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Culture, Tourism, Europe and External Relations Committee

Thursday 24 November 2016

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CULTURE, TOURISM, EUROPE AND EXTERNAL RELATIONS COMMITTEE

12th Meeting 2016, Session 5

CONVENER

*Joan McAlpine (South Scotland) (SNP)

DEPUTY CONVENER

*Lewis Macdonald (North East Scotland) (Lab)

COMMITTEE MEMBERS

Jackson Carlaw (Eastwood) (Con)
Ross Greer (West Scotland) (Green)
*Rachael Hamilton (South Scotland) (Con)
*Emma Harper (South Scotland) (SNP)
*Richard Lochhead (Moray) (SNP)
*Stuart McMillan (Greenock and Inverclyde) (SNP)
*Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

David Branch (Cochran UK)
Professor Clive Church (University of Kent)
Derek Elder (Engineering Policy Group Scotland)
Peter Hardwick (Agriculture and Horticulture Development Board)
David Lonsdale (Scottish Retail Consortium)
Professor Gordon Masterton (Institution of Civil Engineers)
Professor Matthias Oesch (University of Zurich)
Tim Reardon (UK Chamber of Shipping)
Ken Sutherland (Toshiba Medical Visualization Systems Europe)

CLERK TO THE COMMITTEE

Katy Orr

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Culture, Tourism, Europe and External Relations Committee

Thursday 24 November 2016

[The Convener opened the meeting at 09:02]

European Union Referendum (Implications for Scotland)

The Convener (Joan McAlpine): Good morning and welcome to the 12th meeting of the Culture, Tourism, Europe and External Relations Committee in session 5. I remind members of the public to turn off mobile phones. Any committee members who are using electronic devices to access their committee papers should ensure that they are switched to silent. We have received apologies from Ross Greer MSP.

Our first item of business is evidence on the implications for Scotland of the European Union referendum. I welcome our first panel of witnesses, who will be giving evidence on Switzerland's trading relationship with the EU. We have with us Professor Clive Church, emeritus professor of European studies at the University of Kent, and we are also joined via videoconference by Professor Matthias Oesch, chair of public law, European law and international economic law at the University of Zurich. Guten tag.

Professor Matthias Oesch (University of Zurich): Good morning.

The Convener: I begin by inviting our witnesses to make some brief opening remarks, before we move to questions. Professor Oesch, would you like to begin?

Professor Oesch: Thank you very much, convener and members of the committee, for inviting me to participate in this session. It is a great honour to give evidence on Switzerland's relationship to the European Union.

I have four short introductory remarks to make. First, I will give some figures. As you know, Switzerland is not a member of the European Union and there are no realistic plans at the moment to become a member in the near future. At the same time, Switzerland is highly integrated with the EU. That is no surprise when we look at the map of Europe: Switzerland is located at the heart of the continent, surrounded by three of the six founding members of the European Community.

Economically, the interdependence between Switzerland and the EU is impressive. Switzerland is the European Union's fourth most important trading partner: more than 50 per cent of Swiss exports go to the EU; and some 75 per cent of imports come from EU countries. Every fourth inhabitant of Switzerland is a foreigner and two thirds of those foreigners are EU citizens. Some 300,000 commuters travel back and forth across the borders, often on a daily basis, mainly from Germany, France, Italy and Austria.

My second remark is on the agreements. An important point is that trade between Switzerland and the EU is governed first and foremost by World Trade Organization rules. Building upon those rules, Switzerland and the EU have concluded a tight net of bilateral agreements, consisting of some 20 main agreements and more than 100 secondary agreements. The free-trade agreement of 1972 still provides the backbone, covering industrial products and some processed agricultural products. In 1989, the insurance agreement was concluded, mainly granting market access rights in the non-life sector.

In a 1992 referendum, the people and the cantons rejected Switzerland becoming a member of the European Economic Area. Thereafter, Switzerland concluded—faute de mieux, but still quite successfully—two sets of bilateral agreements.

The first package of bilateral agreements was signed in 1999 and comprised seven agreements, mainly covering market access. The controversial agreement on the free movement of persons is one of those seven agreements. Institutionally, the seven agreements are tied together by a so-called guillotine clause, which means that when one agreement is terminated, all the others are terminated automatically, too.

The second package of bilateral agreements was signed in 2004 and comprised nine agreements. Among them are the Schengen and the Dublin association agreements. The package does not contain a guillotine clause.

Since 2004, Switzerland and the EU have concluded further agreements of minor importance—for example, on participation in EU agencies and on co-operation on competition matters.

Institutionally, the classic two-pillar approach applies. According to this principle, Switzerland and the EU are each responsible for the good functioning of the agreements. This institutional setting is not ideal, as the substance and structure of the agreements do not match. Against that background, the EU has been insisting since 2008 that a new institutional framework agreement be negotiated. The EU has made it clear that without a new institutional framework agreement, there will be no new market access agreements. Negotiations on that are under way.

My third remark is on the popular initiative, stop mass immigration. Over the past 15 years, the Swiss people have approved the so-called bilateral way in various referenda. However, in February 2014, the people and the cantons voted in favour of a new constitutional provision, according to which Switzerland will control the immigration of foreign nationals autonomously again. It will do so by introducing quotas and by giving Swiss nationals priority.

This new constitutional provision is not compatible with the agreement on the free movement of persons. The EU has made it clear that it is not willing to renegotiate the agreement on the free movement of persons to the effect that Switzerland would be allowed to introduce quotas and to give priority to Swiss nationals.

In two weeks, in December of this year, the Swiss Parliament will decide on the implementing legislation. At the moment at least, it seems that the Parliament will favour an implementation that is compatible with the agreement on the free movement of persons, contrary to the wording of the constitutional provision.

Therefore, a new referendum will be held on the issue, which is to be welcomed. Once again, the people and the cantons will be called upon to vote on the constitutional provision, we hope in order to bring the constitution into line with the planned implementing legislation.

It is unclear when that will happen and on what exact question we will be asked to vote—either it will be on a straightforward deletion of the new constitutional provision or it will be on the addition of a new provision that somehow will deal with immigration but also will explicitly allow the continuation of the agreement on the free movement of persons.

My fourth and final remark is on the policy of autonomous adoption of EU law. In addition to the tight net of bilateral treaties, Switzerland has developed another instrument to mitigate the negative consequences of not being a member of the EU or the EEA, namely the policy of autonomous adoption of EU law. That principle has been applied in Switzerland since the late 1980s.

According to the principle, Swiss law should be aligned with EU law as far as possible. Deviations from EU regulations and directives are, of course, possible but they should be chosen only if there are cogent political and/or economic reasons to do so. We estimate that 30 to 50 per cent of all acts and ordinances at the federal level in Switzerland are influenced by EU law directly or indirectly.

I will wrap up my introductory remarks with the following tentative conclusion. The bilateral way—the Swiss Königsweg, or king’s way, as it is often termed in Switzerland—has enabled Switzerland to prosper and at the same time to remain outside the EU and the EEA. However, it is currently under construction and it has been called into question. The negotiations on a new institutional framework agreement and the internal debate on immigration are major challenges that Switzerland needs to come to terms with. Both issues are controversial.

I look forward to your comments and questions.

09:15

The Convener: Thank you very much, Professor Oesch.

I invite Professor Church to make a few short introductory remarks.

Professor Clive Church (University of Kent): Thank you. I will start by saying how grateful I am for the invitation, which has allowed me to visit Edinburgh again and to see your magnificent Parliament building. I hope that once we have spent millions on Westminster, it will be as well preserved and as nice as this building.

I thank Professor Oesch for laying out so clearly a lot of the details, orally and in his written submission. He has allowed me to concentrate on what concerns me, which is that when Switzerland comes up in political discourse in the United Kingdom, it is usually offered as a model for the United Kingdom to follow, but I do not believe that it is. Switzerland is engaged in a parallel movement that is not always in the same direction as the United Kingdom, and negotiators should be aware of that. However, there are a number of reasons why it is not a model.

First, it is not a single clearly designed structure; it is an evolving one, as Professor Oesch has helpfully made clear. It is not a model that is clean cut and easy to copy; it is extraordinarily complicated, as Professor Oesch, again, made clear. Alongside the various legal deals to which he referred, there is an undergoing current of what academics call Europeanisation—that is, the penetration of the social and political fabric by relations with the EU. That is often overlooked, but it is extremely important.

As well as the closeness to EU legislation, there are other reasons why Switzerland is not a model, in particular for those who favour Britain leaving the European Union. There is the very Swiss nature of the agreements, which are designed to fit Switzerland’s needs. I echo Professor Oesch’s point about geography: the St Gotthard pass, which is seeing remarkable development at the moment, is far more important to Swiss-European relations than the Channel tunnel is to British-European relations.

In addition, the model is not universally accepted inside Switzerland, let alone by the European Union. Of course, there is also the European Free Trade Association dimension, which should not be overlooked. The thing has been further complicated by the rise of the migration question, as Professor Oesch made clear. He rightly referred to what the Swiss call the RASA initiative, which is a German acronym that stands for "Out of the impasse", which calls simply for the removal of the offending provision in article 121 in the constitution from the draft to take Switzerland back to where it was before 2014. The Federal Council recently discussed that and decided that it did not like the initiative, as it was not wholly democratic, but it is going to put up a counter project—as the Swiss call it—although we do not yet know what that will be.

