HOUSE OF LORDS

Select Committee on the European Union

Uncorrected oral evidence: Scrutiny of Brexit Negotiations

Tuesday 29 October 2019

4.05 pm

[Watch the meeting]

Members present: The Earl of Kinnoull (The Chair); Baroness Brown of Cambridge; Lord Cavendish of Furness; Baroness Couttie; Baroness Donaghy; Lord Faulkner of Worcester; Baroness Hamwee; Lord Jay of Ewelme; Lord Kerr of Kinlochard; Lord Lamont of Lerwick; Lord Morris of Aberavon; Baroness Neville-Rolfe; Baroness Primarolo; Lord Ricketts; Lord Sharkey; Lord Teverson; Baroness Verma; Lord Wood of Anfield.

Evidence Session No. 1 Heard in Public Questions 1 – 12

Witnesses

I: Dr Katy Hayward, Reader, Queen's University Belfast; Mr Ivor Ferguson, President, Ulster Farmers Union; Mr Aodhán Connolly, Director, Northern Ireland Retail Consortium.

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Examination of Witnesses

Dr Katy Hayward, Ivor Ferguson and Aodhán Connolly MP.

Q1 **The Chair:** Thank you all very much for coming this afternoon to this public evidence session of the European Union Committee here in the House of Lords. As a public evidence session, it will be televised. A transcript will be prepared and sent to you in due course for any corrections. Before we begin, would you like to give a brief introduction to yourselves for those of the general public who are watching?

Ivor Ferguson: I am president of the Ulster Farmers' Union, which is the largest lobbying organisation on behalf of farmers in Northern Ireland. We have around 11,500 farmers.

The Chair: Thank you. The acoustics are very bad in this room, so we might have to speak artificially loudly to be heard.

Dr Katy Hayward: I am the senior fellow in UK in a Changing Europe. I am also a reader in sociology at Queen's University Belfast. I have about 20 years' experience of the impact of European integration on the Irish border and the peace process.

Aodhán Connolly: Thank you very much, Lords and Ladies, for the opportunity to give evidence. I represent the Northern Ireland Retail Consortium, which represents all types of UK retailer, from small, independently owned stores right through to the big chain stores and department stores, and everything from grocers to DIY. I also sit on the alternative arrangements working group as part of DExEU.

Q2 **The Chair:** Thank you. We have a number of questions for you, but, at a high level and in a relatively short time, perhaps you could tell us what you thought the overall political and economic impact of the new protocol would be, particularly set in the context of the Good Friday agreement.

Ivor Ferguson: As to the context of the Good Friday agreement, I will probably leave that to Katy. The overall impact of the protocol would be quite considerable. We as the Ulster Farmers' Union have always lobbied for free and frictionless trade east-west and north-south. Certainly, no deal would be a disaster for us. This deal would make sure that we had no tariffs, but there is also a lot of bureaucracy, paperwork, some costs and some delays to it. That would be a problem to us, but I think that we as farmers could live with the deal if the alternative was going to be no deal.

Dr Katy Hayward: It is worth reminding ourselves how we got to this point, specifically the importance of the joint report of December 2017. That reiterated the joint commitment of the UK and the EU to avoiding a hard border, to protecting north-south co-operation and to upholding the Good Friday/Belfast agreement in all its parts.

It had three possible scenarios to be able to uphold those commitments. The first scenario was in the future relationship, the second scenario was specific solutions for Northern Ireland, and the third scenario was full alignment of the UK to the rules of the single market and customs union. The backstop, as we saw in the previous version of the withdrawal agreement, came under the third of those scenarios, essentially committing the UK to full alignment to avoid a hard border.

The version of the protocol that we see now offers specific solutions for Northern Ireland with very practical implications. We see a hardening of borders all around Northern Ireland in different ways. The Irish border, the land border, will be harder after Brexit for the movement of services, and the sea border becomes much more significant. When we consider the revised protocol, we should bear in mind that no longer will this be seen as a temporary arrangement—in effect, it is well described as a front stop, because it is seen as the landing point for Northern Ireland.

It is notable that many of the references to the possibility of the future UK-EU relationship replacing the protocol all or in part are pretty much removed from the new version, so this is the landing point. It is critical, because the new EU-UK relationship will determine in effect the future NI-GB relationship and what that means in real terms. This has consequences for governance as much as for anything else.

Inevitably, therefore, if we put it in the context of the sensitivities in Northern Ireland, which is a meeting point, if you like, between Britain and Ireland, all this will be seen as highly politically and constitutionally significant, because, in effect, the future status of Northern Ireland is being decided at this point. That is why I welcome your scrutiny of this revised protocol, because I think that what is determined in the withdrawal agreement Bill will set the course for relations within the UK as a whole.

Unsurprisingly, there are different responses within Northern Ireland to this protocol, with acute concerns from the unionist community about its consequences for Northern Ireland in the short, medium and long term.

The Chair: Thank you. You set a lot of hares running there, which, luckily, I think we will get to in the course of our session.

Aodhán Connolly: I have a lot of examples which we can come to later. When I was told that I was to appear before this Committee, I put a few notes out to members asking for questions or points they wanted me to raise. The fact that I got back more than 24 pages of questions shows the interest that there was and perhaps the need for clarity.

To start with the positive points of this deal, it is definitely better than no deal and it provides a certain amount of certainty. It also gives unfettered access to the EU and the Irish market. However, we in the retail trade have always argued for unfettered access to both the EU and GB markets to allow us to continue to provide Northern Ireland households with affordability and choice.

A huge number of issues require clarity; for example, VAT. A huge amount of heavy lifting will have to be done by the joint committee on what it adjudicates as at-risk and not-at-risk goods. We need to be able to help it make informed decisions. Declarations, tariffs, administration and delays all have costs. Retail is a high-volume, low-profit industry, so anything that takes away any of those costs will have a profound impact.

As the basis of our Brexit campaign, we have always tried to be the arbiters of common sense rather than taking sides. We have always tried to ask the pertinent questions. Rather than being just for the industry, we have looked at the end user. That is why our Brexit campaign was, "A fair deal for consumers".

