

# Northern Ireland Committee

## Oral evidence: [Brexit and the Northern Ireland Protocol](#), HC 767

Wednesday 24 February 2021

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Members present: Simon Hoare (Chair); Scott Benton; Mr Gregory Campbell; Stephen Farry; Mary Kelly Foy; Mr Robert Goodwill; Claire Hanna; Ian Paisley; Stephanie Peacock.

Questions 481-538

### Witnesses

[I](#): Dr Esmond Birnie, Senior Economist, Ulster University Business School; David Henig, Director, UK Trade Policy Project, European Centre for International Political Economy; and Sam Lowe, Senior Research Fellow, Centre for European Reform.



## Examination of witnesses

Witnesses: Dr Esmond Birnie, David Henig and Sam Lowe.

Q481 **Chair:** Good morning, colleagues, and good morning to the witnesses for our evidence session this morning on Brexit and the Northern Ireland protocol. We have economic and trade analysts with us this morning and we look forward, gentlemen, to what you have to say. I am going to kick off the batting by asking the three of you individually to set the scene, if you will, with a bit of chronology, taking us through from the end of last year to where we are today, and with your thoughts, views and opinions on how things are going, operational ability and the like. Shall we start with Dr Birnie?

**Dr Esmond Birnie:** Good morning. As of 1 January—looking at this in practical terms—costs have been increased for Northern Ireland-based businesses. This is particularly in terms of import of goods from Great Britain into Northern Ireland. So I suppose what we are likely to see—if, indeed, this has not already started—are two main negative effects in the Northern Ireland economy: higher prices to consumers and higher costs to businesses that are processing components and raw materials coming in from GB. That, in turn, will reduce their ability to sell back into the Great Britain market. So, in practical terms, so-called unfettered access into the rest of the UK has been reduced.

You might ask what evidence we have for these sorts of negative effect. I would point to three things. First of all, in January, we had an up-to-date business confidence survey, the Ulster Bank purchasing managers' index, and it showed the most rapid increase in business output prices and business input prices in Northern Ireland for over two years and a much more rapid rate of increase than was the case for businesses in other UK regions.

Secondly, we know that the UK Government has devoted up to £100 million per annum over the course of two years to the trader support service, and that is indicative, I think, of at least some of the scale of the additional bureaucracy. Of course, the TSS may not be a permanent fixture, so Northern Ireland firms in the future will have to take those costs on themselves. From a wider UK perspective, this is £200 million of public expenditure that almost certainly could have been spent in other ways, alternative ways, and, many of us would feel, better ways.

Thirdly and lastly, in terms of evidence of possible difficulties, if we look back to 2019, at the time when a so-called Northern Ireland-only backstop was proposed—in many ways, what we now have is a sort of equivalent to a Northern Ireland-only backstop—some economic modelling was commissioned by the Northern Ireland Departments. The work was done by economists in Glasgow, at the Fraser of Allander Institute in Scotland. They showed that for particular sectors of the Northern Ireland economy—notably, electrical engineering—particular competitive disadvantages



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would be created by having the so-called border or customs formalities and so forth in the Irish sea.

**Chair:** Thank you for that. Mr Lowe?

**Sam Lowe:** I agree with much of that. Yes, clearly there have been issues arising from the fact that customs and regulatory checks are now carried out on goods entering Northern Ireland from Great Britain. It is true to say that the result of the Brexit negotiations, if we incorporate the withdrawal agreement negotiations as well as the future relationship, is that Northern Ireland is in a unique position with respect to its relationship with the European Union, in that it has de facto remained in the EU single market for goods and the customs union, whereas the rest of the UK has not.

I would be careful with the counterfactual when we talk about the economic impact. We cannot compare what is happening in Northern Ireland now to the status quo as of 2019. There was going to be a significant change, no matter the nature of Brexit in relation to Northern Ireland, in that barriers to trade were going to go up somewhere. While it is fine to have a discussion about the merit of putting the barriers in different places, we should not assume that all would have been well for Northern Ireland businesses in the meantime.

**Chair:** Thank you. Mr Henig.

**David Henig:** Good morning. I take that in a slightly different way. What happened on 1 January with respect to the UK and the EU was the most significant rise in trade barriers that we have seen in the last 30 years, and that was inevitably going to lead to a lot of disruption in trade patterns between the UK and the EU. As Mr Lowe has just said, Northern Ireland occupies a unique status within that. As we move from what has been essentially a permissive anything-goes regime to trade, more or less, within the UK and between the UK and the EU to a rules-based system, we have to understand that all the rules that now apply to that trade form a rather complex web, so the Northern Ireland protocol has to be understood as being at the heart of a set of trade agreements—the World Trade Organisation rules, a large number of regulations that apply to trade and tariffs, and various measures around products such as steel—to deliver what is a very complex trading picture for those on the ground trying to navigate their way through the new system.

There are so many different stories—all stories are different—but it is quite clear that there have been difficulties in trading between Great Britain and Northern Ireland. It is clear that some of those are going to be temporary teething troubles. Others are long-term shifts. There will be an adjustment the way things are going, but given the level of complexity and the amount of data that we need to fully understand it, we are, frankly, nowhere near the point where we can have a full understanding. These arrangements have been in place now for seven to eight weeks. Overall what it tells me is that we need to look at these matters in a lot more detail. We need to take them a lot more seriously and we need to be



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thinking of them at the micro level, not just at the macro level of, “Are there problems? Yes. What are they?” We need specifics.

**Q482 Chair:** Mr Henig, I take your point about the quantum of data. What is your estimate as to when you, as an analyst, a statistician and the like, would have a sufficient canon of evidence to come up with something fairly concrete? Is it the summertime? Autumn?

**David Henig:** At the moment, I am not seeing all the different evidence that we would need. We need to see some reliable trade flow figures. We need to see them broken down into sectors. We know, for example, that the food and drink sector does appear to have been more badly affected than other sectors, but that is just an appearance. We would actually need to see the data broken down in that manner. I hope we will see that at least quarterly and therefore after April we will see it for the first quarter of the year, but it is really a question that needs to be pushed back on to the UK Government as well. What data is being kept, and how are we going to be able to judge the changes between the last quarter of last year and the first quarter of this one?

**Q483 Chair:** You mentioned the food and drink sector, obviously an important part of the UK economy. We have this thing called covid, which is acting as a significant dampener on demand in all sectors, but particularly in that. Would you say, from an academic point of view, that it is the quarter of non-lockdown data that will be the most important?

**David Henig:** Clearly, it is going to affect our ability to understand the data. 2020 was an odd year for trade data, and 2021 will be likewise. It will take more time to fully understand it, but I think even the difference between the last quarter of last year and the first quarter of this should provide us with a reasonable amount of evidence. We cannot expect to have full evidence at any particular given point. There are always different effects of different events happening. As soon as we see more data, that will hopefully give us a clearer picture. Yes, we will have to make some assumptions around the covid effect, but that should not be too much of a difference between the end of last year and the beginning of this year.

**Q484 Chair:** Okay, thank you. Dr Birnie, may I come back to you with a brief question? You raised some important information and views in your initial answer. What assessment have you made, if we take Mr Henig’s point about reviewing data at a normal time—to define normal is probably the biggest challenge that we will have this morning—of the argument that we hear of the unique geopolitical position of Northern Ireland, with a foot in both camps in terms of investment, economic growth and trade? Allied to that, if there are perennial problems and issues with regard to accessing product from GB into NI, how much of that is capable of being addressed by sourcing from the Republic rather than by GB?

**Dr Esmond Birnie:** In terms of the best of both worlds argument, we are hearing about case studies of particular businesses in Northern Ireland that have found new business opportunities under the current arrangements. Principally, what seems to be happening is, for example, Northern Ireland food processors selling more into the Republic of Ireland



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because they are displacing what were formerly sales from a GB-based food processor.

I do not deny that there are particular cases like that, but against that you have to weigh up—this is very much the way that I have looked at it—that the overall cost base of Northern Ireland businesses, particularly manufacturing businesses because they are obviously involved in the production of goods, has increased to the extent that on the £10.4 billion, which is the most up-to-date figure that we have for the inflow of goods into Northern Ireland from Great Britain, and relates to 2018, which shows you the lag that we have in the official data, the costs have been increased.

We do not know by how much but, as I was saying, I think the Ulster Bank purchasing managers' index, as of January, indicates that costs are rising for Northern Ireland businesses, and are rising more rapidly than for their UK counterparts. I think that, in part, deals with the very good point that Mr Lowe made. Obviously, there are trade effects going on across the UK in generality from Brexit, but I think there is a particular Northern Ireland and a particular Northern Ireland protocol effect.

As to your second question, Chair, about supply chain adjustments, I have no doubt that there is scope for that to happen, but one of the reactions I would have to that is that that in itself also involves a cost on business in Northern Ireland, because in a sense it has to tear up what may be a well-established supply chain, be it into Great Britain or wherever, and now put down a new one. There will be start-up costs, transaction costs and so forth to all of that—a supply chain to the Republic of Ireland or, indeed, to the continental European Union—so again, there will be an impact on the cost base of Northern Ireland firms, their competitiveness and their ability to sell and export, and generate jobs in the future.

**Q485 Chair:** Of course, you will be aware that in an earlier report from this Committee, published last year, this was a point that we made: there was going to be an increase in costs, and it depended on whether the companies absorbed them or passed them on to the consumer. There is the potential, isn't there, for an impact on the cost of living in Northern Ireland.

**Dr Esmond Birnie:** Exactly.

**Q486 Ian Paisley:** I thank our witnesses so far for their evidence. I want to turn to you, first of all, Dr Birnie, about unfettered access to the rest of the UK market, and the promises that were made. As you know, there were a number of promises made that we would have unfettered access in Northern Ireland, that there would be minimal changes to documentation, and indeed the Prime Minister went so far as to say that businesses could bin any paperwork that may emerge as a result of these changes. Does Northern Ireland have the unfettered access to the rest of the United Kingdom market that it was promised, or has that been damaged by the protocol?



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**Dr Esmond Birnie:** In answer to Mr Paisley's question, only in a very formalistic textual sense, I think, do we have the unfettered access that indeed the preamble to the protocol and, as Mr Paisley says, on a number of occasions the Prime Minister have referred to. I think in a much more important practical sense Northern Ireland businesses are confronting the problem. They are not all reliant on taking imports from Great Britain, but many of them are, and, as I say, it is a £10.4 billion input or import of goods from Great Britain, as opposed to only—although it is still a big sum—£2.4 billion inflow from the Republic of Ireland; so it is approximately four times as much coming from Great Britain as from the Republic of Ireland in the latest official trade figures. So to the extent that there are frictions in that, and their costs are higher, their ability then to sell back competitively into the GB market or indeed the rest of the world market is reduced. So I think, whatever the formal meeting of certain legal issues, in terms of documents and so forth, in practical terms no, there isn't unfettered access any more.

Q487 **Ian Paisley:** Thank you for that. In terms of displacing, or the disruption of, trade patterns, is it already—on, what, the 53rd or 54th day of this—clear to see that there is a disruption that is moving people to look to trade with the Republic of Ireland and with the EU for things that they had previously traded solely with GB on?

**Dr Esmond Birnie:** I think that one is hard to give statistical evidence on, and I think both of the other witnesses, Mr Lowe and Mr Henig, have rightly said that we don't have very timely data. My understanding is we do not have for Northern Ireland official quarterly trade data in any case, unless the UK authorities/statistical bodies start to put it into the public domain for the first time. So we have anecdotal or particular case study evidence, as I was saying in response to the question by the Chair, that particular Northern Ireland businesses are either selling into the Republic of Ireland or the rest of the EU to a greater extent, or that is where they are getting some of their inputs from. I would suspect that businesses will do more of both of those things, because they will be responding to, as it were, the price signals, that if there is restriction in terms of bringing stuff over in the ferry, as it were, from Great Britain, they will go for the less costly option; but there will still be this new cost to them of setting up these new arrangements and so forth.

