



## Select Committee on the European Union

### Corrected oral evidence: Protocol on Northern Ireland/Ireland

Tuesday 12 February 2019

4 pm

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Members present: Lord Boswell of Aynho (The Chairman); Lord Cromwell; Baroness Falkner of Margravine; Lord Jay of Ewelme; The Earl of Kinnoull; Lord Liddle; Baroness Neville-Rolfe; Lord Polak; Lord Ricketts; Lord Risby; Lord Soley; Baroness Suttie; Lord Whitty.

Evidence Session No. 1

Heard in Public

Questions 1 - 12

### Witnesses

I: Dr Katy Hayward, Reader in Sociology, Queen's University Belfast; David Henig, Director, UK Trade Policy Project; Marie Demetriou QC, Barrister, Brick Court Chambers; and Victoria Hewson, Senior Counsel, Institute of Economic Affairs

## Examination of witnesses

Dr Katy Hayward, David Henig, Marie Demetriou QC and Victoria Hewson.

**Q1 The Chairman:** Good afternoon and a warm welcome to our witnesses for this public evidence session on the Northern Ireland/Ireland protocol, otherwise known as the backstop. I say that in introduction because I think that it has become such a word of currency that it may have been somewhat debased, in the sense that those who use it do not always understand what it means. This is an attempt to feel after the truth with people who are acknowledged experts in the field of social policy, politics, economics and legal affairs, in order to try to see a bit more. I would also say that we are exploring not only its relevance to the island of Ireland, in which this Committee has historically taken rather a close interest and continues to do so, but also of course to the whole United Kingdom, the wider relationship and its implications for other matters that are of some concern, not least down the Corridor as well as for ourselves at the moment. That is well understood.

In a moment I will invite you briefly to introduce yourselves formally for the record. I remind my colleagues that when they make an initial line of questioning, if they have a specific interest in relation to these matters, they should declare it. We will put this on the record and will share a transcript with you afterwards for factual correction. The only other point that I would like to make in advance—I think I can do that, given the nature of the panel that we have assembled—is that we are very grateful to you for sparing the time to do this for us and give us your expertise. We hope that the session will help to illuminate some of these matters which, as I say, have become current but are not always as well understood as they might be in terms of public policy. So if you would like to say who you are and bring out any particular points that you want to, that would be helpful, after which we will start on the questions.

**Marie Demetriou QC:** I am a barrister, a QC specialising in European law. I do not think there is anything that I want to say by way of general comment, but obviously I am happy to answer any questions that you may have.

**Dr Katy Hayward:** I am a political sociologist at Queen's University Belfast. I have been researching the impact of the European Union on the Irish border and the peace process for 20 years.

**The Chairman:** And the Committee has seen you before.

**Dr Katy Hayward:** It has indeed. I would like to note that in 20 years of research on this topic, I think we are at an extremely important critical juncture in relation to politics, society and peace in Northern Ireland, specifically on the island of Ireland but also across the UK. The critical juncture relating to the backstop is more profoundly in relation to the peace process than it is regarding the EU/UK future relationship. I am conscious of the enormous responsibility of parliamentarians here and of us as witnesses before you. The responsibility of Parliament at this critical juncture is made all the more apparent when you compare it to the

comparative voicelessness and lack of representation for the border communities who will be most affected by the decisions to be made in this Parliament in the coming weeks.

**David Henig:** I work with the trade policy think tank ECIPE, the European Centre for International Political Economy, directing the UK trade policy project. The only comment that I want to make by way of introduction, seeing the rather daunting list of questions, is that it is difficult to be an expert in all matters of trade, borders and pieces of paper that flow across the border. I will do my best to cover as much as I can but please forgive me if I do not have the exact details of which trade agreements Turkey has or what their details are; I am afraid that such a level of knowledge is beyond me and probably beyond any trade specialist.

**Victoria Hewson:** I am a solicitor by profession. I currently work in the international trade and competition unit at the Institute of Economic Affairs think tank in Westminster. I echo David's sentiments on that point. I have been particularly engaged in my recent research on trade formalities and technicalities—that has been my pleasure for the last two years or so—and that is one of the areas where there is quite a lot of misunderstanding about how the backstop would work, so I am looking forward to airing some of those issues.

**Q2 The Chairman:** Thank you very much for those words of introduction. If I might pick up one particular theme—if it was not clear, then I think it should be—it is that this Committee is always mindful of the impact on individuals. Those of us with some experience of Northern Ireland and Irish affairs will be aware of the changes in the situation on the border, for example, and the developments over the last 20 years that have been positive. I think we share your anxiety that they should not go back, and I am not loading the questions when I say that.

Perhaps I will say one simple thing as an example, because we all bring our experiences to these things. I live in the English Midlands, 300 metres from a county boundary, and every morning I wake up and say as a sort of mental exercise, "Instead of being Northamptonshire or Oxfordshire, this could be Armagh and Louth". I think about that not least because, having represented one of those, I am aware of even the ordinary administrative complications, quite apart from the other implications, of an international frontier in certain cases running through people's houses, and I think the Committee is well aware of that.

We will respect what you have said. Please do not feel in any way that your expertise need get in the way of offering a view on anything. We will steer the questions. The first one would probably not go to Ms Hewson, unless she wants to intervene, but the others may all have a view. So I shall kick off the Committee to ask you three if you would like to give us some assessment of the Prime Minister's attempts to reopen negotiations on the backstop following the vote in the House of Commons in favour of the Brady amendment on 29 January. Any immediate reactions to that?

**Dr Katy Hayward:** One immediate impact is of course the deepening uncertainty and distrust of the UK Government's handling of the negotiations from the point of view not just of Irish nationalists but more broadly of the business and civic sector in Northern Ireland, who, it should be noted, made a remarkable change from their usual practice in sticking their head above the parapet and coming out strongly in favour of the protocol as it has been laid out. That was unusual in Northern Ireland, but they felt somewhat betrayed—

**The Chairman:** Could I just intervene on that? This is really for factual fill-in because it is a question that I might have asked later. Regarding what might loosely be termed the various communities, that reaction is not, as it were, specific to communities; there is a general and clearly expressed feeling that this is a concern for people from different walks of life and different sectarian backgrounds.

**Dr Katy Hayward:** Yes. The DUP has been critical of the backstop, as have the UUP, and we will talk about what the UK Government are trying to do to reassure them. Unusually, though, groups that traditionally would be supportive of the DUP and unionist positions, such as the Ulster Farmers' Union, which did not have a position on the referendum, came out saying that the backstop, or the protocol more broadly, was a good thing for Northern Ireland. We have seen that across a spread of businesses and backgrounds, and of course the four so-called remain parties also made statements in support of the protocol, including Sinn Féin.

As for where we might be going in relation to the backstop, the EU has been clear that it is not going to open the withdrawal agreement again, most particularly not in relation to the Northern Ireland-specific areas. More generally, it would have three questions to ask. The first is: is the backstop the stumbling block, so if changes were made to it—that would be tricky, but if they were—would that actually produce a majority in favour of the withdrawal agreement? That is a pertinent question, I think. The second would be: is a change really necessary? A lot of the discussion about the backstop has been ignoring what is already in the protocol—for example, the UK's position in being able to unilaterally trigger the review process; the fact that the protocol can be amended up to four years after the end of transition, which is in the withdrawal agreement; and the fact that the UK and the EU would already be legally bound to find an alternative using their best endeavours, which is also in the withdrawal agreement. So, many things have been overlooked in all this discussion. The third question that the EU would be asking is: what are the alternatives? A focus on the technological solutions is a distraction; technology just facilitates, rather than substitutes for, the rules and policy framework that are necessary. If you look at the Malthouse compromise in detail, you see that it does not avoid a hard Irish border.

**David Henig:** I am thinking of the question with a negotiator's eye from my experience of Brussels. The Commission and member states have

been quite unhappy with the reopening required by the Brady amendment. If we recall how we got to this point, we see that there was initially an Northern Ireland-only backstop, which the UK side, in so far as we can tell from outside, insisted was not acceptable. I had a lot of sympathy with that view. Therefore, it was changed to include a UK-wide element—it was quite a hard-fought negotiation, as we understand it. To go back on that was seen as something that is not done in negotiations—that is, to negotiate something and then say, “Actually, I don’t like that after all. Can we go back on it?”—and particularly to do so without a specific set of requests or text to go with it. It has already been mentioned that there are words in the article about a review mechanism. I was looking at it earlier. If, for example, we gave a greater role in that review mechanism to the bodies set up under the 1998 agreement, it would be something substantive that one could perhaps argue they did not get exactly right in the original negotiations. A small change such as that I still believe could be made, but to make a significant sweeping statement such as, “This is not acceptable”, is very difficult to put into a negotiation at this point.

**The Chairman:** Can I come back on one point? To what extent is there a feeling that, if the Brady amendment were carried into a change and a unilateral concession by the Irish Government—obviously, in the context of Ireland’s continuing membership of the EU—they would lose out on it? Is there any merit in looking at a package that included some elements which might give them greater comfort as against other bits they might find less acceptable?

**David Henig:** This was very much an EU red line. Crossing red lines is tricky enough during negotiations. One is trying to find out, “Are they really all red lines or are they not?” Once both sides have said, “This is the real red line, and the real red line is that there must be a backstop and it must guarantee no return to border infrastructure on the island of Ireland”, to cross that red line is extremely difficult. It would not be part of a package to ask your negotiating partner to make a fundamental change. It is not something that you are likely to see in the last weeks of a negotiation.