The final reason why Switzerland is not a model to follow is to do with Brexit. A lot of people think that Brexit will automatically favour the Swiss but, in fact, there are a number of problems. Notable ones include the unhelpful impact on the already high level of the Swiss franc and the loss of a useful ally inside the European Union.

For all those reasons, I see Switzerland not as a model but as one of two countries in a parallel situation, who are moving—over a longer period sometimes—in different trajectories, but both are having to seek a new relationship with the EU after a referendum ruled out the obvious option. Both are seeking to make up for the fact that they are in some way outside the single market: they are both searching for deals which aid key national sectors; and they both want bespoke arrangements. They are both bedevilled by a clash between populist pressures and business needs. They are both deeply affected—although they do not always realise it—by Europeanisation. They are both proceeding on the basis of the fact, which I have never wholly accepted, that the EU needs them more than they need the EU. They are both having to face up to the possibility of contradictory referenda. Finally, they both find themselves in the situation of being one state facing not merely 27 others, but the EU institutions as well.

It is difficult to say where this will lead. A solution to the—if you like—9 February 2014 situation is possible, but it is risky. Signing up to a framework agreement would, in Sir Humphrey Appleby's terms, be "very courageous", because it would be so like the EEA. Therefore, I really do not know what will happen. A great deal depends on the evolution of Swiss internal politics and how the EU reacts to Brexit.

The Convener: Thank you very much for that—it was absolutely fascinating. I will start by focusing on EU law and how much of it applies to Switzerland—Professor Oesch suggested that it is between 30 and 50 per cent. What is the position of the European Court of Justice as an arbiter in Switzerland? How much involvement does the ECJ have in Swiss law?

Professor Church: That is a very difficult issue for the Swiss. In the first constitutional charter that we know about—that of 1291—there is a reference to an agreement not to have foreign judges. That argument is produced by opponents of closer relations with Europe at every juncture. They bitterly resist the idea that the ECJ should have any role in any future framework arrangements, although the federal Government has gone some way towards accepting that there should be such a role. I defer to Professor Oesch's technical expertise, but the issue is extraordinarily controversial and delicate, and I think that it will be one of the main factors that will decide any future referendum.

Professor Oesch: I concur with what Professor Church has just said. I would perhaps add that the impact of the jurisprudence of the ECJ in Switzerland is already quite high. I will point to three constellations.

The first one concerns the interpretation of the existing bilateral agreements. As I have said, there is a two-pillar principle at the moment—the traditional, classical public international law system whereby the ECJ interprets the bilateral agreements for the EU, and the Federal Supreme Court in Switzerland interprets the bilateral agreements for Switzerland. In doing that, the Swiss Federal Supreme Court always looks at what the ECJ has ruled on the EU law that has been transferred to the bilateral agreements. A typical example is the agreement on the free movement of persons, where the Swiss Federal Supreme Court quite consistently follows the jurisprudence of the ECJ. That is an indirect influence, but it is a relevant influence.

Secondly, when we autonomously adopt EU law we also look for the interpretation of and what the ECJ says on the parallel EU law. That is another indirect influence that can be clearly demonstrated in Switzerland.

Thirdly, the question has arisen whether the ECJ should be the final arbiter in a future institutional framework agreement. The other option that could be discussed—and which is discussed in some circles in Switzerland—is to use the EFTA Court somehow as the final arbiter in the interpretation of the bilateral agreements, at least for Switzerland. However—I refer to page 14 of my slides—that is not the route that the Federal Council in Switzerland has taken. The Federal Council has favoured the ECJ being the final arbiter, and the EU has agreed to base the negotiations on that proposal.

The Convener: Thank you very much. I have lots more that I would like to ask you about, but we do not have much time. I will hand over to my colleague Lewis Macdonald.

Lewis Macdonald (North East Scotland) (Lab): I am interested in a lot of what has been said this morning. Professor Church addressed the question whether there is any sense in which the Swiss arrangements, as they have evolved, could form a model for another country such as our own. My question is slightly different, but it has a bearing on the same issue. Given that the Swiss arrangement is unique and has evolved in a multitude of different ways over time, if you were to roll back time to 1992, or even 1972, would it ever have been envisaged as the outcome? Is it what people in Switzerland would have wanted to be the model—indeed, do they want it now? Is it simply a case of "This is what's happened and we have to live with it"?

Professor Church: It is what has happened, but we do not just live with it. Over the past few years, the whole bilateral approach has become infinitely popular in Switzerland. Recent opinion polls suggest that attitudes have changed since 9 February 2014 and that people would now prioritise maintaining the bilateral agreements over the right to impose quotas and ceilings, as the initiative allows them to do.

You have put your finger on the issue, Mr Macdonald. Swiss opinion changes. In our introductory remarks, we did not mention that Switzerland agreed to join the EEA but, before that process was complete, the Government filed an application for membership in May 1992, which remained frozen on the table until May this year. It did that for various reasons, one of which was a public opinion poll in the autumn of 1991 that showed that, for the first time, more than 50 per cent of the population were in favour of membership. Rather as in the United Kingdom opinion changes over time, the Swiss have come not merely to live with but to love the bilaterals.

Lewis Macdonald: Does that mean that Switzerland has an infinite capacity for negotiating around the margins? Will the arrangement continue to evolve in an apparently random and certainly unique way?

09:30

Professor Oesch: That is a difficult question. There are two angles. From one perspective, Switzerland has taken a piecemeal approach that has been evolving over time. When there were windows of opportunity and demands on both sides that matched, it went for bilateral agreements.

We do not know where this will lead. When it comes to market access agreements, there is always discussion—for example, on whether we should go for an agreement on energy, which has been under negotiation for a couple of years already. Sometimes there is a discussion on whether we should go for an agreement on services. Where the road might lead is an open question.

The other angle is that we have begun to realise that it is a difficult route when it comes to institutional matters. It is no surprise, and it is logical, that the EU has begun to insist on negotiating an institutional framework agreement—which, by the way, might also be profitable for Switzerland—just to base the whole thing more on the rule of law.

Where it will lead, I do not know. I cannot give you a more precise answer on that.

Lewis Macdonald: On what Britain might do in the context of leaving the European Union, last week we heard evidence from EFTA and from Norway in relation to EFTA. I was quite surprised to hear that the EFTA Court had been set aside as a possible solution to the difficulty of squaring the circle between foreign judges and the European Court of Justice. I am curious to know whether, from a Swiss perspective, that means that EFTA has little relevance or whether it simply reflects a change in opinion within Switzerland towards the European Union.

Professor Church: I think that the Swiss are fairly keen on EFTA. It is the kind of international organisation that they prefer, as it is wholly intergovernmental. It also provides a very useful function. Going back a bit and speaking as the historian that I used to be, when the United Kingdom left EFTA, EFTA changed and became an extremely useful forum for the smaller nations of Europe to use to negotiate with the EU. To some extent, that role goes on. The current President of the Swiss Confederation has said in the past few days that he would be very happy to see the United Kingdom rejoin EFTA, which is probably not a view shared in Norway. EFTA is a useful addition, but basically the Swiss look at it from their point of view, in terms of what they want.

I should also say that there is a historical difference. In 1992 the Swiss started with a small number of issues that they wanted to deal with. The EU added a number, including free movement, and they worked on that. Because the United Kingdom has been a member of the EU for so long, I do not think that it can avoid trying to come up with a comprehensive arrangement that deals with all the sectors. I do not think that the Government or the more emphatic leavers really want to spend 20 or 30 years coming up with yet more deals to cover this sector or that sector; they will look for something more comprehensive.

Lewis Macdonald: Can Professor Oesch give us a view on EFTA from a Swiss perspective?

Professor Oesch: I concur with my colleague Professor Church. I would add that the main reason why the Swiss model—the bilateral way, as it has evolved over time—might not be the ideal setting for the United Kingdom is because of the institutional question. One has the impression at the moment that the EU does not accept participation within the single market, even partially or sectorally, without having a fully fledged institutional setting to guarantee the good functioning of the arrangement.

Dispute settlement and the adoption of new EU rules—last week, the committee heard about how that is done in the EEA—are the two main controversial issues that need to be tackled somehow. As an outsider, I could not imagine the UK accepting the ECJ or the EFTA Court as the final arbiter on such issues, nor do I think that the UK would be ready to take on new EU regulations and directives periodically without being able to make decisions on those issues. That is a controversial issue in Switzerland at the moment, and it is equally controversial in the three EEA-EFTA member states, whether implicitly or explicitly.

Stuart McMillan (Greenock and Inverclyde) (SNP): Good morning, panel. I have a couple of questions about the free movement of persons. Am I correct in saying that it was mentioned that in Switzerland although, politically, there is a will to have free movement of persons, that is not the case among the population?

Professor Church: I think that, on the whole, business is in favour of free movement. As in this country, there are social groups that believe in the value of it, but there is an extremely strong opposing movement: the Schweizerische Volkspartei—the Swiss People's Party. If one were to look at Switzerland as a model, that is the party that the UK Independence Party would follow. It is by far and away the best organised and most successful of such parties in Europe. It is very opposed to free movement, and that applies to people from outside Europe, on which there has been a trend since the late 1980s, and to people from the EU—particularly people from Germany. There is friction between some members of that party and the German professionals who have taken important posts in Swiss administrative society.

