



European Affairs Committee

Oral evidence: Trade in goods

Tuesday 19 October 2021

4 pm

Watch the meeting

Members present: Earl of Kinnoull (The Chair); Baroness Couttie; Lord Faulkner of Worcester; Lord Foulkes of Cumnock; Lord Hannay of Chiswick; Lord Jay of Ewelme; Baroness Jolly; Lord Lamont of Lerwick; Lord Liddle; Lord Purvis of Tweed; Viscount Trenchard; Lord Tugendhat; Lord Wood of Anfield.

Evidence Session No. 1

Heard in Public

Questions 1 - 15

Witnesses

[I](#): Sam Lowe, Senior Research Fellow, Centre for European Reform; Elly Darkin, Senior Associate, Global Counsel; Joe Marshall, Senior Researcher, Institute for Government.

Examination of witnesses

Sam Lowe, Elly Darkin and Joe Marshall.

Q1 **The Chair:** I welcome the three of you to the European Affairs Committee in the House of Lords. We are having physical evidence sessions after a break of 18 months or so. This is a public evidence session connected with our trade in goods inquiry, and we expect to produce a report in December this year.

Our witnesses are: Joe Marshall of the Institute for Government; Elly Darkin of Global Counsel; and Sam Lowe of the Centre for European Reform. Thank you very much for coming along this afternoon.

May I suggest that when you speak for the first time you give a brief introduction, not because the Committee does not know who you are but because those who are watching will not, and it would be very helpful for them?

A transcript will be sent to you, and I would be grateful if you checked it and notified us of any corrections that need to be made.

We have limited time and various people have to leave, so I ask that questions and answers are crisp and, if possible, short. Sometimes, it will not be possible to be short.

I expect there to be a vote in the House during this session. If there is, we will adjourn the Committee for five minutes. You will see us all voting remotely, and we will begin again five minutes later.

I will ask the first question, which is a more general one. It is now coming up to a year since the end of the transition period and the trade and co-operation agreement came into force. How would you characterise the overall consequences of the changes that were brought in by virtue of that for Great Britain-European Union trade, and what are the key challenges that remain?

Joe Marshall: I am a senior researcher at the Institute for Government.

I will probably start by issuing a few caveats that probably apply to quite a lot of what we will say during this session, which is that trying to draw a general picture of the impact on GB-EU trade at the end of the transition period can be quite tricky. The impact varies a lot between firms based on the sector they are in, their size, their experience of rest of the world trade previously and how much they have been exposed to some of the Covid and supply chain disruption. We have to take that into account.

The other caveat is disentangling the impact of Brexit and Covid, which continues to be quite tricky both in the data and in the experiences that firms are having. The most recent Office for National Statistics business insights and conditions survey showed that, of those firms reporting supply chain disruption, about half said that it was a mix of Covid and Brexit and that they could not really disentangle what was causing it. Flagging those things is quite important.

We have seen the impact of the end of the transition period and those new changes. We saw a big drop in trade at the start of the year, with both imports and exports hit very significantly. We have seen exports to the EU rebound to pretty much pre-Covid levels in goods, but imports are still down around 10% and there are questions about what is causing that discrepancy¹.

There are different hypotheses, one of which is that perhaps UK firms that want to continue trading with the EU have no choice but to comply with the new requirements and to deal with the new barriers to trade, whereas EU firms that traded with the UK perhaps have more choice about where they trade. The UK market may not have been as big a part of their overall market compared with UK firms trading with the EU. That might explain part of it.

Despite those caveats, there are some general lessons. Small firms generally have struggled more. Some small firms have decided not to trade with the EU because it is not worth them taking on the additional costs and difficulties of trading with the EU.

Larger businesses have generally fared better. Some sectors such as advanced manufacturing, despite facing some disruption early on, have been able generally to adjust, whereas other sectors such as food and drink have had, as we know, some lasting issues and are still facing some problems, which the Food and Drink Federation, among others, have pointed to.

In pointing out the key challenges ahead, one thing that I am sure we will come on to later is the idea that we are not yet at a steady state regarding the trade barriers with the rest of the EU. Full import controls have not yet been introduced and, alongside that, firms are grappling with ongoing Covid disruption, supply chain disruption and the various causes of that.

Bandwidth within businesses and, to some extent, within Government remains very strained, despite the fact that we are still not quite seeing the full impact of Brexit.

Elly Darkin: I am a senior associate at Global Counsel's trade and manufacturing policy practice.

I will restrict myself to two general observations with regard to the consequences of the end of the transition period and entry into force of the TCA.

The first is that there has certainly been, I would say, a chilling effect on EU-UK supply chains. By this, I mean that not only did we experience quite a sharp drop at the end of the transition period—January to March—

¹ Correction - Exports have rebounded to some extent, but imports are still down quite notably - although trade data fluctuates and it's hard to draw long term trends from the data so far (Joe Marshall)

but we saw quite a severe drop in EU-UK trade flows, and we have not seen those recover to date, from the ONS trade data that is available.

We have observed over the last nine to 10 months a chilling effect on EU-UK supply chains for many of the reasons that Joe outlined. There is general uncertainty about the steady state of EU-UK trade and additional operating costs for trade with the EU Single Market from a UK business perspective.

The second overall consequence that I would highlight is that the impact of the end of the transition period has been unbalanced in terms of the UK economy. One sector stands out to me as having borne a lot of the brunt of the impact of the end of the transition period: the agri-food sector. That is a direct consequence of the UK falling outside the EU's SPS region without any deal to provide a mutual recognition or equivalence framework, whereby you could essentially reduce checks and controls for goods entering the EU Single Market and vice versa. It has been unbalanced in its sectoral impact, with agri-food taking a particularly large hit. That is reflected quite clearly in trade data.

Joe pointed out the impact on small firms that will not have necessarily had experience of international trade as such before because, when they were trading just within the Single Market, they would not have been subject to customs protocols. They would have been benefiting from harmonised rules and regulations at EU level.

One instance that we think about is divergence almost by accident, or passive divergence, with businesses facing more operating costs from regulatory divergence just by virtue of having fallen outside of the European Union. There are additional costs now from no longer benefiting from the harmonisation of rules and certain exemptions and derogations from having to comply with member state rules and regulations. Certainly, smaller businesses have had a particularly hard impact.

Turning to the challenges remaining, there is a general sense of uncertainty with regard to timelines for implementing the next stages of the UK-EU relationship. A big category is customs checks on EU-inbound goods, but many other timelines will be hidden for different sectors in different ways—for example, grace periods for UK cosmetic firms to comply with certain UK-based cosmetic regulations. There is the quite important date for many businesses about compliance with conformity assessment markings, which has now been shifted back to 1 January 2023.

All these timelines will not be obvious on the surface, but, if you are a business looking at how to comply with some quite hefty market surveillance regulation and things such as that in the EU Single Market, that timeline for your Brexit implementation plans is very complex. The goalposts keep shifting, not just on the big dates such as 1 October and 1 January—the beginning of next year—but for many of the implementation dates for certain areas where derogations will expire, but may or may not have been extended for three months.

That really impacts business planning, especially when it comes to a business decision where they might be facing a deadline or a cliff edge, as with the upcoming customs checks, for example. They will need to make a decision about whether they hire more people to service the operational cost of trading with the EU now or whether they need to do things such as expand their infrastructure to hire more, or look to digital processes to help with goods segregation in the digital platforms when they are dealing with their trade flows.

These are a lot of monetary decisions that businesses will generally try to avoid making until they absolutely have to. If there is a possibility that the timeline gets extended or pushed back again, they will probably hold off on doing it, which means that there is more disruption and uncertainty when those deadlines eventually expire and we enter into a new state of trade between the EU and the UK.

Sam Lowe: I work at the think tank, the Centre for European Reform.

I do not want to repeat what has been said because that would be a waste of your time, but I will make a couple of supplementary points.

