

Northern Ireland Affairs Committee

Oral evidence: [The land border between Northern Ireland and Ireland](#), HC 329

Wednesday 11 October 2017

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Members present: Dr Andrew Murrison (Chair); Mr Gregory Campbell; Maria Caulfield; Dr Stephen Hepburn; Lady Hermon; Kate Hoey; Jack Lopresti; Nigel Mills; Ian Paisley; Jim Shannon.

Questions 1-37

Witnesses

I: Dr Katy Hayward, Lecturer in Sociology, Queen's University Belfast; Paul Mac Flynn, Senior Economist, Nevin Economic Research Institute; Dr Sylvia de Mars, Lecturer in Law, Newcastle Law School.

Examination of witnesses

Dr Katy Hayward, Paul Mac Flynn and Dr Sylvia de Mars

Q1 Chair: Good morning and thank you so much for taking the time to come and talk to us. As you are aware, we have extended our inquiry into the land border, given that a lot has happened over the past several months and we want to make our report when it is delivered as contemporary as possible. We are very grateful for you, in two cases, for coming in again to talk to us and submitting evidence to us again. We are really grateful for your time and we are looking forward to hearing what you have to say. Could I start by asking you very briefly to introduce yourselves and explain briefly what your interest is in this particular subject matter?

Paul Mac Flynn: I am Paul Mac Flynn. I am an economist with the Nevin Economic Research Institute. We are a think-tank funded by the trade unions on an all-Ireland basis, so we have an office in Belfast and an office in Dublin. Our interest in Brexit is very much from a labour-market perspective for my work in Northern Ireland, focusing on the impact on jobs, for workers and incomes in Northern Ireland. As such, we have been approaching Brexit from that perspective.



Dr Hayward: My name is Katy Hayward. I am a reader in Sociology at Queen's University. I have been interested in the impact of European integration on Ireland, north and south, for about 20 years now. I have been involved in projects that look specifically at the impact of the European Union on the resolution of border conflicts, not just in Ireland but specifically in Ireland. I have continued to work since on the role of the European Union in the peace process, north and south. I have been doing a lot of work on the potential impact of Brexit on the border, north and south, and British-Irish relations. Most recently, I have completed a research project on the border region—both sides of the border—looking at people's views about Brexit and the anticipated effects that it might have on them.

Dr de Mars: I am Sylvia de Mars. I am a lecturer in law at Newcastle University. My specialism is EU law. I have come together with some colleagues who are interested in constitutional and international trade law to investigate the particular effects of Brexit on Northern Ireland as a region. We have received funding for this. We have written a number of responses to this Committee as well as policy reports and so on. My particular interest in Brexit is universal. I do EU law for a living, so this is what I am interested in. What is particularly interesting is that nothing is quite like Northern Ireland and how it will be affected by Brexit.

Q2 Chair: That is a good note on which to start. Thank you very much indeed. I will ask the first question, which is to do with the motion in draft form passed by the European Parliament on 5 October, which stated that nothing that is determined in relation to the land border should be taken as a pre-determinant of a future, more general, relationship between the UK and the European Union. The fear was being expressed by Parliament that, since the Irish land border issue is one of the three top issues to be determined initially by the negotiating committees, if that were to be determined it would set the parameters within which we would design a more generic relationship with the European Union. It was seeking to ensure that did not happen.

My question to you is about the extent to which you think that the arrangements that we determine in relation to the land border will impact upon the general relationship between the UK and the EU post-Brexit. Were the European Parliament wise in passing this motion? Does it have much in the way of validity since it is difficult to see how one can establish a working arrangement in the island of Ireland without it having consequences for the wider relationship after March 2019?

Dr de Mars: That is a very good question; I will do what I can to respond. What the European Parliament has done in passing that motion is made it clear that there remains ongoing commitment at the EU level, as well as at the UK level, to find a unique, flexible and imaginative solution pertaining to the land border, simply because there are no parallels to it. However, it is difficult for me as a lawyer to see how a regime that would apply only in Northern Ireland could have no impact on what happens in the rest of the United Kingdom regarding the future



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trade relationship, unless there is a specific arrangement made for Northern Ireland to have unique derogatory treatment from the rest of the United Kingdom.

That motion passed by the European Parliament points out a problem in how the negotiations have been set up, in that it is very difficult to say, “We are going to deal with the Northern Ireland issue in the first stage of negotiations—purely in withdrawal—and then we will go on to deal with our future trading relationship”. They are clearly connected. The European Parliament is shedding light on the problem of trying to separate these problems out between the two stages of negotiation.

Q3 Chair: I can see why the European Commission should wish to do such a thing, but do you think it is possible to establish a credible arrangement in Ireland without in so doing establishing parameters within which we proceed to the next stage, that is to say trade negotiations between the UK and the European Union?

Dr de Mars: As a lawyer, I would find it very difficult to see how everything that would affect the border in Ireland could be dealt with as purely a withdrawal matter without discussing the future relationship. How we withdraw from the European Union fundamentally affects what needs to happen in order to ensure that the border in Ireland remains as it is now, which is the wish that all parties have expressed to date.

Q4 Chair: Dr Hayward, we are in a bit of a fix then, are we not? It seems we cannot establish a precedent or structures going forward, and yet we have to deal with the Irish land border issue as one of the first three issues that we deal with as part of this process. What is to be done?

Dr Hayward: The EU has always been clear that whatever happens in Northern Ireland is not going to set a precedent for elsewhere in the UK or elsewhere in the European Union or its border. It is important we now distinguish between what happens in terms of trading and what happens for the island of Ireland. The European Union’s guiding principles on Ireland and Northern Ireland have explicitly said that the UK needs to demonstrate its understanding of the particular situation in Northern Ireland, which gives rise to the need for a unique solution. In so doing, it is not looking—and it explicitly says this—just in relation to customs arrangements. We also need to think about the social, constitutional, political and other institutional aspects of the particular situation in Ireland.

In so doing, in looking for a flexible and imaginative solution, the European Union has made incredible concessions in many ways, because it is saying it is willing to treat a region of a non-member state—Northern Ireland will not be in the European Union—in a particular, special and bespoke way. That should not have ramifications for the future relations for the rest of the UK and the EU. It will have implications but that does not mean that is a back door to the UK having particular engagement in the single market and customs union.



Q5 Lady Hermon: I was very interested in the update that the Prime Minister gave to the House on Monday. She made it quite clear that there was not going to be a border down the Irish sea. This was the first time we heard other words instead of "soft border", "hard border" or "not going back to the borders of the past"; the new phrase is that there is not going to be a physical infrastructure. How on earth do we take back control of our borders? That has been the mantra of the Government. It has been a very attractive phrase. How do we do that if on Monday the Prime Minister ruled out two options: no physical infrastructure on the border between Northern Ireland and the Republic of Ireland, and no border down the Irish Sea, which of course, as a unionist, I welcome?

Dr Hayward: There are several things going on there. First of all, we should not just think of the border as being the line. We should not think about having a land or sea border. Borders come into play within the jurisdictions and regions we are talking about, in the special rules that apply for the movement of people and goods, etc, within those jurisdictions. It is possible to have rules for one set of goods that is different, say, on the island of Ireland compared to how it would work for GB and the EU.

These rules are very complex and can relate to all sorts of different sectors. It would essentially mean that we are not talking about border controls per se; we are talking about different arrangements that exist for goods coming from Northern Ireland or goods coming from GB or, indeed, coming from outside the European Union into Northern Ireland or GB.

The question of physical infrastructure is a bit of a distraction. It does not mean that we do not have a hard border. Because those rules will be different in Northern Ireland, if the UK as a whole, including Northern Ireland, leaves the single market and the customs union we will have a hard border.

Q6 Lady Hermon: We will have a hard border?

Dr Hayward: Absolutely.

Q7 Lady Hermon: All three of you are agreeing. You are unanimous that there will be a hard border.

Dr de Mars: It depends on how you define "hard" but there will be a border that needs to be passed in a concrete way.

Q8 Lady Hermon: Sorry, I think you need to elaborate. I think we are all sitting here going, "Right, the three of you have now agreed that there is going to be a hard border".