Q488 **Ian Paisley:** Yes, which all seems rather ridiculous given we are only 13 miles away from the main island and we have to bring goods from Europe in and out of Northern Ireland. Following on from the comments that you made about higher prices for consumers and businesses doing business in Northern Ireland, we saw yesterday a very interesting report from Cambridge University about the standard of living in Northern Ireland being about 20% higher than the standard of living in the Republic of Ireland. Do you think that this could have a detrimental impact on the—*[Inaudible]*—if costs are driven up in Northern Ireland?

**Chair:** Ian, you just froze so I don't know if Dr Birnie heard your question; I certainly didn't. Could you repeat it? Just the last bit. My apologies.



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**Ian Paisley:** I will repeat it, Chairman. I am wondering if Dr Birnie feels that the standard of living could actually fall in Northern Ireland. According to a Cambridge University report, it is 20% higher than in the Republic of Ireland. Because of the increased costs in doing business, could the standard of living potentially fall in Northern Ireland, as a result of the protocol?

**Dr Esmond Birnie:** There are quite a number of surveys over the years that indicate that the levels of so-called disposable income in Northern Ireland, once you allow for various costs and the effects of the benefits and tax systems, are much lower compared to most, or indeed all, of the other GB regions. In a sense, the margin to cope with higher grocery prices is lower here in Northern Ireland, to the extent that if the frictions, particularly relating to food products, are passed on at some point by retailers in the final price for the consumer, then there will be issues.

We don't yet have definitive data on this. Unfortunately, when the Office for National Statistics publish the inflation measure every month, it is a UK-wide measure. It is too expensive, I suppose, to collect it or publish and process it at a regional level, so we don't have definitive data on this, but we have indications, like the Ulster Bank purchasing managers' index and survey result for last month, which indicates that Northern Ireland businesses are putting up their prices at a more rapid rate than at any point over the last two and half years, and much more rapidly than their GB counterparts. That would suggest to me that prices in the shops are being impacted, and probably will be more in the coming months.

**Chair:** Let's hear from Mr Henig on this, and then Mr Lowe.

**David Henig:** I only have one point to add, which is to say that even in mainland Great Britain we need to see whether there will be any price effects as a result of higher costs of imports coming in from the EU. There is an overall picture. It is not clear when we are going to see the right levels of data from Northern Ireland or when we are going to see it for the rest of Great Britain. It is clear there are some big questions here, and there is a lot of data we need to see from Government. Picking up from Dr Birnie on the fact that there isn't the GB-NI trade data, that is data that we need to see and that Government should be pushed to provide, in my opinion.

Q489 **Chair:** Costs could go up as a result of leaving the single market—who knew? Mr Lowe.

**Sam Lowe:** In terms of the original question of unfettered access—yes or no—there is, on paper, unfettered access in one direction from Northern Ireland to Great Britain, with caveats, in that there are certain circumstances where declarations would need to be made in the event of, say, trading in endangered species or goods remaining under customs supervision, so even that is caveated.

In terms of the discussion about data, I think that is right, but we can, in the immediate sense, acknowledge that there has been a shock. There is a



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shock happening in the UK as a whole, but there is a shock specific to Northern Ireland. The question is how quickly we can recover from that immediate shock of changing the trading relationship, and what the long-term implications of the new relationship are. I fully acknowledge that there are going to be some long-term costs to Northern Ireland's businesses, particularly when it comes to imports—or movements, as I prefer to refer to it—from the rest of the UK.

The long-run question is: does the new situation within Northern Ireland with respect to the European Union, and given its integral status as a nation with the UK, give it some advantages? The answer is yes, but that doesn't mean that those advantages will be taken up. To give a hypothetical example, we have seen lots of concern recently about UK-based distribution hubs. These are companies that import, say, T-shirts from China into a warehouse in the UK and up until now had used that as a base to export to the rest of the European Union. They have found out that they do not qualify for tariff-free trade under the new arrangement, because they do not meet the origin requirements. Theoretically, if that distribution hub were based in Northern Ireland, it could service both the UK market and the European Union market. However, the trading relationship is not the only reason why you would invest somewhere; just because the possibility is there, that does not necessarily mean it will be realised.

Northern Ireland needs to tick a lot of boxes, of course, not just the one, but that does give it a relative competitive advantage vis-à-vis other bits of the UK or Ireland as well for certain industries and sectors if they are performing certain operations. We will not know if those will be realised until much later this decade.

**Q490 Ian Paisley:** All of that is theory, basically—you are saying that this could be. It is a promise of jam tomorrow; there is nothing really there at the moment.

**Sam Lowe:** That is Brexit as well, isn't it? If we are being honest, the promise of Brexit is all theory. It is the idea—

**Ian Paisley:** Yes, I know, but I want to keep on the protocol, because that is what we are dealing with today. I am wondering—

**Chair:** We can't divorce the two, can we? One leads to the other.

**Ian Paisley:** I notice that this is about the protocol—unless you want to have a discussion of Brexit. We could start with 2016 then and deal with the will of the people, and whether consent is broken in the will of the people. Do you want to go down that line, Mr Chairman, or will we stick to the protocol issues that are in front of us?

**Chair:** Why don't you ask the question you wish to ask, Mr Paisley?

**Q491 Ian Paisley:** Thank you, I will do that. I was asking Mr Lowe about standards of living. Do you think, as Mr Birnie has indicated, although there is this issue of looking for data, that it is fair to project that the



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data is pointing to a possible decrease in the standard of living in Northern Ireland as a result of internal trade flows within the UK?

**Sam Lowe:** I think Brexit itself will lead to a lower standard of living across the UK, including in Northern Ireland, despite the protocol, and it could lead to increased costs. There is then the question of whether Northern Ireland will, I suppose, have increased costs above those experienced by the rest of the UK, and yes, that is possible. A lot of things in the future are possible. I hope that that would not be the case, and I hope that in the long run supply chains reorientate and Northern Ireland takes advantage of its new unique circumstances, but I cannot promise that—so yes, of course it is possible.

**Ian Paisley:** Thank you very much. Thank you, Mr Chairman.

**Chair:** Thank you, Mr Paisley. Ms Hanna?

Q492 **Claire Hanna:** Thank you very much and thank you to our witnesses. You addressed this in Mr Paisley's question, but what is your assessment of Northern Ireland's place within the UK internal market and its level of protection? I suppose that would be for Mr Lowe.

**Sam Lowe:** Would you mind clarifying the question?

**Claire Hanna:** Sure. Do you feel that Northern Ireland's place in the UK market has been protected?

**Sam Lowe:** That is a very difficult question to answer, in that it has changed. From my perspective—sorry to take it back to Brexit, but it does build from that—there were always three options when it came to how the UK exited the European Union. It could either retain the integrity of the UK single market by pursuing a very close and integrated relationship with the European Union, which would not necessarily have led to some of the barriers we are seeing today on trade between Great Britain and Northern Ireland. Another option was to extricate the whole of the UK entirely, but that would have led to a border of some sort between Northern Ireland and Ireland. The third was to adopt this hybrid model in which Northern Ireland remained within aspects of the EU single market and customs union, but that leads to regulatory and customs barriers on goods entering Northern Ireland from the rest of Great Britain.

That was the choice, and the Government of the UK prioritised extricating Great Britain from the EU's regulatory and customs regime, so as to benefit potentially from the freedom that offers, but in doing so decided to put the regulatory and customs border between Northern Ireland and Great Britain. So it is different. How that impacts Northern Ireland's place within the UK is a constitutional affair I am not qualified to speak on, but yes, it has fundamentally changed, and that is something that needs to be discussed, I suppose.

Q493 **Claire Hanna:** Don't worry—it is just the people of Northern Ireland who will decide that, and not this. I think you have touched on it there, but the challenge is the absence of alternatives. Could you give us an



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assessment of the mutual enforcement proposal that is being touted as an alternative, given that the softer options you outlined were refused by the UK Government?

**Sam Lowe:** The mutual enforcement proposal, as I view it, is just a return to the discussion of how to place a border between Northern Ireland and Ireland, and how that could be managed. I am not talking about guard posts, or anything like that. I am just talking about a customs and regulatory divide and how you would police that.

I think some aspects of the proposals demonstrate that the people writing it do not necessarily understand how things are enforced currently. The discussions on goods being enforced on the market by market surveillance authorities—that is how it is already done in the EU. There are not actually that many checks at the border on sofas, and the like. There is just legal responsibility placed on the people placing it on the market. I think it misses some key issues, one being sanitary and phytosanitary controls, which under EU law have to be performed at the border. If Northern Ireland remained within the UK's sanitary and phytosanitary regime, you would have to have inspections, declarations and physical controls somewhere on the island of Ireland to manage that.

When it comes to customs declarations—import-export declarations—I have been through this discussion with lots of Committees over the year. Can you do those controls away from the border? Yes. You do not have to follow the exact line. Does that mean those new controls will be there somewhere? Yes. Does there have to be enforcement of it somehow? Yes. If you do not have actual checkpoints, do you still have to have interventions to ensure the honesty of the system? Yes. What I think we have learned from the GB-NI border is that, even if you have a system that is wholly unique in that the UK is enforcing the controls on goods entering from the rest of the UK, you still have barriers, controls, interventions and quite a hard border. Moving that somewhere else I do not necessarily think resolves the issue.

Q494 **Claire Hanna:** Just before we leave this, and still again to Mr Lowe, what is your view on the proposal that article XXI of GATT could be the solution, as, apparently, it permits transgression of the rules on the basis of safeguarding public order? That is in a recent paper from the Centre for Brexit Policy. Has that been invoked anywhere in the world; is it, essentially, saying that we can avoid having a border because it might cause public order issues; and what is its chance of success?

**Sam Lowe:** I haven't read the report, but I assume they are referring to the national security exemption.

**Claire Hanna:** Yes.

**Sam Lowe:** I have also just seen Mr Henig wave his hand, so he may have more to add on this. I was always slightly surprised that this was not discussed a little bit more. There is a national security exemption under GATT and, arguably, it is more appropriate in the context of Northern Ireland than it was when Donald Trump levied it to put tariffs on steel



coming from Canada. There potentially is some flexibility there when the UK goes about carrying out certain actions. Arguably, some of the actions it is carrying out in allowing goods from Northern Ireland into the rest of the UK to go unfettered without any controls is in breach of its WTO obligations. Some countries have looked at that. It could arguably use the national security exemption to justify it. I am not sure you want to base an entire regime for the entirety of Northern Ireland on that basis. You are essentially making the argument that it is in perpetual conflict and any sort of change will make a huge problem, which may or may not be the case. I am not sure the British Government views it as a sustainable alternative.

**Q495 Claire Hanna:** Just before we leave this, Mr Henig, do you think that is the basis for a sustainable trade policy and investment framework for our region?

**David Henig:** I am grateful that Mr Lowe noticed that I wavered at that point, because I have noticed in global trade discussions that the national security exemption has been increasingly discussed in the last year and, indeed, in the last week. This is not particularly good news for anybody in the trading system or in this conversation, I feel, because the nub of the conversation is that the national security exemption is a very powerful exemption from anything, really. As soon as the US said that it was invoking it for steel tariffs, other countries started to wonder if they could invoke it for other things. You are heading, at a global level, for some tricky times ahead. If everybody invokes this and says it can't be challenged, then what, precisely, will the rules be for governing global trade? You have some difficulties in doing it, therefore.