I emphasise the need to differentiate sectors and within sectors. For example, if you look at trade flows in food in general, they look quite healthy. That has largely been driven by the alcohol/spirits sector. Within the sector, however, if you delve down, you will find that lots of firms are struggling to comply with the new processes and are suffering as a result.

It is difficult, from the macro figures, to disentangle the impact of Covid and the impact of Brexit. We need to understand that some of the Covid impacts on trade flows might be positive. For example, at the beginning of the year there was a spike in exports of pharmaceuticals. The UK produces a lot of vaccines and components that are used to make vaccines. You would expect us to be doing more of that than we would under normal times, and you would hope that, over time, this would subside, which is a strange thing to say, but, of course, you would.

We need to be careful with comparisons. This might sound like an academic point, but there will come a time when comparing pre TCA and post TCA is not helpful in so far as what we actually want to know is whether the trade flows would be different were different decisions taken now. In an alternative universe, where we either had a deeper relationship with the EU or a looser relationship with the EU, what would the impact of trade flows be? The difficulty is that we can never know that for certain. You have to model it and use different economic techniques. We have never experienced this counterfactual. The reason it is important is that I would expect trade flows with the EU to continue to grow; populations increase, people get richer and they buy more—that is the general pattern.

We are nearly seeing now that UK trade flows with the EU are bigger than they were pre the end of transition, and I think that will continue. But that is not necessarily the information that we need to make decisions

about the best sort of relationship that we should have with the European Union.

Looking forward, lots of points have already been mentioned, but I will make one other regarding rules of origin. For those who do not know, rules of origin are the criteria that determine whether your export qualifies for tariff-free trade. They are often product specific and often vary product by product; they are essentially a local content requirement—are they actually from the UK or not? There is a grace period in place until the end of the year, which means that firms are not being asked to provide evidence, essentially.

My suspicion—at this moment in time, it is just a suspicion—is that lots of firms, especially smaller firms, are currently trading tariff free when they should not be. I am not saying that is deliberate; I think they are doing it by accident for the most part. There will be a time from 1 January onwards when the question is what the enforcement regime looks like. You can either choose to punish these firms or choose to help them comply. The UK will take a decision on that, but individual EU member states will also take decisions on that, and it could be consequential for some.

The Chair: Thank you very much indeed. It is a good time to move to Lord Lamont.

Q2 Lord Lamont of Lerwick: To what extent have some of these problems subsided and to what extent have some of the firms adjusted? I also want to roll in with that a question on rules of origin. I am interested in what Mr Lowe has just said. In February, the EU Goods Sub-Committee was told that rules of origin were, at that stage, proving to be the main area of difficulty for companies. I do not know whether that is consistent with what you were saying about grace periods and a lot of people just ignoring the issue of rules of origin. Could you comment on those one and a half questions, please?

Sam Lowe: I would differentiate large firms from small firms. Large firms with big compliance departments have been trying to comply with the rules of origin requirements from day one. Some of the early issues with rules of origin were quite technical even for those who spend a lot of time working on the shipment, because it was about issues such as whether Percy Pigs sourced from Germany and repackaged in the UK retain their EU status or whether they are granted UK status as a result of the repackaging. The rules say that repackaging does not count as a significant transformation or towards claim of status. You ended up with stateless Percy Pigs being subject to tariffs when they entered Ireland.

The problems with rules of origin have been ongoing. The people you have spoken to, I imagine, would not necessarily but quite likely be representing larger firms, and they would have been wrestling with these for a while. My fear is that smaller and medium-sized companies, which do not necessarily have the capacity to engage with these issues fully,

have been claiming tariff-free trade, whereas maybe they should not be, depending on the product.

Elly Darkin: At the beginning of the year, one big issue with rules of origin, which Sam alluded to, was insufficient transformation in the UK. Previously, a lot of EU-UK supply chains would have been set up by bringing goods over from mainland EU into the UK and moved onwards to Northern Ireland and the Republic of Ireland. At the moment, if a good is unpacked from a lorry and not put into a customs warehouse but into a normal warehouse and is not under transit rules—if a lorry, for example, comes through Dover, is unloaded in various locations in the UK and then continues on to the island of Ireland—as Sam mentioned, the good has not been sufficiently transformed. You lose the preferential tariff rates, and an MFN tariff is payable on that good moving into the island of Ireland—in this case, the Republic of Ireland. Large companies with cross-border supply chains that were using the UK essentially as a land bridge to move goods across to the Republic of Ireland really struggled with the rules of origin problem at the beginning of the year.

I believe that, to some extent, solutions have been found. Some of these have lain in customs warehousing. That is a technical solution whereby you can technically not unpack your good from the lorry, so to speak, and it does not lose its preferential tariff rate—the preference attached to that good. Other options can be found in things such as returned goods relief and other processes. The key thing to remember is that these are all incredibly complex and very expensive for businesses to invest in. Even for large businesses, investing in customs warehousing options is very expensive, and sometimes it is simply not economical for them to continue the same supply route. There may be a recalibration of the supply route that will go directly from the EU mainland to the Republic of Ireland, or there may be a discontinuation of supply lines going across to the Republic of Ireland, for example. There are many different ways in which this chilling effect on EU-UK trade has sunk in because of the rules of origin issue.

To go in a slightly different direction from that, those issues blindsided quite a lot of businesses—even large businesses—at the beginning of the year. Ten months on from 1 January 2021, we have to some extent seen businesses absorb the cost of rules of origin disruption. It is now reflected in the bottom line for the business and a solution will have been found whether a cost was involved or not—usually, there is. That will have been absorbed to some extent by businesses.

As a more forward-looking issue, I feel that businesses are primarily more concerned about the ongoing operational cost of regulatory divergence on the horizon. From my experience of working with businesses, they are now looking at horizon scanning for regulatory divergence issues as opposed to necessarily focusing on the rules of origin issues, because if they have not sorted that out 10 months after today that would be quite an irresponsible move for a business.

We must remember, as Sam has pointed out, that the statements of origin requirement will come into force only from 1 January next year. We are in a period at the moment where people think that they are complying with the rules of origins, but they may be making incorrect assumptions. We may see the rules of origin issue rear its head again at the beginning of next year, but it is solvable through different options such as the ones I have talked about—customs warehousing. It might raise its head at the beginning of next year but might subside again.

Joe Marshall: I have a couple of points to add to what Sam and Elly have said. Looking ahead to the end of the grace period, we have already heard some concerns about suppliers not necessarily being ready to provide the evidence and information that they need. There is some confusion about what is expected of them and concerns about some suppliers thinking that providing this information would breach business confidentiality, which is making it hard for some firms that are trying to prepare to be ready for the end of the grace period. Even those that are aware of the grace period and are trying to do the right thing are finding some problems.

We have also heard that some firms have found that Government guidance on rules of origin—how to comply and what they need to do to be sure that they will be deemed compliant at the end of the grace period—could do with some more work; some are not finding that particularly helpful at the moment.

We may also see many firms starting to pay tariffs, as Sam said, if they cannot prove origin. What that does to incentives to make firms try to do the right things and provide the right evidence will be interesting to see next year as well.

I have one wider point on whether some of the problems we saw at the start of the year have subsided, more widely beyond rules of origin. It picks up the point that Elly just made about the distinction between readiness and whether the problem was whether you were ready to comply with the rules. We saw problems with people filling in documents incorrectly or not stamping the right thing, or confusion about where they needed to be or whose responsibility it was to comply with certain things. Those issues seem to have resolved; it is more a matter of people getting used to things and adjusting.

The bigger issue is the second point that Elly made about the long-term ongoing cost—the sustainability, basically—of doing business in the way you were doing before, given the new requirements, costs and complexity involved. That is a longer tail because firms start to take decisions about whether they want to change how they are doing business and where they are doing it.

