



# Select Committee on the European Union

## Goods Sub-Committee

### Corrected oral evidence: Future UK-EU Relations: Trade in Goods

Monday 1 February 2021

10.30 am

Watch the meeting

Members present: Baroness Verma (The Chair); Lord Berkeley; Baroness Chalker of Wallasey; Lord Faulkner of Worcester; Lord Inglewood; Baroness Kramer; Lord Lamont of Lerwick; Lord Lilley; Lord Russell of Liverpool; Lord Shipley; Lord Turnbull; Lord Wood of Anfield.

Evidence Session No. 3

Virtual hearing

Questions 25 - 37

### Witnesses

[I](#): Liam Smyth, Director, Trade Facilitation, British Chambers of Commerce; Jo Lappin, Chief Executive, Cumbria Local Enterprise Partnership; Allie Renison, Head of EU and Trade Policy, Institute of Directors.

## Examination of witnesses

Liam Smyth, Jo Lappin and Allie Renison.

Q25 **The Chair:** Good morning, everybody. Thank you very much for joining us for this morning's evidence session on future UK-EU relations: the trade in goods.

I am very happy to welcome our three witnesses today. The transcript will be sent to you after the evidence session. You have had sight of the supplementaries. If I may make a suggestion, perhaps the questions on the level playing field could be directed largely to Jo and Allie, as I think that is an area where they will be able to give more responses. However, that does not exclude our third witness.

Our witnesses are Liam Smyth, the director of trade facilitation, British Chambers of Commerce; Jo Lappin, the chief executive of Cumbria local enterprise partnership; and Allie Renison, head of EU and trade policy at the Institute of Directors. A very warm welcome to you all this morning. In the interests of time, could you be as precise, succinct and as punchy as possible in responding? It helps the flow and keeps us all to time.

What does the trade and co-operation agreement mean for your members? Do any of its provisions cause you concern for the future and, if so, which parts? What could the Government do to mitigate those concerns? Perhaps we could start with Liam.

**Liam Smyth:** Thank you, Chair, and the committee for inviting me to be with you today.

From the BCC's point of view, as a network we were clear throughout that the deal was absolutely required for businesses and for our members. Our starting point is that it is extremely positive that we are not having to manage a no-deal scenario. However, considerable problems remain with how the new arrangements are operating across a range of fronts.

Businesses of all sorts and sizes face big challenges, which are exacerbated by the demands of managing the impact of the pandemic. We are becoming increasingly aware of businesses that are simply turning away from international trade where the new demands and requirements simply make it uneconomic. That is very worrying. We worry that that pace is going to accelerate. It is something we have been hearing a lot about in the last three or four weeks.

We think of it as being three broad pillars and types of problems. In pillar one are areas where there is an issue with how businesses are adjusting, such as through lack of guidance or access to reliable and trusted advice. In the second pillar are areas to do with how the deal has been implemented. The third pillar is where there is something in the nature of the deal. We might look at the effects on traders as some that have additional cost, some that need additional time, and some that make certain types of business activity impossible or, indeed, uneconomic.

Overall, the substantive and long-term disruption to selected business models, which is baked into the deal, is the largest and most important part. Sometimes an issue spans all three of those pillars. One of the main problems that businesses talk to us about right now is rules of origin. You have all heard of that in relation to the Percy Pigs that Marks & Spencer was sending to the Republic of Ireland.

Some businesses tell us that the guidance and the requirements are too complicated to follow. Sometimes, they are impossible to meet. Others have concerns about how the new rules are being applied, such as a good made in the EU that is transported to a distribution hub in Great Britain, because that is how the supply chain was set up historically, and is then re-exported to customers in the EU or Northern Ireland, where it becomes subject to duties because insufficient processing has taken place on the good. Finally, we believe that the decision not to provide for diagonal cumulation in the agreement will prove to be an increasingly challenging problem over time.

What can we do about it? The nature of the fix will depend on the nature of the problem. In the case of rules of origin, under the first pillar, the Government could have issued, and now have, improved and better guidance. We worked as business representative organisations to effect that and make it happen. However, guidance is not the same as advice. It does not point a business to the options or to an answer for their specific product, their specific customer type or their market, and that is what they are looking for right now. The Government need to do more to give firms financial support to deal with new issues, such as rules of origin, avoiding tariffs, making the best of trade agreements, contract terms and treatment of import VAT.

Under the second pillar, they should look very carefully at how they have implemented the rules and work with EU partners to find a sensible resolution. There is confusion on export or self-certification of origin, which is one way businesses can declare origin, and what importers' knowledge means in practice, where an importer can make a declaration based on the knowledge they have of the product.

Under the third pillar, we should think now about where and how we might work with partners to evolve the framework in the TCA. The major problem is that we have pulled up short on diagonal cumulation. That limits the effect of cumulation where we have signed the other 62 bilateral trade agreements. It is only in the agreement with Japan that diagonal cumulation plays a part. I would conclude there on that question.

**The Chair:** Thank you very much indeed. Could we now go to Jo?

**Jo Lappin:** Thank you. I am actually here on behalf of all the local enterprise partnerships. As you know, we are not business representative organisations. We are the Government's body for the economy and business in place.

