HOUSE OF COMMONS

International Trade Committee

Oral evidence: UK-EU trading relationship, HC 493

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Watch the meeting

Members present: Angus Brendan MacNeil (Chair); Mark Garnier; Paul Girvan; Sir Mark Hendrick; Tony Lloyd; Martin Vickers; Mick Whitley.

Questions 274 - 299

Witnesses

I: Aodhán Connolly, Director, Northern Ireland Retail Consortium; and Stephen Kelly, CEO, Manufacturing NI, Dr Esmond Birnie, Senior Economist, Ulster University; and Professor Katy Hayward, Professor of Political Sociology, Queen's University Belfast.

Examination of witnesses

Witnesses: Aodhán Connolly and Stephen Kelly, Dr Esmond Birnie, and Professor Katy Hayward.

Q274 **Chair:** Good morning and welcome to the International Trade Committee's evidence session for the UK negotiations inquiry. This morning we are looking at the interaction between the Northern Ireland protocol and wider UK-EU trading relationships. We have, we hope, virtually—and it looks like we do—four panellists this morning: Aodhán Connolly, Stephen Kelly, Dr Esmond Birnie and Professor Katy Hayward. I will let you all introduce yourself, name, rank and serial number, as you choose. I will start first with Aodhán Connolly. Good to see you, Mr Connolly.

Aodhán Connolly: I am the director of the Northern Ireland Retail Consortium and the trade adviser to the British Retail Consortium. I am a UK Trade & Business commissioner and, most importantly for this session, I am the convenor of the Northern Ireland Business Brexit Working Group.

Stephen Kelly: Good morning, Chair. Stephen Kelly. I am chief executive of Manufacturing Northern Ireland. We are a representative body on behalf of the manufacturing sector, anybody who makes aeroplane wings to chicken wings and everything in between.

Chair: Thank you. Aeroplane wings to chicken wings. I have a feeling that that might turn up at some point in the session this morning.

We also have two other experts for later in the session, Dr Esmond Birnie.

Dr Birnie: Good morning, Esmond Birnie, senior economist at Ulster University in Belfast.

Chair: Thank you for joining us this morning. Last but certainly by no means least, Professor Katy Hayward.

Professor Hayward: Good morning, Chair. I am professor of political sociology and Queen's University Belfast and I am senior fellow in UK in a Changing Europe think tank, working full time on the question of the future of Northern Ireland after Brexit.

Q275 **Chair:** Thanks very much. We will get your volume turned up. Thanks for the name, rank and serial number.

The panel this morning will fall naturally more towards a two and a two but we have all four here in case there is any strong urge that you have to contribute either side. I would imagine that Mr Connolly and Mr Kelly will be more in the first half and our academics towards the second half.

To both Mr Kelly and Mr Connolly, as regards the sectors you represent, where has the implementation of the Northern Ireland protocol gone well? With the news that we have had about the Northern Ireland protocol, I am sure you are not often hearing questions like that. We would like to know where has it gone well.

Aodhán Connolly: One of the main things that we have had to do over this past year is what we call shooting unicorns, which is trying to—

Chair: Sounds cruel.

Aodhán Connolly: Nothing to do with the national animal of Scotland. Basically what it means is that there has been a lot of narratives out there that are totally untrue. If you believed everything—at the start of the year, some people were saying that it was absolutely fine and other people were saying that Northern Ireland was starving. Neither of those narratives were true. If you look at even the start of the year when there was most disruption—the average supermarket has between 40,000 and 50,000 product lines—there were only ever a few hundred that were missing, so we definitely were not starving.

Where it went well was in the fact that logistics, manufacturing and retail in particular stepped up and for the last six weeks of last year and the first three months of this year were working around the clock. The fact that there has been as little disruption as there has been in real terms for business here is a credit as much to business as it is to both the UK Government and the EU.

Where the protocol has worked mainly is in the north-south dimension. If you talk to the Dairy Council, it has continued to be able to process that 30%-plus of Northern Ireland milk that goes south and has been able to sell that into the EU and further. As far as the TSS and that removal of that customs friction, again there were some teething problems and we have had some very frank discussions with those at the head of TSS and quite quickly it turned round. It has become more accessible and the standards grew very, very quickly. For us it has become a useful asset in removing that friction. The fact that there were grace periods, and those grace periods continue, was very useful.

One of the things, while we are talking about the implementation of the protocol and what went well, we need to go back to the 8 December agreement that was made between the EU and the UK. When it was fanfared, it was Michael Gove and Vice-President Šefčovič who fanfared it in Brussels. We took time to read it and on 10 December we wrote back to them and said, "Thanks very much, lads, that's great. However, it's not going to be enough and three months is not going to be long enough to get a new system in place".

That is where we are still at with these negotiations. The reason there were grace periods, whole raison d'être for the grace periods, was to provide a new system that removed Great Britain to Northern Ireland. That friction has not been removed. There has been progress that we have made, and we will get into that in further questions, but we are not there yet. For us the need for those grace periods continues until we have that new system in place.

Q276 **Chair:** Thank you. I had a memory of sausages when you were talking about product lines. They seemed to be in the news earlier in 2021. I hope you are okay as regards sausages in Northern Ireland.

Aodhán Connolly: We are net exporter of sausages. We have 1.9 million people here in Northern Ireland and we feed around 10 million people, the majority of them in GB. If people think that the sausage thing was a trade war, it wasn't even trade handbags at dawn. The fact is that we get fewer than 4% of our sausages from GB and they are usually products of origin. They are Cumberland sausages, or even haggis gets put through on our list as a sausage.

Chair: That changes matters.

Aodhán Connolly: Burns Night is very important. In the EU non-papers that we will discuss later on, there is a particular exemption for those particular products that are of designation, but the sausage thing was the bane of my life. I wanted to talk about removing friction, and people just wanted to talk about sausages.

Q277 **Chair:** I will not mention them much more. I will try to make a seamless link to bring in Mr Kelly on that line. Mr Kelly, from your point of view, what do you think has gone well? I also notice that the growth figures for Northern Ireland recently, the quarterly growth figures, have been the best in the UK. I do not want to be disparaging but it did strike me as surprising. Generally on that and what you think went well on the protocol, did the protocol have any effect on those figures or was that a bounce back on a really bad pandemic?

Stephen Kelly: Good morning, Chair. From our perspective it is a game of four halves, which is a typical Irish saying. Three out of those four elements in terms of what the border looks like post-Brexit—the border from Northern Ireland into Ireland; the border from Ireland into Northern Ireland; the border from Northern Ireland into GB; and GB into NI—have worked exceptionally well and the numbers reflect that.

In terms of the ability for businesses in Northern Ireland to have their goods still freely circulating in the EU's market, that is working exceptionally well. We have seen that the CSO, the statistics agency in Ireland, is reporting in the first nine months of this year that the trade from Northern Ireland to Ireland has grown by 60%. That is in the same period that the UK goods exports to the EU have declined by 16%. From our perspective there is quite clearly evidence there that that part of the border works very well. We also know that the goods travelling from Ireland into Northern Ireland continue to freely flow as well.

We also have the commitment to have unfettered access to the rest of the UK marketplace. The ferries between Northern Ireland and Great Britain are bunged to the funnels is the description that I have been given by not just the ferry companies themselves and the ports but by traders here looking to move vehicles across the Irish Sea. That has worked exceptionally well.

The challenge comes with that last quarter, which is the movement from GB into Northern Ireland, which I know the Committee is keen to discuss. From our perspective the commitment to have unfettered access to the GB marketplace is working very, very well. The commitment that goods can freely circulate between Northern Ireland and the EU works very well.