I think there clearly is a discussion that can be had, and this is about the flexibilities that may be available in putting in place rules. I do not think the national security exemption is a very good place to start that discussion because it is such a dangerous weapon for the whole of the global trade system, because everyone can start invoking national security, as President Trump did. I do not think that President Trump is a good exemplar for anything, really, in terms of trade.

I want to add at least one more point. We need to look in detail at the treaties on which trade is based. I have the Northern Ireland protocol—all 100 pages, in printed form—next to me. Clearly, Northern Ireland's position is different from the rest of the UK because we have the protocol and we have those 100 pages. But do we have within that protocol elements that could be used in a rather less aggressive way than the national security exemption? Yes. Article 16 of the Northern Ireland protocol has been much noted, but one bit of it has scarcely been noted, which is that there is a potential exemption in there for "diversion of trade". What does that mean? We don't know, but there are opportunities there to explore what that means and have some flexibilities around it.

I think it is best not to go for the rather powerful option of national security exemption, and instead to have a more serious conversation with



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the EU and say, "Look, we've agreed that there are ways in which this needs to be addressed. Now how are we going to address them?"

**Chair:** Dr Birnie, I noticed you indicate that you wanted to come in. Let's hear from you, please.

**Dr Esmond Birnie:** Just to continue from what Mr Henig was saying and the whole point about exemptions, this isn't using the national security WTO exemption that Ms Hanna referred to. A paper by two trade law experts, Lux and Pickett, commissioned by the Northern Ireland Departments and published in the summer of 2019, was about customs facilitations or exemptions from the WTO. They noted that, in terms of Switzerland relative to the European Union, several exemptions have been granted or operated by the European Union—for example, that animal and food product inspections do not have to happen at the border. Mr Lowe was talking about mutual enforcement, and where enforcement and inspection would actually happen, so that may be quite relevant.

Secondly, this might seem a trivial example, but it is about the principle. The arrangements between Switzerland and Italy, in terms of the Alpine pastures, allow the cows to roam freely across the border, presumably where the grass is greener, without infringing the SPS regime.

**Chair:** I can almost hear Paisley senior's line, "My voters are British but my cows are Irish." As long as nobody breaks into a verse of "Edelweiss" we'll be okay.

Q496 **Claire Hanna:** Just to finish up, that is, of course, in the context of a separate veterinary and SPS agreement, and would presumably require a fresh treaty on those grounds for something similar to apply here. I suspect that might come up later on in the conversation. Is that something that you think should be pursued, Dr Birnie?

**Dr Esmond Birnie:** Of course it should be considered. The trade-off in policy terms is that this would have to be an arrangement by the whole of the United Kingdom relative to the European Union. Obviously, there would be certain loss of policy autonomy. We would get into the subject of trade deals, FTAs with the United States and so on. No doubt that will also come up later.

**Claire Hanna:** That brings us back to Mr Lowe's comments.

Q497 **Chair:** Mr Lowe has indicated his wish to speak. Mr Farry, I know we have moved on to a topic you've been doing a little bit of work on. If you want to chip in on this after Mr Lowe, prepare yourself and indicate to me in the usual way. Let's just hear from Mr Lowe.

**Sam Lowe:** I was just going to emphasise that the Swiss relationship with the EU was predicated on a veterinary agreement that saw it commit to implement EU rules, both domestically and in relation to imports from third countries, with some slight caveats that we could get into later.



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I completely agree with the previous speaker that that is a potential solution to some of these issues that the UK as a whole should pursue, but I acknowledge that it would place some constraints on the UK's independent trade policy, although I think it would be limited, in practice, to the US. Switzerland has lots of trade agreements and some trade agreements with countries that the EU does not, including China, so it is clearly not a huge limitation that it bound itself to EU laws in this area.

**Q498 Stephen Farry:** Thank you, Chair. Good morning to our witnesses. To follow up the veterinary agreement question, would the witnesses briefly talk us through some of the trade-offs involved and the different options? People are talking about a Swiss-style arrangement that has a deeper level of alignment. By contrast, a New Zealand-type approach has fewer requirements on alignment but has a greater level of checks. Could we have a little comment on the considerations that policy makers need to reflect on?

**Chair:** If we could do that in bullet points, that would be helpful.

**Sam Lowe:** When people talk about alignment with the EU on sanitary and phytosanitary issues, it is important to clarify what kind of alignment they are talking about. As you mentioned, a Swiss-style alignment is essentially regulatory harmonisation. It would see the UK commit to EU SPS rules now and forever both domestically and as applied to imports. With that, there would be no need for export health certificates, no need for either physical inspections or identity checks and no need for documentation. It would essentially free up this area of trade entirely.

If you go for a New Zealand-style approach—this is known as the equivalence-style approach—what you get is a reduced frequency of physical inspections and simplified documentation, but it does not remove the need for products of animal origin to enter Northern Ireland via a border control post or for there potentially to be identity checks and checks on documentation. That reduces the friction rather than removes it, but it leaves the UK with more autonomy, in that you do not necessarily have to fully harmonise with EU rules. As with everything, there are trade-offs. It is no different in this discussion.

**Q499 Stephen Farry:** On either a Swiss model or a New Zealand model, would it be an option for the UK Government to negotiate a time-limited agreement? I am conscious that while people may have the aspiration for a US free trade agreement, there is not one immediately on the horizon, and the current Biden Administration is not particularly open to new trade agreements for the foreseeable future. It seems that the Government is holding back for something that may never happen, while in practice it is continuing to align with European Union de facto on a high level of standards. So is it possible for the Government to do something for the short to medium term, but still keep its options open for the future if the wider trading picture changed?

**Sam Lowe:** Yes, possibly. We see time-limited derogations in place at the moment, so I would not rule it out. The interesting thing about this



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discussion is that up until now the UK Government has made commitments not to change food standards so as to accommodate the US asks in this area. If we assume that remains the same, there is no harm in making this permanent. All trade relationships are ultimately never fixed and permanent, in that they can always be exited from, either legally or not. My personal approach on this would be to go for the Swiss-style approach and hope that the EU consents to that. I think that would benefit importers in Northern Ireland but also UK agriculture more generally. I do not think it would actually constrain the UK's trade agenda beyond areas where they have said changes would not be made anyway. For example, I do not think it would prevent accession to CPTPP.

**Stephen Farry:** Thank you.

**Chair:** Mr Lowe, all I can say is that I bear the scars of that particular academic debate with regards to the passage of the Agriculture Bill and various amendments thereto. I think that segues nicely into Mr Campbell's question.

Q500 **Mr Campbell:** Thank you, Chair, and welcome to the witnesses. In relation to the UK's new international trade policy and the protocol, what advantages, disadvantages or repositioning have we got in Northern Ireland?

**David Henig:** With regard to non-EU trade relations, there has been some debate as to whether Northern Ireland can take full advantage of new trade deals with other countries, including the US and the CPTPP. The answer in most part is yes, but, as we are learning with regard to the Northern Ireland protocol, always, I am afraid, with caveats. Certainly, where there is tariff reduction going on, businesses exporting from Northern Ireland should be able to benefit from that tariff reduction in other markets, and—said with a slight sigh—goods coming into Northern Ireland from other markets should also benefit from reduced tariffs, but that is complicated, because the nature of goods arriving in Northern Ireland directly from third markets and the tariffs they pay and the process they go through is one that, to the best of my knowledge, has not been sufficiently discussed. Certainly, if goods are staying in Northern Ireland, they should be benefiting from those zero tariffs, but I have not quite got my head around the processes by which that happens, I am afraid.

So, you get that level of benefit. There are certainly benefits in terms of the services sector. When we talk about any trade—not just on this Committee—we tend to talk about trade as if it is all goods. In fact, there are large amounts of services trade going on from Northern Ireland, as with the rest of the UK, and Northern Ireland should certainly benefit from any new services trade commitments in broader UK trade policy.

It would be slightly more complicated when it comes to regulatory matters, inevitably, because Northern Ireland is following EU regulations for goods, in effect, and for food in particular. Thus, depending on whether you think this is a benefit, if there is a US trade deal and the rest of the



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UK agrees to accept chlorine-washed chicken and hormone-treated beef and all our old favourites—favourites of the Chair, by the sounds of things—Northern Ireland would not have the benefit of those foodstuffs coming in from the US. You may regard that as a benefit or a concern, but the same would be true on a broader level of any regulatory co-operation. Where the UK would have goods regulatory co-operation with third countries that have agreed to the same regulations, Northern Ireland would be exempt. The “however” to that is that, most likely, there will not be much of that in UK trade deals and, in fact, Northern Ireland having the same regulations as the EU will actually be a benefit to Northern Ireland.

Just to finish my answer—apologies; it has been a little long—the answer to the question earlier about whether Northern Ireland would be, in effect, richer or poorer for the protocol, is that, if Northern Ireland’s trade barriers on average are lower than the trade barriers that the rest of the UK is facing, then through the process of adjustment, Northern Ireland should actually do better than the rest of the UK and goods should actually turn out in the end to be cheaper because of that, but it will require adjustments to supply chains over a certain period of time. I have to admit that is slightly speculative, but that is just how the general trade theory goes. In general, I would expect that Northern Ireland can benefit from new UK trade agreements to a large degree. However, I am hoping that Mr Lowe, who indicated he wanted to speak, will not disagree with me too much.

**Sam Lowe:** I agree with the broad thrust of that. I just want to get into a little bit more detail when it comes to imports and whether the preferential duties of new UK free trade agreements, say with Australia or New Zealand, would apply to imports into Northern Ireland. The answer is that, under the protocol, it depends.

Under the protocol, if you want to take advantage of the new UK free trade agreement, there are two options. If the tariff levy is the same as the EU’s or higher, then fine—it doesn’t matter. But if we are talking about an instance in which the tariff that would be levied would be lower than the EU’s, you have to be a licensed importer and the differential range has to be within 3%. If it is above 3%, then the EU tariff would apply and you wouldn’t necessarily be able to take advantage of your new trade agreement with New Zealand and the imports that you would have brought in at a lower tariff rate than the EU’s applied tariff. At the moment, this is entirely hypothetical, because the trade agreements that the UK has are exactly the same as the ones that the EU has, so it is not actually an issue that has arisen yet, but it could arise as an issue in future in the event that the UK has trade agreements that offer lower tariffs than the EU applies.

I started with a disadvantage, potentially, but I want to talk about an actual advantage that Northern Ireland faces. That is that the UK’s rolled-over trade agreements are more accommodating than the old existing EU ones when it comes to origin. I will not do an incredibly deep dive on rules of origin, but basically, if we want to qualify for a trade agreement, we



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have to be able to demonstrate that the product we are selling is from our country, or had enough work done on it in our country to qualify as British.

That creates a slight problem on the island of Ireland for, say, dairy products, where Irish exporters of dairy are finding that they are not qualifying for the EU's free trade agreements any more, because they have too many inputs from Northern Ireland. However, were they to export those products from Northern Ireland under the EU-UK free trade agreement, they would find that it does qualify for tariff-free trade in many instances, because many of the rolled-over UK free trade agreements include something called extended accumulation, which allows for EU inputs to continue to be used in Northern Ireland exports and qualify for the UK's trade deals—something that is not included in the EU's deal. Often, when companies come across this problem, the answer is sometimes to export out of Northern Ireland, rather than Ireland.