We should start with a positive. For our business community, the TCA was far better than the no-deal option, in that it addressed the most considerable concerns about both tariffs and the movement of goods. We are already seeing some real issues, in the way that Liam described. The biggest issue that is coming across to us, again as Liam said, is around rules of origin. Businesses are finding them hugely complicated. I think the way that it was envisaged, in comparison with the design of the TCA and the actual practice, is very, very different. Some of our businesses have 50,000-odd components that they will have to work through for rules of origin. That is unmanageable from an administrative perspective.

It is helpful that there are many things that still need to be resolved in the agreement. We would like to see the Government really thinking, in the period of grace particularly for rules of origin, about how we make them work far better for the business community.

As Liam described, we totally endorse the fact that there are disproportionate impacts on different types of businesses; for instance, the shellfish industry will now struggle to send anything to Europe. Hazardous goods movement is being particularly badly affected because of licensing considerations. Alongside a generic framework that works better for businesses, we need to look at some very specific sectors and types of trading that need a response.

The Government have done very well in providing additional resource to businesses through EU transition advisers. However, the funding and those posts run out at the end of March. At that point, most businesses will still be getting to grips with what they need to do to manage the end of the transition period. Some careful thought needs to be given to how we continue to hand-hold businesses through some fairly complex issues.

We contacted 200 businesses last week. The feedback that we have had from lots of them is that most have not had the headspace to get to grips with the agreement. They are consumed with Covid. They have seen a reduction in trade. They have significantly depleted reserves. This is a longer-term end of transition period than three months.

The other thing we need to see in practical support is that, whatever government does with the £22 million of business support it provides to the whole of England, it should be flexible, agile and responsive, so that we can provide bespoke advice to businesses. At headline level, those are the key points that I would like to flag.

**The Chair:** Thank you very much, Jo. That was very useful.

**Allie Renison:** Good morning, Committee, from Washington. I will be as brief as I can, with the caveat that, while I will do my level best to answer some of the questions about the level playing field, I, like Liam, have been fairly beset by the business impact end of the agreement, so have probably spent less time focusing on it. I am happy to answer questions on that as well, in the main.

Generally speaking, there was obviously relief that there was a free trade agreement, followed quickly by the realisation that this free trade agreement does not provide for trade that is as free as some might have thought. That is obviously simply because of the starting point being different for this negotiation.

I will not duplicate some of the things that Liam said. Obviously, we are looking at the impact of rules of origin, and we have a survey out in the field. This committee focuses on goods. The impact is disproportionately much bigger on businesses that are trading in goods than in services. There are a number of reasons for that, including simply that a lot of services businesses cannot function at the moment.

As regards the relief at avoiding no deal, we have statistics showing that only one in 10 thought that the lack of a deal would mitigate Covid rather than do the opposite. There was relief in that respect. The most frequent commentary that we received was that the lack of time between text to implementation, and the lack of time between guidance to implementation, has made the impact far worse than it needed to be, frankly.

From a contrasting perspective, the closest corollary to an agreement that, in the outcome, makes trade more cumbersome—not that it is intended to—is perhaps the NAFTA agreement that was renegotiated between the US, Canada and Mexico. Even in that, for example in areas where rules of origin were renegotiated, making it more cumbersome for business to trade across borders, there was about a year and a half between text and implementation, just to give you some comparative context.

As regards the seven-day period, yes, there will be arguments that some of it would have been expected outside the single market and the customs union, and the Government stating last February that they did not intend to seek alignment, but there are a number of areas of detail that people were hoping to see from the agreement—for example, on VAT.

VAT has been one of the biggest headaches on top of rules of origin. People and businesses did not realise that there would be no alignment of any kind, and no real agreement on mutual recognition, whether it related to conformity assessment of standards—we will get into that separately—and accounting for VAT in 27 different jurisdictions, many of which require a fiscal representative.

That amplification of the number of different regimes to deal with, coupled with the impact for hauliers and couriers, with the spike in freight transport costs, for example, has led to something of a perfect storm. It is all happening at the same time.

To some extent, it would be misleading to gauge the impact on business from looking at the immediate disruption, or lack thereof, at ports. That is for a number of reasons. A lot of businesses have stockpiled. A lot of

businesses had basically decided not to trade for a while. Now, as freight volumes are resuming, the paperwork is, as it was always going to be, the biggest challenge to get right. That is why we needed a proper implementation period.

As to what the Government can do to mitigate it, at the end of the day the guidance can only be generic. It obviously came quite late in the day. At the IoD, we have been calling for three and a half years of either a voucher-type system or tax relief to help companies avail themselves of professional advice. Simple generic guidance will never be able to address a company's specific situation. We hope to see that for adjustment needs going forward.

**The Chair:** Thank you very much, Allie, and thank you all for setting out the detail in your opening remarks. We will now go to the specific questions.

Q26 **Lord Russell of Liverpool:** Returning to the guidance that Allie was just talking about, could you be specific about the guidance that the Government have provided on the bits of the TCA that affect your members specifically? Secondly, if I could ask you to rank three things the Government could do to improve the guidance/advice as early as possible, what would they be?