What I would add to what Aodhán has said is the working commitment from different Departments and particularly the work of HMRC. Tax authorities do not usually get a lot of praise, but HMRC has been exceptional this year. The commitment, the time, the patience and the effort that it has put in to support traders has been quite extraordinary and that is something that we would have ordinarily expected running into 2021. But the effort that it has put in has meant that goods can still freely flow, where those technologies have existed, but also problems have been identified and it is not unusual to see problems identified as you work through your process. Its effort to resolve those problems has been first class.

Q278 **Chair:** You said that ferries were full to the funnels just about coming between GB and NI. You also said that there was a bit of an issue with the movement of goods. One of the achievements of Brexit is that it gave the Republic of Ireland a trade surplus with the UK. Is some of that stuff routing through Northern Ireland? Is a lot of Republic of Ireland trade to GB now just being routed through the north as opposed to just going on the shorter journey to Liverpool and Holyhead?

Stephen Kelly: There is some evidence that that is happening to a degree but the big shift there has been that traders from Northern Ireland or to Northern Ireland are avoiding the port of Dublin. The first part of this year lots of traders for Northern Ireland—who used to use that route routinely because the border in Dublin is a full third-country border. It is the equivalent of Calais or any other EU continental port. It was exceptionally difficult for traders sending stuff to Northern Ireland to operate through that port and the confidence in the Dublin port was greatly diminished. So what we have seen is the shift mostly of Northern Irish-based trade to the norther ports rather than through Dublin, so the growth there is not because Irish traders are using it but largely because Northern Irish traders are using that instead.

Chair: So Northern Ireland has stopped using Dublin when sending things to England and Wales in particular.

I am anxious at this stage to take in Paul Girvan, who has more than a passing interest in this.

Q279 **Paul Girvan:** Absolutely. Good to have you along, Stephen and Aodhán, for this first session. I would query the issue about the growth figures. I believe that if you look at certain sectors you will find that it has had a negative impact. Where I want to focus in on is on the axis of trade and how that has changed to a large degree, even within the manufacturing sector. We have had many evidence-based witnesses coming forward in Northern Ireland telling us that they have had to buy from the Irish Republic. First, that is a severe breach of the Belfast agreement in that we are changing our axis of trade from east-west to north-south. That has been a major problem.

Secondly, and more to Aodhán, relating to what is primarily Europe giving us a slap around the back of the head every chance that they can get in relation customs checks. I will give you a very clear example and this is to do with retail. The port of Larne, run by P&O, bring in a container. I appreciate that earlier on in the process there were all sorts of problems. I am not talking about something that happened in January or February of this year. I am talking about October 2021, where an EU customs official from Dublin, who was working in Larne port, asked for a container of frozen goods to be opened that was only going into Northern Ireland because the retail chain did not have any stores in the Republic.

That was opened and a certain item was asked for to be checked that was on that list. When it was taken to be found, it had to be open for a certain length of time to find that crate that was in. When it was found, the container temperature had risen above that which was acceptable by the retailer and as such that container of frozen goods was refused to be accepted. That is where I see overly officious customs officials causing a problem where we have far more customs checks being carried out on the ports within Northern Ireland than are carried out at some of the major EU ports in the rest of the EU. Can you comment on the impact that it has had upon retailers receiving goods from the UK into Northern Ireland, and how has it changed the axis of trade between north-south?

Stephen Kelly: The first question was directed towards us. There is no doubt about it that business will find the way that causes least friction for them. It is inevitable. It has been inevitable since the beginning of the process around Brexit. It has been something that business has continually commented on, that whenever non-tariff barriers or frictions are put in place business will have to find a way of continued supply but also to avoid any cost or complexity that may be coming their way.

What we have seen is Irish buyers, for instance, recognising that there is a full third-country border between Great Britain and Northern Ireland. Rather than buying from Birmingham in the UK, they are buying from Belfast in the UK. There is no friction in the north-south border. They do it to continue their supply and they have bought from us and those numbers are reflected in the CSO trade statistics.

We also have experience where GB buyers, because of the friction that exists between GB and the EU, are looking at Northern Ireland and instead of buying from Birmingham they are buying from Belfast on that occasion as well. So the unfettered access piece has caused quite significant benefit for us because we were able to continue in the EU supply chain in terms of products, components, ingredients and raw materials and we are able to supply GB customers that we have never had the opportunity to supply before.

The first question was around what has worked well and I know this session is trying to explore more than that. The challenge has been that GB suppliers have been wholly unprepared for the requirements that the protocol brings in terms of shipping goods to Northern Ireland. On occasions numbers of suppliers have no longer been willing to send goods to Northern Ireland. That is causing significant disruption to Northern Ireland supply chains, there is no doubt about that at all.

We were asked earlier what has worked well. Three of those four borders are working fine. The last one, the GB to NI route, is where all the friction is and where all the contention is. From our perspective there are a number of issues that need to be resolved, both with the UK and the EU. One is in terms of the complexity involved in moving goods within the United Kingdom from GB to NI, one is the volume *[Inaudible]* reduction and on another occasion require checks.

We have said from the beginning of this process that we needed a number of things. First we need stability in terms of what is the settled status so that businesses can plan for the longer term. Secondly is certainty so that they know that that position is going to be something that they can build into their business models. The last two are the most critical ones in terms of 2021 and for now and that is simplicity to make that movement between GB and NI as seamless as possible, and ensuring the last piece, which is affordability, that we can continue our supply chains from GB, which are absolutely necessary, and that we can continue to enjoy those commercial trading relationships that we have within the UK.

No one in business has said that this protocol is working fine and no one in business has said that this protocol is a fixed and settled state. Even with the protocol itself, it gives opportunity to improve or remove elements of the protocol. That is the pragmatic position that business has taken, for one simple reason. On a Friday every single week they have to pay a wage. When they begin that week they wonder how they are going to gather that money together to ensure that people are paid. Unless business can be made as simple as possible for them, unless as much of that friction can be removed, business will always find a way to ensure that that wage is available to their workers on a Friday. If that means that they are buying from Ireland as opposed to buying from England, if that means that Irish buyers are buying from Northern Ireland as opposed to GB, that is what they will do.

Aodhán Connolly: Thank you for the question, Paul. You said there at the start that the EU was trying to give the UK at every opportunity a slap around the back of the head. That sort of language—for us in business, that is not the way we see it. Negotiations are going on and this whole time we have been trying to be pragmatic. You have to remember that when the protocol was signed, and was lauded by a lot of the political parties, we in business came out very quickly and said that the Prime Minister had not listened to Northern Ireland communities and definitely had not listened to the Northern Ireland business community.

But it is the law and we have tried really, really hard to cut through the emotive stuff, to cut through what has been thrown at us by all sides and to continue to be pragmatic and to find solutions. No one is saying that the protocol is perfect in any way, shape or form. There has not been anything that has been sat on the table that can do what the protocol is aiming to do. We would not be spending 60, 70, 80 hours a week working with both sides, the EU and the UK Government, to find solutions to remove friction if we believed that it was perfect.

On the example that you gave about Larne, that sounds like it is an SPS check rather than a customs check. I would need to get the detail. It would not be the EU who are doing the check, it would be them overseeing the check but the checks would be done by Northern Ireland officials.

On your question about where the supply chains have changed, we have the same problems as Stephen had. We were told, and GB businesses were told, that there were no Irish Sea border. Not only were they told that but millions of pounds were spent by the Government telling people to get ready to trade with the EU. Not one penny was spent to tell people to get ready for Northern Ireland, so of course there was going to be a slight change in trade.