That is particularly important when looking at this deal and the Northern Ireland consumer. The Northern Ireland consumer has half the discretionary income of a Great British household—that is the money that is left after they have paid all their big bills. Therefore, the Northern Ireland consumer, as well as the retail industry, does not have the ability to absorb cost rises that would come from the need for new systems, declarations and administration.

Therefore, if this is the deal, we are asking government to work on a lot of things that they are going to need. There is mitigation; a lot of things are within the power of this Government. Even before we get there, there is dealing with alignment and future trade deals with the EU in a way that means that mitigation will not be needed in the future.

As I said, there are concerns within our industry about cost rises, what that means for the viability of certain items and whether changes in business models may be needed. It is better than no deal. However, there is a lot of work to be done if we are to continue to be able to give the Northern Ireland consumer the affordability and choice that they are used to now.

The Chair: Thank you for that very full answer. We are going now to dig down into the detail.

Q3 **Lord Sharkey:** Do you think that the proposed simple majority consent mechanism is consistent with the provisions of the Good Friday agreement, and what do you think will happen to the consent mechanism if the Assembly is not re-established?

Dr Katy Hayward: Obviously the principle of consent is a new feature in this revised protocol. It is probably worth noting that there is some disagreement on the relevance of it as set out here. For example, it perhaps highlights an innate tension in the Good Friday agreement. The agreement allows for a simple majority vote among the public to be all that is necessary for a change in the constitutional status of Northern Ireland to become part of a united Ireland. Yet, for the continued functioning of Northern Ireland, there is a requirement to have cross-community consent.

This arrangement tries to do two things, in that it has both those elements included. It allows for a simple majority vote by MLAs for Northern Ireland to continue in this arrangement with the EU. That needs to take place only every eight years if there is cross-community consent for it. The definition of cross-community consent here is in accordance with what we already have in the Good Friday agreement and in the Northern Ireland Act. What constitutes cross-community consent in the Northern Ireland Assembly is replicated here.

There are several issues in relation to this. First is the idea that Northern Ireland therefore gives its ongoing, democratic consent to these arrangements. This could be a little misleading, given that it would just be a vote among MLAs after a certain period—four, or possibly eight, years. Whether that constitutes ongoing democratic consent is possibly debateable. Another concern is that what would be on the table—customs and VAT, for example—are reserved issues, rather than those traditionally held by the Northern Ireland Assembly.

Then, of course, there are other concerns, including that the Northern Ireland Assembly has not sat for so long, so you are right to question what happens if that is the case. It is significant that this protocol allows for the UK Government themselves to set up an alternative process that would still use MLAs. The MLAs will still be required to be present and to vote. How that works we do not know; we only have the unilateral declaration from the UK.

In some ways, it is encouraging to see the assumption that the Northern Ireland Assembly would be functioning. In others, it raises issues about the potential role of MLAs. If this is so many years down the line, the significance of that vote would increase, given that Great Britain will presumably have diverged significantly from the EU at that point. I have many concerns about what happens if there is a vote for those arrangements no longer to apply and to align instead to GB. That raises all sorts of issues that are simply not addressed in this protocol. It remains a big question mark.

Ivor Ferguson: From my point of view, the farmers' point of view, we are quite a broad church. We try, wherever possible, to take politics out of these decisions. We are looking totally at a farming business decision. In the original proposals, this would be looked at every four years. From a farming point of view, we would not be too happy about that. As you can understand, we are in a long-term business. When we make decisions on farms it is usually for a period of at least 10 years. Changing policy or taking on a new or modified enterprise is usually long term. Having to go back and change a plan every four years would not be acceptable to us. The possibility that it might now be eight years would be more welcome.

Lord Sharkey: So it is not the mechanism that you object to but the timing—the four years.

Ivor Ferguson: Absolutely.

Aodhán Connolly: I would not want to get into political or constitutional issues but, solely on business, four years is quite short for the small and medium-sized enterprises that make up part of our supply chain.

Looking at the wider picture in the Northern Ireland economy, big PFI and private investment infrastructure projects, especially for energy, usually have a shelf life of about 20 years before they start making a lot of profit. It is not just about the pounds in people's pockets after day one; we would be concerned about the long-term viability of investments and future infrastructure projects.

Lord Sharkey: Given the opposition of the unionist parties to the proposal, do you think that puts the sustainability of the whole protocol in question?

Dr Katy Hayward: It is worth recognising that the very reason why we have this so-called democratic consent mechanism in the protocol is because of concerns raised by unionist parties. Although I personally would have concerns about the definition of consent used here, the intention to ensure broad consensus for the arrangements that Northern Ireland will be applying is important.

It is of grave concern if these arrangements come into force with express opposition to them from unionist parties in Northern Ireland. We have already seen a response from loyalist communities, not necessarily to the details of the protocol but to their concerns about the position and security of Northern Ireland vis-à-vis the UK in the longer term. So yes, it should be addressed as a matter of urgency. It specifically relates to that future NI-GB relationship and the need to give unionists many more reassurances about Northern Ireland's place in the union.

Aodhán Connolly: That question is slightly outside my area of expertise. I will deign to say no to answering that political question.

Lord Sharkey: In that case, may I ask you an even more impossible question? What do you think is the likelihood of a border poll taking place in the foreseeable future?

Ivor Ferguson: I cannot answer that either, I am afraid.

Aodhán Connolly: Again, with respect, that is outside the scope of my expertise.

Lord Sharkey: So, two of you have taken the fifth.

Dr Katy Hayward: I am happy to talk to that question on the basis of the evidence that we have. First and foremost, a border poll could not be called unless the Secretary of State for Northern Ireland sees evidence that a majority in Northern Ireland would vote for Irish unity. At the moment, we do not see the evidence for that. However, there is interesting data from the Northern Ireland Life and Times Survey and other surveys showing that people in Northern Ireland increasingly see

Brexit as relevant to the question of Irish unity, and they increasingly anticipate a border poll happening within the next 10 years.