Professor Oesch: I will add two small points. Under the official stop mass immigration initiative, there are two new provisions, which, as I said, oblige Switzerland to control immigration autonomously again. However—this is important—it is not stated explicitly that, if the agreement on the free movement of persons is not successfully renegotiated, we will terminate that agreement. Our politicians and the wider public are therefore a bit confused about what that means.

As a consequence, we have the constitutional provisions and we have the agreement on the free movement of persons, which are irreconcilable. From a legal viewpoint, it is not possible to sort out that collision. We therefore welcome the idea of voting again on the constitutional provisions.

There is free movement of persons that is similar to that which exists in the EU, but there are some slight deviations from that principle. I refer the committee to page 8 of my submission and I will mention two that are important.

There is free movement for self-employed people, who are able to open their own Geschäft somewhere, but that is only for natural persons and does not include juridical persons—firms and enterprises. There is also a right to provide services, but there is a quantitative limit of only up to 90 days per year. It is important to note that there is no full free movement as you know it from the European Union.

Stuart McMillan: Has the UK's vote to leave the European Union presented any problems for Switzerland's attempts to negotiate an agreement with the EU on the free movement of people?

Professor Church: Yes. The referendum cast a long shadow before it took place and from, I think, the end of last year—Professor Oesch will correct me if I am wrong—the EU said that it would not discuss the agreement until Brexit was resolved, so there has been a timetable delay.

Another problem is that everybody now looks at Switzerland in relation to the Brexit argument. Will the EU play one against the other and should the Swiss go down one road or the other because it would be more likely to fit in with Brexit? That raises all kinds of strategic uncertainties for the Swiss negotiators. There was talk of Swiss officials coming over to talk to their British counterparts a couple of months ago with a view to forming some kind of alliance, but I have heard no further talk of that, so I cannot throw any light on it. However, I am pretty certain that the federal Government wishes that the vote to leave had not happened, because it has made life yet more complicated.

Professor Oesch: Switzerland and the EU have never negotiated on the agreement on the free movement of persons since February 2014.

One of the new provisions in the constitution obliges the Swiss Government to renegotiate agreements that are contrary to the new constitutional provision on immigration. That is obviously directed at the agreement on the free movement of persons, so the Government is obliged to try to renegotiate the agreement, but the EU has never agreed to formally open negotiations.

In diplomatic terms, discussions were going on about how one could come to terms with the situation. It seemed obvious from the start that, even if formal negotiations had been opened, the EU would never have given a hand to renegotiate substantially the agreement on the free movement of persons in order for Switzerland to be able to go for quotas, give priority to Swiss citizens in the job market and therefore reduce immigration substantially.

As my colleague Professor Church said, there are now discussions in Switzerland about whether the planned Brexit might help Switzerland if it waits a bit to see what the UK gets from the EU, but my view is that that does not make sense for Switzerland. If there is to be a new set-up of some kind in Europe in 10 or 15 years, that is fine and the situation might be different but, particularly with regard to the negotiations on the institutional framework agreement, Switzerland will probably go on as it has been doing for the past couple of years and try to do its own homework.

The Convener: Thank you. We do not have very much time left so I ask you all to keep questions and answers as brief as possible.

09:45

Rachael Hamilton (South Scotland) (Con): I have a quick question. Do you agree with the President of the Swiss Confederation, who recently said that the UK is “such a strong economy” that it would be resilient in the face of whatever trade relationship it chooses to pursue with the EU?

Professor Church: In the words of Mandy Rice-Davies, he would say that, wouldn’t he?

Rachael Hamilton: Will you expand on our resilience and strong economy?

Professor Church: I am one of the UK’s few experts on Switzerland; I do not see myself as an expert on the UK economy. What Mr Schneider-Ammann was saying is that the UK is a big country and it has, in some ways, more resources than Switzerland—not qualitatively, but quantitatively—so it could survive. However, as the Irish would say, if I were you, I would not start from here in the first place.

Rachael Hamilton: What about you, Professor Oesch?

Professor Oesch: I am sorry, but I am a lawyer, not an economist.

Rachael Hamilton: Okay—that was quick.

Emma Harper (South Scotland) (SNP): I will also be quick. I am interested in agriculture, trade and tariffs. I read recently that some farms and agricultural holdings have been subsidised by up to 80 per cent, although that has recently been revised. Does that mean that the prices of dairy products or processed produce will increase for consumers?

Professor Church: Definitely. Switzerland is a high-wage, high-price economy. Although there has been much complaint about the common agricultural policy, the Swiss—for reasons of history and identity—have been quick to provide large amounts of assistance to Swiss farmers, which probably goes beyond the CAP. On the whole, Swiss farmers tend to watch closely what the EU does and it is not unknown for them to take part in EU demonstrations when they can see a negative spin-off if the EU were to go down a road that they consider unhelpful.

Something like a third of Switzerland cannot be farmed because it is mountainous, and all the pressures of modern society are pushing people down to what is known as the Mittelland—the plateau area north of the Alps. That leaves the mountain regions exposed demographically. If you look at my colleague Jonathan Steinberg’s third edition of his book “Why Switzerland?”, you will see a mountain and a cow on the cover, because—understandably—that represents the way in which the Swiss think of themselves.

The Swiss are concerned to keep agriculture going to maintain the fabric of rural society, but there is a large movement out of farming. An increasing number of people who run farms have other jobs, because farming has become a sort of secondary occupation. The Swiss are worried about that because it affects their identity.

Richard Lochhead (Moray) (SNP): If you reflect on Switzerland’s experience, and given what I read in my notes, which is that the Swiss have 120 bilateral treaties with the EU—no doubt there are other treaties and agreements with third countries—and that once the UK triggers article 50 it will have two years to negotiate, how long do you think it will be before many similar agreements are signed up to by the UK, should it choose to go down the Swiss route? What kind of resources, including civil servants, would be required to facilitate those treaties?

Professor Church: As I have said, the problem for the UK is much larger than it was for

Switzerland, which has been able to do all that incrementally. We are faced, I think, with the "big bang" option. You cannot have anything else. Unless you make nice payments to Nissan and do not worry about anything else, you have to go the whole hog.

Of course, the reference to two years is slightly misleading because that period refers to the technical agreements to extricate the UK from the union. Those are supposed to be conducted with an eye to future long-term relationships, but they do not require those relationships to be fixed and organised before the end of the two years. The likelihood is that negotiation will go on over a very long time. People are now talking about a transitional arrangement essentially to make sure that we do not get hit too much by leaving before we arrange longer-term deals.

I am sure that the process will take a great deal of manpower, but I would not like to put a figure on it. I have a daughter and a son-in-law who are civil servants and I know that they are already under pressure in various ways. I am pretty certain that extra manpower—personpower, I should say—will be needed, but how much? I cannot say. To unpick the tens of thousands of regulations that have been passed over the past 40 or 50 years and then to have, at the same time, to negotiate a range of new trade relations is a mammoth undertaking.

Professor Oesch: That is an issue about which we in Switzerland are a little concerned. Of course, the current relationship between the UK and Switzerland is based on WTO rules and, as I have said, on all the bilateral agreements. On the very day when the UK formally leaves the EU, those bilateral agreements between the UK and Switzerland will not apply any more. The big goal then will be to mind the gap. Of course, it is to be hoped that we can somehow avoid a gap.

What that will mean has already been implied by Professor Church: it will mean manpower, resources and time—probably much more than two years, but I cannot say how much more.

Professor Church: How long is a piece of Swiss string?

Richard Lochhead: How long is a Toblerone?

Professor Oesch: I do not understand—

The Convener: Professor Oesch talked earlier about an agreement on services being discussed. Obviously, Switzerland's agreements so far do not cover services. When one thinks of Switzerland, one tends to think of financial services. How has the lack of an agreement on services affected those and other service companies in Switzerland?

Professor Oesch: It is correct that there is no comprehensive agreement on services at the moment. The matter was discussed back in the 1990s and again in the aftermath of package 1, but there were never serious negotiations on such a comprehensive agreement. The agreement on free movement of persons covers some services. Page 8 of my submission mentions the freedom of establishment for natural persons and the freedom to provide services, for up to 90 days per year, across borders for natural and juridical persons. That does not, of course, amount to a comprehensive agreement on services.

In Switzerland, we do not know exactly why there is not more pressure from the financial services industry to go for a comprehensive agreement on services. It seems that the big ones—the well-known insurance companies and banks—do not need that at the moment; they have the EU passport anyway because they have branches within the European Union. For the others, such an agreement also does not seem to be necessary at the moment.

Under WTO law, we know that a free-trade agreement is allowed when "substantially all the trade" is covered. The same applies in respect of services. Under article V, I think, of the general agreement on trade in services, agreements on services need to have "substantial sectoral coverage" in order to be compatible with GATS. That is often forgotten when one speaks about the possibility or idea of an agreement on financial services only, for example.

My last point is that an agreement on services would have quite far-reaching consequences because we would probably have to take in all the flanking policies including those on competition, state aid—there is no sensitivity in Switzerland about disciplining state aid—consumer rights and whatever else might come with the package. That might be an additional reason why there is a certain reluctance to go for such negotiations.

The Convener: I thank you both for attending; it has been very interesting to hear you.

