



Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales

Cofnod y Trafodion The Record of Proceedings

Y Pwyllgor Materion Allanol a Deddfwriaeth Ychwanegol

The External Affairs and Additional Legislation Committee

19/09/2016

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Public for the Remainder of the Meeting

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd. Lle y mae cyfranwyr wedi darparu cywiriadau i'w tystiolaeth, nodir y rheini yn y trawsgrifiad.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included. Where contributors have supplied corrections to their evidence, these are noted in the transcript.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Gareth Bennett Bywgraffiad Biography	UKIP Cymru (yn dirprwyo ar ran Michelle Brown) UKIP Wales (substitute for Michelle Brown)
Paul Davies Bywgraffiad Biography	Ceidwadwyr Cymreig (yn dirprwyo ar ran Suzy Davies) Welsh Conservatives (substitute for Suzy Davies)
Mark Isherwood Bywgraffiad Biography	Ceidwadwyr Cymreig Welsh Conservatives
Steffan Lewis Bywgraffiad Biography	Plaid Cymru The Party of Wales
Jeremy Miles Bywgraffiad Biography	Llafur Labour
Eluned Morgan Bywgraffiad Biography	Llafur Labour
David Rees Bywgraffiad Biography	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)

Eraill yn bresennol
Others in attendance

Dr Jo Hunt	Prifysgol Caerdydd Cardiff University
Yr Athro/Professor Alan Matthews	Coleg y Drindod, Dulyn Trinity College Dublin
Yr Athro/Professor Patrick Minford	Prifysgol Caerdydd Cardiff University
Dr Ricardo Pereira	Prifysgol Caerdydd Cardiff University

Yr Athro/Professor Prifysgol Reading
Alan Swinbank University of Reading

Yr Athro/Professor Ysgol Economeg Llundain
Stephen Woolcock London School of Economics

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Alun Davidson Clerc
 Clerk

Elisabeth Jones Prif Gynghorydd Cyfreithiol
 Chief Legal Adviser

Gregg Jones Y Gwasanaeth Ymchwil
 Research Service

Rhys Morgan Dirprwy Glerc
 Deputy Clerk

Dechreuodd y cyfarfod am 13:02.
The meeting began at 13:02.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions

[1] **David Rees:** Good afternoon. Can I welcome Members and the public to this afternoon's meeting of the External Affairs and Additional Legislation Committee? We are in a bilingual situation, so if you need simultaneous translation from Welsh to English, please use the headphones. Channel 1 is for simultaneous translation, and if you require amplification of the audio then it's on channel 2. Please turn off your mobile phones or put them on silent and any other equipment that may interfere with the broadcasting equipment. We've no scheduled fire alarm this afternoon, so if one goes off, please follow the directions of ushers.

[2] We have apologies from Suzy Davies, and can I welcome Paul Davies, who is substituting?

[3] **Paul Davies:** Thank you very much.

[4] **David Rees:** Apologies from Michelle Brown; can I welcome Gareth Bennett who will be substituting this afternoon for Michelle Brown?

[5] **Gareth Bennett:** Thanks.

[6] **David Rees:** And we've had apologies from Dawn Bowden, but we have no substitute for her. I think Eluned Morgan and Mark Isherwood are running a little bit late for various reasons.

**Gadael yr Undeb Ewropeaidd: Y Goblygiadau i Gymru—Cyfraith a
Masnach Ryngwladol
Leaving the European Union: Implications for Wales—International Law
and Trade**

[7] **David Rees:** Can I remind Members that, actually, this is the first in a series of seminars we'll be having throughout the autumn term to identify some of the implications and complexities that will arise following the United Kingdom's decision to leave the EU? The seminar, therefore, today will focus on international law and international trade, and the first session we have this afternoon is specifically on international law. Can I welcome Dr Jo Hunt and Dr Ricardo Pereira, both from Cardiff University, to this afternoon's session to give us evidence? Can I thank you for attending today? I think we intend to actually allow you to give a short presentation or some views in the first instance, and then we'll go into some questions if that's okay with you. So, I'll now move over to you. Who's going to start?

[8] **Dr Hunt:** Okay.

[9] **David Rees:** Dr Hunt.

[10] **Dr Hunt:** Thank you, yes. Thank you very much indeed for the invitation. Do I need to press the button?

[11] **David Rees:** No, don't touch anything.

[12] **Dr Hunt:** Don't touch anything [*Laughter.*]

[13] **David Rees:** It'll come on automatically. The staff are very good at that.

[14] **Dr Hunt:** Okay. So, thank you very much for the invitation. I'm going to open the seminar presentations with an introduction to the framework of international law with the purpose of explaining where the EU fits into this framework and suggest what could happen when the UK and Wales are no longer part of the EU.

[15] There are, after all, a wide number of other international treaty organisations that the UK, and through that, Wales, are part of—bodies that will continue to have some impact for the law of the UK and for Wales on any Brexit. These include bodies that set regulatory standards for trading goods, also agreements on environmental standards and bodies that protect individual rights through human rights agreements.

[16] So, I'm going to outline the broad nature of the international legal order, set out some of its main agencies and agreements, and explain how international law usually impacts at a national level. Because the reach and the force of international law, as we'll see, may be rather different from what we are used to with the reach of EU law, because whilst EU law is, of itself, a species of international law, it does have some rather distinct features.

[17] So, international law is, first and foremost, the law of states. It both governs relations between states, and it's the law made by those states. It's the sovereign state that is the central actor in this system. Consequently, in international law we see a tension between, on the one hand, respect for state sovereignty and, on the other, holding states to account to respect the rules that apply to them.

[18] Sources of international law include customary practice of states, along with treaties. So, legal agreements between states. These legal agreements may be bilateral between two states or multilateral, including a large number of states. They may be focused on a specific issue or they may incorporate a range of issues. Now, in the UK, the treaty-making power falls within the royal prerogative, as we're seeing at the moment with the discussion around the triggering of article 50—that there is the conventional constitutional reading of this that says, 'This is a power that is held by the Prime Minister'. There are other arguments about how it is of such constitutional significance and may involve removing rights that would say that Parliament should be involved in this, but the conventional reading is that it's a royal prerogative.

[19] Now, Parliament will be involved in the ratification of a resulting

treaty. It may be that we would see some involvement for devolved administrations in that process. We know that foreign affairs are not conferred on Wales at the moment under the Wales Act, and we know that, with any new Wales Act with a reserved model, we would see foreign affairs being reserved to Westminster. But, depending on the subject matter of the treaty, there may be a case for a legislative consent motion to be required. It is at least arguable around that. So, that said, as far as the UK is concerned, devolved administrations can't themselves conclude treaties. The structures for the participation of devolved administrations in various international legal fora are, by and large, not as well established as the ones we have with respect to the operation of the European Union. So, we have structures there for the devolved administrations to play a role that we won't necessarily see in other international legal organisations.

[20] So, it's the states that, between them, create the treaties, and, through these treaties, they have created new international law actors by setting up organisations such as the United Nations, the World Trade Organization and, of course, the European Union. These organisations are created to take forward objectives such as collective security, the promotion of social and economic development and facilitating international trade. Almost all states are members of the United Nations, which has amongst its governance machinery an International Court of Justice and the Economic and Social Council, ECOSOC, which itself co-ordinates a network of specialised agencies such as the World Health Organization, the International Labour Organization and the International Monetary Fund.

[21] In addition, there are a number of regional commissions, which report to the UN's ECOSOC, and most significantly for us is the UNECE, the UN's Economic Commission for Europe, which includes countries from Europe and from North America. Amongst the most notable work of this commission is the setting of, for example, product standards for vehicles, covering matters such as vehicle safety and efficiency. These regulations are now the reference point for EU legislation on this matter. These standards that are set within the UNECE forum have been, sort of, downloaded into EU law and become legally enforceable that way. But whether or not the UK remains a member of the EU, its businesses that are involved in the manufacture and sale of cars will continue to be affected by those UNECE standards.

[22] Separate to the UN family, we have the WTO, and Ricardo will be speaking in more detail about the WTO and how it operates. It provides a legal structure for the agreement of trade deals between states—so, trade

involving both goods and services in line with the provisions of a series of treaties, such as GATT, the general agreement on tariff and trade. Key principles within this WTO system include non-discrimination: that in the absence of a regional trade agreement, such as the EU's, states must trade with other states on the same terms as they do with their most favoured trading partner. Additionally, states should also treat products from other countries no less favourably than they do their own.

[23] Away from these more global organisations, we have organisations operating at a regional level. We have, for example, the Council of Europe, an organisation that is separate from and predates the European Union. This has a particular focus on human rights issues through its convention on human rights, which is incorporated into UK law through the Human Rights Act 1998. But it also has a European social chapter, which isn't incorporated in the same way. This idea of incorporation is all important, because, for most states, for most countries, and especially for the UK, international law and national law are seen as separate from one another. They are separate realms, and the terminology that is used is one of a 'dualist', rather than a 'monist', system—dualist in that there are two separate systems. Whilst the UK may be bound at an international level by the agreements that it enters into with other states or with international organisations, these international legal agreements will only generate legal effects within the UK if they've been activated by a national Act of Parliament—so, as far as generating effects within the UK.

[24] So, for example, with the EU example, the European Communities Act 1972—it's that piece of law that brings EU law into the UK's legal order. So, the provisions of the treaties and the laws made under those treaties—rules that may themselves, as we've seen, incorporate international standards, for example, regulatory standards on products and trade. Also, various environmental protections may be derived from international standards. They find their way into UK law via the EU, but we need that activating UK piece of legislation.

[25] The legal force of EU measures is particularly notable, and they're beyond the effect that international law usually generates in national legal orders, or the type of force that is usually permitted by the state to generate within the order. Whilst similar rights may appear in different international sources—the same topic or the same issue may be addressed by a number of different international legal agreements, the enforceability of those provisions will depend on the source of those rights and those provisions.

[26] I just want to finish with an example where this is most pronounced, an area of social and employment law, and in that the matter of working time—an area that we can imagine will be, perhaps, one that will have attention focused on it if, on Brexit, the Government of the day decide to have a new look at the provisions that we have on working time. We have an EU directive that limits maximum weekly working time and also grants a minimum of four weeks paid annual leave. This directive is implemented into UK law. It comes in through the 1972 Act, but there's a specific regulation that takes place within UK law, and it's that piece of law that is relied upon before the UK courts. The UK law has to give effect to the minimum standards set out in the directive and also as they are interpreted over the years by the court of justice. So, we have a minimum floor set out in the directive and we have the principles of EU law that say that EU law has direct effect and should be supreme over conflicting national provisions.

13:15

[27] So, on leaving the EU, we'd expect those provisions of working time to remain, for the time being, on the UK's books, until such a time as a decision is taken to have a new look at it. Now, if we assume that the terms of the UK's future relations with the EU don't require continued compliance with employment law, and they might, depending on the type of agreement that's made—if it is an EEA-type agreement then there may still be a requirement to comply with employment and environmental law—but if we leave that aside, then how much space would the UK Government have to roll back the working time directive, to create a more flexible employment framework?

[28] There are working time provisions across international legal agreements. We see them in the UN declaration on human rights, we see them in ILO—the International Labour Organization—legal conventions, also in recommendations, and also in the Council of Europe's European social charter. So, would these act as some kind of floor, some kind of brake? The key difference is that these international legal commitments create no enforceable individual rights of the type that we see EU law creating. By and large, they are framed in more flexible, more general terms, but they do not have that quality of enforceability before national courts, and that, for better or for worse, is what sets apart EU law from other types of international law, whether it's the individual or a business that is seeking to rely on those provisions—it's the fact that the gateway is made through into the national legal order to allow those provisions of international law to be relied on

domestically.

[29] **David Rees:** Thank you for that. I think you've probably raised a few questions that the Members will have, but if I ask Dr Pereira to give his presentation first, and then we'll go to questions.

