

Exiting the European Union Committee

Oral evidence: The progress of the UK's negotiations on EU withdrawal, HC 372

Wednesday 24 October 2018

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Members present: Hilary Benn (Chair); Mr Peter Bone; Joanna Cherry; Sir Christopher Chope; Stephen Crabb; Mr Jonathan Djanogly; Andrea Jenkyns; Stephen Kinnock; Jeremy Lefroy; Seema Malhotra; Mr Pat McFadden; Mr Jacob Rees-Mogg; Stephen Timms; Hywel Williams; Sammy Wilson; Mr John Whittingdale

Questions 2984 – 3088

Witnesses

I: Dr Katy Hayward, Reader in Sociology, Queen's University Belfast; Dr David Shiels, Policy Analyst, Open Europe.

II: Aodhan Connolly, Director, Northern Ireland Retail Consortium; Seamus Leheny, Policy Manager, Freight Transport Association; Stephen Kelly, Chief Executive, Manufacturing NI; Declan Billington, Vice-Chair, Northern Ireland Food and Drink Association.

Examination of witnesses

Witnesses: Dr Katy Hayward and Dr David Shiels.

Q2984 Chair: On behalf of our Committee, can I give a very warm welcome this morning to the two witnesses for our first panel, Dr Katy Hayward, reader in sociology, Queen's University Belfast, and Dr David Shiels, policy analyst from Open Europe. You are very welcome. As always with this Committee, and particularly with Brexit, we have a lot of ground to cover, so as succinct answers as possible to the many questions that members will wish to put to you would really help the Committee in its work.

If I could kick off, obviously the Northern Ireland backstop is the cause of the impasse in the current negotiations. I wondered whether you had had a chance to look at the four tests, in effect—the four steps—that the Prime Minister set out in her statement to the House yesterday about what the Government were looking for. Could you let us have your view on those, given the state of the negotiations?

Dr Hayward: Thank you very much for the opportunity to present evidence before you. The four steps that the Prime Minister set out are obviously intended to meet the requirements, as the UK Government see it, of the joint report, hence, for example, the mention of not having barriers in the Irish Sea for goods coming from Northern Ireland into GB. There is an interesting interpretation of the backstop being relevant to a UK-wide customs union.

There seem to be two insurance policies being put forward or suggested by the UK Government to go alongside the insurance policy of the Northern Ireland-specific backstop. Those two insurance policies do not necessarily eradicate the need for a Northern Ireland backstop, and I think we can safely assume that the EU will be insistent upon a Northern Ireland-specific backstop, because there is the plenty in the protocol that it would not be covered by a UK-wide customs union, for example.

The other two insurance policies that the Prime Minister is suggesting are an all-UK customs union on a temporary basis, and then of course the idea of an extension to the transition period. On reading this, I do not see necessarily that an extension to the transition period would negate the need for a Northern Ireland-specific backstop, because of course that puts a time limit on it, and the whole point of a Northern Ireland backstop is that it is not time-limited. As I mentioned, the requirements from the protocol building on the joint report show that there is a need for Northern Ireland-specific arrangements to some degree, regardless of what happens in a UK-wide customs union.

Q2985 Chair: Why do you think that a UK-wide backstop arrangement, which is obviously what the Government are wishing to pursue, could not render unnecessary a Northern Ireland-only backstop? Apart from sorting out what the details would be for a UK-wide backstop, if you had that—if it was legal, it could be operated, there was certainty and it was in the



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withdrawal agreement—why would there still be a need for another one relating to Northern Ireland only?

Dr Hayward: Right from the very beginning, when the Prime Minister triggered Article 50 in a letter to Donald Tusk, she recognised the importance of the unique relationship between the UK and the Republic of Ireland, and also mentioned the Good Friday Belfast agreement, and the importance of north-south co-operation and the peace process. That theme has continued on through the whole process of the negotiations, of course giving rise to the priority given to the question of the Irish border, the peace process and the Good Friday agreement in the first phase. That is because of the richness of the 1998 agreement and the connection between north-south co-operation, reconciliation and normalisation on the island of Ireland.

The details in the Good Friday Belfast agreement go much beyond the question of customs union. There is a focus in the UK-wide arrangement as an alternative backstop, really on trade and on customs. That is an important element, because it relates to avoiding a hard border, but it does not get to the other critical question, and that is sustaining the Good Friday Belfast agreement and the peace process more broadly. There are many things in the protocol as we see it drafted currently from the European Union side that are not touching on trade and customs. They relate to rights, for example the rights of Irish citizens, and north-south co-operation covering a wide range of areas.

Q2986 **Chair:** Are you expecting that those would not be transferred across to a UK-wide proposal?

Dr Hayward: No, because they are particular to the circumstances on the island of Ireland.

Q2987 **Chair:** I am struggling to see why they could not form part of a UK-wide backstop proposal that is only there because of the unique circumstances on the island of Ireland.

Dr Hayward: We need to disaggregate from what is specific to the island of Ireland—for example north-south co-operation, the rights of Irish citizens, the single electricity market, many specifics to Northern Ireland that build on a history of unique circumstances on the island of Ireland and in Northern Ireland. There is a whole range of stuff put in the protocol as we see it from the EU that is specific to Northern Ireland. If the UK comes up with an all-UK arrangement, that is fine, but it does not cover a lot of what is in the backstop that is specific to Northern Ireland.

Q2988 **Chair:** But it could.

Dr Hayward: I do not think it could.

Q2989 **Chair:** Just so I understand, why could it not?

Dr Hayward: We need to be clear if we are talking about trade and customs or the fact that the protocol in the draft withdrawal agreement



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builds on the 1998 Good Friday Belfast agreement, bearing in mind that north-south co-operation in particular is recognised by the UK Government and by the EU as being essential to the process of reconciliation and the sustainability of the peace process.

There is a lot in the protocol. We have not yet seen the details, I have to say. We have not seen the annexes and what they will cover, but electricity, telecommunications, energy, the environment, broadcasting and a whole range of areas work on a north-south basis on the island of Ireland and will need specific arrangements to sustain after withdrawal. A customs arrangement is different; it is in addition to a particular area of the protocol that of course is the point of contention.

Q2990 Chair: I think the Government themselves acknowledge that the proposal they put forward in June was, as I characterised it, half of a backstop, because they said, "We are going to need to say something about regulations", which they have not yet done, although they have offered a common rulebook in the Chequers proposals, and so maybe you might take that, slot it and say, "There is the other half of our backstop proposal". We will wait to see what the Government do.

Dr Shiels: The problem with the idea of the customs union as a backstop is a political one from the EU's point of view, in that I do not think the EU or the Irish Government would believe that a longer-term customs union would be politically sustainable from the UK point of view. You can see that obviously Back-Bench and parliamentary opinion may not sustain a customs union in the longer term. The EU still believes that there will be a need for a Northern Ireland-specific backstop if some future Government were to come in and say that we could no longer hold this position and took to change the terms of the question, so to speak. That is the fundamental reason, from the EU's perspective, for the Northern Ireland-specific backstop.

Q2991 Chair: There is a final question from me and then colleagues will come in. It has been briefed in the last couple of days that the EU may be about to propose that a UK-wide backstop proposal could be covered by a separate treaty that would be referenced in the withdrawal agreement but could not be concluded under the Article 50 process. Presumably it would have to be concluded very soon thereafter, but that would be separate from the future partnership negotiations. Do you see any merit in that?

Dr Shiels: Yes, that would be a possibility, but that again comes down to the question of whether that is politically sustainable from the UK perspective. Also, there would be questions and concerns, from those in Northern Ireland who are concerned about the backstop, about whether that would be legally sustainable, what the consequences of that would actually be in the longer term, and whether there was still a Northern Ireland-only provision within the withdrawal agreement. It depends if that overrides the Northern Ireland-only backstop or if it still exists.



Dr Hayward: The reason why Northern Ireland is covered in a particular protocol in the withdrawal agreement is a difficult question, because it is in a sense dealing with the future but it is part of the Article 50 process. Why is that the case? It is really going back to the unique circumstances on the island of Ireland; those have been recognised by the UK Government as well as of course on the EU side.

This has allowed the EU to have this protocol in the withdrawal agreement to meet the commitments made in the joint report. The phrase used is “flexible and imaginative solutions”—that is what the EU is saying. Of course, the whole point of the backstop is that it is legally binding. We know for historical reasons why in Northern Ireland we would like to see something that is legally binding and certain.

The question becomes then about an all-UK arrangement. The EU does not want to do an all-UK arrangement, because it is a very different scenario doing something for the whole of the UK compared to doing something for Northern Ireland, which is worth 2% of the UK economy; it is a small, particular region with particular circumstances. It can stretch to a certain degree for Northern Ireland but not for the whole of the UK.

How do you get around having something that is legally binding for Northern Ireland but not an all-UK scenario? It has been clear for a long time that Michel Barnier has been talking about the possibility of the UK being in a customs union with the EU. That has been on the table for some time. That has been the UK’s decision to take or not. The question is about how you can make that legally binding at this stage. Bluntly, it is very difficult to do so. Putting a clause or a point in the withdrawal agreement about the commitment to making a future treaty seems to me to be a point where the two positions try to meet and compromise on that, to give some sort of legal certainty to the fact that there will be a treaty on this matter without getting into the future relationship, which cannot, as you are well aware, be discussed or decided at this stage under Article 50, which is obviously for after exit day.

Q2992 **Sammy Wilson:** Dr Hayward, you have written extensively on the impact of Brexit and the absence of any separate arrangements for Northern Ireland with the Belfast agreement. It depends really how embedded the EU’s role is in the working of the Belfast agreement. Is the EU a signatory to the Belfast agreement?

Dr Hayward: No.

Q2993 **Sammy Wilson:** Are there any references in the section of the Belfast agreement that refers to north-south co-operation to the importance and the role that the EU would play in that co-operation.

Dr Hayward: There is in relation to the implementation bodies and the North/South Ministerial Council, yes, in the working of the European Union.

Q2994 **Sammy Wilson:** It is only on the basis of EU grants through the SEUPB.



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That is the only reference to the role of the EU in north-south co-operation.

Dr Hayward: Is that a question?

Q2995 **Sammy Wilson:** I am asking you, yes. The premise that has been made is that the EU is so embedded in north-south co-operation that north-south co-operation could not possibly continue in the form that was intended if we were to be out of the EU.

Dr Hayward: In the joint report from the UK and the EU, it specifies that the legal and policy framework of the European Union has been vital to north-south co-operation. Therefore, it talks about the threat posed by the UK's withdrawal from the EU to north-side co-operation.

Q2996 **Sammy Wilson:** Let us leave aside how foolish the UK side might have been in accepting the role from the EU. Do you accept that on tourism, for example, which is a big area of co-operation, there is no EU involvement? In InterTradeIreland, there is no EU involvement. Many of the health initiatives that have taken place between Northern Ireland and the Irish Republic—Altnagelvin cancer centre, the arrangements for dealing with children with heart problems—are Government-to-Government and would continue to operate regardless of whether we were in the EU, out of the EU, had a backstop or did not have a backstop.

Dr Hayward: Concern has been expressed by people involved in many sectors, including the health sector, about the possible effects of Brexit—for example, especially in the event of no deal, the recognition of medical devices being suitable for use across the jurisdictions, prescriptions, drugs, data on patients and if that could be transferred safely. A lot of this now, of course, is not worked on with bilateral arrangements; it is worked in the context of European integration.

That is not to say that there cannot be bilateral arrangements in certain areas. We need to bear in mind, too, that the Common Travel Area is not designed to meet such requirements at the moment. We need significant advancement on defining the Common Travel Area and putting it into legislation. For example, mutual recognition of qualifications can be done on a bilateral basis, but it has not been done yet, because it is being developed at the moment in the context of EU membership.

Q2997 **Sammy Wilson:** However, what you are saying is with co-operation, data sharing, mutual recognition of qualifications, and ongoing arrangements between Departments north and south, co-operation is possible. Co-operation would only be impossible if the Government of the Irish Republic decided that it no longer wished to co-operate on a Government-to-Government basis.