I echo Elly's point about regulatory divergence and firms thinking about those costs. It is one of those things that is not necessarily immediately obvious but will become more so over time, both for active decisions

where the UK Government choose to do things differently and passive divergences if the EU moves on and the UK does not follow suit.

The Chair: Thank you very much. May I appeal for slightly crisper responses because we have a very full question set? I am worried that we will get to the end of our allotted time and will not have gone through it all. It is important.

Q3 **Lord Hannay of Chiswick:** You are all very expert in analysing complex statistical material relating to trends in trading goods. To some extent, you have begun to answer the following question: to what extent is it possible now to identify separately Brexit-related and Covid-related trends and consequences? Can this be done now, and is it likely to prove easier to do as time passes?

Secondly, do we now have enough statistics to be able to identify post-Brexit trends in the UK's trade in goods—both imports and exports—with other European countries side by side with trade with non-European countries, third-party countries outside the TCA? Are we yet able to look at those trends and identify them?

This makes, I hope, a point that the Chair has made. If you felt that some of this material could be better produced in writing after this meeting, it would be very helpful.

Sam Lowe: You can see some trends that are interesting in so far as you can look at the trade statistics and see that trade with the EU has bounced back to a much lesser extent than trade with the rest of the world. That points to there being some difference in that relationship vis-à-vis the rest of the world taking into account Covid and what has been happening.

I would be very careful about forecasting future-looking trends on the basis of existing data because, for example, we still have not seen the full implementation of the trade and co-operation agreement in so far as UK traders are currently operating across an asymmetric border where you have full third-country controls, for the most part, on one side of it with the UK gradually implementing its own regime but also suggesting that it will not necessarily implement the regime that it had before. It will change it slightly and we do not know what that looks like. We can start to paint a picture, but it is difficult.

My colleague, John Springford, has attempted to model the impact of Brexit, and leaving the Customs Union and the Single Market in particular. I cannot remember the figures off the top of my head, but I would be happy to submit his findings to the Committee in writing.

Elly Darkin: You can distinguish between Brexit and Covid with imperfect models. Sam has been talking about that. You can model for a situation in which EU-UK trade is forecast at a certain level of growth, and then you compare that against these levels, but as we are dealing with non-real-world scenarios, these models are always going to have to be caveated as having lots of imperfections in them. You have to be very

careful. One thing in particular that is important to control for as a key Covid-related impact on trade is volatility in commodity pricing. That is affecting a lot of UK sectors, with rising prices for raw materials, for example, and global and uneven inflationary pressures that have resulted from the pandemic. You need quite complex models that can control for those variables if you are to make some statistical comparisons. It can be done, but you will never have a perfect model; it will always be based, to some extent, on hypotheticals.

With regard to your second question about identifying trends in replacements for non-EU goods, you can do that. We have produced some work on that and the extent to which goods from the EU, when they fell, have been replaced by non-EU goods. The statistics and the data are available, but it is hard to infer too much from that data and try to pin it on one thing or another—Brexit or Covid—because there are multifaceted causes and many factors at play. Statistically, it can be done, and I would be happy to submit a report in writing after the session.

Joe Marshall: I will defer to Sam and Elly. They have put it very well. It is hard to draw a clear, crisp distinction without making some of the compromises that we have talked about. The data is still very noisy. There is a lot going on, and the more recent supply chain disruption has not helped.

I would add one final factor. As well as Brexit and Covid playing a role, in some sectors in particular there are other trends going on. In automotive, for instance, there is the transition to electric vehicles, supply chains readjusting and new supply chains being formed to serve that new market, and that is another change that is going on under the surface that muddies things further. It is hard to really isolate those key Brexit impacts from everything else.

The Chair: Thank you very much indeed. That was very interesting.

Q4 **Lord Purvis of Tweed:** Thank you, Chair. Good afternoon. I want to ask about the scope within the agreement itself while looking at some of the barriers that might exist.

Elly, I was struck by what you said at the start when you indicated that the ONS statistics showed a drop in trade in January that has not recovered since. The Government have indicated—to be fair to them—that major stockpiling before the end of the transition period has skewed those figures. I put that point to Lord Frost on 16 September in the Chamber on the ONS figures from July, and his response to me, which I thought was interesting, was, “It is true that July’s figures show a small dip in exports to the EU, but, nevertheless, since January exports to the EU have been rising consistently. In June, they were higher than the pre-pandemic, pre-Brexit figures. We are confident that businesses are rising to the challenge and will continue to do so”. How do you think he is coming to that conclusion?

Elly Darkin: You are correct. Were the figures cited for June or July?

Lord Purvis of Tweed: July.

Elly Darkin: There was certainly a spike over the summer, which is normal in EU-UK trade flows. Throughout the year, trade flows are not consistent. Generally, they are lower in January, then peak over the summer, lull again in the autumn and pick up again and ramp up towards Christmas. It can sometimes be quite convenient to look at those peaks and troughs in trade and try to read what you would like into that.

Lord Frost is absolutely correct in that there was stockpiling ahead of the end of transition. That will have had an impact on the trade figures. That is absolutely true. However, looking at the data and the statistics, the drop in EU-UK trade on both inbound and outbound sides cannot be solely attributed to stockpiling. It would be one factor to attribute a very large differentiating margin for the trade flows for that period of time.

Sam Lowe: Taking into account my earlier comment that I am not sure how useful comparing pre and post TCA will be for a while, if you are going to do it, it is important to have a discussion about which pre-TCA year you compare it to. If you compare it with the year immediately before, you start to pick up some Covid issues and the fact that there was a depression in trade during the transition period because of business uncertainty. The ONS figures tend to suggest, if I recall correctly, that 2018 is their preferred year when trying to compare before and after.

Lord Purvis of Tweed: Thank you. My question was referring to the ONS commentary that says that 2018 was a stable year to compare. I will keep asking the Minister questions, of course.

May I ask about the TCA and then about the non-tariff barriers? With regard to the declarations, the HMRC approach, the use of VAT for the small consignment changes, and all the different burdens for businesses that have to register with an individual member state and so on, how many of those, within the proportion of the totality of the extra non-tariff barriers that are now included, could be removed through the mechanisms of the operation of the TCA with supplementary agreements and so on? How many of those that businesses are now having to grapple with if they are fully implemented, even on a phased basis, are effectively the core elements of the relationship going forward?

Sam Lowe: I am not sure that I can put a proportion on it, but perhaps I can suggest some specific areas where you could see room for improvement.

It is true, of course, that just being a third country—which I do not use as a pejorative term; I am just describing the UK not being part of the EU—comes with additional burdens, even if you have a very close relationship. If you look at Norway's relationship with the European Union, you see that there are still new compliance costs associated with trading between the two because it is not, for example, in the EU's customs territory or

VAT territory. Some of these costs are fixed unless the UK makes drastically different decisions.

Taking into account the existing framework, do I think it is possible to perhaps reduce or remove some of these burdens without necessarily compromising on the UK's stated objectives of regulatory flexibility? Yes, if you push things a little bit. One area that I was never sure about, and I have never been given a satisfactory answer, is why the UK did not push for more on safety and security declarations. Switzerland, for example, has negotiated away the need for them. It is something that I thought the UK could do under the existing type of relationship but chose not to. I am sure that there was a good reason for it; I just have not heard it.

On SPS, if we are talking about the type of interventions that are really disruptive at the border—the need for identity checks, document checks and physical inspections—there are different routes. There is the UK's preferred route, which would reduce the frequency of physical inspections but not remove the need for identity checks or document checks. That is an equivalence-type approach similar to what New Zealand has. We have heard Lord Frost suggest that the UK has considered and proposed this in the past but the EU is not happy with the proposal.

A more EU-favourable measure would be a Swiss-style veterinary agreement, which would see the UK effectively move into the EU Sanitary and Phytosanitary territory in respect of both domestic production and imports. That would remove the need for regulatory checks on products of animal origin moving between the two territories, but that would be quite a big step for the UK in its stated preferences.