Paul Mac Flynn: To respond slightly to what Katy was saying, any unique solution for Northern Ireland is not appropriate. Given the level of trade between Northern Ireland and Great Britain, to make a special deal for Northern Ireland to prioritise trade with the Republic or wider



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European Union would not make sense in terms of trade volumes. If the UK Government position continues to be a withdrawal from the customs union and if it does not seek to form another customs union on the same basis with the European Union following its exit, then Northern Ireland will be a third country.

The Revenue Commissioner's report in the Republic of Ireland this week highlights that from their point of view, under their existing EU obligations, that will become a customs frontier. You can leave the customs union or you can have a frictionless border in Northern Ireland. Tick one box. There is no option for both.

Dr Hayward: There is an option and it is that flexible and imaginative solution, but it would require differentiation within the United Kingdom, so it would require a special arrangement of some sort for Northern Ireland. The EU, remarkably, is saying that it is willing to accept this in order to avoid excessive friction on the island of Ireland. Let us remember that it is not just about volume of trade. This border is highly significant in many other ways: symbolically, politically, etc. That is why the EU is willing to make this concession in this regard but what it does require is flexibility from the UK.

That does not necessarily mean, as we would imagine it, putting up a border between Northern Ireland and Britain. We have to be careful and think about what sort of border would make sense and in which way Northern Ireland would be part of or engaged with the single market or a customs union. One possible solution would be that Northern Ireland would remain in the customs union or have a customs union of sorts with the European Union. Where you would feel the difference is in terms of third-country goods.

It is absolutely critical, however, that you need a baseline of a deep and comprehensive free trade agreement between the United Kingdom and the EU. That is essential. That will enable the movement of goods and hopefully a relatively unrestricted weight on the island of Ireland to begin with, and of course east-west as well. That is the base line, and on top of that, you can have something particular for Northern Ireland. That will be very difficult to work out. That comes in relation to the future relationship in terms of the trade deal etc, with the EU. Before we get to that point, the European Union is saying that it needs to hear from the United Kingdom that it is willing to have some differentiation and flexibility in relation to Northern Ireland.

Q9

Jim Shannon: Like Sylvia and other members, when you mention the hard border, that is not what we envisaged; it is certainly not what I envisaged, anyway. I had the opportunity this summer to be in Milwaukee; it is a guest-speaking arrangement I have with Irish Fest in Milwaukee in Wisconsin. It was fairly high level this year: they sent Ciarán Cannon, the Minister for the Diaspora, to speak on Brexit. I was given the opportunity to speak for the United Kingdom of Great Britain



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and Northern Ireland, and he was speaking on behalf of the Republic of Ireland.

There would not have been a sheet of paper between us in terms of the consensus of opinion that there was between him and myself on the way forward. I always think we need to have a positive attitude on how to do things. We are very keen within the United Kingdom to ensure that we have a frictionless border where companies can come across. I have a lot of agricultural business in my sector. Some of their goods cross a border three times, to give an example. Ciarán put forward a suggestion of a soft border with the security of regulations being monitored. That was one of the things that came out in the debate in Wisconsin. I am keen to get your thoughts.

The British Government put forward a suggestion on how it would work. Right away, the Taoiseach basically pooh-poohed it. That gave me some angst. Is it not possible that the reality must be that we can work together and we can come to an arrangement? The previous suggestion put forward by the British Government was a very sensible one. It made sure we had the secure border. No matter what, we cannot ignore the fact that international security and the security and safety of our citizens and your citizens has to be secured as well. That can happen even if we have a soft border. What are your thoughts on that?

Dr Hayward: We need to distinguish between the movement of people and the movement of goods. Very positively, it looks like we have made very good progress on the common travel area. There are still some things to work out, but we have made good process there and the European Union is willing to recognise bilateral co-operation and arrangements between the UK and Ireland. That is brilliant. I hope that would have implications for security co-operation too, in some regards.

On the movement of goods, can I give a little example? If we were in a very different situation and it was not the UK but Bulgaria that was leaving the European Union, and the UK was still part of the single market and customs union. If Bulgaria said, "We want to have a good relationship with you. We will streamline our customs arrangements but we also want to do deals with the other parts of the world. We also want to go on our own path and we want to have the ability to have regulatory choices that would be different to yours. We will have different economic goals and different means of achieving them," the UK would understandably be concerned about that. They would imagine Bulgaria doing these deals with wherever. The goods coming in from Bulgaria would have different standards and there would be different conditions applied to those goods.

Being part of the single market and customs union means that those goods are treated as domestic for all intents and purposes, and there would be no means of checking to see that whatever comes into Bulgaria would come into London. That is what is happening and that is why the European Union is insistent that it needs more than good intention or



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good will. The UK has been very clear in saying, "We are going to make different regulatory choices". Theresa May was clear on that in the Florence speech.

Q10 Jim Shannon: We from Northern Ireland will ensure that regulations that are applicable to food stuffs or whatever the goods may be would be up to the EU standard. Is that what you are referring to? I want to see if I have this right, because I cannot see that being a problem. I am a "half glass full" person, by the way. The point I am trying to make is that if you want something to work, you can make it work. I just want to make sure I have it right on that one.

Dr Hayward: I agree with you, Jim. If you want to make something work, you can, and I think there is a lot of opportunity here for making something work in Northern Ireland's interests and the interests of the UK as a whole.

Jim Shannon: And the Republic of Ireland and Europe as well.

Dr Hayward: You distracted me there with the glass half full. You still need the means of ensuring that those standards are maintained or observed. Someone will be able to speak to this much better than I can, but you will need assurance that those regulations can be enforced and that there is a body to ensure that that happens and that checks are done. There are arrangements with Cyprus, for example, where there are means of ensuring that regulations are preserved on both sides of the border in Cyprus. That enables the movement of goods from Cyprus into the rest of the EU with relatively little restriction. That can happen, but that still involves a lot of red tape and regulation. For complete confidence of the EU with no checks whatsoever, you need to be part of the single market and customs union.

Jim Shannon: We are not afraid of red tape.

Dr de Mars: Red tape would be the primary indication here. The way that the EU conducts this kind of business with third countries that it has deep free trade agreements with is that they send inspectors to inspect the goods in question to make sure they are meeting the EU standards. That has to be done on an ongoing basis. This is why talking about no physical border infrastructure is a bit misleading. We are going to have infrastructure; it just does not necessarily have to be at the border. There will have to be depots, for instance, where things are checked and where spot checks can take place to make sure that all the products crossing the border meet the EU's internal regulatory standards.

The bigger issue is if, for instance, regulation starts to change in other parts of the United Kingdom. I will use the example of chlorine-washed chicken. I am also sure no one had any interest in chlorine-washed chicken earlier in the summer.

Jim Shannon: The Americans seem to have survived okay with it.



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Dr de Mars: Yes, but there are different standards at play. No one is saying that chlorine-washing chicken instantaneously harms human health. It is a process that is not as fool-proof or as animal-friendly. It basically resulted in the bad treatment of chickens. You end up with chlorine-washed chicken processes if you want to squash them all into very tight spaces and treat them all very poorly. The EU has said, "That is not how we treat livestock. We would like something different", and if you treat them separately, you cannot chlorine-wash them in order to process them. There are different approaches.

Let us say that the United Kingdom wishes to strike a free trade agreement with the United States. We already have the first kind of indications from the United States that they would then be looking to push on our future regulations in the field of agriculture. I am not necessarily sure that this is a battle that the United Kingdom would be able to win just by saying, "We currently have the EU standards and we are going to stick with those". The United States would apply tremendous pressure to say, "You are no longer in the EU. Start accepting our hormone-treated beef and our chlorine-washed chicken", and so on and so forth. I imagine there would be significant pressure from that direction.

We then get the problem that we might have in the United Kingdom, of circulating both chlorine-washed chicken and EU-compliant chicken. How would anyone know what is crossing the border into the European Union unless this is checked? There will have to be checks of some kind if there is any sort of regulatory change happening within the United Kingdom and the United Kingdom remains one area with Northern Ireland when it comes to trading purposes.

Paul Mac Flynn: In terms of Jim's point about Northern Ireland wanting to maintain regulatory equivalence with the European Union, at present its devolved powers would not allow it to have full regulatory equivalence. It does not have powers over standards and regulations. That has been proposed for Scotland in the Smith Commission. Technically, in future, it is possible.