**Liam Smyth:** I will come to the second question first. We often conflate guidance and advice, and that is part of the problem. The Government have provided guidance, but they expect traders to interpret that guidance and, frankly, to make fiscal declarations on that basis and suffer the consequences should they get them wrong. That is a significant gap.

In a way, there is no shortage of guidance. We can all have a view on whether or not it has clarity embedded in it. Jo talked about the grace period on rules of origin. There is a grace period on providing the evidence that you are compliant with rules of origin, but there is no grace period on rules of origin. A misinterpretation that businesses are hearing is that there is a grace period and that you do not need to provide it for 12 months. Well, you do; you have 12 months in which to provide it.

The guidance can also be subject to interpretation that may, in the long term, be unhelpful. Some might say that the focus on the specific guidance in the TCA was in order to make the agreement sound more attractive than perhaps it was. It is only through going into the detail that one realises what the guidance did not say, rather than what it said. There are a number of specific areas where businesses and trade associations, in the relatively short time that we have had to examine the TCA, have looked at the gaps that matter most to our traders around rules of origin and diagonal cumulation, and asked, "What does that mean for businesses?"

We will come on to talk about the issues around the border. They have often been born of conflicts between what the guidance said, what the UK global tariff that we have to rely on says, and how systems such as the

CHIEF system at HMRC were designed to operate. In the early part, in the last few weeks, we have seen examples whereby all three of those important elements were in conflict, and we had to find very early and quick remedies.

Part of the problem with the guidance is that it could not always be relied on by trade associations and by people who are in the know. Therefore, businesses that are less agile and less able to understand this stuff have been left wanting in the advice that was out there and on GOV.UK. Some of that has been addressed, as we brought it forward and brought the issues to HMRC and others, but it remains the case that there were a number of days and sometimes weeks when the guidance lacked clarity.

**Lord Russell of Liverpool:** Thank you very much indeed. Jo, could I direct the second part of the question to you? What are the three top things that you would want the Government to do? I suspect it may be focused on advice more than guidance.

**Jo Lappin:** Advice more than guidance; I totally endorse what Liam said. The Government checker for international trade and compliance is quite useful. It is then about what you do when it gives you a prescription. Businesses need to be walked through that. There needs to be something that is very much about advisory support rather than greater guidance.

Having said that, Lord Russell, we need better guidance. The Business Secretary sent something on rules of origin at the back end of last week that probably raised more questions than provided answers. At a recent Institute of Export and International Trade event for the businesses that should be the best able to manage this, 60% said that they did not understand rules of origin or how they needed to manage them. The only way we will get a solution is by very direct, bespoke hand-holding for the businesses concerned.

Another issue that concerns me is that I understand that some businesses are being told to swallow tariffs rather than even consider rules of origin, because it is potentially much cheaper for them to do that. That is fine if you have high-value goods. However, if you have low-value components, you cannot do that. There are some serious implications that we need to work through with our business community.

**Allie Renison:** On the guidance, it was simply that there were reams of it coming quite late in the day, so now there is a plethora of it for businesses to wade through. From an action point perspective, there are various grace periods. There are not that many, but where they apply they might be extended. For example, the simplified customs declarations are coming to an end in July. I am not sure whether businesses are prepared to handle full customs declarations.

We have not gotten into Northern Ireland, for example, but it is a microcosm of a wider issue, which is that we need the UK and the EU to get the trade specialised committees that sit under the partnership council of the TAC up and running. Hopefully, they will engage the

industry, so that we know to what extent these things can be mitigated further. Otherwise, people will be trying to operate in the dark: “Is this the future or will there be further easements?”

Thirdly, to reiterate the point about fiscal support, we could look at the regimes that Ireland, the Netherlands and even France have put in place to help businesses. They know that their guidance will always be far too generic, so they have put fiscal support in place to help businesses access the specialist advice that will hand-hold them through the process. We urgently need some of that, otherwise businesses will cease trading.

**The Chair:** Thank you very much. Before we move on, I remind everyone that we are under time constraints.

Q27 **Lord Wood of Anfield:** Allie, I know you said that you are not a TCA level playing field expert, but I am interested in which of the provisions in the TCA you think are the most important for providing a level playing field. What do you think the effects will be on business, in particular on small business?

**Allie Renison:** I will start with what we can see as a positive, although we are not sure whether it will be passed through in implementation. If I can articulate the general, fundamental differences, there is no longer a need, effectively, to pre-notify—what we call ex-ante notification of subsidy control. There are benefits to having a flexible regime. For example, the TCA talks about the de minimis level. The overall amount that can be granted to a business was up to £200,000. It has now effectively doubled, so there is flexibility for smaller businesses.

The biggest question mark, however, is against what attracts a dispute and therefore what leads to potential retaliatory tariffs. We already know that, particularly for larger businesses, there is some concern, understandable on the Government’s part, that to a degree they have effectively defaulted for the purposes of ease to continuing the EU state aid regime framework, or subsidy control framework, while they create their own.

Some of that hands back to the fact that at the moment there seem to be a lot of question marks around the Northern Ireland protocol, and the UK taking any flexibilities that might affect trade between the UK and Ireland and Northern Ireland. The Commission has published a position paper that sets out a fairly maximalist interpretation of what it considers to be affecting trade between Ireland and Northern Ireland; any businesses at all that trade with Northern Ireland could be in scope. I think that is keeping the UK from moving ahead with any kind of differences in the regime itself. There are flexibilities to be made use of. It is just that the Northern Ireland question is holding the Government back from making any radical departures, generally speaking.

