HOUSE OF COMMONS

European Scrutiny Committee

Oral evidence: Government Northern Ireland Protocol Negotiations, HC 1101

Wednesday 1 February 2023

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Watch the meeting

Members present: Sir William Cash (Chair); Margaret Ferrier; Mr Marcus Fysh; Mr David Jones; Craig Mackinlay; Gavin Robinson; Greg Smith.

Questions 1 - 47

Witnesses

I: Stuart Anderson, Head of Public Affairs, Northern Ireland Chamber of Commerce and Industry; Fergus McReynolds, Director of EU and International Affairs, Make UK; and Thomas Sharpe KC, Barrister, One Essex Court.

Examination of witnesses

Witnesses: Stuart Anderson, Fergus McReynolds and Thomas Sharpe.

Q1 **Chair:** Gentlemen, on behalf of the Committee, thank you very much for coming this afternoon. Since the end of last year, we have been following the Government-EU negotiations on the operation of the Northern Ireland protocol, and so far, we have seen progress on more technical issues, like last month's agreement on trade data sharing, but as yet, there have been no breakthroughs. Reports this morning suggest that a deal might have been struck, but this has been refuted by both sides. What we know suggests that there might be a bit of exaggeration here, but never mind, and we have not seen anything to scrutinise, which is the crucial issue.

The headline issues are well known concerning the economic and political impact of the protocol on Northern Ireland and this United Kingdom: customs arrangements, regulatory divergence, proposals for a dual regulatory system and reforming the governance structures at the heart of the protocol's operation. What we have not looked at is how these issues are playing out in practice and how this long-running renegotiation is affecting the people and businesses you represent. With the help of Mr Sharpe, we also want to understand where the UK and EU could reach agreement and what would be required on both sides to satisfy our respective constitutional and legal traditions. In a nutshell, we want to know what, in your opinion, could work and what is standing in the way of a durable solution that respects our red lines being reached.

Before we start, we have not heard evidence from any of you before, so would you be kind enough to introduce yourselves and outline your respective responsibilities? There is a ten-minute rule Bill on Scotland's self-determination that we are sure will be divided on, and therefore unfortunately, just as you are getting into your stride, there will be a Division, and there may well be others during the session, so bear with us. In other words, there is something to be said for bearing in mind that the more concise your answers are, the quicker we all will get away, but at the same time we must do justice to the subject matter. Thank you very much for coming. Could you introduce yourselves?

Stuart Anderson: Thank you for the invitation. My name is Stuart Anderson, and I am the head of public affairs at the Northern Ireland Chamber of Commerce and Industry.

Q2 **Chair:** Have you any political affiliations that you ought to declare?

Stuart Anderson: No, I do not.

Fergus McReynolds: Thank you very much for the invitation. I am Fergus McReynolds. I am director of EU and international affairs for Make UK. We are the representative body of the UK manufacturing sector.

Thomas Sharpe: I am Thomas Sharpe. I am a King's counsel. I practise—or, perhaps, practised—in European law and appeared in the

European Court a number of times. In answer to your question about political affiliations, I am a member of the Conservative party.

Q3 **Chair:** Thank you. I am going to start with Stuart Anderson. What have the main effects of the protocol been for businesses in Northern Ireland and for the two communities?

Stuart Anderson: Initially, it was quite difficult to distinguish between what were teething problems because there was not a great deal of time for our businesses to prepare for the new arrangements, and what were the structural issues.

As the Northern Ireland chamber, we represent about 1,000 businesses on a cross-sector basis. We have seen the protocol impact in really significant ways, both positively and negatively and not at all, depending on the sector, the structure of supply chains and the historical nature of the business. We have done a quarterly economic survey, which has been a really useful tool in guiding us through our assessment of how the protocol is operating.

We have seen quite a positive upward trend in the past year. Looking at year-on-year, we see 36% of businesses saying that they are trading well. That is up from 23% last year. Around 21% are saying, "It was difficult, but we've adapted." About 25%—so one in four—said, "It doesn't impact on us at all," and now around 15% are saying, "The protocol just does not work for us." There are some caveats around that that I will come on to.

When you look at the official data, as well, from the past few weeks, which has come out from the UK, and from the ONS in particular, on the exports side, exports are up in Northern Ireland. Exports to the EU are up and our sales to GB are also up. Those to the rest of the world are up as well, and, in some cases, that is back to pre-pandemic levels.

Now, there is some degree of caution with that. The first thing that I would point out is that that official data is not adjusted for inflation. Secondly, there is a concern that Northern Ireland is an SME-dominated economy—nine out of 10 businesses are small businesses—and our exports have been typically led by large businesses that are able to adapt and deal with this through economies of scale. So, I think that the fact that our exports are up is quite positive, as a headline figure, but there is a danger of masking what that means for our SMEs, and I know that some work is being done to look into that.

Another caveat regarding the figures is that we have a number of structural supports and grace periods in place that are sustaining the economy in certain respects. On structural supports, we have the trader support service, and, for customs, we have the movement assistance scheme to help cover the cost of certification. Then, of course, we have the grace periods across myriad issues.

From the supermarkets', and certainly the business community's, perspective—just to be clear, from our perspective, from where these negotiations go today, that is where we see our baseline, so we need to

move up from here and not back from it. However, if you look at those businesses—particularly small businesses or those that are moving goods from GB to Northern Ireland—they are principally moving for the Northern Ireland consumer, and that is at the front end of our concerns. Two out of every three goods moving there are consumer-facing. The Northern Ireland consumer profile is not great, relative to other parts of GB—I think we are at the bottom of the UK league tables—so, certainly that access to GB goods is at the forefront of our focus at this time.

Q4 **Chair:** And investment?

Stuart Anderson: Investment is being withheld. Anecdotally, at a local level, I know of a number of our members who are saying, "Look, we could invest, but we don't know what the structure will be like going forward." They could invest in IT systems, for example, to deal with the current structure as it is, but they are holding back on that.

Certainly, whenever the protocol was signed, there was a lot of discussion around dual-market access. I had a number of calls from private equity firms talking about the potential for life sciences and other sectors like that. That probably does not happen to the same degree now because of the level of uncertainty there. It is positive that both sides are talking, but we must ensure that there is an inclusive political and technical process with Northern Ireland stakeholders if we want to achieve the best outcome.

Q5 **Chair:** Yes, okay, fine. Fergus, what would you like to say about this?