But you have to look at this in the longer term as far as what has happened over this past 10 years. Supermarkets especially have started to buy a lot more this past 10 years from Northern Ireland. There are a lot of things that we cannot buy and they come from the EU. If you look at this time of the year, about 90% of lettuce, 85% of tomatoes, about 65% of all our soft fruit and veg at this time of year come from the EU. So everything that is coming from GB is not just GB produce, it is stuff from EU and the rest of the world as well.

What we have done is to substantially grow over this past 10 years the amount of the agri-food produce especially that we buy from Northern Ireland. That has grown. I think this year will be the first year that it hits the £3 billion mark and that is something to celebrate.

We have tried as much as possible to continue our supply chains with GB because they have longevity, we have buying power and we continue to use those at the minute. Again, that is something that we continue in business to push for, quite simply because our raison d'être in this, we are not on the EU side, we are not on the UK Government side. The side we are on is Northern Ireland business to keep us competitive but most of all Northern Ireland consumers, to make sure that we can give them choice and affordability.

Q280 **Paul Girvan:** Thank you. That leads me on to one area. How do your sectors view the UK Government's approach to the protocol? That is to both Aodhán and Stephen.

Stephen Kelly: It is a game of two halves, I suppose. The first part of the year was very difficult in terms of—the political direction given to officials to support Northern Ireland business representative groups and traders was exceptional. I have to reinforce that when we have the opportunity to do this. That has continued in a lesser form throughout this year.

What we did was we were quick to identify where those issues were prior to the operational plan becoming effective on 1 January. We flagged where the issues would be and then as the first part of the year unfolded we were able to provide evidence to Lord Frost and his team, demonstrating where the protocol was not working as best it possibly could and demonstrating the evidence where we wanted adjustments or amendments. What you find, then, is that in the July Command Paper that the UK Government published, lots of that content was directly from us and other colleagues in the business community.

As we explained to Vice-President Šefčovič and his team when we met him in Newry in September, if our members get a brand new machine—you have been in business yourself and you understand this. If you get a brand new machine it takes some time to understand how that machine works. It then takes a lot more time to understand how to make that machine very productive. On some occasions, that requires amending how you do your work, on some occasions that requires some additional resources and so on. The fact that the UK and the EU concluded a negotiation on the protocol, the fact that Parliaments in London and Brussels approved the protocol, it is not then unusual that we find problems within that product or that machinery.

What we have identified, in terms of the amendments that are largely covered in the UK's Command Paper—we arrived at a position that a lot of the Command Paper says, and we are in a much better place. We agree that there is no logical reason why goods that are destined for Northern Ireland, that wholly remain in Northern Ireland or return to the rest of the UK should be subjected full customs controls—no debate on that at all. How far the UK and the EU can get in terms of agreeing that is still subject to debate and discussion between them. Absolutely, removing many of the frictions that are in the Irish Sea would be hugely beneficial to all traders, whether those are business or domestic consumers in Northern Ireland, and that is where we would like to get to.

Aodhán Connolly: That game of two halves analogy is really important. Last year when it was coming up to 8 December there was very little that business was involved with, and that was both EU and UK. It was like radio silence for a while and it was quite worrying. That is why we got something that two days later we wrote and said that this is not going to work.

I think, though, that we have to pay tribute to the people: the access and the commitment and the sheer enthusiasm that Her Majesty's Government, the officials have brokered, like Aidan Reilly and Elly Paterson in the HMRC, Emma Bourne in DEFRA, Colin Perry and Rebecca Nugent in the NIO and David Revell in BEIS. There are many, many more people. Day and night we get calls and at the weekend if things are moving and we need to know about it or we need to know how it will affect our sectors. We will get those phone calls. You know what? The one thing, the one really good thing out of this, is that we have that level of access and we have built those relationships, because it is going to serve the business community in Northern Ireland well in the future.

As far as UKG itself, as far as the body politic is concerned, the whole point of there not being a sea border, that was a mistake to say that, I think, when it was obvious to everyone who had read the protocol and the withdrawal agreement what was going to be there. I think, though, what we have seen from Michael Gove, when he was CDL, from Lord Frost and others in this space has been genuinely trying to move things forward. One of the biggest problems is that they have very different negotiating styles. The UK Government will come in with this list and they will ask for the sun, the moon and the stars and they will be happy if they get the sky, whereas the EU says, "Here's a principle, now we have to extrapolate this out as far as possible and sometimes we have to change the principle". So there is a very different way of negotiation, which causes friction from the start.

Where we are at the moment is that we have lots of technical talks. We have been involved in tense negotiations for the majority of this year, but really since May onwards. It was politics that got us into this and it is going to have to be politics that gets us out of this by giving both negotiating parties a little bit more leeway to agree something that removes the friction. At the end of the day, that is the only thing that we are looking for here, to remove that friction.

Q281 **Paul Girvan:** I probably used the wrong term earlier when I said slap around the back of the head, but I did believe that we were being punished by Europe for leaving, and I will use that term. Do you believe that Europe has enough flexibility to allow us to get to where we need to be at the end of the day?

Aodhán Connolly: I would agree with you that there is flexibility there. In the current negotiations, depending on who you talk to, Europe feels with its four non-papers that it has moved quite a bit. If you talk to some of the member states, the euphemism is that they are waiting for the UK to show a little bit of leg and a little bit of reciprocity. We are in business in Northern Ireland and we have to be optimists. What we always say is where there is talk there is hope.

Q282 **Chair:** Just before I bring in Tony Lloyd, Stephen Kelly, can I check something that I think I heard from you? You said that there are some people in businesses in GB who now source stuff from Northern Ireland because it is easier to get that than from the European continent since Brexit. Did I hear that properly?

Stephen Kelly: Yes, that is absolutely correct, Chair. *[Inaudible]*—people on the ground in GB who, because of the challenges of getting goods in and out of the EU to the rest of the UK, are looking at *[Inaudible]* supply instead.

Chair: Interesting, thank you.

Q283 **Tony Lloyd:** Good morning to everybody. Aodhán referred some minutes ago to the EU's position as being starting from one of principle. We know that principle is the integrity of the single market and that it is very unlikely that the EU negotiators would be prepared to move away from that. Can I ask Stephen and Aodhán principally, can you identify what would be the short-term fixes that would make a material difference in terms of implementation of the protocol? Stephen, you have already referred to four principal positions and you talked about some of the practical things, but are there practical steps in the short term that would make life easier for the people that you represent?

Aodhán Connolly: It is very nice to see you, Tony. You are very much missed in the shadow brief for Northern Ireland.

One of the good things about the Northern Ireland Business Brexit Working Group is that we bring together 15 groups that are very wide ranging, representing over 85% of business, from the smallest business to some of the largest businesses. That means we can come up with not solutions—we do not like to talk about solutions—but some options of things that would work.

If we quickly go through some of those that follow those principles that Stephen was talking about, but as far as immediate asks, if we had a trusted trader scheme. That can mean a lot of things to a lot of people but we mean a certified and auditable supply chain that could facilitate a green channel at ports of entry based upon the low risk of goods entering Northern Ireland, basically through the provenance of the goods and where they were being sold. That would remove the need for a lot of checks. It would also remove the need for a lot of paperwork and it would keep those prices down for households.

You are talking about 80% of paperwork and about 80% of checks on SPS goods—sanitary and phytosanitary goods—products of animal original and plant origin. That would be a veterinary agreement but it would be a veterinary agreement plus, so things that would include certification on organics, which is important for baby food, would you believe, but also veterinary certs and that sort of thing.