Dr Hayward: No, that is not what I am saying, because a lot of what has happened with the threat for Ireland, and indeed of course for the UK, is that in relation to rules about data protection, a lot of this is governed by the European Union. It would not be the case that Ireland can make



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decisions on all of these areas of north-south co-operation unilaterally to make an arrangement with Britain. It cannot happen that way. This is why it is in green text—that means to say it is agreed in text as well as in principle—that north-south co-operation will have to be part of the protocol of the withdrawal agreement, because many of these cannot be covered bilaterally. As I say, we are yet to see the detail of what that entails, but there is a whole range of areas that could not be covered bilaterally, because the Republic of Ireland would not be in a position to do so.

Q2998 Sammy Wilson: There are many areas, including some of the ones I have mentioned, which the EU has no say in. I just want to establish that co-operation is still possible in a wide range of areas, because the EU's role in co-operation was never embedded; in fact, it is not even mentioned in the section, apart from the grant aspect that existed cross-border in the Belfast agreement.

Could I ask one other question? You have written that to suggest that the backstop arrangement would be "a threat to the integrity of the UK" is "both false and futile". Given what you have said about how deep the EU would require Northern Ireland to be embedded in the rules of the EU under the backstop—it would include all of the regulations on the environment, working directives, standards, animal health, et cetera, and indeed the EU has said that Northern Ireland would be considered as part of the customs territory of the EU—is that not a constitutional change in Northern Ireland's position?

Dr Hayward: Just to pick up on the point you mentioned before you went on to your question, the European Union has been the vital context in which we have had a growth of cross-border co-operation and integration across Europe, as well as most particularly in the Irish border region, and that is why it has been such an important context for that. It is important just to recognise and reiterate that.

On the question of the constitutional integrity of the United Kingdom, as is set out not only in the Good Friday Belfast agreement but also in UK law and of course in the Irish constitution, there will be no change to the constitutional status of Northern Ireland unless a majority of Northern Ireland vote for it to be so in a referendum, and indeed—an interesting point—a majority in the Republic of Ireland also vote for Northern Ireland to become part of a united Ireland. Until such a point, there will be no change to Northern Ireland's constitutional place in the UK.

Q2999 Sammy Wilson: Could you explain to me how, if those laws are made in Brussels and not in either Northern Ireland or London, we would not be regarded as part of the EU customs territory, and what all of that means in terms of where laws are made, how laws are made, what the laws cover, et cetera? How does that not represent a change in Northern Ireland's position within the United Kingdom?



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Dr Hayward: Northern Ireland has already always had a unique position within the United Kingdom. It has always had differentiated arrangements. In fact, the whole of the UK is made up of differentiated arrangements. There is a different law in Scotland public administration to England, and the same for Northern Ireland. There are interesting questions to be asked about governance for Northern Ireland after Brexit.

You are right to pick up on the question about what representation there would be for Northern Ireland if regulations were developed in the EU. This would be a point for negotiation after withdrawal in the future relationship negotiations. I presume that there is already a discussion going on on that, and of course a specialised committee, as is allowed for or accommodated in the protocol in the draft withdrawal agreement, does allow for representation of particular concerns and issues raised arising from Northern Ireland vis-à-vis the withdrawal agreement. That will go on into the future in relation to the withdrawal.

On the question about what happens to the governance of Northern Ireland, or the representation of the Northern Ireland's interests in the EU, it is true that if Northern Ireland has a closer relationship to the EU, and as such that involves, say, a pseudo EEA membership, then you would imagine that that gives Northern Ireland certain rights to be represented at EU level in a decision-shaping role, or EEA or EFTA observer status. Of course, this would be unique for a sub-state region, so it would have to be carefully negotiated. Again, the unique circumstances of Northern Ireland, including vis-à-vis the Republic of Ireland, would play a part in such a negotiation.

There are many questions to be asked about that, but that would be subject to future negotiation. It is not the case that Northern Ireland would simply have to enforce those laws coming down from the EU with no say whatsoever.

Q3000 Sammy Wilson: The Prime Minister of the United Kingdom believes that it would represent a change in Northern Ireland's position within the United Kingdom, hence the reason why she has refused to accept that backstop arrangement. Of course, I think the reason why you are dancing on the head of a pin here is you know that if you were to accept the Prime Minister's interpretation, the logical conclusion that would come from that is, if our laws are not made in our country and made somewhere else, our constitutional basis changes. Do you accept that that would be a very significant and clear breach of the principle of consent that is embedded in the Belfast agreement?

Dr Hayward: No, I do not, because the principle of consent is clearly about a majority in Northern Ireland voting to stay in the United Kingdom or voting in a referendum to be part of a united Ireland. The principle of consent has been used widely. It is interesting to note, of course, the Belfast High Court and Supreme Court ruled that the principle of consent does not prevent the UK from withdrawing; it is not relevant in the UK's



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exit from the EU, because it is very specifically about whether Northern Ireland will become part of a united Ireland.

Q3001 **Sammy Wilson:** The principle of consent does not apply, then, to the annexation of Northern Ireland by a country other than the Irish Republic.

Dr Hayward: The principle of consent is just with regards to referendums on whether Northern Ireland will become part of a united Ireland.

Q3002 **Sammy Wilson:** If we have Northern Ireland laws made in Brussels without any input from Northern Ireland, and laws separate from the rest of the United Kingdom that then affect our economic, political or constitutional relationship with the United Kingdom, you are saying that the Belfast agreement allows that change to be made without the consent of the people of Northern Ireland.

Dr Hayward: Laws in Northern Ireland are already separate. Northern Ireland already makes its own laws.

Q3003 **Sammy Wilson:** Yes. Northern Ireland makes its own laws under a constitutional arrangement with the rest of the United Kingdom. Northern Ireland will not be making its own laws under this backstop arrangement, because they will be made in Brussels without Northern Ireland's consent and without any input from the UK, which will have left the EU at that stage.

Dr Hayward: A specialised committee, as is provided for in the protocol of the draft withdrawal agreement, says that there will be representation from the EU and from the United Kingdom with regards to issues arising from Northern Ireland vis-à-vis the withdrawal agreement and specifically the protocol. We do not know what that would look like; we do not know whether that would entail representation from Northern Ireland or whether there would be Ministers from Northern Ireland. We do not know; it has not been detailed. That is provided for, and it is agreed, in text and in principle, that that will happen.

As I say, with regards to the future, we will not know the future for a long time. We do not know how Northern Ireland will be represented at that level, but in theory, there will be the possibility of the UK making the case that Northern Ireland should have observer status—a decision-shaping role—at the EU level with regards to specific areas. It will be very specific; this is not broad EU law still applying to Northern Ireland. Northern Ireland will no longer be in the European Union. It will not be an EU member, and there will be consequences from that. With regards to specific areas of regulation, for example, that would affect Northern Ireland or may be relevant, then I would expect the UK Government to be making the case for Northern Ireland to be represented at EU level in a decision-shaping role.

Q3004 **Stephen Timms:** Can I ask you about some of the consequences for



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Northern Ireland if we leave the European Union at the end of next March without a deal? My first point is about the exchange of personal data. A Minister yesterday made clear to the European Committee that there will not be an adequacy agreement in place for the exchange of personal data by the end of next March. What would the consequences be for north-south co-operation if we were to leave the EU without a data adequacy agreement in place?

Dr Hayward: That is a very specific question. I have to say I have not looked into that in any detail. A general point would be that data-sharing and adequacy in relation to data protection has been vital for security co-operation on the island of Ireland between PSNI and Garda Síochána. There are also consequences, as I mentioned before, in relation to patients' data, particularly with regards to specialised provision that is done on economies of scale in the north-west of the island of Ireland, for example. An interesting issue also arises with regards to those who may use credit unions or borrow money on either side of the border. There is a whole area of financial services, which I am not an expert in, where I know there are concerns about the consequences of not being able to share data or see it as adequate for provisions on the other side after Brexit.

Q3005 **Stephen Timms:** The health co-operation that there is at the moment across the border does depend, does it, on the exchange of personal data about individual patients?

Dr Hayward: Yes.

Q3006 **Stephen Timms:** Another aspect of no deal would be obviously what sort of checks are put in place at the border. What would be the consequences if the British Government decided to waive all customs and regulatory checks for goods entering the UK via the land border with the Republic of Ireland? What would happen in practice, do you think, if the British Government were to make that decision?

Dr Hayward: If the UK Government say that they are not going to enforce a border, essentially, it is a wide open border for smuggling. There is a reason why countries enforce their borders, and it is not just in relation to tariffs, quotas, standards, and the like; it is also to prevent goods that people do not want coming in to their countries from coming in. When we hear this idea that the UK Government just simply decide not to enforce a border, I do think as citizens and consumers in the UK we might be concerned about that.

Q3007 **Stephen Timms:** Given that, at the moment, goods are coming freely across the border, why would it cause difficulty for us in, say, April next year, assuming there is not a deal? Why would that put consumers in the UK at risk?

Dr Hayward: Because at the moment, of course, the UK and the Republic of Ireland are in the same customs union, so they are enforcing the same customs codes at their entry points. If there is no deal, then of



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course there will be different rules being applied. Tariffs would have to be imposed on certain products.

Q3008 Stephen Timms: Can you give a specific example of a risk to consumers in the UK if there is not a deal and if in April, May, or June next year the Government were not carrying out any checks on that border? What sort of practical risks might there be for consumers in the UK?

Dr Hayward: Customs relates to goods that require certain standards for the health and safety of consumers. I am trying to think of non-controversial issues. In relation to food products, for example, or in relation to toys, if the UK is basically saying that it is not enforcing a border at this point, then there is a risk of the smuggling of dangerous goods into the UK through its open borders. I would presume that, in order to protect consumers, the UK would want to enforce customs controls at its borders to prevent, as I say, the open border—"We are not making any checks or controls at this border"—and the risks that that would pose then to consumers.

Q3009 Stephen Timms: In the event that there is not a deal, is it possible that the Irish Government might choose also to waive customs and regulatory checks on their side of the border?

Dr Hayward: A border is enforced on both sides, and both sides of that border have responsibility internationally to enforce the rules that apply, whether that be WTO rules, EU rules or whatever it might be. The Republic of Ireland would be required to enforce those rules just as the UK would be required to do so.

Q3010 Stephen Timms: If both Governments chose not to, and just decided it was not in the interests of their citizens to control the border, could that carry on for months or years in practice? What would actually happen to stop it if the Governments chose to do it?

Dr Hayward: It is not their choice to say whether they are going to enforce the border or not. They would be obliged to do so under international law. On the Republic of Ireland side, of course, in the whole of the EU, there would be the expectation that a customs border would be enforced.

Q3011 Stephen Timms: Who would enforce that obligation in practice?

Dr Hayward: On the UK side, it would be the UK Border Force, and on the Irish side it would be the Irish Revenue Commissioners.

Q3012 Stephen Timms: My question is, if the Irish Government were to choose not to enforce that border, how would it be prevailed upon to do so? What would change that?

Dr Hayward: The Republic of Ireland is part of the customs union of the European Union. It would be obliged to enforce the border under international law, just as the UK would be. There are reasons why customs borders are enforced.



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Q3013 **Stephen Timms:** Are you saying, then, that the European Court of Justice, perhaps, would force it to control the border?

Dr Hayward: It is in the Republic of Ireland's interests that, if you have a border that is as significant as the Irish land border would be if we leave with no deal and we are under WTO rules, that border would not be an open gateway to smuggling, just as it would be to the whole of the EU. Not only would it mean risk to consumers, but it would also mean a loss of revenue and the like. It would be in their own interests to make sure that this swinging gate does not become a risk, not only to citizens and consumers, but of course to the rest of the EU.

Q3014 **Stephen Timms:** I was wondering if Dr Shiels had anything to add on this.

Dr Shiels: On the UK side, the Government have made clear that they would not impose a border even in no-deal circumstances. If you do not do customs checks at the border, that might be a breach of WTO rules. That might be okay in the short term. It would be whether there would be any remedial action that the WTO could bring, and whether or not another country brought a case against the UK, in those circumstances. That would be quite a slow process. Probably for a period of months it would be possible to actually continue pretty much without checks at the border.