**Marie Demetriou QC:** I would just add one point from the legal perspective. We should bear in mind why the backstop is important from an EU perspective. It is not just about ensuring that there is no hard border on the island of Ireland; its importance goes beyond that. If the backstop is triggered and comes into force, by definition the United Kingdom will not be in the EU at that stage; it will be a third country. What that means is that if goods come into the United Kingdom, including Northern Ireland, and there is free circulation into the Republic and those goods find their way there, they are then in free circulation in the whole EU. There would then be no way of ensuring that all the rules that the EU has built up and promulgated over the years, to do with regulatory requirements on goods, were complied with without certain checks. That is why this whole issue is important from the EU perspective. Yes, it wants an open border, but there also needs to be some way—this goes to

how the backstop or protocol operates more generally—of ensuring that goods that come into Northern Ireland are then suitable for circulation in the whole European Union if the EU project is not to be undone.

**The Chairman:** Following that line of thought, if there were to be a no-deal scenario—which we are not assuming, because we are talking about the protocol—Ireland would have to assume certain responsibilities on behalf of the EU, to meet both the EU’s requirements and those of the WTO.

**Marie Demetriou QC:** Yes. Effectively, if there were no deal, there would have to be a hard border on the island of Ireland and Ireland would have to assume responsibilities on two fronts. First, by definition, the ambit of the customs territory would stop at the border between the Republic and Northern Ireland, so there would have to be checks at that border to make sure that goods that had come in from third states complied with all the EU customs requirements. Secondly, a whole host of single market regulatory harmonisation directives have been enacted which deal with standards for goods within the EU and there would have to be checks to ensure that goods complied with those standards, too. That would happen in the event of no deal. You are right to say that there would be a large burden on the Irish Government in those circumstances.

**The Chairman:** I think that Victoria, too, may want to come in on some of these legal issues. I have the impression, if only because there is a case currently subject to potential litigation in London relating to the European Medicines Agency, that there is potential for arguments about the operation of a border, particularly where there had been a no-deal situation—perhaps you are salivating at the thought in terms of your practice. There might be private sector litigation with people arguing about whether compliance or statutory duties had been fulfilled. That is an underpinning issue that you do not necessarily see on the surface of the discussion. Is it too extravagant to say that?

**Marie Demetriou QC:** No, I do not think it is. Even if one just looks at how the EU has operated up to now, one sees that there has been a lot of litigation about how the common customs tariff applies in each member state. Where you have a single customs territory, there is a single tariff, but there have been lots of cases, some of which have reached the European Court of Justice, about whether a particular import should be classified, for example, as a nightgown or a dress, because the tariff is different for each. There is an interest in that being interpreted in the same way, otherwise you do not have a common application of the rules. That is just looking at the situation so far, where the same rules have applied. In the event of no deal, where different rules apply and the EU has to ensure that its customs rules are applied properly to goods coming to the border, the potential for such a dispute is obviously much greater.

**Victoria Hewson:** While I agree that the endeavour of reopening the backstop in line with the Brady amendment is clearly extremely challenging, I want to add that part of the reason for that is that certain premises were accepted that will now be very difficult to revisit. For

example, it is stated in various parts of the agreement and the associated guidance notes that the regulations that are to apply directly in Northern Ireland are strictly necessary or indispensable to avoid a hard border. Once that is agreed in principle, it is very hard to go back and say, “Oh, maybe they aren’t indispensable after all”, or “Maybe they’re not strictly necessary after all”, when they are the exact parts of the backstop—the direct applicability of laws in Northern Ireland—that the critics of the backstop and the unionist parties in Northern Ireland have the most difficulty with. It was always going to be difficult to reopen the backstop and renegotiate its basis in any substantive way once those basic premises and a particular definition of “hard border” that comprised not just physical infrastructure but general interventions away from the border were accepted. Clearly, they set themselves a difficult target to deliver in any other way than by what was arrived at with the backstop.

**The Chairman:** What does that mean in practice? I am not sure I would want to be able to give a list at the moment, but what is your understanding of what might be a borderline case? If you are not able to offer that because you have not experienced it, we will understand, but I am just trying to get a flavour of the kind of vexatious or difficult issue that might arise, such as the one that has been mentioned in relation to the definition of clothes.

**Victoria Hewson:** For example, on the regulatory checks on goods—putting aside the much more difficult area of sanitary and phytosanitary checks on food and live animals, which I am sure we will come to—the proposition that all the regulatory alignment that is provided for in the backstop is strictly necessary and indispensable is called into question by the fact that the measures that are proposed for trade from Great Britain to Northern Ireland say that those controls can all be done in the market and that we do not need checks and controls at ports and airports for those things, yet that was never really accepted as being applicable on the land border. Those are the kinds of areas where perhaps more flexibility could have been shown in the negotiations.

**The Chairman:** Thank you. That is a really helpful start. Unless anyone wants to comment further—

**David Henig:** I shall make one point for the record. You mentioned what the WTO requires. Actually the WTO requires remarkably little from a border, only that you treat all trading partners the same. We are predominantly talking here about the EU’s rules rather the WTO’s rules.

**The Chairman:** Thank you. That is really helpful. In that case, we will go on to the second question, from Lord Jay.

Q3 **Lord Jay of Ewelme:** I agree very much with Katy Hayward. I want to ask a question which in a sense follows on from what you have all been saying. It is about how you would respond to those who are concerned, and there clearly are concerns, that the UK could end up indefinitely—I use the next word in inverted commas—“trapped” inside the backstop against its will. Is that a genuine, justified fear?

**David Henig:** I am happy to go first. I am not sure whether my view is in common currency, but I will give it a go because there are two very important things. One follows on from what Victoria just said and is that I have serious doubts about whether the backstop will ever be capable of being implemented. What it in fact is is a few pages of legal text and—I counted them this morning—68 pages listing a bunch of regulations that will need to be operationalised in 47 separate categories of product. I have severe doubts about the idea that we are somehow going to turn a few pages of legal text saying “Northern Ireland does one thing and Great Britain does another” into an operating manual for all this within a year.

**Lord Jay of Ewelme:** If it cannot be, what happens if we have not sorted it out?

**David Henig:** For a start we have the extension of the transition period, potentially, and then I think we will need to look at alternative arrangements anyway, whether they are UK-wide or a more detailed customs union. I think we are going to be going through the same arguments we are having now about what to do next. That is the weakness of the system that has been set up. That view is not in common currency, but my concern is that very few people have studied the withdrawal agreement and the Ireland protocol in any great detail. If you go through all those pages of regulations, there are probably some nasties within them.

On the general part of the question about whether we would be trapped against our will, I think it is potentially indefinite, but, frankly, I am sure that the UK can find some areas of leverage if we wish to have a sensible negotiation. I do not like the language “trapped”. When we are in international negotiations, I am sure we have some things that we can offer or not play nice with or whatever that mean we can have a serious discussion. The idea that we have nothing to offer and will be trapped against our will is negative and defensive language.

**Lord Jay of Ewelme:** So when you say we could have something to offer in some sort of negotiation, do you mean the negotiations which are going on now on how the backstop might be interpreted or what?

**David Henig:** I am thinking of in the future to prevent ourselves being trapped. I do not regard this as a trap; I regard it as an ongoing negotiation.

**Dr Katy Hayward:** It is worth differentiating the various elements of the protocol. There are parts that will come into play if it is all approved regardless, bearing in mind that we need to maintain north-south co-operation and protect the Good Friday agreement. That is core, and we must not forget that. Then there are basically two backstops: all the UK being in a customs territory with the EU and Northern Ireland being effectively part of the single market for certain areas. When language about the UK being trapped indefinitely is used, that is specifically in relation to the customs union, which, as David noted, was the UK’s request. That came particularly as a result of concerns expressed from



Northern Ireland, including from the DUP, that customs checks would have to take place between Northern Ireland and GB.

Then we have the sort of Catch-22 that has not been properly spelled out, which is that, if the UK is not in a customs territory with the EU, as Marie said, there will have to be customs checks at the Irish border. This is why the all-UK customs union came to the fore. The EU is least happy with that aspect of the backstop. It gives the UK indefinite tariff-free and quota-free access to the EU, which could be seen to be a remarkable achievement and offer. If the UK were no longer to wish that to be the case—it is an unusual position—there is no reason to think that the EU would not be willing to look at it again. As I mentioned, it is in the withdrawal agreement and the protocol that the UK could trigger a review process to step down not necessarily all of the protocol but parts of the protocol, i.e. to say that they should disapply. That is in the withdrawal agreement already.

**The Chairman:** Either party may do so, I think.

**Dr Katy Hayward:** Absolutely. It is up to them to do so. Then it goes to the joint committee.

**Marie Demetriou QC:** It is interesting because the preamble to the protocol and Article 1.4 say that this is not intended to be a permanent arrangement but, when you look at the actual provisions, it is plainly not framed as a temporary arrangement in the sense that it is stated that it applies if no agreement is reached to supersede it. What you take from that is that if no agreement is reached to supersede it, it simply remains in place. There is a review mechanism, which can be triggered by either side, as we have just said, so if either side takes the view that the protocol is no longer necessary, a review mechanism is triggered, but essentially it has to be a consensual agreement to stop the backstop. That is essentially what the Attorney-General said in the advice that was disclosed, and I agree with that as a matter of law.