[30] **Dr Pereira:** Okay. So, thanks very much to the members of the Assembly committee for the invitation to join Dr Hunt today and to discuss Brexit and international law, particularly the World Trade Organization. What I will discuss are two options for the post-Brexit EU-UK trade relations. A lot has been discussed already about what would be the implications of the UK joining the European Economic Area, the European Free Trade Association or, potentially, remaining as part of a customs union within the EU, and also potentially having a bespoke model, particularly similar to, potentially, the Swiss model. So, as a lot has been discussed in the run-up to the referendum and post referendum on some of those models.

[31] The models that I will be discussing are those that have particularly strong implications with respect to the WTO law. So, one would be the UK having a specific bilateral free-trade agreement with the EU, or the so-called 'clean Brexit', in which the UK would be completely dissociated from the EU and would have its own, and relations between the EU and the UK would be governed by WTO law. So, those are the options I will be analysing in this presentation.

[32] So, first of all, a distinction between a customs union and free-trade agreements. In customs unions like the European Union they have a common external tariff. So, all the tariffs applied to goods coming from overseas, from outside the EU, are agreed jointly by the member states and these tariffs are then part of the EU's exclusive competence, and in all member states, regardless of whether the goods are arriving at a port in Cardiff or in Amsterdam, they will be facing the same tariffs. In the case of free-trade agreements, on the other hand, similar to customs unions there are either no tariffs or a significant abolition of tariffs among the members themselves, but when it comes to goods arriving from third countries, the countries then—the members of the FTA—may apply separate tariffs, and you can see that in the example of the NAFTA in North America, which includes Mexico, Canada and the United States.

[33] What would be the implications for WTO law from this perspective? Well, WTO law has a few things to say about free-trade agreements. One, it

does allow countries to establish FTAs, although it would be potentially, in principle, in breach of the most-favoured-nation principle that, once you give a tariff concession to one of your trading partners, you have to automatically extend it to all your other trading partners. But WTO law recognises that this is possible; countries can create these regional bilateral structures of trade that go against the most-favoured-nation principle.

[34] If the UK were to enter into this free-trade agreement with the EU post Brexit, you would have to notify the WTO. That's one of the key obligations there: the notification obligation. There is also the argument that it would create a number of new regulatory costs for the UK. This FTA option could mirror the Canadian agreement, or potentially one of the existing free-trade agreements that the EU already has with over 50 countries, including association agreements. The problem with free-trade areas is, once goods come in from overseas, from third countries, and arrive in the UK, they might be paying a lower tariff than the EU applies. Or, conversely, they could be paying a higher tariff, entering the UK, and then these goods could be sold on into the EU market, or, conversely, from the EU market to the UK. So, that's why, under WTO law, we have the idea of rules of origin, which tells countries where the goods originated from. Although there's no agreement yet at WTO level, a multilateral agreement on rules of origin, countries have negotiated this on a bilateral basis as well. So, rules of origin will be a major issue if the UK were to follow the FTA option.

[35] There is the potential for litigation surrounding the type of FTA that the UK chooses to engage in with the EU, because countries that already had trade relations with the EU may find that this agreement goes against the commitments that they believe they had signed up to with the EU and they may litigate before WTO panels regarding such issues.

[36] There is also the question of what the impact of Brexit would be on the EU's agreements with third countries. These include, as I have mentioned already, over 50 or so existing FTAs. Unless agreed otherwise, those FTAs would cease to apply to the UK post Brexit. Most academic opinion seems to suggest this. There is an argument that the UK might inherit, somehow, these FTAs as some sort of treaty secession, but these, under the Vienna Convention on the Law of Treaties, only apply to states seceding from each other, not one state seceding from an international organisation, or a regional organisation, such as the EU.

[37] So, the UK may then wish to seek a separate agreement with these

countries, like Korea and Singapore—in the case of Canada, we’re still concluding their FTA. The UK might also wish to enter into these existing agreement that the EU is party to as a third party. So, that is the other option as well. Those third countries themselves may find that those agreements that they have already entered into with the EU—those 50 or so agreements—are no longer as beneficial, because they no longer include the UK. So, they may wish to renegotiate with the UK those existing agreements. You could argue that Brexit is a fundamental change in circumstances, as defined under the Vienna Convention on the Law of Treaties. Therefore, they might even wish to withdraw from some of those existing free-trade agreements—say a country that has particular exposure or an interest in trading with the UK. A provision of the Korea framework agreement makes clear that there is a territorial limitation to this free-trade agreement. You can see that the agreement is specifically applied to the European Union. Therefore, for the UK, once it withdraws from the EU, those FTAs would no longer be applicable in the UK.

[38] The WTO option is the one preferred by those who want a clean Brexit—and, as I’ll discuss later, perhaps it’s not so clean. This option is the one preferred by those who don’t want the UK to be in any way involved with the things of the EU that they dislike, like free movement of persons and paying into the EU budget and all that.

[39] So, the WTO has 164 members and each member state also has a seat. So, the EU and the member states are members of the WTO in their own right. The European Commission represents all member states at most WTO meetings, and the EU tries to reach some sort of consensus or a co-ordinated approach when it comes to trade relations, and that’s why the Commission represents the member states. The UK would remain a WTO member post Brexit. There has been a suggestion that it might not be, but the UK is withdrawing from the European Union, not from the WTO. So, it would remain a member of the WTO, and this is explicitly recognised under article 11 of the WTO agreement, which recognises the UK as a founding member. So, the UK, as a founding member of the WTO, would remain a WTO member post Brexit.

[40] So, as I said before, the relationship between the UK and the EU would be governed by WTO law. The UK would, in all likelihood, have to submit its own schedule of commitments to the WTO, and this is an area in which there can be controversies and potential litigation, because the WTO in general applies a consensus rule and some countries may not wish to accept the UK

schedule of commitments submitted to the WTO.

[41] Also, the EU may have to compensate all WTO members in the form of lower tariffs or duty-free quotas. So, the EU itself may also face, post Brexit, having to renegotiate its own tariffs of commitments, because those tariffs were agreed at the time in which it included the UK, and once the UK is out of the EU, then those tariffs would have to reflect that. So, potentially some of the other WTO members would have to be compensated.

[42] The general WTO law principles that are relevant here include the principle of non-discrimination—the most-favoured-nation principle, which means that tariff concessions given to one of the WTO members must be automatically extended to all the others. And there's the principle of national treatment: once the goods arrive in the internal market of one of the WTO members, they must be given the same treatment when it comes to taxation measures and national regulations as domestic products. So, foreign products must face the same regulations and the same standards. These two principles are very relevant for the UK and the EU's bilateral WTO relations, because it could be argued that, after Brexit, there could be retaliation from one side or the other, but any retaliation or any measure would have to be compliant with those principles of non-discrimination.

[43] And the other key principle there is the question of tariffication—that the WTO is governed by the idea that tariffs are more transparent than other types of trade restrictions like quotas or licences. In order to ensure transparency, all countries can have tariffs—tariffs are permissible—and they are constantly renegotiating their tariff commitments. The EU has argued that by following the WTO option, the UK would be particularly vulnerable to high tariffs on the import of goods arriving from the UK to the EU. Some authors, however, have tried to downplay this and have suggested that the tariffs are already quite low—there's a WTO study of 2015 suggesting that, on average, EU tariffs are about 1 per cent—but there will be particular goods that will be of particular interest to the UK, and they would indeed potentially face a risk of high tariffs. There is the question of tariff escalation as well—that there can be particular controversies surrounding the levels of tariffs, and the UK would be exposed to that.

13:30

[44] The agreements on some of these—Dr Hunt has already referred to these—there are a number of agreements that are relevant here and I'd like

to mention specifically the one on services, because this is of particular interest to the UK. The UK has a trade deficit with the EU, but when it comes to services, the UK has a surplus, and the general agreement on trade in services is much weaker. Although there is no food—the internal market does include services in the same way that it does goods that exist in the EU internal market. The WTO framework for trading services, you could argue, is even weaker. Countries have to negotiate, have to submit commitments on a country-by-country and product-by-product basis, and it does include the financial services agreement of 1997, but this financial service agreement is also particularly weak. It's an annex to the GATS. So, the UK would find that only relying on GATS when it comes to financial services, which is obviously of a lot of interest to the City to London, would not necessarily be the most attractive option. I'm not sure how much time I have left.

[45] **David Rees:** I'll give you another minute, but there are some questions, and I'm conscious of the time as well.

[46] **Dr Pereira:** Fine. So, the final point I would like to make is the legal basis for the EU common commercial policy, which is based on article 207 of the Treaty on the Functioning of the European Union, and this has been expanded since the Lisbon treaty, not only trading goods, but also trading services, not including transport though, and also commercial aspects of intellectual property rights and foreign direct investment as well. So, foreign direct investment, FDI, was not included as an exclusive competence of the EU, but after the Lisbon treaty, it is now an exclusive competence, which means that the UK coming out of this framework will be able to negotiate free-trade agreements, which include services and foreign direct investment as well. And the key issue there is whether some of these agreements are mixed agreements or exclusive agreements. If the idea was that, if these agreements included an element of, say, IP rights or services, the initial case law of the Court of Justice was to suggest that these agreements were mixed agreements, because they didn't have exclusive competence in those areas. But now, after Lisbon, this position is changing.

[47] On the direct effect of the WTO agreements, certainly WTO agreements are not regarded by the Court of Justice as having direct effect. So, individuals cannot rely on their rights before the courts in the member states relying on the WTO rights. And it is the general principle of WTO law that the nature and broad logic of the agreement would have to confer rights on individuals before these agreements could have direct effect. Now, post Brexit, the UK relationship will be governed by international law, so direct

effects will be an issue as a matter of domestic law rather than direct effect as we see existing in international law.

[48] **David Rees:** Can I stop you there because I'm conscious of the time?

[49] **Dr Pereira:** Okay, fine. So, just to conclude, I was just going to mention the defence measures. The UK would have to adopt its own defence measures on anti-dumping, on subsidies as well, and I had a few concluding remarks, essentially summarising what I've already said. Thank you.

[50] **David Rees:** I'm sure we'll make a note of some of those points, but thank you for them. Thank you very much. Before I ask my Members one thing—. Obviously all Members here were involved in the referendum debate, and many members of the public came up and asked certain questions and perhaps misunderstood some of the implications of the law. But can I ask a question on treaties? We are a signatory to many of the treaties. What is the status of those treaties once we leave the EU, if they're not specifically identified in any negotiations?

[51] **Dr Hunt:** EU treaties?

[52] **David Rees:** Yes. Are we basically out of any treaty and, therefore, any agreement or any international law obligation associated with that treaty once we leave the EU?

[53] **Dr Hunt:** If we look at article 50 of the Treaty on European Union, and the process that it suggests in terms of withdrawal, there's an expectation that there will be a negotiation and there will be an agreement to bring the existing treaty framework to an end and its impact within the UK—the withdrawing state—with a vision to recreating new legal relations, which may involve, and would involve, the formation of new treaties. Now, if no agreement is reached by the end of the two-year period that is stipulated in article 50—and there's a suggestion that it's very unlikely that we'd get as far as an agreement at that point—there would need to be the unanimous agreement of all other member states to prolong that negotiating period beyond two years, and if that isn't reached, then, at that point, the treaties cease to have effect in international law. There are general rules—Ricardo made reference to the Vienna Convention on the Law of Treaties, and so there is a sort of general framework governing how treaties are born and how they die. But if there are more specific rules set out in the treaty system, then you follow the specific rules, rather than fall back on the general rules.

So, they are the specific rules that are given. So, the understanding is that those international commitments, as far as the EU treaties are concerned, they come to an end.

[54] Now, there will be national law in place, and that national law—and that's as a consequence of this dualist approach that the provisions that we have in national law—will continue up until such a point as there is reform of those national laws.

[55] **David Rees:** Okay. Jeremy.

[56] **Jeremy Miles:** It's a related question. Just as a point of clarification, it's correct to say, isn't it, that leaving the EU won't of itself change any of our obligations under any other international law provision, outside the EU's treaties? Is that correct?