09:57

Meeting suspended.

10:02

On resuming—

The Convener: We resume with a discussion on the implications of the EU referendum for future trade relationships in a wide variety of business sectors. I welcome Professor Gordon Masterton, chair of future infrastructure at the University of Edinburgh and former president of the Institution of Civil Engineers; Peter Hardwick, head of exports at the Agriculture and Horticulture Development Board; David Branch, head of business development at Cochran UK; Derek Elder, chair of the engineering policy group Scotland; Ken Sutherland, president of Toshiba Medical Visualization Systems Europe; David Lonsdale, director of the Scottish Retail Consortium; and Tim Reardon, policy director of the UK Chamber of Shipping.

We are talking about trade relationships and the committee has spent quite a lot of time looking at the single market and alternatives to membership of the single market. I invite you to explain briefly how important the single market is in your sectors and whether any of the alternatives to full single market access that have been presented are attractive to your sectors.

Peter Hardwick (Agriculture and Horticulture Development Board): It is worth saying that the United Kingdom food and drink sector, according to the latest figures from the Department for International Trade, is worth around £96 billion. About 7,000 companies are involved in the sector, which employs around 400,000 people. It is the largest sector in the UK; it is also the largest sector in Scotland, where it was worth £14.4 billion in 2014, and is still growing. The sector accounts for around 19 per cent of the Scottish manufacturing workforce and turnover, so it is significant.

The sector is highly dependent on its trade with the European Union. Of our exports, around 60 to 70 per cent, depending on the sector—the figure is as high as 90 per cent for the beef sector—are exported to the EU. On-going tariff-free access to the EU is essential for those exports. If we defaulted to so-called most-favoured-nation tariffs—that is rather a misnomer, because the tariffs could be as high as 65 per cent for beef and 50 per cent for lamb—that would be extremely damaging for us. Whatever model we come up with, whether it is a free-trade agreement or one of the models that I heard described in the earlier evidence session, it is essential that we have tariff-free access to the EU.

However, therein lies the difficulty, particularly for agriculture. Although it was not discussed in detail earlier, what is notable and very important about the Norway arrangement or the Switzerland arrangement is that agriculture is not included; therefore, there is no tariff-free access for Switzerland or Norway in that regard. I have worked in the meat trade for most of my working life and I can tell the committee that it is extremely difficult to sell into those markets. The tariffs are extremely high—sometimes as high as 100 per cent—and they are variable, depending on market conditions in the country.

Whatever arrangement we come up with, it is essential that we understand that we have a very good and easy relationship with the European Union that is, frankly, unique. If we step outside of that, we take a massive risk of falling off the cliff, as has been discussed recently, and there would be a number of direct consequences for our sectors in the UK. However, there would also be consequences for our trading relationships in the other direction, because the one thing that the Government would want to avoid is increasing food costs. There are risks of that if we have to impose tariffs on imports, or if we pay tariffs for export.

My overriding comment is that, as far as agriculture is concerned, we have to focus on maintaining tariff-free access to the EU whatever model we follow.

The Convener: I will bring in Mr Lonsdale at this point, as Mr Hardwick has raised the issue of higher food prices in the shops. I take it that that would come about if our farmers faced tariffs for selling into Europe and there was a problem with us imposing tariffs the other way.

David Lonsdale (Scottish Retail Consortium): Yes. I endorse many of the points that Mr Hardwick made. Our understanding is that about 28 per cent of the food that we consume in the UK comes from the EU. As Mr Hardwick said, if we found ourselves under WTO rules or most-favoured-nation rules, we would potentially face tariffs and disruption to supply chains. As Mr Hardwick said, some of the tariffs are pretty steep; for example, the average tariffs on meat are 25 to 27 per cent, and the figure could be higher for other products.

In one sense, that would present opportunities for domestic producers, but the reality is that almost half of the food that we consume in this country comes from abroad. The issue of tariffs and supply chains is therefore very important, particularly to grocers and retailers.

The Convener: What about importing from outwith the EU? Is there a problem, for example, with countries that already have preferential trading agreements that are outwith the EU? Would that affect those countries' relationships with Scotland?

David Lonsdale: I think that you are absolutely right. As I understand it, the EU has a number of preferential deals with countries across the world—one might call them developing nations. We are talking about countries such as Bangladesh and Sri Lanka. It is not just about food; it is also about broader stuff that retailers sell in this country, such as clothing and footwear.

We have figures that are based on an analysis of trading with Bangladesh last year that suggest that reverting to WTO rules would mean about £250 million-worth of additional tariff costs being implemented for imports into the UK of clothing and footwear from Bangladesh. Those are pretty hefty sums, particularly for developing nations. Regardless of what happens at the end of the day, we would like to think that this country will have equally good preferential agreements with developing nations. Perhaps there will even be an opportunity to develop more of those.

Peter Hardwick: I absolutely agree with what Mr Lonsdale has said. I add that the EU currently has a wide range of agreements. Actually, it has only one technical free-trade agreement, which is with South Korea. The rest are called association agreements. There are a large number of those and they are comprehensive. The other day, I looked at the agreement for Egypt, which is a 355-page document that covers everything from felt hats to ladies apparel and from seed drills to washing machines.

There is a good reason for that, and it was explained in the previous discussion. Under WTO, you have to have such comprehensive agreements. You cannot have a selective agreement for one commodity. The agreements are also reciprocal, so they allow us tariff-free and quota-free access to those non-EU markets. We will lose that access to those markets on the day that we leave the European Union unless we have our own arrangement, and the same thing applies reciprocally.

It is a question of understanding, and I think that the real challenge will always be time and resource to get each of those agreements in place.

Richard Lochhead: You mentioned the potential impact on food prices and agricultural exports. That is ironic, given that the vast majority of primary producers—the farmers—that I have spoken to voted for Brexit. Perhaps you should have made your views known to your primary producers in a much louder way over the past year or two.

On the potential impacts that you outline, I know that, during the independence referendum, the retailers were in Downing Street speaking to the Prime Minister about their views on Scottish independence and the impact on the Scottish economy. What engagement have the retailers and the agricultural sector had with the UK Government? Has it explained to you its strategy or policy for dealing with those big threats to your industry?

Peter Hardwick: Personally, I have had a lot of engagement. This is not the first inquiry that I have spoken at. The irony is that some of the detailed questions have come only post the vote. I spoke to the House of Commons committee that is covering the same area as this committee three weeks ago, and I raised the same issues.

In the run-up to Brexit, we had a lot of engagement with Government and we warned of the challenges, so it is certainly aware of the difficulties. Most of all, it is aware of the time that it will take to get these things done. It is not for—

Richard Lochhead: Have the UK ministers spoken to your sector about their policy or strategy for dealing with Brexit, in terms of the threats that you are outlining?

Peter Hardwick: Not yet, no.

Richard Lochhead: What about the retailers?

David Lonsdale: If I may go back to your original question, Mr Lochhead, I think that you made some sort of comment about Scottish independence. To be absolutely clear, I note that the Scottish Retail Consortium does not take a position on that. We have 255 members in our organisation, and if a tiny fraction of those took a position on independence, so be it.

Moving swiftly on, I add that one of the challenges for retailers will be what they will do if we end up facing tariffs and non-tariff barriers. What will the options be? Will retailers want to pass the costs on to consumers? As we heard yesterday from the Chancellor of the Exchequer in the autumn statement, the expectation is that, over the next two or three years, consumption will half. Consumers are facing some headwinds and, at the same time, so are retailers.

Committee members will know some of our gripes about business rates, the large business supplement and the apprenticeship levy—I have a large list that I can bore the committee with at a later date, if you like. There will be some genuine challenges if retailers are to absorb some of those costs, so they will be looking for sharper deals with suppliers to see whether they can get a better price. They will also be shopping around, just as we advocate that consumers do, to see whether they can get the same quality of produce at better prices.

As I said, it will be very difficult to absorb some of the potential costs, but it will be difficult to pass them on to consumers, given the current climate and the stiff competition out there.

10:15

Richard Lochhead: You have outlined the serious consequences of a hard Brexit for food prices, exports and imports. Have UK ministers met the retailers or communicated with the Scottish Retail Consortium to explain their policy or strategy on Brexit?

David Lonsdale: Yes. We met the Brexit secretary in Glasgow a few weeks ago. My colleagues in the British Retail Consortium have met ministers and Government officials to relay our points of view and the industry's perspective.

Richard Lochhead: What did they tell you?

David Lonsdale: They have been consistent with their public utterances thus far. They are allegedly doing a lot of homework and getting their ducks in a line with a view to developing their negotiating strategy. I do not think that we are any wiser than members of the committee.

The Convener: Does anyone else want to come in on single market membership for their particular area?

Professor Gordon Masterton (University of Edinburgh and Institution of Civil Engineers): I bring a slightly different perspective, which is that of the engineering profession. I commend to the committee a report that the Royal Academy of Engineering produced with all the engineering institutions and through quite extensive consultation with industry and academia. It is probably the best published source of joined-up thinking from the engineering profession on the future of engineering outside the EU.

The report sets out a number of facts, the first of which is that engineering skills in the UK are in crisis because EngineeringUK estimates that 182,000 new engineers and technicians will be required every year for the foreseeable future just to feed the UK economy and its aspirations. UK output currently falls quite far short of that, so when big projects are under way or new projects are started our skills are typically complemented by skills imported from elsewhere, and a lot of those skills come from EU countries.

