put up much objection to their case. That would be a positive indicator. On the other hand, they may have been keeping their powder dry for later. So it is a bit too early to say. We can identify risks sometimes a lot more easily than opportunities. Unfortunately, experience teaches us to be more cynical than optimistic about trade agreements.

Baroness Henig: Yes, I understand that. It was just that having followed your logic on the great differential and the problems in America from your perspective, one could argue that the positive side of this would be that this mechanism might then be able to alleviate some of the issues that you are talking about.

Bert Schouwenburg: As Owen says, history tells us that it is very easy to write a trade deal or a treaty; it is far more difficult to enforce it. The Colombia agreement is a prime example of this. There are supposedly a sustainable development chapter and a human rights chapter in there. The European Commission is frankly not interested in enforcing either of those clauses and the situation in Colombia has not improved one iota. There are further ramifications of this. If we look at some of the parts of TTIP together, we see that the new European procurement directive allows member states to say that they will not accept tenders from companies in countries that do not subscribe to the core ILO conventions, so you can see where we could be going on this one. If that is combined with the ISDS legislation, there could be a lot of work for my learned friends around the place, not to mention the trade lawyers on these unaccountable panels in New York.

Owen Tudor: Bert reminds me that it is important in that cost-benefit analysis to know exactly how different bits of the trade agreement will be enforced. This is one of the other problems of not being able to see a text and then comment on it—I recognise some of the difficulties with that—but we are concerned that you might have a provision in one part of the agreement that looks negative and a provision in another part that looks positive. You have to know the relative weight of enforcement on those issues before you can work out whether the positives outweigh the negatives. We want the European Union and the US to learn the lessons of other trade deals. It is the case, actually, that the US has a better track record of inserting ILO standards and conditionality into their trade agreements than the European Commission. The European Commission tends to have a policy of going for sustainable development chapters, which have rather woolly language about those issues, whereas the US, certainly from the Clinton Administration onwards, wrote into agreements such as the Jordan FTA or Peru FTA some quite specific requirements which give enforcement mechanisms and so on.

We are currently going through a process between the EU and Korea over the EU-Korean free trade agreement which contains provisions for core labour standards to be respected on both sides. We believe that the Koreans are in serious breach of that undertaking as a result of the actions of the past few months of deregistering unions, refusing to register unions, sending security services to storm union headquarters, arresting trade unionists for their trade union activities and so on. These have led to the European Union's domestic advisory group for the EU-Korea trade agreement, a tripartite body of NGOs, unions and employers set up under the agreement, to write to Commissioner De Gucht asking him to take action under the Korean deal. We want to see how that works before we see whether similar or stronger provisions would be needed in TTIP, and I suspect that they would need to be stronger. Bert was very restrained. He is a member of the domestic advisory group for the EU-Columbia/Peru free trade agreement, and you have not heard the half of it in terms of his concerns about the operation of that body. So a lot of the issue is around how
effective and how strong the mechanisms are in the deal as to whether we would be positive about it.

The Chairman: I assume in the light of the evidence that you are giving that you will be feeding into the Commission’s consultation.

Owen Tudor: Indeed. We welcome the fact that it has gone out to consultation on this and think that it is something that it should do more often on trade deals.

Bert Schouwenburg: Although it is not clear yet exactly how it is going to be done.

Q235 The Chairman: Can I ask a final question, which concerns procurement? We have a very open procurement system in this country, perhaps one of the most open in the industrial world. I wonder therefore what your views are about seeking to include procurement in TTIP. I imagine that the result would be to make other people a little more open than they are now, and we would therefore perhaps be net beneficiaries.

Owen Tudor: I can answer on Buy America if that is what you mean. We are not in favour of using the TTIP to take away American democratic state or federal authorities’ ability to determine the way in which they run their public procurement systems, in particular about Buy America. I think that the AFL-CIO is in a better position to argue the case around the detail of this. But I go back to the point that Bert made about the newly revised EU rules on public procurement, which allow a whole set of social considerations to be taken into account during the procurement system. We maintain that, in a sense, the Buy America policy is merely an extension of that. It is a question about how locally you require things to have been done to feed into the procurement system. We think that Governments should be able in pursuance of their electoral mandates to decide how they run their procurement systems in terms of what conditions they put on those to meet social objectives.

Q236 Earl of Sandwich: Let me ask one slightly different question of Mr Schouwenburg in his capacity as an officer of the Trade Justice Movement, of which I know a certain amount—it has had a lot of success in campaigning. Are you proposing to start a campaign, or is there going to be a campaign? We have taken evidence from consumer organisations and the food lobby. Maybe surprisingly, the NFU has strongly supported the trade agreement. I wonder whether you will be in that sort of dialogue with it.

Bert Schouwenburg: That is an interesting point. We are not actually affiliated to the Trade Justice Movement, but we have been talking to it and a range of NGOs and civil society organisations, because, as you quite correctly pointed out, this particular deal has attracted a lot of attention for all the reasons that we have heard about. We subscribe to something called the alternative trade mandate, of which Trade Justice is a member—you can look it up on the website. It tries to look at trade in a different way rather than just as something that is for the benefit of multinational corporations. I would not like to comment on the NFU’s position. I have to say that I am little surprised by its position, but, certainly as a trade union, we intend to consult and co-operate with a wide range of organisations about this. I suppose that I should finish by saying that we do not see this as a trade deal; this is more a case of multinational, transnational capital breaking down barriers to enhance corporate profits.

The Chairman: Thank you both very much indeed.
Chris Scott, Senior Manager, Global Automotive Safety, Regulations, Compliance and Homologation, Jaguar Land Rover, Geoff Grose, Chief Engineer, McLaren Automotive Limited Mike Hawes, CEO, Society of Motor Manufacturers and Traders and Andrew McCall, Executive Director, Governmental Affairs, Ford of Europe—Oral Evidence (QQ 144-17)

Transcript to be found under Geoff Grose
Introduction

1. The automotive industry is a vital part of the UK economy accounting for £59 billion turnover and £12 billion value added. With more than 700,000 jobs dependent on the industry, it accounts for 10% of total UK exports and invests £1.7 billion each year in automotive R&D. The industry plays an important role in the UK's trade balance, with vehicle manufacturers exporting around 80% of production. More than 30 manufacturers design, research, develop and engineer cars, commercial vehicles and engines in the UK, building in excess of 70 vehicle models across the country, supported by around 2,500 component providers and some of the world's most skilled engineers.

2. SMMT welcomes the opportunity to respond to the call for evidence on the Transatlantic Trade and Investment Partnership, feeding into the EU Sub-Committee on External Affairs of the House of Lords inquiry. The UK automotive sector is committed to free and fair trade and fully recognises the commercial benefits it can bring. The focus on the United States is particularly welcome, as the US represents one of the UK automotive industry's largest export markets. High-value exporting sectors such as automotive have significant growth opportunities through opening access to markets and reducing tariffs and non-tariff barriers. The approach being taken on the Transatlantic Trade and Investment Partnership will enhance international trade and increase exports, furthering the opportunities that underpin growth in our sector.

UK automotive export data to the US

3. The United States is a key export market for the UK automotive sector. In 2012, the US represented the second largest export market outside the EU for cars built in the UK, exporting 111,449 cars, accounting for 9.8% of all UK car exports and 19.1% of all UK car exports outside the EU. The US export market increased by almost 24,000 units from 2011 to 2012, a 27% growth rate. Expressed as a percentage of overall share of UK exports, the market increased by 1.8%.

4. Key to UK automotive exports to the US is the prevalence of luxury, premium, low volume, and high value specialist manufacturers, as demonstrated in the table below. This reflects the UK automotive sector's expertise in the specialist and premium product areas.

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<th>Manufacturer</th>
<th>Volume</th>
<th>% of exports</th>
<th>% of total prod</th>
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<tr>
<td>BMW (MINI)</td>
<td>48,447</td>
<td>28.5%</td>
<td>23.3%</td>
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<tr>
<td>Land Rover</td>
<td>45,974</td>
<td>18.1%</td>
<td>22.5%</td>
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<td>Jaguar</td>
<td>12,583</td>
<td>30.1%</td>
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<td>35.0%</td>
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<td>27.2%</td>
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<td>Aston Martin</td>
<td>683</td>
<td>27.6%</td>
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<td>Caterham</td>
<td>6</td>
<td>2.7%</td>
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UK production for export to the US in 2012
Source: SMMT EIE Report and own manufacturer data
SMMT position on TTIP

5. SMMT welcomes the opening of negotiations with the United States to further trade and investment relations through the Transatlantic Trade and Investment Partnership. As identified in UK government's economic assessment, opportunities for automotive lie at the heart of the TTIP, and the industry fully supports efforts to realise these opportunities for the UK. SMMT calls for a high level of political ambition from UK government to ensure that the scope and scale of negotiations look to address key issues for automotive, of which removing non-tariff barriers through regulatory convergence is a top priority.

6. The largest gains for UK automotive lie in the removal of non-tariff barriers (NTBs). It is vital that political capital is invested in the need to move forward to achieve recognition of equivalence of regulations between the EU and US. Identifying the appropriate legislative mechanisms and legislation that can be put forward to be considered for recognition of equivalence is an important process that should be established at an early stage.

7. The US represents the second largest export market outside the EU for UK automotive, and is a primary market for many luxury, premium, low volume, and specialist manufacturers in the UK. It is important that UK government and the European Commission look to ensure that improvements are made on the regulatory agenda that also benefit smaller automotive companies across the low volume and component sectors.

8. The UK automotive industry is an important location for US foreign direct investment, with global US automotive companies manufacturing vehicles, engines and components in the UK. The investment by US companies is highly valued and the opening of TTIP negotiations should look to bolster investment ties and enable further investment in UK automotive.

Priority issues

Regulatory convergence

9. A priority for the automotive sector is tackling regulatory differences, which represents the largest potential benefit to an increase in trade for the sector:

10. Determining functional equivalence of technical standards between the EU and US would provide a first step in reducing costs for manufacturers looking to export to the US. ACEA and the American Automotive Policy Council (AAPC) have submitted views on automotive regulatory convergence to the Office of the United States Trade Representative. It is also important to note the opportunity for regulatory convergence for matters related to small volume vehicle manufacturers.

11. The creation of Global Technical Regulations (GTR) is an already established process through the United Nations and should be a focus for continued global harmonisation of standards and regulations. While progress through GTR is not in line with political
timescales attributed to concluding the TTIP, SMMT believes that efforts should be made by the EU and US to move more quickly in developing the areas under GTR and fully implement areas where agreement can be sought.

12. The federal nature of the United States presents specific challenges to the aspiration of reaching regulatory convergence between the US and EU due to competency of some legislation at state-level. Bodies including the National Highway Traffic Safety Administration (NHTSA), Environmental Protection Agency (EPA) and agencies at a state level (e.g. California Air Resources Board, California Environmental Protection Agency) are responsible for a range of regulations relevant to the automotive sector. SMMT is examining this in more detail to ascertain the impacts on achieving comprehensive regulatory convergence. SMMT would welcome a similar focus by government through appropriate officials within the Department for Transport.

Product liability

13. Product liability has also been identified as a potential challenge of the EU and US regulatory environment for automotive, where it remains unclear how differing litigation processes can be overcome.

Tariffs

14. US import tariffs on automotive products vary between vehicle sectors (please see table below); where tariffs for commercial vehicles are high, and passenger cars comparatively low. Elimination of tariffs on both the European and US side would promote an increase in trade. SMMT believes that under a comprehensive agreement, all tariffs should be removed and greater cooperation sought on reducing transaction costs for transatlantic trade.

<table>
<thead>
<tr>
<th>Import tariffs in %</th>
<th>Passenger cars</th>
<th>Light commercial vehicles/pick ups</th>
<th>Commercial vehicles</th>
<th>Buses</th>
<th>Parts</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU</td>
<td>10</td>
<td>10</td>
<td>22</td>
<td>16</td>
<td>2 - 5</td>
</tr>
<tr>
<td>US</td>
<td>2.5</td>
<td>25</td>
<td>25</td>
<td>2</td>
<td>0 - 2.5</td>
</tr>
</tbody>
</table>

Customs

15. Customs procedures and issues related to border enforcement present additional costs for automotive companies. A system of standardised custom processes should be examined as part of the TTIP, focused on eliminating unnecessary controls.

SMMT trade policy principles
16. SMMT has developed the below principles in relation to trade policy, which reflect areas where UK government and the European Commission should focus when dealing with negotiations.

17. The UK's trade strategy must be aligned with government policy in supporting manufacturing and export-driven growth. UK trade policy should be underpinned by government’s wider growth strategy, ensuring that policy objectives around rebalancing the economy, supporting manufacturing and driving an export-led recovery are key factors within the developing trade strategy.

18. Government should be actively engaged with industry to ensure business priorities are aligned with trade policy objectives. For government’s trade policy to be successful in supporting rebalanced growth, business engagement is a crucial requirement at every stage of policy formulation and negotiations. Industry knowledge and expertise of operating in international markets can inform government’s strategy and should be used to enhance the UK’s overall position on trade and investment.

19. Government must use a transparent method of economic assessment in determining key strategic trade partners. Within government’s economic assessment of key trading partners, growth markets and sectors with comparative advantage, particular attention should be put on those markets where there is significant future potential to export. Government must carry out a comprehensive assessment of the impact on our sector, and all sectors, before negotiations begin to identify potential economic imbalances. Such analysis should be available for industry to view and comment on. The opening of FTA negotiations should reflect genuine economic and market opportunities and tie into government’s priorities within its growth strategy.

20. Increasing multi-lateral trade should be government’s trade priority. Particular attention should be given to ensuring that agreement is reached on increasing international trade and opening markets at a multi-lateral level.

21. Free Trade Agreements must be beneficial to both parties. Government should pursue a so called ‘zero-for-zero’ approach in tariff reductions (in vehicles, parts and engines) where parties to an agreement commit to 100% reductions in tariffs. The addition of ‘duty-drawback’ mechanisms must be prohibited in EU FTAs to ensure a level playing field for European automotive companies and in parallel a uniform application of Rules of Origin threshold should be maintained.

22. Sectors should not be traded against each other. Government should aim at achieving a win-win situation for all sectors to promote the greatest level of competitiveness and attract investment.