The question is how people respond to that. There is a clear trend that Irish nationalists, or people who designate themselves as nationalists, increasingly welcome that and see Brexit as making them more in favour of Irish unity. However, unionists, even though they are increasingly likely to say that Brexit is relevant to Irish unity, are increasingly opposed and resistant to it.

That polarisation is a worrying trend. About 50% of people in Northern Ireland now say that they are neither unionists or nationalists. The interesting question is where they sit on this. Perhaps unsurprisingly, most of them are of a mind to wait and see what the implications of these arrangements are. One could say that that middle ground has been the critical mass for determining the stability of Northern Ireland into the future.

The Chair: Before we move on to the next question, Lord Kerr would like to come in.

Lord Kerr of Kinlochard: I would like to take Dr Hayward back to Mr Ferguson's answer to Lord Sharkey's question about compatibility with the Good Friday agreement and the point about timing. As I understand it, because the implementation period can be extended only once, and for a maximum of two years, and consent will not be sought for a minimum of four years, it follows that there is no provision here for prior consent for all this, using the consent mechanisms established in the Good Friday agreement. Is that correct? If it is, is that compatible with the Good Friday agreement—a major change with no provision for prior consent?

Dr Katy Hayward: The Good Friday agreement would be relevant if there is a change in the constitutional status of Northern Ireland. It has already been decided in the High Court in Belfast and the Supreme Court that Brexit itself does not change the constitutional status of Northern Ireland. There was a potential case over whether the previous version of the withdrawal agreement did so.

That aside, I come back again to the point that, fundamentally, this is an international agreement. The rules that will apply are primarily in relation to customs, VAT and the single market, which are not in the competence of the Northern Ireland Assembly. The traditional understandings of cross-community consent and the consent mechanism that is being used here would not, therefore, apply anyway. I do not know if I have misunderstood the question. Does that begin to answer the question? No?

Given the way it is has been interpreted here, I think the assumption is that there will be a majority in Northern Ireland in favour of continuing this arrangement, because it is less disruptive, rather than putting it to the people first. I do not think there is anything in the Good Friday agreement that would require prior consent to this coming into force.

Lord Teverson: I have a much simpler question from a GB citizen's point of view. What is the feeling, away from the political elite in Northern Ireland? Is there a feeling that there is now a real barrier between Northern Ireland and Great Britain that was not there before? Is this seen as some sort of sell-out or as a practical solution to something that Northern Ireland as a whole did not vote for but has to get through? I am interested in the citizen's view of this.

Dr Katy Hayward: It is worth considering what a British citizen in Great Britain thinks about this first. The explainer that has been put forward from the UK Government talks about Northern Ireland being in a single regulatory system and single regulatory zone with Ireland. It also says that, in contrast, Great Britain will not be in a regulatory or customs relationship with the EU.

Immediately you have this whole issue being addressed in a different way for Northern Ireland compared to Great Britain. Indeed, they are being talked about as being in separate systems. This presentation is being made on the assumption that it will be received in one way in Britain. It is inevitable that it will be understood differently in Northern Ireland and that it will raise alarm in some quarters. As has been the case for a very long time in Northern Ireland, unfortunately and possibly inevitably, this is fundamentally about whether Northern Ireland is closer to Britain or Ireland. The harder the Brexit, the more tension and strain is put on that relationship.

Therefore, it is unsurprising that it is being responded to in different ways in Northern Ireland and that very clear concerns have been expressed, particularly from loyalist and unionist communities, that Northern Ireland will be, for want of a better term, hived off and dealt with separately. This is obviously being politicised.

The Chair: We will come back to that area in greater detail in a moment.

Q4 **Baroness Couttie:** It sounds, certainly from what you were saying, Aodhán, that you do not feel that sufficient information has been provided to businesses on the implications of this. Is that the case, and have businesses had sufficient consultation on the implications and the way that this will work?

Aodhán Connolly: Since the deal was announced, I think the Government have tried to give us as much information as possible. However, there are a lot of things within this deal that are not defined: the relationship on VAT, what checks would be needed, the full remit of the joint committee, and what areas are deemed to be at risk or not.

What happens with a GB company doing internet sales to Northern Ireland? What checks would have to be provided? Is the person who is bringing it in to Northern Ireland then the importer and would have to pay, or does the retailer pay? With any deal there were going to be questions on the minutiae and how things work in practice. Because, as I said before, a lot of heavy lifting will need to be done with the joint committee, this begs a lot more questions, especially when you look at the breadth of it. We talk about the retail industry, but it has many different sectors. Food will be a huge thing, especially with the SPS checks that need to be done on products of animal origin, but then there are clothes with different tariffs and everything else.

Maybe it would be useful if I walked you through one lorry and what that would have to do. It will only take a few seconds. To bring this to life for the Committee, I want to emphasise the complexity of sending just one truck from Great Britain to one supermarket in Northern Ireland. That truck will carry a mixture of products, all with different tariff codes and potentially hundreds of different products of animal origin. All those will need their own export health certificate.

That means not only a lot of work to produce the certificates but that everything, from the declaration to the export health certificate, has to be correct and in order. There cannot be one mistake, because if there is, the whole load can be delayed. That can ruin the whole load, because a lot of the stuff we are talking about here is perishable.

All this has to be done within a just-in-time supply chain. Some of the stuff will be coming from all over the world. It can be mangetout from Kenya, olive oil from the EU, McVitie's biscuits—other biscuits are available—from the rest of Great Britain. All that has to get up to a supermarket to make sure that it is in overnight so that people can pick their groceries first thing in the morning for delivery or collection. There are over 100 trucks going to supermarkets every day, not including things going to electronic and fashion retailers. Any delay on any of those is a knock-on delay for every other lorry. That means more cost and more complexity.

This is where the concerns come in for us. Complexity, administration and declarations all mean cost for the retail industry. The past five years has been quite a boom time for consumers, because we have seen deflation up until last year, which is now starting to rise. Consumers have done quite well out of it, but the fact remains that because Northern Ireland consumers have half the discretionary income, they cannot absorb any cost rises. Because there has been deflation, there is no wriggle room for retailers.