[57] **Dr Hunt:** To the extent that the UK is a party to those treaties on its own terms, then they would continue. So, where there is individual membership of the UK, as an independent sovereign state, then, yes, those commitments would continue. Whether it's there as part of the EU, then there may be certain complications. But, by and large, the UK's membership of UN and WTO should subsist throughout this.

[58] **Jeremy Miles:** Okay.

[59] **Dr Pereira:** Can I add to that? It depends on whether the competence of the EU is exclusive, for example in the case of the common external commercial policy or fisheries. But, in the case of mixed competence, or international mixed agreements, in which both the member states and the EU are parties, I'd assume that the UK would remain party to these agreements post Brexit, and therefore those obligations will still be applicable in the UK.

[60] **Jeremy Miles:** Okay, thank you for that. So, in looking at the various models that you've both spoken about, which are the alternatives, going forward, to EU membership, will the particular path that is chosen, or negotiated, have implications for the applicability of international law in the UK, or does just being outside the EU—is it binary in that sense? You know, are there different obligations in international law for the UK, which might arise, depending on which of those other alternatives we end up with?

[61] **Dr Hunt:** I don't know whether you want to speak to an international

trade perspective, but we know that, if we look at the various degrees of exit, the closest would be EEA agreement. And to all intents and purposes, it will look a lot like EU membership, apart from the UK's ability to be involved in decision making within the EU. But a lot of the commitments and obligations under the EU treaty would continue through EEA membership, through that legal framework. There are some differences, as far as the EEA is concerned, to do with things like customs union—that it's not a customs union—so that would have international legal consequences flowing from there.

[62] **Dr Pereira:** It also depends on the nature of these agreements. Often, the EU implements secondary legislation to implement some of these international agreements. For example, on the environment, there's a lot of EU secondary legislation in the form of directives and, sometimes, regulations as well, which are aimed at implementing international commitments. And these are then transposed into UK law because the UK has to transpose directives under the national laws. You could argue that regulations, once the EU transposes international obligations in the form of regulations, the UK would no longer have—you know, those regulations would no longer be applicable, because regulations are directly applicable in the EU legal order. There's no need of national transposition measures. But in the form of directives, these require national transposition measures. And, therefore, the UK would still be bound by these directives, implementing international agreements.

[63] **Jeremy Miles:** Thank you for that. So, that addresses the situation, as it were, with regard to, I suppose, EU treaties, effectively, but are there implications in terms of non-EU treaties—our relations to other international bodies and laws? Does the path we choose—the degrees of exit that you described, do they have implications for those broader, non-EU, if you like, international legal provisions and agreements and organisations?

[64] **Dr Hunt:** I suppose that whether or not there is an EFTA/EEA-type agreement, rather than—so, a soft Brexit rather than a hard Brexit—it may have consequences in relation to the sorts of international trade agreements that the UK would be able to make with other countries, because of the impact that membership of the EEA would have on its ability to form those relations, because of the role of the EU in that area.

[65] **Dr Pereira:** Yes, I mean, I can think of some examples of environment agreements in which the EU has not participated. Those would still be governed by international law and UK law, and the relation between the two.

So, the EU law would now not play a part, and Brexit would imply making rearrangements for that relationship. If the UK decides to withdraw from those agreements, we'll be just governed by the international laws, relationships, treaty termination, rather than anything connected to Brexit.

[66] **Jeremy Miles:** Okay. Thank you, Chair.

[67] **David Rees:** Steffan.

[68] **Steffan Lewis:** Thank you. You mentioned that the UK would have to produce a schedule of commitments for the WTO post Brexit, or when that's concluding, and the then for unanimity among other members for those to be accepted. Can you talk a little bit, elaborate a bit more, about what kind of provisions that would require, what kind of commitments and circumstances, maybe in the past, where there's been a lack of consensus for accepting schedules of commitments?

[69] **Dr Pereira:** Well, the WTO, it attempts—like in the Council of Ministers in the EU, there is an attempt to reach consensus, although, for certain policies, we have majority voting, and the same applies to the WTO. In some policy areas, a majority voting system applies; for other policy areas, there is a need for consensus, and the idea is that consensus is not very effective, because one of the members can block, can veto, the policies. So, the idea is that the UK would have, or at least would have to have reached, some sort of consensus with the WTO members, once it submits its schedule of commitments, and these will relate to goods arriving from various other countries, not necessarily EU member states, and I can see that there is a scenario there in which there potentially can be a veto of perhaps some of those submissions.

[70] **Steffan Lewis:** So, obviously, following the referendum campaign, the big theme was about people wanting to take their country back, and the WTO was mooted as this wonderful arrangement where the UK would be free to do whatever it likes, but, actually, conceivably, if the post-Brexit deal between the UK and the EU isn't very favourable to the EU—say if things break down—it's quite conceivable, then, or possible, at least, that the EU could hit a veto on the UK as a member of the WTO in terms of its schedule of commitments.

[71] **Dr Pereira:** That's possible, yes. That's possible—perhaps not so much as a retaliatory measure, because, also, the UK would have, well, similar rights in relation to goods arriving from the EU. And, as I mentioned before,

there is a trade—the UK has a trade deficit with the EU, apart from the service sector.

[72] **Steffan Lewis:** And except for Wales, of course; that is in surplus in goods.

[73] **Dr Pereira:** That's right.

[74] **Steffan Lewis:** You also mentioned, on this point about the WTO, that the EU itself would need to compensate. Could you elaborate a bit more about that? We're not quite clear on what the nature of that compensation would be.

[75] **Dr Pereira:** So, the EU—. When countries renegotiated their tariffs with the EU, or when they negotiated their existing FTAs with the EU—so, perhaps with Korea, Singapore recently—they took into account that the UK was a member, and some of these countries have a higher or lower level of interest or exposure to the UK markets. So, when, for example, they accepted the higher tariff for a particular good, they took into account that the UK was there as a member state, and, once the UK is out, then countries like Korea and so on can say, 'Well, sorry, we have to renegotiate this because some of these tariffs were negotiated at a time when the UK was a member'. So, the EU would have to compensate in the form of potentially lower tariffs and more trade concessions.

13:45

[76] **Steffan Lewis:** And would this be facilitated by the WTO or would it be the case that the EU would have to renegotiate the trade deals that it had completed whilst the UK was a member, on a bilateral arrangement, with all those countries?

[77] **Dr Pereira:** When it comes to the FTAs themselves, it would be on a bilateral basis. Obviously, if, somehow, this new agreement would contravene WTO law, it could be subject to litigation before the WTO panels. If, however, you're talking about the schedules of commitments being renegotiated, you would expect them to be renegotiated within the WTO forum—specifically for tariff negotiations.

[78] **David Rees:** Thank you. Eluned.

[79] **Eluned Morgan:** I wonder if you can elaborate a little bit on the WTO and this idea of non-discrimination. So, if you're not allowed to discriminate—. Just to give you an example, Brazilian beef—we slap tariffs on, I think. But you're saying that you can't discriminate and you have to treat people in the same way as the most favoured nation. Can you explain that? I haven't grasped that.

[80] **Dr Pereira:** You must treat—. You cannot give a tariff concession to one particular country and not extend it to all the other WTO members. This is to ensure the lowest level of tariffs as possible. That's why it has been seen over the decades that tariffs have reduced significantly over the years, partly because of the MFN principle. The FTAs are an exception to this. Countries can have their own low tariff or zero tariff amongst themselves, without having to extend to all the other trading partners. The no-discrimination principle also applies not only to tariffs, but also to once the goods are within a particular market. So, domestic goods cannot be favoured—cannot be treated more favourably than foreign goods. So—foreign goods—once they are in the internal market of a particular WTO member they cannot be subject to higher standards in terms of regulations or higher taxation policies. This applies also within the EU internal market as well. The principle of non-discrimination also applies within the internal markets of the EU.

[81] **Eluned Morgan:** Okay, that's clarified that. Can I ask you something else on the issue of technical standards? So, you've talked about how we have to conform at the moment with certain UN organisations and bodies. In particular, I think you cited the UNECE, where you're talking about technical standards so that we have common standards. But there are instances where the EU's gone further than that. If that were the case, and if we were to leave the EU, presumably, if we'd want to export car component bits to the EU, we would have to conform with EU standards. So, we may have the liberty to conform to those broader UN standards within the UK, but if we wanted to export, we would still have to conform with those EU standards. I'd like to be clear.

[82] **Dr Hunt:** Absolutely. And at the moment, the single market facilitates that. There's a lot—when you talk about the single market—of attention on tariffs. But, in fact, tariffs are quite a minor part of how the single market operates. The idea of a single market is that you produce a product within the single market and it has free access across that market and the product is presumed to comply with those regulatory standards. So, the market is as

close as possible to a one-state market. The situation at the moment is: those things are produced and there's a presumption that they comply with the product standards—either we have regulatory standards and you comply with those, or we have this principle of mutual recognition. So, where we haven't already got EU harmonisation, there is a presumption that a product made in the UK is equivalent to a product made in another member state. So, there's that presumption of mutual equivalents. And that sort of facilitates free movement within the internal market. So, what we have at the moment is a presumption that our products comply with those standards. If the UK is no longer part of the European Union, there would be that requirement for it to prove that its products meet the regulatory obligations that are set in EU law. And, as you say, in some regards, that will go further than we see in other fora.

[83] **Eluned Morgan:** Do you know how this works in relation to, for example—if a car company wanted to export from Japan? How would they do it in Japan? Would they just say, 'Right, we want to access that European market. Therefore, all those regulatory standards that we are expected to adhere to if we want access to the EU market—'? Do they generally just, lock stock and barrel, say: 'Well, we might as well make those Japanese law as well'? Or, do they say, 'Actually, we will make so many cars for the European market, but we'll have this other ability to meet different standards'? Do you have any idea how that works in practice?

[84] **Dr Hunt:** Can you pick this one up? We have got type approval and things like that, haven't we?

[85] **Dr Pereira:** Yes. I mean, you are looking for a very specific example of—

[86] **Eluned Morgan:** Not necessarily. Just as a general principle, do they bother to say, 'Let's have a separate domestic rule, despite the fact that millions of our cars go to the European market'?

[87] **David Rees:** I suppose the question is: what's the lowest common denominator for the regulations?

[88] **Dr Pereira:** Yes. There is the argument that countries choose—. Well, especially with international corporations, their regulatory conversions tend to be to the highest level because they rarely comply with the same standards everywhere. Rather than having manufacturing processes, they

comply with different standards. So, if they have the best emissions standards in general, they don't need to have different assembly in other manufacturing processes for each market exported to. So, that, then, goes against the principle of the race to the bottom—that countries necessarily adopt the lowest regulations. But the idea is that the regulatory conversions tend to happen partly because of this need—especially from big multinationals—to comply with the regulatory requirements of several separate markets.

[89] **Eluned Morgan:** So, there's no incentive, really, for us to—. You know, we all wanted to 'take back control'. But actually, the reality is that, in practice, we won't bother because we want to export to those markets.

[90] **Dr Pereira:** Yes. I mean, obviously, there are technical standards. And then there are various other issues that impact on businesses' activities—product liability standards, for example. These may not necessarily be subject to—. You know, countries may apply different standards, depending on whether or not there is international consensus. But certainly for product standards—emissions standards, for example—they would most likely wish to comply with the level playing field.

[91] **David Rees:** Thank you. I am conscious of the time, and I'm conscious that we have other witnesses in the next session and that some of them have timescales themselves. Paul, the final question.

[92] **Paul Davies:** Yes, a point of clarification, actually. Dr Hunt, you mentioned earlier that, as far as international law is concerned, devolved Governments have a role to play as far as the European Union is concerned. I just wanted to clarify: is that a formal framework? Of course, if we leave the European Union, we would have to set up some sort of formal framework within the UK in order to ensure that devolved Governments have a role to play in international law. Is it a formal framework as far as the EU is concerned?