23. Government should work with industry to identify and dismantle Non-Tariff Barriers and prevent them from being established. In a heavily regulated industry such as automotive, the regulatory non-tariff barriers to trade are high. Automotive Non-Tariff Barriers are significant in a number of third countries in which the European Commission is negotiating FTAs. UK government should liaise closely with industry to ensure that all relevant barriers to trade are removed before concluding the negotiations.
24. **Government should prioritise the harmonization of global regulations as a means of increasing market access and trade facilitation.** The recognition and deployment of UNECE Regulations (1958 and 1998 Agreements) should be promoted.

3 October 2013
Society of Motor Manufacturers and Traders – Supplementary written evidence

I am writing as a follow-up to the House of Lords External Affairs Sub-Committee evidence session held on 12 December 2013 in relation to the automotive industry and the Transatlantic Trade and Investment Partnership. During the evidence session, statistics on UK automotive exports to the US were highlighted, referencing SMMT’s written evidence which outlined car exports from the UK to the US in 2012. I would like to address some comments made in discussion of these figures.

Firstly, the table below, which was included in our written evidence, details all car exports from the UK to the US in 2012. During the oral evidence session it was asked why Japanese manufacturers were not included in the list. During 2012, there were no UK produced vehicles from Japanese manufacturers exported to the US. SMMT’s data is sourced from vehicle manufacturers directly, therefore it is possible that a number of vehicles could have been imported by US customers through non-direct routes.

<table>
<thead>
<tr>
<th>Manufacturer</th>
<th>Volume</th>
<th>% of exports</th>
<th>% of total production</th>
</tr>
</thead>
<tbody>
<tr>
<td>BMW (MiNI)</td>
<td>48,447</td>
<td>28.5%</td>
<td>23.3%</td>
</tr>
<tr>
<td>Land Rover</td>
<td>45,974</td>
<td>18.1%</td>
<td>22.5%</td>
</tr>
<tr>
<td>Jaguar</td>
<td>12,583</td>
<td>30.1%</td>
<td>15.0%</td>
</tr>
<tr>
<td>Bentley</td>
<td>2,692</td>
<td>35.0%</td>
<td>29.6%</td>
</tr>
<tr>
<td>Rolls-Royce</td>
<td>799</td>
<td>27.2%</td>
<td>24.7%</td>
</tr>
<tr>
<td>Aston Martin</td>
<td>683</td>
<td>27.6%</td>
<td>20.6%</td>
</tr>
<tr>
<td>McLaren</td>
<td>621</td>
<td></td>
<td>39.9%</td>
</tr>
<tr>
<td>Lotus</td>
<td>265</td>
<td>29.2%</td>
<td>25.4%</td>
</tr>
<tr>
<td>Caterham</td>
<td>6</td>
<td>2.7%</td>
<td>1.5%</td>
</tr>
</tbody>
</table>

UK production for export to the US in 2012, Source: SMMT EIE Report and own manufacturer data

Typically, and as demonstrated in SMMT’s figures, UK automotive exports to the US primarily consist of premium, luxury and specialist vehicle manufacturers. Larger volume vehicle manufacturers, such as the Japanese automotive companies based in the UK, predominantly export vehicles to the European markets (EU27 and others such as Switzerland, Norway, Russia). SMMT’s 2012 export data shows that the major Japanese manufacturers in the UK export the vast majority, up to 86%, of their vehicles destined for export to the European market. However, the US market and opportunities for UK-based Japanese manufacturers should not be discounted, particularly as a successful TTIP could enhance the EU-US trading relationship further for a wide range of UK manufacturers.

Secondly, I would like to address comments made regarding the British nature of the companies exporting vehicles to the US. Inward and foreign direct investment is crucial to our sector. The UK automotive industry is diverse, global in nature and is built on major investments from international vehicle manufacturers. Inward investment has played a vital role in revitalising the UK motor industry and vehicle manufacturing, contributing to the growing levels of production as well as job opportunities. While many of these companies are owned by non-UK parents, the proportion of the added value from these manufacturers is significant. The UK automotive sector also includes strong and distinctive British brands.
such as Jaguar, Land Rover, Bentley, Rolls-Royce, MINI and Aston Martin, which are sought-after around the world and their success is a key reason for continued investment and commitment to a UK manufacturing base.

The automotive industry is a vital part of the UK economy accounting for £59 billion turnover and £12 billion value added. With more than 700,000 jobs dependent on the industry, it accounts for 10% of total UK exports and invests £1.7 billion each year in automotive R&D. The industry plays an important role in the UK’s trade balance, with vehicle manufacturers exporting around 80% of production. More than 30 manufacturers design, research, develop and engineer cars, commercial vehicles and engines in the UK, building in excess of 70 vehicle models across the country, supported by around 2,500 component providers and some of the world’s most skilled engineers.

30 January 2014

Setting the Scene
1. Growing volatility in the international system and increasing interdependence in the global economy coupled to a fragmentation of the traditional models of power, will mean global governance evolving with increasing uncertainty and unpredictability over the medium to long term. As a result of this increasingly unpredictability, multilateral governance regimes are likely to prove more vulnerable to competing agendas promoted by growing global powers and interests.

2. The great recession, followed by a period of relative economic stagnation on both sides of the Atlantic has undermined global confidence in the western liberal rules based economic order resulting in increased incentives for the EU and the U.S. to cooperate rather than compete when faced with a world that increasingly does not resemble that of a previous era.

3. Given these global developments, the case for a Transatlantic Trade and Investment Partnership (TTIP) has never been more compelling. The EU and the U.S. are the most powerful markets globally, with huge volumes of trade and investment crossing the Atlantic daily ours is without doubt the most important economic relationship in the world. From a purely trade and investment perspective the EU and the U.S. account for nearly half of world GDP and 30% of world trade and the total sum of transatlantic investment totals more than $3.7tn while 3.5m Americans work for EU affiliated firms and 3m Europeans work for US firms. Clearly any TTIP that has the potential to radically increase trade flows to the benefit of both economies, producing economic growth that can lead to high quality jobs on both sides of the Atlantic is a highly desirable objective for the UK.

The European Union and the Member States
4. From the outset it should be stated that, with the exception of some outlying political alliances in the European Parliament, the three main European Institutions remain strongly in favour of an ambitious and comprehensive economic and trade agreement with the U.S.

5. As one of the co-legislators the EU Council was responsible for approving the Commission’s draft mandate for the opening of negotiations. During this process many issues were discussed, largely behind closed doors, providing the Commission with detailed information concerning the offensive and defensive issues of interest to the Member States. In parallel to this process the European Parliament produced two resolutions, which although not being legally binding in nature, set out Parliament’s offensive and defensive interests and other negotiating sensitivities for the Commission to take on board.

6. In addition to the adoption of the Commission’s negotiating mandate, EU Member States are kept informed at all stage of negotiations by the Commission, as is the European Parliament, pursuant to relevant Treaty of Lisbon provisions. These ongoing and evolving processes permit Member States to feed observations and opinions into the negotiation process as well as to make more detailed comments and suggestions on actual negotiation texts provided by the Commission. The European Parliament, through the newly established
Monitoring Group of its International Trade (INTA) Committee also meets with the EU’s Chief Negotiator for briefings before and after each round allowing MEPs from EU Member States also to follow negotiations and contribute to Commission positions.

7. These mechanisms are designed with a view to ensuring that Commission would not negotiate any sensitive disciplines or provisions that would later prove problematic following the initialling and closing of draft texts. For example, France was successful in obtaining a clear and unambiguous exemption for the EU audiovisual services sector supported by MEPs from mainly southern Member States in the European Parliament, while the UK and France were able to negotiate specific provisions relating to defence procurement in the mandate thus ensuring that the text finally agreed by the Commission would not be unacceptable on these grounds.

8. At the end of the negotiation process the European Commission will present the agreement to Parliament and Council for signature and consent respectively. This final procedure gives a strong incentive to the Commission to present a text it knows will be acceptable by reflecting a majority of Parliament and Council’s interests while simultaneously respecting their red lines. The recent example of ACTA was instructive in this regard.

GAINS FOR THE UK AND EU

9. A Transatlantic Trade and Investment Partnership (TTIP) must be ambitious in scope and in substance to guarantee that business and consumers alike benefit from an environment of increased trade and investment. In this vein, deep and comprehensive coverage should not limit itself to classic tariff elimination (what might be labelled the more traditional aspects of FTAs), which albeit an important element in any market access package, but should not limit negotiators from also focusing on other key issues such as financial services, public procurement and regulatory convergence, all areas of key importance to both the UK and EU.

10. Financial services are an issue of key relevance for the UK and the Conservatives in the European Parliament are encouraged by the current levels of support by EU negotiators and the apparent willingness across the Atlantic to keep discussions surrounding the sector on the table, despite skepticism from U.S. regulators. However, for any real progress to be made, more open communication is essential to disperse existing misconceptions about the EU’s intentions and expectations in this area, which seek a common regulatory framework as being the best way to protect financial stability in both markets.

11. The TTIP should also address and resolve existing barriers to Market Access in public procurement. While clearly there are sensitivities on the U.S. side concerning the ability of the federal government to negotiate on behalf of the states, the UK must insist that the EU include provisions targeted at securing an open, non-discriminatory, competitive environment in procurement at all levels of government. To further this aim the UK representation in the U.S. should be approaching state level government in the U.S. highlighting the areas where both sides could benefit from increased trade and investment.

12. TTIP must provide a new approach for reducing barriers based on pragmatic solutions to deal with both existing and future areas of regulatory divergences. Equivalency finding exercises, like those which are already being explored by certain proactive sectors (automotive and chemicals) could lead, for example, to a situation in which U.S. products
would not have to meet EU standards if the EU accepted the U.S. standards as equivalent. Formal findings of equivalency could be outlined in a mutual recognition agreement, which would also provide legal and regulatory certainty for producers and traders throughout the global supply chain. The establishment of cooperation agreements would help to facilitate trade and increase efficiency, such as information-sharing arrangements in given areas.

13. With a more long-term perspective TTIP must provide for increased regulatory dialogue leading to increased mutual recognition of standards and regulation. New mechanisms and architecture for deepened cooperation should be considered and explored. The creation of a so-called "living agreement" would allow for the promotion of more compatible mechanisms for both sides to set the standards for reducing non-tariff barriers. Such mechanisms would also allow for an increased development of common approaches to upstream regulatory problems in new 21st century industries as well as allowing early warning of future problems that arise.

DIFFICULTIES ARISING FROM EU CONCERNS

14. EU defensive interests include several areas in agriculture such as sugar, beef (especially use of hormones in U.S. production), geographical indications (related to certain intellectual property disciplines) GMOs and other specific sanitary and phyto-sanitary (SPS) concerns such as the well documented disagreements stemming from the application of the EU’s Precautionary Principle as well as other sectors such as data privacy, where the two sides have clashed in recent months.

15. Concerning agriculture, however, recent market evolutions in terms of price levels may prove advantageous as producers on both all sides of the Atlantic benefit from increased world demand stemming from population growth and increasing global prosperity. Tied to this welcome development the two agricultural systems enjoy some complementarities, with the U.S. specializing in production more basic commodities and the EU in more specialized foods and processed foods.

16. However, regarding data flows, recent public disclosures of surveillance activities of intelligence agencies has produced a situation of increasing complexity and evolving difficulty, with many Europeans concerned that data privacy talks should continue in parallel to the TTIP rather than being subject to specific disciplines within any envisaged chapter on data. This issue will be of central concern during ongoing talks and could prove one of the main sticking points from the EU side, with the European Parliament in particular extremely vigilant concerning American demands.

17. Another possibly problematic issue relates to the level of protection granted to investors against states in a potential investor-state dispute settlement (ISDS) mechanism. Some would argue that, on account of the already high levels of protection enjoyed by investors on both sides of the Atlantic, such provisions should not be included. This opposition is especially marked in the EU, with civil society groups criticising the Commission and Member States for possibly seeking to negotiate provisions and disciplines that could potentially limit the ability of states to regulate as they see fit in view of genuine identified public objectives. Clearly, the U.S. business culture is perceived as being more litigious in nature than that of the EU, however, many remain confident that the Commission will be able to ensure that governmental abilities are maintained through any negotiation.
18. One aspect of talks that will need careful handling and innovative thinking concerns the modalities of stakeholder engagement, including the ability of NGOs, civil society, consumer and interest groups to engage and interact with negotiators and to feel ownership and impact on talks as they progress. The failure of ACTA to receive the consent it required by the European Parliament demonstrated the existence of a new generation of citizens and advocacy groups looking for increased ownership of, and influence over, trade policy.

19. Public engagement and stakeholder consultation should therefore be encouraged and more must be conducted from the outset of negotiation through implementation to ensure more than an illusion of inclusion. During these negotiations Conservative MEPs hope that the Commission will continue its proactive work with U.S. counterparts in ensuring that detailed and factual information be supplied to stakeholders to encourage open, evidence led dialogue across all sectors, allowing for informed and detailed debate to ensure increased societal support, while maintaining the necessary negotiating confidentiality.

U.S. Perspectives

20. The U.S. Executive Branch supports an ambitious and comprehensive agreement, clearly investing large amounts of political capital with a view to achieving a deal acceptable to both Congress and the American people. President Obama is keen to achieve as much as possible before the end of his term in 2016, viewing trade policy as one of the key elements of his possible future legacy.

21. Congress is also largely supportive, with many Senators and Congressman publically coming out in favour of the agreement. Traditionally, the Republican Party has been more favourable towards free trade, but more recently many Democrats have also been supportive, mainly on account of the perception of generally higher levels of social and environmental protection in the EU and a connected hope that the negotiations could be used to promote higher levels on the U.S. side. However, sector specific issues will still pose problems for individual representatives in their local areas. For example, Senator Schumer recently wrote a letter to the USTR, asking the USTR to defend the cheese industry in the state of New York which he represents while Senator Baucus has been vocal regarding agricultural interests in the state of Montana.

22. In parallel it is hoped that this strongly supportive Congress will grant President Obama executive authority through a Trade Promotion Authority (TPA) Bill, although this is by no means guaranteed at this stage in view of bipartisan problems in the American political system. The TPA is an authorisation that not only gives the executive branch full authority over negotiations, but also requires that the vote in Congress will only be a yes or no vote with congressman unable to make substantive changes to negotiated texts, smoothing any future agreement’s passage.

23. Regarding possible content, U.S. negotiators have advocated an approach of keeping all issues on the table, however, the U.S. does of course maintain several key defensive interests and red lines which are often the inverse of many of the EU offensive interests outlined above.