One thing I would flag up, particularly in that regard, is that the EU state aid framework had an undertakings in difficulty rule. That was understandable, because the EU was trying to make sure that only

businesses that were genuinely in distress from Covid, dating back to a certain date, could avail themselves of subsidy funds. That should, as much as possible, be removed now that we do not have the obligation to completely align with EU state aid rules, but it seems that for now the Government are defaulting back to the EU's regime just for purposes of ease until they get their own subsidy regime up and running.

**Lord Wood of Anfield:** That is fascinating. Thank you. Jo, do you have anything to add on small business?

**Jo Lappin:** The biggest issue that we feel needs to be resolved is the subsidy control regime. I am very happy to pick up on that in future questions, but at headline level we want to see some pace. We have now entered an interregnum where we are potentially still covered by EU requirements, particularly for grants that entered the system prior to the end of the transition period. We need to see whatever is going to replace that, to make sure that it works to support our businesses.

On your question about small businesses, my concern is more about the funding that will be available to support businesses to navigate the transition. You want to explore the levelling-up fund. As I understand it, that will offer very little to business. It will be very much about what I would call regeneration activity. Conversations on the shared prosperity fund equally seem to bypass business recovery. There is a huge issue about how we support businesses to move forward in recovery from, as you all know, one of the most difficult periods in economic history.

Q28 **Lord Lilley:** My question is initially for Jo, particularly in light of her remarks. The UK will gain some discretion over its subsidy regime, subject to introducing an independent subsidy control body. Within the parameters of the TCA, how much freedom does the UK have to pursue its priorities through subsidies, and how important do you think that is, given that historically we have been a country that does not really favour subsidies?

**Jo Lappin:** The subsidy question is quite interesting, because through the pandemic there have been massive subsidies to the business community to preserve businesses and make sure that we do not see wholesale decimation of businesses and jobs. Going forward, for me, it would be counterintuitive if we did not look at providing support to businesses for the very important recovery activity.

On control of the subsidy regime, to be honest, Lord Lilley, the kind of things that most LEAs, and probably most business representative organisations, are interested in are below the level of the kinds of issues that would be of concern to the agreement. We previously gave a response to the Internal Markets Sub-Committee, and we would like to re-emphasise those points. Any kind of subsidy control regime should be looking at a long-term framework that is not subject to excessive tinkering. We should have simple subsidy rates that align with programme activity and geographies.

We would like a significant increase in the de minimis level, so that we can look at investing in businesses' recovery. For certain activities, such as business support, we would like something that is much more realistic. The amounts that we tend to talk about, and need to account for, are very small in practice. It would also be helpful if the Government could create a single online system that captured, through the new body, all the aid that is provided to our businesses, to make a much more simplified regime going forward.

**Lord Lilley:** You mentioned the de minimis level. As I recall it, any company can receive up to roughly £300,000-worth of subsidy and it is measured in SDRs over a three-year period. Is that sort of help not going to be enough for small businesses, beyond the recovery period that we are talking about? Might we not deploy that in the future?

**Jo Lappin:** We should be looking at a level of at least half a million. If we are talking seriously about moving our business base forward and thinking about innovation investment and recovery in growth, one of the products that we have found locally—I know that other LEP colleagues have, too—that works very well has been investment in small capital grants. In the context of our funding, we would call £500,000, match funded, a small capital grant to move a business forward. For me, £500,000 would be a more reasonable level, and we should be looking at that.

**Lord Lilley:** Thank you. Chair, I do not know whether there is any point in asking others.

**The Chair:** Lord Lilley, as a matter of time, if Liam and Allie have something to add, it would be really helpful if we could have it in writing.

Q29 **Lord Shipley:** I want to ask Jo Lappin first, but I am very keen to hear from Liam and Allie too, about the matter of the TCA having provided greater clarity on future subsidy controls. Jo helpfully gave us one or two centres of direction. I am interested in what state aid policies the Government should focus on to deliver their levelling-up agenda. I am interested too in exactly how the Government should engage with key stakeholders to support the sectors and places in most need.

Jo, you said at the very outset that you were speaking on behalf of Cumbria LEP. I am in Newcastle upon Tyne, so I am particularly interested in your response from the perspective of Cumbria. Secondly, you said that you were speaking on behalf of all LEPs as well. You have given us one or two very helpful pointers, about de minimis, a single online system and so on, but how do we do more, given that we have the TCA, to make the new environment work for businesses?

**Jo Lappin:** It goes back to the point about making sure that we have some kind of support that works directly for businesses. My genuine concern about the levelling-up fund, and the shared prosperity fund, is that the current proposals seem to have business conspicuous in its absence. If we are looking at levelling up, the most important thing for

every area, as you know, is that there are productive, long-term employment opportunities.

We have been very fortunate in the investments that have been made to date to businesses through the pandemic. They have staved off and protected many businesses, but unless we have some kind of serious economic transition plan we will have a very vulnerable business space. Alongside the subsidy control, we need to be clear that we have the right mechanisms to support businesses and to manage through what will be a difficult 12 or 18 months.