[93] **Dr Hunt:** As far as the EU is concerned—. I mean, we have obviously got the two things working together. So, the EU itself creates various fora for devolved administrations to be involved. We have the Committee of the Regions, for example, and through MEPs being elected, but also institutional structures at a UK level—so, things like the joint ministerial council, and there's the Europe strand of that. There are questions around its effectiveness, but we know that that's supposed to be the main route

through which the consultation around Brexit is going to be taking place. We've been told that it looks as though that's going to be key to that. So, to the extent that Wales may want to continue to, post Brexit, have a role to play and to be informed and involved, structures are going to have to be found. Informal paradiplomacy will be necessary.

[94] **David Rees:** Thank you very much. Thank you both for your evidence this afternoon. It has been very helpful, and I think it's given us some issues to explore further. You will receive a copy of the transcript for any factual inaccuracies, because we are in public. If there are any, please let us know as soon as possible so we can get them corrected. So, again, thank you very much for your time.

[95] **Dr Hunt:** Thank you.

[96] **Dr Pereira:** Thank you very much.

[97] **David Rees:** Members, I want to move on quickly to the next session. In the next session we'll start looking at the implications in particular for the agriculture sector.

13:55

**Gadael yr Undeb Ewropeaidd: Y Goblygiadau i Gymru—Cyfraith a
Masnach Ryngwladol
Leaving the European Union: Implications for Wales—International Law
and Trade**

[98] **David Rees:** Can I welcome Professor Alan Matthews, Trinity College Dublin and Professor Alan Swinbank, University of Reading?

[99] **David Rees:** Welcome to this afternoon's session and thank you for your—I think we have received written information from yourselves. It is much appreciated. We'll go straight into your presentations, if that's okay. Do you want to give a five-minute talk or introduction first? Then we'll go into some questions. Professor Matthews.

[100] **Professor Matthews:** Well, thank you very much for the invitation to be with you this afternoon. I thought it might be most helpful to try to focus my contribution on looking at some ways in which the inevitable—what I think

are the inevitable—disruptive effects for trade of Brexit might be mitigated in terms of future trade arrangements. In trade terms, as has been explained in the previous session, Brexit means leaving either or both of the EU customs union and/or the EU single market. So, there are two separate decisions, which may, and probably will be, complementary, but not necessarily so. Under the customs union, at present, the UK applies the EU's common external tariff. Responsibility for trade agreements covering food and agriculture, which is what we were asked to specifically focus on, rests with the European Union. In the case of modern trade agreements, which often also cover regulatory and intellectual property issues, as Dr Pereira's mentioned, these are mixed agreements and, thus, often also require the consent of EU national Parliaments. So, on leaving the customs union, the UK would regain the ability to set its own level of tariffs, subject to whatever ceilings might be agreed as part of its WTO schedule of commitments, as well as the possibility to conclude its own free-trade agreements. Even if a free-trade agreement were concluded with the EU that maintained the current level of duty-free access to the EU market, UK and Welsh exporters would have additional paperwork to deal with, arising from the application of rules of origin.

[101] The rules of origin are a necessary part of any free-trade agreement outside a customs union. They're intended to ensure that the goods receiving preferences genuinely originate in the partner country, and that they are not goods originating in a third country using the free-trade agreement to circumvent the payment of appropriate tariffs. So, my example might be that the UK might have a free-trade agreement post Brexit with New Zealand in which it allowed New Zealand to export lamb duty free to the UK. It might also have a free-trade agreement with the European Union. But the EU customs authorities would want to ensure that the lamb exported from Wales was genuine Welsh lamb and not duty-free New Zealand lamb seeking to enter the EU market without paying the full EU duty. So, Welsh exporters of meat pies or lasagne would have to demonstrate the meat was Welsh lamb and not New Zealand lamb. This can be done—it's a relatively straightforward exporter declaration on the customs form, but it is additional paperwork and that paperwork will have to be maintained for a number of years, because there will be checks, and if the exporter is found to have contravened the rules the full duty would be payable.

[102] It's possible to leave the customs union while remaining a part of the single market and, for non-food products, retaining tariff-free access to the EU market. This is, as you've heard already, known as the Norwegian or,

somewhat less accurately, the Swiss option. In the Norwegian example, it would involve the UK remaining a part of the European Economic Area, with its associated obligations as well as rights. But, it should be noted, given that we're focusing on agriculture, that the European Economic Area agreement does not cover tariff arrangements for agriculture and food products. That would have to be negotiated separately in any case.

14:00

[103] As a separate decision, the UK could decide to leave the single market. In principle, it might decide to leave the single market but remain in the customs union. This would be the Turkey option. I think it's highly unlikely, but it does exist as an option. The UK would continue to have access to the single market, like North Korea and every other country, as your Minister for Brexit famously remarked, but would no longer be part of the single market.

[104] As was explained earlier, the basis of the single market is the principle of mutual recognition that goods that are placed on the market in any one member state can be sold in any other member state, subject to—. There are some safeguard clauses, which, however, are fairly strictly interpreted by the European Court of Justice. However, for mutual recognition to work, especially in the case of food, all countries must have confidence that the goods being marketed meet a high standard of health, safety, environmental and consumer protection.

[105] So, we have two consequences of this. It means that participants in the single market must agree on legislation that sets common standards, which ensures this high level of protection. Of course, this legislation is sometimes criticised by business, but it does ensure a level playing field for businesses, preventing competition by lowering standards unreasonably. And, second, there needs to be confidence in the conformity assessment procedures, so, in other words, the agencies that actually certify, that, yes, this particular food product meets the standards that are set out in the regulations.

[106] If the UK were to leave the single market, it would regain the ability, of course, to set its own regulations, including food standards, although this nominal freedom would be circumscribed both by its international legal obligations, such as compliance with WTO rules, as you've heard, as well as by any desire to minimise trade costs with its major trading partners.

[107] UK exports to the EU would no longer automatically benefit from the

mutual recognition principle, nor would EU exports to the UK. UK exports would have to demonstrate, on a shipment-by-shipment basis, that they meet the regulatory standards to be sold on the EU market. The procedures to demonstrate this compliance will also have to be audited and approved.

[108] So, my example might be a Welsh meat factory selling on the domestic market, but wishing to export to an EU country. It would face hygiene and veterinary inspections, of course, by the UK Food Standards Agency, but it would also face additional inspections from the EU food and veterinary office. Over time, the two sets of standards this factory might be expected to meet may diverge from each other. So, there will be additional costs of delays at border crossings and the paperwork involved, plus possible additional costs from having to reformulate products or to change packaging, which was the question you were asking about cars in the previous session.

[109] These additional costs of trading can be quite significant—estimates might range at the order of 5 per cent to 8 per cent of the value of the product. Of course, they apply to imports as well as exports, and thus would provide some additional protection to UK and Welsh food firms that are only selling on the domestic market, although, of course, these higher costs would ultimately be paid by the consumer.

[110] The new generation of free-trade agreements, which are called these 'deep and comprehensive' free-trade agreements, try to address these additional regulatory costs through mechanisms of what are called 'regulatory coherence' or 'regulatory co-operation'. It would be open to the UK, in any future trade arrangement with the EU, to include agreements on regulatory measures. For example, there could be an agreement on veterinary equivalence, which would allow the UK Food Standards Agency to certify that the Welsh meat factory was meeting the EU as well as the UK standards, so, just one inspection even though the standards might, as I say, be different in the future. There could be an organic equivalence agreement, which would ensure that products that meet the future UK organic standards could also be sold as organic products on the EU market under EU organic rules. The UK could agree to participate in the EU's geographical indications system, which would continue protection for products such as Anglesey sea salt, Pembrokeshire early potatoes and Welsh lamb.

[111] Thus, even under a free-trade agreement outside the customs union and outside the single market, there are opportunities to minimise the additional trade costs that will arise following Brexit. However, negotiating

agreements on regulatory standards does take time and the difficulties should not be underestimated. So, it seems to me it would be important to begin now to establish the priority areas for regulatory coherence from a Welsh perspective in any possible future EU–UK trade agreement after Brexit. Thank you.

[112] **David Rees:** Thank you for that. Professor Swinbank.

[113] **Professor Swinbank:** Thank you, Chair, and thank you again for the invitation to come. I hope I can complement my colleague's comments. There's not usually a gap between us, but we haven't prepared ourselves for a joint presentation today. I think I would start by saying that my presumption is that the United Kingdom will remain a member of the WTO. There was some discussion about that earlier, but we'll remain a member, I think. It seems to me that there are two important aspects about agriculture within the WTO framework that are worth mentioning. One is that there are many high tariffs on agricultural products. So, although we talked about the car industry earlier, some of the tariffs on agriculture are extremely high, which gives rise to some of the concerns and issues that Alan was mentioning just now. One of the reasons why the Doha round of trade negotiations has been delayed is because of discussions over tariffs on agriculture. One of the reasons why access to the European beef market for Canadians, under the proposed Canadian free-trade agreement, is problematic is because European farmers, and Irish farmers now—. I was in the European Parliament the other day when Irish Members of the European Parliament were talking about the threat to the Irish industry of cheap beef coming in from overseas. One of the reasons why the numerous examples of tariff-rate quotas—that's to say, when you allow a certain quantity of product into your country at a much lower tariff than the full rate of tariff—are so contentious and so fought over is because they give real commercial advantage—real profits—to the companies that get access to those tariffs.

[114] So, these high tariffs are an issue as far as any future trade negotiation—any future trade arrangements—that the United Kingdom has. Now I'm starting from the assumption that the United Kingdom will simply inherit the European Union's existing schedule of tariffs. There is debate about that; you talked about it earlier. I think there is a precedent. I think the Velvet divorce of the Czech–Slovak Republic in the early 1990s, when both parties—the Czech Republic and Slovakia—simply took on board the tariffs of Czechoslovakia, gives some indication that it's possible, but whether it will happen or not remains to be seen. With those high tariffs, the United

Kingdom would have the ability to set lower tariffs. It could, if it wished, as some economists would argue, fix very low tariffs—even zero tariffs—on agriculture products. Whether Welsh agriculture and British agriculture would welcome that is another matter but it would be, I think, within the realms of possibility. Or it could start with those very high tariffs and try and negotiate, on a bilateral basis with other countries around the world, tariff reductions. For example, Australia has been mentioned as a country with which the United Kingdom might wish to have a free-trade agreement. Australia, I would imagine, would come to that negotiating table saying, ‘We want free access for agriculture products to your market’. And, if we’d already given free access away, by simply setting zero tariffs on day one of our renewed membership of the WTO, we would have very little leverage in that negotiation to get concessions elsewhere.

[115] So, some of the problems that Alan earlier referred to about trade within Europe are also integrated with these other issues about how we negotiate trade agreements with other countries around the world. One of my concerns—and I’m slightly surprised that Alan didn’t mention it—is the border between the Republic of Ireland and Northern Ireland. Because if you have high tariffs sort of each facing each other across that border, then that’s a very hard border, to my mind, and, in the past, there have been horrendous smuggling issues over that border. So, is it a priority for the UK Government to have a soft border there—basically, free trade in agriculture products across that border—and, if so, what does that imply in terms of its free-trade agreements it could negotiate with Mercosur or Canada or elsewhere around the world?

[116] The other point I would bring to your attention is that, as well as having to apply all of the WTO rules and obligations, such as the agreement on sanitary and phytosanitary measures, there is the agreement on agriculture. It’s perhaps unique that, in the agriculture sector, there are international rules laid down on what sort of farm support programmes you can pursue.

[117] One of the interesting issues for a bit of an anorak like me is how the EU and the United Kingdom are going to divide, if they can divide, the existing entitlements, if I can put it that way, that the European Union has to grant subsidies in the so-called ‘amber box’. This is getting rather technical, but amber-box subsidies are those that are said to distort trade, and the EU currently has a large heading in there. If the United Kingdom had some of that after withdrawal from the EU, then the United Kingdom could afford to

have all sorts of policies within that amber-box heading, but, if it is zero, then we revert to the default position in the agreement on agriculture, under which the level of amber-box support that can be granted is subject to a maximum of 5 per cent of the value of overall production of output for non-product-specific support and a similar amount for product-specific support.

