



Select Committee on the European Union

Goods Sub-Committee

Corrected oral evidence: Level playing field and state aid follow-up

Monday 29 June 2020

10.30 am

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

Non-Committee members present: Lord Teverson; Baroness McIntosh of Pickering.

Evidence Session No. 1

Virtual Proceeding

Questions 1 - 15

Witnesses

I: Paul Scully MP, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy; **Jessica Blakely**, Director for Subsidy Control and International Negotiations, Department for Small Business, Consumers and Labour Markets, Department for Business, Energy and Industrial Strategy.

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Examination of witnesses

Paul Scully and Jessica Blakely.

Q1 **The Chair:** Good morning, everybody, and welcome to this evidence session. First, I welcome Lord Teverson and Baroness McIntosh, our colleagues from the EU Environment Sub-Committee, who are joining us today to hear from our two witnesses, Paul Scully and Jessica Blakely. Thank you for joining us.

In this session we will follow up on the level playing field and state aid evidence sessions. I ask participants to be succinct in their questions and responses. That would be very helpful, because we have quite a lot of questions to get through. Mr Scully and Ms Blakely, we will send you a transcript of the session. If any corrections are needed, we would be very grateful if they could be made as quickly as possible and sent back. The session is broadcast live and we are now on air. If there are any questions after the session, the clerks will be very happy to communicate back to us anything that you have raised.

I welcome Paul Scully MP, Minister for Small Businesses, Consumers and Labour Market at BEIS, and Jessica Blakely, director for subsidy control and international negotiations at BEIS. You have had sight of the questions already, but colleagues may come back with supplementaries that you have not had sight of.

Could you start by providing a general update on the negotiations with the EU on the level playing field and how you think they affect the wider UK-EU talks?

Paul Scully MP: I know it is difficult to be succinct with a job title as long as mine. I would have to have quite a big business card. First, can I thank you and the Committee for your interest in this issue? It has become incredibly important in our ongoing negotiations between the UK and the EU. I will try to answer as many of your questions as possible, given the sensitive nature of the negotiations and the period we are in. We have now had four full rounds of negotiations, and the last round was in the week commencing 2 June. Negotiators have discussed the full range of issues, including the most difficult ones. Progress remains limited, but we are committed to a successful outcome and continue to approach those negotiations constructively.

In doing so, we will make sure that our position is understood. We will not agree to any EU demands for us to give up our rights as an independent state. We believe that it will still be straightforward to agree a suite of agreements, with a free trade agreement at its core, like those which the EU has agreed with other close partners around the world. This can be done quickly. In that spirit, we will continue to work hard and find a balanced solution that reflects the political realities on both sides.

One of the obstacles to this is the EU's insistence on including a set of novel and unbalanced proposals on the so-called level playing field. That would bind us into EU law or standards, along with its proposals on

fisheries arrangements and access to UK fishing waters, which are incompatible with our future status as an independent coastal state. As soon as the EU recognises that we cannot conclude an agreement on that basis, we will be able to make progress.

At their meeting last week, the Prime Minister and the three EU leaders took stock of the progress that has already been made and agreed that new momentum was required. They supported the chief negotiators' plans to intensify talks in July. Those accelerated negotiations should create the most conducive conditions for concluding and ratifying a deal before the end of 2020.

Q2 **Baroness McIntosh of Pickering:** I am delighted to join you this morning. Minister Scully, on the non-regression provisions on labour and environmental protections, what are the main areas of agreement and disagreement? What differences, if any, are there between the Commission's and the Government's understanding of what constitutes non-regression?

Paul Scully MP: We agree on the need for a non-regression clause applying to labour and environment provisions. The UK is committed to maintaining its high level of environmental and labour protection from the end of the transition period. The UK is proposing to offer non-regression from domestic standards at the end of the transition period. In contrast, the EU is proposing a baseline for non-regression from common standards. That would involve a much stronger link to EU law and the jurisdiction of the CJEU.