24. The U.S. is wary of the inclusion of financial services in TTIP, with highly independent regulators in the U.S. remaining extremely active in defending any perceived encroachment by other U.S. agencies or the Executive on their areas of authority. Yet differing agencies
hold differing opinions and this issue is yet to be fully resolved. There is also a widespread misconception that TTIP could affect the implementation of the Dodd-Frank provisions particularly among House Democrats, views that EU negotiators are working hard to dispel, rather the EU should seek to convince the U.S. sides of the merits of the inclusion of financial services.

25. Public procurement will also be a difficult issue for the U.S. to negotiate, primarily because the EU will be seeking access to state level public procurement. Under the U.S. system procurement at state level cannot be decided by Federal Government, meaning that the USTR can only negotiate with the EU should states be willing, and given the vested interests which often prevail negotiating new disciplines and coverage which go beyond the current GPA could prove a substantial stumbling block.

26. Maritime and aviation issues will also be sensitive, as these sectors have strong lobbies and are highly protected. For maritime issues, currently the EU has no access to the U.S. shipbuilding markets by right of the Jones Act. In aviation, the EU failed during the negotiations on the EU-U.S. Open Skies Agreement to ensure cabotage for EU airlines, which would allow EU airlines to operate internal flights in the U.S. It will also be an uphill battle for the EU to see any changes in these fields.

27. Agriculture will also bring sensitivities from the U.S. side. Dairy, sugar and cotton primarily, however, issues like geographical indications will also require innovative solutions for a final deal to be acceptable and compatible with the American system of trademarks. Nonetheless, USTR Froman has indicated that any deal must include also of course contain substantial concessions from the EU side if US Congressman are to be able to sell a deal to their constituencies.

28. Other offensive interests for the U.S. will include expanded quota for beef and pork meat, as well as progress of SPS issues like hormone beef and chlorinated chicken. Americans frequently complain about the EU’s approach to GMOs believing that the current application process lacks sufficient transparency and is open to abuse by protectionist lobbies. Finally, the US has indicated that investor to state dispute settlement provisions in a strong investment chapter are important in addition to provisions on data flows.

The way forward

29. There remains no doubt that the TTIP faces abundant challenges and myriad problems. However, both sides must not lose sight of the key notion that stronger transatlantic ties are essential if Europe and America are to successfully deal with shared problems using common approaches. TTIP will help ensure that Western values and regulatory principles will prevail in the creation of new rules in the 21st century global system.

30. While longstanding differences will pose particular challenges, both sides will need to adopt innovative and collaborative approaches to create flexible and open-minded solutions that respond to the specific features of the transatlantic relationship. To put it simply there is no room for failure, Europe and America cannot afford to fail in this endeavour, with the aim being to create a truly Transatlantic Market that reconfirms, affirms and reinvigorates the most important economic relationship in the global economy.

10 October 2013
TheCityUK – Written evidence

Context
1. TheCityUK is pleased to submit evidence to the House of Lords European Union Committee (Sub-Committee on External Affairs) Inquiry into the Transatlantic Trade and Investment Partnership (TTIP). This is a timely and important Inquiry that reflects a key priority for the organisation and the sector it represents.

2. We are a member-based body representing the UK’s financial and related professional services sector. This ranges from banking, insurance, asset management, securities and private equity through to legal, accountancy and management advisory services. The industry accounts for 13.5% of the UK’s GDP and 12% of tax receipts. It employs over two million people, more than two-thirds of whom work outside of London. Our membership includes UK-headquartered and inward investor firms. TheCityUK’s work on trade and investment policy is undertaken through its Liberalisation of Trade in Services (LOTIS) Committee. This Committee has a Working Group devoted specifically to TTIP, the first with a specific focus on a single international negotiation.

TheCityUK’s overall approach to trade and investment
3. In TheCityUK’s view, the primary objective of global trade and investment policy is to promote economic growth and prosperity among all trading partners. The free play of comparative and competitive advantage, as well as the continued liberalisation of trade in goods and services, are essential to this objective, and should be pursued vigorously at the multilateral, plurilateral and bilateral levels. Crucially, in an environment of economic uncertainty and slower growth in some economies, countries with open markets should maintain their progressive role as key drivers of global liberalisation. Businesses in developed and developing markets alike need the commercial advantages that market opening can bring in order to continue to compete effectively on a global scale. TTIP, as a market-opening agreement between the world’s two largest trading blocs, offers a unique opportunity for enhancing such advantages. We believe a successful conclusion to the negotiations would benefit not just the two blocs, but would set the template for progress and future negotiations on a global basis.

4. To gain maximum economic impact, EU trade and investment policy objectives need to focus on the liberalisation of trade in services, given that the services sector is now the primary contributor to economic scale, growth, employment and competitiveness. European private-sector services businesses already contribute more than 55% of EU GDP and account for more than 50% of all EU employment. This rises to 77% for GDP and employment across all public and private sector services. The EU is also the largest exporter and importer of services, with more than 26% of total world trade in services (extra-EU). Moreover, 65% of all outward foreign direct investment (FDI) by European businesses (extra-EU) and more than 80% of all FDI coming into the EU is invested into services sectors. With services trade comprising 28% of EU external trade, there is huge scope for expansion, with the promise of enhanced EU competitiveness and prosperity. Recent moves to measure the size of trade in services by the World Trade Organisation and the Organisation of Economic Co-operation and Development by using a value added method would increase that figure to over 50% without lessening the potential impact of further liberalisation.
**TTIP must be a comprehensive agreement**

5. The EU and the US account for only some 12% of global population but nearly half of world GDP and 30% of world trade. For both the EU and the US, the TTIP will be bigger than any previous trade agreement. This is true in relation to the value of business covered and the range of subject matter. It is the latest in a series of long-running attempts to conclude an agreement across the Atlantic. Crucially, we believe this is the best opportunity in a generation to deliver and unlock the potential of concluding the right agreement to the benefit of both parties within a relatively short negotiating timeframe.

6. As an agreement between the two largest global markets in which services are most highly developed, TTIP offers particular potential for enhancing business opportunities and economic growth. Furthermore, given the extent, breadth and depth of the UK-US economic and commercial relationship, the benefits for the UK are extremely high.

7. It is not surprising that its ambit is already the subject of a good deal of debate, with both EU member states and certain US sectors and agencies positioning themselves to establish red lines in an attempt to cut out subjects from negotiation. We have urged the US and EU authorities to support a wide-ranging and comprehensive agreement. It would not be right, when negotiations are still at an early stage, for either side to exclude particular topics. The UK Government takes a similar position and we warmly welcome that. It should, however, be noted that the EU has already taken steps towards excluding matters relating to the audio-visual cultural exception at French insistence. There could well be a quid pro quo from the US as the talks develop.

8. Shared EU and US experience demonstrates clearly that trade negotiations can and do deliver important benefits, even in new and untried areas. A comprehensive agreement will maximise the chances of economic benefits with minimum distortions. Business representative bodies in the US have echoed TheCityUK’s view that the financial services should be fully covered within TTIP – an identity of view that ought to weigh with negotiators and regulatory authorities on both sides.

9. For all these reasons, TheCityUK strongly supports the efforts being made in the US and the EU towards a Transatlantic Trade & Investment Partnership. We believe that TTIP needs to be comprehensive in scope and negotiations towards it should cover all aspects of the transatlantic economy. Nothing should be excluded from discussion. The resultant agreement must include both market access for and regulatory coherence in financial and related professional services in order to be truly economically meaningful in the interests of growth and job-creation on both sides of the Atlantic.

**Special characteristics of TTIP**

10. TTIP architecture is likely to cover market access and national treatment for goods and services as is the case in most trade agreements. It should also cater for regulatory divergence between the two blocs, as these differences comprise the main non-tariff barrier to increased trade in goods and services between them. TTIP will therefore contain certain horizontal provisions on regulation that would be common to all sectors in both goods and services. These might cover:

- transparency
- publication of consultation drafts of legislation and regulation
- availability of legislation and regulation once promulgated
- adequate time for compliance
- impact assessments that take account of international effects
- and consultation between the US and EU on instances of regulatory difficulties hampering trade and investment, with a view to resolving these.

11. Alongside the horizontal provisions there are likely to be sector-by-sector provisions on how TTIP’s objectives in the regulatory field might be met in particular cases. These could identify new or existing bilateral institutions that could be used for consultation on regulatory difficulties.

**Financial & professional services within TTIP**

**General**

12. Financial and professional services have been recognised as particularly important for the UK in TTIP negotiations. In a recent consultative document, the Government suggested some key priority sectors for the UK. Financial services were ranked as having one of the highest shares of UK exports, an extremely high degree of UK specialisation, and the highest volume of employment within a single sector.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Financial services</td>
<td>6.50 %</td>
<td>12.4 %</td>
<td>1071,200</td>
</tr>
<tr>
<td>Advanced manufacturing</td>
<td>0.7–4.3 %</td>
<td>15.0 %</td>
<td>399,300</td>
</tr>
<tr>
<td>Chemicals</td>
<td>8.60 %</td>
<td>10.8 %</td>
<td>102,600</td>
</tr>
<tr>
<td>Pharmaceuticals</td>
<td>8.60 %</td>
<td>5.0 %</td>
<td>41,900</td>
</tr>
<tr>
<td>Automotive</td>
<td>12.00 %</td>
<td>4.5 %</td>
<td>124,300</td>
</tr>
<tr>
<td>Food &amp; Drink</td>
<td>13.10 %</td>
<td>3.7 %</td>
<td>342,900</td>
</tr>
</tbody>
</table>

Source: TheCityUK from various sources

13. Key for TheCityUK and its members is the confirmation of an earlier piece of work by the Department for Business, Innovation and Skills (BIS) that placed our sector as one of the top two to benefit the UK. This underlines the imperative of the sector’s inclusion if TTIP is to be truly economically meaningful.

14. For our sector, TTIP offers challenges and opportunities. The prize is great, as both the US and EU economies will best be able to generate growth and create jobs if they have access to the deepest and broadest capital markets that can be provided. In the first instance, both sides should use TTIP to deliver negotiated benefits in terms of market access and national treatment where required. Achieving this will prove challenging in itself, but financial services are also the subject of detailed regulation which, post-crisis, has intensified on both sides of the Atlantic rather than diminished. These regulatory issues need to be addressed too.
15. The general economic background to the case for including financial and professional services within TTIP is at Annex 1.

**Market access and national treatment**

16. Like any free trade agreement, TTIP should offer scope for enhanced market access – both ways – for financial and professional services. As shown in the table above, market access and national treatment barriers in terms of tariff equivalents are not overwhelming for financial services. Yet such barriers exist, at both US federal and sub-federal levels, for both financial and related professional services.

17. Many US restrictions, for example on insurance, legal services and accountancy, result from sub-federal legislation by individual US states. We believe TTIP should find ways of tackling these in a similar way to the EU-Canada Comprehensive Economic & Trade Agreement (CETA) with certain Canadian provincial measures. It is well understood that the US federal government cannot compel the states. But the problem cannot be ignored, and ways need to be found of persuading US states of their own interest in terms of jobs and growth in removing trade-restrictive measures.

18. Barriers to market access and national treatment for financial and related professional services are too numerous to be itemised in this submission. We attach an illustrative list at Annex 2.

**Regulatory coherence**

19. For the sector, a critical issue is the extent to which TTIP can be made to enshrine procedures for building bridges between different regulatory approaches now and in the future. This does not mean seeking regulatory harmonisation - the identity of rules – which we recognise would involve renouncing policy freedoms that neither the EU nor the US would wish to do.

20. Stopping short of harmonisation, however, there are opportunities for removing unintended regulatory obstacles to financial services flows, particularly where these obstacles affect the availability or affordability of core financial services that are vital to business end-users for funding new projects or managing risks in the interests of greater growth and wealth-creation in both the US and the EU. These obstacles arise, for instance, where global standards are differently applied, where there is a conflict or wide divergence of rules, or where extraterritorial application of rules or demands for regulatory equivalence may make it impossible for financial services providers to supply their products, or to do so at reasonable cost.

**Promoting regulatory coherence**

21. The approach for dealing with such obstacles to regulatory coherence will vary, but in all cases agreement by both sides will be required. It may involve some form of recognition or exemptive relief in specific cases; in others, some kind of substituted compliance may be the answer. TheCityUK’s strong view is that TTIP’s proposed arrangements for regulatory coherence, which look likely to cover a wide range of both EU and US measures affecting trade in goods and services, should extend to financial services regulation as much as to the regulation of any other sector. It would be perverse to start TTIP by excluding a sector such as financial services which has a central role in investment, growth, jobs and wealth-creation.
22. Our key priority is that there should be a process in the TTIP for identifying, tackling, managing and preferably removing such obstacles in ways satisfactory to both sides, thereby securing improved regulatory coherence. Any attempts to exclude progress towards such solutions would undermine the prospects for stronger regulatory cooperation as well as deeper economic integration across the Atlantic. Achieving such coherence should not rely only on solving regulatory downstream spill-overs ex post. It should also encompass upstream or ex ante processes for anticipating difficulties and working together on them before they arise.

23. Work to bring about coherence must, of course, be done by the regulators themselves on a basis of agreement: theirs is the duty to adopt the measures that they deem necessary to protect the domestic prudential regime. It follows that any work towards greater coherence will need to fall to them. Much of this is now done in the regulator-to-regulator Financial Markets Regulatory Dialogue, which is well-respected. But providing a TTIP context for this regulator-to-regulator work is important too. We believe it will serve to underscore the shared political goal of reducing, as much as practicable, unnecessary regulatory differences that affect our economies. TTIP should also inform the regulator-to-regulator process by asking regulators to assess the impact of their decisions on the broader transatlantic economy, as might be expected within the general norms of good regulatory practice. The regulators’ independence would not be brought into question through this process. Rather regulators’ decisions would be informed by a greater understanding of differences between their decisions and those of their transatlantic counterparts, the costs that those differences entail, and whether the costs outweigh the benefits.

TTIP: progress of the negotiations

24. Rapid progress has already been made this year. TTIP negotiations were announced on 17 June 2013 during the G8 Summit chaired by the Prime Minister. The first round of negotiations followed soon afterwards on 8-12 July 2013 in Washington DC. Although inevitably something of a scene-setter, it confirmed TheCityUK’s initial analysis of TTIP as a highly ambitious endeavour, huge in size and range. Both sides tabled a spectrum of proposals covering different sectors and areas of economic activity. They were backed by appraisals and representations from business sectors in the EU and the US, including TheCityUK’s cross-sectoral input.