[118] At the moment, that's not problematic, but, arguably, the direct payments scheme that we currently give in the United Kingdom is not entirely WTO compatible. No-one will bother challenging it at the moment, because, if it was challenged, the EU could simply turn around and say, 'Well, it's amber-box support, it fits within our overall limits.' But if the United Kingdom was trying to pursue exactly the same policies and another country then turned around I don't know how many years down the track and said, 'Is that really a green-box policy? Let's look at the way it works,' and it was found to be in violation of that green-box category, then the current level of direct payments that we give in the United Kingdom as a whole and in Wales in particular, to my mind, would exceed our allowance. In other words, we would have to change our domestic policy to fit within those amber-box limits.

[119] The same sort of issue arises over environmental payments. At the moment, you're entitled to give environmental payments provided they don't exceed the cost of provision or the loss of income forgone. Many people say the environmental programmes in rural areas need to be revised so that more generous payments are given to those producers. If they were more generous, they wouldn't fit within the green box, they would be amber-box payments, and under this scenario I've sketched of the United Kingdom inheriting a zero allowance from the EU, there would be more pressure within that de minimus ceiling.

[120] I know agriculture, in this context, is largely driven by devolved administrations, but, of course, it would be the United Kingdom that would have to answer to the WTO for what the devolved administrations were doing. I'm sure you'll have debates later about whether or not there would be any finance for these schemes, even if you wanted them in Wales. But there would be this co-ordination issue about what the devolved administrations could do so that they fitted within the United Kingdom's overall obligations in this manner. Quite how that would work between yourselves and Whitehall, I don't know. That's probably enough for now, Chairman.

[121] **David Rees:** Thank you very much for that. Can I just clarify one

question? The amber-box situation—the WTO obviously agreed to reduce the number of items in the amber box, components of the amber box, and the EU was a negotiating body for the UK at that point in time. I would assume, if I'm correct, when we leave the EU that the UK would take on a similar position as the EU took on in those negotiations.

[122] **Professor Swinbank:** I would like to think so, but I'm not sure one could assume that is the case.

[123] **David Rees:** Fine. Okay. Jeremy, a question? No.

[124] **Jeremy Miles:** Yes. I think, in relation to the customs union, you described it being less likely that we would end up in a situation where we retained membership of the customs union, but had left the single market. Did I hear that correctly? But then you described what you describe as 'paperwork', which, it turns out, is a 5 per cent to 8 per cent cost margin, so it's obviously a very significant level of additional regulatory burdens that businesses would have to meet and, presumably, pass on the costs to consumers of doing that.

14:15

[125] But, on the question of mutual recognition, you then, I think, were going towards a position where you anticipated over time—probably quite a long period of time—the ability to substitute that mutual recognition, in a sense, on an individual, negotiated basis. Have I understood correctly what you were saying? If that's the case, at the end point of that process, could you distinguish that from what we now would regard as the single market, if you like?

[126] **Professor Matthews:** I think this is a very good question. Just to clarify the figure on the 5 per cent to 8 per cent additional costs, I think it probably includes more than just the paperwork, so we would also include the costs of reformulating your product, maybe changing the labelling and the packaging and so on. So, there are those—

[127] **Jeremy Miles:** Sure, but they are costs

[128] **Professor Matthews:** Absolutely, yes. I think if we're simply focusing on trying to minimise trade costs—obviously there are political dimensions to Brexit and so on that we're not discussing here—but if we're simply trying to

focus on minimising trade costs, and if the European Economic Area is ruled out, I suppose what I'm highlighting is that, increasingly in these free-trade agreements, there are now attempts made to try to address these regulatory barriers. It's extremely difficult. We see it in the current negotiations with the United States in the so-called TTIP agreement, and it's difficult both because it raises worries amongst consumers and environmentalists that somehow trade negotiators are going to be setting standards in these areas, which is the basis for the protest against TTIP. But it's also difficult because the regulatory agencies themselves don't necessarily want to have to be constrained. In other words, let's take the American regulators—they say, you know, 'Why should we be trying to take on board the European views on this? We really just want to be able to set our standards in the light of our own analyses', and so on. There are obviously slightly different approaches in different countries.

[129] So, what I'm saying is that, yes, within this new generation of free-trade agreements there are ways of trying to address these regulatory trade barriers, but they're difficult and they're time consuming. So, if you look at the negotiation of the veterinary equivalency agreement, for example, between the US and the European Union, which pre-dated TTIP—I mean, that exists at the moment, but it took many years to reach that agreement. Now, of course, the UK is in a somewhat different situation because we now have all exactly the same rules and regulations, so that might make it easier, but it's a question then of the extent to which your political leadership would want to constrain yourselves, because it's going to be difficult to see the UK getting the European Union to shift on its rules and regulations and the procedures that it has in any free-trade negotiation. It seems to me much more evident that the pressure will be the other way round when it comes to negotiating these rules.

[130] **Jeremy Miles:** But you could see, as an end result of that, a process where you had tariff-free trade within the customs union, so to speak. You wouldn't have issues around free movement—I think that's what you're trying to say—and you could have, if there was political will for it, an understanding or recognition that the UK would apply equivalent provisions and standards to what the EU was providing. That is a legally—

[131] **Professor Matthews:** In certain areas, yes.

[132] **Jeremy Miles:** In certain areas rather than across the board.

[133] **Professor Matthews:** Yes. But that would be up to the negotiators.

[134] **Jeremy Miles:** Yes, of course.

[135] **David Rees:** Professor Swinbank.

[136] **Professor Swinbank:** Can I just add a comment about customs unions? In many respects it would be attractive to remain within the customs union, but the United Kingdom could not then go and negotiate its own free-trade area agreements. It would be bound by the agreements that the EU has with the other countries around the world.

[137] **David Rees:** Thank you. Mark.

[138] **Mark Isherwood:** Thank you. Professor Matthews, you explained that outside the single market, and without regulatory co-operation, a Welsh meat factory selling on the domestic market and wishing to export to an EU country would face dual regulatory systems. How would that apply to a Welsh meat factory selling on the domestic market and currently selling or wishing to export to a non-EU country, and why would that differ, if at all, in terms of regulatory regimes?

[139] Secondly, you referred to New Zealand lamb, which is something that's come up quite a bit in different contexts already. Correct me if I'm wrong, but my understanding is that when the UK entered the EU, part of the agreement was a quota system for New Zealand lamb and that part of the exit negotiations will have to address how that is managed in the future, and the EU arguably will have an incentive to say, 'You'll get the most of it because you receive most of the New Zealand lamb, or the biggest chunk of it, now'. Is it likely therefore that, in the exit negotiations, the EU would still maintain a quota access to the EU for New Zealand lamb, or would there have to be trilateral discussions involving New Zealand as well?

[140] Finally, in terms of your reference to the alternative possibility of bilateral or otherwise agreements and those being time-consuming, and the possibility—. I mean, yes, there's mutual interest in achieving consensus, but there could be threats of veto and the possibility that some member states may not agree to extend the negotiating term beyond two years. If we were in that position and some EU nations were playing hardball, is it the case that the UK could revoke article 50 and then theoretically set the clock ticking again? Certain advice that we've had before suggested that, legally, the

treaties couldn't prevent that.

[141] **Professor Matthews:** I might pass the TRQ one to Alan because we have discussed this on many occasions, so I think we probably would have similar views, and so let me address the other two questions. First of all, with respect to this hypothetical Welsh meat factory that was already exporting to a non-EU country, yes, it had obviously then fulfilled the regulatory requirements that that non-EU country had insisted on, but it would still have to undergo certification by the EU Food and Veterinary Office, because the EU will say, 'Our standards are different and we want to make sure that you actually are meeting those standards'. So, it would still require another inspection. Obviously, it sounds like this factory is pretty modern and has good standards, so it may not have difficulty in meeting the inspection requirements, but it would still have to undergo it—it would have to do the record-keeping and show that it actually met the EU requirements.

[142] **Mark Isherwood:** But would it require inspection by that third nation's own inspection regime?

[143] **Professor Matthews:** Well, it's simply that you're trying to get access to the EU market, so the EU regulatory authorities will not allow imports unless they are satisfied that you are meeting their standards. Let me just give you one example: the UK might well decide after Brexit, particularly in the context of if it were to try to get its own free-trade agreement with the United States, and it might say, 'We're happy to have poultry imports from the United States that are washed with chlorine'. This is a standard practice for removing pathogens from poultry meat. In the European Union, we only allow pure water for the washing of poultry, so we don't have any imports of poultry meat from the United States because of this regulatory difference. In the UK you might decide to say, 'Actually, this is a positive health benefit', and there is some evidence to show that, in fact, it does remove residual salmonella, and so on. So, you might go down the route of actually relaxing that regulation, but that's all the more reason why the EU authorities will want to make sure that any poultry meat that you are exporting to the EU is indeed not washed with chlorine. You may allow it for your domestic market, you may allow it for the US market but, 'We don't want it in Europe'. That would be the line that would be taken. So, inspections, I don't think you can get away from it. You can minimise the costs, as I say, through equivalence agreements, but I don't think you're going to get away from it.

[144] **Mark Isherwood:** I was thinking rather more of exports to third party

countries. The reason, as you've just described, that the EU would have that approach is because they're concerned about the exports that come into the EU from the UK, but we already have agreements or trade of food, amongst other things, with non-EU countries. Are they not equally concerned to ensure that the food that we're exporting to them meets at least their minimum standards, and how do they regulate that?

[145] **Professor Matthews:** Indeed they would because, clearly, every country is going to have some system of ensuring that its consumers are protected, and also in the case of imports, animal health protection, food safety, issues with plant health and so on. But the fact that other countries are prepared to recognise your exports isn't going to be a reason why the EU will do it automatically. It will want to have its own system. Maybe I haven't quite understood the point, but maybe not to take too much time—

[146] **David Rees:** What the question really reflects is that, irrespective of which country we export to, there will be a regulatory requirement upon that exported product, and—.

[147] **Professor Matthews:** Yes, that would be my view.

[148] **David Rees:** And we'll be required to meet those levels.

[149] **Professor Matthews:** Yes. On article 50, I have a view on this. I didn't hear all of the session that you've just had, so it may have come up already, but my view is that the negotiations for the UK to leave the European Union take place under article 50 of the treaty of the European Union, and, as was explained in the previous session, the common commercial policy operates under a different set of articles. To negotiate a new trade agreement, that occurs under article 218 of the TFEU—the treaty on the functioning of the European Union. It requires a separate mandate from the Commission, agreed by the council. To me, it's a separate process. One would hope that legal minds can find a way to allow these two processes, with two separate mandates, two separate approval processes at the end of the day, to go in parallel, and, hopefully, to occur at the same time. I think that would be the best outcome from everyone's point of view. But, as I see it, that's not at all guaranteed. So, you could end up with exit as the trade commissioner herself said it, 'First you exit, then you negotiate', and she was simply following, in my view, the interpretation of the legal position. But I'm not a legal person, so that's something that, clearly, you would need to clarify with your legal experts.

[150] **David Rees:** Thank you.

[151] **Ms Morgan:** Sorry, what was the number of that article?

[152] **Professor Matthews:** No. 218 is the article that explains how the community negotiates trade agreements with third countries.

[153] **Professor Swinbank:** Just another quick comment on that, again, I'm not a legal expert, but my understanding is that once article 50 has been triggered, there is no going back; there is no provision within it to say, 'We want to withdraw our application to withdraw from the EU'.

[154] Sheep meat from New Zealand—that is one of the classic tariff-rate quotas, one of these instances where you can get a quantity of product into the European Union at a lower duty than the full rate. And it does indeed date back to Britain's accession to the EU. It's probably one of the simpler ones, although, in my experience, when you start delving below the surface of these things, none of the examples are simple, and it may well be that, in this instance, both the EU and New Zealand would be happy for the United Kingdom to take on this obligation, so to speak, this tariff-rate quota. But, I think there are many other tariff-rate quotas out there—I think the sugar sector, for example, and trying to disentangle what would happen what would happen to the European sugar market when we leave is, to my mind, really quite challenging. I don't think we're going to have any answers on issues of that sort for some time into the future.