As part of its proposal, the EU has also suggested an unprecedented ratchet mechanism that would allow the party with higher standards to reduce its level of protection to that of the other bodies, but not below. We have a trade and investment test in our proposals that commits to not reducing such levels of protection with the intent of distorting trade. The EU, however, is proposing standards that cannot be reduced, full stop. The clause on intent is really important, because it will allow each party to maintain regulatory sovereignty while ensuring open and fair competition in trade. The EU might be able to seek a test based on 'affecting trade' that would significantly constrain regulatory autonomy. Any changes in the regulatory regime could affect trade, so it is really important.

Finally, it should be noted that the EU's text does not carve out the non-regression clause from the agreement's dispute settlement mechanism. That is very different from the UK approach, which seeks a dispute settlement process in line with precedent from other free trade agreements. That involves consultations, followed, if necessary, by an expert panel process. That makes determinations and recommendations that the parties must discuss and endeavour to find a solution.

Jessica Blakely: The UK's position is fully based on precedent free trade agreements. The EU's position, with the ratchet, is unprecedented.

Baroness McIntosh of Pickering: Minister, you referred to regulatory sovereignty. Do you envisage a time when there may be differences in your interpretation of environmental protections?

Paul Scully MP: We are very committed to our regimes for environment and labour here. As Jessica and I said, we want to base it on precedent. While we do not want to impose our set of values on the EU, neither do we want to be restricted by its imposition of values on us. We already have our 25-year approach to the environment set down. That will determine our position over the next quarter of a century. We certainly do not expect to reduce our responsibility to the environment or labour markets.

Lord Turnbull: Does this non-regression mean that we would never be able to make any changes to the working time directive, even in areas that are not subject to trade, such as healthcare?

Jessica Blakely: The important distinction here in the UK's negotiating position is the trade impact test. We are making all our non-regression commitments subject to an intent to impact trade. That is quite clear that, if the change in the regulation was intended for UK domestic purposes, it could not be brought into the non-regression clause. The EU's position is that there should be no regression, full stop, so there is no intent test or trade distortion test.

Q3 **Lord Inglewood:** The Minister has laid out the Government's position. From a slightly different perspective, I would like to come back to the same general topic, which is about regression in particular. In the response to our EU Internal Market Sub-Committee's inquiry, it was stated that under any future UK-EU agreement, "Neither party will regress from the levels of environmental and labour protection that are in each Party's respective laws from the end of the Transition Period".

It seems to me that we need to know what the exact level of environmental and labour protection might be. Is this a detailed calibration of a specific unit of measurement, or is it much more aligned with equivalence? If this is to be included, how is it anticipated to be included? What are the reasons for either inclusion or no inclusion? Finally, in the event of regression taking place, what would the consequences be? In particular, who would be able to do anything about it?

Paul Scully MP: If I understand the first part of your question, we want to make sure that we have reciprocal commitments on the environmental protections. As I think you have heard from previous witnesses, when you talk about worsening it is very open to interpretation. Some of it is numerical, some is qualitative, some is quantitative. Neither party, I suspect, wants to go into this process with a view to reducing its environmental credentials and policies in future. The key aspect of the negotiation is how we determine that and under which judicial regime—who interprets the law. We want the UK Government and judiciary to be

able to interpret the UK law, and similarly the EU can use its mechanisms.

We are proposing provisions on environmental protections that reaffirm our international obligations, facilitate co-operation and commit both parties to not reducing respective existing levels of protections that are provided by domestic law to encourage trade or expand investment. The environment policy is incredibly complex, so we propose that any disputes in this area are resolved by a collaborative process—through discussion and consultation with a panel of experts, rather than the broader FTA dispute structures.

Lord Inglewood: What we are doing is unprecedented. In the world we now live in, these things, as you quite rightly point out, are becoming increasingly complicated. You have explained to us how you hope the system will work. The reality of international arrangements and negotiations is that from time to time they do not and the whole thing breaks down. In the event of it all breaking down, how is it anticipated that the matter would proceed from there? I am also interested in knowing whether this is seen as purely an intergovernmental matter or whether individuals will be able to play a role in dealing with what happens next.

