



HOUSE OF LORDS

European Union Committee

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Dear Michael

Protocol on Ireland/Northern Ireland

Thank you for agreeing to give evidence to the House of Lords European Union Committee, provisionally on Tuesday 24 March. At that meeting the Committee will discuss a number of topics with you, including the implementation of the Protocol on Ireland/Northern Ireland. I am therefore writing to you ahead of the evidence session to draw your attention to the findings of the Committee's visit to Belfast on 25 February.

During its visit the Committee met Chairs and other representatives of Committees from across the political spectrum in the Northern Ireland Assembly, Northern Ireland Executive officials, business representatives and academic experts. This letter focuses in particular on the significant concerns expressed to us by Northern Ireland business representatives, in a private roundtable discussion with the Northern Ireland business network (a broad and representative network of Northern Ireland business interests ("Northern Ireland Business")), and in a public evidence session with transport providers and points of entry, including Stena Line, Belfast Harbour and Belfast International Airport. The published records of both meetings are enclosed. Their concerns can be summarised under the following headings.

Uncertainty

Witnesses' biggest concern was uncertainty over the practical impact of the implementation of the Protocol upon their businesses. They told us that the significant concerns of the business community in Northern Ireland had been multiplied by the contrasting messages being conveyed by the EU, which had told them that the terms of the Protocol were clear, and the UK Government, given the comments of the Secretary of State for Northern Ireland that there would be no border down the Irish Sea, and media articles suggesting that the Government was seeking to circumvent the Protocol. The sense of uncertainty was therefore increasing rather than decreasing.

Graham Keddie, Managing Director of Belfast International Airport, said that "unless we have clarity and we know what is actually happening, we cannot plan and we cannot operate because we do not know what the processes are." Pamela Dennison, Chair of the Freight Transport Association Northern Ireland and manager of a family-run haulage SME, said that Northern Ireland businesses "are in limbo. Our customers are asking us how to prepare, but I cannot tell them, because I do not know, the Government do not know and trade bodies do not know."

Les Stracey, Director of Stena Line Ltd, said that “we are totally uncertain about the level of checks and customs formalities that will be required ... It is fine having all of this on paper, but we really need information from government about what we need to do and what infrastructure arrangements will be required at ports.”

Engagement

Several witnesses expressed their deep frustration and dissatisfaction at the lack of engagement by the UK Government with the concerns of Northern Ireland businesses. Pamela Dennison said that the Government should “stop telling businesses what you think they want to hear and tell them exactly what is going to happen.” Northern Ireland Business told us that while they had met both EU and Irish Government officials, they had not yet been able to meet the UK Government.

Northern Ireland Business also stressed the correlation between peace and prosperity in Northern Ireland, and said that the implementation of the Protocol therefore needed to be handled with care. Yet they told us that Northern Ireland feels as if it is a pawn in the game at the start of negotiations between the UK and the EU. This makes it harder for Northern Ireland to communicate its concerns and for business to prepare for the seismic change that is to happen on 1 January 2021. They called on both the UK and the EU, as co-signatories of the Protocol, to take responsibility for Northern Ireland by working together to ensure that the Protocol is workable.

Capability

There was concern about the lack of knowledge and understanding of how the Protocol will operate in practice. Maurice Bullick, Finance and Compliance Director, Belfast Harbour Commissioners, said that “there is no doubt that [Northern Ireland Executive] officials are working very hard to do what they can, but they are not in a state of knowledge which allows them to put us in a state of knowledge.” Les Stracey noted the “significant shortage of customs agents at the moment. If there are no customs agents around, who is going to complete the paperwork?”

Representatives of Northern Ireland Business said that they were providing a lot of training around customs and export document certificates, because many businesses have no experience of this area and are nervous. They also warned that businesses in other parts of the UK are unprepared for the requirements for dealing with Northern Ireland in the future.

Time

There was significant concern over the lack of time to prepare for the Protocol to become operational. Les Stracey said that Stena Line was “running out of time to put systems and infrastructure in place.” Northern Ireland Business told us that it would be a Herculean task to complete preparations by the end of 2020. In order for the Protocol to be operational by then, there needs to be a tariff system with a rebate system, plus sanitary and phytosanitary (SPS), VAT, rules of origin and standards checks. Yet there are not enough customs officials, the biggest retailers will need completely new computer systems, and trusted trader accreditation alone typically takes a year to secure. They warned that if clarity on the

operation of the Protocol came late in the day, it would be too late for businesses to prepare.