25. Further rounds of TTIP negotiations are due to take place this autumn. The second round scheduled for the week of 7 October 2013 was postponed due to the US Government shutdown. Along with the postponement of President Obama’s visit to Asia, these US decisions appear to be more about domestic political signalling rather than TTIP content-related. The subsequent round is set for December 2013.

Next steps

26. For financial and related professional services, TheCityUK expects to see negotiators take forward steps made during and after the first round of negotiations when the EU made some initial proposals for the sector. This could be part of a significant focus on broad-based regulatory issues in the run up to the December round. It is too soon to know where financial services will rank in the negotiating agenda over the rest of this year. But it is clear that our sector needs to remain vigilant in ensuring that the case for financial and professional services within TTIP remains at the forefront of negotiators’
minds. We believe that there may be a political stock-take of the regulatory dynamics of TTIP in early 2014. TheCityUK’s work is and will be heavily focussed on that goal.

27. In arguing the sector’s case on behalf of its members, TheCityUK has been active in seizing opportunities to explain and showcase our views and in ensuring that we are reaching out to like-minded allies on both sides of the Atlantic. Main activities have included:

- **putting the case to governments and negotiators:** We have provided full briefing to UK Ministers in advance of their senior level interactions during visits to the US. Following a personal briefing, the Deputy Prime Minister raised our points in a meeting with Vice President Joe Biden and reinforced them in a public platform speech in September 2013. These included the need to cover market access and regulatory coherence, as well as reinforcing the fact that TTIP not the Trans-Pacific Partnership (TPP) is the bigger and more immediate prize in economic terms. We also wrote to the Chancellor in advance of his October 2013 visit to the US asking him to reinforce similar points. This letter was warmly welcomed. Our publication “The Transatlantic Trade & Investment Partnership (TTIP) – A View from TheCityUK” has been circulated to Heads of UK Missions in all EU member-states. We have also run events at which UK and European Commission officials have been able to discuss and explain TTIP to our members. And there has been active series of discussions with relevant officials in Whitehall and Brussels, including the lead TTIP negotiator and sectoral colleagues, to pursue our agenda. Finally, TheCityUK and its LOTIS Committee Chairman were asked by the Permanent Secretary at the Department for Business to represent the sector on a new multi-stakeholder consultative TTIP group. TheCityUK very much supports and appreciates the UK Government’s activities and approach to TTIP.

- **outreach to the United States:** in June and September 2013 senior representatives of TheCityUK led its Chief Executive visited Washington DC and New York to put our case both to US policymakers and to business, including our own members there. We secured strong buy-in for our case, and a highly encouraging response, on which we are building. This outreach includes good links with the US Embassy in London to ensure messages are relayed back to Washington. In conversation with the new US Ambassador, we raised TTIP as the key issue on our agenda with the US.

- **marshalling our members’ views:** TheCityUK has established a TTIP Working Group of our Liberalisation of Trade in Services (LOTIS) Committee – the only such group dedicated to our sector’s interest in a single negotiation. The Working Group has met twice and is to meet again before and after forthcoming rounds of negotiations.

- **research on TTIP’s effects:** we have commissioned research with US partner organisations which will be a major contribution to the sector’s business case. Together with Thomson-Reuters we are sponsoring an independent bi-partisan report by the Atlantic Council assessing transatlantic regulatory co-operation and divergence in financial reform since the financial crisis. This important work, to be launched in the coming months, will be a counterpart to the new report from the Atlantic Council, the Bertelsmann Foundation, and the British Embassy in Washington.
“TTIP and the Fifty States: Jobs and Growth from Coast to Coast”. A ground-breaking study exploring TTIP’s impact on the economies of all fifty United States, it was launched in Washington DC by the Deputy Prime Minister in September 2013.

- **research on the benefits of financial services for the transatlantic economy**: together with the US Chamber of Commerce based in Washington DC, we have undertaken to produce a joint paper on regulatory principles for facilitating funding for Small & Medium Enterprises (SMEs) which make up so much of the economy on both sides of the Atlantic. We intend that this will build on the report “Alternative Finance for SMEs and Mid-Market Companies”, which TheCityUK launched in October 2013 with Ares & Co. Work of this kind has many potential audiences: it may, for instance, be tabled at a G20 business federations’ roundtable. We are planning to follow it with a further joint paper on corporate governance, embracing issues such as reporting, audit reform, and risk management.

**Conclusion**

28. In our discussions with Governments and negotiators it has become clear that TTIP negotiations as a whole will be challenging and will take time to complete. The arguments for the full inclusion of financial and professional services will need to be steady and sustained. We shall continue to take all opportunities to deploy them, developing these as negotiations progress. TheCityUK’s strategic goal of influencing and securing an ambitious, comprehensive and economically meaningful agreement is focussed on bringing significant benefits to and for the UK. We would be pleased to provide any additional evidence, written or oral, that the Committee might consider useful as it conducts its Inquiry.

*October 2013*
Annex 1

Financial & related professional services: the economic background to TTIP

Context

1. In economic terms the case for a comprehensive agreement is clear. Taking trade across all sectors - goods and services - the US is the most important trading partner for the EU in export terms. In 2011, the US was the destination for around 17% of total EU exports. The US is also the third most important (11%) source of EU imports after China and Russia. For the US, the EU is also an important trading partner. It is the second most important destination for US exports (19%) after Canada, and the second most important source of US imports (17%) after China.

2. The transatlantic relationship is even deeper on the foreign direct investment side, where European companies accounted for $1.5 trillion (63%) of total foreign direct investment in the US and US companies accounted for $1.7 trillion (about 50%) of total foreign direct investment in Europe. This investment accounts for four million workers on both sides of the Atlantic being directly employed by the respective affiliates of US or European based companies. The US is a major destination for portfolio investment of EU fund managers. Over 40% of US non-resident portfolio investment assets ($2.7 trillion) comes from the EU. Nearly $1.7 trillion of this is invested in US equity markets and the remainder in US debt securities. The US is the source of some $2.5 trillion of portfolio investments into the EU, $1.5 trillion in equities and the remainder in EU debt securities.

3. For the UK, the economic and commercial relationship with the US is of particular significance. It remains the UK’s single largest export market. The flows of foreign direct investment between the two countries are testament to the strategic economic importance of each to the other. Much of the EU-related focus of US companies is in the UK, which acts as a gateway to Europe.

4. Taken together, the concomitant impact and contribution to economic growth, jobs, tax receipts and competitiveness are vital components of the relationship.

Financial services sector

5. The economic case for including financial services within TTIP – in terms of both trade and regulatory coherence - is also compelling, given the size of the EU and the US in terms of their respective share of global financial markets. The combined total of these two regions accounts for the bulk of the global financial services market (roughly two-thirds of global financial services business). They are by far the largest global markets for financial services:
### EU AND US SHARE OF GLOBAL FINANCIAL MARKETS

<table>
<thead>
<tr>
<th>% share (latest available data)</th>
<th>US</th>
<th>EU</th>
<th>EU &amp; US</th>
<th>Rest of world</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banking sector assets</td>
<td>13</td>
<td>45</td>
<td>58</td>
<td>42</td>
</tr>
<tr>
<td>Insurance premium income</td>
<td>29</td>
<td>34</td>
<td>63</td>
<td>37</td>
</tr>
<tr>
<td>Funds under management</td>
<td>45</td>
<td>30</td>
<td>75</td>
<td>25</td>
</tr>
<tr>
<td>Equity market capitalisation</td>
<td>36</td>
<td>25</td>
<td>61</td>
<td>39</td>
</tr>
<tr>
<td>Domestic bond markets value outstanding</td>
<td>38</td>
<td>24</td>
<td>62</td>
<td>38</td>
</tr>
<tr>
<td>Foreign exchange trading</td>
<td>17</td>
<td>50</td>
<td>67</td>
<td>33</td>
</tr>
<tr>
<td>International bank lending</td>
<td>11</td>
<td>56</td>
<td>67</td>
<td>33</td>
</tr>
<tr>
<td>OTC derivatives trading</td>
<td>24</td>
<td>62</td>
<td>86</td>
<td>14</td>
</tr>
<tr>
<td>Hedge fund assets</td>
<td>65</td>
<td>21</td>
<td>86</td>
<td>14</td>
</tr>
<tr>
<td>Private equity investment value</td>
<td>46</td>
<td>25</td>
<td>71</td>
<td>29</td>
</tr>
<tr>
<td>Marine insurance premiums</td>
<td>6</td>
<td>35</td>
<td>41</td>
<td>59</td>
</tr>
<tr>
<td>Pension assets</td>
<td>56</td>
<td>23</td>
<td>79</td>
<td>21</td>
</tr>
</tbody>
</table>

| GDP                             | 25   | 21   | 46      | 54            |
| Population                      | 5    | 7    | 12      | 88            |

*Source: TheCityUK estimates based on various sources*

6. The EU and US are also the biggest global exporters of financial services:

### GLOBAL EXPORTS OF FINANCIAL SERVICES

$ billion, 2011

<table>
<thead>
<tr>
<th>Region</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU</td>
<td>82</td>
</tr>
<tr>
<td>Extra-EU 77</td>
<td></td>
</tr>
<tr>
<td>Intra-EU 103</td>
<td></td>
</tr>
<tr>
<td>US</td>
<td>21</td>
</tr>
<tr>
<td>Switzerland</td>
<td>15</td>
</tr>
<tr>
<td>Singapore</td>
<td>15</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>8</td>
</tr>
<tr>
<td>India</td>
<td>8</td>
</tr>
<tr>
<td>Canada</td>
<td>5</td>
</tr>
<tr>
<td>Japan</td>
<td>4</td>
</tr>
<tr>
<td>China</td>
<td>4</td>
</tr>
<tr>
<td>S. Korea</td>
<td>4</td>
</tr>
</tbody>
</table>

*Source: IMF, WTO*
Related professional services sector
7. The US and the EU are also the largest global markets for related professional services. All of the largest 50 global law firms are located in these two regions. More than 80% of the lawyers employed in the largest 100 global law firms' lawyers are located in either the US or Europe:

<table>
<thead>
<tr>
<th>Region</th>
<th>Lawyers</th>
<th>% share employed</th>
</tr>
</thead>
<tbody>
<tr>
<td>US</td>
<td>47780</td>
<td>50</td>
</tr>
<tr>
<td>Europe</td>
<td>31780</td>
<td>33</td>
</tr>
<tr>
<td>Rest of world</td>
<td>10847</td>
<td>11</td>
</tr>
<tr>
<td>Middle East</td>
<td>3165</td>
<td>3</td>
</tr>
<tr>
<td>Other</td>
<td>2205</td>
<td>2</td>
</tr>
<tr>
<td>Total</td>
<td>95777</td>
<td></td>
</tr>
</tbody>
</table>

8. In addition, the EU and US are the largest global markets for accountancy services and management consulting.

Conclusion
9. By all these measures, the economic case for the benefits of a comprehensive agreement, in terms of growth and jobs points to a huge opportunity. In economic terms, however, it is an opportunity that will only be realised if the agreement is allowed the widest scope in terms of not only covering the market access for the advanced services sectors in which both regions are global competitors but also providing procedures for regulatory coherence maximising the economic welfare gains in the interests of both.
ANNEX 2

Financial & professional services: market access & national treatment barriers

1. The following are the main generic types of barrier for certain key financial and related professional services.

Accountancy
2. The main transatlantic barriers and related difficulties include:
   • ownership (nationality restrictions)
   • liability
   • legal environment and regulatory divergence (accounting standards, auditing standards, ethical standards and audit oversight)
   • US federal and sub-federal public procurement (EU accountancy firms have great difficulty fronting public sector work in the US, whereas US firms can bid without restrictions for EU public sector contracts)
   • and differences in insolvency regimes between the EU and the US.

3. The following would be important issues:
   • full adoption of International Financial Reporting Standards (IFRS) and International Standards on Auditing (ISAs)
   • adoption of international standards on ethics (governing independence and other matters)
   • greater regulatory coherence in auditor oversight and inspection
   • and the establishment of a transatlantic equivalent of the EU Official Journal for the transatlantic public sector market.

4. Accountancy qualifications are also a relevant issue. The UK has no mutual recognition agreement with the US International Qualifications Appraisal Board (IQAB). This leads to various barriers which prevent UK accountants being permitted to sit the US Certified Public Accountant (CPA) examination.

Banking and related financial services
5. Even before the 2008 crisis, there were longstanding complaints which were spelt out in successive EU reports on Barriers to Trade and Investment concerning, for instance, registration rules. Some key examples include:
   • the extraterritorial application of US sanctions policy to foreign banks
   • and the ban on foreign banks acquiring more than 5% or 10% of a US bank without the approval of the Federal regulator.

6. Since the crisis, other issues have also become prominent:
   • markets regulation: there is a need for consistency with the work done in global forums, such as the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions (CPSS-IOSCO), given the inherent global nature of trading in financial instruments.
• **alternative investment funds**: both sides must avoid limiting their professional investors' access to investment opportunities and depriving companies of a valuable source of capital by introducing such additional criteria

• **capital**: the Basel III regulations should be implemented in an internationally consistent way with mutual recognition of equivalent regimes in other jurisdictions

• **derivatives**: given the global nature of the derivatives business, coherence in the implementation of G20 commitments is especially important

• **resolution of cross-border firms**: there is a need for an internationally agreed regime, accepted by bank regulators from the EU, the US and other countries, working under the auspices of the Bank for International Settlements.

**Insurance**

7. There are a number of issues in insurance between the EU and the US. Two of the most significant are:

• **US rules on credit for reinsurance**: long-standing US regulations have made it more difficult and costly for non-admitted insurers and reinsurers to write US risks, although the National Association of Insurance Commissioners' (NAIC) adoption of a revised Credit for Reinsurance model law and regulation in 2011 has been a useful step

• **diverging views over insurers’ solvency and the use of Solvency II**: the EU’s Solvency II regulations have the principal objective of transforming the regulatory environment of the EU insurance industry. The EU Commission is negotiating with certain jurisdictions, including the US, as to whether their supervisory regulations can be recognised as equivalent

8. In 2012 the EU-US Insurance Dialogue Project was established, with the publication in December 2012 of a technical report comparing and contrasting the EU and US regulatory approaches in seven key areas. A Way Forward document setting out objectives to be pursued over five years in each of the seven workstreams was also published. The way in which TTIP can best co-exist with these dialogue-based approaches remains to be determined.

**Legal services**

9. The key issue in the US is the sub-federal issue. Each US state is a separate jurisdiction and as such has its own regulations where foreign lawyers are concerned. Further, there is no national body that is vested with the power to address these issues for lawyers nationally or internationally. The likelihood of achieving a level playing field maybe slim, but the issues are nevertheless worth examining.