[155] **David Rees:** Thank you. Jeremy.

[156] **Jeremy Miles:** Professor Swinbank, one point of clarity. At the end of your previous answer to me, you said that if the UK were to remain within a customs union, it would be bound by the FTAs entered into by the EU. Is it also true that it would be entitled to be a party to those FTAs, or—.

[157] **Professor Swinbank:** Not unless it had also negotiated with the partner country.

[158] **Jeremy Miles:** So, it's just the downside.

[159] **Professor Swinbank:** It's a one-sided relationship.

[160] **Jeremy Miles:** Okay. Thank you.

[161] **David Rees:** Steffan.

[162] **Steffan Lewis:** Often cited, post-Brexit referendum, is the Norwegian model—the EEA/EFTA arrangement. You mentioned that the same agricultural frameworks don't apply to them, particularly on tariffs. My understanding is that because Norway has a sovereign wealth fund, and has looked after its oil money very wisely—some other states could learn a lesson or two there, I'm sure—they are able to pay their farmers the equivalent, so they cover the cost of the EU tariff. Is that correct? So that they are, in effect, on a level playing field with the rest of Europe or the EU. Is that correct?

14:30

[163] **Professor Matthews:** I don't know that the Norwegians would explain their system in quite the same way, but you're absolutely right that the level of support that their farmers get is well above even what European farmers receive. So, it's one of the highest levels of support in the world. But I'm not sure that you can see it as compensating, if you like, for the tariffs, as such. I mean, I think it simply reflects deep-seated arguments about food self-sufficiency in Norway, and the need or the desire to maintain some kind of agriculture even in very marginal farming areas up towards the north of the country and so on.

[164] **Steffan Lewis:** Are there any non-EU states, or non-EEA non-EFTA states, that you can cite an example that have a reasonable, mutually satisfactory, relationship in terms of agriculture, in particular? Are there any precedents?

[165] **Professor Matthews:** Well, as I say, under the European Economic Area agreement, although agricultural tariffs are not covered directly, there are bilateral agreements. So, in other words, Norway and the European Union have negotiated a bilateral agreement, which I presume they feel reasonably comfortable with on either side. It has a lot of tariff-rate quota protection, so, in other words, it allows access for Norwegian cheeses, but only up to a specific quantity. And these are updated reasonably regularly. I think the last one, with Norway—Alan, you might know—but I think it was 2011 was the last one I've seen. So, they do update them, and there's a sort of provision in that last one saying that they will continue to explore opportunities for further liberalisation. So, it's not a once-and-for-all deal. But one assumes

that both countries, given the interests at stake, have achieved the best possible equilibrium. And, similarly, with the Swiss agreement, which is not exactly the same as the European Economic Area as you'd be familiar with, they also have a bilateral set of agricultural trade agreements.

[166] **Steffan Lewis:** Presumably, the reason those bilateral arrangements are able to be facilitated in such amicable terms is because Norway, Switzerland—to varying degrees—comply, essentially, with EU law, and they pay into the kitty and so forth, so the EU is willing to discuss with them on a bilateral arrangement and come to agreement with them.

[167] **Professor Matthews:** Yes. Yes. If they didn't, you might argue that the EU might have taken a harder line, for example, on some of those tariff-rate quotas. But in the case of Norway, for example, Norway transposes things like—I'm sure your farmers have problems with them sometimes, but it transposes the nitrates directive, and the water framework directive, directly into Norwegian law.

[168] **Steffan Lewis:** Thank you.

[169] **David Rees:** Professor Swinbank.

[170] **Professor Swinbank:** Just to quickly add to Alan's answer, in the past, agriculture has largely been excluded from free-trade area agreements that the EU has negotiated. It's not in the customs union with Turkey, for example, and it's largely excluded from the Norwegian example. More recently, the EU has come under a lot of pressure, because, under WTO law, to have a valid free-trade area agreement, it has to cover substantially all trade. Now, that's been fairly easy with the EU negotiating with Korea, because Korea is a high-cost producer, and, on the whole, we've got export interest in agriculture to Korea rather than import competition. But it's come under a lot of pressure with the agreement with Canada, it's coming under pressure with the United States, it's coming under pressure with Mercosur, because these countries are low-cost producers and want to use their free-trade area agreements to get access to the European market. So, there is this continuing evolution, if you like, of practice out there, and more and more agreements have a bigger and bigger coverage, a larger and larger coverage, of agriculture.

[171] **David Rees:** Do any other Members have questions? Well, can I thank you very much for your evidence this afternoon? It's been very interesting.

Thank you very much for that. You'll get a transcript of the discussion this afternoon. If there are any factual inaccuracies, please let us know as soon as possible, so we can get them corrected. So, once again, thank you for your evidence.

[172] **Professor Matthews:** Thank you.

[173] **Professor Swinbank:** Thank you.

[174] **David Rees:** I propose we take a five-minute break.

*Gohiriwyd y cyfarfod rhwng 14:34 a 14:42.
The meeting adjourned between 14:34 and 14:42.*

**Gadael yr Undeb Ewropeaidd: Y Goblygiadau i Gymru—Cyfraith a
Masnach Ryngwladol
Leaving the European Union: Implications for Wales—International Law
and Trade**

[175] **David Rees:** Can I welcome members of the public back to this afternoon's session of the External Affairs and Additional Legislation Committee's evidence-taking for the implications of departure from the EU by the UK? Can I welcome to our third session Professor Minford and Professor Woolcock? Thank you very much for coming this afternoon and providing us with evidence. You have obviously been informed that you'll have some time to give some presentation. So, Professor Minford, we'll start with you, because I know you've got the PowerPoint slides ready for us.

[176] **Professor Minford:** Okay, sure. Well, I thought a few slides might liven things up a bit, so—. Yes, thank you for inviting me, and I believe you want me to talk about the Brexit options and the controversy surrounding them. So, I'm going to mainly talk about that and also about the outlook, as I see it, after Brexit. So, here's the forecast that comes from—. This is our forecast for three major economies up to 2018: US, UK and Germany. And, then, in the last column, I've shown you the consensus forecast, where you will notice that there is quite a big discrepancy between our forecast, which I can't—. Our forecast is for growth next year continuing more or less in the same 2 to 3 per cent track.

[177] **David Rees:** Putting it into context, when you talk about 'our' forecast,

who is 'our'?

[178] **Professor Minford:** The Cardiff Julian Hodge Institute of Applied Macroeconomics, my forecasting group. And the consensus is the average of kind of the whole forecasting community, which, as you can see, is seeing a big recession or slowdown, a big slowdown, next year, starting really in the second half of this year. So, there's a big—. This is quite unusual in forecasting terms, but it happens and has happened in the past, on two occasions that I can remember in my forecasting career. The first was in 1980 with a monetarist debate, where there was a huge split of opinion, with a big consensus saying that it would lead to a long recession and high inflation, and, of course, we were on the other side of that one. And then the other one where there was a big bifurcation of opinion was on leaving the ERM, the exchange rate mechanism, in 1992—so-called 'black Wednesday' or 'white Wednesday' according to your viewpoint. There were some who said it was white and others who said it was black, and there was a big difference in forecasts then, as well. And so it's true today.

[179] Now, the question I wanted to answer, primarily, is: why is this consensus view of economists, which, of course, we also saw in the campaign, so gloomy? There are two main reasons for this. One is that the consensus assumes that the long-term Brexit scenario is one of protectionism—inward-looking and rather interventionist. This was true before, in the campaign. That's continued, really, since. No one's really changed that assumption. They may be beginning to change it because we've now got, as I discussed, a new Government, which is not taking that line. The other point is that, in the short term—and that's across most material for this short-term forecast—all these forecasters assumed big negative uncertainty effects, which we would argue are basically arbitrary. They just simply said, 'There's going to be a lot of uncertainty, and that's going to be very negative for the economy'. What we've argued—our group and my kind of group of economists for Brexit, which you will have heard about—is that, basically, the long-term outlook must be conditioned on a liberal, free-trade assumption because, as I'll argue in a moment, that's both the only one that's actually going to be feasible and also the only one that's optimal.

14:45

[180] Also, the second point is that, if you look at uncertainty, there's always lots of uncertainty around about policy—whether there'll be a different Government or whatever it is. There's always uncertainty. So,

uncertainty is always with us, like death and taxes. But the point about the uncertainty over Brexit is that it's kind of very specific. During the referendum campaign, it was probably at its maximum, because on the one hand you had this possibility of an inward-looking Brexit, then you had the status quo, if 'remain' won, and then you had the other possibility, if Brexit won, which was the free-trade option. Clearly, that meant there was a lot of uncertainty. Since the referendum, of course, the uncertainty is much less. So, that's an important point in thinking about uncertainty.

[181] Now, I think the uncertainty really boils down to either you have an EEA-type option, which is basically the status quo—as I'll explain and as I'm sure you're aware—or there's a free-trade option, the unilateral free-trade option, which I favour and which is, I would argue, pretty positive for the economy. So, the uncertainty is reduced, but the interesting thing about the second quarter, which was a period of maximum uncertainty, was that the growth rate shot up from 0.4 per cent in the first quarter to 0.6 per cent in the second quarter. That suggests that uncertainty had been much over-egged by the consensus. And if you look, in fact, at the latest information, this is also borne out by the latest data. While there were some early surveys that echoed what you'd call 'media-consensus-type opinion'—you know, 'There's going to be a big problem'—the actual surveys of what people are going to do are much more 'business as usual'. That's come out in the data.

[182] If you look at—well, our projection for the third quarter is around about the second quarter actually, but it could be a little bit less, it could be a little bit more. Purchasing managers' indices, as you will have heard, are now positive—above the 50 mark. Retail sales are very strong—about 6 per cent up on a year ago. Car sales—quite strong. Employment—strong. Unemployment—of course, falling. Money and credit—strong. This is rather important. The annual rate of M4 lending measure is running at 15 per cent on an annual rate over the last three months, which is very strong. A year ago, it was about 7 per cent. Credit card lending—also strong; 20 per cent up year on year. House prices—continuing to be strong.

[183] So, that's really the background. The short term has really not turned out the way the consensus thought it would, and I think that's important. It importantly shows that the whole argument about these uncertainty effects is pretty flawed.

[184] Now, let's turn to the longer-term issue and the options, really. If you look at the longer term, the big problem with the EU is its protectionism. I

know you've just been discussing agricultural protectionism—that's about 20 per cent tariff equivalent. Manufacturing, on our estimates, based on price comparison, is about the same. And this has the effect of raising prices to consumers in the UK and distorting production. And regulation, of course, we know is very EU-style, quite interventionist and rather corporatist, social objectives, quite anti-finance and very interventionist in the energy area.

[185] The third point about the current EU membership costs is the immigration point. The key point that wasn't really much understood, I think, by the 'remain' side in the campaign is that it's all about unskilled immigration and whether unskilled immigrants pay their way. Of course, the problem is they don't pay much tax and they get a lot of welfare benefits and the average unskilled adult immigrant we've costed at about £3,500 a year to the UK taxpayer, which is quite a substantial number and, of course, it's rising quite rapidly. So, the kind of economics of being in the EU are quite negative.

[186] What are the Brexit options? Well, the Brexit options are the EEA option, which basically is the status quo: you stay in the single market, you subject it to the same regulations, basically, you have to have the free migration and you have all the trade barriers we've talked about. The alternative is this WTO, unilateral freed-up trade option, which I, and the economists for Brexit group, have argued strongly is the optimal option for the UK. You're outside the single market, you keep control of your regulations and your borders and you have control of your trade barriers and the optimal thing, then, is to go to free trade. This, of course, respects the vote. But there's a big battle going on as, of course, you're aware between, what I would call, the producer interests in the country that want the EU light or the EEA option. But the big problem about that, of course, is that it leaves all these costs in place. Here's a slide with a few costs, but I've pretty much reviewed them: the trade costs we put at about 4 per cent—this protectionist cost. Of course, there's a budgetary contribution. The regulatory cost we put at 6 per cent, but it could be much higher if the regulation became more intense. There are issues of bail-out. There are issues of regulations on growth and, of course, there's the issue of joining the Euro and there's the issue of migration I've just talked about.