Both sides say that they would like a veterinary agreement, and that is wonderful, but it comes into what you define as a veterinary agreement. The UK would like something that is mutual recognition, whereas the EU wants that dynamic alignment. Both of these positions are not an anathema to the other. However, one of the biggest problems that we have here with both sides is that they are trying to shoehorn the Northern Ireland situation into off-the-peg solutions, when Northern Ireland, being a unique situation, needs a unique solution. We do not need a New Zealand-style veterinary agreement, we do not need a Swiss-style veterinary agreement; we need a Northern Ireland-style veterinary agreement, something in that middle landing zone that gives the EU reassurance that the single market is being upheld but also give the UK enough leeway to go and seek other trade agreements.

For me there is a real worry here. Why can we not get a veterinary agreement now that lasts for three or four years, with a guillotine clause? Whenever the UK moves from agreement in principle to full implementation of a free-trade agreement with, say, New Zealand or Australia or the big fish of the USA, that we could continue within the veterinary agreement but it would stop once it was implemented.

That would give everyone a breathing space, but not only for Northern Ireland. Welsh lamb farmers could sell back into Europe without any problems. People who were looking for groceries all over the UK could get them without any stress. Scottish fishermen could sell into Europe under such a veterinary agreement. But it is a political issue as much as it is a technical issue.

We also need a very, very quick one, which has been worked on but not the extent that we need. If you look at the Joint Committee and decisions 4, 8 and 9 of the Joint Committee, which widened the at-risk test, those are which goods are at risk as far as customs is concerned, there is the power within the UK or within the Joint Committee to widen that out to more not at risk. That is something that will hurt manufacturers and those people who are processing more than it will affect retailers, but at the same time it means that there are jobs and it enhances our competitiveness.

Establishment is something that is being worked on. That means that you have to have a place of business in Northern Ireland to be part of the UK trade scheme easement. That is being looked at. However, we do need that to be put down as a permanent fixture. There are things on access to quotas, TRQs. I will let Stephen talk about that.

Supplementary declarations is something that needs to be removed immediately. Supplementary declarations only needs to be filled in if something is going into the full EU. At the moment businesses are having to do supplementary declarations, at £30 a time. There are hundreds of thousands that need to be done. It all adds up but there is no need for them if we can prove that goods are not going into the south.

The last one I will say is the education piece. There is still a need to educate people, for example UK businesses, to say that sending to Northern Ireland is not that hard to do. If you are sending a parcel to a customer, there is nothing you need to do because we are still under that sort of exemption. Parcels will need to be sorted at some stage but the bigger thing for me is the education of GB businesses, how to send, how to deal with Northern Ireland and that it is not that onerous, but also to EU businesses because they are not giving all of our goods the full access that they should, because they are going, "Oh, is that GB? Is that UK? Is that NI?" We don't understand that". Stephen can follow up with that one.

Stephen Kelly: Tony, good to see you again. Good to see you in good health as well.

I would add a couple of things. First is that on 1 January 2022 the rest of the UK will experience what 1 January 2021 looked like for traders in Northern Ireland. The UK is introducing its border, its inbound border, on 1 January. That will be quite a shock to many in business in the rest of the UK. Once they get over that shock, it is likely that they will understand how to operate the border now that they see it a bit better as well. Maybe the experience some traders have had this year will make life easier for them come January 2022. Certainly once the rest of the UK, GB traders understand the requirements to move goods into the UK from Europe, that will cause some issues but it will also perhaps ease thing on the Irish Sea, in a perverse way.

Aodhán mentioned the UK traders scheme. There is within the protocol a very open opportunity to expand the scope of the UK traders scheme to bring more businesses in under the not-at-risk category. That would be very much welcomed. A couple of elements of that could be extended beyond the very narrow sectors that are currently included in to include the rest of business, particularly those businesses that can demonstrate that they do not trade with the EU at all.

Secondly, there is an exemption in there for businesses that trade less than €500,000. The EU's own definition of an SME is €2 million or less, so quite quickly you could move from €500,000 to €2 million and take in the vast majority of small businesses in Northern Ireland as being exempted from some of these requirements by using the rules that already exist within the European Union, or the definitions that already exist within the European Union.

We have produced some papers, Tony and Chair. I am sure that we would be happy to furnish those papers to the Committee as part of the evidence for this. They will show you how methodically the business community in Northern Ireland has identified problems and issues, has identified opportunities to make those problems and issues disappear and base those where possible in EU or UK law wherever it was appropriate. These are functions or processes or little paragraphs or parts of paragraphs of Union customs code that would allow some of these solutions to be brought through and allow some of these solutions to be landed quite quickly on behalf of consumers and businesses.

Q284 **Tony Lloyd:** One quick follow-up from me. I know that you talk intensively to representatives of the UK Government and I know that you have also met with Commissioner Šefčovič, among others. What is your view about the understanding of both the UK Government and the EU of the kind of proposals that you have outlined to us this morning? Are you getting a credible hearing or is it still a mismatch between the understanding of the EU and the UK Government?

Stephen Kelly: There is a good understanding. There has been a lot of time and effort put into engaging with both and I think there is a very good understanding on both sides about where the issues and problems are and where the opportunity still remains for us.

I would say that both sides are looking for the things they want to hear at times as well. We try to give the totality of the picture and not just the one element. Some of that is reflected in the UK's Command Paper, some of that is reflected in the EU's non-papers about the things that it does want to hear and the things that it does want to try to fix.

We have been engaged in the last six weeks in a deep technical conversation with the EU on its non-papers. We have explored and offered responses both verbally and written to those papers. Where we have got to with that is that the EU appeared, from an official and technical point of view, to have gone as far as it possibly can within the rules that are laid down for it. What it needs at this point is a political motivation to go a bit further.

Equally, on the UK side, we have the Command Paper, which is very top line, but we do not have any technical detail. At this point in time we can get no sense of any substantive movement that would release these conversations and these negotiations. So in some respects we are between the immovable and the invisible, the immovable in terms of the EU's body of law, and the invisible in terms of any lack of paper or detail from the UK side in terms of what it is proposing and what it is prepared to negotiate on. That means that it is enormously difficult for us to say, "Why don't we pick that rather than that?"

The problem all along in this process, as Aodhán outlined earlier, is that business was not engaged with for some time. The moment that they published the operational plan for the protocol back on 8 December 2020 we said, "Guys, very good, but you need to do more because this isn't going to work the way that you think that it's going to work". We have spent this year identifying and confirming our assessment that we had back in December 2020, and providing evidence and ideas to try to make this thing work for them.

Aodhán Connolly: I agree with Stephen's analysis. He said earlier on that the Command Paper contained some of the things that we were asking for, and that was very welcome. On the EU side, even from May and from its papers coming out, veterinary medicines was not on it. It is now considering veterinary medicines quite simply because of the evidence and how we showed that it was not just important for farmers, it was important for agri-food and our exports and therefore for consumers as well.

GSL medicines, general sales licence medicines, your generics, were not initially in the paper. We told it that they needed to be because if we got them from other areas there would be a cost implication that would affect the most vulnerable in our society, especially in things like Brufen, Calpol and paracetamol, and the EU put it in and that is very welcome.

I think, though, what is happening now is that on both sides there is chip, chip, chip, chipping away, getting towards a solution, whereas we have been very clear. We are not looking to go back to 31 December last year, neither are we looking to go back to 23 June 2016, but what we do need to do is to have a situation where business is still allowed to be competitive and we keep those costs down and keep choices for our consumers.

It does not matter whether it is 1% too expensive or 1,000,000% too expensive, it still needs to be affordable. There is a very, very simply equation in this, that if the new costs are higher than the profit margins then either the product or the business model becomes unviable. For us in business, it is just continuing the chip, chip, chip away to get movement, but we need more political focus on this to give both negotiating teams a bit more leeway to deliver exactly what we need.

Chair: Thank you very much. We have probably reached the halfway mark. We are just a little of the time that we were projecting. We are looking to finish about 11.30.