On the Irish side, the Irish Taoiseach has said repeatedly that his Government are not preparing for a hard border or for border checks under any circumstances, including under a no-deal scenario. The question is whether the Irish Government are thinking that no deal is a very unlikely outcome, or whether, if there was no deal in the longer term, there would be an internal EU debate between Ireland and the other 26 members about what would happen in those circumstances.

It is not impossible. There was a report in the *Financial Times* the other week about the possibility that some EU member states may come to the view that if Ireland is not going to impose a land border, there may have to be checks between Ireland and the rest of the 26 countries. That is something that would be politically really controversial to Ireland, and I think that would be an impossibility, but it is certainly a debate that might be had.

Q3015 **Jeremy Lefroy:** Good morning to both of you. Could I ask both of you what the implications are of Stormont not functioning for the Article 50 negotiations?

Dr Shiels: Obviously, that adds a further complication to a really complicated situation. If there was an Executive at Stormont, and if there was co-operation between the parties at Stormont, it is possible that they may have been able to take a more pragmatic attitude to some of these issues. It is a sort of vicious circle, because the fact that there is no Executive running makes the Northern Ireland issue more complicated in the Brexit negotiations, and the fact that there is Brexit is making the



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restoration of an Executive even more complicated. It is sort of going around in circles, and one makes the other harder. The political situation now with the way the debate is going makes it very difficult to see a restoration of the Executive any time soon.

Dr Hayward: One specific point is the lack of representation from elected Ministers on the Joint Ministerial Committee (EU Negotiations), for example. The Joint Ministerial Committee plays an important role, and having a very senior civil servant representing Northern Ireland is not adequate or sufficient given the significance and the consequences of Brexit for Northern Ireland. That is one particular example, because of course a senior civil servant cannot speak with as much authority as a Minister.

More generally, it is unfortunate that we have a sort of perfect storm for Northern Ireland at the moment with the fact that the Executive and Assembly are not sitting, and the uncertainty about Brexit. With any uncertainty in Northern Ireland, it always has particular consequences for people's sense of the stability of the peace process, bearing in mind that it is not a perfect peace process; there is still violence perpetrated by paramilitary organisations, for example, and there is still instability in many ways. Bringing the lack of representation into the mix then is very dangerous, bearing in mind of course that the whole Good Friday Belfast agreement is premised on the idea that democratic representation is the alternative to violence. You achieve your political aspirations through democratic means, and it is important that those democratic means are functioning properly. The longer they do not, the riskier it is for the peace process.

Q3016 **Jeremy Lefroy:** Could I just ask both of you whether a backstop option that is agreed without the consent of the institutions in Northern Ireland could be an all-weather, permanent, robust backstop?

Dr Hayward: In legal terms, the Northern Ireland Executive and Assembly does not have a say over international relations; that is for the UK Government and UK Parliament to decide. To be direct, it does not have an impact, no. More generally, on the question of consent and of engagement from Northern Ireland with regards to the backstop, it is possibly worth noting—and you may hear this later—that the majority of businesses, civic leaders and indeed political parties in Northern Ireland say that a backstop is acceptable, most particularly as an alternative to no deal; if it is between that and no deal, the backstop is preferable.

Dr Shiels: First of all, the problem is if you impose a backstop that may be, say, controversial to unionists, that makes it more difficult to get an Executive or the Assembly institutions up and running again in the first place. There would be a political fallout from that that we would all have to be careful about. There are also questions about how the backstop would work in terms of the functioning of the Assembly and in terms of the petition of concern and the cross-party veto if the Assembly is expected to implement EU regulations in Northern Ireland. What does



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that say about the actual operation of the Assembly and the issues like the petition of concern and cross-community support? It is possible to envisage a scenario where the Assembly would, on the cross-community basis, refuse to do that, and that would be politically problematic.

Q3017 Andrea Jenkyns: I have to declare an interest. I have just done a quick Google of Dr David Shiels's Open Europe, and I have noticed that one of the founding members was a campaign donor of mine, and so I declare an interest. David, in Open Europe's recent report, "No Deal: The economic consequences and how they could be mitigated", am I correct in saying that leaving with no deal would be much milder than generally assumed?

Dr Shiels: That is what the report is arguing, yes. Leaving on a no-deal basis would lead to slower growth of GDP in the longer term than would happen with a deal, but it would not be economically disastrous.

Q3018 Andrea Jenkyns: It was zero point something per cent, I think it said.

Dr Shiels: Yes.

Q3019 Andrea Jenkyns: Is it the case that your report shows that the UK exiting the EU will unlikely be a determining factor for the UK's medium and long-term growth prospects?

Dr Shiels: I was not the author of the report. You would need to have some of my colleagues to speak about it. The report was arguing that it would depend on the policy options and decisions that were made by the UK Government, and there were situations that would affect economic growth. That is what it was essentially saying.

Q3020 Andrea Jenkyns: Therefore, is the conclusion of Open Europe that however not ideal, which I am sure we will all agree here, no deal would not be a disaster for the UK economy? Obviously, we would prefer a deal, but it would not necessarily be a disaster if we had no deal.

Dr Shiels: It would not be a disaster. There would be political consequences, obviously, which are a separate matter, but from an economic perspective, that report would be less concerned.

Q3021 Hywel Williams: Good morning. I just wanted to ask you about the consequences of not having an Executive or an Assembly. In our brief, it says an agreement seemed close following a fifth round of talks in February, but the DUP leader Arlene Foster said that a deal proved impossible because of the standalone Irish language Bill requested by Sinn Féin. Can you just explain for the Committee's benefit why the language Bill is so contentious—contentious enough to sink the agreement—and in consequence the difficulties that has provided for Brexit? Can you do that briefly?

Dr Hayward: It is probably better for politicians in the party who made that decision to explain it rather than me; suffice to say that there has been some difficulty in questions of trust and co-operation, perhaps



putting it broadly, between Sinn Féin and the DUP as the largest parties in the Assembly and Executive for some time. There have often been febrile moments of distrust between the parties, and questions of cultural significance have come to the fore, bearing in mind the assumption in the agreement, which many of us would possibly question a little, of the idea of there being two communities with separate ethos, identity and political aspirations.

Recognition of the Irish language—even though I gather from the proposals it would be far less than is recognised for the Welsh language in Wales, for example, or Gaelic in Scotland—becomes symbolically significant. Progress in Northern Ireland of course depends on compromise and mutual concessions, and sometimes issues that seem very small become highly tokenistic and symbolically important. The possible reason why the talks did not succeed in February was not necessarily just because of the Irish language Act in particular, but it represented more fundamental tensions still between the two parties, particularly with regards to the current situation, you may say.

Q3022 Hywel Williams: In your opinion, therefore, there has been a lack of trust and co-operation symbolically on that particular issue. There is a greater political process, and in fact the difficulties provided by Northern Ireland are to do with Northern Ireland, rather than Brexit.

Dr Hayward: Northern Ireland has enduring challenges, you might say. Let us take this opportunity to note the importance of a good, close, trusting British-Irish relationship in order to sustain the peace process and power-sharing co-operation in Northern Ireland. It has been absolutely essential. If you have, of course, the issue of the border apparently back on the table, at least about the future or the shape and nature of that border, and then you have the British and Irish disagreeing publicly about that future, it does add to the difficulty of building trust and co-operation between nationalist and unionist parties in Northern Ireland.

That is not to say, however, that there is not a substantial amount of agreement amongst some parties in Northern Ireland, such as the so-called pro-remain parties, although I do not think it is useful to call them that. We have had shared statements from Alliance, the Green Party, the SDLP and Sinn Féin. That is an important thing to note, particularly given that we do not have a sitting Executive or Assembly at the moment; it is important to give recognition to the points they are making as well as those made by MPs in Westminster.

Q3023 Hywel Williams: I note in passing the stand-alone Welsh language legislation—the 1942 Welsh Courts Act, the Welsh Language Act of 1967 and 1993, and the Mesur yr Iaith Gymraeg or Welsh Language Measure of 2007 passed by the Assembly, let alone the language provision of the 1536 and 1542 Act of Union, which initially excluded the Welsh language from the public sphere. It is quite normal in British terms.



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You provided the table for the conference of UK in a Changing Europe last week, which shows Northern Ireland's borders, goods and post-Brexit scenarios. There are three there, which are Northern Ireland to GB, GB to Northern Ireland and Northern Ireland to Ireland. Is there a fourth category, which is Northern Ireland through the Republic of Ireland to Holyhead? Do you know what proportion of trade from Northern Ireland goes through that route? Are there any plans to deal with any problems that that might provide?

Dr Hayward: You are absolutely right. Perhaps the next witnesses you will be seeing will be able to answer in detail on that. That is a simplified table that does not cover the complexity of trade, bearing in mind of course this is why the EU is being very specific and careful about what happens to Northern Ireland after Brexit, because it is not just a matter of GB-NI trade or indeed north-south trade; it is the fact that Northern Ireland of course experiences goods crossing from outside of the EU, other EU countries, and then of course going across, as you say, from Northern Ireland into the Republic of Ireland, into Britain, and vice versa. It is extraordinary complex and I have not covered it in that simple table.

Q3024 **Hywel Williams:** Do you know anything about the proportion of Northern Ireland's trade that goes through the Republic and then through the UK and on to the EU?

Dr Hayward: I do not, but I presume that the next witnesses could be able to tell you.

Q3025 **Mr Rees-Mogg:** Good morning. I want to follow up on Mr Timms's absolutely crucial question about what happens if the UK Government simply do not put up a border. I wonder, Mr Shiels to start with, if you could define what you think a hard border means.

Dr Shiels: The Government have defined it as meaning no physical infrastructure at the border. That is how the Government see it. My own sense is that no hard border means that there is no physical impediment to movement between Northern Ireland and the Republic.

Q3026 **Mr Rees-Mogg:** A political border and added infrastructure of that kind is specifically ruled out under the Withdrawal Act under the House of Lords amendment. Is that correct?

Dr Shiels: Yes.

Q3027 **Mr Rees-Mogg:** The British Government under UK law could not impose what most people think of as a hard border.

Dr Shiels: No, that is right.

Q3028 **Mr Rees-Mogg:** You then mentioned the WTO question and said that it might be complicated for the WTO to insist because of its procedures. You said that might be some months. In the event that the UK and the EU, after the UK has left, were negotiating a free trade agreement, Article 24 provides for the existing systems to remain in place for an unspecified



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period, but one thought to be up to 10 years. Is that your understanding?

Dr Shiels: I am not familiar with that in particular, so I cannot say for sure.

Q3029 **Mr Rees-Mogg:** Could you say—because you mentioned the WTO—what the WTO says in terms of how borders must be managed?

Dr Shiels: There is provision that they should be managed with as little as friction as possible, and of course there has to be consistency in terms of how they treat all of your borders. If you have no checks in Ireland on the Irish border, then the same tariff would have to be applied across the border.

Q3030 **Mr Rees-Mogg:** There is consistency in tariffs, but there is not consistency in administration, is there, in terms of infrastructure at the border? That is not a requirement of the WTO. The infrastructure you have is up to you—it is at your discretion—but you have to have the same tariffs.

Dr Shiels: The infrastructure would be up to you, yes, but it would have to do the task that is necessary.

Q3031 **Mr Rees-Mogg:** How does this work, do you think, between the Turkish-Bulgarian border, when Turkey is in a customs union with the EU, and the Norway-Sweden border, when Norway is not in a customs union with the EU, but the Turkish-Bulgarian border is much more heavily policed and a much harder border than the one between Norway and Sweden? Is there not in reality more flexibility than you are indicating?

Dr Shiels: Yes, but that also comes back then to questions of security as well, and to other wider questions.

Q3032 **Mr Rees-Mogg:** But that does not get set down by the WTO. I was focusing really on your claim that the WTO might get involved and it might be in breach of the WTO. Actually, when we look around the world, there is considerable flexibility as long as the customs duties are the same. How you enforce is actually a matter for individual nation states.

Dr Shiels: The point about the WTO I was making earlier is about tariffs. They would have to be applied.

Q3033 **Mr Rees-Mogg:** That is really helpful, because that means tariffs do not require physical infrastructure.