**Mr Campbell:** Dr Birnie?

**Dr Esmond Birnie:** I do not really have very much to add. The protocol creates some doubts, but it is unclear in practice what will happen. To the extent that Northern Ireland complies with EU regulations, particularly SPS for animal and food, how far will Northern Ireland be able to participate in UK FTAs? It is unclear.

Q501 **Mr Campbell:** I will expand a bit on the question, in particular for Dr Birnie's benefit, given that he felt a bit constrained in his answer. This is not conjecture, but let us say that in the near future the UK negotiates a goods-based agreement, setting aside the chlorinated chicken issue—not to mix metaphors, that horse has been flogged to death 100 times, so set that to one side. Let us say that the UK Government negotiate a goods-based agreement with some part of the world to benefit the United Kingdom. We then come to the protocol and how it differentiates Northern Ireland in terms of goods under EU regulations. Will Northern Ireland be able to benefit from that or not, under the protocol?

**Dr Esmond Birnie:** I think to a great extent that depends on the attitude, degree of leniency, interpretation or benefit of the doubt that the other country will take towards Northern Ireland. An informed source related to the American position on the Northern Ireland protocol and the potential UK-USA free trade agreement put it to me that, traditionally, the United States has tried to be generous to Northern Ireland, in particular with economic and trade concessions and so forth, but there is a limit to that generosity. If they feel that Northern Ireland is not able to take in imported US goods in the same way that an FTA would mean those goods were going into Great Britain, they would not necessarily be open to applying extra free trade to Northern Ireland in particular.

Q502 **Mr Campbell:** Yes, but let us say—whether it is New Zealand, Japan or wherever in the far east or middle east—a goods-based deal has been negotiated between the UK and one or more of those nations, to benefit all the citizens of the United Kingdom. Under the terms of the protocol,



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Northern Ireland will be treated differently. Does that mean we can benefit from the agreement or not?

**Dr Esmond Birnie:** If that happens, clearly we are not benefiting from the FTA. That would be another case of a commitment, like the unfettered access, that in practice was not delivered on, unfortunately.

**Mr Campbell:** Okay.

**Sam Lowe:** For exports, Northern Ireland would benefit. That is my view. It would trade with the countries that we have new trade agreements with under the same terms as the rest of the United Kingdom. It would have to meet all the same requirements as anyone else trading from the rest of the United Kingdom, but it would be the same. The question I have is with respect to imports into Northern Ireland, where I have some caveats, because that is when the protocol starts to bite a little bit.

**Chair:** Mr Campbell, are you happy or do you want to come back on anything?

**Mr Campbell:** I don't know whether Mr Henig wants to contribute anything on that latter point.

**David Henig:** No, I am very happy with the two other witnesses' answers.

**Mr Campbell:** Okay, thanks.

**Chair:** We love a bit of happiness of a Wednesday morning, so thank you for that, Mr Henig. Let's turn to Scott Benton.

Q503 **Scott Benton:** Thank you, Chair, and good morning to all our witnesses. Carrying on in a similar vein to Gregory's last couple of questions, could the exceptions for the protocol in the UK-Japan free trade agreement prevent Northern Ireland from enjoying the full benefits of that deal? I ask Mr Henig and then Dr Birnie to address that question, please.

**David Henig:** I don't think so. I was looking at that this morning, as it had been suggested that this may arise. A clause in the UK-Japan agreement says that if there is a clash between this agreement and the protocol, the protocol would have to take priority. My interpretation of that is that it is just a precaution from the UK Government, because they did not exactly know whether the protocol would cause any problems and they are just trying to protect against it. Certainly, I have not thought of any ways in which this would be the case, other than those that Mr Lowe mentioned about imports coming from Japan. But even that would not be the case, because they are essentially the same as the EU-Japan agreement.

To slightly broaden it out, there are at least a couple of other areas where there are some genuine questions that we just don't know the answer to. If there are agricultural product quotas into the UK, we still do not know how Northern Ireland will be treated by those, but I do not think that is the case for the agreement with Japan. In the event of any retaliatory actions—dumping disputes—this also gets very complicated with regards



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to Northern Ireland. But equally, again, we are not in that situation immediately. I think the clause mentioning Northern Ireland in the UK-Japan deal is therefore more precaution than anything else, but I don't rule out that there may be some case that we have not thought of yet and that means that Northern Ireland is affected. As I say, I have not thought of that yet.

**Scott Benton:** Dr Birnie, do you have anything to add on that point?

**Dr Esmond Birnie:** No, I don't, because I have read article 1.9, paragraph 5(a), and I think it is open to a range of possible interpretations. It may have a benign impact or possibly not, so I am not sure.

**Scott Benton:** Thank you.

**Chair:** Mr Lowe, do you want to add your two penn'orth?

**Sam Lowe:** I would just say that while I don't think it necessarily has an impact on the UK-Japan agreement, my view is that it is there to set precedent. The UK will now include this clause in future trade agreements, because there are hypothetical situations in which the protocol would need to override the trade concessions. This goes back to what David referred to and what I mentioned earlier. It is a situation in which the trade agreement offers New Zealand exporters into Northern Ireland zero tariffs, but under the protocol, those are unable to be offered in practice, because it is not within the 3% margin with respect to the EU's external tariff. That is not a problem with Japan. I tried to see if there was any issue. I went through the whole schedule this morning and I am pretty sure that it is not an issue with Japan, but it could theoretically be a problem in the future. In trade agreements, a lot of the text that you see is about setting precedents. Now that the UK has this in one trade agreement, it can demand its inclusion in all future trade agreements, saying, "Look, we did it with Japan." It makes it easier for the UK, even though I do not think that there is an immediate issue.

Q504 **Chair:** So you see it as an iterative, dynamic evolutionary process.

**Sam Lowe:** Yes, I think it is something that the UK may have to rely upon in future—not definitely, because the EU is also negotiating a trade agreement with New Zealand and with Australia. It might never actually become an issue, but it is probably a safeguard that the UK needed to ensure that it was not in breach of its obligations potentially in future trade deals.

Q505 **Scott Benton:** Following up on Mr Lowe's point, presumably you do not envisage a scenario where the UK could strike trade deals with third nations without references to the protocol being included within them—of course, notwithstanding substantial changes to the protocol in the coming months or years. Are you able to briefly comment on that point?

**Sam Lowe:** I think that all new UK trade agreements will probably include this. The roll-over agreements did not need to, because the EU has trade



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agreements with them already. I suppose the problems that could arise only exist in the event that the UK and the EU have different trade agreements or trade agreements with different partners, or the trade agreements that they have are substantially different in terms of the amount of liberalisation that they offer.

**Q506 Mary Kelly Foy:** Good morning. I want to return to the issue of tariffs. First, are there any figures on the proportion of trade between Great Britain and Northern Ireland that is tariff free? Secondly, which sectors are going to be most disadvantaged by the need to pay tariffs, and by some of the issues that they may be facing?

**Chair:** Shall we ask Dr Birnie to kick off on that?

**Dr Esmond Birnie:** Thank you very much, Mrs Foy, for that question, and thank you, Chair. In terms of the percentage of trade or inputs coming into Northern Ireland from Great Britain that are tariff free, at the moment we simply do not know. This is one of the questions of dispute between the UK Government and the EU in terms of the implementation of the protocol. What proportion of the goods coming from Great Britain to Northern Ireland are in the so-called “at risk” category, which could then be moving on into the Republic of Ireland and hence should be subject to the European Union’s external tariff? I do not think that we know, unfortunately.

On sectoral impacts, I think this is a very interesting and important question and may be one that up until now has not been given enough attention. I think the protocol in practice is having a differential effect across different sectors of the Northern Ireland economy. To the extent that the protocol is protecting supply chains in the food processing sector between Northern Ireland and the Republic of Ireland, that has been helpful to that sector, albeit that some parts of the sector do import raw materials, basic food products and so forth, from Great Britain and process them further.

There is some evidence—the Fraser of Allander economic modelling in 2019 that I referred to earlier points to this—that some of the higher-productivity, higher-wage sectors of the Northern Ireland economy, notably electrical engineering, to the extent that they do rely very heavily on bringing in materials and components from Great Britain and then processing them further, are likely to be hit disproportionately by the impact of the protocol. I suppose what we are saying is that some sectors are less badly hit, and some are more badly hit. I am not sure that this is going to be helpful to the long-term development and progression of the Northern Ireland economy towards higher productivity and higher levels of wages and living standards.

**Sam Lowe:** It is very difficult to know. There is always this 98% figure, which you see thrown around, and I have no idea where it came from. I do not know its provenance. It seems to have been put out by Government, but I have not seen any workings. That does not mean it doesn’t exist; it just means it is not very easy to find. You would assume that a lot of



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goods entering Northern Ireland would be tariff free in practice, because you go through the different processes. You have the “not at risk” category. You have the ones that are not subject to processing, or at least are not considered to be under the protocol. You then have, outside that, goods on which the EU levies a zero-tariff rate on an MFF basis. You then have the goods that qualify for the UK-EU trade agreement, so long as they meet the origin provisions. You then have goods that may be subject to a tariff, but it is then waived, so long as they don’t fall foul of state aid limits.

Once you tot all that up, you probably do have a large proportion of the goods entering Northern Ireland being tariff free—probably a very high proportion—but that does not rule out the fact that there will possibly be some products entering that don’t. That doesn’t negate the fact that all of these processes come with additional controls, and there is an additional cost to demonstrating that your product qualifies for tariff-free trade under any of those in practice.

Q507 **Mary Kelly Foy:** Mr Paisley raised earlier the standard of living and disposable income. If some of these higher-end jobs industries have to see job losses or weaker terms and conditions, that will have an effect on the standard of living for a number of people in Northern Ireland. That is worrying and something that we will have to look out for and look into a little bit more.

**Chair:** That is a good point.

**David Henig:** If you don’t mind, Chair, I will just come in on that point.

**Chair:** Please, Mr Henig—of course.

**David Henig:** Obviously, we are talking about the tariffs payable for goods entering from Great Britain. But it is quite possible that for the economy as a whole Northern Ireland will pay on average less tariffs than the rest of the UK and, therefore, may have improvement in the standard of living as a result of that.

Again, it will be a while before we see the data on what tariffs are actually payable. This comes back to the fact that the opportunity is that in theory you should be able to import from anywhere in the EU into Northern Ireland and have your distribution hub in Northern Ireland for sending on to the rest of the UK. I was thinking about that when I was reading about the example of the wine merchants who were complaining about struggling to import wine directly. I thought, “Shouldn’t they just set up in Northern Ireland?” I’m not sure whether they can, but they should certainly consider it.

**Chair:** That is great for wine merchants. Dr Birnie, you waved. Then we will come back to Mary.

**Dr Esmond Birnie:** Thank you, Chair. Just to add to Mr Henig’s point, which he has made before, I accept the logic of it, but I am doubtful about the figures. The argument is that in an overall sense, the Northern Ireland



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economy might gain because we will still have tariff-free importation from the European Union, whatever the disruption in terms of goods coming in from Great Britain. But look at the size of the flows, particularly the inter-regional, as opposed to the international trade flow. In 2018—which is the most up-to-date official figure that we have, although I concede it is a few years ago—£10.4 billion was imported from Great Britain into Northern Ireland, £2.4 billion was imported from the Republic of Ireland and £2.4 billion was imported from the rest of the European Union. The flow coming in from GB is more than double that from the European Union including the Republic of Ireland. Hence, the threat that the cost impact will be, on balance, in net terms, negative.

**Chair:** Mr Paisley, I have seen your finger, but I am going back to Mary as the original questioner to see if she has anything else, and then of course I will come to you.