Fergus McReynolds: I think you can probably come at this from three different perspectives. Stuart has well set out the situation from a Northern Ireland perspective. Looking at it perhaps from more of a Great Britain perspective, and at the challenges that businesses faced on this side, as it were, there wasn't as much awareness of the changes that took place three years ago, compared to businesses preparing for a much bigger change in trading with the EU. The amount of support and awareness raising to ensure that businesses were ready for the changes at the UK-EU border completely drowned out, essentially, the messages around needing to prepare for things changing within the country, in sending goods to Northern Ireland. So, I think it is fair to say that businesses in GB were not very prepared, on day one, for sending goods into Northern Ireland. Awareness was quite low about the new responsibilities that they had in that area.

It is also important to highlight that it is not an isolated issue. Although finding a long-term, sustainable and certain future for Northern Ireland—and the Northern Ireland protocol—is important to businesses in Northern Ireland, and important to businesses in Great Britain sending goods into Northern Ireland, it is also important for the wider relationship. It is quite clear today that co-operation with the EU is being held back while we are at an impasse on this issue.

I would echo Stuart's comments on how it is good that the two sides are negotiating, and good that they are trying to find a solution to this

because it unlocks wider co-operation, which the UK and the EU need to focus on. I am thinking of things like Horizon and the deadlines that we will have for reviewing the relationship in 2025. We need to start talking and co-operating with each other; it is being hampered at the moment.

Q6 **Mr Fysh:** What is your view of the UK's and EU's proposals for the red and green lanes and the way that they will operate? How much convergence do you think there is between the two parties on the technicalities of that? Would you like to go first, Stuart?

Stuart Anderson: There is a shared objective, which is an easing of the burden, but I think they are fundamentally different propositions. The EU express lane is about trying to reduce friction, but at the heart of it there is still the need to continue to comply and declare that you comply with EU law. They are still applying that at-risk test to those movements.

The UK red and green lane proposition put forward by the UK Government is such that, effectively, if you are moving goods that are destined for Northern Ireland—that definition still to be worked through—those goods can move freely, to either a UK or an EU standard. Where that becomes challenging is in the space of intermediate goods. For retailers and for our consumer-facing industries it is a solution, but for our intermediate goods it is problematic. If you are an exporter, you will not be clear about whether goods at a point of entry are destined for Northern Ireland only, so goods will, it seems, automatically default to the red lane. As I said, they are fundamentally different in terms of structure, but there is the potential for convergence if they can work through those issues.

Fergus McReynolds: The only thing I would add to Stuart's comments is that it is important to understand where the baseline is. We need to recognise that the baseline is where we are today. That recognises the fact that there are grace periods that have been extended, and we need to negotiate from that as a basis, as opposed to the theoretical basis that was set out in the original protocol. It is important for us to recognise where we are starting from.

In terms of the two proposals, I think there is a landing zone between them—a mechanism that allows for a trusted trader system that essentially manages what is the greatest divergence in the positions, which is the risk profile. As it stands at the moment, the historical data suggests that there is very limited risk because, as Stuart has said, where most of the goods that take that crossing end up—ultimately and primarily focused towards consumers—the risk has historically been relatively low. The position from the EU perspective is: unless we have the data, we don't know that. The risk is that it could be used as an alternative route.

On finding the space in between where the landing zone is, where that risk is actually monitored and managed, we will not know that until we see that data. As the Chairman has mentioned, the agreement earlier this year on data sharing is a step in that direction. It feels to me as though we are heading to a positive conclusion in that area.

Q7 **Mr Fysh:** What do you think is the minimum requirement that should give comfort on the quality of what is moving across the Irish sea? Is the commercial data that we have agreed to share going to be enough?

Fergus McReynolds: I think the starting position from the Commission on that is that it is not enough. In terms of the information that is important, you need to know who is sending goods, who is receiving goods, what the goods are and how much of that good is being transported at that time. Essentially with those pieces of information, while they are not four data points—they are four sets of information—you can start to find a risk profile to manage that. If one of those actors changes, you might want to look at that in more detail. If the volume of goods traded increases tenfold, again you might want to look at that. If a traditional trader has been sending the same thing to the same customer for a long time and, all of a sudden, sends something different, maybe you look at that.

On where the challenge is, a trusted trader scheme probably answers the first two points—we know who is sending and who is receiving, and we have a set of data in the system so we trust the information from these two actors. I do not think that volume and value—adding things up and finding the right column for that—is a particularly contentious issue. I think the real challenge is the descriptor. The starting point has been an internationally recognised system for classifying goods in commodity codes, but that is a very customs-heavy procedure, and there are businesses who are sending goods across from GB into NI who are not international traders and do not have exposure to those sorts of systems. So can we find a compromise on that issue? I think that, ultimately, that is where the compromise is to be found: whether it is something that satisfies both parties in that it is not a direct commodity code but makes reference to the commodity code system so that it can be coded in to build a risk profile and a risk model. Again, I think there is space for finding a technical solution on that issue.

Mr Fysh: Would you add anything to that, Mr Anderson?

Stuart Anderson: No.

Q8 **Craig Mackinlay:** Mr Anderson, we are spending an awful lot of diplomatic time on this issue with our European partners. The political side of it cannot be overstated. Are we dancing on a pinhead in terms of volumes and values? I see trade flows as a funnel. We have got the very wide bit of the funnel, which is goods going from GB to NI. I think you said that two thirds stay in the NI zone, with a third going into the Republic. We have got a third of everything going into the Republic, so the funnel has already narrowed quite substantially. What is the true value of stuff that is leaving the Republic to go on to what I would call the mainland single market? I can but imagine that it is pretty small beer. Would a more elegant solution not be that there is a special Ireland zone of stuff going backwards and forwards and everybody lives with that, because the leakage outside the island of Ireland into the much-vaunted and loved French single market zone is probably pretty skinny?

Stuart Anderson: Just for accuracy, on the two thirds and one third, it is two thirds of consumer goods. I am not clear—my apologies—about whether those are consumer goods for the island of Ireland or not. But the point that you make is well made: it is a small risk. I therefore would be in agreement, and business would be in agreement, that there is a need to look at this with a risk-based approach.

I have been pushing strongly since the protocol was signed—we came out straightaway afterwards—to say, "Look, the EU single market is not designed for mixed loads that move. It is for single commodities." Certainly, from our own membership we can see those dealing well with the protocol are those who are manufacturers moving single commodities, generally speaking. For those moving mixed loads with multiple commodity codes, it is particularly problematic. So they have got to take a more risk-based approach where it is very clear that goods are destined for the consumer in Northern Ireland.

As I mentioned, where you have got that consumer profile in Northern Ireland with a discretionary income of on average £93 a week—less than half the UK average—there is a solution that we can see. There is a degree of frustration that we immediately pointed out, "Yes, we can talk about the benefits of the protocol, and they are there, but there are problems that we are going to see down the tracks," and those problems came to fruition.