Goods ‘at risk’

Our witnesses expressed particular concern at the implications of the Protocol’s default position that goods passing from Great Britain to Northern Ireland will be deemed at risk of passing into the EU Single Market unless the UK-EU Joint Committee indicates otherwise.

Pamela Dennison called for a derogation for “dead-end hosts”, i.e. goods destined for Northern Ireland. In the case of a supermarket delivery to its stores in Northern Ireland, “we know exactly where that comes from—its UK mainland distribution centres—and it goes straight to the final destination of the shop in Northern Ireland. There is no threat to the EU Single Market, because we know the route exactly and there is traceability on that side of things.”

Witnesses also drew attention to the lack of clarity over how the rebate system on tariffs for goods shown to be remaining in Northern Ireland would work. Northern Ireland Business said that in order to qualify for tariff relief, goods need to be delivered to and consumed in Northern Ireland, with a process involved to ensure this is the case. Yet it was unclear if the rebate commitment extended to cover intermediate processes. They told us that inward processing relief could be useful, but questioned whether it could be applied in a viable way for sectors with a 1–1.5% margin, on top of other SPS costs. Such costs may be prohibitive in their effect.

‘Unfettered access’

Several witnesses remarked on the lack of clarity over the Government’s commitment to ‘unfettered access’ for Northern Ireland products in Great Britain. It was stressed to us that the commitment in fact applied to trade from Northern Ireland to Great Britain, not in both directions. Northern Ireland Business said that “‘unfettered access’ from Northern Ireland to Great Britain is going to be difficult to plot. It means enough openness to allow the essential movement from NI to GB to maintain supply chains but also enough controls to prevent NI business from being undermined by unscrupulous exploitation of the Protocol by non-NI-based traders. It is imperative that NI stakeholders are listened to when the UK legislates for ‘unfettered access’.”

Graham Keddie said that “people use terms like ‘unfettered’ and ‘light touch’, but what do they mean?” Maurice Bullick told us that “unfettered access would mean at the very least that there would be no physical process at the port; that is, no stopping and checking.” Les Stracey agreed, that it should mean that “the traffic flows through the port as quickly as it does today and there are no delays”.

Competitiveness

Several of our witnesses expressed serious concerns about the impact of the Protocol upon the competitiveness of Northern Ireland businesses. Graham Keddie said that the bureaucracy involved in implementing the Protocol “will limit our competitiveness across

the board. The Province is already on the periphery and we would then become even more peripheral in terms of costs.”

Northern Ireland Business told us that “the challenge is that businesses have to operate legitimately, yet these requirements for GB-NI movement seem far beyond what seems plausible as a business model. If you imagine that kind of friction, if costs are higher than profit margin, without derogations or exemptions, products will become unviable to sell in Northern Ireland. On 1 January 2021 there will be a sharp shift in Northern Ireland to a jigsaw of requirements and a sliding scale of friction. This will mean more paperwork, staff hours, new systems and new hurdles for compliance. Ultimately it will mean less choice for consumers and higher prices. ... Moreover, businesses are making investment decisions. If it is easier to do business in Scotland or Ireland because of potential new burdens in Northern Ireland, they will do that. It is a matter of simple equations. If there are new costs in terms of tariffs, paperwork or staff hours, and if costs exceed the product margin, then the product or business model becomes unviable. The supply chain will always take the path of least resistance and businesses seek to reduce unnecessary uncertainties and risks.”

Northern Ireland Business also told us that SMEs are particularly vulnerable, as they do not have the staff to prepare for implementation of the Protocol. Pamela Dennison agreed that, as the Manager of a SME, there was a limit to what she could do: “My customers are asking me about this, but I remind them that, as a haulier, it is not my responsibility to complete import and export declarations; it is their responsibility. I am just the mover of the goods. However, ultimately I will be greatly affected. If that paperwork goes wrong, and I have 50 different consignments on my trailer, it is my business, my driver and my vehicle that is affected. Those costs have to go somewhere. They will go straight to my customer or the end user and that will just put additional costs on top of the import and export declaration costs.”