**Mary Kelly Foy:** I am fine with that. I guess there is an argument there that has not been agreed on. Dr Birnie mentioned the electrical engineering sector, for instance, and that will be a two-way flow, so there is one sector. If that is being disadvantaged, a number of employees there might have lower working terms and conditions or job losses and redundancies. As I said earlier, that is something that we need to look out for and to work with those sectors. Ian Paisley, was your question similar?

Q508 **Ian Paisley:** I agree 100%, Mr Chairman. I think Mary is on to something here. There is an issue to do with standards of living. I want to go back to Mr Henig's statement that there is a benefit here. What I think he was suggesting was that there would be big companies and big business almost brass plaqueing in Northern Ireland and taking advantage of [*Inaudible*] but that does not necessarily then equate to a rise in standards for the people of Northern Ireland. The ordinary working-class people of Northern Ireland would be disadvantaged if Northern Ireland becomes a kind of tax haven regime. I do not know how he got to the conclusion that this will lead to great benefits in terms of an increase in the standard of living. It might lead to a great increase in the pocketbook of big business. That does not equate to an increase in the standard of living of ordinary folk. Does he not agree?

**David Henig:** I have considered the issue. I meant real business establishing in Northern Ireland, if I can make that distinction between real business and brass plaqueing. I was not thinking of brass plaqueing, although I imagine there will be some businesses who will be thinking that. I was thinking that there might well be people currently established in Great Britain who are mainly importers from the EU, who think that by moving their import operations and the jobs that come with them to Northern Ireland, they will be in a better situation. That was my case there.

I also want to come back to Dr Birnie on his point about tariffs overall. Of course, that is correct. If there are tariffs payable on goods going from Great Britain but not from the EU, and given the current volumes, there is not the benefit. My case would be that if, say, 98% of goods coming from



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Great Britain are subject to zero tariffs and all the goods coming in from the EU are subject to zero tariffs, there is a potential benefit, but, clearly, we will have to see the figures. The downside of all of that is that yes, there are potential benefits, but there are also potential drawbacks, not least because of the fact that there are the 100 pages of regulations that I referred to that might make all this more complex. So there is a lot here that needs to be discussed. I can make a potential positive case and I can make a potential negative case. I fear your Committee will be looking at this for a long time to come.

**Q509 Ian Paisley:** It would be helpful if we could get to the facts of the case. In the last 53 days we have seen a hike in VAT on all second-hand goods. Cars was the big one. We have had a hike, for example, on second-hand mobile phones. That is still in place. We have had a hike in VAT on all second-hand furniture. Those are the facts of the case. We had a position of a 25% increase in steel tariffs. Thankfully, that has been derogated for about 12 weeks now. But it will come back [*Inaudible*] on the backside if we are not careful. The factual case is that we are having an increase in costs. There is nothing to show either a level playing field or a decrease in costs. Is that not the case, Mr Henig?

**David Henig:** At this stage, I am looking at the trade effects of the tariffs to come over time. I am not aware of the VAT. I know that VAT for goods is different in Northern Ireland compared with the rest of the UK and that that is causing further problems. Equally, there is the fact that VAT for services is the same. So yes, there clearly is a VAT issue. My point is that if we are talking about the 100 pages of lists of regulations in the Northern Ireland protocol, that is an issue as well. Equally, and since you asked about the facts, the facts are that the entire UK is having to reference the 1,500 pages of the trade and co-operation agreement with the EU with regard to trade. The entirety of UK-EU trade has changed, and Northern Ireland has clearly also gone through particular changes within the UK market. So there is a lot of change; I fully accept that.

**Ian Paisley:** Good.

**Chair:** Ms Hanna, you have indicated that you want to come in. I am keen to make some progress and I want to move over to Mr Goodwill, so I just point that out.

**Q510 Claire Hanna:** Yes, sure; thank you very much. I think Jacob Rees-Mogg said it would take 50 years for the benefits of Brexit to work through; hopefully it can be a little bit sooner—

**Chair:** Well, I won't be here.

**Claire Hanna:** Hopefully some of us will be, but hopefully it won't take that long. Mr Henig, your analysis seems to chime with that of Invest NI and a number of businesses that have spoken about possible opportunities to replace GB firms in relation to importing and, indeed, foreign direct investment. What additional measures would the Northern Ireland Executive and the UK Government need to take to pump-prime those opportunities for businesses? To what extent is political stability a



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factor? Are businesses keen to invest in places that have, willy-nilly, death threats about border posts and so on?

**David Henig:** Just thinking about the politics and the trade, which are within my subjects, I think that what even this conversation over the last hour reveals is that there are still too many grey areas in the trading rules. If I were an investor, I would at the moment be saying, "I think there may be an opportunity, but I am not exactly sure how all these things work."

On both the political case and a number of questions that have been asked by all of you, I think, I really would be wanting to go to the UK Government. I would want the Northern Ireland Assembly to do that and say, "Look, can we have more clarity on the way this is all going to work and can we have more agreement between everybody involved as to how we understand this all to work?"

My worry is that we have scarcely talked about some areas; we have talked a lot about food and drink and much less about manufacturing and industrial production. There are still issues in industrial production—for example, in terms of testing and how product testing is acceptable across the EU. I am still not clear on how those rules will be put in place in practice.

There could be an opportunity, but equally it could turn into a bureaucratic nightmare; I hope it doesn't. At this stage, we are at the point of opportunity. To turn that opportunity into real results for Northern Ireland, we need a lot more clarity from the United Kingdom Government and a lot more agreement among everybody as to what this all means. I really hope that this does lead to opportunities, because I for one am hoping to holiday in Northern Ireland this year if I'm allowed.

Q511 **Chair:** Mr Henig, can I paraphrase your answer there by saying—I'm going to sound a bit like Eric Morecambe—we are asking all the right questions, but not necessarily at the right time?

**David Henig:** Well, you are asking them now; you are doing your best now. It would have been great to ask them and to have this discussion about the protocol. I had to study the protocol to do a study last year with Liverpool University and I'm still not sure that anybody has an absolutely full understanding of what the protocol means. I would dearly like more work to be done on exactly what all these clauses mean and how we are going to understand them and, essentially, not have to have your Committee asking the same questions every week of different people and trying to get answers.

Q512 **Chair:** Do you think there is a danger of an Alice in Wonderland situation—they will mean what they need to mean at the time that they are looked at?

**David Henig:** Well, if I'm a business and that means there can be flexibility—if we can get to a relationship involving the EU and the UK Governments that says, "Look, here's what the words say, but actually we



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are going to do our best to be as flexible as possible”—that would be fine. Again, it feels to me that we are a little bit away from that, but ultimately, the way that trade works is that we would rather not have to refer to the trade deal text every day. We would rather there was a broad understanding of what’s going on and there is flexibility within it.

**Q513 Chair:** Do you have any sympathy with what we were hearing the other week from some business representatives that, despite the moniker of transition period—namely, last year—it wasn’t a transition period but a negotiation period, and in fact we are in the de facto transition period, so the questions that are being asked, the issues that are being raised, and the concerns and anxieties that are being ventilated should come as no surprise.

**David Henig:** Yes, I think that is probably correct.

**Q514 Mr Goodwill:** I would like to specifically ask about steel; I think Mr Hennig may well have already put his head in the noose for this one, having mentioned it already. Steel is in the frontline of global trade wars. Whether that is for unjustifiable protectionist reasons or genuinely to protect against dumping is immaterial. The fact of the matter remains that for many types of steel a tariff of 25% applies. If I were a business in Northern Ireland competing with similar businesses in either the south of Ireland or GB, it would be game over for me.

As I understand it, because of this high level of tariff, the “at risk” test doesn’t apply, because anything with a big tariff differential like that would be at risk. We have tariff rate quotas, so the EU and the UK can import steel under the tariff to a certain level, a bit like New Zealand lamb can come in. What solutions exist to prevent tariffs being charged on steel that is moved from Great Britain to Northern Ireland, if it is coming to GB under the tariff rate quota allowance?

**David Henig:** You can ask, and. I was called by a journalist asking about it on the day that this became a story,. This is a great example of what I just said. I started to try to go through the text, but I couldn’t quite work out the calculation, what was going on, which Acts were being referred to. Mr Lowe is waving, so I am hoping he has managed to get to the bottom of it.

I can only make the general point that I am still unsure what happened with the steel case, why it was the way it was, which particular pieces of the Northern Ireland protocol that referred to, or other trade instruments. It would have been really helpful if either the EU or the UK Government had indicated what on earth was going on here. I am still not much the wiser.

In general, there should be no tariffs or restrictions from the EU to Northern Ireland; that is part of the rule. Equally, in general there should be no tariffs or restrictions from Great Britain into Northern Ireland for goods that are remaining in Northern Ireland. Forgive me, I am still not entirely sure about the fact that the steel tariffs are 25%, and what has actually been going on here. To try to unearth that would take a considerable amount of work, which I haven’t been able to put in. I was hoping that



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the UK Government, or someone, would clarify, but maybe Mr Lowe has the answer.

Q515 **Mr Goodwill:** If I were tendering to build a motorway bridge in Northern Ireland, that wouldn't give me a great deal of confidence in terms of the price I might put in. Maybe Mr Lowe can come in on that?

**Chair:** What about your archaeological skills, Mr Lowe? What have you dug up?

**Sam Lowe:** I believe I can explain what happened. I am not sure it is going to fill you with joy. It is a convergence of lots of different actions. It is the fact that the EU introduced safeguard tariffs, as you mentioned, as a result of the steel trade war—a 25% tariff on anything that is not within quota. It then introduced in-country quotas, so you have a UK-specific quota up to a certain tonnage that can enter the EU tariff free. That's fine.

You then have the EU import quota regulation, which exempted Northern Ireland from being able to take advantage of the EU's country-specific tariff rate quotas, which means that steel entering Northern Ireland would not count towards any EU tariff rate quota that would allow you to dodge the safeguard.

You then have the "at risk" test within the protocol, which states that if a product is subject to a trade defence instrument then it is automatically deemed as being at risk. The convergence of all of these issues means that steel entering Northern Ireland from Great Britain is considered at risk—so it is subject to tariffs—and can't take advantage of the tariff rate quota afforded to the UK in the first instance, because Northern Ireland isn't allowed to make use of the EU's tariff rate quotas.

Q516 **Mr Goodwill:** That situation being the same whether the steel was produced at Scunthorpe or in Japan or China?

**Sam Lowe:** This is where a solution is being found. The EU has indicated that it is prepared to allow steel that originated within Great Britain to enter Northern Ireland directly and take advantage of the UK's country-specific quota. I should note, however, that this country-specific quota was not calculated taking into account flows between Great Britain and Northern Ireland, so it is too small to accommodate product entering Northern Ireland from Great Britain. It could easily get maxed out later in the year. However, this doesn't solve the solution of steel entering Northern Ireland directly from other countries—say, from Japan, as you mentioned. On the other hand, it is fine for steel to enter Northern Ireland via Ireland, because if it enters via Ireland it can make use of the EU's country-specific quota. So yes, the EU has put forward a solution that would deal with UK-originating steel entering Northern Ireland. It would be able to make use of the country-specific quota that the EU applies to steel, and benefit from the zero-tariff rate, up until the point that the tonnage gets maxed out, and then the 25% tariff would apply; but it doesn't have a solution on the table to deal with steel from elsewhere in the world entering Northern Ireland directly.

