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Witness: Rt Hon Lord Brittan of Spennithorne QC

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Members present

Lord Tugendhat (Chairman)
Baroness Bonham-Carter of Yarnbury
Lord Boswell of Aynho
Baroness Coussins
Lord Foulkes of Cumnock
Baroness Henig
Lord Lamont of Lerwick
Lord Radice
Earl of Sandwich
Lord Trimble
Baroness Young of Hornsey

Examination of Witness

Rt Hon Lord Brittan of Spennithorne QC

QI 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 on the 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 substantially 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 with 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 this 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.

Q2 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 less 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 politicals?

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 chair 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.

Q3 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 the people think that we are half way 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 half way 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. After a suitable discussion with our European partners and any modifications, 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 facts and signs up to it.

Q4 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.

Q5 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, but 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 rules 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.

Q6 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 obstacle, 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 come 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.

Q7 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.

Q8 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 where 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, which 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? My Lord Brittan, thank you very much indeed.

Lord Brittan of Spennithorne: Thank you.