10. Specific features arising from the US regime include:

• **re-qualification**: the rules for eligibility to take the US bar exam vary widely between US states. All UK lawyers should be eligible to take the bar exam regardless of their route - university or otherwise - to qualification

• **Foreign Legal Consultant (FLC) status**: foreign lawyers can practice in over 30 US states as an FLC, which permits the practice of their home law with some restrictions. However, only a very small number of US states allow temporary practice as an FLC (allowing foreign lawyers to perform “temporary and limited services in the United States”)
• **practice as an in-house lawyer:** a handful of US states have rules for foreign lawyers Practising as in-house counsel

• **setting up a law firm:** there are UK law firms established in a limited number of US states where many employ both English and US lawyers. However, as some UK firms convert to Alternative Business Structures (ABSs) they may have issues with local compliance as ABSs are, almost without exception, not allowed in the US.
Jean-Paul Thuillier, Minister-Counsellor for Economic Affairs, French Permanent Representation to the EU—Oral Evidence (QQ 61-72)

Evidence Session No. 7.  |  Heard in Public.  |  Questions 61 - 72

TUESDAY 5 NOVEMBER 2013

11.05 am

Witnesses: Jean-Paul Thuillier

Members present

Lord Tugendhat (Chairman)
Lord Lamont of Lerwick
Lord Maclellan of Rogart
Baroness Quin
Earl of Sandwich

Examination of Witness

Jean-Paul Thuillier, Minister-Counsellor for Economic Affairs, French Permanent Representation to the EU

Q61 The Chairman: Mr Thuillier, thank you very much for joining us. As I think you know, we are the House of Lords Sub-Committee on EU External Affairs. We are doing an inquiry into the TTIP negotiations. We hope to report in the first quarter of next year and, during our visit to Brussels, apart from seeing the Commission, we are seeing a number of member state delegations. We are also seeing the Chinese and the United States, so we are quite busy. You have been sent a number of questions, I know, which we will work through, but we will not necessarily take them in order.

If I could start off with a general question: we have seen studies commissioned by the European Commission and the UK about the possible impact of a prospective TTP agreement on different parts of the British economy and different parts of the EU economy. I imagine the French Government has done something very similar, and I wonder if you could tell us which sectors of the French economy you think stand to gain most from this and what aspects you are most nervous or hesitant about.

Jean-Paul Thuillier: Thank you very much, and thank you for inviting me to this audience. Actually, we also commissioned a similar analysis as the Commission and the UK, and this study was presented last year during a seminar organised by the Commission. At that time, we presented the main outcomes and I am sure that the UK reported exactly to London
what was presented by the French speaker. I may transmit back to Sarah this study, which was already sent to London. The general assessment is the same as the UK one and the Commission one, which is first of all that non-trade barriers are the main topic, even if, none the less, tariff elimination would be beneficial for both sectors.

The second point is that we already have a quite impressive integration of both economies, because more than one third of our bilateral trade is intra-firm trade—so the French ancillary in the UK and the contrary US companies in France. A third of all services would be one of the major benefits from this exercise, provided that the real trade barriers and regulatory convergence are led in this exercise. In the field of industry, we have no really sensitive sector, as I understand it, because of this already-integrated economy. I leave aside the audiovisual sector, which is out of the negotiation.

The sensitive sectors for us are the traditional ones, in terms of competitiveness: in agriculture in the bovine, pork, poultry and meat sectors, and we have often seen interest in the field of dairy products, agri-food, processed food and obviously wines and spirits. The economic analysis led by France provided the same kinds of results as the Commission one, maybe with some discrepancies from the UK one, because we are less specialised and focused on specific services, like financial services, which is of paramount importance to the UK economy. Our nervousness with regard to the economy would most rely on those sensitive sectors, where our real political nervousness would rely on different items.

Q62 Baroness Quin: Have you identified in the agricultural sector any clear areas where you feel you would benefit, and therefore you can somehow get some momentum going, which would then help to deal with the difficult ones?

Jean-Paul Thuillier: Yes, wine and spirits, and dairy/cheeses, provided that the sanitary issue of unpasteurised cheese, fresh cheese, could be solved based on a risk-scientific approach by the US. Processed foods are clearly of economic interest but, all in all in France, defensive sectors are much more vocal than offensive sectors so, in terms of political balance, we need to take it into consideration.

You may have seen in the press reports that we have some difficulty at the present time with Brittany, which is suffering a specific sectoral crisis on agri-food, on pork, meat and all the sectors of poultry as well. We have companies in very straight difficulties, and we have to take that into consideration. We are speaking here in 2013, and the negotiation may end around 2018 or 2020, so we may see when the decision is concluded and, at that time, what is the exact situation of French industries in this regard. Politically, there is clearly no possibility of really balancing, if I may say so, the positive sectors with the defensive ones.

Q63 Lord Maclennan of Rogart: Has the Government made any projections about what the overall percentage increase in trade might be?

Jean-Paul Thuillier: Yes, I have no figure in mind, but I may once again transmit back to you the main conclusions of those studies. Actually, I must say that our Government is looking a bit critically at the figures that were produced by the Commission in their economic analysis. When you talk with the economists who produced those studies, there is always some discrepancy of appreciation between the economists and the politicians. The politicians are looking at the figures and the figures are always more positive than impact studies, whereas the economists are looking at how their models are functioning, and if they have put good factors and parameters in their models to assess the situation.

Clearly, the assessment by the Commission that globally for the EU an ambitious trade deal would create around 0.45% additional growth for EU has been challenged because, over time, it is very difficult to know over more than a decade, provided that all the potential benefits of trade are in place, what is to be the real situation for the EU economy as a whole. It is quite difficult. There are so many parameters starting with, for the eurozone, the rate of the euro. Contrary to the UK, we have no possibility of managing the money as the Bank of
England is able to do. There are so many parameters that, if you use external factors, about the whole competitiveness of the EU in comparison to other economies and so on, clearly the figures are to be considered as a general factor, a positive factor, but they are not able to produce precise forecasts in macroeconomic terms.

Q64 Earl of Sandwich: Just staying with agriculture, do you anticipate hostility among consumers in France to GM and so forth, and particularly in the political parties, the government party?

Jean-Paul Thuillier: Clearly there was a red line set by the European Commission and President Barroso from the start that the negotiation would be at constant legislation, which meant no changes in EU legislation for GMOs, hormones and so on. We have seen some statements in the European Parliament and in some political groups in France with the Greens and the Left about hormones. I leave aside all the debate in France around free trade and trade liberalisation, but my personal view is that the news surrounding NSA and so on is providing me the evidence that what I personally call traditional trade irritants between the EU and US will not be a stumbling block. We have the means to manage it traditionally through the negotiation process.

For the hormones, for instance, we have a technical solution, which is to negotiate a quota of hormone-free beef from the US. I am sure that the Commission already has figures in mind for this quota. We have the example of the CETA with Canada. We show that, if the EU is about to provide to Canadian exporters a sufficient quota of hormone-free beef, allowing them to develop a sector that can be economically profitable, then we can solve the issue. For GMOs, we have the same kind of legal system where we are providing authorisation. Even if within the Congress you still have some Congressmen pushing hard in that direction, I am sure that the negotiators are able to manage it and provide proof that the EU will not change its system. If EU consumers want to eat hormone-free beef, then they will be allowed to continue to do so.

On the contrary, my view is that we may be faced by some difficulties, and some are beginning to be known, around what I am calling the digital economy, the 21st-century economy. In that respect, we have some very specific differences in approach between the EU and the US, in terms of data protection, data privacy, freedom of internet and so on. We have a clear signal in that direction with ACTA, the agreement on intellectual property, when unexpectedly we were faced with very strong opposition from some Member States, most of which were eastern European countries. They experienced 50 years of Soviet occupation, so they have very strong concerns in terms of freedom of the citizens. Some western European countries, like Germany and the Netherlands, which were not supposed to be against free trade, were also very sensitive to this kind of issue. In my view, it would be in the interests of negotiators to clearly put strict borders between negotiations around data protection, data transfer and so on, and regulation of the internet economy, and see what can be put only within TTIP as a trade question, not mixing the issues of freedom of the internet with trade issues. It means that the Commission has to reflect about that. I see, for instance, that we may have some contradictions between the EU and the US, even within the field of the negotiation. I take the specific question of financial services, for which the US wants an exclusion. How do we reconcile the question of financial services with the question of data transfers between banking sectors on both sides of the Atlantic? It is, in my view, more with these kinds of issues that we may face some political difficulties.

Q65 Lord Lamont of Lerwick: Did you say the United States has formally asked for the exclusion of financial services?

Jean-Paul Thuillier: Not formally. They will not proceed like that but, in fact, it has been stated time and again within their Congress or even in Brussels by Mike Froman himself,
talking about dealing with those issues in a parallel track that needs to be outside of the negotiation. We are still discussing that.

**Lord Lamont of Lerwick:** What was your point about bank transfers? Were you referring to anti-money-laundering? Was that that you were referring to?

**Jean-Paul Thuillier:** Not only money-laundering, but all the issues relating to the treatment of data. For instance, SWIFT is an example.

**Lord Lamont of Lerwick:** When you say SWIFT, do you mean sanctions on SWIFT?

**Jean-Paul Thuillier:** Yes. If I may conclude, my view is that we may face some sectoral problems, traditional ones—hormones, GMOs and, for France, audiovisual and agriculture—and how they are dealt with within the negotiation—freedom of the internet and even confidence in the partnership itself, consumer concerns around the right to regulate, investor-state dispute settlement and the fear by some trade unions around social issues, the so-called race-to-the-bottom regulations and so on. All those issues, at this point in time, are more or less theoretical. We have not seen, except for some specific issues, constituencies expressing their concerns, but I cannot totally exclude the scenario that, in a point of time, if the negotiation is turning a bit sour, you see some kind of convergence and consolidation of the different concerns expressed by the NGOs, civil societies and some Member States. I do not know if, in English, you have the same kind of image but, in France, we are talking about the “blogosphere”, which means you have a civil society that is very active on the internet with lots of people active on that. For ACTA, for instance, we saw all the institutional communication by the Commission was preceded and challenged by civil society expressions. Even in some EU countries, like Sweden and Germany, this led to the expression of political parties under the name of Piraten, so there is that political expression, which is represented in the Swedish Parliament, for instance, and made some political headway in Germany. If we have this kind of convergence of concerns, challenges and questions, the Commission may be in very serious difficulty to counteract them, because institutional communication is a little weak compared to those kinds of challenges. That is how I see the possible criticism and challenges that this question may face in the future, at this point in time.

**Q66 Lord Maclennan of Rogart:** I wondered if there were any prizes, perhaps in the sphere of public procurement, which might cause you to modify your attitudes in respect of particular products that are causing difficulties for you. Are you seeing this as a negotiation sector by sector, without any leeway to offer?

**Jean-Paul Thuillier:** There may be two sides. The first is the political side for the French Government, which has some time to assess the outcome of the negotiation and then to ponder the different items. Even without public procurement, if we have a very ambitious outcome in terms of GIs, for instance—geographical indications—for which France is attaching a very strong importance, with very good results on wine, spirits, dairy, cheese and other interests, and if we have a balanced package in agriculture with a not-too-ambitious offer from the Commission on beef meat, for instance, which opens the way for positive effects from agriculture, then I think the French Government may be in a position to agree and to support the deal. On the contrary, balancing between public procurement, which is, all in all, an issue first for big French companies, rather than SMEs, and big concessions in agriculture, I do not think it would be the right balance for us. We have to see sectors chapter by chapter, in the negotiation, if we can have some internal balance, and then make a general assessment on the possible impact on the French economy.

The second side is related to the position voiced by some sectors of interest. Clearly, if we are in 2018 in the present situation where we are in the meat sectors in France, if the results of the negotiation with the US are to multiply by three or four the figures provided to the Canadians, for instance, I am sure we will have a very strong political difficulty.
Whatever the outcomes of the negotiation on public procurement, I am not sure that even transatlantic buyouts would balance the political sensitivities of the meat sector.

**Lord Maclennan of Rogart:** Is there a political head of steam behind this in France? Is the Government really keen to see progress on these fronts?

**Jean-Paul Thuillier:** Yes. We are clearly committed but, as you know, our approach to trade policy is nearer to the one in Washington DC than the one in London. We are more mercantilist than free traders, and so we have to balance all those issues. Traditionally, defensive sectors are much more vocal than offensive ones, so it is a political issue that the French Government will have to be able to manage. A decision will have to be taken.

**Q67 Lord Lamont of Lerwick:** There is a difference between Washington and France. That is, Washington says it is in favour of free trade. I wonder if I could ask you about an issue that is so important to France, the audiovisual sector. Considering we talk so much about the convergence of technologies, how do you define “audiovisual”? How broad is the area for which you are seeking exemption? If this is exempt from the talks, what will the end result be? Will it be that each country will have its own regime for trade in audiovisual—for example, foreign content in domestic television programmes or something like that? Presumably, in Britain we would be free to continue just as we are. Lastly, are there ways in which we could get greater market access in the audiovisual field while meeting French concerns? Is there any way round this that you can see?

**Jean-Paul Thuillier:** I had almost six months of discussion and, from time to time, challenging discussions with the Commission about that. Clearly, we were in a binary situation. There is no possible theoretical compromise. The issue is not about opening or closing the market, and so on. The French market is as open as the European market as a whole. We are less familiar with US language or culture than clearly you or other countries are, but I saw the figures in France. The turnover of US films is between 55% and 75% of the total EU market, which is very broad and impressive. All media are concerned by that. As you mentioned, technology convergence means that the French internet consumer is not searching a French site to look at French cultural products. It is YouTube, eBay, Amazon and so on, in an open market.

The issue is rather as we decided to do through the negotiation of the Uruguay round to leave aside trade and culture. That is a French point. We consider that, if you put audiovisual sector cultural services within the trade negotiation, then it induces you to take commitments that are subject to dispute settlements and possible sanctions or compensation payments. Therefore, we want the sector to remain free from those commitments, in exclusion of the audiovisual. It has always been a red line for France. We told the Commission time and again that we would not be able to accept the launch of a negotiation if we did not have this exclusion. It will be a constant position for France and, in this respect, contrary to what the Commission thought and stated to everyone, we were not totally isolated, because the European Parliament inclined in that direction and supported this stance.