Are there things that can be done? I think so. At the moment, it does not feel like the atmosphere—the mood music—is favourable towards improvement, but I hope we will get there one day.

Q5 **Baroness Jolly:** As you know, the Government recently delayed the introduction of certain import controls citing the impact of the pandemic on supply chains. Do you think that explanation is convincing? If not, what causes would you identify for the delay?

Elly Darkin: I think it is undoubtable that the pandemic will have been a contributing factor in the decision at the beginning of September. There is no doubt that there was a supply chain crisis. You could walk into a supermarket and struggle to find certain goods on the shelves, and there was a real sense of crisis in the media and among the general public. That was to some extent, as you mentioned, pinned on the pandemic by the Government. It is very fair to say that this was obviously not the whole story. It was a multifactor-caused crisis of which the pandemic was inevitably a contributing factor but not, in my view, the key one.

Far more crucial, from what I hear from businesses and general analysis on the issue, is that Brexit-related labour shortages were one of the larger contributing factors to the supply chain crisis. We have all probably heard about the HGV driver shortage. That is a great example of a labour

shortage in which there was some pandemic-related contributing factors with, for example, the delays for testing for HGV drivers and that backlog, but there were also tougher immigration rules post Brexit in order to source labour from the EU. There was also a wealth of other labour shortages affecting supply chains, from fruit picking to meat production processes to construction working. There were—and still are—supply chain shortages across many sectors of the economy; not only were they felt in the upstream production stages of supply but they acutely led to delays in transport and the final delivery of the good. Those factors were inevitably one of the key causes of the supply chain crisis.

The Government have been particularly sensitive, as we have seen, to fears of shortages of food and fears of disruption felt in the everyday life of a person who goes shopping in the supermarket. This was a particular political sensitivity caused to a great extent by labour shortages that have pushed the Government towards making the decision to delay import controls. I am sure that my colleagues will talk about other important aspects, but I would just focus on the labour shortage issue because it has not received as much attention from the Government as it should have.

Sam Lowe: Covid disruption has played a part in it, but that disruption was known for a long time in advance. My issue with the Government's decision is not that they made it. I would have absolutely made the same decision but, if I were in charge, I would have perhaps not taken so long to tell everyone else I was going to do it. It was entirely foreseeable. I had been advising people in the run-up that the most probable outcome on this was that it would get extended further, and the same was true for the recognition of CE marks in the UK, which was meant to come into force on 1 January but has been pushed back.

Has Covid played a part in that? Yes, but the Covid disruption was not known well in advance. If the Government were to do it all over again, they probably would have signalled differently.

In doing so, they created some problems for some businesses because, in a sense, you end up punishing those that have sought to comply and have probably paid premiums to get the advice they need and the people in to be able to meet, for example, the need for pre-notification and export health certificates by 1 October, which was the original date. They have been penalised, in a sense, vis-à-vis their competitors, who perhaps did not bother. Of course, this has led to some companies feeling slightly upset about it, understandably. However, I reiterate that I think the Government made the right decision.

Joe Marshall: I echo the points that Elly and Sam have made. The supply chain disruption, including the labour shortage as part of that, was a big part of the picture causing genuine issues. It is fair for the Government to take the view that trying to add a new level of checks and compliance requirements on firms at the same time was going to add more pressure to firms, particularly when they could not get staff in certain places.

Sam is right to highlight how the delay came about, both the timing of it and the fact that we have had repeated delays. You risk damaging your relationship with traders and business groups, and we have seen the annoyance among many firms that this has happened again and they have put money in to comply, which is now effectively wasted, or they put staff and systems in place that are not needed for some time.

There is also a risk that, for some firms, it sends the message that checks are never coming. It cements the idea that the status quo will last for ever, which potentially damages attempts to get people to prepare, particularly some UK traders who have not had to deal with these checks at all yet for EU imports into the UK. That is a big part of it too.

While more time to prepare is good and will ease the burden on many businesses and provide more time to put things in place—hopefully, when wider conditions are more favourable—it also gives more time to the Government on their side of preparations. While the Government are very confident that they are ready to go—it is why they are going ahead with customs checks at the start of next year; they believe they have the IT systems and things in place—on the agri-food side, there is more concern that some of the stuff is not quite ready.

If you look at infrastructure, for instance, there are still border control posts with planning permission out and where building needs to take place. Some of that is the responsibility of the Welsh Government. There are still things that need to be done. We have heard concerns as well about the level of some official staff—official veterinarians or port health authority staff—for the agri-food checks. While the Government's official line is that that is not part of the picture and they were ready to go, it will not be unhelpful for Government to have that time as well.

Sam Lowe: I will add on the vet point, because you mentioned it, that that is an area where there are labour shortages.

Baroness Jolly: Okay.

Sam Lowe: There was a report today in the *Financial Times* that largely focused on pets and the like. If we think about industrial vets, that function was largely carried out by non-Brits—EU nationals—prior to Brexit. I do not know whether they are still here and performing those functions, but I suspect that there could be some issues there.

Q6 **Lord Tugendhat:** What are the advantages and disadvantages of the decision further to delay the introduction of import controls? Was it the right decision overall? You dealt with quite a lot of what I wanted to ask, so let me rephrase my question slightly.

From the point of view of UK plc, as distinct from individual countries, is this situation beneficial?

Sam Lowe: Is an asymmetric border with the EU beneficial to the UK? In the long run, there is probably an economic argument to be made that the UK should have a higher risk tolerance permanently for imported

goods from the EU than it might have done as an EU member. You can make the case that the EU, as a regulatory entity, tends to make good decisions vis-à-vis the health of its citizens, so perhaps we do not need to apply controls to goods entering from the EU to the same extent as we might have with other countries. You can then get into legal questions about that, which I get asked but am not so convinced by.

One thing that you see coming out is complaints from UK exporters who say, for example, "My EU-based competitors are able to sell into the UK fairly easily, whereas I am struggling to sell into the EU because I am having to deal with these heightened controls and increased compliance costs, so it is unfair". There is some truth to that, and it is certainly true for certain companies and for certain industries. But, to take a step back, we must also take into account the fact that many UK producers import to export, so having low-cost imports from the EU is in the interests of many UK firms.

You can even make that case in respect of products that you might not think about. Even if you think about agri-food products, if you are importing the fertiliser and it is getting in more easily, that helps you on the costs side. I do not think the argument that it is unfair and bad for UK business is the full one because it really depends on what you do.

Lord Tugendhat: You have gone exactly to the point in which I was interested. Would either of the others like to confirm or dissent?

Elly Darkin: I would in general completely agree. For every exporter there is an importer on the other side. If one side is benefiting from an easement, it will undoubtedly benefit the importer as well. The benefit will not just be felt on the EU side; it will, to some extent, be felt on the UK side as well.

There is one additional point that I would like to make. When we look at the impact of the asymmetry, it all depends on the level of complexity of the supply chain. If you are a small UK-based business—you might export cheese from the UK to the EU—and your EU-based competitor exporting EU-based cheese to the UK is subject to a lot of easements that you are not subject to, there is a sense of unfairness. It is not trivial. There is an impact on small business competitiveness that we should acknowledge.

The difference is where there is an EU-UK complex supply chain where goods might go back and forth several times. You might be a large retailer that imports loads of goods from the EU, transforms them, moves them back and forth and transports them across the Republic of Ireland, for example. In that case, you will probably be asking the Government to extend those easements permanently because you benefit from them greatly as an importer from the EU. It really depends on the level of complexity of the supply chain and how frequently your goods might cross the border with the EU and the UK, or whether you are a small business that has a one-way flow of supply from the UK to the EU, in which case you will probably be quite upset about the situation.