A subsequent question arises on which the Attorney-General has also expressed a view, in particular I think there has been some suggestion that because this protocol has essentially been agreed pursuant to Article 50, and Article 50 is all about withdrawal, if the backstop goes on for a long period, there may be some point in time where it becomes unlawful because it has transmorphed into a permanent arrangement. I have heard suggestions of that, including from the Attorney-General. I do not share that view, because the protocol is lawful now under Article 50. There is a mechanism for it to be reviewed by the Court of Justice. Other international agreements have been reviewed by the Court of Justice before they have come into force—there is a mechanism for that to happen—but it has not happened here. Assuming it is lawful now, I do not think there is any way it can at some vague point in the future suddenly become unlawful. Either it is lawful or it is not. I just thought I would add that point because I have heard it being made.

**Victoria Hewson:** I agree with David that the protocol backstop is not ready to go. That is acknowledged in the text. It is envisaged that the joint committee will make further decisions to operationalise the rules for trade, which will be a challenging and complex task. My worry on that is twofold. First, if they were to manage to get it up and running and operationalised, it will have been such a complex and disruptive task that the appetite to get out of it again after having gone through all of that would, I imagine, be quite low on the part of affected businesses. Whether that constitutes being trapped, and I probably would not use that word, it would become—

**Lord Jay of Ewelme:** I used it in inverted commas.

**Victoria Hewson:** It would become the new status quo and forces tend to solidify around that. The other aspect is that in a sense because it would be so disruptive and quite destabilising, the effort to avoid triggering the backstop at all could turn out to be essentially taking the terms of the backstop and agreeing that as the future relationship. In fact, what is in the political declaration is not too far away from that. I think that paragraph 23 was one of the reasons why Dominic Raab resigned as Secretary of State. It envisages customs arrangements that build on the single customs territory and the regulatory side says that the UK will consider aligning with EU regulations. Actually, the future relationship track is not that far away from the track that the backstop is on anyway, so in an effort to avoid triggering the backstop, as someone who supports leaving the customs union and embarking on an independent trade policy, I would be very worried that in order to avert the backstop we essentially formalise it as the permanent future relationship.

**Lord Jay of Ewelme:** Thank you for that. Some people talk about the backstop as being permanent and some talk about it as indeterminate. Is there any difference between the two?

**Marie Demetriou QC:** I think that “permanent” means that you can foresee now that it is a permanent arrangement unless some form of termination provision is triggered. I do not think that it is permanent in that sense. There are international agreements which are intended to be permanent. For example, the EU arrangement is permanent unless an exodus is triggered under Article 50. This arrangement provides a means for it to be terminated, which is if a future agreement that supersedes it is agreed. I think that it is an indefinite arrangement and is not intended to be permanent. However, the difficulty is that there is no hard-edged way of terminating it short of reaching another agreement, and that depends on both sides agreeing.

**The Chairman:** Are there any other comments? If not, perhaps we can move on to the generic area of the implications for Northern Ireland specifically.

**Baroness Neville-Rolfe:** I want to probe a little more on what you have just been saying. Let us assume that the backstop is open-ended. Does

that affect our leverage overall in negotiations over the future trade agreement between the UK and the EU 27? Once we have implemented the withdrawal agreement we will be committed to £39 billion and various freedoms being given to EU citizens. I think Mr Macron has suggested that the backstop would give him leverage. Somebody suggested that we would have other ongoing levers in future negotiations, and obviously I would be interested to know what they would be. Would they be money, fish, trade agreements or whatever? I am not sure that the review clause you mentioned quite works, because that has to be by agreement. It goes to the joint committee and then it has to be agreed. My worry is how you agree something if you are “trapped”, which I think was the original question.

**David Henig:** Victoria might disagree with me, but my take is that in the negotiations we will need to find the areas of leverage that we have.

**Baroness Falkner of Margravine:** Could you give some examples?

**David Henig:** Fish has been mentioned, but I am going to mention financial services. The City, sitting just outside the EU as it will be, as a frankly enormous offshore financial centre is a potentially systemic risk to the EU. There are fears in the EU about what we might do in the future with regard to our trade or our regulatory policies. We are going to be able to make more regulatory changes than we would have been able to as members of the EU. Whatever we decide to do with services is something I am not exactly sure about. I have not thought through all the areas of leverage, but I hope that the Government have thought through many more of the areas of leverage that we will have. That is because I find it difficult to see this as a sort of negotiation where we threaten the EU. That is not a negotiation that we are likely to win, whereas a negotiation where we say, “Here are some things that we think you are going to be concerned about or you are going to need from us”—security is sometimes mentioned in this context as well—is where we are more likely to find a mutual benefit. Normally in trade talks what you are trying to do is find a mutual benefit, not to threaten each other, which is when the biggest party wins.

**Victoria Hewson:** I am heartened to hear that from David, because my fear had been somewhat the opposite in what the backstop delivers for Great Britain as opposed to Northern Ireland. The backstop delivers a customs union, and that is really all. There is nothing for regulatory recognition or for services, and nor is there anything on services for Northern Ireland. My fear is that going into the future relationship, frankly, we are going to be pretty desperate for some regulatory recognition and services access. I fear that having us in a customs union safely tucked away and not able to liberalise with the rest of the world while also having to plead for mutual recognition on regulations, services access, data adequacy and so on does not put us in a strong position. However, I am pleased to hear that David thinks that there are some things that we can fix on.

**David Henig:** I want to be plain about that. I have never said that I thought the withdrawal agreement and the political declaration were, taken together, a particularly good deal. They may be better than no deal, and personally I think that they are, but there has been far too little scrutiny of the content of the withdrawal agreement and where it is going to leave us. I think that it is being scrutinised now.

**The Chairman:** Does anyone else on the panel have a comment to make?

**Marie Demetriou QC:** I want to add one short point, which is that the political declaration leaves things open in terms of the future relationship and so there is a wide spectrum of possibilities that could be agreed which would be consistent with the political declaration. A point to note in terms of the negotiating position, which is more of a political question than a legal one, is that I would assume that the EU would in principle be happier than the UK would be to let the backstop arrangement trundle along because it does not have much to lose. However, one would imagine that there would be a political impetus in the UK to try to stop a position where Northern Ireland is being treated differently from the rest of the United Kingdom. That would seem to be an obvious skew to the respective negotiating positions.

**Dr Katy Hayward:** It is worth noting that there is a risk to the EU in having Northern Ireland in a very distinct position by effectively allowing it to be part of the single market as a non-member state. We should acknowledge that there is a risk which has been swallowed by the rest of the EU in the very unusual arrangement that has been proposed.

**The Chairman:** Baroness Falkner, I believe that you had a point to make.

**Baroness Falkner of Margravine:** I would be very happy to have another discussion with you about the extent to which the level playing field provisions in the withdrawal agreement circumscribe the ability to do anything with financial services, but this is not the time or the place. For here and now, I have another question. Given that the leverage is ephemeral, do you believe that perhaps we should not have sequenced the exit settlement in the way that we did, but should have left more of that for the future agreement, set it out in tranches, devised a different level of payment with review clauses in the middle, or anything like that? Would that have been a better negotiation for a negotiator?

**David Henig:** I am not sure that it is about the sequencing. In a negotiation you see where the red lines are and you end up with a position. Any negotiator will do that, but the skill is in finding what I would call a comfortable landing zone and making sure that it contains many of the things that you want to see. My concern is that we do not appear to have that—we do not appear to have done it, for example, in the area of services. It feels like an uncomfortable landing zone for the UK. We can kind of live with it, but it should have been better; that is the way I feel about it. Is that sequencing? I am not sure.

**The Chairman:** We will now turn the Committee's attention to the implications for Northern Ireland. We have a series of lines of questioning on this. I will ask Lord Cromwell to lead. He has indicated to me that he needs to leave in due course, so do not take his disappearance as derogatory to anything you say. He will have the first go at this and I will follow up on any points.

Q4 **Lord Cromwell:** Please do not be offended if I run away; I have a train to catch. I will award points for brevity. On any matter relating to Ireland, I always start by saying, "My name is Cromwell, but not that one". To put the record straight, I am no relation at all. Let us consider what this means in practice for the movement of people, goods and services across the borders from Northern Ireland to Great Britain, Northern Ireland to Ireland and, indeed, Northern Ireland to the other 26 states. What practical differences will people near the land border or across the Irish Sea notice as a result of this?

**Victoria Hewson:** In the interests of brevity I will say that, on people, little or no change is intended. The common travel area will continue. The only difference will be that European EEA citizens who travel to Ireland and then travel onward to Northern Ireland will no longer be allowed to work as of right and will need to go through whatever our new immigration and work permits system will be.

In relation to services, Northern Ireland will be a third country to the Republic, even in the backstop. Services will need some attention in the backstop: that was not thought to impact on the hard border as such. Happily, however, there are lots of things that Ireland can do independently. Even if we are not successful in negotiating this on an EU-wide basis, it is open to Ireland independently as a member state to continue to recognise qualifications and, often, other regulatory matters around services. For example, with respect to the health system and the free movement of doctors and nurses, which has been a big concern, it should be possible for Ireland to continue to recognise qualifications. You do not need an EU-wide agreement to do that. Similarly with haulage, Northern Ireland would be a third country, so Northern Irish haulage operators would no longer as a matter of right be entitled to operate across borders. But again, as I understand it, it is possible for member states to agree their own bilateral arrangements for point-to-point haulage. For the moment, to maintain unity, the EU is asking member states not to do that. But in the backstop, or potentially in a no-deal situation, these are some of the things that could be accommodated bilaterally if Ireland wished to do so.