Q11 **Jim Shannon:** It can happen. We have to get a mind-set, Mr Chairman, and a positive frame of mind and find a way forward to overcome problems, not count how many problems we have. How do we overcome them? We can overcome them, if we really want to.

Paul Mac Flynn: It is probably better to refer to the single market as the internal market because it is still in construction as the single market. There are ways between the regulatory equivalence of technically being outside the single market but removing as many of the non-tariff barriers as possible. The problem with the customs union is that it is an all-or-nothing deal. It is specifically designed to remove barriers between members but to erect them with non-members. Both of those actions are as important as the other.



I am all for flexible and imaginative solutions to the tariff but I am not for illusionary ones. I get what you are saying; yes, the United Kingdom and Republic of Ireland Government have been singing from the same hymn sheet on this. They have both been very detailed in what their aspiration is but not very detailed in how both positions are going to at some point converge on their stated destination. Customs unions are older than internal markets. There are examples of customs unions elsewhere around the world, and where custom unions have failed is where there have been exemptions for certain countries and where the customs union has not been fully complete.

It is worth pointing out that if you could leave a customs union and maintain a completely frictionless border with an existing member of a customs union, why would anybody stay in one?

Q12 Chair: Can I press you on the failed customs unions? You mentioned those, and you mentioned them in plural. I was wondering if you could tell me what they are.

Paul Mac Flynn: The name of it escapes me, but in South America there was a precursor to Mercosur that involved more of the Andean countries, such as Chile and Peru. It failed because the larger countries sought exemptions for a lot of their more protected products from the removal of internal tariffs. In southern African—South Africa, Botswana and Namibia, unless my southern African geography is failing me—there were several attempts at forming a customs union. That had to do with it being a completely unbalanced customs union, with the South African economy being far too large.

The common themes running through the experience of these customs unions were removing internal customs and duties, and full implementation of a common external tariff. That is the recipe for the success of a customs union. I would argue that the current arrangement Turkey has with the European Union does not work for Turkey. It was predicated on the idea that Turkey would gain full membership of the European Union. It is a lopsided arrangement. If, as it seems to be now, at the political level membership of the European Union for Turkey is off the table, any economic analysis would say that Turkey would be better leaving that customs union arrangement.

Q13 Kate Hoey: Do you accept, as some people seem to think, that perhaps the Republic of Ireland sees this whole Brexit issue as an opportunity for them to work towards a united Ireland in the sense that they would love to get a separate arrangement for Northern Ireland because it helps to create that idea that it is different? If the Republic of Ireland were serious about their trade with Great Britain and Northern Ireland, which they should be because they depend on that trade, should they be exerting a little more influence on the European Union itself to be little more flexible and perhaps to go for the model that Switzerland has? Switzerland are not in the customs union or EEA but have managed to get a frictionless tight border with the kind of suggestions you made



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about posts that are not at the border and spot checks and that kind of thing. It is common sense.

Paul Mac Flynn: Absolutely. Do not get me wrong: there are definitely political forces on the island of Ireland who would see this as the opportunity to mark out Northern Ireland as different and use that to bolster an economic argument for a united Ireland. That is a legitimate political objective. It is not one shared by the Government of the Republic of Ireland, purely for the reasons you just gave. When we were talking about making an exception for Northern Ireland beyond what would in the future apply to the rest of the United Kingdom, that is neither good for Northern Ireland nor the Republic of Ireland, even if it does solve the border question. For both Northern and the Republic of Ireland, the biggest export market is Great Britain. For either jurisdiction on the island of Ireland, erecting a border down the Irish Sea benefits nobody.

The Republic of Ireland Government want a UK-wide solution, both in terms of people and trade. That would be best for the Northern Ireland economy and for the Republic of Ireland economy. There are flexible and imaginative solutions. The customs union is where I keep coming up against a wall. I was hoping that the paper released by the UK Government back in early August, both in regards to the customs union and Northern Ireland's specific situation, would reveal some deeper thinking. However, there were two proposals made in that paper. One was for paying a UK or EU tariff on arrival in the UK and then seeking reimbursement for the lower rate if the good either stayed in the UK or went on to the EU—whichever was applicable. That to me is the bureaucratic nightmare. I cannot imagine businesses in Great Britain agreeing to that for the sake of the land border on the island of Ireland.

The other idea is of exempting small and medium-sized firms from customs declaration. That gets rid a lot of the bureaucracy for most of the firms operating on the border. It does not get rid of the issue of compliance. It is grand to say that you are exempting 80% of trade from having to declare customs; you are still going to need checks for the 20%. When we talk about physical infrastructure, whatever the physical manifestation of it, borders are a creature of the activity they are seeking to regulate. They will be as big or as small based on the perceived risk of people not complying with either tariff or non-tariff regulations.

Yes, I agree that we have to be positive. We are however many months on from this. There is little point in constantly raising problems. On the customs union issue, however, I would love if somebody could come back and say to me that they have found a new solution based on the history of customs unions and based on what the current position is from the UK side and the EU side. I do not see a solution on that.

Q14 **Kate Hoey:** The EU already accepts that there is a difference, because they accept that there is a common travel area with the Republic of Ireland and that will stay. They are already accepting a difference when



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we leave with another country within the EU. They accept citizens' rights: that Irish citizens in this country can vote and all this sort of thing. The EU could be moving a lot more on being flexible if they wanted this to be a success, as it is in their interests for it to be.

Dr de Mars: I am not sure that is necessarily true in the sense that whether or not the EU recognises the common travel area is a purely EU matter. It has no obligations to any other countries in the world to decide if it accepts or does not accept special treatment between Irish and British nationals, between Ireland and the United Kingdom. That is a matter that falls outside of EU competence, and they have just said, "We will ignore it". That is what protocol 20 to the treaties effectively guarantees: that there is an exception for the special treatment and it will continue as long as that protocol is in the treaties.

However, when it comes to trade unfortunately it does not only have internal wishes and policies; it also has obligations to the rest of world by means of what it commits to via the World Trade Organisation. It cannot have an exemption for the European Union as a customs union unless it meets the WTO criteria of what a customs union is, which does require it to treat everything outside of the customs union in one particular way as a matter of principle.

I appreciate that, as a lawyer, I am coming up with a lot of rules and saying that there are barriers and restrictions. I imagine that as politicians you say that where there is political will, you can overcome most of those. That is true but there is also a misunderstanding on how much flexibility the EU has on trade issues, largely because it is bound by the rest of the world in a global trade network, where its exceptions for how it runs the single market and how it runs its customs territory are things that approximately 160 other territories in the world have said, "Fine. We will let you do that but only that".

In order for special treatment for Northern Ireland or anything exempting that border to work with the United Kingdom as a third country, they would nonetheless have to commit to creating such a degree of, say, a customs union and a single market for it to meet all of those WTO criteria. We cannot fudge some of the rules relating to what a customs area is for the sake of maintaining the border the way it is now. There are definitions of what a customs union is and there would have to be that level of integration between Northern Ireland and the EU for it to fall outside of those rules.

In a way, the UK has more flexibility on this point than the EU does in a lot of ways, because once leaving the European Union, the UK can indeed decide that, yes, Northern Ireland gets treated in a distinct way or it stays in a customs union or it signs up to all the single market rules. The UK has a number of choices; the EU effectively can either say, "You can join the customs union and be involved in it", or "We might be able to negotiate some kind of exception for you but it would not necessarily



cover the entirety of all trade that takes place between Northern Ireland and Ireland”.

Q15 Chair: We have been talking up to this point largely about trade and commerce but the uniqueness of this situation is clearly that prosperity and security are intertwined. To what extent do you think the European Union has fully understood its obligations to promote peace and security? In particular, to what extent do you think it is observing Article 8 of the treaty of the European Union, which has to do with amity and concord with its neighbours? Do you feel that that is something that perhaps needs to be brought into play more firmly in this discussion, or is it a supplementary issue for the negotiators on the European Union side?