Q9 **Craig Mackinlay:** I would imagine that a lot of the stuff going from Northern Ireland to the Republic is certain food-related products. We have got similar tastes because we're all sort of Anglo-Saxons, and I am sure that in the Republic they quite like some goods that you only tend to get from GB; they would enjoy those similar goods. So I think that if you could take the food bit out even further, which is absolutely for local domestic consumption in the Republic, I imagine that the amount that goes from the Republic into the rest of the single market is so small. I wish we had the figures for that.

Stuart Anderson: I think that is a question for Irish representatives.

Q10 **Chair:** Can I ask a question before Gavin Robinson does? I just want to remind people of something. Wasn't it Bertie Ahern who said that there is a lot to be said for putting a kind of block on your eyes when you look at what is going on, because some of the small stuff is so small that it's not really worth bothering with? Do you remember that comment?

Stuart Anderson: I don't, but as a former lawyer, it makes me slightly uncomfortable!

Q11 **Chair:** He more or less said that you could turn a blind eye to some of the stuff, and it has been going on forever, whether it's cattle or whatever it happens to be. I just wondered what you thought about that.

Fergus McReynolds: I think that, as Stuart said, it all comes back to risk, and essentially we won't know what the risk is until we are looking at the data. That is why the actual agreement on sharing the data has been a

very important step—because it is on the basis of the real data about what is actually happening that we can profile the risk, and you can then make decisions based on that. As you said, if the risks are low, we need a low-impact solution; if the risks are high, we might need a higher-risk solution to that. But until we are sharing and actively monitoring the data, we won't know that.

Chair: But the degree of proportionality in terms of this risk compared with what is at stake in terms of constitutional sovereignty, questions relating to the Court of Justice and all the rest of it—we're just getting into a situation where you are comparing something that is, to say the least, fairly minimal with something that is absolutely massive. But we'll come to that later. Gavin Williamson.

Gavin Robinson: Robinson, Chair—there's enough wrong with my reputation! I do need to push back just a bit, Chair, on "We're all Anglo-Saxons". There should be a Celtic pushback on that.

Chair: Two pushbacks—

Q12 **Gavin Robinson:** Two pushbacks, yes. Look, the test was wrong for the Joint Committee, and the Joint Committee didn't do its job thoroughly or comprehensively enough, when we consider this disproportionality. But Mr McReynolds, can I ask you this? You mentioned companies moving goods from GB to NI not being used to the requirements of international goods movements and so on. What information was required pre-Brexit on the movement of goods from Stranraer to Larne or Belfast, for example, in manifest information, and what do you understand to be the ordinary commercial information that could be required in any subsequent agreement?

Fergus McReynolds: As you said, before Brexit, you were essentially sending shipping notices, you were sending manifests and you were probably sending a commercial contract along with your shipment. That would have had the information required by the customer and the seller for that process. There was no customs requirement of sending any goods into an alternative authority to do that. The information was only pertinent to the person sending it and the person receiving it, so it was as detailed as both those parties agreed it needed to be.

Q13 **Gavin Robinson:** So there was no uniform provision of information?

Fergus McReynolds: Other than the traditional models that people use for shipping, which would have been common, there was not a mandated common requirement per se. If you were using international shipping requirements, you may have applied that just because it was part of your internal process to do so. So there were processes where it would have been uniform because you were using a uniform system, but there was no requirement for it to necessarily be uniform.

In terms of whether that data can be used in the future, I think that the challenge is over interpretation of the description of goods. There is an international system for classifying goods, and for good reason, because

what I might call a pen you might not call a pen. What I might call an engine you might not call an engine. So there is an internationally agreed system to say definitively, "We have agreed that this product is x and we therefore have a coded system for that."

In an absolutely ideal world, if you were sending shipments, you would probably use that system, because then you are guaranteed that the sender and the receiver know what is being sent and any authority who needs to have that information also knows exactly what is being sent. But that is clearly an enormous burden inside an internal market. So can we find an alternative to that where both parties agree that the descriptor is sufficiently detailed that the authorities can monitor the risk of the movement of that product? At the moment, that is where the discussions are on understanding whether that can be a written descriptor, or a code descriptor that is perhaps shorter than the classic eight or 10 digit code. I think there is a way to find a solution to that, but it is important to understand why we are starting from those positions. Historically, it was not required, and there is one party that thinks that the only way to classify goods is using that internationally recognised system. The compromise has to be somewhere between those two positions.

Q14 **Gavin Robinson:** Just very quickly, Chair—Mr Anderson, is that something you would agree with? Have you canvassed members who are engaged in the receipt of goods across the Irish sea on that?

Stuart Anderson: As I said, the issue always comes down to scale. When I have been asked about the reduction in numbers, the answer, I guess, is the longer the number, the greater the fishing expedition and the greater the level of detail that is required. For some of our smaller members, that is quite a key ask to ensure that the issue is dealt with more efficiently than it is today. For others who are moving one or two commodities across at a larger scale, it is not so much of a problem.

Q15 **Mr Fysh:** I just want to come back on a technicality that you might or might not know. There are lots of simplifications that are available under the EU customs code for things essentially to occur between trusted traders "behind the border", in inverted commas, rather than at the border. To what extent does that discussion about customs codes apply to whether or not they might be able to be used as part of this discussion?

Fergus McReynolds: I think it's worth exploring that in more detail, but the one thing I would say is that the current system of trusted trader applied across Europe tends to be the AEO system, or authorised economic operator system. That is quite a burdensome system and although we can learn lessons from it, I do not think that that is a model for the trusted trader scheme between GB and NI. But it is worth exploring how they account for some of those different elements. Yes, let's look at it, but is it the solution? I don't think so.

Q16 **Greg Smith:** Mr Anderson, this question is specifically for you, but if either of the other two witnesses have a view on it, I would welcome their input. Would the sanitary and phytosanitary agreement that the Northern

Ireland Business Brexit Working Group advocates be UK-wide or relate more narrowly just to goods between GB and NI? Within that, what degree of alignment with EU standards would that group's proposal require?

Stuart Anderson: That is a good question. First of all, you have to recognise that there is a diversity of interest within the group. When you look at those who are operating in what the EU would probably consider the more risky part of the SPS regime, they would favour as close a relationship as possible. For example, the Ulster Farmers' Union came out with a very clear statement to that effect quite early on. As you move up the supply chain towards retail, it is seen as part of the solution but not a solution or a silver bullet in and of itself, because SPS does not cover the wide range of consumer goods that they need.

If you then start moving into off-the-shelf solutions like equivalence and alignment, the challenge with alignment is that you are outside and you are continually in that space of perpetual negotiation, and when you are in the equivalence space, you are looking at checks and controls still being there and you are not addressing the challenges to things such as chilled meats or the P&R list, for want of a better expression.