I do not think that, whatever the political representation of the next European Parliament, it will be easy for MEPs to consider that audiovisual services can be included in the trade negotiation. Having said that, we would not in principle have been opposed to some discussions between the EU and the US surrounding cultural exchanges and the audiovisual sector outside the TTIP. At the European Commission, for instance, we have co-operation agreements with some of our members. The Korean FTA, for instance, was supplemented by a protocol on culture between Korea and the EU.

**Lord Lamont of Lerwick:** What sort of disputes do you have? When you said it is not about access—it is about disputes—I am trying to get an understanding of what this means.
Jean-Paul Thuillier: If you take commitments in the trade negotiations, you are exchanging offers and concessions. In the audiovisual sector, we can have a discussion surrounding foreign content and subsidies for instance, even the market shares and the notion of local production. If you get into discussions with foreign partners and commit, then it means that your capacity to change your legislation is subject to possible challenges from your partner and then to possible dispute settlement. We do not want to go in that direction, because we consider that we must remain totally free for the future, even taking into consideration technological convergence and the development of the internet economy.

Q68 Baroness Quin: Have you been encouraged by the American reaction to the exclusion of the audiovisual sector or do you think this area might provoke problems later on in the negotiations?

Jean-Paul Thuillier: There has been some—how to say—unwise communication by the Commission after the adoption of the mandate saying that we could discuss that further. We saw some statements and reaction, namely from Mike Froman. He said in an address to Congress in July—the exact date was 17 July; he avoided 14 July—that, for the US, audiovisual through Congress was still within the negotiations. It is the freedom of our US partner to call for the Commission to discuss that. The Commission has to take its own responsibility in that respect. Clearly it is a red line for us and for the European Parliament and even for some Member States, which did not add their voice but expressed some concerns. Clearly if the Commission is willing to kill the process, the best advice is for the Commission to get into discussions with the Americans, but there is no way around that would allow some discussions to take place while keeping to the spirit and the letter of the mandate.

Q69 The Chairman: You have covered a very wide range and you have been very frank in your views. Could I just try to clarify something?

Jean-Paul Thuillier: I suspect that it is the object of the communication.

The Chairman: It is. Could I just try to clarify something? We have been told, since we have been here, that the Commission is minded to produce a sort of interim report at the beginning of next year about the state of the negotiations and what might be achieved. The first question is: what would you like to see in that? The second question is, you have been very clear about audiovisual and, in other conversations, we have found that financial services are also likely to be excluded, but can you tell us what you think are going to be the things put on one side, if I can put it that way? Being put on one side does not mean there is no progress, but they are being put on one side from the TTIP negotiations. We have two, but do you think there will be others?

Jean-Paul Thuillier: Maybe a final question for the report is I would say that I would like this report not to produce only words, but to report real facts on the negotiations, at this point in time. Right now, our internal information or intelligence is that nothing happened in July or very little happened, in the sense that there was no real formal negotiation, but the two sides exposed their own position in terms of templates, methodology, substance and so on. We have to see if, for the second and third rounds, negotiations may go in substance. Presently, the Commission and the US partner are supposed to begin the exchange of offers during the third round, in December. We may see how this happens and in what direction, because the exchange of offers will be a first exchange and, I suspect, a bit limited. The second point is that the core issue is related to non-tariff barriers and regulatory convergence. The two negotiators have to feed that in the process and see how this issue can really develop and go in substance. We see more or less, in SPS and TBT, which are traditional issues, what can be arranged, but it is around principles. For the sectoral annexes, which have been identified at the start by the Commission and the US, we see that it may be a bit difficult. As soon as you get into the detail, even traditional sectors like the automotive
sector, when we are talking to EU and US manufacturers, we see are diverging and hesitant on how to proceed. For the broader ambition to introduce regulatory convergence, we are still in the process of exchanging ideas. It needs to become substantial before we see if the outcome can meet the ambitions expressed through the different statements, and the report and view on it. That is one point.

One additional point is that, clearly, the idea of having, before the end of 2014, a substantive outcome seems to us a bit too ambitious. We may be in a very progressive negotiation where we have to identify every kind of difficulty arising and see how we can solve them. When it comes to TTIP, I am usually speaking about that. First of all, whatever the dimension of the transatlantic partnership, the aim of having a transatlantic interacting market, clearly we are beginning a trade negotiation between two partners. The US is a special partner, if I may say so, considering its importance economically and socially, but it is to be a trade partner. We have to see if both negotiators are able to start discussing rules of origins, the basics. Are we about to get an agreement? The first report of January may give us the first advice and assessment about that.

The second point, with regard to the possible exclusions, which I understand is your question, is clearly there is some difference of communication between the two partners and maybe some kind of hypocritical communication by the US. The US will say that they are pro free trade; they never said that they want to exclude some sectors, but still they have never committed to maritime transport in the WTO.

Lord Lamont of Lerwick: Nor in aviation.

Jean-Paul Thuillier: Nor in aviation. In financial services, they have always stated unofficially that they wanted to have it excluded from the negotiation. I assume that you met the US Treasury before or people from the Fed, and they do not favour the inclusion of financial regulations in the Treasury. We have maritime transport, financial services and air transport, then the more fundamental question of the sub-federal level; will it be included in the negotiation or not? I remember that, in 1996, the UK Embassy in Washington DC produced a very thorough analysis in the field of services at the sub-federal level and we were unable to include the sub-federal level within the negotiation. Will the US Government be able to include the sub-federal level within services regulation or for public procurement? We do not know.

Q70 Earl of Sandwich: Have we got a minute just to deal with the multilateral? The Chinese and others fear that we are abandoning it, because we have this enthusiasm for TTIP. As you said, we are being overambitious already. How are we going to do it in Bali and what is the future of what is left? Is this going to help this process?

Jean-Paul Thuillier: For the Chinese, I think it is a good thing if they are sending us messages, after some years of EU bashing and so on. If they are showing an interest in the EU, that is not so bad, and we are not challenging their choice to try to make free trade agreements with other partners. Everyone is, at this point in time, independent and free to manage their own trade policy. It may be the first positive side or signal that TTIP may produce some renewed attraction for the EU market. We see the same kind of signal from the Brazilians, even if they are in some difficulty with their regional partners, like Argentina and Venezuela in the Mercosur negotiations.

My assessment is that, if we are going in the right direction and are able to conclude negotiations at some point in time, it would be beneficial not only in economic terms for the EU as a whole but even in strategic terms, because it may add to our credibility as a trading partner. It is a balance of success. If we fail it will, on the contrary, increase some EU bashing in the rest of the world or lack of confidence from some new members. If we succeed, we show that the EU is still an attractive partner, whatever the outcome.
The second point is with regard to Bali and the WTO. It is the outer sky of the trade negotiation, which the Commission called the systemic volet, providing the EU and the US have the capacity to engage emerging partners, going back to the multilateral trading system. Clearly it is an idea that France is sympathetic to, because we have always put priority on the WTO and the multilateral trading system. The different hurdles are the following ones: first of all, the capacity to give substance to this systemic volet. You have different sub-chapters—state-owned enterprises, energy, raw materials, investment, competition and so on. It means that, through the negotiation, we have to add sufficient substance to be able to convince our partners that it is better to have a multilateral deal rather than a bilateral one. Then you get into the notion of leaving agreement from the Commission, which seems to imply a two-step approach. The first is the trade negotiation in a shorter term and then leaving room for whatever agenda I do not know.

Secondly, you need to take into account the fact that the US has never been keen to get into multilateral trade negotiations. They have not really supported the WTO system, except for some issues. Ironically, with some of the issues within TTIP—all the items around environment, investment and competition—the US position from the Singapore agenda of 1996 to the Hong Kong conference was to kill those issues and to go back to only the market-access agenda and WTO. We have to discuss further with them if they are adhering to that idea of going back to the WTO with a broader agenda of regulation. Thirdly, this also means that from the movement of TTIP and its supposed products, we will be in a position to convince the other partner that, actually, Brazil, India, China, Russia and so on are more likely to go back to the WTO, leaving alone the EU and US, setting principles for the 21st century.

Q71 Lord Lamont of Lerwick: It is a slightly new aspect, but you mentioned energy. I know the United States is having a tremendous transformation of its energy situation with low-priced gas, but they do have controls of export of gas. There has been talk about lifting those. Is that part of the issue that might be on the agenda, the export of US gas?

Jean-Paul Thuillier: Clearly it is a point that has to be on the agenda, first of all because export restrictions are not totally in the WTO’s spirit. You cannot challenge the Chinese on the limitation of export restrictions on raw materials, whereas you have your own domestic legislation about that. It is a problem of coherence by the US. Secondly, it is a very offensive interest for the EU as a whole. It will have to be on the table. Thirdly and more substantially, behind that is the whole question of the competitiveness of the US economy compared to the EU one. If we want to be in better parity on competitiveness, if the prices of energy fall between the US and EU, then we will have to get the maximum freedom of exchanges between the EU and US. It is a traditional point of any trade negotiation and the US would have to discuss that.

Q72 The Chairman: I have been reminded that there is one question that I should have asked earlier. The UK, as you know, is attaching great importance to the automotive sector and to financial services. How does France feel about those two sectors? We know that the British attach importance; are they important in your minds?

Jean-Paul Thuillier: The automotive sector is not in very good shape at this point in time. Renault Group and PSA Peugeot have difficulties. We are in quite a specific situation where our manufacturers are not invested in the US. Renault failed two times to invest in the US market and then its own subsidiary, Nissan, the Japanese car manufacturers, has performed quite well in the US market, so they have no direct offensive interests. They are more sceptical about the issue of regulatory convergence, clearly.

Financial services are clearly an offensive interest and my own directorate in the French Ministry for Economic Affairs is pushing hard to have it in the negotiation. Clearly our banking system is a bit nervous about the Dodd-Frank Act, Section 161, considered as
discrimination by the Fed. We are also concerned that we see a difference of implementation of the G20 orientations or recommendations on both sides of the Atlantic. We see a lot of advantages from having it in the negotiation. I suspect that, if not, we may have some less positive orientations to reproduce the US discriminatory system in the EU, which would not be a positive effect.

**The Chairman:** Thank you very much. I know that our next witness is waiting outside, but you have been very helpful. Thank you very much indeed.

**Jean-Paul Thuillier:** I would be interested to look at your report, as it is made public.

**The Chairman:** We will send you a copy.
Trade Justice Movement – Written evidence

The Trade Justice Movement is a network of sixty organisations campaigning for trade to work in the interest of people and the environment. We welcome the Committee’s inquiry into the Transatlantic Trade and Investment Partnership (TTIP). However we are extremely concerned that, given the scale of the deal and its likely impacts, the Committee has not had input from a sufficiently diverse range of views. This is particularly worrying given the third question in your initial call for evidence, which focuses on the need to ensure full consultation with stakeholders, including NGOs. We are therefore writing to raise our concerns and to urge you to extend the inquiry to be able to hear from a broader range of views.

Our key concern is that the negotiations are being used to exert downward pressure on hard-won and necessary labour, environmental, health and consumer standards in both countries, via so-called ‘harmonization’, and they will severely curtail the ability of participating countries to develop policy through democratic processes. Furthermore, there is a danger TTIP will set a precedent for future trade negotiations with developing countries, setting a ‘golden’ standard which will limit the flexibility necessary for development objectives.

Please find below a list of areas that we would like the opportunity to discuss with the Committee together with contact details for experts witnesses.

Democratic Participation

It is of significant concern to us that civil society has not been properly engaged in the negotiation process, despite the far-reaching implications of the TTIP. The European Commission has released a list of 130 ‘meetings with stakeholders’ on the EU-US free trade talks. At least 119 of these were with business groups: 93% of the Commission’s external meetings during the preparations of the negotiations. Given that the agreement would impact on a broad array of public interest policies, we believe that the process must be open to a much more diverse group of stakeholders.

Investment Protections

As members of the Trade Justice Movement, we are particularly concerned about the proposed inclusion of an Investor-State Dispute Settlement (ISDS) mechanism. The historical argument for such a mechanism is that it substitutes for inadequate comparable mechanisms in third countries. This argument does not hold in respect of the EU and US. Furthermore, evidence from a growing number of cases globally, where countries on every continent have been challenged on policy decisions from tax, to mining and health, demonstrates the threat that ISDS poses to democratic policy making. Even when the state is not under threat of legal action from investors, ISDS creates a ‘regulatory chill’ which stays the hand of governments to regulate in the public interest for fear of litigation. We also believe it is iniquitous to provide corporate entities with a facility to enforce elements of the TTIP when these are not available to other interests such as trade unions, consumer and environmental groups.
Impact on Public Services

Recent policy has led to increasing privatisation of public services, creating a market for things like health and education that US companies are keen to access. The proposed EU-US treaty could set in stone all liberalization and privatization measures already achieved at the time the treaty is signed and bring all future regulations within the restrictive provisions of the new agreement. Subsequent governments wishing to adopt a different approach would lay themselves open to expropriation litigation under ISDS. The safeguards currently included in the negotiating mandate to allow states to pursue legitimate public policy objectives may not carry sufficient weight to defend states’ freedom to act. These weak exclusions are also undermined by requirements which provide international corporations with a number of legal loopholes. For instance, criteria such as ‘non-discrimination’, ‘necessity’ and ‘proportionality’ are routinely used to challenge government regulation. Finally, the exclusions relate only to present provisions. Future regulation or changes in regulations would not be excluded from treaty provisions.

Labour standards

We are deeply concerned that harmonisation of standards might lead to a levelling down of labour rights. The USA has not ratified six of the fundamental ILO Conventions, including the rights to freedom of association and collective bargaining. Recent ‘Right to Work’ laws in certain states also curtail unions’ capacity for collective bargaining and organising.

Reform of the Financial System

The TTIP proposes further liberalisation in the area of financial services and the introduction of ISDS mechanisms would make re-regulation of financial services more difficult for states. This approach runs contrary to the UN-Commission of Experts on Reforms of the International Monetary and Financial System. Any harmonisation of standards must set a floor of strong financial regulation, based on the most robust US and EU regulation efforts, to reflect the lessons of the recent financial crisis, and must ensure the freedom of the trading partners to establish and enforce better regulations.

Intellectual Property

The large campaigns to protect access to affordable medicines (challenging the intellectual property provisions of the proposed EU-India FTA) and to prevent the adoption of ACTA demonstrate the strength of public feeling against infringement on basic rights such as freedom of speech and to adequate health care.

These negotiations must not undermine the work of civil society organisations across Europe and the United States to prevent the interests of large corporations infringing on the freedoms of individuals. There must be no further tightening of intellectual property provisions, including, among others, those relating to patents, copyright, trademarks and data protection, and parties must retain the ability to amend their own legislation in response to public concern.