Paul Scully MP: I will pass over to Jessica for some more detailed measures. We are keen to work through an agreement that is based on precedent. We are not starting with a blank sheet of paper.

Jessica Blakely: You are asking about the mechanisms by which we would enforce the measures. There it is quite important to us, and you will notice the difference in our non-regression clauses: they refer to common standards, rather than EU standards, specifically not to bring the CJEU into an assessment—we referred to this before—of whether we have the same effect and level in the actual regulation that we put in place. What we call the dispute settlement mechanism is quite important. What those standards actually are, has a really strong link to who the arbitrator on any disagreements would be. That is the first point to make.

Certainly in terms of environment and labour standards, one of the key design principles has been the inclusion of various organisations and the ability for stakeholders outside Governments to make their views known. These expert panels and consultation processes are established to enable that.

Lord Turnbull: This is a similar question to last time. Does this non-regression provision freeze the position on genetic modification and use of pesticides, for example, even if, in the UK, the scientific opinion had moved on and we wanted to change where we started from?

Jessica Blakely: I think we have said before that the standards that we are talking about are the standards at the end of the transition period. The UK's position is then to have an intent on affecting trade. That intent on affecting trade is quite important to us in the negotiations, because we

need to make sure that we retain the policy space to make domestic regulation in line with what is best for the UK as a sovereign state.

Lord Inglewood: Am I right in concluding, from what I have been told, that this will be an exclusively intergovernmental process that you have in mind?

Jessica Blakely: No, there are differences in the EU's and the UK's position on that with regard to the dispute settlement mechanism.

Q4 **Lord Teverson:** Good morning. First, I would like clarification on whether the Government intend the non-regression commitments on environmental law to include climate protection. I understand that in the UK this involves two separate departments, BEIS and environment, but I would be very interested to understand our intention here.

Paul Scully MP: Climate is in scope of the trade and environment chapter that we proposed. By that reckoning, it is captured by the provisions, including on non-regression. The provision ensures that each party, as we said, cannot lower the environmental standards or fail to enforce them in order to encourage trade or investment.

Lord Teverson: To follow that up, I was interested that Jessica said earlier on that we, as the UK, are trying as much as we can to include these non-regression areas in the trade agreements. Yet in climate change we are proposing that the main agreement is in a separate energy agreement. I can see that entirely in terms of interconnectors and all that sort of rather technical stuff, but why then are we shunting climate change to that if our priority is to get these non-regression issues into the trade deal? I do not understand that.

Paul Scully MP: Distorting trade, as Jessica said, is the key separator between the two proposals. We have proposed specific commitments on climate in the energy agreement and it is separate to the core free trade agreement. It includes our proposals on energy and carbon pricing, which allows us to focus on the links between energy and climate change. We can innovate and learn from each other to achieve, and definitely exceed, the respective climate ambitions in the most cost-effective way.

It builds on the free trade agreement by focusing on specific practical and material frameworks for co-operation in the fight against climate change, such as electricity, gas trading and infrastructure development in the North Sea. We want to be able to support our transition to a decarbonised economy. The energy agreement reaffirms in particular our respective commitments to tackling climate change under the Paris agreement, recognising our right to regulate in line with our own priorities and interests.

Lord Teverson: Is the threat not from the other side, in a way? The EU green deal is suggesting maybe a carbon frontier for trade. We could be quite disadvantaged in that by whatever we do on carbon pricing. Does that not again say that it is a core trade issue?

Paul Scully MP: Essentially, it is building on that. You have the core free trade agreement, which will capture any distortions in trade. In addition, we want to be able to build on that, for the reasons I have just set out, to complement that core free trade agreement, rather than oppose and fight with it.

Lord Teverson: Briefly, is the EU receptive to a separate energy agreement? Would this have to be agreed at the same time as the FTA?

Jessica Blakely: That point is being discussed currently. It is one of the key areas of discussion. That comes with the overall structure of the agreement.