If you want to look at the challenges we have, fundamentally the question is the wrong way around. What is it that we are trying to get into Northern Ireland and how can both parties suggest that? For example, chilled meats are moving under the grace period. What risk is that to the single market? We have to move into a space where there is a recognition of the political realities that we are in and also that there are really sensitive issues, whether that is seed potatoes, the P&R list, or supermarkets being able to put the goods on their shelves in Belfast that they do in Birmingham. We have to move into position where we understand what those products are and then find a solution that works: mutual recognition or some form of solution where, if you are moving goods from GB to Northern Ireland as a trusted trader—bear in mind that Northern Ireland is not part of the single market; it is applying single market rules—there has to be scope for some movement in that respect.

Q17 **Greg Smith:** If I could simplify it to a very base level, which sometimes helps in these arguments, could it not be addressed without an SPS agreement, on the basis that we understand that both sides have very high standards? In fact, at the moment, both sides have identical standards because EU standards have been transposed into UK law post Brexit.

Stuart Anderson: I think there are matters that could fall outside of an SPS agreement, such as facilitating divergence for goods for final sale to the consumer. I think there is the option there, potentially, to look at that as a solution. But if the premise is that you are both upholding internationally high standards, what's the reference point? What is the agreement underlying that? Do you have an agreement? What title are you putting on that? Is it some form of SPS agreement? I think there has to be some form of agreement that recognises, first, what standards apply in Northern Ireland and, secondly, where the recognition of the respective

standards is. I think there needs to be some form of agreement underpinning that.

Q18 **Greg Smith:** Thank you. Do any of the other witnesses have a view on SPS?

Fergus McReynolds: Only to add that I think that one of the challenges here is that perhaps we should not start by trying to solve the most difficult issue first on the basis that that if we solve that, everything else will be solved by respect. Is there an iterative process by which you can solve some of the lower-hanging fruit—the lower-risk issues—first and then concentrate on the more challenging elements later?

I think this goes to part of the fundamental discussion, which is that this is going to be an iterative, continual process. It will not be a static agreement; it will be something that allows for continuous development, because the EU will continue to legislate and the UK will continue to legislate, and they will no longer be on parallel lines, so you need to build something that creates the framework to deal with that divergence in the future. While it is true today that the standards in the two markets are the same, that is not a guarantee that that will be the case in five years' time. I think that you do need a mechanism that manages that into the future.

Q19 **Craig Mackinlay:** On the back of Mr Smith's questions—this is probably to you again, Mr Anderson; I am sorry—we mentioned chilled meats. The ultimate in the acceptance of someone else's chilled meat has to be the New Zealand deal. For many years, the EU has accepted that New Zealand's standards are different but of sufficient equivalence to allow New Zealand lamb, frozen or ultra-chilled, to be exported into the single market without too many difficulties. How has it managed to overcome that? Do you have any experience of how the EU has got its rather fixed mind around that, despite New Zealand being very different, with its own laws? I don't know what the SPS laws are in New Zealand, but the EU has obviously accepted that they are good enough, because New Zealand is an advanced economy that does things you would expect. It has got its head around it elsewhere; I am just struggling with why it can't get its head around it with us.

Stuart Anderson: I might pass the buck to Fergus; as a resident of Brussels, he is probably more knowledgeable than me on that.

Fergus McReynolds: I will also confess to not being an expert in the SPS law of New Zealand, or in the agreement struck between the EU and New Zealand, but your point is valid. There has been a will and they have found a way. Let us hope that there is a will that we can find a way in the context of the Northern Ireland protocol as well.

Q20 **Mr Jones:** I would like to talk about dual regulation, which, as you know, has been advanced by the United Kingdom as a possible solution to some of the problems we have been discussing, but has been rejected so far by the European Union. Do you believe that it is possible to construct a dual-regulation system that would work in a way that would satisfy both the UK and the EU? When you answer, will you consider whether a trusted trader

scheme could be constructed to provide an alternative to dual regulation that would be agreeable to both sides by allowing final retail goods that comply with UK laws to be sold in Northern Ireland by selected trusted traders?

Fergus McReynolds: I am happy to start on that question.

Mr Jones: Yes, please, if you would. By the way, I wonder whether Mr Sharpe could consider the issue of dual regulation from a legal perspective.

Thomas Sharpe: I'll try.

Fergus McReynolds: What I would say is that I am not surprised that the EU has not looked at this idea favourably, on the basis that it was an idea that was presented during the full negotiations between the UK and the EU on the final relationship and it was equally said not to be a palatable approach. So their resistance to this idea has some history. We also need to recognise the special nature of Northern Ireland and the settlement that was reached and agreed by the two parties.

Does dual regulation work for everyone? The answer to that is no because, particularly in integrated manufacturing supply chains, the certainty of single legislative environments is very important because of the onward trade that you have. Predominantly, the UK manufacturing sector, including Northern Ireland, is what we would refer to as mid-supply chain, in that they are bringing goods in, adding value and expertise in their manufacturing process and sending components out. Very few are sending final goods—they are sending intermediary goods—so you need to have a single legislative environment in order to guarantee as much access to as broad a market perspective as possible.

But you have rightly highlighted one of the challenges that we all find ourselves with at the moment, which is that there is significant concern about choice editing at retail. The point has already been made that a retailer cannot sell a product in Belfast that they can perfectly easily sell in Birmingham. How do we find a solution to that? It strikes me that we perhaps do need a different approach, and perhaps not a dual regulatory environment in that both sets of laws—of the UK and the EU—apply in that context, but a dual regulatory approach so that we address final retail as an issue separate from integrated manufacturing market legislation.

It is probably not for me as a representative of the manufacturing sector to comment too broadly on the regulation for the retail sector, but it strikes me again that we can find a solution for an issue that is relatively low risk. You can construct a mechanism that may involve retailers working more closely with market surveillance on highlighting the fact that products that are being sold in Northern Ireland may not strictly be compliant with the EU single market but the risk of their entering the EU single market is extremely low, and the retailers take on responsibility for alerting someone to any issues with that. I will leave it there.

Q21 **Mr Jones:** Mr Anderson, perhaps you would like to come in.