Dr de Mars: It is very difficult to say. I will at this point disclaim that I am clearly not from Northern Ireland or Ireland. My accent gives me away on this point. I would hesitate to express very firm opinions about the extent to which even I understand the situation in Northern Ireland and Ireland, as it were. The European Union is not in denial about this. It takes great pride in its role in establishing the Good Friday Agreement and in arranging for funding to ensure that cross-border co-operation continues to take place. There is definitely a significant understanding of and sympathy for the position Northern Ireland finds itself in within the EU. However, that does not necessarily negate all of its other obligations. It is one factor in the very wide negotiation.

I would also at this point raise a very bizarre example to show that the EU is not completely immune to these kinds of situations where there is a big political history that stands outside of the European Union, and it is willing to make reasonable compromises where it can. One of the strangest examples that I have come across in my work on this is the situation between Bosnia and Croatia. Croatia is in two parts. There is a single stretch of land in between the two parts of Croatia that is Bosnian territory. When Croatia joined the European Union, all of a sudden there was a 10-mile strip of territory that fell outside of the European Union. The EU worked on extensive negotiations with Croatia and with Bosnia, asking, “How are we going to make that work?” The number one problem for Bosnia, as a non-EU member state, was that its primary shipping port in all trade was in Croatian territory, which works not as an analogy but a parallel to how complex the situation in Northern Ireland and Ireland is.

This one port suddenly found itself in the EU and Bosnia rightfully went, “What are we supposed to do now? This is how we deal with all of our international trade issues”. The EU worked out a compromise for them. It established one single road of traffic where Bosnian firms could go up and down as long as they demonstrated they were compliant, particularly in agri-food, with all the EU regulations. They could continue to, without restrictions, use one road to get to that port and start shipping their business out. The demonstration here is that if there is a concrete



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proposal on how these issues can be mitigated from the UK side, the EU is definitely willing to play ball on this front.

What has been missing to date is such a concrete proposal of saying: "The border is this long. Here is where bottlenecks would be. Here is how these could be managed". Whenever I speak to someone of Irish origin about this, they just say, "You cross a farmer's field and you are in the other country. It is impossible to regulate". Perhaps that is true, but it would be helpful if the UK came forward with some suggestions on what kinds of exceptions it would like in order to facilitate the non-hardening of the border.

- Q16 **Mr Hepburn:** How significant is the border in determining whether the UK gets a rubbish Brexit deal, a poor Brexit deal or no Brexit deal? Secondly, on the Spanish issue, how important is that in the current debate on the Brexit negotiations? I understand you have no crystal ball but I am asking your academic opinion: how important do you think that is on the future of Northern Ireland within the UK? For example, if Northern Ireland get a cherry-picked deal and the rest of the UK, say the likes of the north-east, does not, are we going to be much of a bigger supporter of Northern Ireland within the UK?

Dr de Mars: I will take the first question. Most people I have spoken to who deal with international trade to any particular extent and have been watching Brexit would agree that the border situation is the number one problem in stage one of the negotiations. It is the fundamental one. Compromises on EU citizenship rights are being struck. That is happening to some extent.

On money, the money is a political issue. We will eventually find some sort of compromise on the money to get that moving forward. The problem is the border requires concrete solutions and no one has put concrete solutions on the table yet so far. What we mostly have is a bunch of significantly incompatible red lines with the UK saying, "We want to divert in regulations but we also definitely do not want to be in the customs union; we do not want to be in the single market. We want to be outside of all of that but we do not want a border". The EU is saying, "You can be in the customs union, you can be in the single market, or you can have a border". That is the long and short of this.

Within Northern Ireland itself it is very sensitive as to whether or not Northern Ireland can be treated as separate to rest of the United Kingdom. There are a lot of converging red lines here. No one has cut through them and said, "Here is a thing that would work for all parties involved", as far as I can tell. It is the number one stoppage point.

- Q17 **Maria Caulfield:** Your views in terms of flexibility are interesting, because there are a number of other states that have different arrangements with the EU. For example, San Marino and Andorra are not in the EU but they are in the Eurozone. Gibraltar is in the EU but it is not in the customs union. Turkey is not in the EU but is in the customs



union. There are lots of arrangements that are bespoke and have been struck before. Why is it proving so difficult that that bespoke arrangement cannot be done for Northern Ireland? The explanations you have given seem to suggest that if it was done for Northern Ireland it would have to be done for others, but it has already been done for others.

Dr de Mars: It is a matter of scale and scope. Those are micro-states. The level of trade crossing those borders is going to be relatively insignificant. There is not nearly as much traffic there as there is in Northern Ireland. That is one reason why it is slightly different in practical terms.

Beyond that, the exceptions that you have mentioned have also involved a region signing up to the entirety of a part of EU law or not. The real problem that we have at the moment is that the United Kingdom is not willing to say that it is willing to sign up to the entirety of a part of the EU, whether it be the customs union or whether it be the single market. They say they might want to stay involved in some parts of how the EU operates. That is the part that is unprecedented, in that there are only certain EU projects that are opt-in for non-EU member states, but the customs union and the single market for the EU as a whole are not those.

The Turkish agreement is there but it is significantly more limited than what we would want for the Irish border. It does not cover trade in agricultural goods. That would be the primary problem there. Beyond that, it also does not obviate the need for border controls. The border between Turkey and Bulgaria tends to have 17km-long waiting lists for things to be processed and cleared before they go through. There is a level of co-operation there but it is not comparable to the level of co-operation we are seeking in order to maintain the situation with Ireland as it is at this point in time.

Paul Mac Flynn: In terms of examples of other countries, Greenland is an interesting one. Granted, it is a territory of another member state; it is not part of Denmark but it is part of the Kingdom of Denmark and voted to leave the European Union. It is not in the customs territory of the EU but it applies the common external tariff and the Union's customs code, which removes two main blockages in terms of what would create friction. The third component of the EU's customs union is the common commercial policy whereby the EU makes your trade deals for you. Technically, if the UK as a whole continued to apply the common external tariff and brought the EU customs code fully into UK law, it would be outside of the customs union but that would remove the need for any borders.

You could ask yourself what on earth the point of leaving the customs union is if you are going to maintain the common external tariff and the Union customs code. The reason given for wanting to leave the customs union is that there are great trade gains to be made far and away.



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Leaving the customs union will result in a reduction in EU trade, though we do not know what that reduction will be.

It would be interesting if the UK decided in the interim, maybe following the implementation phase, to maintain the common external tariff and the Union customs code. If the Department for International Trade could then find deals where it is worth more to the UK to diverge from the common external tariff and make these other trade deals, and show that that would bring an economic benefit greater than the economic impact that would result from diverging from the EU, then, yes, you have the control and power to make the trade deals but, in terms of a political context, you would have to justify diverging from the EU common external tariff in order to make this new trade deal. If we are going to make a trade deal with India, why would we do all the damage in terms of removing ourselves from EU trade first? Why do we not let the Indian trade deal be negotiated and then mark it up against what we would lose if we had to have a different common external tariff because we have different rates of tariff on goods from India?

That would then cause the political decision to be very much in terms of overall trade—how it would affect UK trade and how that would in turn affect employment, particularly regional employment. We have talked an awful lot about the impacts of the loss of EU trade; that is not going to be felt uniformly around the United Kingdom. I do not just mean in terms of Northern Ireland; I mean in terms of regions of England, Scotland and Wales.

Dr Hayward: It is worth reminding ourselves of how we got to this position. There was not an expectation, generally speaking amongst all quarters, that the UK would be leaving the single market and customs union. It was only when the European Union made it very clear that you cannot be in the single market and not have free movement of labour that that became a position of the United Kingdom Government. Similarly, when the EU said that you cannot make deals of your own with other countries and be in the customs union that that became a standing point, from the Lancaster House speech onwards. We are in a different position to where we were a few months ago on that.

We are now in the position, therefore, with the UK leaving the single market and customs union. As I say, that means a hard border on the island of Ireland. If we are to avoid that, the UK needs to be in the single market and customs union. What we are talking about is a different solution for Northern Ireland. The reason why this is appearing to hold things up is because that willingness and flexibility from the UK side does not appear to be forthcoming.

Q18 **Maria Caulfield:** Can I just touch on something that has not been raised? When I met with Irish Ministers something that was certainly high on their agenda was the issue of the land bridge. For the Republic of Ireland to be able to trade with EU goods, they often use the UK as a



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land bridge to access those markets. Do you know if that is being discussed as part of the negotiations? Is there progress on that? That seems as key an issue.