Q285 **Chair:** We are looking at more of an academic focus in this second half. To kick that off, the master of brevity himself, Mr Mick Whitley.

Mick Whitley: Good morning to everybody. My question is to Professor Hayward and Dr Birnie. What is your assessment of the ongoing negotiations between the UK and the EU regarding implementation of the Northern Ireland protocol?

Professor Hayward: Thank you very much for your question. The first point is the matter of whether they are actually negotiations. The fact that the EU is quite clear that it is not renegotiating the protocol and that it sees these talks very much as coming within the competence of the Joint Committee already is important. The UK, of course, is seeing this as a renegotiation and it wants a new agreement that supersedes the protocol under Article 13.8, so already there we see a fundamental disagreement between the two sides.

It is important that we have these discussions, however, whether you call them negotiations or talks, mainly because we are seeing more flexibility from the side of the EU to begin with. This is very much in response to the real needs that are being expressed in evidence from the business community, as you have been hearing there. That is a response to the fact that during the withdrawal negotiations when the protocol was being drawn up, there was very little input and engagement or space for that evidence to be presented, so that is a very good thing.

The UK is seizing upon this window of flexibility from the EU but there is a risk of the political coming in here and trumping the practical and the pragmatic. The ask from the UK side with respect to the protocol includes things that have not been raised as major concerns from businesses or indeed many others aspects of civic society in Northern Ireland. ECJ jurisdiction means one of those.

Fundamentally what we see is that there are very different understandings of the protocol and this has been there from the very beginning. The UK Government see the protocol as being something that should be very skinny. They do not see Northern Ireland as particularly posing a risk to the EU single market, and of course they object to some of the constraints that they see being put upon the UK more broadly by the ties that remain to the EU through the protocol.

The EU, on the other hand, sees the protocol, as has been referred to earlier, in terms of principles and it wants it to be thick, if you like. It wants it to be substantive. This is partly exacerbated by the lack of the operation of the border operating model so far by the UK and by a lot of rhetoric and discourses around Brexit and more particularly around what Lord Frost would like to see—that is, UK divergence from the EU. The EU was looking at that and being very cautious in what it is prepared to allow, given that it sees the risk to its single market growing over time.

To conclude my remarks here, we ought to bear in mind that there is only one way out of this and that is by a joint agreement between the two of them, by both sides. For all the talk of trade wars and so on and new versions of no deal, there has to be accommodation, realistically speaking, and that is why it is good that both the UK and the EU continually stress that. That is why it is good that these talks are ongoing.

A lot of the tactics and strategies with respect to briefing that we have seen here on both sides, we have seen before. It does have the effect of raising the temperature and anxieties around a potential outcome here, which is not good. With the continual message from civic society and businesses in Northern Ireland, the need for certainty and stability, we need to keep focus on the fact that the only serious way out here, the ultimate outcome, has to be accommodation and negotiated agreement and we need to bear that in mind.

Chair: Thank you for that, Professor. Dr Birnie.

Dr Birnie: Thank you very much for your question. Chair, with your indulgence, could I briefly, because it is a statistical point, say something about two things that came up in the first 50 minutes?

Chair: Yes, please, pick up the baton.

Dr Birnie: Okay. Aodhán referred to a good point that the Trader Support Service, after some initial difficulties, was working well, and that is well and good and I accept that. But it is important to put on record that the Trader Support Service and the other advice and digital support services being offered through the UK Government are not without cost. They cost in terms of public expenditure probably about £250 million per annum. That is an ongoing cost and obviously there will be an issue going forward as to how long these schemes stay in place, because they are mitigating the effects that would otherwise fall on the private sector. Somebody has to bear these costs of the protocol. Is it the UK taxpayer, is it Northern Ireland and the GB private sector? That is one point.

Chair, you referred to the fact, or the alleged fact, that Northern Ireland's economic growth in recent months had been above the UK average. I think you are referring there to a *Financial Times* article that came out last week.

Chair: Yes, I am; correct.

Dr Birnie: The problem with the *Financial Times* article is that the contents of the article do not well reflect the headline. The headline talked about a supposed gain to Northern Ireland economic growth from the operation of the protocol. If you drill down into the article, it is much more, as is often the case, especially in recent economic statistics, open to debate. In any case, it is all based on experimental data coming out from the Office for National Statistics, and the Office for National Statistics would be the first to say that we need to be extremely careful about the reliability of such figures at the regional level. So I very much doubt that Northern Ireland's recent economic growth has exceeded the UK average.

In terms of the question itself, the ongoing negotiations, I do not have very much to add to what Katy has just said, but a few points. Obviously this has been much more protracted than many people had said that they had hoped. I remember talk of things being cleared up by the summer and then that we would have a few intensive weeks of negotiation, mainly in October. Of course, now we are at the start of December and things have, maybe inevitably, taken much longer.

Being a little bit more positive, certainly there has been movement by both the UK Government and from the EU27 side, as it were, off their initial starting positions as far as they could be identified. The UK Government seem to be accepting that there will be some role for the European Court of Justice, just not a supreme arbitration role. On the EU side there were the proposals to make apparently quite substantial reductions in paperwork and vet checks, although you have to be careful in terms of the baseline against which it measures those reductions, if reductions relative to the full implementation protocol, which we have not got to. Aodhán in his final remarks expressed this very well. A sizeable gap remains and I would be very unclear as to what speed of progress we should expect, but that is probably coming on to the next question.

Mick Whitley: Bearing in mind the brevity of the situation, I will leave it there Chair.

Chair: I am very grateful indeed, Mr Whitley. An example to all on the Committee that the witnesses are the ones who provide the evidence.

Turning to Mr Garnier, who will be aping the need for brevity.

Q286 **Mark Garnier:** I will crack on, then. Thank you. Dr Birnie, can I address my starting question to you? Under the Northern Ireland protocol there is provision to potentially trigger Article 16. Within all that you have these safeguard measures. Dr Birnie, can you talk us through what you think would be the implications of triggering Article 16 and if you have any ideas what some of these safeguard measures might look like?

Dr Birnie: I cannot say that I have detailed knowledge as to what the safeguarding measures would be. The first question was whether the Command Paper is correct in deeming that we have already, as of summer of this year, reached the point at which it would be justifiable to use Article 16. I think they were correct, because the article itself talks about serious societal and economic difficulties and it also talks about trade diversion. We have had both. We have had an impact on the economy and we have had a cost impact, which affects competitiveness and business success. Both Stephen and Aodhán have alluded to that in terms of the statistics. We have had trade diversion and Stephen particularly has alluded to that in terms of the statistics for growth in trade between Northern Ireland and the Republic of Ireland.

That is a good thing, that trade growth, from the point of view of powers involved, but it does almost certainly—and both Stephen and Aodhán referred to this—show evidence of diversion from previous suppliers in Great Britain selling into the Republic of Ireland that are now being replaced by Northern Ireland suppliers. So from an overall UK point of view it is not necessarily a gain.

The effects in terms of your question of triggering it. In the short run there would be the benefit to Northern Ireland in terms of an end to the protocol checks. It might then be said that we would very quickly have the negative of checks being imposed at the Irish border. I think it is doubtful that the Irish Government and the rest of the EU would retaliate in that form. They might retaliate in other forms, that is quite plausible, but given what they have previously said about the Irish land border and their claims about the hard infrastructure, I doubt that that would happen. So we would get rid of checks NI to Great Britain but I do not think we would necessarily see equivalent checks and procedures in the Republic of Ireland.

Of course, there is the longer-run situation. That is much more uncertain than the short run. There is a benign scenario in which once the article is triggered and the EU27 sees this this demonstration of the seriousness of the UK Government position, the EU would then pull back somewhat from, to use that earlier word, its principles about the alleged threat to the European single market. Incidentally, I do not think that trade from Northern Ireland does represent a credible or material threat to the EU single market. In statistical terms, that can be demonstrated.