**Liam Smyth:** Jo makes some very sound points with regard to levelling up. The key area I work in is trade. Businesses are not used to trading outside the single market, and many rely on trade within the EU 27 countries for their future prosperity and success, so I am concerned that we use state aid to support improvement in knowledge and understanding of how cross-border trade works. Unfortunately, many firms have never had to learn that; or, fortunately, in 30 years of being in the single market it did not matter to them. They just sent their goods across many countries and traded their goods. Now they have to send those goods across a border, and that is quite a different dynamic that many are coming to understand. It is complex. It is not outwith the bounds of possibility to learn how to do it, but people need to be given the opportunity to learn. They will need some support, given the background of Covid and all the other pressures on traders, to get to that point.

**Allie Renison:** I will briefly amplify some of what Jo was saying. At the moment, for various reasons, we have an interregnum period. While we do not want to lose haste at the expense of simply consulting, I think that consulting on industry views, and having the mechanism to be transparent, before we have the regime set up is really important.

Of course, regardless of one's views on the TCA itself, there is a huge amount of flexibility. Yes, there is some provision to notice and comment between the UK and the EU and to avoid too many retrospective disputes, but, apart from that, the UK has a huge amount of flexibility now to streamline it and make it as transparent as possible. For example, even though the UK had quite a heavy hand in designing the UK state aid framework and notification requirements, we do not want to get into repeating what has happened over the last decade. Very often, the Treasury can hide behind state aid rules not to do something. We want to move away from that, to be completely blunt and frank. That requires a significant amount of transparency about what the new regulator—the new awarding body, so to speak—is willing to do and who it is going to be.

**The Chair:** Thank you very much indeed.

Q30 **Lord Berkeley:** Allie, what impact will the TCA's provisions on labour and social standards have on different sectors and sizes of businesses? I can see that as being a way of government, particularly our Government

probably, trying to support businesses that are badly affected by the TCA. If we are not careful, it looks to me as though we will get into a pretty impossible arbitration system that will not work at all and will cause even more confusion. Can you see any positive outcome on that from the TCA?

**Allie Renison:** Without going into too much detail about all the different versions of it, because that is potentially better answered by people who are more expert on the level playing field provisions, the most important part is to some degree the non-regression clauses. That is why there has been some confusion in the business community, and beyond, over some of the reports in the media about changes to the working time directive. It is about understanding, first, where that desire is coming from, and, secondly, whether it will trigger any of the dispute provisions. There is a lack of clarity about that.

Businesses' biggest concern about the provisions that you raise is more about what will trigger a dispute, not doing too much in a non-transparent manner, and suddenly finding that they have defensive or retaliatory tariffs applied to them. That is also a big concern for inward investment.

Generally speaking, it points to the need to make sure that on regulatory change there is a period of stability and calm, which is what businesses are looking for right now. There is so much going on in the ether around Covid. Sometimes, even when you deregulate, you can create red tape in and of itself. That is not an aversion to deregulating or better regulating; it is more a plea to the Government to make sure that there are transparent mechanisms for how they approach regulatory change going forward and that we get back to doing impact assessments and consultations. Although the TCA does not have a provision for being bound into EU rules going forward, we have to look quite transparently at the trade dimension when we are doing regulatory change differently, better, or what have you.

**The Chair:** Lord Berkeley, if Jo and Liam want to comment, could they keep it brief? If they would like to add in writing anything that they feel would be useful to the committee, it would be really helpful.

**Lord Berkeley:** Chair, I think it would be better if they submitted things in writing because it is quite a complicated subject. Allie has given us a very good introduction to it. I would welcome something in writing from the other two witnesses.

**The Chair:** Thank you. I agree with you totally, Lord Berkeley.

Q31 **Lord Lamont of Lerwick:** In the interests of speed, I will direct this question to Jo. Then I have a specific question for Liam.

Jo, do you expect disputes over subsidies and the introduction of retaliatory measures to happen very often? The EU has had massive support for business through the Covid crisis. If one is to be challenged about support that one gives, the other side cannot just introduce retaliatory measures. It has to go through a process, and it has to give

evidence and proof of diversion and economic harm. Is this really likely to be an inhibiting factor on state aid in the UK, given that we have been very sparing with state aid in the past anyway?

**Jo Lappin:** I do not believe it will be. The level of interventions that we are talking about should not trigger any kind of issue. It would be massive, single governmental investments in something that were likely to trigger that. The routine, everyday activity that we will be dealing with in our own economies will be nowhere near that kind of trigger point. That would be my view, and that is the view of LEP colleagues across the country.

**Lord Lamont of Lerwick:** Going back to what Liam said earlier, referring to the Northern Ireland protocol, nobody has mentioned the trader support scheme. That is free advice, and good advice, as I understand it. Does that not ease the problems considerably?

**Liam Smyth:** Is the question whether the trader support service eased the problems significantly?

**Lord Lamont of Lerwick:** Yes.

**Liam Smyth:** In so far as it has been engaged in the first few weeks of this year, it would be fair to say that it has done a job, but volumes are very low right now. You are quite right that it is state aid for traders in Northern Ireland and very often for traders in other parts of Great Britain that are moving goods into Northern Ireland as well.