Q5 **Baroness Kramer:** I wanted to push a little on the ratchet clauses, which in a sense you could interpret as the dynamic relationship going forward. For many years, I was a banker in the United States, where decisions were made, particularly at state level, not with an intent to limit trade but with a very dramatic impact on trade. Trying to sell cars into California, for example, is near impossible for an importer because of laws in place about the selection of ultralow emission vehicles that have to be available, et cetera. I do not fully understand how all this works as we move forward and how the ratchet clauses would play into it.

Secondly, when you say "distortions in trade", do you include distortions in investment, or are they considered to be outside the scope of the trade agreement?

Paul Scully MP: It is a good question. I may pass that to Jessica in a second. There are a number of reasons why there is disagreement in the area of the ratchet clause. It is unprecedented. Everything that we are trying to do is based on precedent, like key trade agreements around the world. It is unprecedented in any free trade agreement. One big problem is that it is unclear how it would work in practice, so it is hardly surprising that you are unclear yourself.

It is not easy to define standards as simply better or worse. As I said earlier, and the chief negotiator set out in the previous Select Committee on the EU, sometimes you have numerical components and sometimes not. Sometimes it can be qualitative. It is not always obvious what a comparable standard is, so it becomes incredibly difficult.

Through the ratchet, the EU proposes a dispute settlement mechanism that involves the European court interpreting EU law in this area. Since many relevant provisions would be quite like EU law, it would not allow the balanced arbitration process if we got into an argument about standards. Our proposal, rather than the ratchet, is sufficient to ensure that both parties can maintain their high levels of protection, so we are not distorting trade.

We do not want to use these negotiations to fetter the EU at all. The EU's level playing field request represents one sovereign equal seeking to fetter another sovereign equal. We do not take that approach.

Jessica Blakely: Just to be clear on the ratchet clause, your example perhaps relates to something that would be covered by the non-regression clause in itself, rather than the ratchet clause, so it would be covered in the UK's position. We would focus on any impact that it would have on international trade, given that it is an international trade agreement. That intention is where we would focus.

We would cover trade and investment in any non-regression clause. The UK proposal does not include a ratchet.

Baroness Kramer: If I understand correctly, the UK proposal is that there will be no dynamic relationship. It is merely a sorting out of things as they stand today.

Paul Scully MP: That is correct.

Baroness Kramer: That is helpful at least for understanding. I would say that the discussion of precedent never gets me very far. Agreements are whole agreements with give and take in them, so bits of them do not reflect a real precedent; they reflect just one corner of a precedent. I find it hard to understand what the UK is actually trying to achieve in some of this.

Can you say anything more to give me a feel for what happens going forward? Are these two completely divergent systems that no longer interact with each other but are simply going their separate ways?

Paul Scully MP: The key point about it is the distortion of trade. It is a free trade agreement, so distortion of trade is the key aspect of it.

Baroness Kramer: Is it the intent to distort trade? I think you said that actual distortion of trade was not to be a criterion.

Paul Scully MP: When we look at comparisons and any disputes that may arise, they will be about distorting trade. As to it being a static rather than a dynamic system, as you say, the distortions of trade might be one thing, but when it comes to sets of values the EU is an important partner, as are a number of trading blocs and countries around the world, which we would trust to create and build on their own values. Similarly, we would expect the EU to do that with us.

Jessica Blakely: Our approach to a number of these areas is to refer, where relevant, for example on climate change, to the international agreements. In the UK's view, the EU and the UK can, jointly and as sovereign states, agree to improve or change their commitments in those multilateral environments. It is not about the trade between us as trading partners, but we, in the trade agreement, also committing to upholding our international standards, which will evolve over time. That is where the evolution comes from. To enable us to retain rights as sovereign states and make regulations that suit our own markets, we each relate our non-regression to the end of the transition period.

The Chair: Mr Scully, I think it would be useful for the Committee if we

could have an example in writing of what Baroness Kramer is alluding to: where it is working or not working elsewhere. That would help us to make better sense of it, rather than trying to rush through a response today.