Dr Shiels: I suppose legally they do not, but it depends whether the technology exists, can be found and is ready in time, and that leads to all of the other questions.

Q3034 **Mr Rees-Mogg:** But does it? Because the different VAT regimes in the Republic of Ireland and the United Kingdom are applied without having any physical infrastructure at the border, which is much the same as



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tariffs, and the technology for that already exists.

Dr Shiels: Yes. The interesting thing is that the EU is talking about using electronic checks, as it were, for the proposed east-west checks that would happen under the Northern Ireland-specific backstop scenario if there was divergence.

Q3035 **Mr Rees-Mogg:** I am not talking about that at the moment; I am talking about what the international law requirements on the UK would be. It seems that there are not any as long as it applies the same tariffs, which it already does. It has a system that applies different rates of VAT. There is already a system that would be compatible with the WTO requirements.

Dr Shiels: Yes. I suppose it is not so much a question of what is compatible; it is what is possible, available and operating, and if there are other examples.

Q3036 **Mr Rees-Mogg:** Compatibility is quite key to meeting legal obligations. I think we have established that the UK would not have any obligation to do something, and actually to do something would be illegal under UK law. The question then is whether the Irish Government or the EU Government would insist upon a hard border as you have helpfully defined it? The Irish Government have already said that they will not do that, and the President of the Commission, representing the EU, has said that he would insist on it when he went to the Irish Parliament. Who is insisting on this hard border?

Dr Shiels: It is very valid to point out that there is an inconsistency in what is being said. There is agreement on all sides; everyone in the Irish Government, the European Commission and the British Government have said that they do not want to see a hard border. There is a question about, if they have all given a political commitment to that, the circumstances in which they would actually impose a hard border. That comes down to whether that position is actually sustainable in the longer term in a no-deal situation.

Q3037 **Mr Rees-Mogg:** That is essentially a matter of political will, is it not?

Dr Shiels: Yes, I think it is.

Q3038 **Mr Rees-Mogg:** It is a political decision. All of these people saying there must be a backstop to protect the peace process are actually saying that they are not going to impose a hard border. They are doing it for political reasons to try to influence the outcome of the negotiations. It is an entirely political posture.

Dr Shiels: That point can be made. There is a question that the border issue is being used to some extent in a way that, because there is widespread consensus on the need for no hard border and because that issue has already been banked, so to speak, then therefore the prospect of having a hard border then being used in the negotiations is slightly problematic.



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Dr Hayward: There is considerable confusion here about the various reasons why you would have borders. There are customs borders. There are also regulatory borders. Norway and Sweden are in the European Economic Area, so the single market rules apply, and of course the VAT system is different as well. Outside of the EU, the UK will no longer have access to the same regime for dealing with VAT, for example, hence the increased friction on that. Do not be obsessed by the physical infrastructure, because there is a second line in the joint report about physical infrastructure or “related checks and controls”, and it is the checks and controls that mean a hard border.

It is important to note what a hard border means in the Irish border region. It is very specific. Having done research there, it is not just the case that people talk about soldiers, which they remember as a very vivid memory of what a hard border means, with the related trauma that that entails, but also they say that any friction at all would constitute a hard border. If you are crossing a customs border—indeed, if you have a regulatory barrier—then that required extra paperwork and assistance to comply with in order to cross that border.

Q3039 **Mr Rees-Mogg:** Crucially, there is already a difference in excise rates and VAT rates, and there are checks carried out by the Irish authorities to make sure that diesel is the correct diesel. You can see on the internet that there are checks away from the border. Suddenly, as you change a hard border from being physical infrastructure at the border to being any means of checking, you are saying that something that is already there should not be there. There is already ANPR on roads going towards the border by both sides. This is completely changing the argument to move away from a hard border to say it is any change. Of course there is going to be a change, because we are leaving the European Union. That is the whole point.

Dr Hayward: Absolutely, but ANPR cameras are not used for checking customs. It is a completely different sort of technology to use it to deal with customs compared to dealing with speeding.

Q3040 **Mr Rees-Mogg:** A moment ago you said that any checks were wrong, and now you are saying the checks that are there are not wrong. I just do not see the logic in that.

Dr Hayward: I beg your pardon. I did not say that they are wrong. I am saying it is specified in the joint report as physical infrastructure or related checks and controls. Of course, we are talking about the single market and the customs union. There is this idea that because there is already a border, we can accept any other border after Brexit; of course, leaving the European Union has consequences, and the whole purpose of the backstop is to manage the consequences of that for a very vulnerable region.

Q3041 **Mr Rees-Mogg:** It is all about avoiding a hard border, not any border, because there is already a border. That is why the definition of a hard



border is so crucial.

Dr Hayward: Absolutely—related checks and controls.

Q3042 **Jeremy Lefroy:** I very much hope there is a deal, but if there is no deal and we are on WTO rules, what would the situation be if the UK said, "We are not going to have any hard border or checks at all between ourselves and the Republic of Ireland"? What if, say, Argentina was to say, "On a most-favoured-nation basis, you should do the same for us, because there is no difference between us and any other state outside"? Where does that leave the United Kingdom, in terms of saying, "I am sorry; for everybody else, we are having one set of rules, but for the Republic of Ireland we are having another set of rules", under the WTO? I am not talking about anything else, such as the Belfast agreement; I am talking specifically about the WTO.

Dr Shiels: My understanding is that is where the breach would be under WTO rules, if there were specifically favourable tariffs to the Republic of Ireland.

Q3043 **Jeremy Lefroy:** I am not talking about tariffs; I am talking about checks.

Dr Shiels: I am not sure about the question of checks in terms of actual customs checks and regulatory checks.

Jeremy Lefroy: I will leave it there. I just wanted to raise that question.

Chair: This is about MFN status.

Jeremy Lefroy: Exactly; it is most-favoured-nation status. Anyway, I will leave it there. I just wanted to raise that question.

Chair: You cannot treat them differently. That, no doubt, we will explore.

Q3044 **Mr McFadden:** There is an awful lot of talk in this debate about some of the things we have been talking about this morning: customs checks, trade, backstops and so on. I would like to ask you a couple of questions about identity and how Brexit might affect identity. It is almost exactly 20 years since Lord David Trimble in his Nobel Prize acceptance speech said, "Ulster Unionists, fearful of being isolated on the island, built a solid house, but it was a cold house for Catholics". The Good Friday agreement was an attempt to address that issue in some ways, of the cold house, and to create parity of esteem. Beginning with you, Dr Hayward, do you think that the changes brought about by Brexit are in danger of recreating a colder house for part of the population in Northern Ireland?

Dr Hayward: I do not think it necessarily has to be that way. There have been decisions that have been made that could have been made differently, and, more to the point, there are decisions still to be made about the future. We need to bear in mind that whatever happens at this



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moment in time, in the future we have to have a good, trusting and close British-Irish relationship for the peace process. We have to have a good UK-EU relationship. We also have to have good relationships between unionists, nationalists and others in Northern Ireland itself.

The principle of parity of esteem in and of itself should not be challenged by Brexit. That is basically equal recognition of the identity, ethos and aspirations of, as it says, both communities, although, as I say, there are many more than two communities in Northern Ireland. That should not be challenged by Brexit, but of course this is where we get into the politics and diplomacy around all of this.

Building on the earlier questions about representation in Northern Ireland and the lack of democratic representation in Northern Ireland at the moment, there is a concern that actually the core principles in the agreement about recognition and the validity of different identities are being undermined. Fundamentally, there is a problem with the idea that this is a point of contention between the British and the Irish, with the idea that the British Government represent unionist identity alone. Of course, it should not be that way. Both the UK and Ireland have responsibility as co-guarantors of the agreement to the people of Northern Ireland in general, and there should be some caution about the idea that the UK Government only speak for a portion of the population.

Q3045 Mr McFadden: Can I just ask about the impact on citizens' rights? We have heard a few times this morning that Northern Ireland is in a way unique. It is certainly unique in terms of the citizens' rights that people born there enjoy. Everyone born in Northern Ireland is entitled to an Irish passport. That is not true of my constituents in Wolverhampton. This means there is a unique position on citizens' rights for people in Northern Ireland. What do you think the implications are of that looking to the future? That gives 1.5 million people the right to continue to be a European citizen even when the UK has pulled out of the European Union.

Dr Hayward: We actually do not know the full implications of that. I always think of the draft withdrawal agreement and the protocol in terms of colour-coding. It is in yellow at the moment, which means they agree in principle but not in text. They mention the rights of people born in Northern Ireland who are Irish citizens, and that they should continue to have the rights they have at the moment vis-à-vis EU citizenship. That is specific to Northern Ireland. There are interesting questions and discussions to be had about Irish citizens across the UK more generally and outside of the UK. As you know, at the moment it is still just in principle the EU citizenship rights of Irish citizens after Brexit in Northern Ireland have been agreed, rather than in text.

Q3046 Mr McFadden: Dr Shiels, can I ask you about this question about identity? Do you think Brexit has any implication on that crucial phrase in the Good Friday agreement: that people from Northern Ireland can choose to be British or Irish or both? Does that survive Brexit unchanged?



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Dr Shiels: From a legal point of view, it does, because that is a question for nationality law in both countries. Brexit has changed the terms of that debate to some extent, and there is certainly a sense of grievance or frustration on the part of nationalists in Northern Ireland. People who may have been more middle of the road and less concerned about Irish unity and things like that have been provoked, I suppose, by Brexit, and there are commentators writing to this effect, saying that the national question was not something they were interested in before, but it is now.

There is also the question of unionists feeling slightly aggrieved by some of the possible outcomes, and the backstop scenario if they feel cut off from the rest of Great Britain. It undoubtedly makes those questions more problematic.

Q3047 **Mr McFadden:** Is there a danger that this question of being both is put at risk by Brexit, because it forces people to choose one or the other?

Dr Shiels: It depends ultimately on what happens with Brexit and how it actually works out, given the temperature is raised at the moment politically, and whether some sort of arrangement can be worked out that is found to be satisfactory, pragmatic and so forth. The whole temperature may lower again, and that may not cause those problems. There is a question that Brexit may force a choice between being close to Ireland or close to Great Britain in certain scenarios.

Q3048 **Mr McFadden:** This is about more than trade, really, is it not?

Dr Shiels: It is certainly about identity.

Dr Hayward: It is interesting to note in the Northern Ireland Life and Times survey that the majority of the people in Northern Ireland across all generations feel a mixture of British and Irish. Often, we forget that in a lot of the discussion, but it is an important point.

Q3049 **Mr Djanogly:** Listening to the conversation we have had about all the problems with the backstop, and the UK and the EU dancing around each other in circles, if our witnesses had a reset button, could we have done this better? Do you have an alternative way of going about it? Could you offer us an insight that we have missed?

Dr Shiels: You go back to the December text and the acknowledgement from both paragraphs 49 and 50, and paragraph 46, which acknowledged that Northern Ireland was a special case, that there needed to be a pragmatic working out of the arrangements, that the UK should have a role in staying aligned to the EU in those circumstances, and that the Northern Ireland Assembly should have a say in those matters. If both sides had stuck to the sense of what was agreed then, that may have been one possible route to a better outcome.

There was concern on the EU side about some of the comments made about possible backsliding from the UK commitments, but the text that was put forward in February by the European Commission was obviously



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a red rag to unionists, and that has further upset things. The Irish Government could be criticised as well for “playing the green card”; that point has been made by commentators in Dublin as well, not just in Britain. Possibly some of the things that our own Government have said have not been helpful. Yes, it could have been done better.

Dr Hayward: I have four things that could have been done better. The first is explaining the process: that this is not about the future relationship; it is about exit, and the backstop should be placed in that context.

The second thing is to explain the unique circumstances of Northern Ireland: explain why the 1998 agreement has been given such a profile, explain the specific nature of Northern Ireland to the general UK population, and indeed perhaps, if needs be, explain the experience of the Troubles and the consequences of that in the Irish border region in particular.