On goods moving between Northern Ireland and Ireland, we should notice no difference under the backstop. That is the intention. There will be no physical infrastructure and no additional checks and controls. Northern Ireland will remain part of the European Union customs territory and the European Union customs code, the regulations for customs processing will still apply and, broadly speaking, all the regulations around goods, standards and regulations will still apply, in Northern Ireland. This means that, between Great Britain and Northern Ireland,

there will be new barriers. They will not be fiscal barriers in respect of actual tariffs; the idea is that things will be tariff and quota free because we are all in the overarching single customs territory together. However, there will be new formalities. A movement certificate will be required to move goods from Great Britain to Northern Ireland. This is a new formality. The intention is that the approach will be worked out in the course of the transition period but, as it stands, there will be a piece of paper with a physical stamp from the customs authority. That will be quite burdensome for goods travelling between Great Britain and Northern Ireland and I suspect—although it is not entirely clear to me in the text—that goods from Northern Ireland to Great Britain will also need to be accompanied by the movement certificate.

Finally, on regulations between Northern Ireland and Great Britain, the intention is for no regulatory barriers; there should be complete alignment and recognition of regulations so that goods can continue to be sent from Northern Ireland to Great Britain. But, when it comes to the other way around, Great Britain will be a third country to Northern Ireland, so there will be checks and controls at the ports and airports on goods coming from Great Britain to Northern Ireland. I hope that that was not too quick.

**The Chairman:** A micro-point on this, and then Lord Cromwell will come back. Are there issues about rules of origin as well, vis-à-vis Northern Ireland and GB?

**Victoria Hewson:** No, there are not. This is why we have the movement certificate and why we have a customs union as opposed to a free trade agreement.

**Lord Cromwell:** Well done on points for brevity and precision. You anticipated my second point, which concerned movement between Great Britain and Northern Ireland and vice versa—the compare and contrast exam question. Can you give a flavour of the additional checks, including phytosanitary checks? How intensive will they be compared to now?

**Victoria Hewson:** At the moment, live animals are subject to checks and controls when they move from Great Britain to Northern Ireland. This is reasonably comprehensive, comprising checks of 100% of documentation and a more risk-based physical examination of the animals. That will broadly continue, although they might need to up the intensity. Those checks will now be expanded to cover all food and animal products on a third-country basis, unless something better is agreed. At the moment, they would have to have 100% documentary checks and a high level of physical checks, especially on meat and animal products but broadly on all food products. Other industrial goods would also need to be checked on a full third-country basis, which is usually much lighter. I notice that the Commission's recently produced guidance slides indicate that it expects most industrial goods not to be checked at the ports coming in to Northern Ireland. These would be dispersed in the market, but they expect much fuller checks on food and animal products.

**Lord Cromwell:** Thank you. Does anybody want to comment or add to that?

**David Henig:** Yes, I would add a couple of points. On the point just made, the Commission's guidance, which I think was published yesterday, includes a slide, which I commend to the Committee. It says what checks are done at the border—it also refers to "Financial Controls" and then "Market Surveillance". It is very clearly laid out and Victoria has covered most of it, but there are some odd products which get tested at borders. Even I am just learning that 10% of plastic kitchenware from China is checked at borders. Who knew about that?

I want to add a more significant point on services. There is a bit of ambiguity, as I read it, in whether there should be an all-Ireland market in services. At the moment, a service provider from Northern Ireland could set up in the Republic of Ireland. It is not clear under the backstop whether that would still be allowed, but it seems to me, on one reading of the common travel area, that it should still be. There is what is called a right to work within it and, if that is not allowed, there will be quite an impact on all-Ireland trade. This is if a company from the north cannot provide services in the Republic. That area will probably need to be addressed.

**Dr Katy Hayward:** I have a couple of points on the movement of goods from GB into Northern Ireland. The unilateral commitments paper published by the Government on 9 January included a note saying that the Government would commit to not diverging on rules that are "covered by the Protocol" for avoiding a hard Irish border, which is potentially huge. It is there to avoid the need for those regulatory checks between GB and Northern Ireland; there are implications for the wider UK in that, and I have not heard much discussion of it elsewhere. Also on the question of goods moving from GB into Northern Ireland, there is a report in the *Guardian* this morning based on statistics that have been available for some time from the Northern Ireland Statistics and Research Agency. It has been significant to get this data, because it has not had to be quantified in the past. It looks at the number of goods vehicles that cross from GB into Northern Ireland: there are 22 sailings a day and 70% of them contain food products. In theory, they would be likely to be subject to checks under the backstop. Whittling down, going on the basis of having the same criteria that currently apply to checks for goods coming from New Zealand, for example, there is a 1% rate, which equates to nine lorries a day being checked.

**Victoria Hewson:** And all documentation.

**Dr Katy Hayward:** But they have documentation anyway, given that they are crossing on the ferries. Bear in mind that there are five times more crossings of goods vehicles across the Irish land border than across the Irish Sea border, and 60% of those crossing the Irish Sea are shunted on and off by tugs—they are not accompanied by drivers. The implications of the checks are much less than they are for the Irish land border.

**The Chairman:** Just for the record, a lot of the crossings on the Irish land border will be agricultural goods passing. We have taken evidence on earlier occasions, as you know, about the integration of agriculture and agri-food businesses across the border and it would be a significant proportion of those. It will not make much difference to them, or it need not.

**Dr Katy Hayward:** If there was no deal and we did not have the backstop, they would have to go through border inspection posts for those checks.

**The Chairman:** But with a backstop—

**Dr Katy Hayward:** With a backstop, there should not be any.

**Marie Demetriou QC:** Looking forward to goods, briefly, particularly the movement of goods between Great Britain and Northern Ireland, it is useful to break that down into two categories. Potentially, there are checks that are all about making sure that the United Kingdom has properly applied the EU customs rules or their equivalents. That is what the UK movement certificate is all about and it will need verifying. But potentially there is another category of checks, which is all about ensuring that goods which come into Northern Ireland and hence the whole of the EU comply with other EU regulatory standards. We know that Northern Ireland has to comply with those standards because they are set out in the protocol, but the protocol does not require the rest of the United Kingdom to comply with those standards—although it has been said that they will do so to avoid this disparity. But if the United Kingdom chooses to diverge, there are potentially a whole bunch of other checks that could be carried out. If the United Kingdom decides that it wants to diverge from the single market rules, for example by allowing produce which is not permissible in the EU—chlorinated chicken or whatever—to circulate, then the EU would want to take steps to prevent those products coming in. That would necessitate additional checks in the Northern Irish ports.

One further legal point is on the difference in travel between Great Britain and Northern Ireland, and the reverse. You can see that in the protocol at Article 7, which says: "Nothing ... shall prevent the United Kingdom from ensuring unfettered ... access for goods moving from Northern Ireland" to Great Britain. Potentially, unless the United Kingdom wants to place barriers in the way of such travel, there is no reason to have checks in this direction. But in the other direction there is simply a commitment to use best endeavours to reduce the checks, so there is a clear disparity or lack of symmetry between the two sets of rules.

**The Chairman:** That is a good moment for Lord Cromwell to get his train, thank you, and to move on seamlessly to the governance arrangements for this.

Q5 **Lord Risby:** Under the umbrella of the Northern Ireland protocol, we just want to look at what arrangements are likely to operate in practice. For



example, there is the joint committee; there is a specialist committee between north and south; finally, there is a joint consultative working group. Is it possible to shed any light on how they might co-exist and operate under this umbrella?

**Dr Katy Hayward:** You have noted the three main institutions. The joint committee would be responsible for managing the overall implementation of the withdrawal agreement, including the protocol. We can assume that it would involve EU and UK representation at ministerial level. It would be able to adopt binding decisions and so on. At the moment, it is due to meet minimally—once a year—but if a review process is triggered, for example, we could expect it to meet more often.

The specialised committee is of course one of six set up by the withdrawal agreement. It would be the focus of the work in relation to the implementation of the protocol on Ireland/Northern Ireland. Again, the withdrawal agreement talks about it meeting once a year, but we could expect it to meet frequently, perhaps monthly. It would be the main vehicle for dialogue and UK input—but particularly Northern Ireland-level input, which I will come back to in a second. It is meant to facilitate and consider proposals, so we could imagine that input from the 1998 agreement institutions would be quite critical for the work of this specialised committee. It would basically keep under constant review the operation of the protocol, including in relation to north-south co-operation. For example, if new EU Acts might be relevant they would be considered by that specialised committee first. It would be expected that the European Commission and senior government officials would attend this committee.

Finally, we have the very unusual institution of the joint consultative working group, which is unprecedented in the EU's relationships with non-EU member states. It is a novelty, so there is much potential here to be quite flexible and have recognition of the unique circumstances of Northern Ireland. In theory, it can be primarily for mutual consultation and information exchange. If we were ambitious, from a Northern Ireland perspective, there is potential for a decision-shaping role in that it would be the first point at which potential new legislation or the implications of EU legislation, or indeed legislation within Northern Ireland, could be considered and discussed in some detail. There is a lot of potential here for expert input—sectoral input, civic input and so on—to discussions that would be relevant for Northern Ireland.

As regards where Northern Ireland could have a direct input, we could talk in more detail about this but, putting it simply, that is up to the UK. The rules and procedures for these institutions are not yet set, of course. They are still to be negotiated and it is a domestic concern of the UK as to what it allows, enables or facilitates as representation from Northern Ireland. We have seen some precursors for this in the unilateral commitments paper of 9 January. One might argue that it is not ambitious enough; actually, there is more scope there for including business communities or the civic community as well in these institutions.