[187] Turning finally and briefly to the outlook, what we've done is we've costed the liberal, unilateral free-trade option, put it into our forecast and what it does, of course, is that it has the effect of—. The exchange rate falls—as we've seen, exchange rate falls—and the exchange rate would

probably fall further than what that alone would warrant because of the shock effect of the regime change. The exchange rate falls, this drives up inflation and it drives up interest rates as a result. We think that the interest rate movement will be reversed because of the rise in inflation that's going to occur. There's not much change in the growth in the short run, but as these longer term effects of removing protectionism and regulations and so forth come in the economy starts to gain from a supply-side growth viewpoint and that boosts the growth rate. It boosts competitiveness, boosts real wages, investment and employment, and pushes up, as I say, inflation. It also interestingly, of course, improves the current account, which is a problem.

[188] This, finally, is our actual forecast, for the record. As I said, the main point is that growth continues and is a little bit faster. Basically, we see these changes as coming in over quite a long period of time—about five years—but, generally, once people get the idea of what's happening, we think that that will boost growth because there are all these opportunities of trading with the rest of the world and so forth that are opened up by unilateral free trade. So, I'll leave it there, Chair.

[189] **David Rees:** Thank you, Professor Minford. Professor Woolcock.

[190] **Professor Woolcock:** Thank you very much, Chair. Thank you very much for the invitation. I will speak on the implications of the UK leaving the EU on trade and investment. My own view is that it's really a damage-limitation exercise that we're engaged in. Most of the work that was done on looking at the costs of leaving the EU found that there would be a real costs in leaving. So, let me turn, like in a previous session, to look at how we can mitigate these costs.

[191] The first best option would be to remain in a single market. As you've heard—. Sorry, there will be a little bit of overlap with some of the other sessions, but I'll try to limit that as much as I can. Remaining in a single market means no tariffs, it means no border-control costs, which were mentioned, no customs duties, no costs of dealing with rules of origin, no costs of lorries queuing at the border to get goods cleared. More importantly, though, it means that there won't be any increase in the cost of non-tariff barriers. Professor Minford has costed EU regulation as being up to 25 per cent—presumably, that's a factory-gate cost. Regulatory barriers do pose costs, but the question is whether you have automatic access to the single market, and therefore you don't face additional costs. I would also argue that access to the single market is a good way of ensuring access to

third markets. If the EU negotiates with the US and if—it's quite a big 'if'—it negotiates with Japan and Korea, and the EU negotiates better access, I would argue that the UK will be able to negotiate access to those agreements. So, by complying with EU regulatory provisions, the UK-based producers have better access to those markets.

[192] So, what do we do, though, short of a single market, because there's this question here of whether this is feasible without having free movement of people? What has to happen is: we have to negotiate low tariffs—as low as possible—and we have to negotiate accumulation of rules of origin. I can go into that in more detail if you want. This is important, as was stressed in the earlier session, because of the growth of global value chains. Wales is not separate from the global economy. Parts of production are split up between here, Europe and other markets. So, any company that wants to remain competitive internationally has to be plugged into those global value chains. Rules of origin can become costly if you have to comply with them. So, this means close co-operation between the UK, customs authorities and customs authorities in the other member states. Above all, though, there's a need to negotiate mutual recognition agreements with the EU or acceptance of conformance assessment, as was discussed in the case of agriculture, but this applies to all manufactured products and it applies to services. The issue of the single passport for financial services is well known, but the UK is actually a bigger exporter of business services to the EU, and so this concerns architects, lawyers—a wide range of professions. Under the existing arrangements these professions have a right to supply services in the rest of the EU.

[193] There will be a need to negotiate continued access to public procurement markets in the rest of the EU. These account for something like 12 per cent of gross domestic product. So, the issue here is whether UK-based suppliers would have fair access to contracts throughout the rest of the EU. There's the issue of state subsidies. How do you manage? What sort of criteria are possible for supporting specific sectors?

[194] Fundamentally—and this point came up, I think, in the first session where the discussion was about direct effect—in any agreement, if you negotiate a free-trade agreement or any kind of access agreement, the conclusion of the agreement is only part of it. It's actually implementation and ensuring effective compliance with that agreement that is crucial. So, when the UK leaves the EU, companies or individuals won't have recourse under EU law.

15:00

[195] So, moving on to the alternative of the WTO, I can cut back most of this because I think it's been largely discussed and covered. There will probably be a need to resubmit schedules for goods, services and government procurement. Perhaps the other countries will be in agreement to keep more or less the same level of tariffs, and the same commitment on the part of the EU, but this is an uncertainty. There's no precedent in the general agreement on tariffs and trade for unwinding customs unions, just as there's no precedent for unwinding the EU. So, you have article 24 of GATT, which says that, after the conclusion of a free-trade area, there should be a broad balance of benefits—the balance of benefits shouldn't change fundamentally. So, we don't know how this might be applied. Would this be applied when the UK leaves? In which case, other WTO members may want to ensure that the balance of benefits remains broadly the same.

[196] There are existing WTO agreements, of course, so you have MFN tariffs, you have existing GATS agreements and you have agreements on technical barriers to trade, which try to deal with some of these non-tariff barrier issues, but they're not very effective. This is why these issues have become the substance of the modern free-trade agreements.

[197] I won't go into the need to renegotiate PTAs, apart from saying that I'm not a constitutional lawyer, either, but I can't really see that the rest of the world will simply accept the same conditions for—how shall I put this? The EU's negotiating partners are not going to allow the UK to take the same commitments and obligations that were negotiated, for example under the EU-Korea agreement.

[198] I knew Professor Minford was coming, so I wanted to say something about unilateral free trade. I'm not quite sure what he means by unilateral free trade under the WTO. My understanding of unilateral free trade is that you remove all barriers. I mean, I think this is a coherent position, but I don't think it's a realistic position in the twenty-first century, where most trade relations are shaped by reciprocal market access negotiations and have been, really, since the 1930s, since the UK was, if you like, supplanted by the US, which always favoured reciprocal market access. So, if UK-based suppliers—and I say UK-based suppliers, meaning it doesn't matter about nationality—want to remain internationally competitive, they have to have access to all the other major markets in the world. Access to these markets means you

have to negotiate reciprocal agreements.

[199] Of course, there are gains from unilateral free trade and from reducing tariffs. There are benefits, perhaps, from reducing regulatory barriers, but then we need to know from where these savings are going to come. Are they going to come from consumer safety, environmental protection, employment conditions or regulation of financial services? From where are the cost savings going to come? My view of the international trading system is that you have to find a balance between these broader policy objectives—what the lawyers call legitimate social policy objectives—and maintaining international market-based competition. This is really through a rules-based trading system, which is the WTO, which, these days, is more free-trade agreements and which the single European market is, in fact, the most advanced form of.

[200] **David Rees:** Thank you, Professor. Jeremy.

[201] **Jeremy Miles:** Professor Minford, you describe the consensus that you stand outside of as based on overemphasising uncertainty and an introspective view, but isn't there an alternative view that assumes certainty and a very outward-looking view, but one where we're locked out of tariff-free trades for decades because of not being able to negotiate free-trade agreements and so on? Isn't that an alternative view behind that consensus?

[202] **Professor Minford:** It's interesting Professor Woolcock talking about the US-type approach, which is, in fact, quite modern, as he says, since the 1930s. In fact, for the whole of the nineteenth century and into the early part of the twentieth century, until of course the protectionism of the inner-war period descended, the British method was unilateral free trade. We basically opened up the world's markets. The interesting thing is that there have been plenty of examples in modern times of unilateral free trade—Singapore, of course, is well known—but also New Zealand and China. China has unilaterally reduced its tariffs massively. You can look at the World Bank data; tariffs, actually, around the world have been massively reduced. Of course, non-tariff barriers are another matter. But the whole point about unilateral free trade is that it gives benefits to consumers, because the basic point that comes out of trade theory—you know, ordinary standard trade theory, general equilibrium, comparative advantage-based trade theory—is that if you're a small country like the UK, you only cause damage to yourself by putting up barriers. Barriers cause damage to you, not to anybody else.

[203] The other point that comes out of it, which is also relevant to all the

stuff about trade agreements, is that if other guys want to be protectionist towards you, you don't really care, because all that causes is trade diversion. This is a hard thing for people who think always in terms of access and so on and so forth, which is the American way. The American approach to trade is really mercantilism. It's what used to be called in the eighteenth century 'mercantilist doctrine'—that you try to expand your exports and that way you bring prosperity. Of course, that was used by the Germans also. Their views were very mercantilist and they are to this day, as a matter of fact, mercantilist.

[204] But the truth is that, of course, free trade gives benefits to consumers and if you're a small producer, you sell at world prices around the world, and if some country erects a trade barrier against you, it diverts consumer demand away from your source to someone else's source, but it doesn't change world demand for that product. As a small country, you can still sell that product at the same price around the world. So, you sell less in this country, but of course you've got the same capacity and you sell more elsewhere. The other guys sell more there and less elsewhere.

[205] So, this whole business about trade agreements is a giant red herring, if I may say so, really. I know it appeals to all the people who've invested heavily in all this trade-agreement stuff, which, if you're going to do trade agreements, is a tremendous thing to invest in. Professor Woolcock is a world expert on this stuff. I'm surprised that your phone isn't ringing, Professor, from the department of negotiation—

[206] **David Rees:** Can you focus on the issue and not the—?

[207] **Professor Minford:** Yes, the point is that these trade agreements are irrelevant because the key thing they do, in addition to unilateral free trade, is they make the other country change their trade tariffs towards you, but they don't matter. The thing that really matters for you is the trade tariffs you impose on your own consumers.

[208] **David Rees:** Can I ask a question? Obviously, you talk about selling goods—I'm not an economist, so please treat me as someone who doesn't understand fully the issues—but the sale of the goods depends on the cost of the materials and the goods you produce, and if the costs are higher in any particular country then obviously your selling price will be higher elsewhere. So, there's a possibility that consumers may benefit from imports that are cheaper. If you can't sell your goods outside or you're no longer

producing, you won't have the economy to actually buy the goods from the consumer in the first place. Is that generally a basic principle?

[209] **Professor Minford:** No, it's not, because, you see, the point is that how much produce depends on your resources and your economy, and they get priced according to however much those resources can get from market conditions—from world prices, essentially. World prices; I mean, if you're a producer in the UK, you can only sell at world prices, fundamentally, in the world market. And then the labour that you use, the capital that you use and the land that you use can only get a return that's related to those world prices. You can't control that. All you can control is what your consumers pay, and if you have a protectionist organisation like the EU that, on our behalf, has raised prices to consumers—we calculate by about 8 per cent through this protection of manufacturers and food—what you do is you divert resources, obviously, into those sectors because they're more profitable than the rest of the economy, and you also penalise the consumers—they're worse off. When you get rid of that, what happens is that resources flow into the most efficient industries and your consumers, of course, are much better off, and that's where it gives you the gains from trade, because they're buying stuff from the rest of the world at world prices instead of distorted, exaggerated prices. But your producers will also produce more, because you'll now focus on your sectors that are more productive.

[210] **David Rees:** Eluned.