Stuart Anderson: It's a good question, and one that has been around since the referendum. What the protocol Bill did for the business community in Northern Ireland was force us to have a conversation on a cross-sector basis as to what it would mean. There was a diversity of views in those conversations across the summer. What is clear is that, as you will have heard, there is very strong resistance to that from manufacturers, as Fergus has pointed out, but principally from our agrifood industry. I think we have to be cognisant of what that looks like in Northern Ireland. It employs over 100,000 people and feeds 10 million people. GB is the main market, but it largely operates on a cross-border basis. I will come on to the alternative, but I guess the best way to play that through is to look at the profile of trade and how it comes in at the point of entry in Northern Ireland. As an example, you have less than 10 merchants—maybe seven—moving grain into Northern Ireland. That then moves through the supply chain, once in Northern Ireland, to 70-plus merchants, and then on to 26,000 farms. Trying to navigate that dual regulatory regime within that system is too problematic in the view of those particular sub-sectors. The risk is therefore reputational, and the breakdown of that access to the market in the Republic of Ireland, but onward into Europe, is potentially lost, and the integrated supply chains might be put at risk.

There are a few other risks that might not be identified as often. When we have an open land border, what risk are we imposing on our businesses by operating a dual regulatory regime? Is that an insurable risk? Is it a strict liability offence if a business is in breach? Those are important questions that I don't think we have as yet bottomed out.

On the flipside of that, for consumer-facing industries, divergence is a challenge, but it is a particularly acute challenge that we have to find a solution to. In the view of retail, when goods are moving for final sale to the consumer, that facilitated-divergence, dual regulatory system is one that potentially works for them.

I guess one caveat that we maybe have not really got to the bottom of is: what does it look like from an administrative point of view? Is this going through Stormont? How is it being applied? Those are all questions that I think we need to ask. On UK standards and the powers being transferred back to the devolved Administration, how will that play out in respect of the Internal Market Act? They are all open questions, but ones that I think we should all consider.

Q22 **Mr Jones:** Thank you. Mr Sharpe?

Thomas Sharpe: I'm a non-combatant with all the stuff that's being discussed—until now—and I don't want to trespass on the real expertise of my colleagues. On dual regulation, I see none of the problems that have been ventilated just now. The dual regulatory thing is a burden that anybody manufacturing or selling goods in GB has to take account of. On selling to Northern Ireland or within the UK, such decisions are made

thousands of times a day by companies selling into the EU and into the UK. If there is a divergence of standard, they have to cater for that in their production.

I think the issue with Northern Ireland is much more fundamental. Does the EU have exclusive jurisdiction on imposing standards, or should it share that jurisdiction with the United Kingdom? If one were to explain the regime to a man from Mars and say, "The real problem is leaching products into and questioning the integrity of the single market", however trivial or disproportionate that may be, you would have difficulty persuading that man from Mars that the current regime is remotely acceptable and sensible.

Dual regulation simply takes away that explicit jurisdiction of the Commission and places the burden on the Northern Ireland authorities and the Irish authorities to police their borders. I am probably the only one in this room who has appeared in Irish courts in relation to smuggling between the Province and Ireland. It is a legendary pastime for people on the border. It is really bad form to try and stop them doing it, and that isn't going to change. It is de minimis. I suppose the broader issue is why are we debating this issue, which is de minimis, when in fact, as we pointed out, in other jurisdictions it is regarded as acceptable? That is an open question that has something to do with the more fundamental relationship between the EU and the UK.

Q23 **Mr Jones:** There must be thousands of companies in the United Kingdom manufacturing goods for the EU market on mainland GB.

Thomas Sharpe: Yes.

Q24 **Mr Jones:** Why, therefore, is it necessary to have a different system in Northern Ireland for companies that are manufacturing for the EU market?

Thomas Sharpe: It is a question of certifying that they are indeed compliant, if that is your interest. In the end, they sell to other parts of the EU, and they have been satisfied without question there. We could have a trusted exporter arrangement. If you have managed to get your goods into France and Germany and so forth—it is the same production line, same product, same box—why should there be any issue at all in relation to the Province? I just don't see the problem.

Q25 **Mr Jones:** And in those circumstances, why do you need to have any element of EU jurisdiction in Northern Ireland?

Thomas Sharpe: Why indeed?

Chair: David, I was going to ask whether you were about to ask the question about sovereignty and mutual enforcement.

Mr Jones: That was what I was doing, without actually using the word "sovereignty".

Chair: No, no, we must not avoid the appropriate word when it is necessary, so perhaps you could.

Q26 **Mr Jones:** Yes; what is the impact on UK sovereignty of a dual regulatory system?

Thomas Sharpe: The Commercial Bar has apparently contributed one phrase to the English language, which is: "We are where we are". I do not favour this. Left to myself, I would not have agreed to this, but that is all history—who cares what I believe? We are lumbered with it.

We have a protocol, which is a document in international law. We can walk away from it, with some risks, or we can attempt to amend it. The message I am getting from my colleagues is that you can amend it incrementally but, as it stands, it is a very powerful restriction on UK sovereignty for a significant part of the United Kingdom. I mean that not just in terms of population and economy, but historically and emotionally.

Q27 **Chair:** There is this question, is there not, David—if I could do this vicariously—with respect to section 38. Section 38(2)(b) in particular quite clearly states that the United Kingdom is sovereign and, secondly, that, notwithstanding anything else, the protocol and the withdrawal agreement—including article 4, which seeks to impose EU jurisdiction in this field—can be overridden. I just wondered whether you had any mind to pursue that question, David.

Mr Jones: I'm sure, yes.

Thomas Sharpe: Vicariously, I will take the question. We are basically referring to those parts of the Bill, aren't we, which seek to suspend—it would be section 7?

Q28 **Chair:** That's right. Section 38 is absolutely explicit. It is expressly described in terms that would be worthy of Lord Denning in Macarthys *v.* Smith.

Thomas Sharpe: Absolutely. What the Bill is trying to do, as I understand it, is to disapply article 5, which then applies article 4 of the withdrawal agreement. That then establishes the supremacy of EU law. If the Bill is ever enacted and implemented, that is the effect it would have.

Q29 **Chair:** Section 38 is an Act now, and it was never disputed when it went through either House of Parliament.

Thomas Sharpe: Yes; and there we are. That is what the situation would be. As I understand it, it is in hibernation.

Chair: The next person to ask a question is Margaret Ferrier, please.

Q30 **Margaret Ferrier:** Thank you, Chair. I would like to touch on labelling as a measure in reducing checks and controls on goods, specifically around retail. Could the UK Government provide additional safeguards for the single market to help to secure less burdensome GB-NI trading arrangements?

Secondly, coming to retail, the chairman of Marks & Spencer recently objected to the proposal that there should be labelling of goods as UK-wide or Northern Ireland-only, thinking that it would be overbearing and

mean prohibitive costs, and wondering if we should be doing that—going back to stickers and labelling, when we are in a digital age. What is your view on that? Do you think that would risk increasing polarisation in Northern Ireland? I will come to you first, Mr Anderson.