That is why we have said from day one that we will need the Government to look at alignment, trusted trader schemes and things to make it easier for us to get goods into Northern Ireland. We will need them to work with us and bring us in at ground level to talk to the committee and the expert committees that are going to be advising the joint committee.

At the end of the day, we are the people who will be doing this. We have worked with the Government for the past three years to try to show what works and what does not for retailers, and to put the consumer at the heart of everything we do. That offer still stands. This is a hugely, hugely complex thing that we will be doing. Our offer is there: to use our expertise and knowledge. It is not just pie in the sky about customs and tariffs; it is about what actually happens when a truck gets loaded, stopped or delayed.

Baroness Couttie: And the farming community?

Ivor Ferguson: We could certainly agree with many of Aodhán's concerns, but we as the Ulster Farmers' Union originally voted for Theresa May's deal. One of the main reasons, of course, was that it kept the UK in the customs union, which solved many of the difficulties we are talking about here around this border. We have certainly asked many questions and have sometimes had very little in the way of answers.

Some answers leave us confused. For example, 30% of the milk from Northern Ireland farms goes over the border every day for processing in southern Ireland. The biggest market for that is processed into powders, whether whey powder or skimmed milk powders, and through—I think I am right in saying—52 agreements with the EU, that product is exported to countries all around the world.

We have asked whether, if this agreement was put in place and assuming the milk continued to go south, we would have access to those trade agreements. Whitehall has told us that yes, that would be the case, but when we made some inquiries, Brussels was not so sure. There is that confusion as well. We certainly have a lot of questions still to ask, and we need a lot of answers.

Baroness Couttie: Are you getting answers to the questions? Is the consultation working?

Aodhán Connolly: It is still early days. There are a number of complex questions. For example, within farming there are the arable, dairy, beef and lamb sectors. It is the same in retail. Every time you go down to a different level of granularity, there are more questions. As representative bodies, it is our duty and our job to try to get answers for our members. It will take time, and the fact that many things are not specific and are open to interpretation lends itself to bringing those questions forward.

We are not there yet. There are many more answers to get, but we also need to ask for a lot more and make it very clear what derogations we need—for example, the trusted trader schemes that I will keep coming back to—and what sort of exemptions we would be looking for under the at-risk or not-at-risk adjudication from the joint committee. This is all in the future. There is a lot to do before January 2021.

Baroness Couttie: That was going to be my final point: is that enough time?

Aodhán Connolly: It is a lot to consider, and we are still coming to terms with and investigating many of the things that are out there. Within the retail consortium, we did not come out very quickly and give a yea or nay to this deal. We went through it with a fine-toothed comb, and still are, to see what the implications for all our members in all the different sectors are. It will be difficult to get everything we need done by 1 January 2021.

Ivor Ferguson: As the Ulster Farmers' Union, we welcomed this deal, because after all we had two or three years with nothing on the table, but we could not really support it for the various reasons I have given. Have we enough time? That will depend on how quickly the answers keep coming back. Aodhán's point is relevant: this is a completely new system for us, and new questions that we have not thought of yet will crop up.

The Chair: A number of people would like to come in here. I appeal for quite short answers, because the difficulty is that we have a limited amount of time and quite a lot of other questions to get to, and I would love to do them justice as well.

Baroness Verma: Thank you very much for your detailed responses. Aodhán, can I just ask you about the trusted trader scheme and your members? You will be catering for businesses of a range of sizes. Have you found that there has been a good take-up of them? Have they been easy for traders to complete? Previous evidence sessions I have sat in on have highlighted some of the difficulties that some smaller businesses are facing.

Aodhán Connolly: Short answer: there are difficulties in the amount of time it takes to get AEO trusted trader status. Some of our members are already there. For others it can take anything from 18 to 24 months. One of the things we will ask the Government and EU for is a system of mutual recognition with the EU on a customs fast-track system and an AEO system not only to allow that to be quicker for everybody but to allow greater accessibility, no matter what size the business.

Lord Morris of Aberavon: Mr Ferguson, could you repeat the proportion of milk produced in Northern Ireland that goes to the Republic to be processed? What exactly are the implications of this agreement on that kind of movement of milk?

Ivor Ferguson: Milk and sheep meat are two major problems for us. Of all the milk produced in Northern Ireland on a daily basis, about 30% goes south for further processing. The total milk produced in Northern Ireland is about 800 million litres per year. If that milk could not travel south, the processors in Northern Ireland could probably handle about an extra 100 million litres, so a major share of that milk would not be able to travel and there would be no home for it. That is in a no-deal situation; it would be catastrophic for us.

To come back to the point I was making, the other thing is that in this deal, the milk processed in southern Ireland does not have a liquid market; it has to be manufactured into powder. There is a good market worldwide for powders—whey powder, skimmed milk powder or whatever—but we are not sure if, under this deal, we would have access to those EU trade agreements with the 52 countries that buy that powder. We do not yet have a definitive answer on that. We are hoping to have a meeting with Task Force 50, and that is one of the main points we would like to have clarified.

Q5 **Baroness Donaghy:** Good afternoon. What are the practical implications of the provisions for Northern Ireland's continued regulatory alignment with the single market for goods? What would be the implications of future regulatory divergence between Great Britain and Northern Ireland? I know you have touched on this a little, but please expand.

Ivor Ferguson: From the farming point of view, regulatory alignment with the single market for goods would not present us with any problems. We would be quite happy with that. It would be a more serious problem if the UK moved away from the regulations or lowered standards.

We produce our food to a very high standard and have been attaining this standard for 40 years. It is all retroactively quality-assured. If for some reason standards in the UK were lessened and there were fewer regulations, the main difference would be that food produced on the mainland would have less cost, and in Northern Ireland we would still be aligned to EU standards, so we would have a higher cost.