**Lord Risby:** Thank you. I realise it is difficult to define their role because they have not been defined in a comprehensive way. Of course, this is a devolved Administration and we do not have a Northern Ireland Assembly, yet we have a proposition put forward by the British Government that it should have a role in triggering the backstop or getting involved. I realise that this is murky territory, but could you comment on how you think that might work? We have to have this thing functioning in the first place, of course.

**Dr Katy Hayward:** I know a concern has been expressed relating to the democratic deficit that may arise from these institutions. The potential democratic deficit that already exists in Northern Ireland from the lack of a devolved Executive or Assembly might be noted. As you have noted, what the UK Government have put forward assumes the existence of the Assembly and Executive. It will be important for them to allow for various different scenarios, such as direct rule or what we have at the moment, which is dysfunctional devolution, if you like, as well as properly functioning devolution, which it assumes. On what is promised in that paper: it talks about mandatory consultation and seeking agreement from the Assembly. There is a difference between seeking agreement and securing it. Of course, the UK Government would not want to have their hands tied behind their back by a devolved Assembly in terms of international obligations, particularly by one or other party in an Assembly. There would have to be a careful balance.

There is a lot of work to be done. I am involved in some work at the moment with colleagues in Northern Ireland trying to consider how you might get Northern Ireland input. For example, if you wanted to be ambitious you could ask for the joint committee to allow the First Minister and Deputy First Minister in Northern Ireland to be present and to have speaking rights if issues relating to Northern Ireland are being discussed. Similarly, if there is no devolved Administration, senior officials, such as the head of the Northern Ireland Civil Service, should have speaking rights.

**Lord Risby:** What you are saying is that there are all sorts of domestic reasons, if that is the right word, for the Assembly not sitting that have nothing to do with Brexit. Say they could not get agreement on the language or whatever these issues are: there could be some functioning of the previous committees that you were talking about and there could be some input, as there is at the moment, from officials, for example, as a way to try to address the deficit as a devolved Administration.

**Dr Katy Hayward:** Yes. We would need to think about how to address that concern about democratic deficit. Its position might be informed by wider society in Northern Ireland.

**The Chairman:** I am just wondering whether there is any formal input on the EU side from these committee meetings. Presumably there would be. They would be reported back and taken into account by the EU 27.

**Dr Katy Hayward:** If the joint committee works in the same way as similar committees for the EEA, then the EU would agree its position in advance, normally through qualified majority voting, before it comes to the joint committee so that when decisions are made it is confident of representing the full EU. It is worth noting that it is unlikely to take any position on this that contravenes the wishes of the Irish Government and the Irish. That will continue to be a consideration for it all the way through in the operation of the protocol—that Ireland's wishes are represented and taken into consideration.

**Lord Liddle:** Would Ireland be formally represented on these committees? Would the Republic be there?

**Dr Katy Hayward:** The Council has already decided that it would allow Ireland to be represented in meetings of the specialised committee on issues relating to the implementation of the protocol on request. That has not been spelled out in detail, but it has made that commitment to Ireland. Similarly, there is scope for the UK to do the same vis-à-vis Northern Ireland. The unilateral commitments paper is a step in that direction.

**The Chairman:** I am just trying to summarise what I am hearing about this. As I read it, the joint committee and the other specialist committee structures could consider issues on quite a wide spectrum of matters. Absent the functioning of the Northern Ireland Assembly, there would be ways that Northern Ireland opinion and representative opinion in Ireland would also be represented. I am not trying to read anything too prescriptive into that at this stage, but is a reasonable summary of where we are that solutions could be found to those, but it is early days yet?

**Dr Katy Hayward:** Yes. I would express slight concern, given the lack of a sitting Executive and Assembly at the moment, setting aside the political disagreements about Brexit, that an opportunity might be missed for Northern Ireland in terms of proper representation. I used the word "ambitious" advisedly; the EU recognises the unique circumstances of the island of Ireland and of Northern Ireland in particular. These institutions are unusual, particularly the joint consultative working group. The question is: who is putting this forward from Northern Ireland and able to say, "We should have a seat at the table and we should have direct input"?

**The Chairman:** I think Lord Risby has to leave in a minute, but again it is no reflection on the quality of the answers. Does anyone want to add to that?

**Victoria Hewson:** I would add one point about the joint committees. This is a more general point and not Northern Ireland specific, although it will certainly influence the Northern Ireland issues. The joint committee has quite significant powers, certainly in the early stages, including to rewrite parts of the agreement. It meets in private and its documentation is confidential. Given the conduct of the negotiations so far, in particular on the United Kingdom side, has not exactly been a shining example of

transparency, that is something we need to take particular care over, should this all come into effect.

**The Chairman:** We touched on that a little in our report. Indeed, it is a matter of more general concern for the Committee relating to the operation of joint committees under the withdrawal agreement, for example, but it is right to put it in.

**Q6 Lord Soley:** I must start with an apology too because I have a meeting in the House of Commons, which, believe it or not, does other things besides Brexit at the moment. One of them is to do with me. I have to be there, so my apologies, too. This very much follows on from what has just been discussed: what is your assessment of the compatibility of the backstop with the Good Friday agreement? That touches on what you were saying about the democratic deficit and how that will be addressed. Could you tell us about that in relation to the Good Friday agreement? I am sure that I do not need to tell you that there is in the background a possible legal action built on other examples, such as Gibraltar. I think that the Earl of Kinnoull might want to follow that up. Could you answer that question on the compatibility with the Good Friday agreement?

**Dr Katy Hayward:** I will try to be as succinct as possible. The withdrawal agreement states that it respects the "State functions and territorial integrity of the United Kingdom", which is an interesting phrase that it repeats and has obviously come from the UK Government. It says that this is "without prejudice to the provisions of the 1998 Agreement", particularly in relation to the constitutional status of Northern Ireland. The Attorney-General's advice on 3 December also noted that the protocol does not affect any provision of the Good Friday agreement or the constitutional status of Northern Ireland. Particular concerns that have been raised on the matter of whether the backstop or protocol contravene the 1998 agreement arise in relation to the principle of consent.

There are two aspects to this. The primary interpretation of the principle of consent in the Good Friday/ Belfast agreement is that Northern Ireland's constitutional status will not change unless a majority of people in Northern Ireland wish it to and that that expression is made through a referendum as called by the Secretary of State for Northern Ireland. We know from the McCord case, which was ultimately decided on by the Supreme Court, that Brexit does not change the constitutional status of Northern Ireland and does not breach the principle of consent in those terms. That is relevant to some of this discussion now, in relation to the protocol.

Other concerns that arise regarding the backstop relate to north-south co-operation. There is some concern that it may expand without proper scrutiny or against the wishes of certain communities in Northern Ireland. It is clear that the purpose of the backstop is to maintain north-south co-operation, not to expand it. There is no intention to expand the scope of the protocol. If that were to take place, it would have to go before the joint committee. The UK Government are being very clear, relating to

something we mentioned before, that they would consult the Northern Ireland Assembly and Executive on that, and the 1998 agreement institutions.

Another interpretation in relation to consent is that of parallel consent. This is a principle from the Northern Ireland Act that you need both unionist and nationalist agreement to certain aspects of devolved legislation. This is not really formally required for something such as the protocol, which is an international agreement, but the UK Government, in the 9 January paper, say that they would look for cross-community consent if there were to be an expansion of aspects covered by the protocol.

My overall assessment, having looked at it in detail and having close knowledge of the Good Friday/ Belfast agreement, is that it does not contravene the Belfast/ Good Friday agreement—specifically that it does not breach the principle of consent and it does not sneakily expand what is already in place for north-south co-operation.

**Lord Soley:** In Northern Ireland, European Union rules would still have to be implemented and the argument has been that the democratic deficit is that Northern Ireland will no longer be represented in the Parliament. That was the Gibraltar issue, was it not?

**Dr Katy Hayward:** This is something that has primarily been raised by Sinn Féin and nationalist communities, making the point that not least because there will continue to be EU citizens in Northern Ireland—a growing number—there should be representation in the European Parliament. This is really a decision for the Irish Government to make and at the moment they have not done that. Instead, this comes back to the question of what use can be made of those institutions—the specialised committee, in particular—vis-à-vis Northern Ireland. More to the point, it should focus us on the question of what happens within the UK when it comes to representation for the various devolved Administrations in the UK's future relationship with the EU.

**Lord Soley:** With Gibraltar, that was got round by making Gibraltar part of the South West England constituency. Are there any lessons from that? It is rather worrying, one would have thought, but that is the way it was dealt with.

**Marie Demetriou QC:** You are referring to the Matthews and United Kingdom case that went before the Strasbourg court, which held that there was a breach of the convention because essentially Gibraltar citizens did not have a right in European elections. The argument applying that principle to this particular situation would run as follows: the protocol requires, in Annex 5, Northern Ireland to comply with a whole raft of EU rules; not only that, the protocol provides that that is not just those rules as originally enacted but also as amended and as replaced within the broad scope of those rules. The argument would be that the EU will in the future be legislating in a manner that fundamentally affects Northern Ireland but Northern Irish citizens will not

be allowed to elect MEPs, and so there will be a democratic deficit in that sense. The question is whether the ruling in *Matthews* would apply in the same way to this situation, so as to render that contrary to the European Convention on Human Rights. It is a tricky question, and no doubt somebody will try to argue it. I think they are already canvassing arguing it now.