Stuart Anderson: Thank you, and good question. I think the first point is that there is a lot of noise at the moment about a deal being done. We have always been very clear on two things: that this is a political issue to be addressed and a technical issue to be addressed.

The failings of the agreement, the protocol and the backstop, and the history of this is that you have the UK and EU agreeing a deal and then announcing it, and business having to apply it. I draw a clumsy analogy of a business engaging a law firm to buy another company through some sort of M&A process—stepping away, coming back, seeing the agreement at the end and being told to implement it.

That is kind of what it feels like in the business community. This is a case in point; there is a caution at the moment about saying that business—and particularly retail, where that is the crucial issue—should be engaged in modelling and working through this process to ensure that it works. Particularly where we are in this process, three years down the line, I think it is crucial, now more than ever, that those technical issues are worked though.

On the specific question around the labels, it is something that I have heard from retailers for some time, and it has been an issue that they have identified for some time. The movement of any product, and the issue itself, in relation to Northern Ireland, is a question of economies of scale.

If you are a UK retailer, as an example, that is moving goods to Northern Ireland, and you have 600 UK stores and 20 of them are in Northern Ireland, why would you have that separate label and that separate process for Northern Ireland if you can rely on commercial data that would suffice in lieu of that? The question that we need to get to the bottom of is, "What is actually meant by commercial data"? What do we mean by that, and what does that potentially look like?

My answer to the question is that there must be an improvement on the consultative nature of the process, but the actual labelling issue itself just highlights the economies of scale issue that we face whenever we are talking about GB-to-Northern Ireland movements.

Q31 **Margaret Ferrier:** Mr McReynolds?

Fergus McReynolds: I would only add that, in essence, it goes back to the same challenge that we had in the last question around a dual regulatory environment. While I agree with Mr Sharpe on there being two different regulatory environments in the UK and the EU, there is absolute legislative certainty for a company because you know what market rules you are making goods to.

In a dual system, you create an element of uncertainty, and it comes back to the point that Stuart made, which is that if I am sending 10 widgets to a company in Northern Ireland, I do not know which one of those 10 widgets might go into a product that might go into the single market, so to which standard do I make it? The inherent uncertainty of splitting your supply chain in that way creates cost inefficiencies, and the challenge that we always have is in trying to drive down, to create a system that is as efficient as possible, and removes as much of that ambiguity as possible, so that you can have one product for multiple markets.

The challenge with separate labelling is that it creates the same cost inefficiency and the same inflexibility in supply chains, because you cannot send the same thing to multiple destinations; you have to send it to only one place, because that is the only place where that product is compliant. It creates that challenge.

Thomas Sharpe: May I just add a coda to this? I accept the difficulty about intermediate goods, and that is very real, but I have, over the years, advised all the supermarkets, and they have the most amazing data arrangements whereby they can plot every single bar of soap that they are selling anywhere in the world, and not merely that, but they do it in real time. It seems to me that it would be really sad if we tried to reinvent the wheel here, rather than capitalising on their expertise.

I would have a lot of sympathy if Archie Norman was talking about physical labels—I mean, it's monstrous; it's stupid—but, in fact, they haven't had a written label in Asda in 30 years. So, it seems to me that these problems are, actually, in principle, solvable, although of course I am reminded of the same sort of debate that we had on the hard border leading up to the withdrawal agreement. We were saying, weren't we, that we could in fact police the border virtually, in all sorts of ways. That of course was rejected by our European friends. Now, it may be that on a much smaller scale this whole thing can be done more efficiently and effectively, while being able to identify the location and destination of any of the products sold from GB into Northern Ireland.

Q32 **Mr Jones:** Pursuing the point that you just made, Mr Sharpe, I wonder whether any of our witnesses have heard of the intelligent property transaction coding system—the IPTC?

Stuart Anderson: I haven't; apologies.

Mr Jones: It seems to do very much what Mr Sharpe was just outlining, and I was just wondering whether any of you were familiar with it, but thank you.

Q33 **Chair:** One thought, which hasn't come up yet, and may be more appropriate under the dual regulation issue anyway: what are your views on the issue of mutual enforcement? Is it a better way to go, because that solves problems of sovereignty on both sides of the equation? What is your view? I will ask Mr Anderson about this. Has it been discussed? Is it properly discussed? It does seem to be something that really does have

traction, if you think about it.

Stuart Anderson: There have been a number of these proposals put forward. I think it could potentially work well in certain areas. The challenge is that, if you are looking at this through the eyes of a producer who currently has unfettered access in both directions and, whether we agree with it or not, is building goods to an EU standard, the concern there is, if you move to a position where that unfettered access is potentially put at risk—the dairy sector is an example—what additional checks and controls will be put on what are currently integrated supply chains? There is potential value in some of it, but I am not sure that, politically, it is something that is going to rest with the current negotiations and discussions.

Q34 **Chair:** Fergus?

Fergus McReynolds: As Stuart has said, we are trying to apply a one-size-fits-all solution in many areas to solutions that do not fit each other. We have seen that there is a difference between manufactured goods and integrated goods and retail goods. There is, perhaps, a difference in terms of goods that are sent from business to business, or business to consumer.

Perhaps the solutions need to be different for different problems. Perhaps this is a part of the ongoing mechanism of the protocol. It builds the framework to continue to have this conversation and to say that we have a challenge in this sector. That does not mean that we reach for the one-size-fits-all solution that we have applied to everything. It means that we, collectively, between the two parties, find a solution for that. That solution might have to be different for different products in different sectors.

Q35 **Chair:** In a way, it encapsulates the whole Irish question. Basically, you have got two parts of Ireland and the question is: whose sovereignty is to be applied in given circumstances? Historically, there was a resolution in 1922, and then the '49 Act eventually took place. I am asking a much bigger question here but, right at the heart of it, we are talking about the sovereignty of two different countries, and then a further claimed sovereignty of the EU, which we have left.

Fergus McReynolds: I am not in any way qualified to comment on the history of these issues, other than to say that it is a responsibility of the EU as much as it is of the UK to uphold the international agreement that was struck. Both parties came to a conclusion that you needed to have a different treatment for Northern Ireland to allow that process to work, and the EU is responsible for making that work as much, so I do not see it necessarily that it is—

Q36 **Chair:** But the protocol itself contains within it, very precisely, the opportunity to amend in the event of the whole thing becoming unstitched. That is, in a way, where we are. These negotiations have been going on interminably. The Bill is in the House of Lords and, as I said in the House the other day, it is like the Mary Celeste with nobody else on board. We need a resolution of this, and I do not know that you are going

to be in a position to give us the solution. What I am saying is that it is a really serious question, and we are going to come on in a minute to the question of democratic deficit. These are big issues of which a lot of these very important, but none the less subsidiary, questions form a part.