GB is the main market for everything we produce in Northern Ireland, and 50% of what we produce goes to the GB mainland market. In some products it can be as high as 80%. If the cost of production were lower in GB, that would present us with a major problem. It would be a very big difficulty for us if there was divergence.

At the end of a long day, we would like to hope that we get our goal of a free trade agreement with the EU. If mainland GB diverged too much, it would probably be difficult to have a free trade agreement in practice. For those reasons, we certainly would not be happy if there was a lot of divergence.

Aodhán Connolly: We welcomed SPS alignment when it happened. It is great that we can move things from north to south. Our supply chains across these islands are very integrated. For example, a bottle of Baileys will have five border movements back and forth to RoI, up and down. The humble cottage pie has eight border movements. The milk is from the north and processed in the south.

A southern cow that is slaughtered in the north could go up over to Doncaster for second cuts in the meat and then comes back. That is how integrated it is. There are 405 different controls; for example, there are 22 controls and checks on fresh beef. If there is divergence and we are not aligned with the EU, it becomes a problem.

As part of the EU customs union and single market, we do not have any of those controls, but it is not clear under the new regime what checks would be needed. If, for example, we have some sort of dynamic alignment, as we have with New Zealand—that means that very few checks have to be done—that is great; it means that there are fewer checks and less cost and makes the goods that are travelling across borders more competitive.

The more divergence there is, the harder it makes it. But you have to remember that this is within the power of the Government to do. In the same way that they can give derogations and make exemptions, the standard of alignment that they have with the EU is within their power as well.

Baroness Donaghy: If there were checks in the Irish Sea, for instance, what system of regulatory control would there be, particularly if there was going to be regulatory divergence?

Aodhán Connolly: That is not clear at the moment. Several things would need to happen on that. There would be an adjudication by the joint committee. The joint committee would also take evidence from its expert committees. It would also be within the gift of the UK Government to make sure that that alignment did not happen, or did not need to happen.

There has to be compliance with EU regulations for all products crossing the Irish Sea border, such as the export health certificates I was talking about; even how they are transported changes as divergence happens. All we can ask for is mitigation on checks that do have to happen. It is within the Government's power to make sure that that alignment is there and we do not need those checks to happen in the first place.

Ivor Ferguson: I agree. From our point of view, the problem here would be that it would be the decision of the joint committee as to what products are acceptable. Other than that, we have no input into that. That would be the system, as far as we know.

Baroness Couttie: Presumably, if we do end up with a free trade agreement with the EU, we would either have to continue with some form of regulatory alignment or have equivalence, where our standards were recognised by the EU. That would solve quite a lot of the issues you have been talking about.

Aodhán Connolly: Alignment can happen on its own or as part of a free trade agreement with the EU. If that free trade agreement had, for example, something that handled customs and something that handled the level of alignment so that the risk was negligible—

Baroness Couttie: If it was just on the level of alignment, it may not be following exactly the same regulatory provisions—it may achieve the same high standards by this different mechanism and have equivalence by recognising those high standards, even if achieved in a different way. If that was in a free trade agreement, presumably a lot of the issues you are having about divergence would then be solved, because it would be recognised both sides of the border.

Aodhán Connolly: That would definitely help. As you know, there are different standards of alignment: full alignment and dynamic alignment. The closer the alignment is, the fewer checks that are needed.

Ivor Ferguson: There is still the point about whether or not it would address the tariff issue. If we were not in the customs union, the tariff issue would be a big concern for us as well, aside from the alignment.

Dr Katy Hayward: We should bear in mind that it is not all going to be decided by the UK-EU relationship. Whatever free trade agreements the UK does with other countries will determine the scale of the checks and controls needed between GB and NI.

The Chair: We will come back to this in a second. Lord Lamont?

Q6 **Lord Lamont of Lerwick:** My question is about customs checks and controls. I guess a lot of what you said about alignment is probably very similar. The answers will probably be very similar. But in so far as you can separate these from what we have been talking about, what will these checks and controls mean in practical terms for businesses trading between Northern Ireland and Ireland and vice versa, and between Great Britain and Northern Ireland and vice versa? It would be particularly interesting if you could say something about the exit declarations that Mr Barclay revealed would be necessary when trading between Northern Ireland and GB.

Aodhán Connolly: There is still a lot of debate as to what would actually be needed. The exit declarations can be between £15 and £56. We are currently looking into what would be needed. At-risk goods are those that are defined as those that could be transported into Northern Ireland and then moved on to southern Ireland without EU import duties being accounted for, and that is where the real problem and risk for the EU is.

That is one of the things it will be looking at. For us, again, there are ways to get around this. If we do not get any derogations, if we do not get any of those trusted trader schemes, it will be quite burdensome: you will have declarations, some people are talking about rules of destination as well as rules of origin, and people are talking about how the administration system that does not actually exist yet would look.

A lot of this is up in the air. There are ways to get around it, though. The joint committee will adjudicate on what is at risk going into the EU. You would have the trusted trader schemes—the AEO schemes—as I have said before. But one of the most important things is for it to be recognised by both the EU and the UK that when retailers are bringing things into Northern Ireland, they are trusted to do so as a dead-end host. That means that those things will be going no further, which should allow the EU to have more trust in the system that is in place.

Ivor Ferguson: From a farmer’s point of view, we do not know a lot about the exit declarations yet. After all, we heard about them only a week ago, so we have a lot of catching up to do.

The other thing is that from a farming point of view, we do not export a lot of stuff directly. It is usually through the businesses that Aodhán represents that we do that, so we are removed from that. Our concern would be about the cost of these declarations—between £15 and £56. We do not know how many we would need on a particular load. It could end up as quite a lot of money for us. Anything that added cost in a business with very low margins would be a major issue for us.

Lord Lamont of Lerwick: Dr Hayward, do you have a clear understanding as to why these exit declarations from Northern Ireland to GB are necessary?

Dr Katy Hayward: Exit summary declarations are needed from NI to GB, because the EU needs to know what is leaving its customs union. That is my understanding of it.

Aodhán Connolly: My understanding is that there is no charge for the exit of stuff from NI to GB. The charge is for the customs declarations from GB to NI.