Joe Marshall: I agree with both Elly and Sam. We have seen indications from Lord Frost already that even when full UK import checks are in place there may exist a level of asymmetry just in the extent to which the UK applies checks. Lord Frost has said that the UK regime might be lighter touch and there may be a different approach to inspections and things like that. They are not necessarily going to be equal regimes when they are in place. There may be a bit of asymmetry anyway when we have full checks in place.

Lord Tugendhat: If the import controls had been imposed on day one, everybody would have taken that as normal. It was “take back control”, and you imposed the controls. But they have not been imposed and time has passed.

Let me ask two questions. Do you think that, when eventually the Government get round to trying to impose them, there will be a reaction against that? Lots of people will feel that it was perfectly fine as it was—they got along without import controls, so why they should have them now?

My second point is the converse of that. If we continue in the present way, I can well envisage people in some EU countries asking why it is necessary to have these controls.

Sam Lowe: Will people object to the imposition of these controls in future? Possibly. As Joe mentioned, it seems probable that the UK will adopt a lighter touch regime in future. If that is the case, the UK Government should start telling people now what that will be so that they can prepare for it because, at the moment, it has just been alluded to rather than being set out in a solid proposal. That would be more useful.

I would not imagine that there will be pressure on the EU side because exporter lobbies are a bit louder than consumer lobbies. EU exporters at the moment are happy, taking into account what we said earlier about complex supply chains. They are happy with having preferential access to the UK and getting some protection from UK competitors. Obviously, if they think about it more deeply, they might realise that is a flawed way of looking at it. That is certainly what you see quoted in the papers.

The Chair: Thank you very much. We will come back to that area later.

Q7 **Lord Jay of Ewelme:** Thank you. You have answered, in replying to Lord Tugendhat, many of the points that I was going to make. Given that the asymmetric relationship is rather more complex than one might otherwise have thought, does there come a time when firms here begin to say, “We cannot accept this any more”, and it becomes economically unsustainable to continue, or are you saying that it is such a complex relationship that that point will never be reached?

Joe Marshall: In some ways, I wonder whether the politics of it might play a bigger role than the pure economics in that it will be the unhappy voices and how loud they are. As you said, it is a very complex picture,

and I do not think that there will be a bright-line point at which it becomes unsustainable.

Elly Darkin: When we are talking about economic sustainability, I do not think that a switch from the current situation to one where there would be more controls, more paperwork and more bureaucracy for business will make the status quo more sustainable in the future.

What people are worried about, quite rightly, is whether the steady state that we eventually reach with the EU, where we have full import controls on inbound goods, is sustainable. At the moment, I feel that businesses are quite happy with the easements in place. Certain very vocal voices and certain trade lobbies are already saying that they are unhappy with the asymmetry—they feel the unfairness and it is really a matter of principle. The more pertinent question is whether the steady state after 1 July 2022 is economically sustainable for businesses that have to invest in enormous capacity to be able to import goods from the EU. I would see that a bit in reverse.

Sam Lowe: This whole discussion is political. Why has flow been prioritised over Sanitary and Phytosanitary controls? It is because you do not want further disruptions on shop shelves. You do not want any visible impacts of this policy decision. If you can delay, perhaps indefinitely, ever having to impose this political cost on yourself, why would you not?

It is also important to take a step back and ask why these controls exist in the first place. Why do most countries impose some form of checks on products from outside, particularly on products of animal origin? Why are Sanitary and Phytosanitary controls so intrusive? Why do they nearly always happen at the border? It is because you are guarding against pestilence and disease. If you want to make an intervention, you want to make it on the outer edges of your territory to prevent it from contaminating anything further. My view of the politics is that, politically, this could continue indefinitely up until the point something goes wrong. If something goes wrong—and this may never happen—

Lord Jay of Ewelme: What might go wrong?

Sam Lowe: Diseased horsemeat—it is just a hypothetical—leading to big problems for the UK, or the farming industry killing cows or some sort of plant disease that wipes out loads of crops. I am not saying that this will ever happen. The Government might rightly gamble that it never will. If it were to happen, the political backlash comes in on those sorts of controls.

Lord Jay of Ewelme: Without that, you think that the firms that were complaining about the asymmetry will probably just be overridden.

Sam Lowe: It is a complex picture when it comes to which firms are saying what, and, as a Government, you can just choose to listen to the ones that are saying what you want to hear.

Q8 **Lord Liddle:** My question relates to that. It is about what Sam glancingly

referred to: the legal position. Can we, under our international obligations—under WTO rules and all that—apply different rules to goods coming from the EU to goods coming from elsewhere? Can we discriminate between different countries on the basis of where we think the risks are? I am very ignorant of these questions, but I am sure that you can answer them.

Sam Lowe: It is a very fun and interesting hypothetical, especially for trade lawyers. The basic scenario and assumption is that a WTO member has to treat all other members and their imports the same unless there is a trade agreement or the like that allows it to discriminate positively. Is the UK discriminating positively in favour of imports from the EU? Yes, it absolutely is. We are allowing EU imports to enter more freely than we are goods from the rest of the world.

The next question is: can you justify that under the TCA? Maybe, in so far as if you are looking for a hook to justify your discrimination. It is not explicitly in there, but perhaps you could use that as justification.

Let us assume that you cannot and therefore you are discriminating positively against the EU without good reason. The follow-up question is: who cares? Does any other country care enough to bring a dispute against you, and are they able to prove harm? Are they able to prove that this discrimination has negatively impacted them?

Once you make your way through all those questions, my opinion is that, at least in so far as the Government are saying that these easements are temporary, they have nothing to worry about. If they were to introduce permanent easements that were not available to every other country—at least theoretically—perhaps you could have a case raised. But even then, it is not necessarily a given that the UK would lose.

Lord Liddle: If we have new trade agreements that result in more beef coming in from other countries—I am not talking about live exports and imports—can we apply a different rule to Argentina as opposed to Holland?

Sam Lowe: Yes, and the UK already discriminates positively in favour of, for example, goods entering from New Zealand because there is an equivalent arrangement in place that the UK inherited from the EU. With an agreement in place, yes, you can discriminate positively. This usually results in a reduction in the frequency of physical inspections. The issue with the EU is that there is not obviously an agreement in place that allows for this positive discrimination, although perhaps it is arguable.

Q9 **Viscount Trenchard:** We have talked about this quite a lot, but what should the Government be doing now? They have kicked the can down the road again and delayed the introduction of checks and controls. How should they be using this time? Are they just going to wait and delay again? What are the Government doing with the extra time, and what do you think they should be doing? For example, the Government's border operating model has warned that customs declarations are complex and

recommends that traders seek the assistance of a customs intermediary. How many are there? Is this industry going to be helpful? Is it difficult to become one? Can you talk a bit about that area?

Elly Darkin: On what the Government should be using this extra time to do, there are some immediate priorities—

The Chair: I am sorry to say that we will have to adjourn for five minutes as there is now a vote. May we press the pause button on that answer to that very interesting and come back in five minutes' time?

The Committee suspended for a Division in the House.

The Chair: Welcome back. The democratic process has been undertaken and we can resume. Elly, you were asked a question by Lord Trenchard.

Elly Darkin: The question was about how the Government should use this extra time now that the delays have been enacted. As an absolute urgent priority, the Government should focus on their own readiness and preparedness—digital infrastructure, physical infrastructure at ports and BCPs, and human resourcing with regard to staff recruitment and training. After two delays to those processes, there are very few excuses for not being ready, when import controls take place, across those three buckets of issues.

As a second point, the UK Government should really focus their readiness plans away from getting their own house in order to engage with the EU on a basis in which you can ready the EU supply base for the imposition of import controls. There are a number of ways to do this. I know that Defra plays a very active role, for example, in providing webinars and other services to help upskill and train the EU supply base on how to comply with the new import controls.

Another untapped network that could be better used is the diplomatic network that the UK has across the EU. In each member state, there are DIT and various other UK Government officials on the ground who, I believe, to date, have been a very underused resource by the UK Government in working and liaising directly with member state authorities and businesses located within certain member states on readying the EU supply base in a particular member state. If a German exporter to the UK is looking to obtain an export health certificate, they do not go to a website managed by the European Commission; they go to one managed by the German health authorities.