For what it is worth, in my view there is a quite fundamental difference between the two sets of circumstances. A key difference is that in the *Matthews* case it was exactly as you say—open to the United Kingdom to remedy the situation so as to give the Gibraltar citizens a vote. That was within the power of the United Kingdom Government. In this situation it would not be within the power of the United Kingdom to remedy that position, because it would be required by the protocol—by the agreement that it had signed. There is another distinction, which is that the Government representing the people of Northern Ireland—the United Kingdom Government—will have, by definition, entered into this agreement. In a sense, that is the expression of the democratic will of the Northern Irish people. In a similar way, it is not so very different from the people of Norway or Ukraine having to comply with EU rules but not having a voice in the determination of them. That is the key difference between this case and *Matthews*, which is not to say that the argument will not be run.

**Lord Soley:** Thank you very much indeed, and I apologise that I have to move on.

**Victoria Hewson:** I have a couple of points. I do not entirely share Katy's view that there are no violations of the Belfast/ Good Friday agreement. Principle of consent is certainly arguable, but the new interactions of the institutions that will support the backstop, should it come into effect, will have definite effects on how the institutions of the Belfast agreement would work. There would not be any way around that. Regarding the democratic aspect and the principle of consent, it is as much the fact that the Government of Ireland and the Irish voters south of the border will have more say on those particular rules and regulations than the people in Northern Ireland will have themselves, which is a very sensitive subject for at least half the community.

The part of the Belfast agreement that is particularly neglected is the strand 3 intergovernmental side, between the Westminster Government and Dublin, which is supposed to discuss matters of mutual interest between the entirety of the islands and seek to progress matters between them. This has clearly been completely written out not only of the Article 50 negotiations but the whole way that the backstop will work going forward.

I will throw another one into the mix: the Act of Union 1800, which I am led to believe is still good law, (which has effects with respect to Peers and Irish Peers in particular). It essentially provides for free trade between Great Britain and what is now Northern Ireland, and in particular prohibits different treatment of the citizens of Northern Ireland in treaties

with a foreign power. That is an especially interesting challenge that will be part of that legal action you referred to.

**The Earl of Kinnoull:** It strikes me that implied repeal might come into play. There is a third ball. You have answered the first two balls—the consent ball and the Matthews ball—comprehensively, so thank you. The third ball runs something like this: the current iteration of the backstop is a non-runner. We know that it is a non-runner because it has been heavily defeated and, accordingly, if it is unamended, the most likely thing that will happen is no deal. No deal is extremely damaging to the whole of the island of Ireland because it is damaging economically to the south and the north, and that in itself is completely against the spirit and some of the terms of the Good Friday package of agreements. Therefore, the current iteration of the backstop is not compatible with those agreements. It is a less firm legal point that was made in some of the debates that we had over the withdrawal agreement and I wonder whether you have any brief comment on that.

**Dr Katy Hayward:** There is a risk in that of being seen to use Northern Ireland and the peace process as collateral.

**The Chairman:** Thank you. I think that we should move on. Reflecting on some of this, and on a conversation that I had last week separately, I think that I am right in saying—perhaps you need no more than assent or otherwise—that there is potential for discrimination issues. Given that members of one community, typically, but not always, will identify with EU citizenship or Irish citizenship and others will not, there is potential for discrimination between those two vis-à-vis their representation, because one will say, “We have others representing us”. Equally those from, shall we say, the nationalist community who identify with continuing EU citizenship through their Irish citizenship may say that, if they are resident in Northern Ireland, they may not have exactly the same regime as their counterparts south of the border. Those are both issues which still have the potential to be opened up in due course, are they not? I am not seeking trouble; we have found enough difficulties as it is. You are smiling, but are you acknowledging that they are issues at least of argument?

**Dr Katy Hayward:** A profound concern is that it makes differences between British and Irish more substantive. The good thing about the environment created by the agreement, especially in relation to strand 3 on the relationship between Britain and Ireland, is that it enabled a majority of people in Northern Ireland to feel both British and Irish. All of a sudden now we have substantive differences between British and Irish. Which passport you have makes a difference not just in symbolic terms; it makes a difference in practical terms, and politically that is going to be exploited.

**David Henig:** I should probably draw attention to the fact that last week I co-authored an article that more or less said that these are concerns and that we should be finding a new pathway for discussions on many of

these points. It seems that almost the whole of Brexit has come to rest on Northern Ireland and that does not exactly seem right in any sense.

**Lord Liddle:** Could I just make a point? I read an article by an eminent Irish commentator, whose name I cannot remember, contrasting the situation of no deal with a situation where a unilateral exit for the UK was omitted from the Irish backstop. His argument was that if the EU imposed the unilateral option on Ireland that would mean a hard border for ever because the Republic would have no leverage over the situation. If there is no deal, there would be a chaotic situation and something would then have to be negotiated, which would be a better outcome for the Republic. Does that make any sense to you, or am I totally confused?

**Victoria Hewson:** The idea would be that in a no deal no one genuinely believes that troops would be deployed and watchtowers would be built. Therefore it would be chaotic, but it would be managed as HMRC is saying trade would be with the rest of Europe; that is, flow would be prioritised over compliance. You could do something like that at the Irish border in the short term. From what I understand the argument to be, both sides would then be incentivised to come back to the table and agree something more stable and permanent. I think there is something to that. I would not particularly relish the initial disorderly exit. The other side of that is with the backstop. You suggested there would always be a hard border, but with the backstop there would always be a backstop looming over the UK's future legal decisions and trade policy decisions in perpetuity. That is why so many people have such strong views about it.

**The Chairman:** On that note, we might move on to the wider UK implications. We have had a useful rehearsal of all those issues, but I am conscious that perhaps you can spare us half an hour of your time to look at the other issues. I think we would like to look next at the implications for the UK's external trade policy.

Q7 **Baroness Falkner of Margravine:** This is a good point to pick up what Ms Hewson just pointed out. Mr Henig, you did not much care for the word "trapped". My question will directly allude to that. To what extent is the UK going to be trapped ad infinitum in the EU's single customs territory as provided for in the backstop and—using polite words—to what extent will the UK's trade autonomy be hindered? I would use slightly stronger language.

**David Henig:** Where I start from on this is that trade policy is a spectrum of things, of which free trade agreements and being able to vary tariffs are only one part.

**Baroness Falkner of Margravine:** Shall we say, broadly, "the EU's common commercial policy"? Shall we use that for shorthand?

**David Henig:** I am happy to use "common commercial policy". It is one part of trade agreements. Trade policy starts from, frankly, helping people in disputes where exporters are struggling to get their goods in or other countries are not following the rules. I suggest that we will see a lot



more of that after Brexit. We then have the ability to vary tariffs, change regulations and make agreements on services, issues of trade defence, trade remedies and things that you can do at the World Trade Organisation. There are a lot of things.

The single customs territory will take some of that away from the UK. Notably, we will not be able to set our own tariffs and will be bound by the common commercial policy. That is going to be a drawback. First, we are going to need to mirror all the existing EU free trade agreements—that is what we see from Turkey, which has mirrored some, but not all, of them—in order to ensure that we gain the tariff preferences that those countries will have of us. Then we will have to keep that going for new EU negotiations, such as those with the USA, New Zealand or Mercosur, if that ever comes to pass. We will not be able to make new free trade agreements with the likes of the United States, so that will be a drawback. On the other hand, the Secretary of State, Liam Fox, has made digital services a priority. The most promising avenue for that, which is not terribly promising, is that the WTO was the trade in services agreement and we would have full freedom to try to restart that. Arguably, that is the biggest single thing the UK could do. If we could make any difference to making that happen, it would have a positive impact on UK trade.

Are we trapped? In one sense, yes, we will have less leverage to achieve what we want to achieve. On the other hand, since we do not yet know what we want to achieve, at the moment we do not know the extent to which that is going to make a big difference.

**Baroness Falkner of Margravine:** What are the examples of FTAs that are only trade in services? GATT is not very comprehensive, is it?

**David Henig:** It is a services agreement and it is comprehensive, if not particularly ambitious. That is the way I would put it, but it was the first of the global agreements in services. The trade in services agreement was to be the second but it is effectively in cold storage over a dispute between the EU and the US. There are not comprehensive agreements in services, but there is no reason why there could not be. There are individual agreements in services. We have already mentioned mutual recognition of qualifications. Services barriers are typically tricky to remove in free trade agreements anyway because they are often about licences and qualifications. You could have individual deals on that. We have something in services that is very attractive to other countries, which is the right to come and work here. That could have its own tricky implications, but we have leverage there. I would argue that we lose a part of our ability on trade policy but maintain a certain set of abilities. The analysis that you would have to do is what we were hoping to do, whether we could still do some of that and which bits would be lost. Undoubtedly we will lose some ability. Do we gain more benefit from, say, still being part of an EU-Japan deal?

**Baroness Falkner of Margravine:** For clarification, we would not be able to do any FTAs that trade in goods.

**David Henig:** We would be able to, but they would need to mirror the EU's trade in goods.

**Victoria Hewson:** We would have to follow it around.

**Baroness Falkner of Margravine:** So would we just shadow whatever trade deals the EU does?

**Victoria Hewson:** We would have to ask the other country to let us join in. They would not be obliged to. They would get all of the benefits of market access to our market but the EU could not compel them to reciprocate for our benefit.

**Baroness Falkner of Margravine:** There is one other thing for my information. We are going to get some questions about Turkey so I will try not to use it as an example, but the way I understand it is that under this system, if it were to happen, if the EU made an FTA with another country—naturally the UK would not be present because it would be a third country—the UK would have to apply all the access rules of that EU trade agreement with a future third country and it would need to accept all the goods, services and other provisions of that rule without being able to access the market of that third country as an EU member state.