Lord Kerr of Kinlochard: Is it perhaps because there is a new customs code that requires the EU to check goods leaving the EU? In the case of goods that are leaving Northern Ireland, the EU has to check whether they have in fact come from the EU. Therefore, there has to be a declaration system. It worries me to think of an EU check on trade inside the United Kingdom, one that the EU will want to keep an eye on and monitor. I find that difficult. But is that right: that it is an EU requirement?

Dr Katy Hayward: Yes, absolutely. This is why it is so important to scrutinise this. Although it is emphasised that Northern Ireland is part of the customs territory of the UK, Northern Ireland is de facto applying the Union customs code, with all that that implies, let alone the single market regulations. This is why those rules would be applied.

There is provision for the fact that the UK would be the monitoring authority for that, but the details of what that looks like and how it is all managed will need to be decided by 1 July 2020. That is an extraordinarily short period of time for basically changing an arrangement within the United Kingdom for the movement of goods within the United Kingdom.

Lord Kerr of Kinlochard: Can we look at trade the other way, as Lord Lamont did: the east-to-west trade—i.e. imports into Northern Ireland from Great Britain?

As far as I can see from the text, there will be four kinds of checks: the regulatory checks on standards; the VAT check, if the regime in Northern Ireland, where the rules will be EU rules, leads to a different regime from the regime in Great Britain; a tariff if the goods are at risk of being circulated into the European Union—i.e. going down south and across the border into the Republic; and the rules-of-origin checks, brought in for the first time in the Johnson political declaration, ruled out in the May political declaration.

So there are four kinds of checks.

Lord Lamont of Lerwick: Declarations, not checks.

Lord Kerr of Kinlochard: I am sorry; a declaration carries a requirement for a check.

Lord Lamont of Lerwick: For some checks, not all.

Lord Kerr of Kinlochard: In the case of the tariff or VAT, it may carry a payment. In the case of the standards and rules of origin, it is indeed a declaration, but there will have to be, presumably at least, spot checks to make sure that the declarations exist and are not fraudulent. What is the effect of that on business in Northern Ireland, given that the degree of integration across the Irish Sea of the GB-Northern Ireland economy is still much greater than the integration in the island?

Aodhán Connolly: That is the greatest concern for our members. Again, I will break this down for you. At the moment, for the SPS, VAT, tariffs, rules of origin, health certificates or customs declarations themselves, we are having to define the tasks and look at: what additional information these new tasks will require—remember that for a lot of this stuff we have not needed rules of origin before; the resources and people required to undertake them; how many man-hours, how long, it will take to complete those tasks; and what supporting networks and IT systems will be required, even down to the software and what those systems will need in order to be able to talk to VIES, HMRC or anyone in between.

The final part of that is that you add all that up and find out how the cost will come through. That will be different for every retailer, but I can assure you that that is the sort of detail that retailers are looking at at the moment.

Lord Kerr of Kinlochard: These are all very good questions that you ask, but I was rather hoping for answers.

Ivor Ferguson: I suppose the SPS checks would probably be of the least concern. Between 1% and 2% of New Zealand lamb coming into the EU at the moment is checked. That is the level of check that they do. That, of course, is the system. There is a degree of trust there, because they have been dealing with New Zealand for a long time. But I take the point that the VAT and the tariffs would certainly be a different thing.

The Chair: A lot of Committee members want to ask questions on this area. Before I move to Lord Morris, would you like to add something here briefly, Katy?

Dr Katy Hayward: It is worth noting in point 16 of the UK Government's explainer of this: "Any processes normally required on goods entering the EU will be implemented at the Northern Ireland-Rest of World border"—that is basically ports and airports—"or on trade moving East-West between Great Britain and Northern Ireland". So in effect the EU's external border is moved to Northern Ireland's border with GB.

The assumption here is that it is more practically possible to manage, and indeed it is, than moving to cross a land border, because you already have those ports and you can expand facilities for carrying out the checks, which will be necessary—verification is required.

Another assumption behind this is that the nature of the trade is quite different. On the whole, it involves larger companies, and the value is much, much greater but the volume is less compared to the type of movement across the land border. There is a sort of pragmatism there. None the less, the point you make is absolutely true: there will be significant checks and controls on movement from GB into NI.

Q7 **Lord Morris of Aberavon:** I apologise to the witnesses, because I have to leave, but first I want to ask a precise question. We have been told that these checks will take place on the Irish Sea. That is a cavalier way of saying that it will not be on the sea at all, I suspect; it will be in Holyhead, Fishguard and the equivalent ports. What exactly will happen in those ports? What is the effect on both sides?

Aodhán Connolly: I have heard of preparations that are being made. Again, the level of checks needed is yet to be defined, and will not be defined until the joint committee makes an adjudication. Preparations, I know, are being made.

One of our concerns is the costs for the checks that need to be done. Another is the delays. Say, for example, a retailer's lorry misses a boat. It is not 20 minutes late for a just-in-time delivery; it is three hours or six hours late. We are still waiting for further detail on the checks, but we know that with checks come delays, and with delays comes pressure on just-in-time supply chains.

Ivor Ferguson: A thing to add is that we need to think about the logistics here. Take, say, a meat plant in Northern Ireland that has quite a sizable boning-out hall. A lot of the product that is boned out and packaged for retailers in Dungannon in Northern Ireland, for example, will go to the south of England through the Republic of Ireland to get to Holyhead; it is the shortest route.

Now, this product would not be able to do that, for various reasons, so it would have to come across from Northern Ireland directly into Scotland or England and then travel south. That adds considerable cost. As Aodhán has said, a lot of the business with retailers is just in time. That is one big concern that one processor has mentioned to me.

There are those implications which we probably have not thought about until now.

Q8 **Lord Cavendish of Furness:** I have two questions. I, too, have to go. I have found the session incredibly helpful.

First, what scope is there for exemptions for specific goods or businesses, or for use of simplified or automated checks and controls?