There is also the much more malign scenario whereby the trade and co-operation agreement collapses and you move into an overall trade war.

Q287 **Mark Garnier:** To be clear on this, what you are effectively saying is that you think that to start with it would be beneficial and that the European Union would not then start quoting the trade and co-operation agreement, the TCA and the potentially retaliatory factors that they could bring in, if Article 16 is triggered, so you would not get that tit-for-tat. Is that right?

Dr Birnie: No, I am not saying that. I am distinguishing between what would happen between Northern Ireland and the Republic of Ireland, where I think the retaliation is unlikely, but then of course there is the broader picture in terms of the zero tariff, zero quota arrangements between the UK overall and the European Union. Who knows, but it is at least plausible that the EU might retaliate in regard to that, but that would mainly affect the trading position between Great Britain and the European Union. I suspect that the Irish land border would remain—

Q288 **Mark Garnier:** To be clear, you are suggesting the retaliation would be on, say, the UK-France border, rather than Northern Ireland?

Dr Birnie: Yes, much more likely because there was such a strong emphasis in the run-up to the agreement, to the protocol, that there must not be any hard or physical infrastructure on the Irish border because it was alleged it would be a threat to peace and so on. I cannot see them rolling back from that.

Q289 **Mark Garnier:** Professor Hayward, what do you think of all of that?

Professor Hayward: My evidence will be quite different from Dr Birnie's and I will say it as clearly as possible. If the ultimate aim for both the UK and the EU is to provide certainty and stability for Northern Ireland, Article 16 should not be triggered while talks are ongoing. Fundamentally Article 16 and the use of safeguard measures could not offer anything better or more long-lasting, especially not economically, for Northern Ireland, than the outcome of these talks. Fundamentally, the use of Article 16 would have to be by definition restricted in terms of its scope and duration to what is strictly necessary to meet the very specific problem.

It is also worth mentioning that our polling that has been done through Queen's, our project on post-Brexit governance led by my colleague, Professor David Phinnemore shows that a minority of people in Northern Ireland, only 39%, think that the UK Government would be justified in triggering Article 16, and our polling also shows there is an awful lot of confusion about what Article 16 means in practice.

There are several things that we need to ask fundamentally and it is basically about the when, what and how of Article 16. These questions have not been addressed by the UK Government so far.

When would Article 16 be triggered? We keep hearing from Lord Frost that he thinks the conditions have been met and that he is willing to use that, but we do not know if it would be the case that he would use it if the talks that are ongoing at the moment collapse, for example. That would be very different from using it if the talks are ongoing, because the first thing that would happen if proper process is followed once the British Government announce that they are going to trigger Article 16 is that then the UK and the EU are in consultations in the Joint Committee around those particular safeguard measures. The question would be how would that set of consultations and discussions be different or superior to those that are ongoing at the moment between officials.

Dr Birnie says that it would remove checks. We do not know that. The British Government have not said that that would be what it would be used for. A big question is at the moment we have a standstill in the grace period, so we have a standstill in the legal action being taken by the EU against the UK and we have those ongoing talks. What would be the purpose of triggering Article 16 in practical terms, aside from the political ones? Maybe it would mean extending the grace period. We have the grace period on medicines that is due to expire at the end of this year. If Article 16 was to be used to extend that, the immediate question would be perhaps that would be welcome, but in fact the EU has proposals on the table and, as Aodhán has already mentioned, has advanced those proposals, it is ready to process legislation to address that problem, so why would Article 16 be a better use of time and a better process than working with the EU to get agreement on a medicines proposal?

Why is the minimal approach better than the talks, given that we are in standstill on many things at the moment and the grace periods are ongoing? If the maximal approach as Dr Birnie is hinting at there, for instance, ends all checks, then we have even more questions. First and foremost, is it proper use of Article 16? I am not a lawyer and I am not going to go into that. The other question is how does that benefit anybody who wants to trade in or from Northern Ireland? How does it address any of the concerns that have been raised? Most particularly, what you are saying is that after 30 days the situation for trade with Northern Ireland will be completely transformed, so all of that process of familiarisation and the process of developing the systems to enable that GB to NI movement to operate better would be a great question.

I have heard Stephen Kelly say this before and I think it is a good point. The question is: how many businesses in GB would trade in Northern Ireland that are not already doing so simply on the back of Article 16 being triggered? Another question would be how many other businesses who are trading with Northern Ireland from the EU or the rest of the world will be cautious about trading with Northern Ireland if we are in the situation of Article 16 being triggered and then a point of contention over the position of Northern Ireland vis-à-vis the EU and the UK? I think that is a valid question.

Last but not least, the question of the process, if it comes through the use of ministerial powers, would that be a good and appropriate use, if it comes through primary legislation? We then have a much longer and more complicated process to trigger Article 16, which again raises the question of how is this better than the talks that are ongoing between the UK and the EU?

Q290 **Mark Garnier:** Ultimately Article 16 is a paper tiger. Is it a toothless threat?

Professor Hayward: It makes more sense politically. You can see the sense of trying to raise the temperature and the sense of urgency, wanting the EU to move. Safeguard measures do have their place but we do not have much evidence in terms of practise of their use. In this case the definition of the grounds upon which they would be used is very unusual and extraordinary, including diversion of trade. It is a peculiar thing to include on the grounds of safeguard measures. It is there for a reason, but I think the constant referral to it at this current point needs to be queried, because we need to be clear about what Article 16 would do and what it cannot do.

Q291 **Mark Garnier:** Therein lies the problem. Ultimately it is very difficult to know what these safeguard measures would achieve without any real clarity as to what they are, or have I slightly missed something?

Professor Hayward: No, you are right. You would have to identify the specific problem that is being addressed and the measure that would be taken underneath would have to address that specific problem. As I say, in the situation where we have a standstill on the grace period and the ongoing talks it would be difficult to say that this situation can only be addressed through the safeguard measures, bearing in mind it must be reviewed.

Aodhán Connolly: To back up what Katy was saying, some people are holding up Article 16 as this great beacon of hope. It does not get rid of the protocol. It is there to provide a short-term tweak to allow the protocol to perpetuate.

I agree with Esmond that it will not be Northern Ireland who feels this the most. It will be GB and with my NIRC hat on the big retailers are particularly worried about that. If it goes to infraction and we know that the withdrawal agreement and TCA are linked because of the way that the TCA was written, a lot of people are thinking that it would be long-term and you are talking about the imposition of WTO MFN tariffs, which will take about nine months. Even if you are looking at some graduated tariffs it will be six months. Some of the fishing measures, there could be retaliation within seven to 14 days, however that is all looking at tariffs. The biggest problem that there is, EU to GB, GB to EU, is non-tariff barriers. That means that you may have extra checks, you may have every single bit of your paperwork checked, and that can be switched on by France, Germany, Belgium or wherever the ports are overnight. That is particularly worrying for us in retail but also in manufacturing. We have learned, because of what happened last year, whenever Covid meant that we could not go across the short straits, first there was a breakdown of supply because the lorries were not moving, but more importantly it took many weeks for supply to get back to normal, because if you are processing something 100% of your ingredients must be there at the exact right time for that to be processed. It is not just about the big headline tariffs and whether the TCA perpetuates and those infringement proceedings. It is about those soft, non-tariff barriers that can come in overnight, which directly affect competitiveness because they break down the just-in-time supply chain.