Dr de Mars: I agree it is as key an issue. It is the same thing as saying that if the land border becomes problematic, why would companies in Northern Ireland not start flying goods to Ireland? It is those kinds of issues of saying, "What are we going to do?" Unfortunately, because of the design of the negotiations, I would guess this is something that has probably not been addressed to date. We pull out first and then after that we can go back to the EU and say, "This is what we want for the future".

Q19 **Maria Caulfield:** For the Republic of Ireland, that must be a key concern.

Paul Mac Flynn: The Road Haulage Association, both north and south, have been pushing this for quite some time. They have a separate issue in terms of single market regulations governing trips that a truck takes from Northern Ireland down to the Republic under the single market regulation. It can make many trips in the Republic of Ireland and bring it back. Outside of a separate agreement for that in terms of the UK having left the single market, that is no longer a standard arrangement.

For the Republic of Ireland, in terms of the land bridge, you just have to look at the time it takes from somebody leaving Dublin port through to Holyhead and then crossing the English Channel versus having to go down to Wexford and get the overnight boat all the way across. You only have to look at the margins that are operating in most haulage operations there to see that that is going to have a significant impact.

I agree that that is probably being held up until they start trade negotiations. Bringing the Irish border issue before the trade talks was unhelpful. Whether that was designed to box somebody into a corner, it does highlight the need to think about Northern Ireland when you are thinking about what trade relationship the UK and the EU are going to have. That is definitely a border issue in terms of road haulage. It is something that needs certainty quickly.

Dr Hayward: To add to that, that east-west trade is very important in trading and economic terms, but it is not as key an issue as the Irish land border because of the significance of that border politically, symbolically, socially and culturally. It has a very particular status, as embodied in the Belfast Good Friday Agreement and has been supported and recognised through numerous EU projects. This is why it is being treated differently, this is why it has that particular status, and this is why it was put as one of the three top issues that have to be addressed.

As I say, it is important that we do not get caught up in the quest for technical solutions at this stage. I have described this elsewhere as this focus on technological solutions being like trying to decide the light



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fittings in a house that you do not even have planning permission for yet. It is a way down the line. Instead, we have to be thinking about what sorts of arrangements could possibly work for Northern Ireland. There is a possibility here of Northern Ireland having the best of both worlds, if you like. It would be extraordinarily complicated but, picking up on Jim's point, if it is worth doing, it is worth investing in and having imagination in that regard. There is a potential here for Northern Ireland to have the best of both worlds, but that requires political will on all sides.

Q20 Chair: As you say, it is unlikely that the Irish land border was introduced as a Trojan horse in order to facilitate a more agreeable trading relationship between the UK and the EU, though it is an interesting academic point. Paul, did you want to add to that?

Paul Mac Flynn: I do not want to sound heartless. My focus on this is on trade and how it is going to affect employment and standards of work. Yes, there are a multitude of other issues and reasons why you would bring the border forward in negotiations. From a cynical point of view, if you got people talking about the border first and said, "Right, if you want a frictionless border", and accept everybody talking about a frictionless border, it then leads you in the situation we are finding ourselves discussing today. When we talk about trade, having accepted that you want a frictionless border, you find that several doors are suddenly closed off to you. I am not suggesting there is some sort of sinister move. It may have been a helpful coincidence to one side of the negotiation.

Q21 Mr Campbell: I am sorry for being late due to a prior appointment. It seems to me that the issue of movement of people due to the common travel areas and other issues are not as problematic as the issue of goods, trade and services. The nub of my question is whether you think there is an understanding and a full grasp, not just from our own UK Government but in Brussels, of the nature, which one or two of you have alluded to, of the physical land border in Northern Ireland and the utter impossibility—not difficulty—of trying to police that for all crossings? Not just for six, eight or 10 major roads, but, as have been alluded to, the hundreds of fields, lanes, minor roads, larger roads, narrow roads and gateposts. Is there an understanding that it will be impossible—physically impossible—to police the movement of goods between Northern Ireland and the Republic? Has that been understood and grasped?

Dr Hayward: The fact that Barnier and Verhofstadt have visited the border, or the invisible border, is very significant and very helpful.

Mr Campbell: One very, very small part of it.

Dr Hayward: It would be good if we saw similar visits from British Ministers as well. They certainly have an appreciation of this. In some ways, the UK is unfamiliar with the land border compared with the experience in the European continent, of course. That is why it is willing to look for flexible and imaginative solutions. That is why the focus on



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avoiding physical infrastructure is not where it is at. You have to be talking about the rules that apply and the arrangements that will be agreed for the UK and the EU, particularly allowing for a particular arrangement for Northern Ireland vis-à-vis the EU.

- Q22 **Mr Campbell:** Sorry that I have to disagree with you but I do not accept what you say about Barnier coming on one visit; I would have thought going round the border for a week would have been a massive lesson. I agree with you that our own Ministers should have done that as well. Setting that to one side, do you think there is a grasp that many businesses in a number of sectors will now see that as a golden opportunity to have outlets on either side of the border for their goods and services? That will give them an input into the UK market and will also give them an input into the EU market; going into the UK market will allow them to trade with the rest of the world, and going into the EU market and the Republic will allow them to trade in the EU. Do you think there has been an understanding that that is what may well emerge over the next three or four years?

Paul Mac Flynn: When we are looking at the economic evaluation of this, it is for the existing businesses and the existing employment that is there and, particularly along the border, you would have small-scale manufacturers who could equally be supplying north and south of the border, or both. It is when you introduce a new cost to business there, whether that is non-tariff barriers or, in the case it may very well be, full-tariff barriers, and when you think of the bigger companies they are supplying into, whether north or south, most of these companies are operating on a very, very small margin. If you introduce this new cost to them, you suddenly make them not the most competitive. You suddenly introduce European Union suppliers for the Republic and international suppliers for companies operating in the UK, including Northern Ireland.

I have heard stories of divisions of multinational firms in Northern Ireland where they are linked into another base in the Republic. If the cost of business in transiting produce north and south suddenly comes into the operation there, the small margin under which Northern Ireland was competitive suddenly evaporates, and maybe that plant gets moved down to the Republic of Ireland or the other way.

- Q23 **Mr Campbell:** You are assuming there would be an additional cost; some people may look upon it as an advantageous cost-saving in that it opens up markets because they have two plants, one in either jurisdiction.

Paul Mac Flynn: The advantage of bi-locating in Northern Ireland and the Republic of Ireland would have been that there was a frictionless border. If you are going to have a trade and tariff border, you might as well go across the Irish Sea. Before the referendum, I thought that Northern Ireland represented a key way into the Eurozone and the wider UK market, and that that was underexploited; it was not marketed successfully as that. Whether there will be opportunities to try to amend



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that offer, I am not sure what we would gain in terms of new business would make up for what we might lose. It is the ripple effects that I am particularly worried about, in terms of smaller manufacturers in the broader border area who suddenly are going to face competition that they would not have, because of this new business cost imposed.

Dr Hayward: In relation to the border region, we are already seeing a re-emergence of what has happened in the past that caused great damage to the economy in the border region in particular, but also in Northern Ireland more widely; that is back-to-back development, with businesses in Northern Ireland, including the border region, facing London and facing into the UK, and businesses in the border region on the south of the border facing down to Dublin. That has created this deficit of development in the border region. That is the most direct effect of having an economic border; immediately there is this zone of underdevelopment as a result of its periphery.

It has taken time and membership of the single market and customs union for that effect to be diminished, and slowly, slowly to have cross-border trade and supply chains developing that are healthy and growing and flourishing in that area. To have an economic border is one thing, but the effect that has on back-to-back developing and the ripple-out effects of that in social terms are very, very significant and possibly much more pressing than any opportunities for bi-locating.

Dr de Mars: On the point of the supply chains, this is such a technical point that it is very easy to miss: we currently have a lot of cross-border supply chains where, say, an animal was killed on one side of the border, then processed on the other side of the border, then sold or consumed back on the other side of the border. If this is something that occurs across all different areas of industry, it is a significant problem in light of Brexit, largely because if a good customs agreement is not struck between the United Kingdom and the European Union in the future, we are going to have problems with rules of origin. That is something that not nearly enough attention has been paid to, either by the UK or the EU.