Third, British-Irish intergovernmental conference should have set up earlier and a premium should have been placed on the British-Irish relationship. I know it is difficult because of Ireland being on the EU side of the negotiating table, but there are unique circumstances there that could have justified much closer co-ordination between British and Irish Governments. In relation to that, there should be absolutely no allowance for the kind of language and hyperbole we have heard about the Irish Government, and to a lesser extent the Irish vis-à-vis the British. That has been extremely damaging and it has consequences within Northern Ireland.

Fourthly, visit Northern Ireland, listen to the people in the Irish border region in particular, and people from all communities in Northern Ireland, listen to businesses in Northern Ireland as you are about to do so, and listen to civic leaders. That would have made a big difference right from the very beginning.

Q3050 **Joanna Cherry:** Dr Hayward, I wonder if I can go back to some of the questions that Sammy Wilson asked you earlier about the relevance of the European Union to the Good Friday agreement. Mary Daly, professor of modern Irish history at UCD, has talked about how the EU framework has de-dramatised a lot of the north-south co-operation under the Good Friday agreement. Do you agree with her statement, and can you elaborate on it?

Dr Hayward: As briefly as possible, there are four ways in which European integration has affected the Irish border. The first and most important one, and the most difficult to explain, is that it has depoliticised and normalised north-south co-operation. This has been important for buy-in for all sides, recognising the pragmatism behind it. That is the key.



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Secondly, it has related to trade. Harmonisation of standards, et cetera, has had a real impact on economic growth, particularly in the Irish border region but across the island, and of course exports from Northern Ireland into the south.

Thirdly, it has affected legislation. Most particularly, we can see that with cross-border workers and their experience of working across the border. It has also had other impacts, for example emergency transfers for ambulances and these kinds of things.

Fourthly, the whole point about ever-closer union has been demonstrated within the Irish border region in very real ways, partly through cohesion funding that has made a difference in the Irish border region—the Special EU Programmes Body manifests some of that. It is across a wide range of areas because European integration has been about facilitating frictionless and seamless borders, if you like. We see this most clearly manifest in the case of the Irish border with direct consequences for the peace process. That is not to say that exit from the EU automatically means a retraction of that, but it does mean we need to be extraordinarily careful, flexible and imaginative in how we approach that particular challenge.

Q3051 Joanna Cherry: Dr Hayward, when you were answering questions from my colleague Hywel Williams, you said that it was important for the British Government to listen to other parties in Northern Ireland, not just to the MPs who take their seats. It has been reported this week by the BBC and the *Belfast Telegraph* that the Prime Minister has refused to meet with Sinn Féin, the SDLP, the Greens and Alliance. Do you think that is helpful?

Dr Hayward: Given the attention being paid to Northern Ireland and the sense of the fragility of the place at the moment, noting that the chief constable of the PSNI, George Hamilton, says they are working 24/7 to “keep a lid” on conflict in Northern Ireland even right now, it is very important that the views and concerns of all democratic parties in Northern Ireland are listened to, because they have connections into wider business and specific communities. I would hope that the Prime Minister would find time to meet with all parties.

Q3052 Joanna Cherry: Would you agree with me that it is important to remember that the majority of people living in the Northern Ireland voted to remain in the European Union?

Dr Hayward: Yes, it is important. The critical point now is about Northern Ireland’s interests going forward, if you like—to use that awful phrase. Yes, they did, which means that of course, if there is a sense of decisions being made over the top of Northern Ireland, or without due consideration for a wide range of views within Northern Ireland, then that does give rise to serious concerns.

Q3053 Joanna Cherry: Specifically, on the question of the backstop, I wonder if



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I could ask you about paragraph 46 of the joint report back in December 2017. That paragraph says, "The commitments and principles outlined in this joint report will not pre-determine the outcome of wider discussions on the future relationship between the European Union and the United Kingdom and are, as necessary, specific to the unique circumstances on the island of Ireland. They are made and must be upheld in all circumstances, irrespective of the nature of any future agreement between the European Union and United Kingdom".

You are nodding. I want to direct this question to Dr Shiels as well. You will both be aware of the existence of that paragraph in the December 2017 joint report. I want to ask you both: would a UK-wide backstop conflict with paragraph 46 in that it could predetermine the future relationship?

Dr Shiels: I suppose that is the concern on the EU side. That is one of the primary objections to the possibility of a UK-wide backstop. From what we are hearing in the reports, that is actually a question on future relationships, and that is not something they feel they can commit to in the withdrawal agreement. The question is then, if they are prepared to make specific provisions for Northern Ireland in the withdrawal agreement that affect the future relationships, why they are not prepared to do that for the whole of the UK? There are concerns about cherry-picking, but it may be that they are themselves cherry-picking on some of the issues in any case for Northern Ireland.

Dr Hayward: That paragraph in the joint report is very important, because it explains why the backstop has to apply and cannot be time-limited, because it applies in all circumstances. It also allows for the fact that you have the draft protocol in the withdrawal agreement specific for Northern Ireland, and, as I mentioned right at the very beginning of this session, allowing for something to be in the withdrawal agreement that relates to Northern Ireland after withdrawal.

In actual fact, an all-UK customs union does not really relate to those terms, because that is specific to what the joint report is dealing with for Northern Ireland in particular. Yes, it does not really address it directly, but it does explain why a Northern Ireland-specific backstop has to not be time-limited and has to endure regardless of whatever the future relationship might be.

Q3054 **Chair:** On behalf of the Committee, can I thank you, Dr Hayward, and you, Dr Shiels, for your really helpful evidence? We have covered a lot of ground, which is exactly what we hoped to do. Thank you very much.

Examination of witnesses

Witnesses: Aodhan Connolly, Seamus Leheny, Stephen Kelly and Declan Billington.



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Q3055 **Chair:** Can I, on behalf of the Committee, welcome Aodhan Connolly, director of the Northern Ireland Retail Consortium, Seamus Leheny, the policy manager of the Freight Transport Association, Stephen Kelly, chief executive of Manufacturing Northern Ireland, and Declan Billington, vice-chair of Northern Ireland Food and Drink Association? You are all very welcome. We are grateful for your patience. You can see this is an issue that engenders a lot of questions. We have ground to cover. Do not feel under an obligation for all of you to answer every single question, but we are very grateful to you for coming here today.

Having just said that, I am going to break that rule by asking each of you briefly just to say to us what your members are feeling at the moment, and what impact the uncertainty—which all of us are experiencing but particularly them, given the backstop and arrangements in Northern Ireland are as yet uncertain—is having on their planning and how they see the future.

Aodhan Connolly: First, Chair and members, thank you very much for having us along today. As far as Brexit itself, I am not just here to talk for the retailers; I am here talking about the Northern Ireland consumers, because we are a consumer-facing industry. Our members, from the biggest guys through to the medium-sized and small guys, are all trying to prepare for Brexit. Some of them have money put away or set to the side, but quite simply they do not know what they should be spending, they do not know what is going to happen and they do not know what preparations to make.

Katy Hayward earlier on talked about Northern Ireland going through a perfect storm. That is exactly it. Brexit is the perfect storm for Northern Ireland. Our consumers already have half of the discretionary household spend of Great British households. We already pay more for things like fuel and car insurance, and we are the only part of the UK with a border with the eurozone. We are going to feel any of those potential rises exponentially more than anywhere else in the UK. To top it off, we do not even have a working Assembly or Executive. In the best-case scenario, we would have Ministers who would be taking the technical notes that came out from HM Government and translating them into tangible actions that they could take.

Without getting into the detail—I will let the questions bring that out—our biggest concern is that we have a trade deal where there are zero tariffs and no new border friction, and which is as close to frictionless as possible, because, as Mr Rees-Mogg quite rightly said, every border has friction. As well as that, we need to make sure that there are no new taxes. What we are trying to do is protect Northern Ireland business, but most of all protect Northern Ireland shoppers.

Chair: That is very clear and helpful, thank you.

Seamus Leheny: Our members, Chair, operate 50% of the UK truck fleet, and our members consign 70% of air and sea freight. Brexit is



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obviously going to have implications on the movement of goods, which is something of concern to our industry. The transport industry, as a whole, is an enabler. We rely on my colleagues here beside me. We move the goods. Without these guys, there is nothing for us to move.

At the moment, supply chains run on efficiencies. Transport is very low margins; it is volume-based, and anything that disrupts supply chains right now costs money. A lot of times, with supply chains at the moment, these are costs that are factored in the long term—one or two years—when contracts start. Brexit has the potential to slow down the movement of goods across borders, and ultimately cost our industry money.

Q3056 Chair: On that specific question, there are some phytosanitary checks, as I understand it, on goods moving from GB to Northern Ireland currently. Is that correct?

Seamus Leheny: That is correct.

Q3057 Chair: Can you just describe, very briefly for the Committee, how that works? Physically where?

Seamus Leheny: Livestock, at the moment, Chairman, I would transport between Cairnryan and the Port of Larne, near to Antrim. Livestock, at the moment, would undergo checks with officials on arrival into Larne, where there are documentary checks and then actually physical inspection of the livestock. Dependent on that, that may incur further checks on the welfare, and also the health of that livestock.

Q3058 Chair: That is it, in terms of the kind of products that your members deal with.

Seamus Leheny: Also on the phytosanitary as well, things like seed potatoes would also come under inspection as well.

Q3059 Chair: Would that also be done at Larne?

Seamus Leheny: That would be at Larne as well. There is the facility in Belfast for minor. That focuses on container traffic. However, for ro-ro traffic it would be Larne.

Q3060 Chair: That is very helpful.

Stephen Kelly: Chair, manufacturing represents a larger part of the Northern Ireland economy than it does the rest of the UK economy. One in four families, this Friday, will depend upon the sector either directly or indirectly for a way to run their house and home. It is largely a part of the economy that is outside of the cities—so, places like Mid Ulster, Mid and East Antrim, Omagh, Banbridge and Craigavon Councils. Half the jobs in those regions are dependent upon the manufacturing sector alone.

They are almost exclusively SME businesses in Northern Ireland. Only 1% of our manufacturers are over 250 employees, and there are



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concerns about their ability, resources and experience in terms of handling the change that Brexit will bring to trading patterns. Right now, our firms trade largely cross-border in terms of exports, and the rest of the UK represents a significantly larger market. Any cost and complexity in a manufacturing business is worked on to try to remove it, because where there is cost and complexity that reduces competitiveness. When you reduce competitiveness it is difficult to win business and secure sales.

Every option on Brexit, whether that includes backstop or others, adds those additional costs and complexities into our firms. Our biggest concern talking to our SME members is that their ability, capacity, experience and indeed their resources to manage that are quite limited.

Q3061 Chair: What impact is the current uncertainty having on potential investment decisions by the businesses that you represent?

Stephen Kelly: That depends on what territory you are talking about. In this past week alone, I have been speaking with one member who has purchased a site in County Mayo for £500,000. Another member has purchased five acres in County Donegal, roughly a mile and a half from where he is currently situated. In other committee evidence, one of our largest and most important manufacturers confirmed they were making three purchases, two purchases of a firm plus an additional batch/dispatch facility, in the Republic of Ireland. That is replicated across the larger firms that have the resources, the capital and the intellectual capital to be able to do something for their business.

That is not all one-way traffic. We also have Irish firms moving north, who are looking at Northern Ireland as a bridge into the UK post-Brexit. Its own hedge is to look at Northern Ireland and securing investment there. There has been a lot of investment from Southern Ireland firms in the north.

The vast bulk of people are sitting with their head in their hands and waiting for some sort of clarity from these Houses, and the people in this room and elsewhere, so that they can try to make up their mind what they need to do. The overwhelming action and reaction is one of worry, concern and waiting.

Q3062 Chair: Now, Mr Connolly drew attention to the technical notices that were published over the summer. One of them, in respect of Northern Ireland, did at one point suggest if you were looking for further information you might contact the Government of the Republic of Ireland. Can you just say, since you have the floor, Mr Kelly, how that went down with your members? How would you know who to ring?

Stephen Kelly: Chair, all the technical notices now say the same thing—every single one of them. In fact, it is the same four paragraphs relating to Northern Ireland in every single one of the notices: “The UK is the sovereign Government of the United Kingdom. We are in discussions.



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The Irish might want to have a word with you or you have a word with the Irish. We will come back to you when we have more information." That is the height of the advice that firms in Northern Ireland have been given at this point in time.