Paul Scully MP: Yes, I am happy to do that.

Q6 **Lord Russell of Liverpool:** Could we move on to dispute resolution arrangements? In the current draft free trade agreement that we put forward, there appear to be less developed dispute resolution arrangements on subsidies than on labour and the environment. Why is that?

Paul Scully MP: The position is centred on aprecedented trade deal. The proposals for labour and environment are almost exactly identical to those in the EU's agreement with Canada, so we are not starting with a blank sheet of paper there. For the subsidy control, the precedent-based approach means building on existing commitments and subsidies as per the World Trade Organization rules. It foresees that dispute processes as set out in the WTO agreement on subsidies, and countervailing measures would be the correct means of settling all the disputes. The respective positions derive from the nature of the issues. Labour and environment are a set of standards, but subsidy control involves decisions on individual cases within a broader framework than that.

Lord Russell of Liverpool: Can I assume from that that the Government feel that the WTO dispute resolution arrangement on subsidies, as it is currently being performed, is satisfactory? Is that a good starting point?

Paul Scully MP: That is the proposal we are setting forward, yes.

Jessica Blakely: In our view, the right forum for addressing any issues that we have with the WTO proposal is international, rather than bilateral.

Paul Scully MP: It comes back to the WTO itself.

Lord Russell of Liverpool: My only comment is that since there is shortly to be a vacancy for the head of the WTO, perhaps the Government could try to put a candidate or two forward.

Paul Scully MP: That is duly noted.

Q7 **Lord Faulkner of Worcester:** Can we stick with dispute resolution for a second? What consideration are the Government giving to referring to expert panels in the event of disagreement between the parties? What about setting up a mechanism for engaging with businesses and others on the subsidies granted in the EU, building on the model of the domestic advisory groups proposed for labour and sustainable development?

Jessica Blakely: The expert panels are most relevant for the labour and environmental chapters. There, again, the UK and the EU positions are different. The EU has a proposal for overarching governance with single bodies, whereas we suggest having experts that are relevant to each of the topics, so we can progress the issues in the best way possible.

Lord Faulkner of Worcester: Would I be right in assuming that this is still at a very early stage of thinking on the Government's part?

Paul Scully MP: Negotiations are clearly going through that. As I say, there is a difference in opinion, but ours is essentially based on the precedent. We have a fully formed position, but negotiations continue.

Lord Faulkner of Worcester: Jessica has helpfully said that expert panels and other mechanisms are being thought about. How far has that thinking gone?

Paul Scully MP: Once this starts to crystallise into an agreed position, we will continue to work with businesses and other stakeholders to make sure that we can have full consultation on it.

Jessica Blakely: The proposals for how it would be represented in the free trade agreement are very well developed. I assume your question is about establishing those. As the Minister says, we would do that once we have reached an agreement on the format.

Q8 **Lord Wood of Anfield:** Thank you for being with us, Minister. I wanted to ask you about the state aid provisions that are emerging in the agreement. What is your sense of the EU's position at the moment on state aid? Can you see where the landing strip will be for an agreement between us and the EU on that issue?

Paul Scully MP: As you will have heard from the Prime Minister after the meeting on 15 June, he sees no reason why the EU and the UK cannot reach a deal during this intensified period in July. I am sure you will appreciate that, while negotiations are still in progress, I am afraid I cannot go much further.

Lord Wood of Anfield: Do you accept that it is not realistic to expect the EU to live with an agreement that, for example, gives us freedom to give large grants to pharmaceutical companies, tech businesses or other kinds of service industries to move their operations to the UK, when it would be unable to match those grants because of EU state aid rules?

Paul Scully MP: There are already common rules in the WTO agreement on subsidies and countervailing measures. They prohibit certain types of subsidies. Our UK offer goes further in offering transparency on all our subsidies, on both goods and services. We have that basic measure, as Jessica said, in an international agreement through the WTO.