I hope, of course, that that will continue to be effective as volumes increase. I have no reason to doubt that it will be, but it remains to be seen. We are not experiencing volumes of trade that are typical for the UK at this point in time.

Q32 **Lord Faulkner of Worcester:** Thank you for coming to see us this morning. It is perhaps rather too early to ask this question, but I wonder if you could share with us your thoughts on the primary causes of delays in the transportation of goods between Great Britain and the European Union? Are they deep-seated structural delays that are likely to persist indefinitely, or will we find a way through them and find that they do not really affect the supply chain?

**Liam Smyth:** I do not think it is too early, notwithstanding my remarks on the volume of goods moving through our borders. We are not seeing the full impact, in part because businesses either oversupplied or stockpiled in advance of the Christmas period, and in part because, as we did not know that we were going to have a deal at that point, many traders anticipated the possibility of no deal and moved goods into EU 27 markets early, under the customs regime that applied then.

The main issue that we are seeing now relates to being able to access certification such as EHCs—export health certificates—and catch certificates on time. We have seen plenty in the press from the fishing community in that regard. Jo referred to that earlier. For businesses and

for some intermediaries, it is knowing how to file those, as there has been conflicting advice between the tariff, the way that CHIEF was operating, and the guidance. Those issues have taken some weeks to resolve. They caused some friction, more than we would have anticipated or hoped for.

Secondly, there are major issues with the use of transit documents, where goods are sent under the common transit convention. At no point last year or the year before, when we were trying to prepare for day one, no deal and so on, did anyone anticipate the common transit convention being used as much as it has now, in part as a result of the terms of the TCA. Hauliers and EU traders, based beyond the French or the Dutch coast, pretty much want the goods to be delivered to their port. I had a good example in the last week of a trader in Marseilles who was not happy to have the goods cleared at Calais. They wanted the goods cleared at Marseilles and were insisting on a movement under transit across France.

That has resulted in unanticipated demand for transit movements. You can add to that the introduction of the NCTS—the national common transit system—brand new at the end of the transition period, as well as insufficient capacity of transit guarantees. When you move goods, you have to guarantee liability for duty and VAT through the countries in which the goods move. There is insufficient capacity for transit guarantees in the UK. In addition, the drivers of the trucks are unfamiliar with the system because they are less used to operating it.

From the start of the year, there have been problems with transit paperwork and issues with goods departing from the UK and arriving in the country of destination. Drivers did not understand that, where they had groupage loads, they needed every element of those loads cleared for departing the UK so that they presented a single document for the truck. That did not work. When they arrived in France, they were held up, sent down an orange channel and delayed.

The consequence of all that is that many transport companies are now carrying goods only if they are also responsible for the paperwork. They are saying to traders, "I'll do your paperwork. I don't want any third party doing it. I want to make sure the paperwork is okay and the driver is not delayed". Therefore, we are seeing big price inflation. Traders are telling us that prices have gone up quite dramatically, threefold in some examples we have. Some are also insisting that goods are moved under transit so that they do not have to deal with anything beyond the arrival of the goods in the country of destination. That can be Poland, Ukraine or Germany. The goods then freely flow through the Dunkirk or Calais border controls. All of those are immediate problems causing issues at the border.

My worry is that, as volumes increase, the capacity issue in the intermediary sector in the UK will become ever more evident. I am already hearing from businesses that come to our customs brokerage business at the BCC, called ChamberCustoms. We have capacity because

we built it for this very circumstance. They come to us having been rejected by 10 or 20 other intermediaries, who just say, “We don’t have the capacity to help you”. We can help to fill some of that gap, but it will become ever more evident that businesses will not be able to move goods because they cannot get anyone to clear them.

**Lord Faulkner of Worcester:** That is a really helpful answer. We had a witness last week from Make UK who sought to draw a distinction between system issues and structural issues. He told us that one of those would be solved more easily than the other. Would you agree with that?

**Liam Smyth:** Yes. I share the confidence of many people that we can resolve system issues. The system problems are not overly complex; it is about education. The structural issue is that, once we left the single market and the customs union, we became a third country and therefore the paperwork and the procedures are inevitable. You cannot do anything to change the need for the paperwork to be done, other than educate the people who have to do it, and try to find some potential efficiencies in the way data are transmitted electronically between systems, but the structural issue of needing the paperwork will not go away.

**Lord Faulkner of Worcester:** Jo or Allie, if you would like to add anything, I think the Chair would like you to do it in writing rather than in a long answer now.

**The Chair:** You have absolutely hit the nail on the head, Lord Faulkner. Jo and Allie, if you could put into writing anything you want to add, it would be helpful.

**Jo Lappin:** We have a lot on that one.

**The Chair:** Thank you very much indeed.

Q33 **Lord Inglewood:** I ought to explain to the committee that while Jo is chief executive of the LEP that I chair, first, I have nothing to do with any particular evidence she has given, and, secondly, she was asked to come not by me but by the LEP Network.