When the first technical notice came out, the language was pretty raw, and that did not go down well at all. They are looking for guidance, support and a Government to actually help them through this process, and it appeared that Government were doing the opposite. They were just saying, "Go and speak to another Government, and hopefully you can get some answers there." That advice has changed, and is much more subtle now. In fact, that has included letters from HMRC to all businesses in Northern Ireland, saying essentially the same things that the four paragraphs in the technical notices say, but not much more advice than that.

Chair: That is very helpful.

Declan Billington: First, there is an awful lot of confusion out there, within our membership, about what exactly is being negotiated and what exactly the backstop is, and that is creating a lot of anxiety about whether they should be for or against it. However, there is a strong fear of the consequences of leaving Europe on 29 March without a deal or without a transition, and that we are facing the tariff wars. The viability of the dairy sector is being brought into question because 30% of our milk goes south, and with a 16p levy on the milk going south, you cannot actually go south. However, we do not have the physical infrastructure to process it in the north, nor the markets to process it in.

With the distance, the UK is a great opportunity for us to expand into but we do not have five months to build the factories to make the butter and cheese, and so there is a real fear that unless the Government intervene in a hard Brexit to support the industries while they transition, there could be serious casualties.

On the sheep side, it is exactly the same. Sheep farmers are wondering whether to breed for the coming year, because 40% of the sheep go south. The UK is in surplus. If we are cut off from the European market that is being serviced from Northern Ireland, the UK market does not have the demand for the products so prices will crash. Do they invest?

On the poultry side, the UK market is imbalanced. People like the white meat; the brown meat has to go to the European market to clear. It is the same with beef: 18% of our beef is sold into Europe. It is not 18% of the livestock; it is 18% of the animal, because the UK does not consume all of the animal. We have these clearance markets, and without access to them we see price depression. Businesses are making or considering making investments across the border to handle some issues, such as manufacturing facilities across the border to service the European market. They are looking at warehousing, so that, if you are able to trade into Europe, you are able to carry the stock to buffer the borders,



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wherever they may be, that will create problems with your just-in-time supply chain.

There is a huge amount of uncertainty. The big businesses are looking at mitigation measures, but they are about stock, storage and figuring out how to service their customers, and the customers are asking them in Europe, "How are you going to service me in April?" For the smaller businesses, this is too big for them, so it really is "wait and see", because you do not have a mitigating measure.

Q3063 **Chair:** What would you say to those who argue that leaving with no deal is no problem and we should just get on with it?

Declan Billington: It is interesting, because Northern Ireland is about 2.3% of the UK population, so perhaps at a national level people do not consider us to be significant or material. At a local level, the wrong type of exit, with a five-month window in which to get ready, would in my mind be devastating to our industry. I am actually in shock that anyone would think that it would not be. Over time, we could have repositioned. Two and a half years ago, we produced a paper that said, "Great opportunities; let us reposition." Two years have elapsed, no policies have kicked in to allow us to extract the opportunities of Brexit and now we are facing a cliff-edge.

Q3064 **Chair:** You are nodding, Mr Connolly. Is that in agreement?

Aodhan Connolly: Absolutely. Let me be clear about this: no deal is not an option for us in Northern Ireland. A backstop is not perfect, but it is much preferable to the alternative of no deal. Take, for example, if we go to most-favoured-nation status with the WTO; consumers will see beef up to 37% dearer, cheese up to 43% dearer and tomatoes up to 8% dearer. We are already at the lowest baseline economically of any of the regions and countries throughout the UK. Quite simply, the Northern Ireland consumer and Northern Ireland shopper does not have the ability to absorb these cost rises that could come from a no-deal scenario.

Chair: Okay, that is very clear. Thank you very much.

Q3065 **Stephen Kinnock:** Thank you very much for coming in today, gentlemen. You may well be aware of the National Audit Office report that was published this morning, which confirms that 11 out of the 12 critical systems that would need replacing or changing in time for next March in the event of no deal are not yet up to acceptable quality. It also says that new systems needed to help track and examine goods crossing the UK border cannot be built by March 2019. Are you worried by those comments, and would you agree with them?

Declan Billington: I thought it was interesting, when we read the technical notice about customs clearance, that it stated that they would recommend businesses that trade across the border hire their customs agents and start to develop their skillsets, including customs declarations. A substantial number of cross-border businesses are owner-managers.



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They do not have the resources to hire experts in customs declarations, and there are not enough customs businesses in Northern Ireland capable of handling those declarations for cross-border trade in Northern Ireland.

In addition to that, a number of businesses are applying for trusted trader status or authorised economic operator status. There is no facility in Northern Ireland to help businesses with that. They have to work with HMRC in the UK, and there is probably about a nine to 12-month waiting list to go through the AEO status in the normal course, but I know a number of businesses that are now applying for that, to manage risk. There is not even, in the existing system, capacity to manage existing mechanisms for trading into a third country. SMEs will not be able to afford the IT, the skillset, the resources, and there are not enough customs clearance agents in Northern Ireland capable of handling cross-border trade on the island.

Q3066 Stephen Kinnock: I also just wanted to touch on this issue of organised crime. Rebecca Sheeran of the National Audit Office gave an interview on the radio this morning where she said that any weaknesses or gaps could quickly be exploited by organised criminals. I am sure that would be an issue that would concern all of you.

Aodhan Connolly: The Northern Ireland Business Crime Partnership's aim is to make Northern Ireland not only more competitive but a safer place to do business. One of the things we have seen over recent years is an increase in cross-border smuggling of things like counterfeit goods and cigarettes. This would be the tip of the iceberg, as we see it, and there is a real concern that over the past 20 years there has been growing co-operation between Garda Síochána and the Police Service of Northern Ireland. They are to be lauded and commended on that. They have even completely changed their minds on business crime; they no longer see it as a victimless crime, and are putting resource into supporting businesses, so that we do not feel the effects of business crime.

It is another tangible example of how Brexit could make things harder to do business in Northern Ireland. We are very clear, in both the British Retail Consortium and the Northern Ireland Retail Consortium, that we want to make sure that the resources are given to the police and that the co-operation that there is between the Garda Síochána and the Police Service of Northern Ireland continues unabated after 1 April.

Declan Billington: First of all, there was a report by the Northern Ireland Affairs Committee—I think it was in 2012—that stated there was £70 million of duty fraud on this island lost to the UK Exchequer. That was fraud run by former paramilitaries. I would also point the Committee to the events around the dioxins. We may recall that several years ago there were dioxins discovered in pigs at the border, and that resulted in the loss to one business of about £6 million and a €25 million cost. The root cause of that was fuel laundering of transformer oil blended into heating oil. An innocent farmer used it to dry animal feed that was fed to



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six nearby farms. It created a €25 million cost to the industry. Worse still, there is a huge reputational damage.

If we had a border with tariff differentials, you could see, for example, cheap meat coming in from Brazil and being repackaged—remember horse-gate—to be passed off as Irish into the market at a higher price. I do not think those people would be too concerned about food hygiene standards in the process of doing it. Our anxiety is that honest businesses will work the systems that are tabled. Dishonest businesses will take advantage of any loophole. At the moment there are only three duty differentials that exist: fuel, tobacco and alcohol. If we bring a whole larger portfolio of things in due course, then without strong enforcement we are at serious risk of having a serious fraud issue.

Q3067 Stephen Kinnock: Thank you; that is very helpful. If I may ask just a final question, it is focusing on VAT. The European Union, when it talks about a UK-wide backstop, is of course talking about complete alignment on EU excise and VAT law on goods. However, amendment 73 to the Taxation (Cross-border Trade) Bill that was passed by this House prevents the UK from continuing its participation in the EU VAT area, which of course would be a key pillar of the current frictionless movement of goods and services. Can you see any way in which the European Union's definition of a UK-wide backstop is compatible with the way in which this Parliament has tied the Government's hands on VAT? Mr Connolly, I know you have some comments on this.

Aodhan Connolly: In the best-case scenario, our position in the NIRC is completed the same as the British Retail Consortium, and that is that, for businesses and consumers in NI, the whole of the UK and throughout the EU are better off in the common VAT system, and that would be underpinned by alignment to the EU VAT directives in full, with full participation in VIES and full participation in MOSS. That would mean—and this is where we come to the contentious part—that there would be continuing jurisdiction with some part of the ECJ in all of this.

Like I said, that is the best-case scenario. From the UK Government, on VAT within the backstop, we have not really seen anything other than the 2018 statement on common processes between both jurisdictions. I think that you are quite right to say that one opinion would be that our hands are tied. While I do not have the complete solution, I would stick with what our assertion would be, which is that to remove costs and to remove that friction, whether at a UK-wide level or a Northern Ireland level, there needs to be alignment to the EU VAT directives in full. Otherwise it is going to be costly.

Q3068 Stephen Kinnock: Given that amendment 73 was passed, the UK Government promise no checks for VAT or excise purposes, but we passed a piece of legislation in this House that makes that utterly impossible to achieve. What are your views on that?



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Declan Billington: My view has always been that we in industry cannot table solutions that address issues like that, because it is beyond our scope to do it. All we do is, you tell us what you plan to do, and we will tell you the consequences of it, to the best of our ability, and we will hope to influence better policy than would otherwise be the case. It is a challenging question, because it is a question, in my mind, for the UK Government to resolve in their negotiation with Europe. It is beyond our ability to engage in this. We will try to work with whatever the consequences are.

Q3069 **Stephen Kinnock:** Have any of you pointed out to the UK Government that there is a fundamental incompatibility between their objective to have a common VAT area, as set out in their White Paper, and the legislation that was passed by Parliament.

Aodhan Connolly: Our colleagues in the British Retail Consortium have been in almost constant contact with the Treasury, HMRC, DExEU and BEIS. It is one of the key concerns that national retailers have, and the Northern Ireland Retail Consortium is part of the BRC, so we feed into that, and our voice is heard through the BRC.

Q3070 **Stephen Kinnock:** Have you received any feedback?

Aodhan Connolly: I will look into that and I will reply to you.

Stephen Kinnock: That would be very kind. Thank you very much.

Q3071 **Sir Christopher Chope:** You referred to the way in which crooks are flourishing in cross-border trade at the moment, particularly in fuel, alcohol and tobacco smuggling and so on. Is that a price that has to be paid because there are insufficient border checks?

Seamus Leheny: When it comes to fuel duty, a major problem with our industry is that it has actually decimated the transport industry in Northern Ireland. A rogue operator can buy a litre of laundered diesel for 70p a litre, compared to someone else legitimately paying over £1 per litre. There are savings there. It is getting to the point now that the launderers are making so much money that they are now exporting laundered diesel to GB, and those drums of diesel are being shipped unmanifested on ferries, so there is a health and safety issue there as well.

For us, currently, the fuel laundering industry has hit our industry very hard in terms of profit margins, and to think that there could be other opportunities for criminal gangs to make more money, which will ultimately undermine legitimate operators, would be a deep concern.

Q3072 **Sir Christopher Chope:** Does anybody else want to comment on this? If you have this criminal activity at the moment, and it is not being adequately addressed, why do we not concentrate on trying to address that? Does that require essentially more border checks or security measures than are currently being carried out?



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Declan Billington: It is a question you would probably need to ask customs and the police. It is the nature of a land border with 200 roads and a legacy of businesses that did this at the time when the border was a no-go area and have established long-term businesses that are effectively illegal. In answer to the question about whether, if you were to put more police and more security on the border to manage it, you would reduce it, you probably would, but the consequences are then this concept of going back to the bad old times. I honestly think the former paramilitaries would play on the division that that would create, in order to even better protect their businesses. If they can create a problem at the border, with society, it plays to their strength of being able to smuggle without society informing the police about it.

Stephen Kelly: Declan made the point earlier that the smuggling is across a very narrow set of goods. It is alcohol, tobacco and fuel, although there are reports of washing powder now beginning to make its way into the smugglers' interest. There is a very interesting documentary about the Norway-Sweden border, and about how the biggest challenge they had on that border was garlic.

When you begin to widen out the tariff differentials and price differentials from one customs territory to another, there becomes an attraction for one group of people to try to mess that system up and start to import goods illegally, without tariffs being paid, avoiding the non-tariff barriers, because there is a huge price differential and there is money to be made.