Q292 **Chair:** Thank you for the illustration. Just before I move on to the next area, which will be Sir Mark Hendrick, Martin Vickers and possibly even Paul Girvan, can I check something on my understanding of Article 16? This would address one of the academics or maybe both academics. Article 16 in the media up until now and before we had to engage with this in the Committee space has been sold as the suspension of the protocol, but Article 16 is something that sits within the protocol, is a creature of the protocol, and the protocol continues even if Article 16 is invoked. Article 16 is only for a period within the protocol and the protocol then further sits within the withdrawal agreement. Is that the correct understanding of what Article 16 is? The media understanding is something else; it is that Article 16 will negate the protocol, when in fact it does not. Am I correct in that, both Professor Hayward and Dr Birnie?

Professor Howard: You are absolutely correct, and that is very clear from Article 16. It says, "Priority shall be given to such measures as will least disturb the functioning of this protocol", so that is the purpose of the safeguard measures. In any agreement like this it is ultimately to preserve the operation of the overall agreement, to address a problem that has arisen. There is debate over whether that problem must be unforeseen or not, but it would not make sense to have safeguard measures being used for something that was perfectly predictable. In fact, a likely or expected or even a wished-for outcome from any trade agreement, a diversion of trade, could be seen as that in some cases.

You are absolutely right. Bear in mind if these safeguard measures are put in place then you have the possibility of rebalancing measures on the other side. Those things are continually reviewed and kept under review every three months. It is not a long-term solution and it certainly is not about suspending all or part of the protocol.

Q293 **Chair:** Dr Birnie, is that the way you see the understanding of the interaction of Article 16, the protocol and the withdrawal agreement?

Dr Birnie: I think your broader explanation there in strict legal terms is correct. However, in practical policy terms I think there would be enough room for the UK Government if they chose to trigger it and then chose to go down this route to suspend the parts of the protocol that are very much the things we are talking about this morning, the excessive level of checks and so forth that are imposing a cost burden, which is doing the socioeconomic damage as specified in Article 16 and is driving the trade diversion again as specified in Article 16.

Chair: Thank you for that perspective. I will move to Sir Mark Hendrick.

Q294 **Sir Mark Hendrick:** Chair, can I start by commenting briefly on the question you have just asked and the contrast in the responses from Dr Birnie and Professor Hayward? The way that Article 16 was originally presented by yourself looks to be a method of resolving difficult issues, whereas I think Lord Frost sees it as a big stick to hit the European Union with in order to try to get his own way and take measures in the meantime to put pressure on the EU. I think that is very important.

Could I ask both speakers very briefly to start with whether they are surprised at the degree to which the EU is prepared to maintain the integrity of the single market and how reluctant they are to allow for even modest changes in the longer term to the way in which the UK trades with the EU, even though there has been some flexibility over the border question? To what extent is the wider EU or UK-EU trading relationship insulated from the issues concerning the implementation of the Northern Ireland protocol?

Great Britain has developed, since Brexit, trading norms that are obviously not as free flowing as they previously were, but nevertheless there has been a degree of settling in. At the moment the Northern Ireland issue, even though it is extremely important to Northern Ireland, to many in Westminster might seem a peripheral issue to trade between Great Britain and the EU. That is fine, until Article 16 gets triggered, and then the EU will turn their sights not just on Northern Ireland but, as Dr Birnie referred to, he thought that Great Britain as a whole would be a victim of that process should Lord Frost go down that path. How do we marry the two considerations to make sure that Lord Frost does not put at risk trade with GB and the EU because of the lack of tact or the way in which he is behaving regarding Northern Ireland? I will ask Dr Birnie first, because I referred to what he had said earlier, and then Professor Hayward.

Dr Birnie: Am I surprised that the EU27 are bedding down, standing so firmly on the single market integrity principles? To some extent I am because I do not think it is economically rational. The threat posed by goods coming from Great Britain into Northern Ireland and the supposed threat that they could flow into the EU single market, that trade flow is £10 billion per annum roughly. That is a big figure in terms of the Northern Ireland economy, but it is a tiny figure compared to the total size of the EU27 economy, because their GDP would sum to about £10,000 billion sterling equivalent. The flow is 0.1% of the EU's economy. From that statistical point of view they should be seeing this as an existential threat in the way that President Macron seems to be saying he thinks it is, war and peace, and the incoming German Chancellor Scholz in his coalition agreement I believe had written in something about the Northern Ireland protocol.

What is going on here? The obvious explanation is that Governments do not always follow what is rational in terms of the economic relationships, the sizes and magnitude. That would not be unknown. Perhaps an equally likely explanation that was alluded to right at the start of this session is that some of the continental European countries in a sense want to use the protocol as a tool to inflict pain on the UK for Brexit. That all said, and it somewhat comes round to your final question, particularly to me about balancing protocol concerns with protecting the trade and co-operation agreement and the trading relationship, which is fairly crucial, and I do believe in as much free trade as possible in all directions, I think the economic basis here will eventually tell, the EU Government will realise what their fundamental interests are, rather than their rhetorical ones.

It must be remembered that trade diplomacy does not happen in isolation. There are broader strategic issues at play here which could shift, for example, French diplomacy quite quickly. There is the joint operation of UK military with French military in the Sahel region of Africa and heaven forbid if there is a Russian incursion in the Ukraine. Everything changes in terms of these quite bitty trade issues.

Professor Howard: It is a good question. Both Simon Coveney, the Minister for Foreign Affairs in Ireland and Maroš Šefčovič himself have said that there is a connection between the TCA and the withdrawal agreement and that the TCA is contingent upon the withdrawal agreement. They are very clearly making the connection between the two and the process of sequencing, the development of the future UK-EU relationship, was important.

Perhaps we should not just be talking about Article 16, however. Fundamentally the importance of something that we know does not sit comfortably necessarily with the Government is the supremacy of EU law and the direct effect of EU law as occurs through the withdrawal agreement Act and through the protocol itself. I think the EU is conscious of this and the importance of it, so if the UK Government try to move to overthrow it in any way—and we have seen this before with the UK

Internal Market Bill, for example—we know that the EU will be very wary of that, hence then all the measures that are available to it through the TCA and various options as Aodhán has outlined.

The legal process, however, if those are followed, and the EU would have to be proportionate just as much as the UK should be, those legal processes are long and they do entail processes, consultation, dispute resolution, arbitration and so on. What does not take such a long time is the political process and the political reaction. That is one thing that the UK Government will need to bear in mind and we have seen this already in the response from the US when the possibility of triggering Article 16 was mentioned. We have seen how the US would potentially respond to that with the prospect of a harder Irish border.

This is not just about trade. As I was preparing for this looking into more detail in terms of when the TCA could be terminated, it could be terminated after 12 months under Article 779 with no reason needed, although you would need unanimity among the member states but it could be terminated more swiftly if one party breaches the essential elements of the partnership, and that can comprise issues of democracy, rule of law and human rights. I know that the Human Rights Act and the ECHR is also under review at the moment by the UK Government. I would just mention that without saying anything else, but the EU would be wary of that too. Of course those elements of the human rights protections and the ECHR is fundamentally important to Northern Ireland in the Good Friday/Belfast Agreement.

Chair: We will take in Martin Vickers at this point.

Q295 **Martin Vickers:** Since we are coming to the end of the session, perhaps this is an opportunity to sum things up. Stephen Kelly may remember I was in Belfast a couple of weeks ago when we met the British-Irish Parliamentary Assembly, and the clear impression I came away with was that the business leaders do not want the Government to take any precipitative action. We want to resolve these in a steady, progressive way, whereas I think Dr Birnie is suggesting that because the retaliatory measures might be rather more measured from the EU that perhaps we should resolve it rather with a big bang approach, and let us get it over and done with.