What ends up happening is that, for instance, for a product that currently qualifies as European in origin because it is produced partially in Northern Ireland, partially in Ireland, then in Northern Ireland then again, if this product now becomes 55% produced in Northern Ireland and if Northern Ireland is not deemed as European any more, all of a sudden you get the external tariff when that product moves into Ireland.

Small businesses are not aware of this nor do they necessarily have the profit margins to be able to cope with such a day-to-night change of what is happening. That is not merely a question of saying that there are tariffs when things move across the border; those tariffs come up at any point in the supply chain. You have to pay them when the product is then moved as it is being put together, i.e. every time you add a wheel to a car, you pay those tariffs as they come and go across the border.



Depending on the industry at hand, that can have devastating effects. I am not necessarily sure there is that much industry that is in a position to say, "We will have two plants in two different countries", versus saying, "We do business now with the plants in the other countries and it will continue to not be a problem".

Paul Mac Flynn: In terms of the rules of origin, that would be the main point. Even the most pessimistic among us would hope that in the final deal between the EU and the UK that there would be no internal tariffs. Granted that is an optimistic situation depending on which day you wake up on. On the treatment of third-country goods and components of goods in terms of rules of origin, it is also worth emphasising that rules of origin are not uniform. Different countries have different rules of origin in terms of different rules for determining where a good comes from. If you get into that territory, you will have further disruption.

In terms of the point Katy was making in terms of all-Ireland trade, it is worth noting that for two regions that are so similar in terms of language, culture and industry, Northern Ireland and the Republic of Ireland did not have the volume of trade between them that would have been expected of two territories that were that similar. The EU and the single market greatly improved that, but it is definitely not what its potential would be. It is not just the trade that could be lost; it is the trade that could be. Katy put it quite well that the turning away back to London and Dublin respectively is a very powerful economic dynamic and is likely to have a very regionally imbalanced impact, in both Northern Ireland and the Republic.

Q24 **Nigel Mills:** I have a few questions, but can I start with where we were finishing there, Dr de Mars? It is a pretty common feature of custom regimes that you get reprocessing relief and issues like that. You can move stuff in, do one task, and move it back without triggering tariffs on both moves. That is correct, is it not? There are pretty well understood options for how you handle that.

Equally, Mr Mac Flynn, on the language, if Ireland are moving goods across Great Britain to get back into the EU, there are exemptions for transiting goods from having to apply customs tariffs at both borders, are there not? Those are standard features.

In terms of frictionless, the phrase that the Government have always used is "as frictionless as possible". They have never said "frictionless". Perhaps you have been hoisting a straw man to have a shot at there. The border is not frictionless now, is it? You have a different currency, VAT requirements when you move stuff across, and regulatory differences for certain goods. No one is pretending it is going to be painless, are they?

What I am most interested in is what the special deal for Northern Ireland might look like. Dr Hayward, you said that we cannot do that until we know what the all-encompassing free trade deal looks like. Was



that what you said earlier? It is quite hard to build the special bit on without knowing the basic bit.

Dr Hayward: It is clear at the moment that we are not moving forward and that it looks unlikely that we may move into the second stage unless we make progress on this issue. Looking carefully at what the EU is saying, it seems to me to be saying it wants to hear something other than talk about customs arrangements. It almost wants to see a gesture in relation to political will on this matter—flexibility in allowing for some differentiation for Northern Ireland to be treated differently as a region of the UK, even once it leaves the European Union.

- Q25 **Nigel Mills:** You are not saying that the EU expects us to negotiate the super-special complicated bit without negotiating the basic bit first? That seems to be quite hard to know. In terms of what those special things for Northern Ireland might be, is there any precedent elsewhere in the world for part of a country to be in a different customs union from the rest of the country? Has that happened anywhere?

Dr Hayward: I do not know the answer to that. What I do know is the special arrangements from the EU that were touched on earlier tend to centre on membership of the European Union. As we in the UK know very well, it is the membership of the EU by the UK that enables that special arrangement for those overseas territories and the like. The starting point for Northern Ireland is that it first and foremost will have been a member of the European Union and of course its close relationship with the Republic of Ireland, which is a member of the European Union. That is the starting point and that is why there is exceptionality here.

- Q26 **Nigel Mills:** I get that. I was asking if any of you had any experience of any other customs arrangements around the world where part of a country was in a separate customs arrangement to the rest of the country.

Paul Mac Flynn: The Greenland one works in reverse. Technically Greenland is still part of Denmark. It is technically in a different customs union. It is adopting most of the arrangements of the customs union but in legal terms, it is not a part of the EU customs territory. In terms of the customs union, in UK terms it is definitely all together or not at all. That would have to be generally accepted.

In terms of the point you are making about deferring customs payments for land bridge crossings, it is worth noting that it goes the other way as well. If you are driving from Belfast to Dublin, all that is coming back at you are Marks and Spencer's trucks that have come across the ferry into Dublin port, bringing stuff into Northern Ireland. The point about that is that it is like when people say, "We are going to have electronic customs declarations and that is going to remove a lot of bureaucracy for businesses", and stuff like that. That is fine. Borders are there for the people who are not filling in the forms. You cannot tell by the look on



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someone's face whether they have filled in their customs declaration or not.

The point that was made on the Sweden-Norway border, where they have a fully electronic system and people are sharing information, was: "Why are you still stopping people and x-raying trucks? They have told you what they have in their customs declaration". They say, "How do we know they are telling the truth?" It is not complex trade infrastructure we are talking about here; basic human nature is going to be the problem. We can start out with a soft border but it will be a border which will be a creation of the dynamic that exists. If you look at how the current border manages differences in excise rates, there is no way the EU is going to allow its customs frontier to be as ill-policed as the excise border is between Northern Ireland and the Republic. There is an industry there in itself already.

Q27 Nigel Mills: I think Mr Mac Flynn agreed that there is no precedent for having a country with two split customs area in it on the scale that we are talking. That leaves us with an exemption for Northern Ireland's small businesses where the EU would just regard those trade flows as being local and not high-risk enough to want to police. Is there any precedent for that local trade being exempt on that level?

Dr de Mars: To a minor degree something like that happens on the Croatia-Bosnia border, where anyone living within 30 kilometres of that border has a special pass that makes it easy for them to cross back and forth. I am not sure to what extent that includes all goods that they might be transporting, but they keep it easy enough for people, at the very least, to come across in that particular fashion.

Again, with the exemption that the Government have proposed for small traders, I ask the question: how do you know what a small trader is? What is small? What if a business expands? What if it ships products via FedEx or UPS? How do you know that what is in one of those shipments is the small trade or the big trade, and so on? Regulation will pile up, even if exemptions are created, in practical terms. You are talking about small traders who would have to prove that they qualify for the exemption.

I appreciate that this is one of those things that are culturally very difficult in the United Kingdom. You need to be able to identify the people in question who qualify for these exemptions and decide whether or not they continue to qualify and if what they are doing there meets the grounds for the qualification. There are going to have to be checks of some kind to make sure that is happening.

Q28 Nigel Mills: We have knocked down all the options now for the flexibility the UK needs to show the EU to move this on. We cannot think of any options that work, other than getting the free trade deal and customs agreement to be as comprehensive as possible and then trying to manage the compliance. Is that where we are?



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Paul Mac Flynn: It is not intransigence on the part of the UK Government. It is not like they are sitting there saying, "That is it. We are not moving". When they made the decision that we would leave the customs union, in terms of options that wiped a load of things off the second-stage approach. Leaving the customs union is a perfectly legitimate political aim if the UK wants to pursue an independent trade policy. That is fine, but then do not turn around when you get to the land border in Northern Ireland and say, "Woah, where have the flexible solutions gone?"

This is why I think the danger is that you could start out with a soft border and end up with a hard border. Like the exemption for small and medium-sized enterprises, the idea was first that they would say that they were only going to stop 6% to 8% of heavy goods vehicles. If you are somebody that is going to want to get around a tariff border, all that says to you is, "Do not use trucks; use vans". We then start checking vans, and then they say, "Start using estate cars". Before you know it, we are checking everybody.