Secondly, to date I have the impression, and perhaps Dr Hayward can tell me whether I am right in thinking, that a politically or economically good outcome will depend very much on work to be done rather than work that has been done.

Dr Katy Hayward: Yes, absolutely. This is why so much of this is unknown, because there is a lot of uncertainty here and so many decisions to be made, in particular by the joint committee. There is a possibility that this could be a very good deal for Northern Ireland if we have a soft Brexit. A concern is that it allows a very hard Brexit, which could be very bad for Northern Ireland, if you see what I mean.

Lord Cavendish of Furness: And the exemptions?

Aodhán Connolly: It is very difficult for us to fully anticipate what friction might look like at the border, but because of outbreaks of animal disease in Great Britain we have some experience of the problems that we might expect. There had to be very strenuous checks before anything entered Northern Ireland.

We have some level of expertise in that a lot of our members already have AEO trusted trader status. We really need the exemptions to come through. As well as needing the joint committee to make adjudications, we need it to be able to listen and for us to inform it of common-sense exemptions, especially if we are going to be dead-end hosts; the majority of stuff going into Northern Ireland from Great Britain is.

We have already shown our willingness to work with the UK Government to find pragmatic solutions to this. Our only plea is that the Government look at the common-sense exemptions and allow access to that joint committee for us to explain why they are so important, so that we can continue to give the Northern Ireland consumer choice and affordability and to allow business models—not just of big but of small retailers—and supply chains to continue in a similar way as at the moment.

Lord Wood of Anfield: On this Northern Ireland-Great Britain customs border, Katy said that it is the Union Customs Code that effectively requires the Irish Sea to be the border of the customs union. Does that mean that if something goes systematically wrong in the customs arrangements between Northern Ireland and GB, the EU will be in the business of telling Great Britain how the trading of goods within its own country should be conducted? Is that a possibility, or even a likelihood, if something goes wrong?

Dr Katy Hayward: It would be a likelihood regardless of whether things go wrong, because this would now be a joint UK-EU concern.

Baroness Hamwee: I pick up Aodhán's point about the joint committee needing to listen. One of the phrases that struck me when I was reading through the protocol and the assessment of risk is that this, that and the other have to be "established". When you are assessing risk, I do not know how you align that with establishing something. What, if anything, do you make of this so far? We have not seen it for long.

Aodhán Connolly: That is something we are currently considering. One of the things we have in our favour is that our members, the majority of which are Great British stores, have a track record of supporting the Northern Ireland economy and delivering to Northern Ireland stores. That track record shows that there is very little to no risk of goods going straight into the EU market. How the joint committee decides to look on that evidence has yet to be decided. We do not even know how that committee will be constituted. We will be vociferous advocates of the need for common-sense exemptions for the Northern Ireland consumer.

Baroness Hamwee: I hope that you do not have to prove a negative, which is what that phrase has suggested to me.

Q9 **Lord Teverson:** Let us move on a little. If and when Brexit happens and we move beyond the transition period, one of the motivations for the UK is to have a number of other free trade agreements or broader agreements with other economies.

At the moment, we are lining up just the equivalent ones that the EU has, but we have an appetite for more. Once that happens, those agreements are in place and there are major trade flows that are different from the EU-rest of the world ones. How does that start to change the relationship? Are we hawking the United Kingdom as Great Britain only to our future trading partners, or are we perhaps expecting Northern Ireland to attend EEA meetings with its trade associates or something like that? How will it all look at that point?

Ivor Ferguson: From a Northern Ireland and a farming point of view, we would welcome and be keen to see new markets for our products. The concern in any trade agreement is the products coming back. There is always a two-way flow, and if the products coming back on to that GB market, our main market, were of a different standard—a lower standard—and diverged from us—

Lord Teverson: My hearing is particularly bad. Could you please speak up just slightly? I apologise.

Ivor Ferguson: Yes. I was saying that there is a two-way flow, so it would be a very big concern for us if the products coming back into our market were of a different standard. I am thinking about a trade deal with the US, say, which has been much talked about. They have a different standard to us—a lower-cost standard—and some of that product would be illegal for us as farmers in Northern Ireland or in the UK market to produce. Those free trade agreements would be a major concern for us. I do not see how we would be able to compete in that market.

Lord Teverson: Do you feel that you would be shielded from that, because you will not be able to participate in it, because you will still effectively be in an EU regime?

Ivor Ferguson: Yes, and that would mean that our costs, which are related to the EU regime, would be higher, so we would effectively be cut out of the GB market. That would be a major issue for us. As I said earlier, the only way to solve our problem would be if GB remained in the customs union.

Dr Katy Hayward: A new element of this protocol is that Northern Ireland would be part of the customs territory of the UK and would therefore benefit from future UK FTAs arranged with other countries. One thing to bear in mind is that other countries negotiating those with the UK will want to be sure of what they are getting in that regard. The Irish Sea border could therefore become more significant. For example, if you do a deal with the US, the US wants to be sure that Northern Ireland-GB is not a route for the EU to get goods in and get the special arrangements that apply for UK goods vis-à-vis the US. It becomes much more complicated, and those borders become more significant as time goes on.

Lord Teverson: Presumably, as Lord Kerr brought up, there will be much more concentration on and sensitivity around rules of origin. In many ways, that is surely one of the biggest barriers that you can have.

Dr Katy Hayward: Yes, absolutely. That is why the customs declarations will become so important and why it will be interesting to see what happens with regard to NI-GB movement.

The Chair: These are very complex areas. Thank you for being so clear.

Q10 **Baroness Neville-Rolfe:** I move on to VAT. Stephen Barclay, the Secretary of State, said that the joint committee will be able to consider changes to VAT, so that the UK could reduce VAT on Northern Ireland goods. We are interested in the practical and cost implications for Northern Ireland businesses in this area. What are the negatives on VAT, and are there any positives?

Aodhán Connolly: The Treasury has already stated that NI will be able to maintain VAT rate differentials with the Republic of Ireland—for example, new zero-rated items. However, it would be good if we got that in writing and I could pin that to the flagpole.