We really need representatives of the UK on the ground in EU member states engaging with local authorities, ensuring that the correct translations have taken place, forms are readily and easily findable on the websites and there are enough official veterinarians in place to sign off on the forms. Engagement on the EU side should be funnelled through those diplomatic networks, and the engagement needs to be one-on-one with those member state health authorities to really help to prepare for the imposition of checks that will take place from next year.

Joe Marshall: I echo Elly's point about the Government needing to communicate well and maintaining momentum in preparations. That includes many of the channels Elly talked about—working with trade bodies in the UK and the EU, working through diplomatic channels, working with member state authorities who are responsible for communicating with their constituencies, and pointing people to the many tools that exist and things that the UK is doing and that UK departments are doing.

Any the government needs to demonstrate that preparations are on track. Part of that will be demonstrating that things are coming into place at the end of the year and making sure that the implementation of customs controls goes well and is a vote of confidence in the government's preparations. [*Inaudible.*] when checks are introduced, systems stand up and work properly and there are not big concerns.

The Government will also need to look carefully at the private sector ecosystem that supports traders when they are trading to see whether there are particular areas of weakness or concern.

This picks up on your comment about the customs sector and customs agents. We have heard that, while there might be sufficient numbers of customs agents—customs capacity—there might be concerns about the quality of advice and support that particularly smaller firms are getting and about whether there is consistency of support and that, when firms receive advice, it is good enough that they can rely on it to be compliant. That might require some more targeted support from the Government in training, skilling up customs agents and making sure people are available [*Inaudible.*]

Viscount Trenchard: I will comment on what Elly said about the Government needing to concentrate now on getting both the digital and the physical infrastructure in place. Presumably, the better the digital infrastructure the less you need the physical infrastructure, which is very welcome because it creates a very negative atmosphere if you have too much physical infrastructure.

Sam Lowe: Digital infrastructure helps, but it is important to be clear on what we are talking about and what the difficulties are. It is not that difficult to make a website. A company imports and inputs all the information on a website once. The thing that is difficult is: what happens then? Where does that information go? You find out quite quickly that when it comes to running a border, it goes to multiple departments at once. The co-ordination of that back end, all the different bodies that need to make decisions—local authorities, Border Force, HMRC—is the reason that it gets difficult. I say difficult, but not impossible. Of course it can be done, and a lot of progress has been made, but that is the hard bit; there still needs to be some work there. I have nothing else to add to what has been said.

Viscount Trenchard: On a scale of one to five, where five is very confident, how confident is each of you that the revised timetable for the

introduction of import controls will be delivered on time without further delays?

Sam Lowe: I think there will be further delays in certain areas, so probably two.

Elly Darkin: It is certainly possible. I would say three because I think they need to happen at some point.

Joe Marshall: I will go the same as Elly—three. The Government have pointed to circumstances as a reason to delay before. There is no guarantee that they will not do so again. The fact that they are introducing customs controls this time shows that they are making progress and edging towards full controls.

Sam Lowe: I do not think that they should delay. They should lay out a clear timetable of what they are going to do, and they should stick to it. There are lots of hidden grace periods and sector-specific ones. I will not confidently say that none of them will get extended.

The Chair: Thank you very much indeed. Strictly come import controlling. Lord Wood?

Q10 **Lord Wood of Anfield:** Thank you, Lord Chair. I want to go back to the introduction of customs declarations. We are just over 10 weeks away from another raft of customs declaration requirements and the expiry of lots of grace periods. You have mentioned the rules of origin issue already, but where do we expect to see the most compliance issues arising? One way of thinking about this is that it is a particular issue; for example, it could be the economic operator registration problem or the community code or something in the regulation. It could be that it is some sectors rather than others or it could be that a large business is okay but a small business is having trouble. What is your sense of where we should keep most vigilant about the problems arising?

Elly Darkin: My sense is that if a business has the economic capacity to outsource the issue it will, and there will be less risk of a compliance problem. Large-scale businesses will outsource quite a lot of those functions. They will hire a comprehensive network of consultants and customs intermediaries to foresee those problems and horizon scan to ensure that the business is as prepared and ready as possible. Problems will be quite limited in those respects.

The area where we will see more compliance problems is with the smaller businesses that do not have the money to invest in hiring experts to do that job. Someone in the room mentioned earlier that the Government website advises you to hire customs intermediaries because it is so complex to handle all these documentations yourself. That makes sense; that is a valid recommendation from the Government, but there is no mistake that there is a cost to that. It is with businesses that cannot afford to invest in that external capacity that we are going to see more issues with compliance.

Joe Marshall: I would echo that. Smaller firms are definitely more at risk. It is important to flag that many firms have not been taking advantage of some of the options to defer declarations, for instance, and have been doing full customs declarations and things when they have been importing anyway. Not all firms are facing a cliff edge. Those facing the introduction of those full checks are the ones that have been taking advantage of the concessions. We have heard mixed reports about firms deferring or delaying declarations. Some of the supplementary forms show concerns that compliance with requirements on the information that they are providing—and providing it on time—has not always been great. There are the foothills of some of these problems emerging. The rules of origin issues that Sam talked about earlier will probably expose smaller firms and those with less capacity for expert support.

Sam Lowe: Quite a few of the companies that are outsourcing these processes to another company have already transitioned some of their customers in so far as the ability exists within the existing customs code to, for example, submit simplified declarations and defer tariff payment. Maybe it is not six months, as the current grace period allows, but that ability exists. I know that some customs intermediaries have already been transferring people.

The point I would make in addition to what we have heard so far—and it is one that I alluded to earlier—is that what happens as a result of non-compliance is up to the British Government. The enforcement environment on day one does not have to be very strict. If firms make mistakes, they do not necessarily have to be penalised for it in the first instance. They can be told that they have made a mistake and be asked to correct it. There is still quite a lot of scope even if the grace period comes to an end—and I expect it will—for the British Government to have a smooth transition towards the future. HMRC does not need to be very mean on day one if it does not want to be.

Joe Marshall: I agree that the enforcement and compliance picture is a really important thing to flag. In terms of how HMRC is communicating that [*Inaudible.*] to firms and whether that is informally, but we are going to take a common-sense or light-touch approach to enforcement, or whether something is more formal. We have heard some concerns that some firms are a little bit nervous about relying on informal messaging that they are not going to be penalised for getting things wrong on day one.

Sam Lowe: It is a Catch-22.

Baroness Couttie: I would like to focus on UK exports to the EU. You have covered some of this in your earlier answers. What has been the impact of EU checks and controls on GB exports? What are the biggest challenges, and how might they be addressed? You mentioned that it is particularly difficult for small businesses. I would like to go into a bit more detail on that.

Are EU countries applying the new regime fairly, proportionately and

consistently across their borders, or are countries making their own interpretation of the TCA and applying it slightly differently, which would cause increased complications?

Joe Marshall: On the problems that firms have faced in exporting, it is those issues that we talked about earlier: the new costs and complexity of trading into the EU and having to deal with things that firms may not have had to deal with before. Part of that picture feeds into the type of firm they are, the sector they are in, the kind of checks they have to deal with and the routes they are trading through. I do not have too much more to add on that.

On the asymmetry point, or the inconsistencies in how different member states or different ports are applying some of these rules, it is definitely something that we heard reports of, particularly early on when some of the rules were introduced. Some seemed to be taking a much stricter approach, particularly if there was non-compliance or a mistake in paperwork or things like that; we heard how different authorities or different ports were dealing with that. To some extent, that is probably inevitable in the sense that we are dealing with different member state authorities, and they will apply this in slightly different ways.