Lord Wood of Anfield: Are you saying that we are prepared, as part of the discussions, to offer binding commitments on not having subsidies beyond what the EU could tolerate for a deal? Is that part of what we would include in an agreement with the EU?

Paul Scully MP: Our starting point is the WTO measures that I have outlined. Negotiations are continuing.

Jessica Blakely: I know we have discussed the relevance of precedent before. In a situation where no precedent includes that, the question is the other way around: why would they include it for the UK? None of these proposals was included in any of the other precedent trade agreements which they have agreed with Japan, Canada and a number of other developed economies, as well as the TTIP proposals put forward with the US, where they have significant trading volumes. When they are unable to point to a single precedent where this has been included, it starts to question the point about sovereignty.

Lord Wood of Anfield: To be devil's advocate, in areas like road haulage, business travel or financial services, we are seeking way more access than Canada did, for example, when it reached its agreement. Given the level of access we are asking for, would it be reasonable to ask for commitments beyond that?

Paul Scully MP: We are not seeking to be part of the single market. We are not seeking to be part of the customs union. That is why we have taken a position on precedent.

Q9 **Lord Turnbull:** I am now completely confused about the subsidy control framework, and I should think the CMA is. Two years ago, the CMA was told there would be something called the state aid control framework. Now the Minister's reply to a previous report says that we do not necessarily require a domestic regulator. There is a void there at the moment. How advanced is development of the Government's proposed domestic subsidy control framework? When can we expect details of it to be laid before Parliament and in what form? What consultations are proposed to try to fill this vacuum?

Paul Scully MP: As I said earlier, once we crystallise an agreement we will be in a position to consult on the operational nature, as Jessica said. I have talked a bit in my letter about the UK's position on subsidies and the fact that for subsidies the trade agreements do not necessarily require a domestic regulator. Canada, for example, does not have a regulator to fulfil its obligations with the EU. We are working on options for best ensuring that we have compliance with the domestic regime. We will discuss that with key stakeholders in due course.

The policy of the previous Government was that if we left the EU without a withdrawal agreement, the state aid laws would have been transposed into UK law. That would have been made operable in a domestic context, with the CMA as a regulator. Given the ratification of the withdrawal agreement, that was no longer deemed necessary. I speak to the CMA on a regular basis; my department does, as does Treasury. The CMA continues to work with us on forward planning. That will be a factor in the Government's planning going ahead.

Lord Turnbull: There is an important difference, as I understand it, between the state aid framework and the WTO framework. In the former, challenges come from Governments to another Government. Under WTO rules, a challenge can come from individuals and companies. Which of

these approaches do you think will be incorporated into whatever we agree?

Paul Scully MP: We will have to see what is agreed. We have put forward the WTO model, the agreement on subsidies and countervailing measures. As I say, we have gone further than that. We have included full transparency. That is what we have put forward, but obviously negotiations continue.

- Q10 **Lord Lamont of Lerwick:** Lord Wood and Lord Turnbull have explored this subject, but I will push it a little further. In the past, we have never had a domestic state aids regime because the only state aid regime was the European Union one. Now you seem to be saying that the only one we will have is the WTO one. One can see why those in Europe might be a bit anxious about this, particularly when they read perhaps over the weekend that the UK Government have decided to invest £500 million in a failed satellite company. Are you really suggesting that we will just rely on WTO rules, or will a domestic regime come forward in the end?

Paul Scully MP: We believe that a domestic regime is a reserved matter for the UK Government. We continue to work with the devolved Administrations in all this. I hope and expect there to be an announcement very shortly.

Jessica Blakely: We are developing those proposals currently, so we are not able to make an announcement at this stage.

Lord Lamont of Lerwick: I took that as a yes; we are developing them.

- Q11 **Lord Shipley:** Minister, your letter also highlighted the difficulty of developing the new framework in tandem with the EU negotiations. They are both going on at the same time. Could you set out in greater detail how the two processes interact and how the Government are co-ordinating them? This is particularly in a context in which state aid and subsidies seem to be at a different level now, given the coronavirus outbreak and what we have seen some EU countries are doing, which is to extend the range of state aid and subsidies. Has the environment altered? You have two processes operating side by side: what we are doing and the EU negotiations. Then there is the context in which that is operating: the coronavirus pandemic.