**David Henig:** It is only the goods provisions but, yes, it has an impact. If, for example, the EU negotiated a new agreement with New Zealand that said that New Zealand could provide even more lamb than it does already into the EU market, that potentially could have an impact on UK sheep farmers. It probably will not, because New Zealand cannot fill its quota already, but the point is that it could impact us. Again, in the customs union defined in the backstop, we have very few rights of consultation. Something I would be concerned about is how little we have a right to be consulted.

**Baroness Falkner of Margravine:** Particularly in terms of competition law and state aid. That is why I use "commercial policy" as an umbrella term.

**David Henig:** I was thinking specifically of tariffs and quotas at this stage.

**Marie Demetriou QC:** One way to look at potential free trade agreements in goods is to divide them into those countries with which the EU has negotiated or will negotiate a free trade agreement itself. As far as those are concerned the UK can do the same thing on the same terms, but there is an imbalance built into the system because, even without such a trade agreement, those countries have access to the UK market because of the customs union.

**Baroness Falkner of Margravine:** Exactly. That is the point I was trying to make.

**Marie Demetriou QC:** There is not much of an incentive for them to negotiate with the UK. Regarding the second category—that whole host of

countries in the world with which the EU does not yet have a free trade agreement—there is no ability for the UK to negotiate a separate free trade agreement. I would look at it in that way.

**Baroness Falkner of Margravine:** Thank you, that is very helpful. One final question: how would the application of UK FTAs to Northern Ireland be affected? I am not sure that I understand this question. Assume that I understood it, but perhaps we need to let it go.

**David Henig:** In terms of tariffs it is not affected, but it comes in in regulation. We have things called mutual recognition agreements, where we mutually recognise each other's regulations as equivalent. We can have that for Great Britain but not for Northern Ireland. Is that right?

**Victoria Hewson:** It is right under the terms of the backstop, but under the terms of the unilateral commitments document Katy mentioned the UK has committed to remain aligned with Northern Ireland. I am not entirely clear whether that would prohibit mutual recognition agreements with other countries. I suspect that it might, because Northern Ireland would not be able to make mutual recognition agreements, other than the ones that the EU has done for the EU. I suspect that commitment to tag along behind Northern Ireland—tail wagging dog somewhat—might even preclude mutual recognition agreements.

**The Chairman:** I think that we go straight on to Lord Polak.

**Lord Polak:** To be honest, I think that we have dealt with the issue I was going to raise about Turkey—you did not want to answer about Turkey anyway—and I think that we have covered most of the trade issues.

Q8 **The Chairman:** I do not want to preclude others. I suppose the question might be: is Turkey happy with the sort of deal it has, or are there particular issues you would like to draw to our attention?

**David Henig:** I want to mention two issues on Turkey. One is something I was told by Turkish trade officials. They describe the customs union as the worst possible arrangement except for not having it. Those were their words. More seriously, the Turkey customs union was defined quite a long time ago. It comes back to this issue of consultation and having a say. Turkey has very little say. As somebody said to me, when was the last time you heard somebody in Brussels talking about trade policy saying, "We need to find out what Turkey thinks"? They would not do that.

Is the Commission willing to give us a greater say? From my soundings, yes. What will that actually amount to? What could be defined? Again, this is where the agreement falls down. There is very little inside the customs union as defined within the backstop. Perhaps if you negotiated a fresh one you would be able to have more say. Certainly in areas such as trade and defence, which could be of particular concern to industry, you would ask for quite a significant say and even on free trade agreements, but short of actually having that debate, we are talking in the abstract. We imagine we could get more say than Turkey currently

gets, but not as much as we currently have as members. That is as much as I could honestly say.

**Victoria Hewson:** That is what I was going to say. From the EU side, the possibility of the UK having as much or more say—for example, a veto over future free trade agreements—is unthinkable because existing member states do not really have a veto on free trade agreements. You would not expect them to come anywhere close to giving the same privileges that member states have. I would quickly add that the main difference with Turkey is that when it entered into its customs union it was on an accession track hoping to become a member and therefore wanting to become as close as possible and reconciled to eventually being absorbed into the bloc entirely, whereas we are in the exact opposite scenario.

Q9 **Lord Ricketts:** We are now at the stage of the discussion where most of the issues have already come up, but I want to look at how being in the single customs territory in the backstop would feel for the rest of the UK rather than Northern Ireland. If you are a UK business, is there any difference when the single customs territory kicks in as against now? An example would be checks, regulatory or otherwise, at ports in the UK for goods coming to and from the EU.

**Victoria Hewson:** There are a couple of big differences, which broadly speaking can be divided into customs and regulatory. Customs-wise, it is not the full formal customs declaration process that you would have from outside the customs union. It is the movement certificate process where you have to validate that your goods qualify for the single customs territory. That means that they have either been grown or wholly manufactured within the single customs territory or, if they or parts of them have been imported, those imported parts have been fully duty-paid and released into free circulation. The movement certificate will be a physical piece of paper—as a default unless something better is arrived at—that is physically wet-stamped by a customs authority in Great Britain. That document needs to accompany the goods either to Northern Ireland, to the Republic of Ireland or to the other EU member states. That is quite burdensome and arguably might in many ways be worse than just doing a normal customs declaration. Putting aside rules of origin, which is a sort of upstream matter, physical accompanying documents being physically wet-stamped by a customs official is extremely old-fashioned and not something that has been widely done within the EU for its external trade for a long time. Actually, I think that that is the case for Turkey, which still has a paper certificate.

Another thing that arises out of the movement certificate process is that it causes some difficulties for businesses with supply chains where they are importing some parts from outside the customs union and using customs procedures like inward processing relief. That is where you have some parts that have been brought in and you have suspended the duty that you would have otherwise had to pay on it while you do your processing. Some of those end products might end up in the domestic market or going to the rest of the EU market, or they might go back out

again, in which case you never have to pay the duty because the parts have come in and gone back out again. If you want to send out some of the goods within the single customs territory with a movement certificate, you will not be able to use inward processing relief in the same way, because you do not quite know whether those parts have met the necessary conditions any more. There are various difficulties like that so it is not frictionless trade at all; it is not frictionless and it is not seamless.

As regards regulatory matters, again we start from the basis of being within the backstop unless something better is agreed. We are a third country with all the third-country checks applying. There is no mutual recognition of regulations so, as a default matter, all SPS and other checks on industrial goods that would customarily be carried out on a country with no regulatory arrangements would apply to goods going from Great Britain to Ireland, France, the Netherlands or wherever it may be. I think that everyone is reasonably confident that that is not how it will transpire in practice, but having to seek those additional agreements leaves us in a fairly weak position. Coming the other way, the UK has thankfully adopted a very open and pragmatic position of continuing to recognise all the EU regulations and putting in place facilitations and simplifications for goods coming in. Thus at Dover there will not be huge numbers of checks, certainly not on fiscal matters and certainly not on regulatory matters because we still accept that EU goods are as good as they were from one day to the next. However, the other way around we are waiting and hoping that the EU will come to some sort of pragmatic arrangement and recognise our regulations. I should emphasise that this is irrespective of the substance of our regulations staying exactly as they are and aligned. The EU could still say, "Yes, they are aligned, but we still need to check".

**The Chairman:** So there is an inherent asymmetry in that.

**Victoria Hewson:** Yes, it is a huge asymmetry.

**The Chairman:** One that is not in our favour. Does anyone else want to comment on this?

**Dr Katy Hayward:** It is worth noting that that has nothing to do with the protocol or the backstop. It is just the effect of leaving the European Union.

**Victoria Hewson:** Well, yes, but it would apply with the backstop.

**Lord Ricketts:** Essentially, what the backstop requires so as to avoid checks between Ireland and mainland Great Britain is to have a single customs territory.

**David Henig:** Some of this is about the way we have negotiated it. I want to add three points to that, one of which is on the movement certificate. That is part of what has been said in the text: detailed provisions can be negotiated until July 2020, so if in theory that was the absolute biggest priority, perhaps we could do something about it.

However, it comes back to the point about going into detail and knowing what our priorities are. There is an interesting point about products coming in and the fact that we will be open while the EU will not be. First, is that a good negotiating position? Secondly, will we continue to be so open? With the first thing that goes wrong, we will get a tabloid frenzy saying, "How dare we be so open to EU goods coming in?" Let us not assume that it is always going to be us who are open. I share the hope that we will be and that we believe that EU products are safe, but often that is not the way things work in reality. Thirdly, a friend of mine would never forgive me if I did not mention services. What is the biggest difference? There is nothing whatever in the customs backstop about services. That is worrying. If you were ever to go into the backstop where basically we have no services agreement whatever with the EU, that does not feel like it would be a great deal for us.

**Dr Katy Hayward:** Is not the point that we have yet to negotiate the future relationship? The backstop is not the landing point. All of that is still to be negotiated.

**Baroness Falkner of Margravine:** Not if we agree to the single customs territory.

**Lord Ricketts:** As I understand it, if we have the backstop, we have the single customs territory however it is defined.

**David Henig:** I have a worry because I have been doing some research into this. If you go into the backstop, there is a big change in trade. Let us say that we are negotiating the future relationship. We fail to do so by 2020 or whatever deadline we are now putting on it—2021, I am not sure. We know how long it takes the EU to negotiate a trade deal. It is typically five years. You are in danger of having multiple transitions with the backstop. Let us say that there is a transition period to December 2020, then potentially a backstop, and then the future relationship. Katy's point is correct, of course, but again this is where the backstop is an uncomfortable place. I myself have always thought that it would be easier to say that we will carry on rolling over the transition period until we actually get to the future relationship.