There is a human factor as well. Sometimes, it seems to depend on the particular staff on duty at the time and how they are dealing with things or how busy the port is. All of those factors play into it. Part of that is inevitable. When that was happening, particularly early on, while the UK Government could not control that, to their credit, as part of the process of stakeholder engagement—the daily stakeholder calls that were run early on—they were identifying those issues, raising them with the member state authorities, trying to work out what was going on and feeding back to firms on how they might be able to avoid some of those problems and what they could do differently. There is a bit of a feedback loop. There is a bit of inevitability in some of this.

Sam Lowe: It is important to understand that, while the EU has shared customs rules, they are interpreted differently by different member states, and this is true of imports from anywhere else in the world. It was true while the UK was a member. The UK was always a bit more gung-ho or business-friendly—depending on how you want to frame it—than some other member states in how it applied the rules. This differentiation between member states is, in one sense, due to different levels of development and state capacity. What is possible for the Netherlands to do is not necessarily possible for Greece or Bulgaria.

This feeds through even into the EU's external negotiations: it rarely, if at all, makes binding commitments when it comes to trade facilitation in its trade agreements because it is constrained by the lowest common denominator. While it might be possible in the UK-EU relationship, for example, to have really good, binding text about how roll-on, roll-off would work way beyond what is already in there, it does not do that because, while France and the Netherlands can do it, it cannot be sure that Greece or Malta can. That has always been an issue.

In terms of how this has materialised on the ground, we need to differentiate between member states and the types of controls—customs controls and regulatory interventions within member states—and by product. You end up with some slightly strange ones in that, if you talk to firms, one country that they have the most problems with is Germany, and one reason for that is a very strict interpretation of the rules and how they are applied.

To look at a specific issue, there is a customs process called delivery duty paid, whereby the UK exporter will take on the burden on both sides of the border of transporting it as well as dealing with customs formalities on the UK side and the EU side. Within the EU, you need an indirect representative. German indirect representatives do not want to take on board that liability because if anything goes wrong it is on them and their Government quite strictly enforce it. Historically, they have often tried some things that then create problems for the businesses that receive the product in the VAT sphere.

There are some issues that need navigating. The Dutch are reportedly very good when it comes to customs but have a bit more of an aggressive regime when it comes to SPS. The food industry reports that there have been quite big SPS issues in Spain because, due to its interpretation of the rules, Spain checks everything at the border, including the labelling, whereas other countries will deal with that via market surveillance.

On food, the reports are that the French are really good. It is one of those areas where you cannot stereotype at all. You end up having to go regime by regime in how it is applied. Obviously, some of those issues recede over time as people get used to it and work around it. They are more acute at the beginning of the year. Some of them are just a function of how a country's border regime works in practice. Of course, it is all very confusing for British companies that are exporting.

Elly Darkin: The one thing I would add to that is that there is really no other topic that you can raise with UK businesses that have large volumes of trade with the EU that will get them as hot under the collar as the issue of variable treatment at EU BCPs. UK firms with large trade volumes with the EU really do not like that high level of uncertainty when trading with different member states across the EU. If a member state stops the entire lorry, checks the backing consignment, looks at the commercial invoice, unloads every consignment, checks it and, if there is any discrepancy, refuses entry to the lorry and sends it back, they will feel that that is unjust treatment, whereas, for a country that performs a much lower level of checks on a lorry load entering a country, they will feel that the just amount of checks have been performed. Variable treatment will be a very unpalatable issue to UK companies.

One way that we suggest a company deals with this is to track instances of variable treatment. It would be a very useful for the Government to develop a tool as a way for companies to report back in those instances of variable treatment so that there is at least a decent level of

information for companies to know to what extent checks are imposed and in which ways.

Sam shared some anecdotal evidence from countries. It would be really useful for UK businesses to know that, if they are sending clothes to Spain that need to comply with various labelling requirements, they have to make sure that they are clearly visible to customs controls and so forth. If they are sending SPS goods to the Netherlands, they need to have all that information in place. It is about being transparent about the fact that there is variable treatment at EU member state levels and encouraging UK businesses to prepare for them accordingly; otherwise, there will be a sense that these checks are unjust simply because they are different across different member states.

Baroness Couttie: That is a very good pointer for us. Is there anything more that we could and should be doing as a Government to try to make some of the more draconian interpretations at borders more palatable, or will we have to live with it because that is the way they do things across their countries?

Elly Darkin: The reporting tool that I have just mentioned would be a great idea to develop. It would be a really good way to raise information-sharing levels and transparency about the variable treatment at the EU member state level. If there is a genuine sense that there has been unjust treatment, too many burdensome checks and the interpretation of the rules at certain member states has been unfair, the forum to take that up in is the TCA specialised committees. They are the appropriate forums to raise those issues, and from there they are supposed to be the institutionalised platforms from which to deal with customs issues and enhance information sharing over time.

Now that the TCA institution architecture is slowly being set up and rolled out, the UK Government need to engage seriously with those committees and make sure that complaints are properly taken to them and reported, and constructive solutions can be found within the parameters of those working in the committee. That is where action is supposed to be taken forward.

The Chair: Thank you very much. The committees are now finally meeting, so we hope that happens. If you have other thoughts on that very important area, we invite you to send them in writing.

- Q11 **Lord Faulkner of Worcester:** This question is for Joe, because I want to pick up on a report from the Institute for Government on the shortage of lorry drivers, on which I know you have opined. Why do you think we have this extraordinary shortage of lorry drivers, which may be as high as 100,000 according to the Road Haulage Association, with others putting the figure at 65,000? The Government say that it is not a peculiarly British matter and that there is a shortage of lorry drivers everywhere. You think, in your report, that it is something to do with non-tariff barriers. Will you expand on that a bit?

Joe Marshall: We talk about the fact that there is a mix of causes for the shortage of labour, particularly of HGV drivers, in which Covid, Brexit and some of the long-term economic trends are all playing a role. Covid has affected driver testing. Many EU nationals who used to live in the UK and worked in the haulage sector and other sectors, who would have been eligible to stay in the UK under the settled status scheme, may have returned home during the pandemic and not come back to the UK. That has exacerbated some of the Brexit-related changes. Some long-term problems in the HGV sector around wages and conditions have also played a role.

The most obvious effect of Brexit is around the availability of labour and the fact that under the new UK post-Brexit immigration system it is harder, or in some cases not possible, for firms to bring in EU nationals to do jobs that they used to do. That is causing some problems in certain sectors such as haulage but also food manufacturing and processing.

There is also a slight question of what impact some of the non-tariff barriers are having. We have heard anecdotal evidence that, where EU drivers have a choice of operating into the UK or EU, it is less attractive to operate into the UK now because you have to deal with all the different customs requirements when moving goods particularly back into the EU but also some going into Great Britain. That means taking on more responsibilities. More risks of delay affect some parts of the haulage sector, as some driver pay is based on distance travelled, not just time spent.

Elly mentioned the land bridge earlier where hauliers moving goods from the EU to the Republic of Ireland over Great Britain may operate cabotage movements within the UK as part of that. We are seeing a big diversion away from the land bridge and a lot more direct routes between the Republic and the EU, partly because people want to avoid the additional burdens and complexities of having to go through the UK and the paperwork involved in doing that. That is all playing a role. It is a very big, messy picture. Brexit, Covid, long-term economic issues are all causing problems in the HGV sector. With Brexit, it is the labour shortage and the immigration side that is the most pressing part of it.

Lord Faulkner of Worcester: What effect do you think that the Government's moves on temporary visas and the cabotage rules might have on that problem?

Joe Marshall: On temporary visas, one of the big concerns that people raise is that there is no shortage of EU nationals who have settled status and a right to come and work in the UK, but they are choosing not to do so at the moment. Likewise with short-term visas, it is about how attractive they are to EU nationals, particularly in sectors where there are shortages in other countries as well and quite a high demand. Is it attractive for EU nationals to come back to the UK for a short period? Maybe not.