Dr Birnie, is that a fair comment or would the more progressive measures that Professor Hayward advocates be more appropriate if we are going to get this resolved quickly?

Dr Birnie: It is a very good question. A lot of this is inherently uncertain and I do not profess to have the proverbial crystal ball, but I am not confident that the current approach to the negotiations is going to move at all quickly. In the absence of a strong, credible threat, and I think the strongest credible threat that the UK Government have is the triggering of Article 16, I am very doubtful we would have the extent of movement we have already had from the EU27, and without that threat I am doubtful we will get any more movement.

I am not saying that the use of Article 16 should be done lightly. I am well aware of the danger of this spiralling into a wider trade war. It should not and if the EU27 recognised where their real interests were, it would not, but you cannot exclude the possibility of chaotic and unfortunate behaviour.

Q296 **Martin Vickers:** Professor Hayward, how are we going to resolve this if we just take a very slow, progressive way forward?

Professor Howard: We need a long-term, stable relationship between the UK and the EU and we do not get that through hostile or conflictual language. We get this through building trust and the big problem is that trust is missing, most particularly the distrust of the UK from the EU is growing and so what we do need to see with respect to Northern Ireland's position is more flexibility from the EU. We are not going to get that flexibility if the UK is seen as being untrustworthy and not acting in good faith.

If we have a situation where any actions over Article 16 or any threats to override international law are seen as canny negotiating tactics we are setting back the situation in which we could possibly come to that necessary negotiated outcome.

I should say, we will see continual negotiation and bargaining and consensus building hopefully between the UK and the EU through the Joint Committee. That Joint Committee, currently with Lord Frost and Maroš Šefčovič, is extremely important and has extremely large capacity for decision-making over the situation in Northern Ireland vis-à-vis the protocol. You need a good relationship there and I do think the sooner we get to that the better, most particularly if we want those conditions of certainty and stability, not just for Northern Ireland's economy but for Northern Ireland's civil society and elected representatives.

Chair: I will leave the last question to Mr Girvan as a Northern Ireland MP. The spotlight is yours.

Q297 **Paul Girvan:** Thank you, Chair. I would like to thank Esmond and Katy for coming along today.

Has there been any economic aspect assessment made of the cost of implementation of the protocol as it currently stands, cost to business? I will give you an example. I have had a number of businesses who have been in contact with me to say they can no longer get supplies from the UK because the supplier said that it is far too much paperwork required, the bureaucracy required in trying to get something forward to Northern Ireland and as a consequence it is not financially viable for them to send goods to Northern Ireland. People in the horticultural industry have been told the very same thing. Have you undertaken an impact assessment of how much this has cost the Northern Ireland economy? Many of those people have had to change their axis of supply because they do not want to close their business down, so they have had to get supplies coming from the Republic of Ireland, coming through Europe, to the Republic. Likewise, they have increased their links to France on that shipping route from the Republic into France, and that is adding to some of the difficulties.

Have you undertaken an impact assessment to that degree to see what has happened? We have heard mention of the £30 cost per item paperwork requirement for goods that are coming into the United Kingdom and destroying trade within the UK and that is the point, with no intention of ever making it on to the single market.

Chair: The question is about an impact assessment.

Paul Girvan: Esmond?

Dr Birnie: Thank you very much. If I could reply to Mr Girvan, it is again a very good question and in fact at the end of last month two economists based at the Fraser of Allander Institute in Glasgow, Duparc-Portier and Figus, published an article in the *International Economics* journal and *Regional Studies*. The article is entitled “The impact of the new Northern Ireland protocol: can Northern Ireland enjoy the best of both worlds?” and they looked at the evidence. They used a so-called computer forecasting model, fed in data and they came to the conclusion that Northern Ireland would not enjoy the best of both worlds because the costs, some of which in the question were being alluded to, would outweigh the trading advantage between Northern Ireland and the Republic of Ireland. They concluded that over the long-run the cost of the higher frictions, the non-tariff barriers as was mentioned earlier between Northern Ireland and Great Britain would impose a reduction in the long-run of about 2% to Northern Ireland’s gross domestic product, equivalent in today’s money to about £900 million per annum.

Professor Howard: No, I have not performed an economic impact assessment. One would have hoped the UK Government would have done that thoroughly before designing any protocol. I should say we are conducting stakeholder workshops as part of this project led by my colleague, David Phinnemore, and we have seen a significant change over this year, an improvement in experience of the protocol, partly because the systems are working better, the functionality of them has significantly improved and also the support and networks that are available. Communication from the British Government has significantly improved as well. I want to create space for Aodhán and Stephen to comment on this as well, given that their members are most directly affected.

Chair: Can I ask both gentlemen to be brief?

Stephen Kelly: I can comment very briefly, just on the report that Dr Birnie mentioned there. What is clear is that we are worse off than if there had been no Brexit, but we are better off than had there been no deal and we are better off than the UK economy as a whole, as published in the Chancellor's autumn statement. No one has said, and you have heard this today across all witnesses, that the protocol is perfect, and it needs amendment and adjustment to make it work better, and that is absolutely clear.

Finally, despite all the problems, despite all the uncertainty, despite all the instability that we have witnessed, business is getting on with it. Our manufacturing sector as an example have order books that are brim-full. We have had a series of announcements in terms of jobs, the single biggest jobs announcement for half a generation in terms of one of our pharmaceutical firms, who talk about the advantage that the protocol gives them, the single biggest cash investment in our production capability since John DeLorean sadly came along.

Q298 **Chair:** "Back to the Future" then, is it?

Stephen Kelly: Very good, Chair. Business is getting on with it. They want it to work better and overwhelmingly are pragmatic around this stuff.

Chair: Thank you. Aodhán briefly as well, please.

Aodhán Connolly: There are always going to be winners and losers. It is not going to be a level playing field for everyone. It is hard to say, "This will be the ongoing cost for Northern Ireland" when we do not know what the final settlement is because we are in the middle of negotiations. I think there has been movement by the EU. I think there has been movement by the UK. I think there needs to be continued movement to deliver a system that removes that friction, but until we get that final settlement two things will continue to happen. First, no one will be able to tell exactly what the outlook will be, but secondly, I can guarantee you that the business community, and especially the Northern Ireland Business Brexit Working Group will continue to hold both the EU and the UK Government to account to make sure that we have competitive businesses and that we have choice and affordability for consumers.

Q299 **Chair:** Defensive talk there from Northern Ireland business. I can only maybe remark probably similar to Stephen's lines that there is a personal view that all of Brexit costs, so I am not surprised that the protocol would cost as well. It is 4% from the OBR and 4.9% from the UK Government of GDP so maybe at 2% you are getting off reasonably okay. As to the rational side, if we are talking about rational again personally perhaps Brexit would never have happened and we would not be here this morning discussing this, but it has.

Dr Birnie: Sorry, Chair, can I just comment there on the statistics?

Chair: Yes, Dr Birnie, of course.

Dr Birnie: As I understand it that article from the economists at Strathclyde and Fraser of Allander said that is a cost over and above the general cost of Brexit, so Northern Ireland is suffering further.

Chair: I see a shaking of the head in disagreement so we can check that Fraser of Allander report through Committee staff and, as has been alluded to, we can perhaps include it in evidence later. Time, unfortunately, although I have been enjoying this discussion, is the enemy of interest and we must put a full stop to it. I thank all four of you this morning for coming along and certainly increasing the body of knowledge that we have about the situation of trade, particularly around Northern Ireland and, as was alluded to several times, the possible impacts on cross-channel trade between Britain and France. As a trade Committee these sorts of things are fascinating to us, so thanks to all four of you for that and hopefully it will not be too long before we see you all again in some guise or form, sometime, somewhere, some place. Thank you all very much.