Mr Campbell: They will not be able to check.

Paul Mac Flynn: Absolutely. It comes down to the fact that if you are leaving the customs union, that has an implication for what the border in Northern Ireland is going to look like. Say that one is being sacrificed to the other, but at least be honest about it.

Dr de Mars: The main point here is that "as frictionless as possible" becomes less possible the further we diverge from what the border looks like now and what the EU is doing at the moment. That is the long and short of this.

Nigel Mills: The key is get onto the trade talks and get the free trade deal and the customs arrangement to be as comprehensive as possible.

Dr de Mars: How comprehensive those are will determine the shape of the border in the future.

Lady Hermon: Paul, could I ask you to expand on the comments that you have made about the business that already exists? I take it that the business that already exists is called smuggling in any other language. Let us call it what it is: smuggling. You are anticipating that smuggling is going to increase, yes? Katy, you have been doing a study about the consequences for those living along the border and you are saying smuggling is going to increase. How in heaven's name is HMRC going to deal with this? How are the Irish commissioners in the Republic going to deal with this? How is this going to be dealt with without putting people's lives at risk, called the UK Border Force officials, called the PSNI, called HMRC? How is this going to be done without endangering people along the border?

Paul Mac Flynn: I agree. I would not sign up for a job as a customs officer on a border in Northern Ireland. The reason people are talking



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about physical infrastructure is physical infrastructure is something people can attack.

Lady Hermon: Thank you. We no longer have the watch towers to protect the personnel.

Paul Mac Flynn: The reason I make the point about the excise duty is because that agreement is managed between the UK Government and the Republic of Ireland Government. The common external tariff is collected centrally and then tariff revenues are split out by member states within the customs union. If goods are being transported into a landlocked country but are being brought through the port, and they pay their tariff in the EU port they come into, you could not have it that one country that has a particularly long coastline was managing to get all of the external tariffs for all the landlocked countries. It is shared.

The same thing happened in the southern African customs union as well, for similar reasons. That means that the revenue collected is not going to the Irish Government; it is the EU's revenue collection. The EU will naturally be centrally involved in what any tariff collection or monitoring arrangement would be. It is very much about the issues you describe of either personnel or infrastructure on the border. Yes, that is an issue for the UK and the Republic of Ireland Government, but it is very much an issue for the EU. If it ended up in a situation with people being posted there, they would have as much responsibility for the safety of that operation.

Dr Hayward: It is important to remember that the island status is a help here, in that goods are imported into Northern Ireland and exported through the ports, including Dublin port at the moment. That does create an opportunity for managing the goods coming in at a point where they are transported across in the ports. If we have an arrangement regarding the customs union, what we are looking for is third-country goods. It is not saying that you are going to putting barriers on trade from GB into Northern Ireland. It is not putting a border in the Irish Sea in that regard; it would only be about goods that are third-country goods. There would be different third countries for Northern Ireland compared to GB but that would be all to be arranged. In principle, that would be a point at which we could minimise the need for checks on the Irish land border.

In order to enable that, we need special or particular arrangements within Northern Ireland that would have particular capacity. The Good Friday Agreement has a lot of suggestions in relation to cross-border bodies or competencies for cross-border bodies and implementation bodies that cover a whole range of areas that are so pertinent now if you look at the agreement, including agriculture, the environment, social security, education and healthcare.

The EU is listening out for this from the UK Government: not just to say that we want to uphold the Good Friday Agreement, but to go to the



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Good Friday Agreement and see what is in there that could be used. It is not just talking about structures and institutions, which I think are there, but also talking about principles—principles of partnership north and south, east and west, and principles of equality and mutual respect.

Q29 Maria Caulfield: Is another option to overcome a lot of the issues that we have discussed this morning for the UK to be able to strike a free trade deal with the EU? It is not in a position to do that or even to start that process because until the Northern Ireland border issues are solved, we are not allowed to go on to those parts of the negotiation. Is a simple option not to get on with the trade talks and see if there was a free trade agreement reached, which would solve a lot of the border issues?

Paul Mac Flynn: Maybe an idea would be that you would agree that the Northern Ireland border issue could be solved in terms of people first and then say that we would deal with the trade section of it in the trade talks. Once again, if my pessimistic view of why things were sequenced in a particular way was correct, it would be that things will not be allowed to move on in those circumstances. That is political.

Lady Hermon: We have talked a lot about movements of goods and customs duties. I am really, really very concerned about the emphasis that has been placed on the common travel area; that is to be welcomed, of course, but it only applies to those who are British citizens and those who are Irish citizens. The Republic of Ireland remains within the EU. Northern Ireland as part of the UK is going to come out of the EU. When I hear, as we heard from the Prime Minister on Monday in her statement, that they are working on the details of the principles of the common travel area, that does not deal with the heart of the problem. The heart of the problem would be EU nationals from France, Germany, and Italy are entirely legitimately coming to work in the Republic of Ireland as EU workers. How is that going to be policed along the border? How is the UK Government going to realise that we are taking back control of our borders, including with the Republic of Ireland. How is that going to be realised?

Dr de Mars: They have made it clear in the Northern Ireland and Ireland policy paper that they intend to police internally, through immigration enforcements of checking people's right to work, right to buy property, right to healthcare and things like that.

Q30 Lady Hermon: Where?

Dr de Mars: Once they cross into the United Kingdom. Anyone from the European Union can cross the border from the Republic of Ireland to Northern Ireland. It would not be checked there. If they wish to stay for longer than three months, the UK proposal goes, they would then need to prove they are entitled to stay by showing they have a right to work or a right to buy a house, for instance. Immigration controls are being moved away from the border, if you will, towards life.



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Paul Mac Flynn: I would imagine it would mirror the situation for how non-EU people are treated. There are a small number of situations now with non-EU countries where a visa gives you a right to work in the Republic but does not give you an equal right in the United Kingdom. That is managed in that, yes, you can travel up to Belfast and the rest of the United Kingdom, but the visa that you had would not entitle you to a national insurance number or a bank account.

Now, unfortunately as happens with the current arrangement for non-EUs, that does not prevent you working in the black market or off the books. That is an under-researched area because the possible scale and volume of that kind of activity could be huge.

Your point about EU nationals is very important, because it is often overlooked in Northern Ireland. EU immigration from pre-2004 and post-2004 countries has been incredibly beneficial for the Northern Ireland labour market. They have a higher propensity to be employed and employed full-time. Also, they bring a significantly higher skill profile to Northern Ireland. The rate of economic activity and a deficit of skills are two of Northern Ireland's key economic weaknesses. EU immigration has been incredibly beneficial for that. It is not just what we would lose in terms of people who have made the decision to leave in circumstances following the UK's exit, but those we would have lost out on in the future in terms of bringing that skill and further employment into Northern Ireland.

Chair: You are right to make that point, particularly from a trade union perspective. The issue that Lady Hermon has highlighted would very largely depend on the liberal or illiberal nature of a future UK immigration policy. In the event that it was liberal and required large numbers of migrant workers to continue to come from the European Union, the advantage of using the Republic of Ireland as a continuing member of the European Union to access the UK through Northern Ireland would be at least diminished and probably erased, if it was relatively straightforward to come directly into the UK from the European Union.

Q31 **Lady Hermon:** Yes, but I think the point that the witnesses have confirmed is that it is going to be up to the Police Service of Northern Ireland and the banks in Northern Ireland to do all the checking. There would be an increased burden on them to check for illegal immigrants coming into the United Kingdom.

Paul Mac Flynn: Yes. Based on what the UK Government outlined as their position, that is where the burden would fall.

Dr de Mars: If I could raise a slightly related point that has not yet been picked up on, it is an interesting one: the UK Government and the EU have both promised to continue to respect that those born in Northern Ireland have the right to both Irish and British nationality. The exact wording that is used for this is that the withdrawal agreement should respect and be without prejudice to the rights, opportunities and identity



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that come with European citizenship for the people of Northern Ireland who choose to assert their Irish citizenship rights.

That sounds lovely but one of the practical dimensions of that that has not been considered is that if you have an EU nationality, say Irish nationality, that is only helpful to you if you are resident in a member state most of the time. You would not be able to exercise, for instance, free movement of services the way you currently are if you are resident in Northern Ireland, because once the UK leaves the European Union you might as well be an Irishman living in the United States. Yes, you are a European national but you cannot access the four freedoms in the way that you have before.