I will direct my question principally to the other two witnesses. It is very simple and follows on from what we heard before. A whole series of issues has been described that relate to customs controls and associated processes. What good concrete changes might reasonably straightforwardly be introduced to alleviate the practical difficulties that are getting in the way of the flow of trade?

**Allie Renison:** To recap, some of it is structural and needs adjustment. Therefore, to help to service that adjustment—I speak here only for myself and my organisation—where there are grace periods, we should try to extend them wherever possible—for example, on export health certificates. For people who are dealing with trade under the Northern Ireland protocol, the full sanitary and phytosanitary checks that come into effect in April need to be extended wherever possible.

On fiscal support, we have been told that the fund for customs training provision has effectively been tapped out. I am not normally one to say that fiscal support is the answer to everything, but in the event that guidance remains generic, fiscal support will be needed to help companies access the specialist advice they need to be able to navigate the systems.

As for solutions going forward, there are provisions to avoid things such as safety and security declarations, if the Government were willing to consider them; for example, Norway has agreed to align with parts of the EU customs code so that it does not have to deal with that. The Government do not want to align with any EU rules, so that makes it much more difficult. I think that ups the need to make sure that the committees of the trading partnership council, sitting under the structure of the agreement, meet as quickly as possible so that business can feed in to try to maximise easements wherever possible.

**Liam Smyth:** Allie talked about the grant schemes that are around. To amplify what I said about the difference between guidance and advice, I am talking about advice that traders can rely on that is indemnified against someone's profession so that they can make the statement to HMRC: "I believe this to be the case, because I have taken that advice". If there is an argument about it later, they have some recourse to the advice. Funding sound, reliable advice is a gap for many businesses.

We spend millions of pounds, typically with DIT, trying to get businesses to export for the first time, grow their exporting or go on a new exporting journey. The risk right now is that people who have been invested in to do that just give up. The short and long-term aims must be to maintain the exporting activities of many businesses, and importing—let us not forget importing components and the process to transform and re-export—and overcome those frustrations by making sure that businesses have the advice and guidance they need and that they keep on their trading journey.

Q34 **Baroness Kramer:** My question is about the burdens, particularly on small businesses, of complying with rules of origin and conformity assessments. People have said a lot about rules of origin, so perhaps we could focus on conformity assessments.

I have one query on rules of origin. In the discussions we heard, are we talking primarily about small businesses that are end sellers to the EU, and is it different if a small business is part of the supply chain? Could you first address the issue of conformity assessments and any burdens or challenges, particularly for small businesses? Perhaps I could start with Jo and then go to Liam, and ask Allie to add something in writing later.

**Jo Lappin:** It is very, very difficult for small businesses, because they are still dealing with the burden of the pandemic. They have limited resource, and trying to manage a significant change in the system at relatively short notice is proving difficult.

Small businesses trading at relatively low levels report that they are being asked to complete not only all the export paperwork but the import paperwork. The businesses they trade with say, "If you want to trade with us, you also need to complete all our paperwork as well". That is having a disproportionate impact on what they want to do in trading internationally.

Another thing we are picking up is that many businesses now find it difficult to trade at all. It goes back to Liam's point about groupage haulage. If you are smaller, a lot of hauliers do not want to take your goods because they are less confident that you have complied with the requirements. That is having a very disproportionate effect on small businesses. Concerningly, one of our businesses wrote to a local MP to say that since their main market was Europe they were seriously considering re-establishing their manufacturing presence in Europe, because that would make it much easier for them to do business going forward. Clearly, that is not something any of us wants to see.

**Baroness Kramer:** Liam, on conformity assessments it would be helpful if you could help on the distinction between structural and system problems.

**Liam Smyth:** I will do my best, and I will try to keep it brief on conformity. I would sum it up as follows. Our ask of the Government would be, "Don't diverge on conformity for the sake of it. Continue to input". The British Standards Institution has been very much the leader in that space, not just in the EU but in a European context, through CEN and CENELEC. We have asked the Government to continue to see BSI as that leading light, because if we start to diverge, businesses will be faced potentially with producing the same thing in two or three different versions, each of which will have to meet the conformity assessment in two or three different jurisdictions.

That will not help our productivity levels; it is certainly not an efficient way to go. There are plenty of examples in the market of good conformity convergence on items that consumers buy that has made them much more competitive to make and sell, and much cheaper for our consumers to buy. Diverge as little as possible and, if you are going to diverge, you need a really good reason for wanting to do that.

Q35 **Lord Turnbull:** Before the end of the transitional period, we did not hear a great deal about VAT. Now, in the press, VAT is everywhere. Can the witnesses explain the changes that have been made and the consequences for UK businesses and customers of leaving the EU's VAT system? If you are buying something, is the amount of VAT that you ultimately pay unchanged but the way it is collected makes a great deal of difference, or is there an actual change in the amount of VAT that people have to pay?

**Liam Smyth:** You are right to say that the change is mainly in relation to when and how VAT is collected on the importing of goods. The BCC campaigned and lobbied the Government to move to postpone VAT

accounting, or to return to postponed VAT accounting, at the end of the transition period, and prior to that if we entered a state of no deal on day one. The reason is because it is the only VAT that is collected in that way. Most VAT in the UK is collected at the point at which the goods are consumed. We pay it in our shops, and the shops collect it on behalf of the Chancellor and remit it to the Treasury. We campaigned for that as an easier way for UK traders to deal with import VAT. Indeed, that is where we are now. They can use postponed VAT accounting.