What Declan's point is saying is that right now we have a limited set, because we share a set of common rules across a common market. Once we begin to remove ourselves from that, we present many more opportunities to have many more items actually come into the sights of those criminal elements who may be interested in actually making a profit from the tariff differentials that are there. The likelihood is that you will end up with the need for more security and checks, and more difficulties on the Irish border as a result of that.

Q3073 **Sir Christopher Chope:** Currently, you are describing a situation that seems to me like licensed anarchy and criminality taking place on a major scale across the border, being connived at by both Governments. Are you not really adopting double standards in saying that post Brexit there are going to be additional border issues that somehow are going to require a lot more policing than at the moment? You are already short of police at the border to deal with this licensed anarchy. Are you not adopting double standards to say, "Let's leave the existing licensed anarchy, but try to introduce some additional border checks to deal with potential future problems"?

Declan Billington: There is ongoing work and ongoing collaboration between Governments north and south to minimise that, and it is generally an intelligence-based effort, so it is wrong to assume they are getting by the border. I remember several months ago a tobacco factory being fined and closed down in Ireland. This was a factory making



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cigarettes—not smuggling them, but manufacturing them with the leaves. There is cross-border work to go and do it.

In any society, there is a criminal element any time there is an opportunity. The only message we are giving is that Government are working hard to contain it. They are collaborating as best they can. It results and arises from a difference in tariffs, and it is logical to assume that if you expand the range of opportunities, you will expand the criminal element, despite your best endeavours.

Q3074 Sir Christopher Chope: Surely you would be able to use exactly the same measures at the moment, as are currently being used? What is the problem with that? Why are we introducing double standards? The current arrangements, which are designed to try to counter criminality, will still be able to be used post-Brexit, will they not?

Declan Billington: I presume so, though I do not know. Common sense would say Governments north and south should continue to collaborate on security issues, but I do not accept the double standards. My view on the matter is there are three product groups that have a differential tariff. It creates a certain volume of opportunities. If you create 30 product groups, you will create a much larger number of opportunities and many more fraudulent businesses will set up to do this. It is just a factor of the opportunities. The bigger the opportunities, the more players move into the market.

Q3075 Sir Christopher Chope: Can I ask you something else? You have talked about the impact of no deal on Northern Ireland. What about the impact of no deal on the south?

Stephen Kelly: I think there has been research done by InterTradeIreland. If the Committee has not already seen that report, InterTradeIreland has done some analysis on the impact it would have just on the all-islands trade—so, between Northern Ireland and GB, between GB and Ireland, and between Ireland, north and south. The scenario under no deal—World Trade Organisation with non-tariff barriers—is that trade from Ireland to Northern Ireland would reduce by 14%, trade from Ireland to GB would reduce by 12%, but actually trade from Northern Ireland to Ireland would reduce by 19%. Northern Ireland itself is the most impacted in those scenarios.

Declan Billington: Ireland also has the European market. I recall one official saying that Ireland's response to this situation is to remind Europe that if there is a problem with access to the UK market, they will turn their products into the European market. That will give them an out for the product but will depress the European price. Therefore, there is an onus on Europe to make sure that does not happen. We, unfortunately, will not have access to 450 million people to redirect our products to once we leave in a no-deal situation. We will have the UK market, which is in surplus in milk powders, which is the only thing we could do with our surplus milk, in surplus with lamb, so there is nowhere to go with this



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stuff. Ireland can, although they will end up taking a lower price for it and affecting the whole of the European price as a result.

Q3076 Sir Christopher Chope: On this issue of milk and cheese, how is what you have just said consistent with the scaremongering statement earlier that there was going to be an increase of 37% in the cost of cheese post-Brexit? Why are people in Northern Ireland going to have to pay more for their cheese when they can get it either from the surplus milk that you say there is going to be, or from buying good old English cheddar?

Declan Billington: There are two points. The UK, I think, is running a 30% deficit in cheese. A lot of that cheese is made up from countries like Ireland. Indeed, the milk from Northern Ireland goes to the south to be made into cheese. Years ago, we argued that we needed a level playing field to be able to build the factories in Northern Ireland to service the UK market. The food deficit is twice the size of our output, so over the distance there was always a big opportunity. The all-island market evolved so that the factories are on the other side of the border. The milk will not be able to move south to service those factories and we do not have the factories in the north to make butter or cheese. The only factory that could help us can produce dried skimmed milk, and the UK produces twice what it consumes in that commodity.

Q3077 Sir Christopher Chope: That represents a post-Brexit opportunity—a great opportunity.

Declan Billington: That is absolutely right, and if you gave us a five-year transition period before we hit the brick wall, we would break your arm to take the opportunity for Northern Ireland in the UK market. We are not being given five years; we are being given five months.

Seamus Leheny: I would also point out in terms of freight, 70% of what is taken into Northern Ireland from the Republic is intermediate products. It is ingredients that are then used to make a finished product for export to GB, the EU or rest of world. If tariffs were imposed on those goods coming northbound, that has a consequence for the price of the product.

Q3078 Sir Christopher Chope: You are saying you are only being given five months, but we have known that we are leaving for more than two years, and nobody has ever given any guarantee that there would be a deal. Why is it that none of you seem to have been making any contingency plans for no deal?

Stephen Kelly: I would direct you to the technical notice that the Government themselves have issued. Judge for yourself the advice the Government have been sending out just to Northern Ireland's businesses.

Declan Billington: The contingency plan for the milk is to build £50 million to £60 million factories. A lot of the milk companies are all-island companies, so the suggestion there is to spend £60 million to replicate their asset north of the border on the assumption there is no deal, and if there is a deal they just wasted £60 million. That is the challenge facing



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all-island businesses, trying to mitigate the risks without spending a lot of money that, with hindsight, was wrong, or a lot of money that, with hindsight, was right. Right now, they just do not know, and it is a lot to commit to in this uncertainty.

Q3079 Jeremy Lefroy: The questions that I was going to raise have been answered. They say, "Which sectors of the economy are most likely to be affected?" and "Which sectors are most affected by continued uncertainty?" We have heard a lot about that, so perhaps leave it to other colleagues, unless anybody wants to repeat what they have just said.

Aodhan Connolly: I recently got a table on which sectors would be most effective in terms of non-tariff barrier equivalents. I can send that through.

Q3080 Mr Bone: Gosh, you are a gloomy lot, are you not? You represent your organisations. You have known that we are coming out of the European Union since June 2016, and now you are just waking up, with five minutes to go, that there might not be a deal. You have not done a very good job, have you? More than 85% of goods in Northern Ireland either stay in Northern Ireland or go to Great Britain, so many of your members will not be affected at all.

Aodhan Connolly: Sixty per cent of those goods go through the Republic of Ireland, across to Wales and then to GB. The complexity of the supply chains in Northern Ireland cannot be underestimated. For example, you could have a cow that is in Northern Ireland that is slaughtered in Northern Ireland that goes through the Republic of Ireland, goes to England to be processed. It will then come back to be further processed and it will end up then either in the Republic of Ireland or Northern Ireland. It has already crossed the border twice before it eventually gets on the shelves. There is an importance here to remember that everything does not go Larne, Cairnryan or Belfast to Scotland either. The majority, 60%, goes through the Republic of Ireland to get to GB.

There are some very complex supply chains at work here, as Seamus said, as far as even the ingredients we need coming across the border every day are concerned. I will give you an even simpler one. There is a supermarket in Northern Ireland that delivers to someone in Northern Ireland, and for that one delivery they cross the border four times, and then four times on the way back. It is not just the case that the goods either stay in Northern Ireland or they move across to GB. That seamless, frictionless movement across the border is of paramount importance to us.

Stephen Kelly: Can I add, just for clarity, that when we have surveyed our members, 11% of those members believe that being outside the EU will be positive for their business? That is down from 21% in December of last year. That says to me that people in these Houses are not doing anything to inspire that group of people that the future is brighter than



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what they can see with their own eyes, with their own experience in dealing with their own businesses. There is a challenge here for Government to come up with a model where business can go, "We see a great opportunity here."

We have never called for the Brexit referendum to be reversed. We have never called for the Brexit referendum to be rerun. We have not asked for Brexit to be stopped. We have only asked for some clarity from Government of what the future looks like and how we can prosper in that future. From our organisation's point of view, we have always seen Northern Ireland, given its unique geography, economy and history, as being a bridge between the EU and the UK, outside of the EU. If we have a model that allows businesses to see an opportunity, they will go with it. Our businesses are enormously resilient. They have been through a hell of a lot and they will go through a hell of a lot in the future, whether we are inside the EU or outside the EU. It takes policy makers like yourself, Mr Bone, and others, to inspire them that there is a future there that is positive for them and demonstrate to them how they can seize those opportunities. No one in this Parliament has been able to do that effectively as yet, when only 11% of our businesses see a future that is positive.

Declan Billington: If I could just add, in terms of waking up two years ago, our industry woke up and produced a report in around November. It is the first report. It identified the threats that might exist two and a half years out and identified the opportunities. On the back of that document, I engaged with local politicians. I engaged with David Jones then in DExEU. I engaged with DEFRA. There are opportunities to develop the third markets around the world, but it takes time to get into those markets, to establish your reputation, get the veterinary agreements. I spent a lot of time two years ago and a year and a half ago canvassing those people who could start the process of creating the policy that would allow us to pursue third countries. DEFRA was not geared up to market opening around the world. The problem is, two years on, the policy framework is not there to encourage us to do the things that we need to do and wanted to do.

Q3081 **Mr Bone:** Is the real problem for industry not the lack of clarity? If the Government said, "We are not going to make a deal with the EU. That is it. We have tried," that would give you certainty to get on and do whatever. The fact that the negotiations just drag and drag on with the threat of a no deal seems to me the problem. It is the lack of clarity about what is actually going to happen.

Declan Billington: Two years ago in our document we said, "There are opportunities. We just need time to move into those opportunities". Time, given enough time between moving from A to B, allows us to reposition ourselves. That is what we have been arguing for all the time. The problem is we are not being given the time to reposition our businesses.



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Stephen Kelly: Can I add to that? You are absolutely correct that if we just said, "As of that time and date, everything is completely changed and this is what the environment will be," people will have the clarity they require in order to make the decisions they want to make. The problem is the consequences of those decisions are pretty severe for Northern Ireland firms. Thirty-eight per cent of our businesses are planning on moving production outside of Northern Ireland. That does not mean that four out of 10 factories close. It means that they do different arrangements with partners, sites in the Republic of Ireland. They may shift some production to GB. They may shift some production across to continental Europe. They change some of their supply sides in order to do much more work at an earlier stage before it arrives to them. In all those scenarios, whilst there is clarity, there are actually damaging consequences for our firms.

We are trying to make sure that our industries grow. It may be no consequence to some people that firms will decide to close and lose some people in some jobs because there is a macro view of what this future can look like. In the road between where we are now and where that potentially can get us to be, there will be casualties. We do not want to lose any of those jobs we have had.

Our manufacturing sector in Northern Ireland is growing faster than it has done for quite a while. We are back to job numbers we had back in 2009, I believe. We are trading really strongly in markets at home and abroad. What you want to do is move on and progress from there, rather than having to take two steps back in order to step forward once again. Yes, clarity would be provided, absolutely, but that clarity comes with consequences as well. Collectively, we are trying to manage what those consequences are and the severity of those.

Q3082 **Sammy Wilson:** Just in case people listening think that all is gloom and doom in the Northern Ireland economy, we should acknowledge we have the lowest rate of unemployment we have ever had. Our exports are growing faster than any other part of the United Kingdom. Manufacturing is improving and we are attracting high-paid jobs now to Northern Ireland. This session has been described as gloom and doom. We have to have some of the positives of the Northern Ireland economy.

I just want to ask you two questions. In the earlier evidence we had, Katy Hayward indicated that a hard border was not just the presence of physical checks but any increase in related checks could also be regarded as a hard border, for example if there were more forms to fill in. Would the panel share that view? From the point of view of the industries in Northern Ireland, if you had additional administrative arrangements in place, would that represent a hard border?