I am now going to ask another question, because we will have a vote fairly soon, and I want to get this one out of the way before we move on to other matters such as the European Court and the Commission. Fergus, this is to you, and then others can chip in if they want. What are your thoughts on the effectiveness of the current dispute settlement provisions in article 12 of the protocol?

Fergus McReynolds: There are concerns being raised over the dispute resolution mechanism and the application of jurisdiction, and that is part of the negotiations. We also need to remember where the protocol comes from. The protocol was part of a negotiation in parallel with the withdrawal agreement, and it was a final state agreement for Northern Ireland to apply, whether or not the UK and the EU agreed a trade and co-operation agreement. Recognising that the dispute resolution mechanism needed to be potentially a belt-and-braces approach for a circumstance where the UK and the EU did not find a mutually beneficial agreement on trade and co-operation, it needed to have an end state dispute resolution mechanism.

We now need to reflect that, as Thomas said, we are where we are, and in this context, that is a much better place than where we were when the protocol was conceived and agreed. It is time for us to have a look at that dispute resolution mechanism and learn from the dispute resolution mechanism that we find in the withdrawal agreement and the one we find in the trade and co-operation agreement. Remember where we started: we are not in that place anymore. We have an agreement that has a different—an alternative—mechanism for resolving disputes. Maybe it is time to look at that as a model.

Q37 **Chair:** When one is addressing a great question, which is almost the Irish question, "We are where we are," one is also addressing another question, usually in the Irish context, which is, "I wouldn't have started here." Do any other members of the panel want to answer the question about the dispute settlement provisions?

Stuart Anderson: Again, it is something we have consulted with members on. The focus has been on protecting the current trade flow, so there has not been a concerted, concentrated conversation around the dispute resolution mechanism to any degree. There is always one eye on where things potentially land. With that consumer-facing industry, I guess there is a difference in emphasis.

Thomas Sharpe: We start with the notion of a regulatory union where Community or EU law applies and is supreme, so from the EU's point of view, it is only right that any dispute should be adjudicated by the body that has responsibility for doing just that. In addition to that, on the horizon you have the possibility of enforcement of directly effective rights under the protocol and the possibility of Francovich damages. All of that makes it—I hesitate to use the word—a sort of colonial jurisdiction, where

UK law has a very minor role to play. That seems to be the reality of the position.

However, even on its own terms, there is this asymmetry with adjudicating on the withdrawal agreement, when you have that super-structure of arbitration procedures, the joint committee on arbitration. Even if one accepts the rules of the game—and as you have probably gathered, I do not—it seems to me that that asymmetry ought to disappear and there ought to be some sort of tripwire, leading up to possibly going to the Court of Justice, if you want to go down that road. I do not think the present asymmetry is defensible.

Q38 **Chair:** But would we not agree that there are very profound views about the question of whether or not the Court of Justice should have any jurisdiction here? After all, when we repealed the whole concept of the Court of Justice and disapplied the charter of fundamental rights, it was the integral centre of gravity of leaving the European Union.

Thomas Sharpe: I am in complete agreement with the thrust of your question. We are where we are, which is to say that, as we speak, the protocol provides for a regulatory union in which Union law applies. Therefore, if the Commission were here, it would say, "It's only logical that it should be dealt with by the body that deals with these concepts and things." It seems to me, if you want to do away with the Court of Justice, you ought to do away with some of the things that underpin its justification in its present position, namely the supremacy of Community law within the Province.

Chair: We know, because we receive the documents or know of them, that the latest figure is something like 430 regulations, directives and so forth that have been imposed on the people of Northern Ireland in what can only be described as the most astonishing circumstances, given that they do not have any representation at all in the European Union or, in this context, in the United Kingdom, except that they can say something in Parliament. The documents get referred to our Committee, and Gavin, who is a member of the DUP, might like to comment on that, because that question also has to be looked at.

Andrew Griffith is speaking in the Chamber, and he will cause Divisions that will hold us up for 30 minutes. Gavin, do you want to follow up on that thought about the Court of Justice before we get on to the main question, which David Jones will ask when we get back? Do you have a question you want to ask about the role of the Court of Justice?

Q39 **Gavin Robinson:** I will ease into that question before Mr Jones. On the European Court of Justice, Mr Sharpe, you know that the difficulties that we are in have three dimensions: practicality and frictions on trade; the constitutional impact; and lack of democratic authority for, or oversight of, the decisions that are applied to Northern Ireland. The Chair referred to the 430 regulations, directives and so on. There is now a huge distinction between the perspective of the European Commission on the role of the ECJ and that of the UK Government. Where do you see a solution? Do you

think that there is a construct that could remove the ECJ while EU law applies to Northern Ireland, or do you think that, in totality, if you can be free from that legislative framework, by consequence you remove the ECJ?

Thomas Sharpe: That is an enormously difficult question for me to answer, and there is what I want, as opposed to what I think will happen. If no change is made to what I call the regulatory union and the supremacy of EU law in the Province, the case for having that adjudicated by the Court of Justice is a strong one—or, to put it this way, it would be argued strongly.

If you believe absolutely fundamentally that, whatever law you are seeking to apply—EU law, or any other law—nevertheless the Northern Ireland courts would be perfectly capable of dealing with that, you can take away the Court of Justice jurisdiction. In the withdrawal agreement, however, we were "happy" to accept the jurisdiction of the European Court on matters of European law in the arbitration procedure. So we have a problem, because we accepted some limited jurisdiction at the end of the process, which is tortuous—so tortuous that we hope it will never be used.

Is there a good case for marking out Northern Ireland as being an exception to that exception? I would have difficulty arguing that, however much I would want it. It seems to me that if you want to get rid of the Court of Justice, you have to get rid of the structure. You have to get down to dual regulation and leave it to member states, or the UK and Ireland primarily, to solve the problems at the border, and for the Northern Ireland courts—which are pretty good—to adjudicate these issues, perhaps not allowing any references to the European Court of Justice. But I have the feeling that that is asking for too much.

Q40 **Chair:** I come back to section 38, Gavin, because it is so central to the question. Our Parliament has made a decision in both Houses by a significant majority that we are going to have the European Union (Withdrawal Agreement) Act 2020, which contains section 38. I know that this is trespassing into the legal concepts and sovereignty issues, but it is just out of interest. Although you had the bulk of the questioning at the beginning, I wonder whether you have any thoughts on that, Fergus or Stuart. Would you like to contribute a bit to the question of how it works in practice if we were to apply section 38? The Bill itself is now in the House of Lords; it passed without any amendment at all in the House of Commons, which raises the issue of the Parliament Acts. Therefore, whatever the House of Lords may say about it—be it like the Mary Celeste or otherwise—the reality is that we are in these negotiations. Do you have a view on what is currently being discussed in this Committee?