Q517 **Mr Goodwill:** Do we know how generous the tariff rate quotas are? I



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know, for example, with New Zealand lamb, we don't max out, so in effect the tariff is irrelevant. How much of the steel we import into the UK or EU is actually subject to tariff?

**Sam Lowe:** There are different tariff rate quotas for different types of steel. What I have been told is that, for steel entering Northern Ireland from Great Britain, and because, as I mentioned, the EU's tariff rate quota here wasn't calculated taking into account that flow, we could see quotas maxed out in the next few months for certain bits of the steel industry, which would then lead to the 25% tariff being applied. In practice, what I hear at the moment is that the tariff isn't actually being applied to any steel entering Northern Ireland. The UK is keeping a running tally, on the assumption that this process is going to come in in future that would allow for it to count towards the UK's quota; but yes, I think certain companies are worried that it is going to get maxed out.

Of course the EU could get rid of this safeguard this year. With Trump gone and trade wars subsiding, you would hope that the US would remove its own steel tariffs and then the EU can do the same. But that is not guaranteed, because the Biden Administration actually shares quite a lot of Trump's assessment of the issues around trade in the world.

Q518 **Mr Goodwill:** Finally, is there potential for fraudulent activity in this area, given the different types of steel? I know, for example, that large-bore welded pipe from Turkey is exempt from tariffs, presumably so they can build the Nord Stream 2 pipeline between Germany and Russia; but is it possible that goods could be incorrectly described, to get round the tariffs, and therefore people could make money out of this in a fraudulent way?

**Sam Lowe:** This an origin issue, and it exists with all preferential trade access, in that in order to benefit from, say, a free trade agreement, or anything else, if it offers a tariff lower than the usual one, you have to be able to demonstrate that your good actually originates in the country that that preference is aimed at. There is always a risk of fraud when it comes to rules of origin. I suppose it just then becomes a question of incentives, and how much money you can make from pursuing that fraud, and I suppose steel is quite a high-value item, so the temptation might be higher than in other cases.

Q519 **Mr Goodwill:** Yes, and it is not only a high-value item; if you are making ships or vehicles, or constructing buildings, it is an item that is a big proportion of what you are doing. Would you agree that this continued uncertainty makes it difficult for businesses in Northern Ireland to plan ahead?

**Sam Lowe:** Absolutely, and I think this is an example of a problem that has emerged largely because it was something people weren't necessarily thinking about. I would describe this as an unintended outcome of the Brexit protocol and domestic EU regulation. They introduced this regulation saying imports into Northern Ireland wouldn't count towards EU quotas, and they introduced it because they were worried it could lead to a WTO challenge down the line, and it would just be too complicated; but



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then it has had this problem. It was never envisioned to cause problems on the movement of steel within the UK from Great Britain to Northern Ireland, and the potential of a 25% tariff being applied. From my perspective, it is now on both the EU and the UK to fix this problem and make sure that this unintended outcome is resolved.

**Mr Goodwill:** Thank you, Mr Lowe. I wish I could say that is all clear.

**Sam Lowe:** I'm sorry.

**Chair:** I'm glad you said it, Mr Goodwill. Thank you very much indeed for that. Let's turn to Stephen Farry.

Q520 **Stephen Farry:** I wanted to ask an even thornier question around access to trade deals—

**Chair:** Ah. If I'd known that, Stephen, I wouldn't have called you.

**Stephen Farry:** —and specifically about Northern Ireland's relationship with the EU free trade agreements, in the sense that Northern Ireland goods can be freely placed on the EU market. However, when it comes to Northern Ireland contributing to parts that are then processed as wider EU goods, there seem to be rules of origin issues with access to quota, which may create difficulties for companies in the European Union accessing goods from Northern Ireland. Do any of the witnesses wish to comment on that? In doing so, do they see any way around that particular challenge for us?

**Chair:** Mr Lowe, you were the first with a hand, so let's go to you.

**Sam Lowe:** I can comment on it; I'm just aware that I have spoken quite a lot recently. The issue is that Northern Ireland is party to the UK's trade agreements; it is not party to the EU's trade agreements. This is very clear under the protocol. This means that products created in Northern Ireland—Northern Ireland-originating products—do not count towards the origin requirements under the EU trade agreements. For example, if I was making a car in the EU, and in order to qualify for tariff-free trade under the EU-South Korea agreement, I needed to have 55% of the value of that car created in the EU, any inputs from Northern Ireland would not count towards that 55% local value-added threshold. This is deliberate: we wanted Northern Ireland to be part of the UK's trade agreements, not the EU's. However, I think this problem could be resolved. If you talk to either the EU side or the UK side, they both blame the other as to why it has not.

It would be quite possible for the EU to ask its trade partners to continue to allow for inputs from Northern Ireland to count towards the local content thresholds within the EU trade agreements. The UK has already done this unilaterally, by agreeing in most of its rollovers extended cumulation. I mentioned earlier that the UK trade agreements are more useful than the EU trade agreements in this respect. I think it is something that could happen. The reason it has not—I am not sure. One argument is that the UK has not asked the EU to do it, because I suppose it would call into question Northern Ireland's place with respect to the UK a little bit



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more, if it was party to EU trade agreements as well. But from a practical perspective, this is resolvable, so long as the politics can get there.

Q521 **Stephen Farry:** That's very encouraging—better than I thought you were going to say.

**David Henig:** If I may, Chair, I'm not sure I am quite so optimistic as Mr Lowe that it will actually be resolvable.

**Chair:** Mr Henig, it was all going so well.

**Sam Lowe:** I said "could", not "will".

**David Henig:** Exactly. I think Mr Lowe is getting carried away with the general optimism of the session. Certainly, there is an avenue for it being resolved. Equally—I would certainly not advocate this—it is not always going to be clear whether the product's origin has indeed been Northern Ireland. A lot of products will go from Northern Ireland into the EU without checks, as they did before. I think there are opportunities. It is a case of monitoring how Northern Ireland's trade is affected with Great Britain and the EU and what opportunities there might be. But when it comes to changing EU trade agreements, that is always a big ask.

**Sam Lowe:** I was not recommending they be changed. I think it could be agreed via a side letter. In fact, the EU did this during the transition period. It wrote to all of its trade partners, asking for the UK still to be considered as an EU member for the purpose of these trade agreements, despite having already exited. There is precedent for this. I am saying it is possible; I am not saying it will happen. Politics makes lots of very sensible things very hard to achieve.

**Chair:** Politics is the art of the possible, isn't it? Dr Birnie, you have not contributed to our discussion for a little while. Have you anything to say in response to Dr Farry's question?

**Dr Esmond Birnie:** No, I do not have anything to add to what Mr Lowe has said.

**Chair:** Right-oh. Thank you very much. Mr Paisley is next.

Q522 **Ian Paisley:** Thank you again, Mr Chairman. I must say, I think we have had excellent evidence from our witnesses today and it has been a very informative discussion. I want to look at the medium and long-term consequences of the positive and negative aspects of the protocol. We have already covered the economic stuff, and I don't think we need to go back over the failures—that is certainly my conclusion from what I have heard today—of the protocol versus the unicorns of prosperity sometime in the future. May I look specifically at the relationships and the medium and long-term consequences, in our panellists' view, of the impact the protocol is having on north-south, east-west and internal relationships? I suppose it is only fair to start with you, Dr Birnie, seeing as you know Northern Ireland so well.



**Dr Esmond Birnie:** That is obviously a very broad question, but I will start by saying that there is one other possible longer-term economic impact of the protocol that we have not discussed so far: state aid and industrial policy. I think there will be a constraint on, for example, the future ability of the Northern Ireland Executive—an ability they may not wish to use—in legislation to vary its corporation tax rate compared with the UK average. As I understand it, under the protocol, being part of the European single market, Northern Ireland will still be subject to precedents set by the European Court of Justice—the Azores judgment. Basically that means that if, say, at the Budget next week the Chancellor says that corporation tax is increasing at the UK-wide level and the Northern Ireland Executive decide to keep the existing 19% rate, there would have to be a deduction from the Northern Ireland block grant.

In terms of Mr Paisley's wider question about relationships within the islands, I think undoubtedly one of the harmful effects—you could say this is political, or you could call it political economy; it does not really matter what you call it—is the disruption to the delicate balance of the 1998 Belfast agreement. That is regrettable, and I think in the long term there will be negative economic results following from that. I think Ms Hanna in an earlier question was saying that it was very important that we try to promote Northern Ireland as a destination for inward investment. I entirely agree with that, but instability of any sort, or any sort of threat of violence from any quarter, has a very negative effect on the potential for inward investment.

That would be a great shame, because Northern Ireland has been doing relatively well in terms of inward investment, particularly back-office service sector inward investment coming from the United States. Belfast is second only to London, during the period from 2000 to 2015, in terms of the amount of American service sector investment and the employment it generated across any UK city. We need to keep working on the aspects of our competitive advantage, which are things such as having a good supply of high-quality graduates at a relatively low labour cost. We need to continue working with that, notwithstanding the effects of the protocol.

**Q523 Ian Paisley:** On those issues of instability of any type—disruption or terrible threats of violence, wherever they may come from—it appears from the Irish press at the weekend, as I read in the *Irish Independent* commentary, that there are threats to the Dublin port and threats to Irish institutions in the Republic, and proposals for protests by people affiliated with paramilitary groups. This threat appears not just to be a Northern Ireland issue of instability, but to be seeping into the Republic of Ireland. Do you agree with that?

**Dr Esmond Birnie:** I must say, I did not read those reports about possible threats in the case of Dublin port. Obviously, that is entirely wrong and is causing harm, not just now to the Northern Ireland economy, but to the Republic of Ireland economy as well, so it is deeply to be deplored.

**Q524 Ian Paisley:** Before I come to another witness, you mentioned the issue



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of state aid and its potentially detrimental impact. If the UK Government wanted to grant a free port to Northern Ireland, even the regional status of a free port, could the EU object to or oppose that?

**Dr Esmond Birnie:** Yes, I am aware of that continued policy emphasis on developing free ports. The Chancellor, for example, is quite a fan of the concept. We need to see a lot more of the detail, but I am not convinced that it would make a terribly great difference to Northern Ireland's trading relationship with either GB or the European Union. It would very much depend on the fine detail. I do not know whether the protocol would give the European Union a sort of say—or a veto, perhaps—on whether Northern Ireland or a part of it could have free port status.

Q525 **Ian Paisley:** Thank you. Mr Lowe, again on the issue of relationships, do you fear that the protocol in its immediate seven or eight weeks of operation has damaged the relationships between the EU and Northern Ireland?

**Sam Lowe:** Specifically on that question, I think that the EU's actions when it almost triggered the safeguard measures indicated that there is not always enough thought about how its actions elsewhere in the EU might impact on Northern Ireland. That will be a constant challenge for the UK and Irish Governments, to ensure that Northern Ireland remains part of the EU's thinking, because otherwise problems could emerge. The EU's actions certainly caused problems with the Northern Ireland protocol. I was on BBC Northern Ireland radio on the day that happened, before it was resolved. I said that this makes me fear for the longevity of the protocol, if that is the direction of travel, because it undermines the protocol and could lead to retaliation.

On the impact on relations more generally, in particular between Northern Ireland and Ireland, and Northern Ireland and Great Britain, I am not qualified to speak. From an investment perspective, however, instability is not useful, so political instability does not help. That is why my preference throughout all of this was always to ensure that the Union had a much higher priority in the negotiations with the EU. I advocated for, and would continue to do so, a much closer all-UK relationship with the European Union so as to ensure that there is no need for either a border between Northern Ireland and Ireland or an internal one within the United Kingdom.