Aodhan Connolly: It is a sliding scale, Mr Wilson, as far as what is a structural hard border, right through to what is an administrative hard border. If you take the non-tariff barriers—so, not the customs or the tariffs—the non-tariff barrier cost impact, as a percentage of value of



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product, for food and beverages is 29%. For textiles and clothing, it is 7%. For wood and paper products, it is 3%. To make it even simpler, admin equals delays; delays equals cost; cost needs to be passed on at some stage. Our members no longer have the ability to absorb all of it, so that could get passed on to the Northern Ireland consumer. The Northern Ireland consumer is already not able to absorb cost rises.

You can put a different label on so far as hard border or towards softer border. It does not really matter. We are talking about the need to mitigate even those administrative costs, so that those costs do not then get passed on. We are protecting our businesses and also protecting the Northern Ireland consumer.

Declan Billington: I will respond as well. First, your opening statement was exactly spot on. The Northern Ireland economy today is in a very good place. In fact, I would ask your help to address our labour shortages in the MAC report. We have lost 24,000 employees since the referendum and are struggling to maintain our current success. Any help you can give would be greatly appreciated.

I also think the question is perhaps a leading one. It depends on the amount of administration involved. Businesses live with administration all the time. If the administration of managing our relationships can be designed in such a way as it is electronic and simple, then whether they fall on the larger businesses or the smaller businesses will determine whether it is just administration or something somewhat greater than administration.

Seamus Leheny: Obviously with any burden of administration, as Aodhan says, there will be a sliding scale. If it is in electronic form, the onus could be on the transport companies to get them processed and complete that traceability of the movement of goods. Our industry would not be able to absorb those costs. If we had to have staff, software, et cetera, to do that, it would be a cost we would have to pass on to the clients.

Aodhan Connolly: This is one of the real concerns that we, as an industry, have. We have always been agnostic about Brexit. We have looked at the challenges and the opportunities. We believe the opportunities will come, and it might take a while, but, quite simply, the Northern Ireland consumer, the Northern Ireland shopper, does not have the ability to wait that long. We want to see things move as quickly as possible. It is that sort of figurative cumulative effect of Brexit that we need to protect the consumer from—so, the fuel price rises, the admin, the costs that need to get passed on to the transport, the retailer costs that need to get passed on. That is where our concern is.

I totally agree with your opening statement. It is not all doom and gloom. Northern Ireland is a wonderful place to live, it is a wonderful place to invest and it is a wonderful place to bring up your children. We have a great education system. Quite rightly, we are all proud of it. In



these negotiations—and, quite rightly, it lands at the foot of the EU just as much as it does with the UK Government—we need to make sure that Northern Ireland is protected and that business and the consumer can continue to flourish the way we have done.

Stephen Kelly: Chair, can I just add that business is not interested in the politics? In fact, when we got the invitation to come and give evidence to the Committee, Chair, there was a lot of debate about whether we should do that or not, because this is a very political Committee. Business is interested in the practicalities.

Chair: Surely not. You are at the risk of provoking controversy. Do carry on, please.

Stephen Kelly: Business is more interested in the practicalities. It is why we travelled to Brussels two Mondays ago to talk with Task Force 50, with Nina Obermaier and her team. We are not interested in rerunning referendums, not interested in whether there is going to be another referendum and not interested in a lot of the debate that takes place here. We are interested in the pure practicalities of this. The conversation we had in Brussels was based on the practicalities. We would welcome the opportunity for the UK Government to begin to publish some information about what they believe any backstop could be, so we can debate the practicalities with that as well. As we sit here today, Chair, we do not have any sight of any of that.

Q3083 **Sammy Wilson:** Let me come to the practicalities of this. The danger of no deal is the EU's insistence on a backstop, which would break up the United Kingdom. Mr Barnier suggested that the checks should take place between Northern Ireland and Great Britain. That was to check for customs and VAT and for compliance checks. He said for the purpose of the VAT checks and customs checks we would propose using existing customs transit procedures to avoid doing checks at a physical point. The regulatory checks would be carried out on industrial goods, for instance. These could be carried out by market surveillance authorities. Again, they need not happen at the border but directly in the market or at premises of companies in Northern Ireland.

Is there any reason that any of you see why those two types of checks could not be carried out in Northern Ireland, between Northern Ireland and the Republic? If it is possible to carry them out between Northern Ireland and GB, are there any impediments to using that kind of procedure for trade between Northern Ireland and the Republic of Ireland?

Stephen Kelly: One to begin with is all markets need to have sight of what enters their marketplace to circulate. You have a scenario where, with no checks, for instance, at the Port of Larne or at Belfast, or Warrenpoint or Foyle Port for that matter, goods could come into Northern Ireland and just simply travel across the border, so all of a sudden the EU does not have any sight of what is circulating in its



marketplace. It is fair for the EU to insist that it has some level of control and understanding of what comes into its marketplace.

Q3084 **Sammy Wilson:** You are not suggesting that every good that comes through the Port of Larne would be checked.

Stephen Kelly: No.

Q3085 **Sammy Wilson:** So why could an arrangement that only has partial sight of what the goods are and is carried out at the premises away from the Northern Ireland-GB border not happen between the Northern Ireland and Republic border?

Stephen Kelly: We are not insisting that it does. One scenario that has been rolled out here is the UK itself will not have any checks, and that it is going to prioritise flow over compliance and cost collection. Effectively, what is being offered here is that business in Northern Ireland is having a door shut in its face. In one scenario, the UK shuts the door in its face, in another scenario the EU shuts the door in its face, and in another scenario the UK is just flinging open the door. In every one of those scenarios, our businesses get a broken nose. At the end of the day, that is the only thing that matters to us. It is whether our businesses have an ability to trade legitimately and fairly across all marketplaces.

Should that scenario be rolled out, with the EU raising up the backstop and it has some level of controls in the Irish Sea, as a business, we are interested in how that actually happens. As a business, we are interested in finding out what that means in terms of origin rules, what that means in terms of VAT registration and how we manage VAT and what that means in terms of providing market access. How does this House guarantee the words of the December agreement that the DUP actually helped introduce into the document? That word “unfettered” is very small but very powerful. What is the legislative protection for our firms to ensure there will not be any fettering of our access into that market? Whilst the debate here has been largely around whether the EU’s backstops are needed or not, our firms are interested in finding out how you are going to guarantee that my business sales into the rest of the UK can continue. Where is the legislative control to ensure we do not get discriminated against in the rest of the UK market? That is what our businesses at home are keen for politicians from home and others to ensure happens in these Houses.

Q3086 **Sammy Wilson:** Is that not the real danger of the demands that the EU are making for those checks to be carried out between Northern Ireland and GB?

Declan Billington: I have had two meetings with Task Force 50 and we have actually challenged them on this point as well. Europe are saying, in order to avoid the normal border that would occur, they are prepared to offer certain things in an insurance policy now that will probably be negotiated by the rest of the UK in 20 months’ time, hopefully. They are only prepared to offer that in respect of Northern Ireland and they are



nervous that therefore gives access to a backdoor into Europe. The first session was quite interesting, because they were their usual, "It has to be like this," but at the end of the first session they said, "We need the comfort of knowing bad things are not potentially entering the single market." I think the UK Government, HMRC, the Crown authority in the matter, could well manage that within the UK, given the assurance.

The second thing is, having been assured that there is nothing bad happening, that there are certain checks to make sure nothing bad is coming in in real life. Europe recognised that HMRC could have a role to play in all this and that the FSA could be the body that does all this and manages all that. We believe the UK version of it can provide the assurance they want within a UK regulatory system. They said they can be flexible with regulatory certainty and I kicked back at them and said, "If today there are no problems with what we are doing, we are part of the single market, we have good control systems, why are we a problem tomorrow?" In 10 years' time under Chequers, we could throw away the common rulebook, and that is why it has to be an all-weather backstop.

If you really want to know what is going on in the supply chain, do not check the container; go and visit the factory. That is what Government officials and the FSA do today. If you want to avoid the creation of a perception of a border, or diminish the sense of a unionist community by creating a sense of a border, you need to be pragmatic and work with the UK Government to rely on the checks and balances that are there at factory level, and to rely on the assurances of UK supermarkets, who will want to give those assurances to Europe that they are managing their supply chain. Within the regulatory certainty that I believe the UK can deliver, you should honour your commitment to be pragmatic and sensible. Remember, New Zealand is only 2% of checks, and they were not in the single market to start with, so our checks should be an awful lot less. That was the challenge we threw back at them, and that is the challenge I throw the UK Government. Go back and call on them to honour their commitments to be pragmatic within the regulatory certainty the UK can provide them.

Q3087 Chair: There are two competing backstop proposals in play at the moment. One is the Northern Ireland-only one and the other is the one the Government are trying to create that would be UK-wide, as yet incomplete in terms of how it would operate. If you had to choose, which of those would be better for you and you and your members?

Declan Billington: At the outset, the agri-food industry really wanted the whole of the UK to be in the single market and the customs union. I know that is not politically acceptable in some camps. That was the aspiration. We want anything that can be delivered on a UK-wide basis, because our biggest market is the UK. We do not want to appear to be different. We want to see regulatory assurances and statutory protections if we go down this insurance route.



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Stephen Kelly: In our conversations with Task Force 50, all that we heard we did not believe was insurmountable. We believe that, from a practical point of view, we can make what they are suggesting as a backstop work. In that space, that presents opportunities for Northern Ireland manufacturers, particularly in terms of avoiding any harm, but actually potentially being that bridge that we had spoken about. We have not had sight of the UK's version of the backstop. That is one of the appeals to the Committee. If you can find a copy, please send it on to us.

Chair: We will do our best.

Stephen Kelly: I know people are interested. If the choice was between no deal and the backstop, we would take the backstop, absolutely.

Seamus Leheny: Transport would want a backstop over no deal any day. We have 4.6 million commercial vehicles crossing the Irish border every year. The big conundrum for us is the sanitary checks. A third of that traffic is agri-food, so we would probably be looking at in the region of 4,000 commercial vehicle movements daily that would have to stop for documentary ID checks, and then a proportion of that—up to 50%—actually having to have the physical inspection. The costs and the delays of that mean we would have to completely reinvent the supply chain for the movement of these goods on the island of Ireland, and even going over to GB. A lot of the exports we move out of Northern Ireland will actually go via Dublin-Holyhead for that just-in-time market in the midlands and the south of England. I would think no deal is not an option for us. It would have to be a backstop as an insurance.

Q3088 **Chair:** Indeed. Can I just check, in terms of the permission to drive in the EU for a driver from the UK, and vehicles, the Government have put legislation on the statute book, because they were worried about that. Can you explain what the practical impact of no deal would be the day after on the ability, literally, to move stuff, never mind the checks on the goods in the back of the lorry doing the moving?

Seamus Leheny: On day one, international permits would be required in the event of no deal. At the moment, 50,000 UK trucks travel into the EU. That would limit us to just over 1,200 UK trucks. For Northern Ireland, we would be eligible for 60 permits—so, 60 Northern Irish lorries would be allowed to travel into, say, for example, the Republic of Ireland to carry out higher-reward work. It would simply be paralysis at the Irish border. We obviously need a UK-EU deal, because it would work both ways—equally, ROI trucks could not come into Northern Ireland. Failing an EU deal, we are going to need a bilateral deal, either between the UK and the Republic of Ireland or a special deal for Northern Ireland and the Republic.

Aodhan Connolly: It is a double-edged sword for us. We buy £2 billion worth of Northern Ireland agri-food. We only use about 25% of that in Northern Ireland. The rest of it goes to GB and beyond. On the other



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side of things, our members account for 70% of roll-on/roll-off traffic from GB to Northern Ireland. What we need, as far as a backstop, as far as a solution is concerned, is a deal that has 0% tariffs, no new border frictions and no new taxes. If you can give me that, I would be very happy, thank you.

Chair: On behalf of the Committee, we are really grateful to you for coming, and particularly grateful that you overcame any potential reservations you might have had about entering this particular den, because we are really quite nice. Your evidence has been extremely helpful. On behalf of the whole of the Committee, I would like to express our thanks to you for coming today.