However, the VAT issue that is really vexing many traders now is that, as Jo pointed out earlier, when they sell goods in the European Union the businesses they sell the goods to say, "When you sell me your goods, I want you to deliver them to my factory gate in Stuttgart having dealt with the duty and any VAT that is due to be paid in the European Union". That places a burden on UK traders if they aim to comply with it.

First, they need to get themselves an EU EORI number and VAT registration. Secondly, they need an establishment in the country of destination, which means establishing a business enterprise and so on; they need a tax accountant in that country to act on their behalf, and they need an agent to clear the goods into Germany, in the case of Stuttgart, for example. The alternative is to renegotiate their contract with the customer and have the customer deal with all those things. If you were the customer, you would expect to erode somewhat the margin that the seller will benefit from in selling to you.

One option in dealing with the issue of VAT at the destination is to renegotiate contracts, probably with eroded margins. Sometimes with low-margin goods, one ends up with no economic viability in selling to that customer any more. You need to operate on a high margin to have the wiggle room to absorb duty and give the customer some benefit from dealing with the VAT, the duty and the import procedures at their end. I hope that answers the question.

**Lord Turnbull:** Do you think there is much prospect that those changes will be made?

**Liam Smyth:** It depends on the relationship between buyer and seller. I know of a number of examples where we have advised people how to do that, and they have succeeded. In other cases, there has been a compromise where they split the cost of doing those things. None the less, there is a compromise. For others, I am afraid the decision is, "For that 10% of my turnover that comes from the EU, I'll try to get another 10% of turnover in the UK. I will just let it go and try to find someone who buys the product that I sell in the UK who may be buying it from the EU". People are trying to deal with displacement in supply chains.

**The Chair:** Lord Turnbull, perhaps we could have the next question. The two witnesses who have not spoken on this one may want to add some thoughts to the final question. I know that one of our witnesses has to leave very shortly.

Q36 **Lord Turnbull:** That is fine. I would also like someone at some point to try to explain why the EU refused to grant diagonal cumulation. What was the rationale for that? It seemed to me an illogical thing to do. I have never understood why it was so important for the EU to deny it to us. If someone could add that to any submission they make, I would be very grateful.

**The Chair:** Thank you, Lord Turnbull.

Q37 **Baroness Chalker of Wallasey:** I will put my question to Liam in particular, but Jo may want to add something. How do you assess the TCA's protocol on combatting VAT fraud, recovering taxes and duties? Is it very cumbersome, as it seems to be to me, and how successful do you think it can be? Is there scope, therefore, for improvement in this area, which I would have thought was clear?

**Liam Smyth:** I defer to others on VAT fraud. It is not an area on which we have any substantive data, so it would be wrong for me to speak to it. My apologies.

**The Chair:** I think Allie would probably be better placed to answer.

**Allie Renison:** It is worth making the distinction that the VAT protocol is really about a state-to-state mechanism, as people may or may not be aware. It does not materially assist businesses with any of the VAT issues arising at the end of the transition period.

It allows the UK and EU member states to request VAT information from one another and introduce arrangements for the automatic exchange of VAT information. It is one of the areas that highlights how important it is to have the specialised trade committees sitting under the TCA structures meet, because the type of information to be exchanged will be determined by those specialised committees. One of the areas that has seen the greatest volume of European Court of Justice cases is VAT and, to a lesser extent, VAT fraud. This is one of the areas where you need to get those structures up and running to improve things that may seem quite cumbersome on paper.

**The Chair:** Allie, would you like to touch very quickly on Lord Turnbull's question on diagonal cumulation?

**Allie Renison:** Sure. Liam deals even more with rules of origin, so he may have a view as well. One might recall that the Japanese Government's submission, quite early after the referendum, asked for diagonal cumulation to reflect the integration of supply chains.

I do not know whether you would say that the UK has a high average threshold for local content, but, generally speaking, EU resistance to diagonal cumulation comes from the fact that it wants to limit the amount of third-country content coming into the EU duty free, because to some extent it can have the outcome of pushing up domestic supply chains. If one wanted to be contentious, one might even suggest that it is about reshoring or onshoring of supply chains, or maximising the amount of

supply chain activity that goes on within the contracting parties, as opposed to those outside it. One of the main reasons for President Trump's Administration renegotiating rules of origin in NAFTA was to try to make sure that third countries outside the contracting parties did not have easy access to the United States.

**The Chair:** Jo, do you want to add anything on Baroness Chalker's question?

**Jo Lappin:** I have nothing on that one. Thank you.

**The Chair:** We are drawing this session to a close. I thank the witnesses very much indeed. It has been an incredibly detailed and comprehensive session.

I remind the witnesses that when they receive the transcript of this public session, if there are any minor corrections to be made, perhaps they could make them and send them back as quickly as possible. A number of colleagues asked for responses in writing to add to our evidence session. If that could also be done, it would be appreciated by the committee. We always run out of time in these very important sessions, but I thank you for joining us this morning and giving us your expertise. I suspect it has raised more questions for the committee to take forward.