Now that we are into the land of counterfactuals, if we get rid of the sea border, what comes next? If the answer is, "We get rid of both, because we are more integrated", wonderful. However, if it is, "We get rid of it and move it to the land", we are back into the discussions of the past few years, and we do not answer the political instability question.

Q526 **Ian Paisley:** Yes, but the issue I am wondering about is the UK-EU relationship. You would agree that the last 53 days got off to a very bad start.

**Sam Lowe:** I would absolutely agree with that.



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**Ian Paisley:** It has almost poisoned the beginning of what could be a new relationship. I appreciate the short answer; thank you. [*Interruption.*]

**David Henig:** Has the Chair disappeared? I was going to ask whether I could come in and answer a couple of those points.

**Ian Paisley:** Yes, please; I was turning to you but my screen froze. I will ask you to answer while the Chair is trying to reconnect.

**Chair:** I am here. I have no idea what happened; my apologies.

**David Henig:** I was just saying, Chair, that if I may, I will answer part of Mr Paisley's question. A couple of points are very interesting. First is whether a free port established in Northern Ireland is consistent with the terms of the protocol, and I am not sure that it is. As currently established, the territory of Northern Ireland follows and has certain regulations with regard to tariffs and how things work between the EU and Northern Ireland. It may be consistent, but I suspect there is a lot work to be absolutely sure about the terms of a free port—I do not think that we know those terms—being consistent with the protocol. That being said, I agree with Dr Birnie that I am not sure there would be much benefit from it. That is an illustration that we don't really know enough about the rules.

I want to make a general comment about UK relations over Northern Ireland. I am always wary of speaking from London about matters of Northern Ireland or the Republic. I fear that many of us in London continually get things wrong. There were always going to be issues between the EU and the UK. I am concerned about the lack of representation from Northern Ireland into an EU that is passing regulations that will affect Northern Ireland. There are problems there.

Issues of tense relations were to be expected. I don't think it has been completely different from what I expected. I don't think that has necessarily poisoned relations for ever. It could have been better, but it could have been worse as well. It is going to be a matter of saying, "Look, there are a number of issues we need to work through." There will be some ups and downs in this relationship, and we need to keep ploughing away, I guess.

**Ian Paisley:** Thank you, Mr Henig. I agree with you that the idea of a free port is probably incompatible with the protocol. That's just a hunch, but a good hunch. It will be interesting to see how that develops. I do agree that the democratic deficit is now a democratic chasm. All of this is affecting relationships.

**Chair:** Thank you, Mr Paisley. In passing, on the first bit of your question about potential actions in Dublin, in the Republic, I am pretty certain that all of us on the Committee would want a very clear message to go out that people's concerns are being heard, and that senior politicians are seeking to address, answer and sort out those problems. That can be frustrating, one appreciates, but peace, democracy and common sense must prevail. We don't want to see people being forced to act in a way that is not



concomitant with the rule of law.

**Ian Paisley:** Absolutely, Mr Chairman. A strong, "Hear, hear," to that.

Q527 **Chair:** Exactly. I know that is a message for all of us on this Committee. I wanted to ask Dr Birnie a question. You mentioned earlier that you were picking up a potential trend here for some benefits in the sector of food processing, as an advantage of the protocol. Is it just that sector, or are there other sectors that are well placed to avail themselves of opportunities, particularly on the "one foot in each camp" proposition?

**Dr Esmond Birnie:** The examples that I have become aware of do relate to food processing. It obviously relates to the European Union restrictions on imports—in some cases absolute restrictions, or prohibitions, on imports—of certain types of food products into the European Union SPS area. Some Northern Ireland firms have been able to increase their sales into the Republic of Ireland, displacing what would formerly have been food products coming from GB.

As to broader evidence of this going on, so far it seems less clear cut. One of the Members of the Committee earlier referred to some of the statements that Invest Northern Ireland has made about expressions of interest in terms of inward investment. It has to be said that at this stage, they are still only expressions of interest.

As I think Mr Lowe pointed out earlier, the range of factors that influence international firms as to where they locate round the world is a very long list.

Q528 **Chair:** I understand that, but if you were still advising the Stormont Executive, which you did in a previous life, what would you be saying to Ministers there? These are potentials that you should be paying attention to where you could see economic growth, job creation, new industry and so on. You have the food processing one, and I appreciate that that is the only one that is evidential at the moment. We have had quite a lot of hunches and ideas coming forward in the session, so don't let that constrain you.

**Dr Esmond Birnie:** As with the rest of the UK economy, and indeed most other western economies, Northern Ireland is now predominantly a service sector economy—more than 80% of employment and GDP—so what happens in the service sector is critically important. I think I referred earlier to what Northern Ireland—including what Invest Northern Ireland has promoted—has done very well in the first two decades of this century, in terms of attracting into Belfast, in particular, and other parts of the Province service sector firms, particularly of a United States origin. I would continue to emphasise that area.

Now, does the protocol either advantage or disadvantage Northern Ireland as a centre for services and for the export of services back within international firms? I don't think it will affect things very much. It is true that because of Brexit there may be certain restrictions on Northern Ireland-based service companies taking in labour from the rest of the



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European Union, but that then raises issues about future policy relating to work permits and migrant labour and so forth, which is a big issue and obviously should be considered in its own right.

**Chair:** Thank you. Claire, I think you wanted to come in.

Q529 **Claire Hanna:** Of course, it is only expressions of interest in terms of investment post protocol. I don't think even the most optimistic scenario would think that after 50 days a business plan would be complete and an investment would have transferred, and I don't think we have seen any comparable big investments in Britain post Brexit either.

Dr Birnie, would you see any opportunities for advanced manufacturing, for example, and highly regulated industries, such as, for example, pharmaceuticals? I appreciate that you perhaps don't see the opportunity, but is there anybody else that has such clear access to two very dominant markets? I am not really sure why you don't see that as an advantage, notwithstanding the instability issue.

**Dr Esmond Birnie:** What will happen to highly regulated sectors, such as manufacturing, pharmaceuticals and life science products, is an important question. It is true that that has been identified as one of the clusters or business networks where Northern Ireland has performed relatively well over the last couple of decades and where we might have potential for further expansion.

I think the difficulty with respect to pharma and life science is that I am picking up very mixed messages from people who are closer to the sector than I am. Some are saying that we really do have a foot in both camps, and that the business costs will be eased and the ability of Northern Ireland pharma and life science firms to sell back into the rest of the EU and into Great Britain—into both big markets—will be aided, but other informed sources seem to be saying that it is not at all clear to them that the regulatory burden has in any sense been reduced. The firms will still be obliged, as it were, to go through two systems of safety standards, both the UK and European Union system, so I think at the moment, in terms of advanced manufacturing, particularly pharma, this situation is still unclear.

Q530 **Claire Hanna:** Mr Lowe or Mr Henig, have you an assessment on that?

**David Henig:** I think it is a little early to be certain about what those impacts will be. When I was working in Government, I met a number of inward investors working in the Department for Business, Innovation and Skills, supporting Ministers. They would always ask about a certain level of certainty. I think that it is not just Northern Ireland. This applies to the whole of the UK. We are in a state of some flux as a country, after Brexit, not quite knowing what our regulatory frameworks and trading relationships will exactly be. I think there are possibilities that investors will be looking at. There will be a certain wariness until things get a little bit more solid. At a UK Government level, will frameworks change dramatically? That is about more than trade—it could be about tax. The whole post-Brexit picture is still evolving, it is fair to say. It is a little early



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to say that businesses will definitely be taking advantage, but there are certainly areas where we might see opportunities that you want to push Government and others on to clarify things and help to attract that business.

**Chair:** Mr Lowe, and then Mr Campbell wants to come in.

**Sam Lowe:** To refer back to something we were discussing earlier, Northern Ireland is, in and of itself, a sort of free port now, in that it is part of the EU's customs and regulatory regimes for goods, but it can send goods into the UK without any additional barriers, subject to the caveats we discussed earlier. When trying to work out who this could advantage, if thinking about sectors, one, for me, is any company that imports lots of inputs from outside of either the EU or UK but wants to sell to people in the EU and UK. Northern Ireland suddenly becomes more attractive, relatively, as a proposition because you are guaranteed tariff-free access to both markets. This goes back to what I said earlier about people distributing t-shirts, maybe, that were imported from India and sent out elsewhere, but it can apply to food products and lots of other things as well. You can potentially get quite a high value once you start going through supply chains.

On questions such as pharma, it is a difficult one, because under the protocol you still have to get your EU-based certification. The certification body, I believe—I will write a correction to the Committee if I am wrong—has to be carried out by a certification body based within the EU, so in Ireland. Then you have the UK-based route as well. At the moment, the UK is quite accommodating in just accepting authorisations that have been granted by EU bodies. The question I hear, I suppose, is: how long is the UK's commitment to this? At the moment, if you are just thinking about general product standards, the UK says that it will accept CE marking until the end of the year. I'm just thinking about this generally—Northern Ireland has a slightly different approach. What I mean by this is that at the moment the UK is quite accepting of EU regulatory approaches and allowing goods to be placed on its market without necessarily an additional burden placed upon it.

My view is that if the UK is to uphold its commitment under the Northern Ireland protocol to unfettered trade, it should continue to accept EU-based approaches, because otherwise you will place additional burdens on Northern Ireland's businesses. There will be goods on the market in Northern Ireland that can't be sold in and transferred on into the rest of the UK. However, this is not necessarily the Government's position at the moment—it has deadlines in place for lots of these things. If those were to be extended and made permanent, that would of course increase Northern Ireland's attractiveness as a proposition for companies and help them to see that in certain instances they would not have to straddle two regulatory regimes. But that is an open question at the moment. An opportunity has been created for Northern Ireland for certain sectors, but there are still lots of things that could go horribly wrong.

**Chair:** As always. Mr Campbell?



**Q531 Mr Campbell:** Thanks, Chair. This is a big-picture question arising from what Mr Lowe said 10 minutes ago. There are sensitive and competing balances in the Northern Ireland system, politically and practically, which I alluded to, in terms of where checks are done. If we look at the last eight weeks in terms of the sea border, at a political level, there is no Unionist consent for that. It simply is non-existent. It does not exist there, and it is not likely to exist in the medium to long term. On a practical level, in terms of the border checks, I think most people now accept, given what has been said by the European Commission, the British Government and the Irish Government—virtually everybody—there is no practical, realistic prospect of there being physical checks along the border. In the long term—not eight weeks in, such as we are now, but in eight months or 18 months—is the reality not going to be somewhere between the two projections: the political and the practical? *[Interruption.]* Anybody? Somebody!

**Chair:** Or are you pleading the fifth because it's too political?

**David Henig:** I am only too willing to have a go. I have been examining the trade minutiae, but I am well aware of the fact that trade only exists in a culture of consent, and there are many difficult issues. I think that the UK Government and the EU will be aware to a degree, although perhaps not as much as they will need to be. There is scope for varying ways to ease things or to make certain minor changes, but it seems to me that there will have to be some sort of framework, probably, unless something dramatic changes in the near future. I suspect the protocol is the framework for it. On how that is then implemented and in what ways, there will I am sure be a lot of discussion about it. That is about as far as I am going, but I am speaking from London. I am not in Belfast or other parts of Northern Ireland, and I am not trading across, so I am careful to observe your roles as MPs. That is all I can say, but there are ways we can help. That is the best that I can say.