Climate Change and Environmental Sustainability
Any agreement must provide policy space for signatory countries to respond to the emerging climate crisis and facilitate a transition to more sustainable consumption and production patterns. Trading partners must have the policy space to adopt those measures and standards they consider necessary to advance sustainability and avert catastrophic climate change. In particular, we are concerned that EU regulations for the safety standards of Genetically Modified Organisms will be weakened via a trade deal, with no reference to the wishes of EU and US communities.

Public procurement: The TTIP threatens to restrict the ability of local authorities and other public bodies to source and employ locally. This undermines their ability to use public money to achieve social and environmental outcomes through their supply chain and employment practices.

**Impact on future global trade agreements**

The rules created by TTIP may impact on other future bilateral and multilateral negotiations. Once the world’s two biggest economies sign up to a deal, the rules it contains are likely to become the ‘gold standard’ – the benchmark against which other deals are measured: the EU has expressly said that it wishes to multilateralize the deal. This makes the standards set by a TTIP much more important than for their impact on the EU and US alone. A poor deal could lock poor standards into future global trade negotiations.

Given the breadth of consumer, worker, and environmental implications of such an extensive potential agreement between the United States and the EU, this letter does not represent an exhaustive list of our concerns. Nor does it address the issues of concern to us in already existing trade relations between the USA and EU, including the penalties levied by the USA on EU companies trading with Cuba, which are contrary to international law. We will continue to monitor developments in the negotiations and would welcome the opportunity to discuss with you the concerns above and others.

*February 2014*
Introduction

1 The Trades Union Congress (TUC) has 54 affiliated unions, representing almost six million members, who work in a wide variety of sectors and occupations. The TUC welcomes the opportunity to respond to the House of Lords Sub-Committee’s Call for Evidence on the Transatlantic Trade and Investment Partnership (TTIP).

2 It has been argued that the TTIP has the potential to deliver significant economic gains for both EU and USA in terms of growth, employment creation and higher wages. Trade unions, states and employers in both Europe and the USA have been positive about the possibilities of a progressive TTIP, although we are sceptical about some of the wilder claims being made.

3 However, it is important to consider the threats as well as the opportunities contained in such a deal, and to minimise the former while promoting the latter. The TTIP is being promoted as offering significant gains in terms of stimulating growth, expanding manufacturing, creating jobs and improving global labour standards. Concerns have been raised around the potential impact on public services, environmental and labour standards, financial service regulation and other sectoral concerns, and the state’s ability to legislate in the public interest.

4 Our responses will outline these concerns, which we believe need to be addressed before the TTIP can be approved. As negotiations progress, of course, our views may develop further.

Response to Questions

Question 1. What are likely to be the most challenging chapters of the TTIP and why? What is the minimum level of ambition necessary in each chapter? How can the ambition of each chapter be maximised?

Investor-State Dispute Settlement (ISDS)

5 The TUC is particularly concerned about the impact of the Investor-State Dispute Settlement (ISDS) provisions proposed for the TTIP. We note that Australia has recently reaffirmed its refusal to include such provisions in any future trade agreements, and we would strongly urge that they be dropped from the TTIP.

6 ISDS provisions allow investors to challenge state actions which they perceive as ‘expropriation’. However, what is understood as ‘expropriation’ by investors can be the legitimate exercise of state regulation for the public good. For example, Veolia is currently using ISDS mechanisms to sue the government of Egypt for increasing the minimum wage and there are many other examples. Where they have been established, ISDS processes are often conducted in secrecy, undermining states’ ability to defend their actions. Even when the state is not under threat of legal action from investors, ISDS creates a ‘regulatory chill’ which stays the hand of governments to regulate in the public interest for fear of litigation.

7 The inclusion of ISDS mechanisms in a deal between the EU and USA is anomalous as these were originally designed to offer security for investors in countries where there was
no developed legal system to protect their investments. As both EU and USA have sophisticated legal systems for guaranteeing financial activity against risk, however, it seems far more appropriate for state-state dispute settlement mechanisms, such as already exist in WTO rules, to be used.

8 In addition, it would be unbalanced to provide only for investors to benefit from a method of redress beyond state-state dispute settlement mechanisms. Were investors to be privileged in this way, we would certainly want workers and their representatives to be entitled to seek redress if their interests were affected, and the same might go for consumer or environmental interests.

9 The EU’s TTIP negotiating mandate does allow Member States to ‘pursue legitimate public policy objectives’ which include ‘social and environmental security’ and ‘public health’. However these vague securities may not carry sufficient weight to defend states’ freedom to act.

10 The changes to the NHS ushered in by the Health and Social Care Act (2012) are encouraging large US health companies to maximise their involvement, and were subsequent governments to seek to change the arrangements under the 2012 Act, they might well lay themselves open to expropriation litigation under the ISDS mechanisms that the TTIP will set up. Given the size of American health companies and their frequent recourse to litigation, these investors are more than likely to use and defend such mechanisms.

Public procurement and services

11 Current terms of the TTIP commit to opening up access to government procurement markets and eliminate preferential treatment to local suppliers. This will restrict the ability of local authorities and other public bodies to source and employ locally, ensure decent wages, require skills training and so on. This means national and local government are limited in their ability to use public money to achieve social and environmental outcomes through their supply chain and employment practices.

12 We share the concern of the US trade union movement that this will threaten the ‘Buy America’ policies in the USA which allow states to preferentially recruit local workers for publically funded projects and source goods from US enterprises.

13 In addition, we would wish to argue that any liberalisation obligations should only apply to services using a ‘positive list’ approach as used in GATS. The wording of public services in the agreement should not create ambiguity as to what is classified as a public good. Public services should not be seen in the minimal definition of ‘services in the exercise of governmental authority’ as defined in Article 1.3 of GATS (which should also cover services provided by sub-national levels of government) or ‘public utilities’. Rather they should be more broadly defined using terminology used by the EU Treaties to include provision of public goods such as education and health.

Labour standards

14 Standardisation of conditions brought by the TTIP could diminish labour rights if they ‘level down’ to the labour standards found in the USA, which has not ratified six of the fundamental core ILO Conventions, including the rights to freedom of association and
collective bargaining. The US has also passed ‘Right to Work’ laws in 24 states, most recently in the traditional union stronghold of Michigan, which clamp down on unions’ capacity to bargain and organise.

15 The TUC is concerned that European companies may take advantage of the ease of market access created by TTIP to relocate to the USA, and take advantage of the weak labour regulations described above. Similarly, there is also a danger that American companies may be encouraged by the TTIP to relocate to EU states such as Bulgaria, Romania and Slovakia where incomes are low and trade unions are weaker than in other parts of the EU.

16 However, US and European unions have identified the possibility of extending elements of the EU social model to the US – or at least to European companies operating in the US – so that works councils and other worker voice mechanisms can be promoted. US unions are particularly keen to do what they can to ‘level up’ labour standards through this agreement. European works councils are found in a number of US companies operating in the EU, we believe there should be a direct transfer of this worker voice mechanism to the US-based operations of these companies.

Financial regulation

17 The TTIP could lead to further liberalisation in the area of financial services. Whilst we understand the need to reach some sort of arrangement on EU and US financial services regulation, the EU and US have quite distinct systems of financial regulation. Neither of them prevented the global financial crisis (so neither can be said to be particularly fit for purpose), but aligning them may be particularly difficult, and the lesson of the global financial crisis is that it is particularly important to ensure that financial sector regulation does not become weaker in either jurisdiction.

Sectoral concerns

18 As the negotiations develop, specific sectoral concerns will emerge which will need to be addressed. In the higher education sector, the TUC is concerned about access to the market in student loans, and access to public sector research grants. In automobiles, aerospace and pharmaceuticals, the TUC is concerned that harmonisation of standards could lead to lower safety and quality standards being adopted in both the EU and USA. The TUC shares the AFL-CIOs concern that ‘offsets’ – which involve the transfer of technology and/or production from a company in one country to a company in another country in return for a sale – should be eliminated through the TTIP. This would assist U.S. and European companies that are constantly being pitted against one another by China. If both the U.S. and the EU were to agree bilaterally not to engage in offsets with each other—or when competing with one another for sales to China—jobs that would have been lost due to offsets, particularly in aerospace and our wider manufacturing industries as well as with cutting edge technology and communications, could be avoided.

In the cultural sector, the TUC and trade unions in other EU member states are concerned the TTIP could endanger the protective subsidies European governments grant their cultural industries, weakening their ability to preserve and develop their cultural and audio-visual policies, especially in the new digital and online environment. Without this subsidy, much European film, music and arts would be badly affected and the market would become dominated by more commercially powerful American cultural exports. It may even affect the
public subsidies which allow museums to remain free to visitors. France managed to secure a ‘cultural exception’ in the negotiating terms of the TTIP announced in May 2013. However, this does not exclude culture from being included at a later stage in discussions.

Environmental standards

19 The TUC is concerned that the higher environmental standards found in the EU will be diluted to harmonise with those of the USA where there is no different regulation for the safety standards of Genetically Modified (GM) crops compared to non-GM crops.

Question 2. Is the time-frame of completing negotiations within two years realistic? If not, when is it realistic to expect a deal to be agreed, and what can be expected to be achieved in the next two years?

20 The TUC believes the progress of negotiations should be determined by the outcome, not by an artificial time-limit.

Question 3. How should the Commission most effectively conduct the negotiations in terms of ensuring appropriate transparency and communication, as well as full consultation with stakeholders, NGOs and EU Member States?

21 The TUC believes that without maximum transparency, opposition to the TTIP will only grow, and it will not meet the concerns of working people and their representatives (as well as consumer, environmental groups and others). The traditional explanation for secrecy, which is that this is vital for effective negotiations to take place, is undermined by the likelihood that papers will, regardless, leak into the public arena (in which case it would be better to be open, rather than allow specific interests to manipulate what is made public and what is not) and also by the privileged access to negotiators being given to employers in the private sector. Apart from the significant disparity between meetings with employers and unions, consultative bodies such as the BIS stakeholder group on TTIP contain a preponderance of employer representatives (and just one trade union and one consumer representative.)

22 The TUC would favour the creation of specific bodies to represent civil society views on the negotiation and operation of the TTIP, building on the arrangements made for certain existing EU bilateral trade agreements. Social partners and the EU Economic and Social Committee should be consulted in the design of such bodies.

Question 4. How will TTIP negotiations be affected by relations with third countries, such as China, and also developing countries, including in relation to existing and pending bilateral trade agreements? How do you anticipate the TTIP interacting with the Trans Pacific Partnership and NAFTA, for example?

23 The rules created by TTIP may impact on other future bilateral and multilateral negotiations. We share the view of UK Ambassador to the OECD Nick Bridge who wrote: “once the world’s two biggest economies sign up to a deal, the rules it contains are likely to become the ‘gold standard’ – the benchmark against which other deals are measured…A key consideration will of course be to ensure that the rules agreed on can be ‘multilateralised’ – that’s to say turned into WTO disciplines to which everyone can adhere in future. A global
set of rules or agreements remain the first best option where possible.” This makes the standards set by a TTIP much more important than for their impact on the EU and US alone. A poor deal from our perspective could lock in poor standards in future global trade negotiations, but on the other hand, levelling standards up, as in the case of labour law might have knock-on benefits in trade agreements covering workers in even more desperate straits.

24 A Bertelsmann Stiftung study projected that EU trade with neighbouring states in North Africa and Eastern Europe would decline by an average of 5% due to the fact that the comprehensive agreement will devalue existing preference agreements. Trade with BRICS countries is also predicted to decline for certain EU states. In addition, if the TTIP does not settle the issue of market access for agricultural products, developing countries may be disadvantaged in future trade deals.

Question 5. What is the potential impact of TTIP on consumers, whether in the UK, EU or US?

25 This is covered in the answers to question 1.

Question 6. What aspects of the negotiations will be of the greatest significance to the UK, including its component parts?

26 There are several sectors which will be particularly affected by the TTIP which are particularly important in the UK, such as financial services, pharmaceuticals, motor manufacturing and so on. But we believe that, including in some of these sectors, the UK’s interests are fairly similar to those of the rest of the EU.

Question 7. For UK consumers and business, where are the greatest gains to be made and where could they be disadvantaged? What are the most significant non-tariff barriers for British exporters and importers?

27 The TUC would of course welcome the creation of decent quality jobs and higher wages, and we are concerned that only consumers and business are identified in this question. The Business Coalition for Transatlantic Trade has estimated the TTIP would create 500,000 high-paying jobs in the EU and USA. A Bertelsmann Stiftung study projected that the TTIP could create 2 million jobs across the OECD, although it does not specify the pay or skill level of such job creation. CEPR estimate that the majority of job creation will be in low skilled sectors, whilst high skilled jobs in electronics in the EU will particularly decline. They estimate 0.2 – 0.5% of the EU labour force might have to change jobs as a result of economic restructuring caused by TTIP. There is a need for an independent analysis of the labour market impact of the TTIP so negotiations can be guided to maximise the deal’s potential to create higher skilled jobs and industries likely to be negatively impacted by the TTIP are supported to retrain their workforce.

Question 8. What are the political and practical challenges within the UK to an agreement?

28 Our main concern is that the UK would be at a significant disadvantage if our relationship with the EU was renegotiated in the way that the Conservative Party has suggested.
Question 9. How can the UK seek to maximise its influence at EU level as the TTIP negotiations progress?

29 The only way for the UK to maximise its influence and ensure the best possible representation and results for its workers is for it to build up better relations and increase cooperation with the other EU Member States and remain centrally involved in the EU decision-making process.

Question 10. What might be the potentially adverse effects for the UK of a failure of the TTIP negotiations?

30 Our main concern is that we would lose the positive results that might flow from a TTIP, with the added complication that world trade would continue to increase without the EU playing such a key role, or benefiting as much.

Question 11. How could the Commission seek to ensure that the interests of the Member States are represented, and that a satisfactory outcome with regard to Member States’ interests is secured?

Question 12. What are likely to be the most significant potential gains and difficulties for other Member States? How do UK interests and those of the other Member States coincide or run counter to each other? What would you identify as areas of common European interest?

Question 13. From the EU perspective, what are likely to be the biggest political, institutional and practical challenges to a deal? How can they be overcome?

31 The TUC believes that the issues facing the UK, as set out in answer to question 1, apply generally to the countries of the European Union.