Paul Scully MP: With the Covid pandemic, we have come up against state aid rules and had to give due consideration to how we work within them on a number of issues, such as the grants and loan structures. Although we have left, we are still in the transition phase. Under the terms of the withdrawal agreement, the state aid rules still apply within the UK during that period. It is a sole competence of the European Commission. The temporary framework it has brought in was welcome flexibility, allowing us to deal with some of the impact of the coronavirus. Perhaps, Jessica, you can pick up on the way it is being negotiated.

Jessica Blakely: The way we think about the negotiations is that is what we are committing to in an international environment as it relates to

trade specifically. In some ways, it sets a minimum that we are committing to throughout different Parliaments. At the moment, with the domestic regime, we are setting current UK policy. It is within the sovereign rights of the UK to determine that in the best interests of the UK business. The intention is to consult really extensively with businesses and other stakeholders as we develop that.

In that way, the two systems are different. With the EU we would commit to the international commitment that survives a number of Parliaments. What we have in the domestic regime is what we will consult with domestic businesses and other stakeholders on. The two interrelate, which is why we refer to doing them in tandem, although, as I have described, they are separate.

Q12 Lord Lilley: What progress, if any, has been made in working out how the protocol on Northern Ireland regime for state aid, which has implications for the whole of the United Kingdom, might operate in practice?

Paul Scully MP: We are clear that the UK will have an independent domestic subsidy regime that will not be aligned with the EU state aid rules. That is without prejudice to the protocol that was agreed between the UK and the EU. The Commission has been clear that it will not renegotiate that, but it should be stressed that state aid provisions apply only to trade subject to the protocol. We are clear that the protocol is limited in scope to aid that affects trade in goods and wholesale electricity markets between Northern Ireland and the EU. Northern Ireland will be able to enjoy the flexibilities with respect to support for its service industries, which make up a significant amount of our economy.

The Government will provide further information for public authorities before the end of the transition period on how these provisions should be applied to Northern Ireland and across the UK, to the extent that they apply. As you will know, this is a comparatively short-term measure, with the Northern Ireland Assembly having the democratic ability to review the protocol and its workings in four years' time.

Lord Lilley: You say that the EU has refused to renegotiate the protocol. My understanding was that, in European law, the protocol is intrinsically temporary. If you recall, the EU said that it could not negotiate a trade agreement between the EU and the UK while the UK was part of the EU. That was constitutionally impossible. That was why it was not there, yet it negotiated an agreement affecting trade between part of the UK and the EU. I put this to the then Attorney-General and asked how this disparity was reconciled. He said it was because the Europeans said that anything in the withdrawal agreement affecting trade could only be temporary. Are we making much of that in the negotiations? They will have to renegotiate it sooner or later, because it will lapse with the passage of time.

Paul Scully MP: The key thing is that the solution will be lasting in any sense only if it has democratic support. That is why we were able to

include in the negotiations last year the ability for elected representatives in the Northern Ireland Assembly to vote either to extend or to end the Northern Ireland alignment with the EU four years after the arrangements come into place.

The point is that we know that the protocol is there to protect the Good Friday agreement. We are not going back on that, but we have a way here that allows us to transition, working through the fact that the goods and the single wholesale electricity market will keep within this, but it will be up to the people of Northern Ireland and their elected representatives to work out how they think it should go. That seems a sensible way forward.

- Q13 Lord Berkeley:** Good morning, Minister. The continuing apparent uncertainty about what will happen with subsidies or state aid seems to be of particular concern to people in Northern Ireland. Is there nothing that can be done in the short term to give business some clarification, at least to the options being considered?

Paul Scully MP: We have given as much clarity as we can, inasmuch as services will come under the subsidy control that we agree for the whole of the UK, for the domestic subsidy control market. We will continue to speak to all the devolved nations on that basis as that comes forward.