**Mr Campbell:** Mr Lowe?

**Chair:** Where Mr Henig led, Mr Lowe follows.

**Sam Lowe:** I think the sustainability of the protocol is something we should be concerned about and take into account for this to work. For Northern Ireland it has to endure, and for it to endure there has to be broad consent—to a point. I am sure that some people will never be happy with it, as is the case with lots of things. From an EU perspective—this is where I think about it from—it is in the EU's interest to be as accommodating as possible to ensure that it endures and to ensure that it does not have to keep returning to this question constantly, over and over again.

From a wholly EU perspective, they have lots of other issues that they are worried about. There are issues around coronavirus and migration, and lots of other things that they want to focus on, so it is in their interest to make this work. I have lots of suggestions on how to make it better. I think the UK should further integrate into the EU's SPS regimes so as to



remove some of the most burdensome of checks. But then I also think that the “at risk” profile could be extended to cover other sorts of issues—for example, around sausagemeat and non-frozen meat entering Northern Ireland, and pets. We already have solutions for certain specific issues that could be broadened to incorporate other areas. I don’t really accept that there is a risk to the EU single market of sausages coming into Northern Ireland from Great Britain. That can and should be resolved. I would hope, and I advocate for this, that there is flexibility on the EU side to allow this to happen.

I should say that one of the reasons this flexibility isn’t all so forthcoming is that many member states really do believe this argument that Northern Ireland has the best of both worlds, and they are worried about not only Northern Ireland being a gateway to the single market, but, more fundamentally, that Northern Ireland/British-based companies will out-compete their own because of the position that Northern Ireland has found itself in.

**Chair:** Mr Campbell, are you happy? Dr Birnie, do you have anything to add?

**Dr Esmond Birnie:** I don’t have much to add to what the two previous witnesses have said. Clearly, the EU have it within their power to show more flexibility. In a sense, that would make the working of the protocol more palatable, but there would still be some frictions. Therefore, I think there is still a very strong argument, in principle, to say that the protocol per se is objectionable. So far, no one has discussed or mentioned the fact that there is the provision for retrospective consent, in the sense of the vote in the Northern Ireland Assembly at the end of 2024. It remains to be seen how well the protocol will have worked, how far it will have been reformed and how far there will be extended grace periods. Are they perhaps only kicking the can down the road? What will be the result of that vote in 2024? Therefore, how far is the protocol sustainable in any case?

**Mr Campbell:** Thank you.

**Chair:** I am conscious of the time, and I want us to finish the ground that we want to cover, so I will ask for almost a quick-fire round—I sound like somebody out of “Mastermind” or one of those quiz shows. I want a quick question and a quick, pithy answer. Let’s turn to Dr Farry for a quick question, and then we will look to somebody for a pithy answer.

Q532 **Stephen Farry:** I think we have addressed the agrifood issue, so I will just focus on the parcels aspect. Do any of the witnesses foresee a permanent solution to the problems being encountered around the movement of parcels into Northern Ireland?

**Chair:** When you say parcels, Dr Farry, this is granny in Barnsley sending a pot of jam to her grandson in Belfast or something—not great parcels of steel or anything.

**Stephen Farry:** Yes, Amazon-type parcels through to domestic-type



arrangements, particularly over the threshold.

**Chair:** Who is our expert on parcels?

**Sam Lowe:** Technically, you can come to solutions. Parcels are one of those products for which you can fairly easily demonstrate that the end buyer is in Northern Ireland, because you have a delivery address on it. They are largely moved by quite big companies, which have the ability to audit their internal supply chains. Technically, can you come up with solutions that avoid the need for export declarations? More importantly, the ones that would cause more difficulty would be the ones around animal products, export health certificates and the like. I know that is where Amazon and the like have been dropping supplies from Northern Ireland, because they think it will be too much hassle. Technically, is there an approach that you could take to this that could resolve the problem to everyone's satisfaction? Yes, but we go back to the art of the possible in relation to politics.

**David Henig:** If I may, Chair, I wonder what has happened to the notion that we were going to solve a lot of issues with trusted traders. That was being talked about in December by the Government, when it said how the protocol was going to be implemented. We have not heard very much about it since, but as Mr Lowe correctly says, much of this is being done by traders that we should know about. It really does not strike me as something that is beyond our wits to work out. It is one of many questions I have for the UK Government about how they are implementing this. Are they absolutely sure they are implementing this as well as it could be? I read a comment a week or so ago from someone saying, "Why is the EU implementing things in such a tough way into Northern Ireland?" It is actually the UK Government who are implementing this. Perhaps the UK Government might be gold-plating or over-embellishing what it actually needs to do, and it could do things a bit more simply, but I think we need some evidence of that.

Q533 **Chair:** Never let it be said, Mr Henig, that Whitehall ever gold-plates anything. We usually gold-plate, stick a few diamonds on the top and a couple of rubies, and add an emerald for good measure. It is what we are very good at, but you make an important point. Does anybody else want to come in on that, or can we move on to our next quick-fire question? I am not seeing anybody else indicating.

I want to deal with article 16, and I will try to wrap this into a question. First of all, I would like your thoughts about the merit or otherwise of tightening up the definition for what could allow the trigger of article 16, because it seems to be slightly opaque, perhaps intentionally. What are your views or thoughts about the EU's actions at the end of January? Did it breach the terms of the protocol in the manner in which it invoked? Also, what is your assessment of the efficacy of the Joint Committee? I want to take those three questions wrapped into one.

**David Henig:** I am happy to start on a quick-fire basis. I regard article 16, like I regard much of the dispute settlement procedures in any trade



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agreement, as being there not to be used. It is there as a fail-safe. One side should be saying to the other, "We really might have to get to the point where we would use this. We need to talk before we get to that point." Therefore, what the EU did—however it happened—was ridiculous. It was done in a panic, quite clearly, by some middling official—as I used to be—and nobody noticed what they had done. It was clearly a huge error and should teach us, for the time to come, that we shouldn't be trifling with such a major thing. It is not a matter of tightening up the wording. It is a matter of both sides understanding that this is there as the final straw. If months have gone by and the other side has really not been paying any attention to what has been said, then you do something about article 16. That is the way that I would regard it.

On the Joint Committee—frankly, all the structures—I do not see enough of what is going on to understand whether they are working as they should be or not. As I keep saying in this session, we need more information from somewhere. I think that comes in from the Joint Committee. We need to open this up to see the workings. It might not be pretty, but we need to see a little bit more. It all seems a little bit opaque. Did I miss a question in there?

**Chair:** No, you didn't. Thank you very much.

**Sam Lowe:** I think I spoke about the safeguards earlier. In terms of the Joint Committee I can give the perspective from the EU side. I think Commissioner Šefčovič has been quite a good friend to the UK in these discussions. I think he built up a good rapport with—

**Chair:** Michael Gove.

**Sam Lowe:** Yes, I was trying to give him his full title.

**Chair:** Chancellor of the Duchy of Lancaster.

**Sam Lowe:** Yes, that's the one.

**Chair:** Government guru. I am not quite sure what his title is these days.

**Sam Lowe:** Yes. They built up a good working relationship. To get through the derogations that we saw announced at the end of last year, Commissioner Šefčovič, to put it crudely, had to sit on quite a lot of other Departments—especially DG SANTE, which is in charge of agrifood controls—and had to spend quite a lot of political capital getting that over the line.

In that sense, has it been effective? Yes, and that is the place where these issues should be resolved in future. But it is not a technical discussion. This is the point I am trying to make. It still requires the people who are running this at the political level, on our side—I think that will stop being Michael Gove soon and it will be Lord Frost—and on the EU side, to be willing to spend political capital to get these solutions over the line. So far, we have seen some of that on the EU side. Admittedly, much of that good work was undermined by the actions then taken with regards to the



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safeguard measures, but we will need that to continue. That will require the UK retaining generally a good relationship with the European Union, beyond just Northern Ireland, not constantly fighting with them over everything, and then also a good relationship with Ireland, which will be important to ensuring that it remains high up the EU agenda.

Q534 **Chair:** Certainly on that latter point, listening to conversations at BIPA on Monday, I am tempted to say that relations between the UK and the Republic have not been warmer for many years. There seems to be a real commitment to and understanding of the need to replace some of those bilateral conversations, which used to take place in the corridors of the EU, and that is good news. That segues terribly well to Ms Peacock's question—unless Dr Birnie wants to add something in answer to my question.

**Dr Esmond Birnie:** The only thing that I would add about article 16 is that in a late clause of the article it talks about giving at least one month's notice within the Joint Committee if a party feels that the "serious", as they are termed, economic or social difficulties are being caused by the protocol. Clearly, the EU didn't do that at the end of January with respect to the vaccine exports. That was very unfortunate.

**Chair:** Yes, that is a good point. Let's segue now to Stephanie Peacock.

Q535 **Stephanie Peacock:** Thank you, Chair; that leads on nicely. How do you think the appointment of Lord Frost to his new role could affect the way the UK engages with the EU on the protocol?

**Sam Lowe:** Sorry, I just had a bit of a connection problem. Do you think you could repeat the question?

**Stephanie Peacock:** Yes, sure. My question was how you think the appointment of Lord Frost to his new role will affect the way the UK engages with the EU on the protocol.

**Sam Lowe:** That is quite a political question. It is hard to say.

**Chair:** We are politicians, Mr Lowe.

**Sam Lowe:** Yes, absolutely, and I am very much not. Lord Frost clearly has a very good grasp of this issue and has been involved in the negotiations throughout. My concern is that he had to be competitive throughout all those negotiations. In respect of Northern Ireland, he took some decisions in those negotiations that I think undermined the protocol slightly and undermined the UK's approach, if we think about the threat to unilaterally breach the withdrawal agreement and the like. Previously, he has been very in favour of alternative arrangements at the land border and was not reportedly in favour of the Northern Ireland protocol itself. That is some context. But—

Q536 **Chair:** But Mr Lowe, just pausing there, he did sign off the protocol.

**Sam Lowe:** Yes, exactly. It is his responsibility; he did sign it off and he did deliver it. We will have to wait and see. As I said earlier, I was quite



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positive about Michael Gove's role in the Committee recently and I think he has had an important role to play there. I will wait and see how it operates under Lord Frost. My concern is that it is going to become more combative, but of course that might not happen.

Q537 **Chair:** Does anybody else want to opine on this change of personnel from Michael to David Frost?

**David Henig:** I share the concern that it would be a mistake to be too combative on this. What I am hoping for from the UK Government—let us turn it into that—is that they think through what they want to achieve very carefully. Your Committee can help as well, I am sure, in making recommendations. However, while accepting that there are going to be big political issues around the protocol, there are also many technical things that can be done and he, and I am sure his team, will be able to tread that line and try to improve the functioning. I expect—I am sure—he will continue to make political points, but I hope he can do it in such a way as to also make technical improvements at the same time. That is a tough ask, but that is the ask he is taking on in becoming a Minister.

Q538 **Chair:** The last word goes, if he wishes it, to Dr Birnie.

**Dr Esmond Birnie:** Thank you, Chair. This is still on the same question, I presume, of the change in personalities?

**Chair:** Yes.

**Dr Esmond Birnie:** As Mr Lowe said, it is very hard to predict the effect, but I suppose, being honest, I would lean more towards feeling that a bit more of an aggressive stance on the part of the UK Government is more likely to achieve concessions from the European Union.

**Chair:** Thank you. We have had a marathon session, but it has been, I think, hugely worth it. I still think my assessment—without sounding too much like Eric Morecambe—is that the right questions are being asked, but all the data is not necessarily there to answer them yet. Understandably, we will go on asking the questions to ensure that this is got right for the residents and businesses of Northern Ireland. Gentlemen, may I thank you on behalf of the Committee for joining us this morning? Thank you for your time and your very comprehensive and detailed answers.