Cabotage might relieve some of the pressures and help in some ways where new barriers were put up at the start of the transition period. Ultimately, the sense in the sector at least is that some of this is quite short term. There is nothing that attractive for those in the EU who it is aimed at, and it does not necessarily go far enough—the numbers are not necessarily high enough—to deal with those problems.

Lord Faulkner of Worcester: If you were the appropriate Secretary of State, what would you do?

Joe Marshall: That is a difficult question. A lot of that comes down to the politics of it and political choices. The UK Government's narrative has changed a little bit on these issues in the last few months. Part of the narrative is that some of this is the necessary consequence of a set of political choices about the relationship that we want with the EU and the kind of economy we want. The UK Government are putting it in place. There will be a period of adjustment, albeit with some easement with the UK Government pulling some of the levers on immigration or cabotage to try to ease the transition. Ultimately, it is a political call. The UK could ease immigration a lot more in some sectors. It could issue special Covid recovery visas. It could do lots of things if there was the political appetite to do so.

Elly Darkin: One thing that is important to do with HGV drivers is to make the job more attractive, not less attractive. If we want to help grow the domestic workforce of HGV drivers, I would not do things such as extending driving hours, which has been a stopgap measure pursued by the Government so far. I would look at improving the labour conditions for HGV drivers. I would also look at potentially investing in the training and upskilling of HGV drivers and helping to get people on to tests, book their courses and get through the training period as fast and potentially as cheaply as possible to encourage recruitment. There has been a lot of rhetoric recently about a home-grown labour force of HGV drivers, but that can only exist if we make the job attractive, safe and reasonable for people to do. That is where the Government policy should potentially focus.

Sam Lowe: Anecdotally, one line you often hear from the European base of HGV drivers is, "Why would I go through the hassle of dealing with the UK when I can drive on nice roads in France with lots of nice places to stop off, get some food and go to the bathroom?" That is part of the working conditions argument, and the UK can certainly make itself more competitive.

You asked about the temporary visa scheme. There appears to be—again, anecdotally—a lot of scarring from recent history when a lot of EU lorry drivers got trapped in a car park because France closed its borders. This is not a Brexit issue; this is a Covid issue. The timing of this points towards the deadline being just before Christmas again, and a lot of EU nationals probably do not want to be trapped here over Christmas. What could the Government do differently? Maybe they could make it 12

months rather than three if that is the route they are going down—just to add a bit more certainty.

Lord Hannay of Chiswick: May I ask a supplementary on that?

The Chair: A very quick one.

Lord Hannay of Chiswick: Yes, it is a very quick one. Have I correctly understood, therefore, that the matters that we were talking about earlier—when the UK imposes more controls on imports from the European Union—are likely to make this worse?

Sam Lowe: If you are operating in a tight labour market and you are able to choose the jobs you take on, why would you choose the one that comes with a very large, additional administrative burden over the one that is very easy and leaves you at home? That is the decision that people need to make. To my mind, it is not a particularly difficult one unless the incentives to take on board that additional administrative burden are there, which could be in the form of much higher pay.

The Chair: It is now just after 5.30. A number of my colleagues would like to ask supplementary questions. I have a little list here. Are you happy to stay for a further 10 minutes, in which case I will run my list? I have three names on it so far. Lord Liddle?

Q12 **Lord Liddle:** Regarding discrimination between goods from EU and non-EU countries, would you expect the UK, at present or in the future, to apply a different style of regulations to some EU countries rather than others, and would that be problematic in any way?

Sam Lowe: Generally speaking, it would be problematic for the UK to discriminate by member state. There are, of course, certain circumstances where that would be justifiable. For example, if there was an outbreak of disease in a specific member state and not in others, within the existing frameworks—both TCA and WTO—you are allowed to discriminate on that basis. But the answer would be no.

In terms of the general UK system going forward, my view is that, if the UK wanted to WTO-proof it or the like, if we introduce a new system that is lighter touch for the EU and is permanently so, it should be a system that other countries are able to qualify for. Say you were another country elsewhere and the UK had set up some specific requirements with just [*Inaudible.*] treatment of the EU. If it is open to other countries to meet those requirements, and when they are able to do so they receive the same treatment, that removes all the issues around discrimination.

Q13 **Lord Purvis of Tweed:** I want to come back on the questions that were asked about the comparative benefit of checks not being carried out and its advantage for businesses. Will you clarify something that I am not sure about? Even with there not being any checks, since the end of the transition period all British businesses have had to maintain records for every consignment. The calculation of the payment of import duty or VAT has been deferred 175 days. Even with the goods not being checked,

they still have to be processed administratively. Is that correct? If that is the case, HMRC is now gradually going to have a deferred deluge of all this data, on which it has the power to audit and check, making sure that proper declarations have been made for the values of those goods. Effectively, it comes back to your point, Sam: it can either just accept in their entirety millions of self-declared forms and say, "That is what you are paying for VAT or duty", or it will have to start to audit and go through that process. Is my understanding correct?

Elly Darkin: Your understanding is certainly correct. There has been a deferral of payment of VAT and linked duty, and companies have had to make their own commercial records. Yes, that is absolutely the case. It has not been a complete waiver; it has been an easement in delay but not a waiver of the obligation.

Lord Purvis of Tweed: The easement has not been on the business maintaining the records of every consignment. The easement has been the fact that those consignments have not been checked, which effectively is live-time audit—

Sam Lowe: This is true. There has already been a deadline that was hit. Six months in, the people who had made use of it had to submit the full declaration. HMRC is already processing and assessing that. The ability to use that deferral was extended, but there was still a pinch point in the middle of the year.

You mentioned that while there may not have been checks there has still been a burden. This is one of the reasons that I do not like the word "checks" that much unless we are specifically talking about an intervention that requires inspection.

When we talk about navigating borders, quite a lot of the new burden is not necessarily enforced at the border. If we are talking about controls on food, it probably is. You cannot enforce rules of origin at the border because, if someone turns up and says something is from a country, you have to believe them. The only way you can find out whether there has been compliance is if you investigate. That is behind the border compliance. Product standards are largely enforced in market. These are all new burdens that have arisen as a result of erecting a border. They cannot necessarily be typified as checks.

The Chair: Thank you very much indeed. We move to the very final question from Lord Tugendhat.

Q14 **Lord Tugendhat:** It is almost an observation as much as a question. We read a huge amount in the newspapers about how people who work in offices are reconsidering their lifestyle and how we are going to have different ways of working for middle-class people. The same probably applies to blue-collar people as well. The whole question of lorry drivers is something much deeper than Covid or leaving the EU or anything. It is an unattractive job, and the people have had an opportunity to reconsider. Amazon is offering £3,500 signing-on bonuses, and the whole online

economy opens up a whole new way of life for people who earn their living by driving. The whole problem of HGV drivers will affect all countries for quite a long time to come.

Sam Lowe: I must say that it is nice to be out of the house for the first time in two years and be here with you in person, as a white-collar worker. I think you are right; that is one of the structural issues surrounding this debate. I suppose in the UK context the question is: are we feeling this pinch more acutely than others? The answer right now seems to be yes.

Are there shortages in Poland? Yes, but we need to take into account that Poland services the entire EU market. There have been shortages for ages, but they still have a lot of drivers and they are moving around quite quickly.

Are there shortages in the US, which has similar demographic problems to here? Yes, of course. Are we feeling it more here? It seems so. The question is: what can you do about it? As you said, it is not necessarily the most attractive job. One of the answers is massively to liberalise the immigration regime because there are people in this world who will want to do that job. They just might not be living here right now.

The Chair: I said that we would finish at this time. May I on, behalf of the whole Committee, thank the three of you for being thoroughly lively witnesses and bringing clarity to a very complex area? I have been absorbed by everything. You kindly said to Lord Hannay at the start that you might supply further written materials. May I invite you to do that? Certainly, there may be other areas that you think we should consider in this inquiry.