However, the one piece that remains within the state aid rule is goods traded and the electricity wholesale market. We will work with the Ireland/Northern Ireland Specialised Committee, which has already started to work out how to implement the protocol. We will keep them fully abreast and work with them as we arrange our domestic subsidy control, just the same way we will with Scotland and Wales.

- Q14 Baroness Chalker of Wallasey:** Your response to our predecessor Committee, I remember, stated that the Government's "negotiating position on state aid does not necessarily require a domestic enforcement authority". Does this mean that the Government are no longer considering appointing such an authority? If not, what mechanism will there be for enforcement? Have you thought about this? Have you any plans for it?

Paul Scully MP: As I said earlier, we are developing options for how best to ensure compliance with a domestic regime. We will discuss that with the key stakeholders in due course. We do not automatically need a domestic regulator. Other countries do not require that. Canada does not have a domestic subsidy control regulator to fulfil its trade agreements with the EU. We are basing things on precedent.

Baroness Chalker of Wallasey: Have you had any discussions with the CMA about the implication of the Government's decision for the CMA?

Paul Scully MP: Yes, the department regularly speaks to the CMA, as does the Treasury. It provided estimates for how long it would need to prepare for any role in relation to subsidy control. That will be a factor in the Government's planning, but we continue to talk to the CMA.

Q15 The Chair: I would like to ask you a question, Minister, in your role for small businesses. It is not directly linked to this, but while we have you I would like to ask it. It is about the impact of the authorised economic operator scheme and how you are making sure that small businesses will not have onerous administrative burdens because of the scheme. How are you preparing the small business sector, given that Covid-19 has obviously had a huge impact? I am sorry; I have thrown it at you.

Paul Scully MP: That is fine. I will ask Jessica if she has any specifics that she can include. I know you are a big champion of small business. We have done a lot together on small businesses in the past. With the Covid emergency, at every point I have tried to give small business in particular as much warning as to what the Government are doing at any given time, whether it is the support schemes or through the reopening of our economy.

Clearly, that is not always possible. When I was running my small businesses, I could make a decision relatively on the spot, whereas government tends to work in months and years, as you can see from what we are talking about now. This is a few years in the making and we are not there yet. The Covid emergency has meant that we have had to work sometimes in hours. We try to give as few surprises as possible, wherever possible.

That will be the same with this. Whereas the Covid emergency is a situation where the Government can make their own decisions, with our stakeholders and our small business friends there are two parties in a negotiation, so it is not all within our gift. We have to go through the process, which obviously takes more time. We want to give small businesses as much certainty as we can in the coming months to the end of the transition phase.

Jessica Blakely: In relation to the general approach to small businesses, we have been talking about Covid aid under the temporary framework. We are in the process of discussing with the Commission that we can have some easements for small businesses specifically. That is especially important for us in relation to start-ups.

The authorised economic operator scheme is more to do with trading in goods and related customs processes. In negotiations with the EU, we have been looking for exemptions related to small businesses. That is pretty consistent in our approach across different chapters. In one of the chapters that I lead on, for example, it is under state-owned enterprises looking for exemptions for small businesses.

On the whole, the EU has been open to those considerations, certainly in the chapters we have been negotiating with it. At the end of the day, it comes down to the actual effect; what percentage of the population we are talking about relates to small businesses. That is one of the things that will be covered during the negotiations.

The Chair: Thank you very much for joining us this morning. You have

been very succinct and we have managed to finish the session reasonably on time. I would like to thank you for coming in today. If there are any corrections to be made to the transcript, could we have them back as soon as possible? On behalf of colleagues, knowing your busy schedule, Minister, may I say that it is incredibly important to be able to have this conversation with you? We are extremely grateful that you have made time this morning.

Paul Scully MP: It was an absolute pleasure, and I know there was one thing we promised to write to you. I will follow up with you on that afterwards.

The Chair: Thank you very much.