In a post-Brexit UK, one hopes that the need for engineering talent and skills will still be there because we still want a growing and vibrant economy. Whatever structures we put in place for access to skills, labour, talent and expertise, we must recognise that the wheels of industry have to keep rolling on. Unfortunately, at the moment we simply do not know what the new arrangements are likely to be for access to skills.

The problem will be particularly acute for research and development industries that rely on a talented and mobile workforce. The skills that are required for high-tech operations and research and development are global and, in picking and choosing where those skills come from, industry does not want artificial constraints if we can avoid them. I used to be vice president of a company that had about 66,000 people in countries throughout the world and there were times when we needed to deploy the right people to the right place. That meant that we needed mobility from within the organisation and within the rules of the countries concerned. It was not easy but it was not impossible to relocate staff, particularly for short periods of time, to get the best quality of delivery. Being in the EU made that easier because of the regulations that prevailed.

Companies like my old company are now operating in a field of uncertainty in that regard. Uncertainty is the worst business and investment risk possible. We really must navigate through this period of uncertainty as quickly as possible.

Derek Elder (Engineering Policy Group Scotland): I do not want to repeat what Gordon Masterton has just said, although I certainly endorse it. I represent the professional engineering sector in the UK and Scotland. I simply re-emphasise his point about migration, which is really a proxy term for skills in the engineering sector, as it probably is in other sectors although I can only speak about the one that I know.

A lot of Scottish companies, whether they are owned in Scotland, by UK operations or by overseas operations, EU or otherwise, will staff as best they can and take the skills from where they can get them within whatever constraints exist. For example, when I got up this morning, I read that Skyscanner—a Scottish unicorn company, as they are styled—has sold out to Chinese interests. It will be extremely interesting to see how that company develops under different ownership. I know, from personal links with the company, that it has people from all over the EU working in it. Will that change? I can only return to Gordon Masterton's point about uncertainty being the most difficult thing for business in any sector to deal with. That is particularly the case in professional engineering, where universal standards apply to the recognition of qualifications but that does not mean that people have access to different geographies.

The Convener: Mr Branch, you are with an engineering manufacturing company that is doing a lot of exporting. How do you think leaving the EU will affect your business?

David Branch (Cochran UK): To be frank, we would just like some certainty about where we are going. We export about 40 per cent of what we manufacture, but very little of it goes to the EU; it goes to countries such as Bangladesh, which we have talked about. As a business, we are more concerned about the inward investment coming into the UK. We have seen quite a drop-off in inquiries from the UK since the Brexit vote, which I guess is down to the lack of certainty. Domestic customers want to see where their markets are going in the future—do we invest for growth in the EU or will there be retraction?—while overseas companies are deciding whether the UK is the best place to base their facilities. That is our short-term concern at the moment.

Ken Sutherland (Toshiba Medical Visualization Systems Europe): My company is involved in the crossover between healthcare and the information technology sector. Healthcare and life sciences are a global market, and there is more that is the same than is different. Even though the model of delivery for healthcare is different globally, the challenges that are being faced and the solutions that are being created in terms of pharmaceuticals, medical technology and medical devices are very similar.

Companies that operate in Scotland are thinking about a global market, and the biggest single healthcare market is the United States, not the European Union, although the EU market is huge and is available as a home market to companies working in Scotland—it is a fantastic opportunity. I see real challenges ahead.

The company for which I work is a wholly owned subsidiary of Toshiba, which is based in Japan, and we are a research and development company. We export almost all of the software that we produce to Japan under WTO rules, and the WTO has an arrangement for IT—the information technology agreement—that specifically covers a lot of computer equipment and stuff like that, which is transacted tariff free. However, there are still very real barriers. For example, we recently had to import some equipment from our headquarters in Japan in order to test it. It had to go through customs and clearance, and we still had to pay VAT and deal with all that sort of stuff.

As Derek Elder and David Branch have said, moving people around the world creates lots of challenges as well. If my head office was in Spain, Germany or wherever, that would be easy—we can move people and equipment around Europe trivially. However, bringing stuff in from outside Europe presents us with significant challenges as well as an admin burden. As I say, quite a lot of the stuff is tariff free for us, but there are very real non-tariff barriers. A particular barrier for medical devices is regulatory compliance. It is a tightly regulated industry. There is a European directive on medical devices and other medical device regulations that we have to comply with, such as the Food and Drug Administration regulations in the US.

We are now beginning to see some consolidation between certification for Europe and certification through what has been agreed between the US and Canada, Brazil, Australia and Japan under the medical device single audit programme—MDSAP. That is quite encouraging and, under a Brexit scenario, the last thing that we want is a unique set of certifications for the UK as a market that is independent of both Europe and all the other markets in which we operate. We are going to build products that are suitable for the global market, if at all possible, and the way in which we can do that sensibly is by having some streamlined regulatory process that is as common as possible addressing the global requirement.

Tim Reardon (UK Chamber of Shipping): I am here representing the shipping sector, which shares the concerns that have been expressed about access to a skilled workforce to enable our businesses to compete in Europe and around the world. In the context of today’s discussions, however, our primary interest is that of the carriers of the goods that are being traded between the UK and its neighbouring countries. Our ships carry goods from the UK overseas. Our members are familiar with the arrangements for carrying goods beyond and within the EU, and we see the clear difference that exists between those two trading scenarios.

As we have looked at matters arising from the referendum vote in early summer, our concerns have focused clearly not so much on the tariffs that may apply to the importation and exportation of goods as on the procedures and formalities—the non-tariff barriers—that apply to traffic at ports when it is coming in and going out. Our concerns focus on the driver-accompanied roll-on, roll-off freight traffic that is carried on our ferries between the UK and its neighbours, which has seen phenomenal growth since it was freed from border controls at the end of 1992. The UK’s main artery with the continent—the Channel tunnel and the ferries through Dover—has seen traffic grow from 1 million heavy goods vehicles a year in 1992, which was the last year of customs controls, to 4 million trucks last year. Traffic on the main corridor to the Republic of Ireland through Holyhead has grown by 627 per cent in volume over that same period.

Those ports have not got any bigger over that time. The reason why they have been able to carry the extra volume of traffic is that everything that used to have to stop in the port and await clearance now passes straight through. One can foresee a real choke threatening that traffic if every unit is required to stop and wait for approval from somebody in order to either leave the country and get on a ship or drive out through the dock gate on arrival.

I have one final preliminary point. Although the discussion up to now has focused on customs and tariffs—customs are reserved under the UK’s constitutional settlement, with tariff rates being set centrally across the UK—we are equally interested in the other formalities and controls that apply at our ports, primarily health controls. Agricultural traffic, which was mentioned earlier, may be subject variously to plant health controls and animal health controls, and all those matters are devolved. It would therefore be potentially for the Scottish ministers to decide which health controls were to be applied to imports or to exports of agricultural products from Scotland, and those need not follow the same arrangements for imports to and exports from England and Wales.

At present, there is a standard set of procedures that is prescribed in Brussels. Traffic coming between the UK and the rest of the European Union is to be free from all controls and traffic coming into the UK from outside the European Union is to be subject to a standard set of European controls. All that standardisation potentially falls away if we step out of the single market. We are facing tremendous uncertainty, and it is not a comfortable position to be in.

Tavish Scott (Shetland Islands) (LD): First, I want to ask Mr Sutherland a couple of questions. Given that you represent a global business and your parent company is on the other side of the world, is your company already considering where in Europe to locate some parts of your operations that are currently based in the UK? I have heard other businesses say, “Of course, we are going to take a commercial view about where best we can be so as to access the EU post-Brexit.”

Ken Sutherland: At the moment—no, not particularly, mainly because we are a global business and we already operate in something like 140 countries. Our view is that politics and conditions change, but the market does not really change. We still want to be able to sell our product to healthcare systems everywhere, wherever we can. From a sales perspective, we will continue to do business here. In truth, Scotland is a tiny market to a company such as Toshiba; we could stop doing business in Scotland tomorrow and it really would not make that much difference. However, it is clear that, if we stopped doing business in the UK, and certainly across Europe, that would make a significant difference.

There is no intention at present to relocate anybody. However, there is a concern. I am quite glad that I am not looking for additional investment from my colleagues in Japan at present because, as a couple of the other witnesses have suggested, uncertainty is a problem. In the current situation—I do not know whether it is to do with our company in particular or the style of management from Japan—there is a concern about uncertainty and risk.

My concern is that the future of our business is entirely dependent on our ability to recruit and retain talented people. We are a talent business—in essence we are a software company, which employs software scientists and some clinical people. We employ about 100 people in Edinburgh, and about 12 people on my staff are non-UK European nationals. We are trying to look after them, we are working with them and we have offered some additional support to those who want to apply for citizenship, for example. Those are people who have chosen to come to Edinburgh—primarily to come to university—and have stayed here, because there are nice companies to work for and this is a lovely city to live in.