**Lord Ricketts:** It is quite a contrast with what we have heard from Ministers such as Mr Gove, which was that being in the backstop would be so fantastically advantageous to the UK that nobody would want us to be in it or stay very long if we got there. But what you are saying is—

**David Henig:** I saw that question. I am sorry; a lot of people think that I am terribly biased towards the EU, but I struggle to see why this is such a wonderful deal. The EU has many relations with many countries of different types and this is just another one. It is not particularly good or bad but I am not sure that it is terribly stable, as I have said before.

**The Chairman:** It is not that we are being discursive but we are now on to some of the interesting political takes. Does Baroness Suttie want to add anything on that?

**Baroness Suttie:** My question may effectively just have been answered but, if I am not mistaken, much earlier on Dr Hayward made a sort of positive reference to the backstop. Mr Henig has already given us his interpretation of Michael Gove's suggestion that it might allow us to cherry-pick. Could the others give their interpretation? Is there an uncomfortable element for the EU in the backstop? Is it in some way a concession?

**Victoria Hewson:** I would say that the backstop is messy and clunky. I am sure that the EU is not delighted with it but, for us, it has huge downsides: from democracy, law-making and competitiveness to trade policy and the integrity of the union of the United Kingdom. For the EU, it keeps us tucked away in a customs union. That really dampens down our potential competitiveness and limits what we could do outside a customs union.

**The Chairman:** At that point, we bring in Lord Whitty.

Q10 **Lord Whitty:** We have more or less covered this ground but, to go back to Dr Hayward's earlier exchange with the Chair, there are those who say that the argument over the backstop is stopping everything happening—that it is the tail wagging the dog. That includes some businesses in Northern Ireland. They are saying: "Let's just accept the backstop for now. It's less constraining than continuing to have to follow EU rules through the transition period. We'll be in a better negotiating position when we get it out of the way. Let's take the backstop for now and start negotiating everything else from there". Is that a potentially viable argument? It is also true that a lot of the rest of the United Kingdom regards the argument about the backstop as a bit of a block on progress.

**Dr Katy Hayward:** We have to be careful not to think of the backstop as the landing point when it is not intended to be that. It is understandable that there is so much scrutiny of it—rightly so, because it is the only thing we know for sure about the future relationship or, if not for sure, the only thing we have in writing that could be legally binding in relation to the future relationship. That is all perfectly understandable. We could expect the elements of the backstop, or the protocol, to change over time. Let us presume for the time being that we have the future UK-EU relationship negotiated and agreed, and coming into play. Perhaps elements of the backstop could then be taken separately to form separate agreements, which could be treated in a different way from a protocol that is appended to the withdrawal agreement. There will then be more opportunity for the kind of scrutiny and issues being raised here to be interrogated.

On the cherry-picking, the EU has been very cautious. It was always clear that it had to be specific to Northern Ireland. We must differentiate the regulatory aspects and the customs aspects: Northern Ireland will effectively be part of the single market for certain things. It will be outside the EU and not in the same kind of relationship as it would be, for example, if the UK were in the European Economic Area. So it is in a distinct position and this is where we come back to the balance about

allowing territorial differentiation within the UK, and for what. It is quite clear that the bit with which most people are uncomfortable on the backstop is the all-UK customs aspect, which was an ask of the UK. We should not lose sight of that. Let us be conscious of the implications of changing it to be Northern Ireland specific.

I think we are going to be at this for a very long time—many years—and that there will be points at which alternative arrangements will be considered and come into play, such as on facilitating customs procedures. This will be a point at which all those things can be considered in detail and the possibility of various differentiated arrangements for Northern Ireland will be considered then, but for the time being we must bear in mind that it is not the intended landing point.

**Lord Whitty:** Are you implying that the British Government were wrong to react to the intense antagonisms in Northern Ireland, from unionists and others, being treated differently? Could we have negotiated a perfectly reasonable agreement with some slight differentiation between how Northern Ireland and the rest of the UK would be treated for certain aspects?

**Dr Katy Hayward:** I would look to what businesses are saying in Northern Ireland. The border communities and the majority of political parties there are saying that they welcome the protocol for avoiding, as far as possible, checks and controls on either the Irish Sea border or the Irish land border, such as they are.

Q11 **Baroness Falkner of Margravine:** I am not sure I understood the legal implications of your opening remarks because, the way I understand it, if the protocol remains part of the withdrawal agreement then it is binding in law. But, Dr Hayward, were you saying that we should sign up in an international treaty to the protocol but then, in a future international treaty with the EU, agree to repeal it and put something other in place? I cannot quite see that happening.

**Dr Katy Hayward:** But that is in the withdrawal agreement.

**Baroness Falkner of Margravine:** I know that it is, but it would require agreeing it now. Mr Henig referred to the leverage point. It seems to me that the points of leverage are disappearing slowly—or rather, incredibly fast—as this conversation goes on.

**Victoria Hewson:** I would agree and, as I alluded to before, the best chance of averting the backstop is by signing up to a full and formal future agreement during the negotiating or transition period. In substance, that essentially replicates the backstop but on a formalised basis. It meets the criteria of the EU's Article 218 competences.

**David Henig:** I have a few points here because it feels as if we are coming to summarise the conversation. To go back to an earlier point of Victoria's—for once we are going to disagree, which is what we are supposed to do—I think that the backstop is messy for both sides. I do not think the EU particularly wanted it like this or that it is particularly



great for the UK. There are incentives on both sides for it not to become the long-term future relationship. The way I look at it, it is not comfortable for the EU to have the UK in a fairly indeterminate and unstable relationship on the side. There is a strong incentive for it to want to put it on a stable footing.

It is important that we recognise that there is no country outside the EU that has no current border infrastructure. We are being offered something that has not been done before; we should recognise that and work out whether there is a way to expand it. Perhaps in the future relationship negotiations we could think of a path that allows us to maintain that offer and gradually give ourselves more scope to do the kind of trade policy that we want. But we should not forget that we need a very close economic relationship or a border, because the whole system of customs and regulatory inspections is based on the fact that—to use the word in a different context—the backstop for all customs and regulatory inspections is the border. It is the only place where all the goods, the paperwork and the lorries come together and can be checked. If you want to devise a different system, it is going to take time because everything has been based on that.

The idea that we can suddenly change all this is wrong, but we should also not lose faith; there is a chance to do something new and interesting. We could say, “Actually, we can have a relationship where we might have the kind of trade policy we want while having no border infrastructure, but it will take time to put that into place”. Expecting that to come into place in a month’s time is just not a realistic idea. These things take time.

**Q12 The Chairman:** We are drawing to a conclusion. Absent any specific points that you want to share with us, I have one final fast ball which we have not bowled and which has not received the attention that it merits: the level playing field provisions in the backstop, specifically as they apply to state aid and competition law. How will this work in practice? How enforceable are non-regression clauses and are there any other ways in which UK domestic policy is likely to be constrained?

**Marie Demetriou QC:** Shall I have a go at that? The reason for those level playing field provisions is that they are the quid pro quo for the customs union. Normally, if a third state currently outside the customs union grants a subsidy to a domestic producer so that the producer can produce its goods at low cost, the EU deals with that by imposing a countervailing tariff. It will not be able to do that vis-à-vis the UK when it is a third state, because it will be in a customs union. It will therefore be important for the UK to comply with the state aid rules so that it does not grant subsidies. That is why the rules are there.

On the enforcement provisions, yes, they will be enforceable. In fact, there is a detailed enforcement mechanism set out in the protocol, which will be enforceable in the UK. There will be an independent body, the Competition and Markets Authority, which will apply the EU state aid rules and will take the place of the European Commission in ensuring that

the rules—essentially the EU state aid rules imported wholesale into the protocol—will be applied. There is then provision for the CMA to co-operate with the European Commission, so there will be a dialogue between the two. The EU has an overriding ability to take up with the joint committee any issue that it has concerning effective enforcement of the state aid rules by the UK authorities. The rules will be fully enforceable in the courts, so a detailed enforcement mechanism will be in place.

**The Chairman:** Any other comments on that?

**Victoria Hewson:** Very briefly, it is worth noting that, given the patchwork of enforcement mechanisms across the different level playing field provisions—between competition, state aid, environment, labour and workers’ rights—how they all work will vary, but several will entail the Court of Justice of the European Union having final jurisdiction to determine matters of law. That might surprise many people, given the various assurances made that this would no longer be the case. But if the backstop comes into effect and the protocol is triggered, that is what will happen in respect of those level playing field areas.

**The Chairman:** Are there any other comments from the panel? If not, given that we have just rounded off with two lawyers—I know one is not allowed to say this in the courts any more—*res ipsa loquitur*. The expertise of our panel has been very much appreciated by all colleagues. This is not an easy area and we are very conscious of the intense feelings that the Irish situation arouses, both in Ireland and in the UK. Your perceptions have illuminated our thinking and, I hope, will also contribute to a public debate on this issue. Please accept our warm thanks for your time.

As far as I am concerned, this is very much a living relationship. If at any stage you wish to add more comments on anything as it passes, we will of course take note. We are grateful for the expertise that you have shown and your application of it. We will perform our normal courtesy of making sure that you get to see an uncorrected transcript to make any appropriate changes. With those expressions of thanks, we now begin to close our formal evidence session. This has gone on for two hours, not a moment of which has been wasted. Our sincere thanks once again.