Question 14. From the US perspective, what are likely to be the biggest political, institutional and practical challenges to a deal? How can they be overcome?

32 The TUC supports the views expressed in the submission by the AFL-CIO.

Question 15. What would be a mutually beneficial solution for the EU and US? Is that the same as a mutually beneficial solution for the EU and UK

33 Yes

10 October 2013
Owen Tudor, Head of European Union and International Relations, TUC and Bert Schouwenburg, International Officer, GMB—Oral Evidence (QQ 224-236)

Transcript to be found under Bert Schouwenburg
Unite the Union – Written evidence

1. Introduction

1.1. Unite is the largest trade union for Britain and Ireland with 1.5 million members. We represent workers in all areas of industry including food retail and distribution, hotel and casino workers, agriculture, road, rail, air and sea transport, manufacturing, local authorities, the health service, civil service, community not for profit sector, construction and building materials, print and media, finance and legal and utilities.

1.2. The proposed Transatlantic Trade and Investment Partnership (TTIP) has potentially major implications for many thousands of Unite members. This includes those in sectors that will be directly affected by any agreement and also those indirectly affected through the potential impact of the TTIP on the UK economy and the ability of the UK government to regulate in the best interests of UK workers and wider society.

1.3. Much of the literature and analysis so far published on the TTIP has focused on the potential opportunities any agreement might bring. However, Unite believe that it is also crucial to consider potential threats that may be present in any agreement.

1.4. Unite’s response focuses on a number of areas of concern rather than attempting to answer the detailed questions posed in the committee’s call for evidence. It also reflects our current understanding of the key issues and as such will clearly develop during the course of the negotiations to reflect what is learnt about the direction of negotiations.

1.5. We are aware that a number of the issues we raise below are also key concerns for the TUC, and indeed the ETUC and AFL-CIO, and we are supportive of its response to the Committee.
2. **Potential Impact on the NHS and Public sector (including public transport)**

2.1. Unite has major concerns about the potential impact TTIP could have on the future of the NHS and indeed the way in which the wider public sector is organised in the UK. Unite believes that there should have been a clear exemption, particularly for the NHS but also the public sector more widely, in the negotiating mandate agreed by the European Council.

2.2. Given the implications of the Health and Social care Act on the commissioning and organisation of health services in the UK, we believe that there is a clear danger that major private health care corporations will be looking for opportunities within any TTIP agreement to further force large-scale privatisation.

2.3. There is an additional danger in the proposed inclusion in any TTIP agreement of an Investor-State Dispute Settlement Mechanism (ISDS). Unite is completely opposed to any such mechanisms being agreed as part of the TTIP. Both the EU and USA have well respected and strong legal systems and there is absolutely no justification for creating a mechanism to allow corporations to bypass the usual legal process to launch expropriation litigation should a UK government attempt to bring elements of the health service, or other parts of the public sector, back under direct public control.

2.4. As can be seen by the activities of Veolia in Egypt, where they have attempted to take action under ISDS against the Egyptian government for raising the minimum wage, there is real danger in corporations using these legal avenues to undermine a national government’s ability to legislate in the best interests of its own population.

2.5. Unite are also concerned about the potential implications of TTIP for public procurement. The EU has made it clear that it is targeting ‘Buy America’ polices in the USA which have been instrumental in ensuring that public procurement leads to local employment opportunities. There is a clear danger that TTIP in the form that it is currently envisaged will limit local authorities’ ability to source and employ
locally. Any measures within TTIP that could potentially limit the ability of local, or national, authorities to use public money to achieve social and environmental outcomes through their supply chain and employment practices should be rejected.

2.6. Unite has similar concerns regarding the potential implications for the structure of the UK’s public transport sector. We have concerns that any restrictions on the ability to use public procurement to achieve social and environmental outcomes, coupled with the dangers highlighted regarding ISDS mechanisms, could restrict the ability of local authorities to retain public transport in public ownership or any future decisions to bring transport back into public ownership.

3. **Labour Standards**

3.1. Unite is concerned by the apparent complacency regarding the issue of Labour rights in the TTIP negotiations. Despite comments in the European Union documents reflecting on both the EU and USA’s high level of labour, environmental and social standards it is a fact that the USA has not implemented a number of the most fundamental ILO Conventions. These include the rights to freedom of association and collective bargaining. Unite is strongly of the belief that respect for fundamental rights such as these should be at the heart of the EU’s bilateral relationships and we believe that the EU should call on the USA to fully ratify these conventions as part of the negotiations towards achieving a TTIP.

3.2. If the EU does not take a strong position regarding labour rights there is a danger that the standardisation of conditions that could be brought about by TTIP could lead to a ‘levelling down’ to the standards found in the USA, rather than the levelling up that is desired by workers and trade unions across the EU and USA.

3.3. However, if a more positive attitude to labour standards within the negotiations is taken there are potential opportunities of extending elements of the EU social model to the USA. In particular Unite supports the call to extend the right of participation in European Works Councils to workers in the USA as part of the
TTIP agreement. It is surely right that just as the agreement aims to dismantle barriers faced by companies to create a common trading area, so should the barriers preventing workers being properly informed and consulted within that self-same area be removed.

3.4. Analysis by the ETUC has shown that over 300 US based multinationals should be eligible for an EWC. All of these companies will be benefitting from any TTIP and Unite believes it is essential that the workers of these companies should have an equal right to information and consultation whether based in the EU or USA.

4. **Manufacturing**

4.1. Unite would like to see much more detailed analyses of the potential benefits to the UK’s manufacturing industry that are claimed in relation to the TTIP. Manufacturing has a crucial role to play in rebalancing the UK economy and there are potentially gains to be made for a number of UK manufacturing sectors if a successful TTIP is achieved.

4.2. However, more in depth analysis is required on the potential benefits, particularly in relation to the potential impact of TTIP on employment and wage levels in these and associated sectors. Simply stating an overall figure for the sector does not allow a full understanding of who the winners and losers may be under different scenarios for TTIP and therefore makes it very difficult to get a full understanding of the implications.

4.3. Unite is also concerned that a full social impact Assessment has yet to be carried out. The full costs and benefits of a potential TTIP cannot be assessed simply by analysing potential economic impacts. A much fuller study also needs to take into account the impact of a potential TTIP on social, environmental and labour rights issues.

5. **Impact on Future global trade negotiations**

5.1. The standards set by the TTIP are much more important than just for their impact on the EU and USA alone. It is clear that the TTIP, being between the two most
influential global economic areas, will have major implications for the future of bilateral and multilateral trade talks.

5.2. It is even more important therefore that the agreement does not lock in poor standards in social, environmental and labour rights that will have the impact of driving down protections in any future WTO level agreements. This is crucial given the possibility of ratchet clauses that could lock in any liberalisation measures permanently.

6. **Other Issues**

6.1. Unite has concerns that the TTIP could lead to further liberalisation in the area of financial services. Given the role of deregulation in this sector laying the foundations for the financial crisis of 2008, the consequences of which we are still dealing with, Unite believe it would be wrong to use the TTIP to in any way weaken financial sector regulation.

6.2. Unite believes that there needs to be a much greater degree of transparency in the way in which negotiations over the potential TTIP are conducted. Without such transparency Unite believes it will not be possible to assess whether or not the agreement meets the concerns of our members, and consumer, environmental groups and others who have serious reservations over this agreement.

*October 2013*
Which? – Written evidence

Introduction

Which? is an independent, not-for-profit consumer organisation with around one million members and is the largest consumer organisation in Europe. Which? is independent of Government and industry, and is funded through our own activities, such as the sale of Which? consumer magazines, online services and books. Which?’s mission is to make individuals as powerful as the organisations they have to deal with in their daily lives by empowering them to make informed decisions and by campaigning to make people’s lives fairer, simpler and safer.

Which? is broadly supportive of the TTIP negotiations. We note that a successful deal has great potential to drive growth and create jobs and this is clearly welcome as our respective economies in both the EU and USA continue to recover from the economic shocks of the last five years.

From the consumer side, we consider that the focus on regulatory and non-tariff trade barriers has the potential to open up markets and bring increased consumer choice. As long as we can find a way forward that respects good consumer outcomes then an agreement based on regulatory convergence or equivalence could have considerable benefits. We should be able to open up markets whilst simultaneously guaranteeing high standards of consumer protection.

Question 3 – How should the Commission most effectively conduct the negotiations in terms of ensuring appropriate transparency and communication, as well as full consultation with stakeholders, NGOs and EU member states?

Achieving a successful outcome to these negotiations requires the EU and US to commit to openness and transparency throughout the negotiating period. As a negotiation, there is clearly a need for some level of discretion in what is shared, but that is not the same as doing everything in secret. In many areas, some of which are clearly controversial, people need to be brought along and bought into the benefits. If everything is done behind closed doors then the chances of a good deal being agreed will be much reduced. This is particularly important in the context of negotiations where important issues such as consumer safety and other protections are being traded.

We believe that some prior experiences around trade discussions, particularly in terms of efforts to participate in the Transatlantic Economic Council and meetings around the High Level Regulatory Co-operation Forum could have worked better if there had been more up-front engagement by Government parties.

In particular, we would like negotiating texts to be made public as they are developed, and then again after each negotiating session. At each stage, opportunity should be allowed for public comment. Many of the issues under discussion have a considerable potential impact on consumers and as such, consumer organisations very much want to be acknowledged as key stakeholders and for our views to be proactively sought as part of the negotiations.
In the UK, early signs of openness, particularly through the Government’s core stakeholder group, are encouraging but the view from our sister organisations is that more could be done at EU level to put transparency and consultation on an adequate footing.

**Question 5: What is the potential impact of TTIP on consumers, whether in the UK, EU or US?**

Good consumer protection measures have a key role to play in encouraging economic growth. If consumers feel protected then they will be more confident which will in turn help sustain the economy and create employment. We consider that there is potential for TTIP to drive growth whilst also leading to better alignment of consumer protection on both sides of the Atlantic.

Whilst we are supportive, we must also sound a note of caution on the risks of getting this wrong. The worst outcome would be one in which we allow the negative consequence of encouraging forum shopping where firms can choose to operate in the jurisdiction with the lowest levels of protection. In this respect we should be particularly careful not to unduly erode existing consumer rights and protections. National Governments should retain the right to implement or maintain higher national standards at their discretion.

Some of the greatest risks from a consumer perspective come in the food area as well as in other areas of product safety. In these areas care must be taken to ensure that mutual recognition is done in a way that ensures consumer protection.

One important dimension to achieving progress in negotiations will be to ensure that we focus attention more on outcomes than on processes. This means that in some cases it will be most important to articulate the consumer outcomes that should be protected whilst allowing mutual recognition of the ways in which this is achieved.

A further important consideration is the need to ensure that these negotiations are seen as part of an on-going process of change rather than a single moment in time. Long term success needs to be forward looking; it should look at current issues as well as leading to better integration in regulatory policy making in the future to ensure better long-term harmonisation between the EU and US.

**Question 7: For UK consumers and business, where are the greatest gains to be made and where could they be disadvantaged? What are the most significant non-tariff barriers for British exporters and importers?**

The biggest potential gains are likely to come from discussions on services (including financial services, if included) as well as on some goods markets such as automobiles. Some of the greatest risks from a consumer perspective relate to food, as well as in other areas of product safety. In these areas care must be taken to ensure that mutual recognition is treated with caution and done in a way that ensures consumer protection. More detail follows on a number of specific areas in which we have particularly strong views.

**Financial Services**

As a result of the size of the financial markets on both sides of the Atlantic, and the relatively low levels of trade, there is evidently potential for growth in this area. As such, we would
note that there may be some merit in exploring this as an area for consideration. The TTIP negotiation process creates an opportunity for the EU and US to exchange ideas about best financial regulatory practices, and then use this agreement to set important minimum standards, without limiting local efforts to create stronger rules and regulations.

If financial services are included in TTIP then the agreement could potentially lead to increased competition and product choice. It could also lead to better exchange of best practice. For example, the apparently impressive start that has been made by the Consumer Financial Protection Bureau (CFPB) in the US might offer lessons for improved EU level consumer protection. In this respect, inclusion could lead to an increase in protection rather than a leveling down as best practice is shared.

If the TTIP ultimately addresses financial service regulation, it must focus on creating a floor of acceptable rules, without limiting a nation’s ability to more strictly control this vital sector. The TTIP must not be used to undo and/or stop the necessary financial regulations that are currently being developed and implemented on both sides of the Atlantic. We do have some concern that the TTIP process will devolve into an effort to deregulate the financial services industry, harmonize rules to the lowest common denominator and preempt local efforts to create stronger rules and regulations.

We would not want the talks to limit the ability of governments to adopt the policies that our colleagues in Consumers International and their members have called for in their international work and which have, in many cases, been endorsed by the G20 through their adoption of the G20/OECD principles and the Financial Stability Board (FSB) report on consumer finance. As examples, the US and EU should be free to establish limits on a range of issues both at the prudential level, such as financial institutions size or separation of banking, and at the retail level such as imposing performance standards and investment obligations and capping fees and interest rates.

Food

We consider that food policy is an area that is particularly important to get right, not least because of the important safety considerations that exist in this area. There are a number of specific dimensions in which it would be good to achieve progress. Firstly, we would like to see a global system for food alerts; at present the EU use the Rapid Alert System for Food and Feed (RASFF) which is not recognised by the US. We would also like to see cooperation on finding better ways to ensure traceability and food authenticity – this could help with the horse-meat type cases.

However, there are also areas in which there should be caution. On food standards we would not want a deal that limited EU countries from applying standards that give higher protection than that agreed under any treaty. This means mutual recognition in this area may be a difficult compromise. An example is that European consumers enjoy labelling of GM foods whereas US consumers don’t. We would also want the EU to be able to maintain the use of the ‘precautionary principle’.

Similar concerns also exists with respect to wider risk management; the EU recognises that food regulation should be based on a broad social, ethical and economic dimension, in addition to scientific assessment. Examples might include the ethics of something like cloning or the desire to make decisions based on the origin of a product.
**Investor-state dispute resolution**

One final area in which we would like to express particular concern is the important issue of investor-state dispute resolution. Investors should not be empowered to sue governments to enforce the agreement in secretive private tribunals, and to skirt the well-functioning domestic court systems and robust property rights protections in the United States and European Union.

Experience elsewhere has shown how powerful interests from tobacco companies to corporate polluters have used investor-state dispute resolution provisions to challenge and undermine consumer and environmental protections. Investors must not be empowered to sue governments directly for compensation before foreign investor tribunals over regulatory policy.

18 October 2013