That is my biggest concern, and I think that my parent company would say, “If you want to build your business in Scotland and increase business, can you guarantee that future pipeline?” It is a tricky one because, although the skills issue is a challenge, we also value—certainly in my industry, which is mainly software—the diversity of the talent pool. It is not just about the core skills. We can get the skills. We can train more Scottish people to be software engineers if we need to do so—in theory, I guess—but we cannot replicate that diversity. As I said, we make products for a global market. The only way to make a product that is acceptable to global customers is by involving a diverse group of people in the design and development process, so having a diverse skill set and a diverse team of people is an asset.

10:30

Tavish Scott: You make the point strongly and well. I presume that the uncertainty is not helped by the President-elect of the United States potentially ripping up every trade agreement. The Japanese Prime Minister was in Trump Tower earlier this week, I presume to make that argument. That is uncertainty writ large, is it not?

Ken Sutherland: Absolutely, we are in a complex situation. We are a very old company. We are 140 years old, and we intend to be in business in 140 years’ time, so we will do whatever it takes to continue to drive forward. We will continue to operate anywhere, under whatever regime, as long as we can make it work. However, I am concerned, as I said. I am concerned for other companies in my sector, particularly in life sciences, because of all the things that we have talked about, particularly talent, which is critical for me.

It is no surprise to hear that a company such as Skyscanner has been acquired, because given our currency rates it is very cheap to buy UK companies at the moment. It is also not a great surprise that it should be Skyscanner, which is a global software company—in essence it is just a website with a whole bunch of really smart stuff and smart people behind it. It is in Scotland, but it could be anywhere, and its being acquired by a Chinese company is no great surprise.

Tavish Scott: I agree with that last point.

I have a broader question for the wider panel. You might all have had nice meetings with David Davis. Does the Nissan experience indicate that you have to say exactly what you need? On Monday, the Prime Minister said that there would be no cliff edge, so by definition there would be transitional arrangements, but that view was altered within three hours of her making those comments, when number 10 briefed that she was not saying that there would be transitional arrangements. Is it your job to make crystal clear, on behalf of your members and companies, what you need, because otherwise it will all happen and there will be no point throwing your hands up then?

Peter Hardwick: I agree with you, and I can assure you that that is being done. I note that the panel has been raising a lot of common issues in this discussion. We have talked about shipment, customs controls and so on. Whatever arrangement we come out with, if we fall into a free trade-type agreement we will inevitably have some form of additional controls at ports. There are all sorts of things that can be done to resolve that, such as electronic pre-certification, so that things move more quickly, but such systems are not currently in place, so there is an awful lot of work to be done in the area. I cannot emphasise that enough.

We perhaps sound a little negative, and I want to put a positive spin on this. In the agriculture sector, certainly, we have worked hard at developing non-EU trade, which is growing quickly. However, even that is based on an EU regulatory framework that we are about to step away from. China is a good example. We do not have a trade agreement with China; we have technical agreements for each product that we ship to China. Those technical agreements, particularly in the agriculture sector, are all underpinned by EU regulation. The Chinese are very particular about detail, so if certification wording changes so that it no longer refers to the European regulatory framework but refers to a UK one, they will ask what that is and want to come to check. There is a risk of a hiatus. As I have emphasised to ministers, I am keen that we do not lose the momentum that we have at the moment on exports. There is a risk of that.

From the point of view of the AHDB and our Scottish counterpart, Quality Meat Scotland, which I went to see yesterday to talk about this meeting, we are certainly getting across to Government the messages about what the risks are for the sector.

The Convener: Professor Masterton, I ask you to be brief, because of the size of the panel and our keenness to allow all members of the committee to ask questions.

Professor Masterton: To follow up the question and one of the earlier comments about risk, engineers in particular have a habit and practice of modelling and assessing risk before changes are made. Unfortunately, we are now in a position in which we are trying to model and assess the new situation after the decision has been made, without perhaps fully appreciating all the consequences. It is not an ideal situation.

To turn that into a positive, perhaps it is an opportunity to have a reassessed industrial strategy that takes full account of the new landscape that we are in. Perhaps it will be a wake-up call that we ought to be joining up industry, Government, the professions and academia. In Scotland, we are compact enough to be able to have a joined-up industrial strategy for Scotland that fully recognises the new situation that we are in. It is very different from the one that we were in before.

Supporting industrial performance, there is infrastructure, which is my area. There is also a need for a joined-up industry and infrastructure strategic plan that allows the new situation to be studied, analysed and risk assessed and joined-up decisions to be taken on the way forward.

The Convener: We do not have a lot of time, so would members direct their questions to particular members of the panel, so that we can use the time well?

Lewis Macdonald: My questions are for Mr Hardwick and Mr Reardon. I have a couple of related questions and I suspect that I might more easily predict what others might say from the answers so far.

First, the convener’s initial question was to ask about the importance of the single market and what the alternatives were. We will have a paper from the Scottish Government next month that will lay out the Scottish Government’s perspective on that. Although I cannot speak for the Government, I think that it will focus on the single market as the best option.

For agriculture and food, Mr Hardwick said at the beginning that the single market does not address any of the issues that are important from an exporting point of view. For example, if we joined the European Economic Area, which Norway and Iceland are members of, it would have no direct benefit for agricultural exports and therefore would not impact on the agriculture sector.

Mr Reardon made a point about animal and plant health controls and how those responsibilities are devolved within the UK. I presume that the implication of that was not that it would be good to have different animal and plant health controls because we are set to lose the European common standards.

I would be interested in a view on that from an agricultural exports point of view and also any clarification from Mr Reardon.

Peter Hardwick: What I said was that the current agreements do not include agriculture. Of course, that does not mean that an agreement that the UK might strike would exclude agriculture.

One of the concerning things for our sector is that traditionally, going right back to the Uruguay round that was discussed at a previous meeting and in all the other trade agreements, agriculture is always concluded at the end because it is the most difficult bit, and everybody recognises that. As a consequence of that, we cannot see a solution that delivers what the sector needs if it includes tariffs. In other words, whatever solution we come to has to exclude tariffs.

The regulatory side of it, which was mentioned as well, is also extremely important, because that allows for relatively free trade. We have struggled with that a great deal in the model, and we have to say that what we see emerging from the discussions is the favouring of some form of Canada-style free-trade agreement. That can—and does, in fact, in the case of Canada—include agricultural products to some degree. A trade agreement that allows relatively free movement works well, from that point of view, but it does not address the regulatory differences and the non-tariff barriers, which we have also discussed.

Tim Reardon: The key value of the single market in our sector is that it enables supply chains to operate with complete predictability between the UK and its neighbours, because there are no regulatory differences controlling the production, consumption and carriage or movement of items between them. It is that which enables Scottish seafood producers to lift their stuff straight out of the sea, pop it in the back of a truck and dispatch that truck south to France, in the certainty that it will be acceptable when it gets there and it will not have to queue to get through a checkpoint and have somebody pore over paperwork.

The other way round, that arrangement enables UK salad producers to buy up land in France, Spain and elsewhere, grow their stuff and dispatch it to the UK market. It can be ordered directly by UK supermarkets from a farm on the continent and they know that it will be on the shelf by midday the next day, because there is absolutely no unpredictability about that.

I was not advocating that something new and fundamentally different should be done in relation to the devolution of plant and animal health controls generally. I was merely illustrating the fact that it is a very complex issue that is potentially being awoken and unravelled; there is much more to it than simply the potential setting of tariffs for bringing any particular item into the UK or taking it out.

Lewis Macdonald: The customs union is an additional dimension for both those answers, is it not? The single market does not deliver the advantages of the customs union. From what you both say, it would be quite a significant deficiency if we were to apply for membership of the single market without being members of the EU and the customs union.

Tim Reardon: The single market is a slightly unspecific phrase. There is a single market for various sectors. Sometimes it is referred to as a collective single market, when it does not actually include everything. The customs union relates to things that are subject to customs control, clearly; those are things, not services so much. The customs union is part of the single market, but the single market is broader than the customs union because it includes a single market in services as well as those things that are subject to customs controls.

A customs union, as we have picked up in the context of agricultural production, is not terribly useful on its own if it does not tie in standardised agricultural rules. It is all very well for something to be free of customs control, but if it is still subject to a health control it is stuck at the port.

Peter Hardwick: I absolutely concur with that, and therein lies the rub. Whatever arrangements we come to, maintaining regulatory harmony with the EU is extremely important, but, as we heard from the previous panel, possibly politically difficult.

Richard Lochhead: I have a very quick question that, in the interests of time and in the light of his previous contribution, I will put to Ken Sutherland. The Scottish Government is looking at the options for maintaining membership of the single market. If the rest of the UK goes for hard Brexit but Scotland manages to negotiate membership of the single market or the four freedoms, would that be good news for your company and would it give Scotland a competitive advantage over the rest of the UK?

10:45

Ken Sutherland: That is a really tricky question. I know that I have 12 non-UK European nationals on staff, but I do not know how many English people I have on staff, or how many of them might feel that their opportunities would be different if we had different arrangements here in Scotland. It is difficult to see that. In practical terms, the challenge for companies in my sector, which is a crossover between IT and life sciences, is to scale up. As I have already said, it is a global market and you have got to be big to be successful, and getting to be big is a challenge for a Scottish company if it is thinking only about a Scottish market or even a UK market. To be big and to grow, we have to be thinking about a much bigger market and must be able to attract investment.