Case studies

Our witnesses provided vivid illustrations of the scale of the challenges facing them:

Case studies of the impact on Northern Ireland businesses of the Protocol on Ireland/Northern Ireland

Maurice Bullick told us that Belfast Harbour is the largest cargo port in Northern Ireland, and the second-largest on the island of Ireland. About 70% of its traffic is trade with Great Britain. His primary concern related to the operating model of the port. At present, the port is primarily an infrastructure provider, so is not involved in checking cargoes, which is the responsibility of agencies. He needed to know what impact the Protocol would have on the infrastructure requirement of the port, but said that the port cannot undertake any planning until the practical operation of the Protocol has been determined by the UK-EU Joint Committee. It is in “wait and see” mode until then.

Les Stracey said that Stena Line operates 140 sailings a week from Belfast to Cairnryan, Heysham and Birkenhead, involving seven ships and carrying 540,000 freight units, approximately 67% of which are unaccompanied. They estimate that 97% of those units are intra-UK trade, not crossing the Irish land border.

Les Stracey added that, for unaccompanied freight, Stena Line is classed as the carrier under the Union Customs Code, obliging it to submit safety and security declarations: “If there are 100 consignments in the back of a trailer, we would technically need to know all the details for every single consignment ... To me, that is a nonsense. We are effectively being asked to collect data which we do not have.” Mr Stracey said that there are 12 sailings a day each way between Belfast and Cairnryan: “The port turnaround for those sailings is about one hour 36 minutes. Delays because of customs checks on the inbound traffic may cause problems with discharging ships and therefore problems loading them. If there are significant checks at ports, that will give us great concerns about what the impact on our timetable will be.”

Northern Ireland Business said that 13,500 lorries cross the land border every day, while 2,500 cross the Irish Sea between Great Britain and Northern Ireland each day. Retail covers 70% of crossings. They told us that there are 31 data elements in the standard exit summary declaration form (for instance covering goods moving from Poland to Ukraine), and one form is required for each consignment, including details of the consigner and consignee. They stressed that a bespoke arrangement is required for goods moving from Northern Ireland to Great Britain, otherwise up to 70 forms may need to be filled in per lorry. Likewise, an entry summary declaration for goods moving from Great Britain to Northern Ireland would require 45 data elements to be completed. These will have to be pre-lodged before shipments leave Great Britain.

Northern Ireland Business shared a recent case study of a lorry crossing the Irish Sea with nearly 1,400 different items on board, including 576 products of animal origin, each of which would require an export health certificate. In addition, each item will require a different tariff code, without which the lorry will not be permitted to board the ship. They added that, in terms of sanitary and phytosanitary (SPS) controls, the Government’s impact assessment for no deal showed a 50% physical inspection rate for dairy products and 20% for beef. Physical checks require a product to be taken off the lorry, opened, inspected, tested and quarantined until deemed legitimate. Such a requirement would undermine the freshness of products. They warned that the more the UK diverges from the EU, the more intensive such checks will be.

Northern Ireland Business also highlighted the EU’s assertion that the Irish Sea border should be the same as other EU external borders. Yet the day-to-day movement of goods across the Irish Sea is very different to the EU’s external borders. A retail lorry travelling between Great Britain and Northern Ireland has hundreds of different items on board. These are then dropped at a regional distribution centre, repackaged and then sent out to shops. A requirement for ports to inspect a lorry travelling from Great Britain to Northern Ireland would undermine the just-in-time models on which supermarkets rely. Lorries typically arrive 20 minutes before the boat sails. Everything in supermarkets’ 24-hour cycle to shelves relies on catching that boat, because they depart only every three or four hours. Delays would cause significant problems with product availability, and “the supply chain would just fall over”. They told us that this is partly why delays should preferably occur on the Northern Ireland side.

Conclusion

At your 11 March appearance before the House of Commons Committee on the future relationship with the European Union, you responded to a range of questions about the Protocol by stating that they were a matter for the UK-EU Joint Committee, whose discussions you did not wish to prejudice. However, businesses and citizens in Northern Ireland urgently need clarification of how the Protocol will operate in practice. We would therefore be grateful for a reply to this letter by 8 April 2020, outlining your response to the points raised by businesses under each of the headings above and in the attached notes, and taking account of the discussions at the first meeting of the Joint Committee, scheduled to take place on 30 March. In particular, what steps will you take to intensify your discussions with Northern Ireland businesses, and to address their frustration over the Government's lack of understanding of and engagement with their concerns? We also look forward to discussing these issues with you at your forthcoming appearance before the Committee. We will take account of your responses, in addition to the views of Northern Ireland businesses, academics, legal and trade experts, in a report to be published in due course.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'L. Kinnoull', with a horizontal line underneath.

Lord Kinnoull
Chair of the European Union Committee