This is something that really needs to be picked up on. The four freedoms are dependent on you residing in a member state and exercising a business activity in another member state. It is very, very important that further specificity on this is demanded. It is not clear if small businesses are aware that this is something that they currently take for granted but may not be able to automatically do with the rest of Europe in future.

Paul Mac Flynn: That is a current issue at the moment in terms of a lot of social transfers. For a while there was quite a large difference between the unemployment benefit between the UK and Republic of Ireland. What you found was a lot of people who are ordinarily resident in Northern Ireland suddenly ended up spending a lot of time in aunties' houses in Donegal and then claiming benefits. That is a hard one to police in terms of that, but in terms of further rights to be exercised by Irish passport-holders in Northern Ireland, that needs to be thought about and scoped out.

Mr Campbell: Never underestimate the ingenuity of people that live close to a border.

Q32 **Lady Hermon:** What you have described has the potential to be enormously divisive in Northern Ireland. For those who are perfectly entitled to have Irish passports under the Good Friday Agreement—they can be an Irish citizen and a British citizen, or choose between the two of them—the potential of Brexit now means that those who are European citizens through Irish passports will be able to travel freely without visas or any other restrictions within the rest of the European Union. Those who remain just with British passports in Northern Ireland will be highlighted because they are not going to be EU citizens moving freely within the rest of the EU. Is that not the case? It is going to be very divisive.

Dr de Mars: For the purposes of general travel, the UK seems quite willing to strike a compromise, where in the first three months, if you are moving anywhere, we wish to avoid a visa review. Obviously this requires participation by the EU, but it seems unlikely that the EU would



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subject the United Kingdom to a more stringent visa regime than any other country that it has a waiver scheme with.

In terms of general things, i.e. going on holiday, I would imagine that in practical terms not an awful lot will change. We may have to participate in the European Union's equivalent of ESTA, which I forget the name of, where you pay a minor fee and get pre-customs clearance and so on. That would be the one way in which there would be a concrete difference between Irish passport-holders and British passport-holders. It is when it comes to further rights that the fundamental differences will kick in.

Dr Hayward: In the UK position paper on Ireland and Northern Ireland, they were clear in saying that Irish citizens in Northern Ireland should continue to enjoy their full rights as EU citizens, which is an interesting phrase. We do not really know what that means. You are absolutely right: what does that mean for British citizens in Northern Ireland? There is then the disparity in their rights, which contravenes the Good Friday Agreement. This comes back to that point about flexibility and what the EU may be listening out for from Northern Ireland as a region, bearing in mind that those who are born in Northern Ireland have the right to be Irish, British or both. Both is the critical thing. Being born in Northern Ireland gives you that very unique opportunity to be both British and Irish. Therefore, the region has particular status already. It is recognition of that, and the possibilities that arise from that, such as Northern Ireland getting the best of both worlds, that go beyond the customs issues. That is what the EU is listening out for now, in order to progress this border issue.

Paul Mac Flynn: It could be that the EU decides to treat people who ordinarily live in Northern Ireland with Irish citizenship as if they were living in a member state.

Dr de Mars: It would have to be specifically negotiated, because the thing I am thinking of at the moment is the Faroe Islands, where you have people with Danish passports who do not get to exercise their EU rights unless they are physically resident in Denmark as opposed to in the Faroe Islands. It is difficult stuff.

Lady Hermon: Very, very interesting.

Nigel Mills: I think you all agree with Sylvia's point that there will be more smuggling after Brexit.

Dr de Mars: I am not sure I was the one who made that point. I will take it at this point.

Q33 **Nigel Mills:** Presumably, in theory if there was a tariff on bananas that cross the border and you carry a banana across, you are smuggling. I am not trying to minimise. I am trying to ask the witnesses what goods they would see as having a greater risk of smuggling post Brexit than they are now, given we already have significant smuggling on tobacco,



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alcohol and petrol, none of which would change. In theory, it would be easier to stop people bringing a suitcase full of cigarettes across the border because they would not be allowed to bring more than 200 or something. When you say there will be a bigger risk of smuggling, on what particular goods or items should we be worried?

Paul Mac Flynn: It would depend. The point is right that we have to look at third-party goods here. Third-party goods affect legitimate trade in terms of composite goods sourced in secondary manufacture in the Republic of Ireland or indeed in Northern Ireland, where significant components are coming from outside the EU, transitioning to get further manufacturing or specification at one side of the border or the other. That is a live issue for legitimate business.

In terms of illegitimate trade, it is wherever the tariff differentials are going to be. Wherever there is a tariff differential, somebody will be willing to make a business out of it. I have never bought illegal fuel but somebody is buying it.

Q34 **Nigel Mills:** We have that now, as a separate duty regime.

Paul Mac Flynn: Yes. There is a sort of acceptance that is alright and that is grand, in a very Irish way. It is not. It causes legitimate businesses on the border a significant economic cost. That spreads further and further. The more that things and goods are controlled at the border, the more opportunities there are to make a quick buck, and the more businesses then become involved.

Q35 **Nigel Mills:** I was trying to get some particular examples. We know the average tariff is 3% and we can accept that chocolate, cheese or fresh goods have higher ones. You seem to all agree that smuggling would be worse.

Paul Mac Flynn: It depends what the tariff differential is.

Nigel Mills: We know what the EU's external tariffs are, do we not?

Paul Mac Flynn: If the UK left the EU in the morning, it has said it wants its common external tariff to be what it is for EU countries trading. In that sense, there is no tariff differential but if it wants to make new trade deals, it then disrupts what its common external tariff is. That, from that first trade deal, is where it starts. If the UK does not start making significant trade deals, people would start asking, "Why did you leave the customs union?" Given the amount of trade that they would lose from the EU, they obviously want to make up a fair whack of trade with these new deals. There would be a whole host of goods that would have different tariff treatments coming into the UK. If you ask me what the top goods are going to be wherever the diversion from the current EU common external tariff is, that is going to be your first—

Nigel Mills: If we introduced a much lower tariff on a highly smuggle-able good, there might be more smuggling of that.



Paul Mac Flynn: A smuggle-able good is a creature of the imagination of a smuggler.

Q36 **Nigel Mills:** You do not tend to smuggle fresh goods with a product life of one day, do you?

Paul Mac Flynn: Garlic smuggling is a huge issue because it has such a high tariff coming into the EU. There was a person prosecuted in the Republic of Ireland for it.

Nigel Mills: Now we have an example. I was trying to get to that.

Paul Mac Flynn: That is a significant example. The UK may look to get cheaper food from South America or wherever. People get caught for garlic smuggling, but the differential is so large that people almost go for Chinese garlic and accept the risk that they will get caught.

Q37 **Maria Caulfield:** These are all hypothetical scenarios that may or may not happen. To go back to my question earlier, until we know what the trade arrangements between the UK and EU are, we are not going to get to the nuts and bolts of how goods and services are going to move across the border. Would it not be sensible for the EU to allow trade talks to begin because that will also help the border issues? It will not fully resolve them but you cannot make full progress until you know exactly what your trade arrangements are going to be.

Dr de Mars: There was a report in *Politico* recently that Michel Barnier is attempting to persuade the EU member states that the border, in terms of goods, has to be moved to stage two of the talks and the border as regards to people, safety, security and so on can stay here because we are already close to reaching a compromise on that. The 27 EU heads of state were not being particularly hostile and nefarious when they said, "Ireland needs to be dealt with first". The Government needed a year to figure out what exactly composed the common travel area and what agreements fall under it, how they work together and whether they have been supplanted by EU law. The EU said, "Let us deal with Ireland first because it is sensitive". I hope they are now realistic enough to realise that not all of Ireland fits into stage one of the negotiations. I am hopeful that this is a message that will be received.

Chair: Thank you very much indeed to our witnesses. You have sat through quite a long session today. We are very grateful for your insights into the situation. If you think we have missed anything in our interrogation this morning, you are very welcome to write in with further points that perhaps we might have missed or not had time enough to give their dues. Thank you very much indeed for coming and thank you very much for contributing to what I am sure will be a very useful report.