Under that scenario, the question is whether small companies that can currently attract £500,000 to £2 million worth of investment would be able to attract the much bigger sums that are required to take them through to scale—in the order of £20 million, £30 million, £40 million, £50 million or even hundreds of million—in the pharmaceutical sector. If those companies were able to attract such investment in that scenario, then the answer would be yes. Is that likely? I truly do not know.

Derek Elder: I will take the question that was put to Ken Sutherland and turn it around. We have several companies located in Scotland, whether they are Scottish or not, that are ultimately owned by EU companies as opposed to Japanese ones. The question about Scotland having a soft Brexit is interesting, and I had not thought about until Richard Lochhead posed it. It is possible, I guess, that a company located in Scotland but owned by an EU company might be more easily able to attract reinvestment from that EU owner than if it were elsewhere in the UK.

I will not name the company, but there is a defence avionics company based in Scotland that trades globally and makes very specialised high-tech equipment, and it recruits people from wherever it can get them. It might just be the case that, because it has EU ownership, it might be easier for it to get the future investment that Ken Sutherland mentioned in the scenario that you painted, Mr Lochhead. That is only a personal view and it is not rehearsed. As I say, I had not thought about it until you posed the question.

David Branch: I will also come in on that. Between 35 and 40 per cent of what we produce is exported, predominantly outside the EU, but most of our market is in England, although we are based in Scotland. Whatever arrangements there are in Scotland—ignoring the politics—they need to be the same UK-wide. I accept that the UK is not going to be part of the European Union any more, but ending up with different regulatory arrangements, customs, tariffs and non-tariff barriers in Scotland and in England would be a challenge.

The Convener: You said that you export all over the world, Mr Branch, and you are doing that under trade agreements negotiated at EU level. If we come out of the EU—

David Branch: We are coming out of the EU.

The Convener: If we revert to the WTO rules, how will that affect your trading relationships with all those other countries around the world that the EU already has agreements with?

David Branch: To be honest, I cannot answer that. It is beyond my knowledge. We export to China, Russia, the middle east and the Indian subcontinent, and it is usually non-tariff barriers that become the bigger issues, rather than tariffs.

The Convener: What are those barriers for your industry?

David Branch: Codes and standards. We already manufacture to the European standard and our chief engineer sits on the European standards committee. We will carry on manufacturing to the European standard. If we are not in the EU and he is not on that committee, without our influence it will become a German standard, but we are leaving anyway, so we will have to cross that bridge. There are only two UK manufacturers and we will not come up with our own standard for our own little market, so we will have to live with the bigger global standards.

Rachael Hamilton: Notwithstanding the uncertainties that you mentioned, the need for harmonious regulations and the issue of non-tariff barriers, we also need to look at our productivity. Yesterday, Philip Hammond made an announcement on investing in infrastructure and innovation and said that, as a nation, we need to be “match-fit” for Brexit. We also need to ensure that we are globally competitive. He gave an example of a German car being made in four days, whereas the equivalent here is made in five days. As resilient businesses, how are you planning ahead to improve productivity and make yourselves match fit?

Professor Masterton: I can say something, although it is not particularly about my business, because I have retired and I am now in the university. It is a fair point. Plenty of countries out there are right now quietly hoping that we lose market share because we become less than match fit for a significant period. That is the reality—we are in a competitive world. Some countries will see Brexit as an opportunity, not a threat. To deal with that, our industrial strategy needs to be not just match fit, but better than that. It needs to be smarter and better than anybody else’s.

If any crumb of comfort can be taken from the situation for the engineering profession and community, it is that it is a wake-up call that we now need to be smarter and better than others, with a better and more joined-up industrial strategy and a managed and world-class skills flow. We need to invest in higher and further education and attract young people into the industry by making it an attractive career for them—engineering has particular issues with that. We need to attract young women into engineering, which we have not done very well as a community or profession—we still have very low representation of women. All those things need to be addressed if we are to be best in class and risk manage our way through the situation. There could be an opportunity, if we have to put that level of support and intellect into dealing with the challenge that we face.

Derek Elder: To follow up on what Gordon Masterton said, there are two components to that match fit comment that the chancellor made yesterday. Productivity is a product of skills and of investment in the equipment, software and all the rest of it that those skills are applied to. There could be more uncertainty about initial investment or reinvestment even if we invest in skills, but skills are very important. I have mentioned the issue on a couple of occasions, but we cannot overstress it. We need to realise that, for UK and Scottish competitiveness, technical skills—science, technology, engineering and mathematics skills or STEM skills, as they are called—are extremely important. That re-emphasises what Gordon Masterton said. We need skills plus investment in what those skills are applied to.

The Convener: Does anyone else want to come in on the autumn statement and Brexit?

Peter Hardwick: I want to address the point about being match fit. The AHDB spends an overwhelming part of its income on research and development and productivity improvement—that is its raison d'être. The agricultural sector in the UK and certainly in Scotland sees itself as a leader on animal welfare, food safety, sustainability and environmental protection, and we sell products very successfully on that platform. However, I emphasise that we will have to become an awful lot more than match fit if we face tariffs of 25, 30, 40 or 50 per cent.

I completely agree with that view and I believe that our organisation needs to address the issue anyway if we want to do business in the wider world outside the European Union where we are not protected by import tariff barriers and by having no tariffs. However, we need to be realistic about the speed with which we will have to transition from being highly dependent on a tariff-free market in the European Union to trading globally, with potentially higher transaction costs and tariffs.

Emma Harper: I am pleased that we are talking about agriculture, because it is important and we have not heard a lot about it in the five months since the vote on 23 June. I represent South Scotland, where there are dairy, beef and sheep interests. Can you clarify how we can mitigate supply chain challenges for our agricultural industries?

Peter Hardwick: Domestically, the major challenge—in my view, at least—is to do with trade, because we balance our markets by having access to external markets. It has already been pointed out that the wider food industry is highly dependent on imports to supply products to manufacturing businesses.

We need to ensure that the current level of trade continues because, without it, we lose market balance, particularly in highly seasonal businesses such as the sheep sector, which have periods of the year when they produce a great deal of product and they need to export it.

If you look at the numbers simplistically, you might say, "We appear to import as much as we export. Isn't it simple? We stop importing and just supply our own domestic market." However, as anyone who works in agriculture knows, producing sheep and cattle is not like producing peas in a pod. There are animal products that are suitable for market and those that are not. There are parts of the beast—fifth-quarter products—that you cannot sell on the domestic market but which you can export. Also, of course, it has now been 10 years since the end of full restrictions for beef exports post the BSE crisis, and we have seen a great growth in exports. That has certainly added a lot of value to the business.

I am not sure about the nature of the supply chain issues. Perhaps I have not fully understood the question. My own view is that the trading element is the bit that gives us the added value that we need.

Emma Harper: I recently met NFU Scotland and it was really concerned about dairy products, including powdered milk, and the challenges of getting products into not only Europe but Russia, because they eat a lot of cheese in Russia. It was about the whole process back and forth, whether we are importing or exporting raw materials or manufactured goods. The whole thing is just so complicated, I worry that it will take years to sort it all out.

Peter Hardwick: I agree that that is a challenge. Certainly in the dairy sector, the export of butter and cheese in particular is a market balance activity. Without it, we would see falling prices within the UK.

Tim Reardon: The key point about supply chains is that the UK is currently part of a supply chain that is much bigger than a purely domestic one and the UK and the Republic of Ireland are completely integrated in the context of the supply chains that our members' ferries are part of. There is also a high degree of integration between the UK and the continent.

That highly integrated supply chain is frankly incompatible with having a border control in the middle of it because such a control would introduce unpredictability and uncertainty. It is not so much the cost but the unpredictability that is the real issue. We hear, for example, that hauliers driving from southern Europe to northern Europe will take a longer route to avoid going through the border control that gets them directly through Switzerland. They incur that extra mileage and extra driving time because, by doing so, they avoid the uncertainty of being stuck at a border crossing point where there is a border control.

The key way to get a wider appreciation of the issue is for the debate to be focused on that overall supply chain and for there to be a recognition that this is not about a border control—it is about a supply chain with a border control sitting in the middle. The debate needs to be had in the proper context. For the decision's consequences to be fully understood, it is important to look at it in the context of that overall supply chain. We are just a part of it but we can see the threat to the bits on either side that come from the interruption of the bit that we are responsible for.

The Convener: To illustrate the supply chain point, someone might be making biscuits in France and importing Scottish butter to make those biscuits or vice versa. I know that biscuits are made in Scotland with imported butter, which possibly is not so popular with our farmers. That is the kind of thing that we are talking about.

11:00

Tim Reardon: That is exactly the kind of thing that we are talking about. Arguably, biscuits are easy because they are not time-sensitive. A tin of biscuits is not going to sit on the quayside for so long that the biscuits will not be edible. Quite a lot of fresh produce, however, is in exactly that position and causes concerns.

Think back to the summer, when traffic through the port of Dover was choked by action that was undertaken by the French police who sit there. The segment of traffic that caused the greatest concern was carrying fresh seafood out of Scotland and it was stuck in the sun on the roads of Kent. That is the issue that we are looking at.

Stuart McMillan: I have a few questions about free movement. How important is the free movement of people to the shipping sector?