Fergus McReynolds: On matters of law, I will defer to Mr Sharpe, most certainly. The challenge we have, which perhaps goes back to the answer to my first question, is what the impact is. The impact here is that, yes, it is important to find the resolution for businesses in Northern Ireland and businesses in GB trading into Northern Ireland. But it behoves me, representing the manufacturing sector in the UK, to say that an action that leads to a significant trade dispute with our largest market is not

something that we would advocate. The matters of law are what they are, but the reality is that, if we were to breach those agreements, there is likely to be retaliatory action from the EU. Given where we are in the current economic climate, we do not support taking action that would result in a significant trade disruption with our largest export market. The comment I make is not on the matters of law but on the consequences of a potential dispute in this area.

Chair: I call David Jones—*[Interruption.]*

Mr Jones: The bell is ringing.

Chair: The bell is ringing—for whom the bell tolls. It is going to take us about 20 or 25 minutes perhaps. Sorry about this. Let's say that we will be back by 10 past 4, unless you have to go.

Stuart Anderson: Chair, I have to leave at around quarter past 4 today, so my apologies if I am not going to be here.

Chair: There really is only one more question.

Stuart Anderson: I will do my best.

Chair: We will adjourn now, and we will come back at 10 past 4. Let's say by five past 4 if we can.

Sitting suspended for Divisions in the House.

On resuming—

Chair: We are back from voting. Gavin Robinson will ask what might turn out to be the last or second-to-last question.

Q41 **Gavin Robinson:** I think I know where you are at. Mr Sharpe, back on the ECJ point, we talked about the distinct difference between the UK's position and the EC's position. Do you accept that there seems to be a misunderstanding of the opposition to the role of the ECJ? Are you aware that it is not only the potential for reach-back on state aid issues that causes concern in the UK Parliament, but constitutionally from a Northern Ireland perspective, when we have politicians who have no say whatever in the laws that govern trade? It is a problem that needs to be resolved.

Thomas Sharpe: I have complete sympathy. On reach-back, arguably, the Subsidy Control Act may have dealt with some of the issues, but it would be a brave man who said that that would never ever arise. There is a lot to be said for having a unified state aid regime for GB and Northern Ireland, instead of having two in parallel—daft. Then, of course, it is a question of identity, isn't it? You just don't want, anymore than we do in GB, to have the European Court telling us what the law ought to be.

Q42 **Gavin Robinson:** Or to have laws that we have absolutely no say in. The reason that the ECJ has a role at all is that we are bound by laws in which we have no say.

Thomas Sharpe: Absolutely. As we said before the suspension, that is the logic of the extra rules—this is dynamic alignment. It is even worse, because the provision of the protocol allows not merely the Commission to look at existing laws and areas of law to be amended, revoked or whatever, but new laws that fall within annex 2 to come in. There does not seem to be much ability to question their application, so you are lumbered. Absolutely, those are things we should endeavour to change.

Q43 **Gavin Robinson:** What is your view of articles 167 to 181 of the withdrawal agreement, involving independent arbitration? Is that a potential landing zone?

Thomas Sharpe: It certainly has the attraction of symmetry. If the Commission were here, they would have some difficulty saying, "Look, what is good for the withdrawal agreement cannot apply in Northern Ireland." That is a persuasive point. If you accept that the Court has any jurisdiction at all—our earlier dialogue suggests that it should not, but if we accept that—it seems to me very difficult to argue for the existing asymmetry. There is also a practical element. The superstructure of arbitration arrangements is unlikely ever to be implemented, because that is not exactly swift justice. You can calculate a minimum of 17 or 18 months from the beginning of any dispute to its resolution, and I don't think that is an acceptable way to solve disputes. So, yes, if we cannot do anything better, we should try to adopt the withdrawal agreement procedure.

Q44 **Gavin Robinson:** May I ask you, then, a question that I would not open to the other two, because it is not economic or industrial, but purely constitutional and political? You said earlier "we" accepted a role for the ECJ, but "we" did not, from the Northern Ireland perspective; this Parliament did. That is contained within a withdrawal agreement that recognises that there can be changes to the Northern Ireland protocol, should there be economic, societal or political difficulties, and that is where we are, so, within the legal construct of the withdrawal agreement, it is absolutely appropriate to recognise that as an impediment. We have talked about the disproportionality of the system there thus far, and that the EC should not be as doctrinal as it is being, but if we have gotten to the point of recognising that it should not be as doctrinal as it is being, what changes do you believe it would be required to make to remove the role of the ECJ—legal changes, to bring that within your bailiwick?

Thomas Sharpe: The legal changes would be to surrender the ultimate jurisdiction of the Court of Justice to the courts of Northern Ireland. Personally, I would have no difficulty with that, but I can understand that it might have difficulty accepting that. Again, I point to the asymmetry, again, between the withdrawal arrangements, which do provide for recourse to the Court by the arbitration when it is necessary to opine on the issue of Community law. There you are asking to be an exception to that—an exception to an exception—which, with respect, is a difficult ask.

Q45 **Gavin Robinson:** Within the confines of what was outlined in the withdrawal agreement about the political, economic and societal

consequences, would you accept that it is doable?

Thomas Sharpe: I think that eliminating the asymmetry is eminently doable and sensible. For what it is worth—perhaps not very much—I think the Commission would be flexible on that in the end.

Chair: David Jones, do you have anything to say?

Q46 **Mr Jones:** Yes. Just to continue the conversation on this topic, Mr Sharpe, as you know, this Committee has a specific function to scrutinise legislative proposals that will affect Northern Ireland. We have frequently criticised the so-called democratic deficiency of the protocol. Do you think it would ever be possible to make the protocol itself work? Can you turn that legislative sow's ear into a silk purse?

Thomas Sharpe: By "work", if you mean whether it will function to the satisfaction of the business community in Northern Ireland, I am not so pessimistic. I think there is a sort of commercial and political logic to making things work—

Mr Jones: I am more interested in the democratic deficiency.

Thomas Sharpe: No, I can't—in answer to that specific issue, no, I do not. It is a fundamental issue: who governs people in Northern Ireland? It should be Stormont and the United Kingdom Parliament.

Q47 **Mr Jones:** And the same criticism would apply to the role of the European Court of Justice in terms of jurisdiction.

Thomas Sharpe: Precisely.

Chair: We are getting to the end of our session. We have done our best to get ahead of the curve. Mr Stuart Anderson may want to leave, so unless anyone has further points to make, I will bring the meeting to an end. Thank you all very much for coming.