[211] **Eluned Morgan:** Have you done any analysis on how this would impact on the balance of trade for the UK? I mean, we'd have to produce something in order to win any—

[212] **Professor Minford:** Well, this is neutral on the balance of trade. The way we do these calculations is neutral on the balance of trade. When we do the forecast that I referred to, which is up on the screen, you'll see that because of the way in which this is implemented, and the fact that it's coming through a fall in exchange rate, that improves the balance of trade. But that's a kind of a correction to things that are wrong at the moment. You see, at the moment, if you look at the one from bottom line there, you can see that big current account balance in pounds, running at a deficit of £89 billion, currently, on our current account trade balance effectively. That, as a result of—. It's interesting that Brexit rebalances the economy in all sorts of ways. It raises inflation, which has been too low, and it corrects the trade

balance by getting the exchange rate down to a more realistic level. But that's the short-run, macroeconomic effect of Brexit, if you like. The long run is simply that we assume those things are ineffective, and we're talking about the very long run where everything is in balance.

[213] **Professor Woolcock:** If you open markets, there are gains to be had for consumers. But, I think, the point I'm trying to make is that the UK is part of an integrated global economy, and you have to bear that in mind. You can't really just talk about UK performance compared to other countries. To remain internationally competitive as a location, you have to ensure that your producers, whether they're Japanese or Korean or British, or Welsh, have access to international markets. And that's where negotiating trade agreements comes in. I don't want to get into a long debate about unilateral free trade versus other forms of trade, but the WTO is based on reciprocity. The whole negotiations have been based on reciprocity since 1949 and the UK is not going to change that.

[214] **David Rees:** Can I ask a specific question? Obviously, much has been made about whether we have access to the single market or not, but there's always been a fall-back comment that we are members of the WTO. Just as a point of fact, if we wish to go down this unilateral free trade route, do we leave the WTO?

[215] **Professor Minford:** No. We stay in the WTO. We are already members of the WTO. We're a founding member and we'll stay in the WTO. The WTO is a courts-based system that enforces non-discrimination, basically. At the end of the day, that's really all it's there for. And we haven't had a trade agreement with a lot of our trading partners, like the US or China, for example—two big trading partners. There's been no trade agreement between us and them, or the EU and them. We've never had a trade agreement with the US, and yet it is our biggest single export market in the world. It's double the nearest highest country, our exports to the US, and we've never had a trade agreement with the US.

[216] Another very important market for us is China. We've never had a trade agreement with China. I have great respect for Professor Woolcock and his work, and all the work on trade agreements and so on, but the truth is that trade is older than trade agreements—much older. Even if you have trade agreements of sanctions, still trade goes on. It's a very ancient occupation.

[217] **David Rees:** Eluned, yes.

[218] **Eluned Morgan:** Can I ask about this? You focused on the growth rate and we're constantly looking at this as the measure for judging success. It's quite interesting that in the post-war period up until about the 1980s, we had a more interventionist model—the Keynesian model and the welfare state model—and, actually, we saw far bigger growth rates during that time than we have since the 1980s fall. So, it's quite interesting that the two models are very different and they've brought up different results. And the better results, in terms of growth rates, were during that interventionist period. But the other—

[219] **Professor Minford:** I can't agree with that, by the way, but let me explain in a moment.

15:15

[220] **Eluned Morgan:** Really? Okay. The other point that I think was interesting, politically, in this referendum debate, is that the public don't see any of that. Actually, what matters to many people is whether that growth is fairly distributed, and whether they see any part of that action. And part of the failure of this free-market model is that, actually, the trickle-down model that has been promoted has not worked for, certainly the past few years, in terms of if you look at people's incomes and to what extent they have grown in the past few years. In the meantime, they have seen the economy grow, but, actually, that's not impacting on people. I just wondered to what extent you would agree with that.

[221] **David Rees:** I think you said you don't agree with it.

[222] **Professor Minford:** No, I don't agree with much of it. But that's not a change, is it, in our relationship? [*Laughter.*]

[223] **Eluned Morgan:** No, it's certainly not. [*Laughter.*]

[224] **Professor Minford:** Let me just say very briefly that the pre-1980s growth of the UK, of course, was strong, but it was the post-war period—everyone was growing fast. If you look at Europe, it was growing twice as fast as us.

[225] **Eluned Morgan:** It was an interventionist model.

[226] **Professor Minford:** No, it wasn't interventionist in Europe. And the interesting thing is that the European model, which is what we then realised worked a bit better, was not as interventionist as us. I mean, it was still somewhat interventionist, but there was this post-war period of relative market freedom on the continent, which led to very high growth rates, and of course we lagged behind, as you will be aware. When our growth rates started to rise relatively was after the 1980s, and this was because of the free market policies introduced by the Thatcher Government in the 1980s, which led to a huge supply-side improvement, of course, bringing down unemployment, fast growth in employment, and so forth.

[227] The other point about, you know, have we had a problem with trickle down, the interesting thing is we have a very, very progressive tax system here, and benefits system, and that has certainly moderated the distributional effects of fast growth, and we have had faster growth relative to other countries since the 1980s. It's interesting that the distribution of income has remained pretty equal here. That's because of the very, very positive benefit and tax credit policies—now they're called 'tax credits', you know—that we've had in this country. I think that we haven't really got an equality problem here. Of course, as you know, employment has grown very fast among all parts of the labour market, and there is quite an employment boom. As you know, the employment rate in the UK is the highest anywhere in the world: it's 74.5 per cent of the population of working age here, which is higher than anywhere else, as far as I'm aware, in the world, and is up 1 per cent on a year ago. So, it's very much a participatory capitalist system here, I would argue.

[228] **David Rees:** Professor Woolcock, do you want to make a comment?

[229] **Professor Woolcock:** No. I'll answer questions on trade.

[230] **David Rees:** Okay. Well, I'll make a comment, and I don't want to turn this into a political discussion, but your recollections of the Thatcher years and my recollections of the Thatcher years, and the impact upon south Wales and its industries, are different. I don't want to go beyond that. I have Jeremy—a question?

[231] **Jeremy Miles:** You've addressed your comments, mainly, Professor Minford, to the UK economy. Does your analysis apply in the same way to the Welsh economy, or are there any different characteristics that affect that,

from your point of view?

[232] **Professor Minford:** The Welsh economy is very typical UK—it's very similar to, say, the north-western economy, or many parts of the UK. Basically, it's a very average UK-type region, with the exception of London. But then, there's this difference between London, which is very heavily finance based, and the rest of the economy. So, I would say it's basically the same analysis for Wales, yes.

[233] **David Rees:** Okay. Steffan.

[234] **Steffan Lewis:** Professor Woolcock, you mentioned the issue of access for Welsh companies, or UK companies, to public contracts in the REU, I suppose we'd call it, or what will be the EU, and that, also, there would be effective compliance with new regulations, but there would be no recourse to EU institutions. Could you talk me through the precise nature of that? I mean, what kind of situation are we in now, in terms of Welsh UK businesses participating in public contracts on the continent?

[235] **Professor Woolcock:** In public procurement, public contracts, the EU has a regime that requires transparency and requires non-discrimination, according to bids. So, if a local authority, or a government, is putting out a call for tender, there are obligations in terms of publishing this and the clear contract award criteria have to be set out in advance. There is then something called Tenders Electronic Daily, which is an EU-wide website you can go to to see what contracts are coming up, for example. So there is transparency. So, if the UK leaves the EU, the question is: what sort of access would the UK still have to this system? That's something that has to be negotiated, just as access in services or manufacturers. In terms of recourse, under the EU system, there's something called bid challenge, which means that, if you think you've been discriminated against, a company can challenge the bid under administrative or legal framework, and that then ultimately comes under European law. So, there would be—I mean, there are options. You can negotiate similar agreements, or you can have similar arrangements in a post-Brexit situation, but you'd have to negotiate those.

[236] **Steffan Lewis:** Have such negotiations occurred, say, between other non-EU states that wish their companies to have access to public contracts in the EU?

[237] **Professor Woolcock:** Yes. Well, Canada negotiated in the

comprehensive economic and trade agreement. The EU negotiated greater access to the Canadian market—this is provincial level, sub-central government—and there were some extensions on the EU side. And that agreement includes a bid challenge mechanism. So, they can be negotiated.

[238] **Steffan Lewis:** So, under that agreement, would Canadian companies then have recourse under EU legal institutions, as if they were—

[239] **Professor Woolcock:** No, it would be under the bilateral agreement, and the bilateral agreement, of course, doesn't have the same power as European law. Most of these free-trade agreements have fairly extensive implementing provisions, but, ultimately, it comes down to a committee of the parties to decide on the issue. So, it's not as judicial as in—. The ultimate recourse under EU law would be to the European Court.

[240] **Steffan Lewis:** Thank you. Do we have time for one further question, Chair?

[241] **David Rees:** Yes, one more.

[242] **Steffan Lewis:** I wanted to ask, in terms of your experience of trade negotiations and the constant balance between the social outcomes and trade, whether you have experienced any challenge that we could be facing now in terms of access to trade and implications for the free movement of people on the one hand, and, at the same time, the very real and dangerous situation with the border on the island of Ireland, so that, if there is an imposition of an EU frontier on the island of Ireland, that has real consequences for the peace deal and the peace process. Are there any other trade arrangements around the world that you could think of where there has been such a high cost? So, if we went down the route of unilateral withdrawal from trade negotiations and frameworks, but that is completely incompatible then with what the European Union demands, but there are big questions over—social, political questions.

[243] **Professor Woolcock:** I'm not sure what the main thrust of your question is. I mean—

[244] **Steffan Lewis:** I think, essentially, what I'm trying to say is that one of the big campaign promises of Brexit was that we can take back control of our borders. Well, to take that to its literal sense, that means border guards along the Irish border, and how on earth could you therefore try and

negotiate control over borders when, at same time, you're trying to avoid controlling the border, if you know what I mean, and the implications for trade over an open border between two separate trade blocs, especially if we're outside of the bilateral arrangement with the European Union.

[245] **Professor Woolcock:** In terms of the goods passing across the border, you can facilitate this by concluding co-operation agreements between customs authorities. So, you can reach an arrangement whereby goods can be pre-cleared, so that you can drive straight through the border, it's all done electronically, and the lorry doesn't have to stop and wait for two or three hours at the border. So, that is possible, but it has to be negotiated, again. But that is something that quite a lot of free-trade agreements are working towards. In terms of people crossing the border, here, existing free-trade agreements really only cover freedom of movement for certain qualified professions or businesspeople. So, under the services provisions in most free-trade agreements there is scope for some freedom of movement of workers, but that's tightly controlled by schedules, usually. Does that answer the question? I haven't really answered the question about the border in Ireland.

[246] **Steffan Lewis:** What I'm trying to wonder is how on earth you would have a unilateral trade position—blanket—and not address the issue of your land frontier when it comes to people and goods and services and so on.

[247] **Professor Woolcock:** Yes, it's difficult.

[248] **Steffan Lewis:** I thought so. Thank you.

[249] **David Rees:** Thank you. We've gone beyond our time, so can I thank you both for your evidence this afternoon? You will receive a transcript of the proceedings for any factual inaccuracies. Please let us know as soon as possible if there are any so we can have them corrected. Once again, thank you very much for your time.

[250] **Professor Woolcock:** Thank you.

[251] **Professor Minford:** Thank you.

15:26

Papurau i'w Nodi
Papers to Note

[252] **David Rees:** We'll go on to the next item. There are no papers to note at the moment.

**Cynnig o dan Reol Sefydlog 17.42(vi) i Benderfynu Gwahardd y
Cyhoedd o Weddill y Cyfarfod**
**Motion under Standing Order 17.42(vi) to Resolve to Exclude the Public
for the Remainder of the Meeting**

Cynnig:

Motion:

*bod y pwyllgor yn penderfynu that the committee resolves to exclude
gwahardd y cyhoedd o weddill y the public from the remainder of the
cyfarfod yn unol â Rheol Sefydlog meeting in accordance with Standing
17.42(vi). Order 17.42(vi).*

Cynigiwyd y cynnig.

Motion moved.

[253] **David Rees:** Therefore, to move on, can I ask the committee to go into private session under the Standing Order 17.42(vi)? Are Members content? Then, we'll go into private session.

Derbyniwyd y cynnig.

Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 15:26.

The public part of the meeting ended at 15:26.