Tim Reardon: It is vital to us. First, in the context of access to skills, we need to have the right people in our companies to enable those companies to be successful, profitable and competitive. Secondly, the shipping business is involved not only in the carriage of goods but in the carriage of people. The ability of people to come into the country and, indeed, to get out of it is a significant determinant of whether they want to travel at all.

Another thing that my organisation does is represent the cruise sector. Scotland is a tremendous success story in growing and marketing itself as a cruise destination. This year, approximately half a million passengers came ashore from cruise ships in Scottish ports to enjoy Scotland's fantastic tourism offering. Many passengers are European and there is a question mark over whether, as the consequence of any visa regime or nastier boarding control that is put in place, they will continue to be entitled and free to come to Scotland as tourists and whether they will feel welcome in Scotland as tourists. Will they continue to come if they feel unwelcome?

In that context, Scotland and the rest of the UK are competing with neighbours to attract people. Tourism travel is a discretionary activity; people do it because they want to and they will want to because they will feel welcome and feel that they are going somewhere great. The Scottish tourism product will be as fantastic next year and in two or three years as it was this year, but it is critical to customer confidence that they should be able to plan on the basis that they will be able to come without a visa, just as they could this year.

The Convener: Who is our competitor in the tourism market? Is there a competitor country where cruise ships are more likely to stop if they have access without visas, for example?

Tim Reardon: The big success in northern Europe is Norway. It has fantastic scenery and wonderful open seas and fjords with beautiful and interesting things to go and look at—

Tavish Scott: Stop.

Richard Lochhead: It is nearly as good as Scotland.

Tim Reardon: Scotland has all that, too. At the moment, there is a level playing field. Every country wants to grow its cruise business because it is a lucrative business. Scotland's cruise business is doing fantastically well, so we should not hobble it.

Stuart McMillan: Mr Reardon anticipated the fact that I will ask about the cruise sector. A huge amount of investment is being made in that sector. For a number of years ahead, more than £4 billion of ships are on order, which amounts to 73 new ships. That means an even greater opportunity for Scotland and the UK to get more tourism and more passengers to come here.

However, this is not just about passengers. Many of the people who work on cruise liners are non-UK nationals, and some are non-EU nationals. When the UK leaves the EU, how will that affect not just passengers but those who work on the ships?

Tim Reardon: There should be no risk associated with a ship's crew as long as they are on the ship, because they are protected by international instruments, which UK immigration legislation respects at the moment.

However, there are concerns about the wider servicing of ships while they are in port and about the ability to make crew changes and to do so with ease, for example. As you indicated, large numbers of crew are on cruise ships and, as and when crew reliefs occur, it is good business to make them happen through our airports and ports, because we get all the associated ancillary spending. The value of spending ashore by crew members of a cruise ship is reckoned to be in the region of £20 to £22 per head per call and, if there are 1,000 crew members on a ship, that is a worthwhile spend. If the crew cannot come ashore because they are judged to have the wrong passport and they need a visa to set foot on this land, that money will not be spent.

As you said, wider issues are associated with crew on cruise ships and the business that Scotland and the rest of the UK get from them, which it would be a crying shame to forgo.

Stuart McMillan: Do you suggest that, in any deal or agreement that the UK manages to achieve, free movement of people should be important? That would allow your sector to operate with less negative effect.

Tim Reardon: Absolutely. The right of free movement underpins our business, whether it involves tourist travel by ferry or cruise ships coming in from western Europe. Because of where Scotland is geographically, it is part of a north-west European itinerary, so it is predominantly Europeans who are on board the vessels that come into ports in Scotland. Their ability to do so without needing a visa in advance is critical to the success of that business, just as it is for families from Scotland and elsewhere in the UK who choose to drive and take a ferry to France, Belgium or Spain for their summer holidays. That ability is part of the journey and is critical to the way in which business is set up at the moment. Yes, people will fly to the United States or the far east for a holiday but, for the segment of the market that involves inward tourism here, and for a significant part of the holiday experience of UK residents who go to Europe, the ability to travel freely is vital.

Stuart McMillan: Does anyone else want to comment?

Peter Hardwick: The agriculture sector is highly dependent on migrant labour. Office for National Statistics figures show that, in 2014, 38 per cent of the workforce in food product manufacturing—the highest percentage in any industry—was migrant labour, of whom about 14 per cent were recent migrants. Some parts of the industry, such as the meat sector, are highly dependent on migrant labour and would be affected by a lack of access to labour on an on-going basis.

The industry has a job to do to improve its efficiency. We talked earlier about being match fit. There are opportunities to improve automation—through robotics and so on—but not all parts of agriculture lend themselves to that. There will be a challenge for the food manufacturing sector if there is a change in the access to migrant labour.

David Lonsdale: To go back to the earlier conversation, food prices tend to be a lot higher in Norway, which might be in Scotland's favour. We will see how that situation develops.

We are undertaking a workforce survey to tease out some of the staffing statistics. It is not information that we have traditionally collected, but our understanding at this juncture is that about 5 per cent of staff in the retail industry are from the rest of the EU. The figure can be a lot higher in the supply chain, particularly in and around the supply to the horticulture and grocery sectors.

It is worth bearing it in mind that, in our industry, productivity is at the heart of what we are about. That is allied to Rachael Hamilton's earlier question. Over the past few years, the number of people who work in Scottish retail has reduced by about 7 per cent, and we are constantly looking to innovate and find new ways of engaging with customers.

One of the drivers that are behind that is that people are becoming more expensive to employ. Public policy has added to that through, for example, the national living wage, the apprenticeship levy and the increase in statutory employer pension contributions. Various drivers lie behind that, not just the need to gain talent from elsewhere in the EU.

The Convener: We have time for one more question, from Lewis Macdonald.

Lewis Macdonald: Every witness on the panel has talked about the importance of the free movement of people—that is where the questions have taken us. Freedom of movement can mean different things. In the European Union, it means unlimited freedom of movement for EU citizens. We heard earlier about Switzerland's agreement with the EU on the free movement of people, which is restricted to people who have a valid employment contract, people who are self-employed and people who can prove their financial independence.

The UK Government seems unsympathetic to the business and other arguments in favour of freedom of movement. If it does not reflect what all the current witnesses and many other witnesses have said about freedom of movement being critical, is there a second best? Is there another outcome in which UK ministers might show some evidence of being interested that would protect the vital interest that the witnesses' sectors have in freedom of movement, or is it simply the case that, if the UK Government turns its back on free movement, the game is a bogey as far as the economy is concerned?

Derek Elder: I do not know whether what I will describe is second best. As things stand, it is easy to have freedom of movement for skills in the EU. If that changes, a possible upside is that the UK could import skills from places from which EU regulations make it more difficult to import them, such as the US, Australia and Canada. I do not advocate that; I simply say that it is a potential upside of a change. I do not know how the balance of skills would manifest itself in the people from the EU and those other countries who wanted to come to Scotland and the UK.

Tim Reardon: The UK has been successful in encouraging shipping companies from other European countries to invest and set up operations here. As they have done that, they have—naturally enough—brought some of their own people with them, as anybody would if they were setting up an operation overseas. There is not really a second best to telling those people that they do not have to go home again or that the next generation can come through. It is a tough sell to say to inward investors that we want their money but do not want them; it simply will not wash. There must be a risk that that segment of our business, which generates wealth and employment and supports service businesses, will feel unwelcome if it is unable to renew its staff.

As has been said, our businesses need access to skills. The skill pool of people who have served at sea and are coming ashore to work in technical and management roles is global. At the moment, it is difficult and awkward to get people into the UK from beyond Europe. If that got any easier, it would mitigate the difficulties that would be created by making it awkward to get people in from Europe, but there are no signs that it will get any easier to get people in from beyond Europe. The signs are that getting people will get more difficult in places where it is easy now.

In the tourism market, people should be able to come easily and feel that they are welcome in Britain when they get here. As often as not, a visitor's only interaction with the UK state is at border control. That is where they are made to feel welcome or otherwise on arrival. I do not think that there is a second best to making someone feel welcome when they get here.

Professor Masterton: I concur. I have been thinking about the question and it is difficult to think of a second best. We are in a competitive market and world so, if it is even slightly more difficult to enter and leave the country to do business, businesses will consider that to be a risk, will assess that risk and may make choices on the basis of that changed regime and go elsewhere.

That would be a great pity, because Scotland has a great internationalist tradition. We have sent people out around the world and have built businesses—we have in some cases built countries. It is in our DNA to trade internationally, so anything that gets in the way of that would be a retrograde step, and we should be mindful that whatever arrangements are put in place should enable us to do our best to enable the continuing flow of people for businesses. People are what makes businesses work. Even data-intensive industries require people to move across borders.

The Convener: Does anyone else want to come in?

David Branch: To return to the issue of there being a second-best option, I point out that Cochran does a lot of trade outside the EU and we have to invite customers to come to us for training, inspection and so on. It is much easier for me to get a visa to go to their country than we make it for them to get a visa to come here. We are not very welcoming before they get here, never mind when they get to border control.

The Convener: You have Chinese owners, so you deal with people outside the EU.

David Branch: On the issue of there being a second-best option if we are outside the EU, I point out that, at the moment, we are not very welcoming at the first stage, never mind when people get to the border post. That is my experience.

The Convener: That is a good point to end on. I thank our panel for attending.

11:16

Meeting continued in private until 11:29.

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Official Report
Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447
Fax: 0131 348 5423

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