VAT is a great concern for our members. In fact, in the previous withdrawal agreement it was one of the things that we as business could actually say we got. When the EU met us and showed us this wonderful deal it had, we said, “You haven’t covered VAT”. So they came up with that system in which we would be part of the VIES and the HMRC system.

The situation is just not as clear under this Northern Ireland protocol. It requires the application of EU VAT law, one of the key areas being 0% VAT rates by the UK and Republic of Ireland for food, childrenswear, clothing and footwear. The loss of all or part of the 0% rate would mean increased costs for Northern Ireland customers. Our VAT on food items that are non-exempt—this is the one about whether it is a cake or a biscuit—is 20%, but in the Republic of Ireland it is 23%.

So there are questions about competition and about whether there will be a change in the definition of one of the categories I mentioned above to bring it into line with the Republic of Ireland, because that will be within the EU jurisdiction; whether there will be new tax compliance and associated burdens—that alignment of Irish VAT rates has thus far not been clearly defined; whether, where there are zero rates on certain things like newspapers, snacking products and that sort of thing, they will then have different rates; and whether that produces all-Ireland competition.

Unfortunately, I am probably going to give you more questions than answers on this. It is desperately complicated, and because of the different VAT codes on different items and the way current EU law limits the minimum VAT rate to 5%—with only Ireland and the UK applying 0%—there may be pressure on Ireland to raise its VAT rate above 0%. Would that then apply to Northern Ireland as well? This falls into the "need more information and need it now" category.

Baroness Neville-Rolfe: I assume we are now getting VAT operating across both the land border and the sea border. We have VAT across the land border already—we managed to sort it out—but this is much more difficult, for the reasons you state. You now have both, which in a sense doubles the problem. Is that right?

Aodhán Connolly: It does, and currently we are able to talk to VIES. After, there will be the HMRC system and VIES. There is no point in communication at the moment, as far as we can see.

Baroness Primarolo: I will continue briefly on VAT. The draft agreement says the EU has responsibility for VAT as the current regime stands in Northern Ireland, notwithstanding that some rates in the Republic of Ireland vary. That is not a devolved issue, so HMRC—the Treasury—would have to negotiate directly with the EU, should there be any variation in GB's VAT rate. Is that correct?

Aodhán Connolly: That is my understanding. To go even further, there is a possible additional VAT return required for Northern Ireland, given the requirement under the protocol for NI VAT revenues to be retained in Northern Ireland.

Baroness Primarolo: I will give you an example, and maybe you could explain how this might work.

Aodhán Connolly: No pressure.

Baroness Primarolo: I did not mean to do that. Let me rephrase. Maybe you could raise the questions as a result of this proposition. The UK, which currently has a minimum of 5%, decides that on air exchange heat pumps it will move to 2.5%, which is not the rate in the Republic of Ireland and is below the 5% that would be allowed for Northern Ireland, because it would still be regulated under the EU-wide VAT regime. Is my assumption correct that Northern Ireland could not benefit from the theoretical reduced rate of 2.5% in GB because it was still locked into the current 5%? Does that make sense?

Aodhán Connolly: It makes sense to me, but that does not mean it is the right answer. That is one of the questions we have not yet had answers to. However, it has been brought up by four of the 20-plus members who responded, so it is a concern.

Baroness Primarolo: Are they also raising questions about HMRC taking the view that ignorance is not an acceptable excuse for not complying with whatever rules HMRC designates to be operational and that there might therefore be a clash with the European Union responsibilities for the VAT regime in Northern Ireland, with businesses caught in the middle? I am putting words in your mouth.

Aodhán Connolly: I can confirm that there have been questions about enforcement—not just on VAT, although that is one that has come up, but enforcement on customs and things finding their way into the Republic of Ireland-EU market. It has come up.

Baroness Primarolo: So Northern Ireland could basically find itself in three regimes: you would be locked into the European Union one that exists now, it is possible that the European Union would move on and change some of its rates but they would stay the same in Northern Ireland, and it is also possible that GB moves to change its regulations in future because it is outside the European Union. You would have three regimes on VAT pressing down on you.

Aodhán Connolly: Plus there are the new Making Tax Digital requirements that come in in 2020, just to add a little flavour to the pot.

Baroness Primarolo: Thank you. This is a really complex area.

The Chair: It is so complex that I invite Aodhán to send some written submissions to us. We would be very interested in your list of questions and any other observations you had, and we will look into those things.

Aodhán Connolly: I am absolutely happy to. I would be very grateful.

Q11 **Lord Jay of Ewelme:** I declare an interest: I was for many years on the board of Associated British Foods, which owns Primark. It trades as Primark in the north and Penneys in the south, and I visited many of the stores on both sides of the border over the years.

My question is about the joint committee, which has come up a lot in the discussion so far. It is clearly not just a bureaucratic committee but something really important in the management of the implementation of the withdrawal agreement. Can you say a little about how you see it working and when it would start working? We have already had some mention that until it starts working you will not be able to do certain things that need to be done.

Also—this is one of the things that strikes me very much from the conversations we have had so far—what sort of relations will stakeholders have with it, and what sort of relationships does it need to seek with stakeholders if it will be able to fulfil its functions? There are rather a lot of questions there. I am not sure who they are for—probably you all.

Dr Katy Hayward: I have done quite a bit of work with my colleague, Professor David Phinnemore, on post-Brexit governance in Northern Ireland, looking into the roles of the various bodies envisaged and the implementation of the withdrawal agreement. It is very significant that the joint committee in effect becomes a managing body for the withdrawal agreement but, very specifically, the protocol. Its decisions will therefore have very direct implications for NI-GB relations on practical matters.

It is worth just reminding ourselves of the significance of the decisions being made by this body within a very short space of time. It will make decisions on what goods are classified as being at risk of moving into the EU and what would therefore be subject to particular checks and controls when moving from GB to NI. It will establish the conditions under which fisheries and aquaculture will be exempted from duties—a very controversial and sensitive issue. It will also keep under review a particular paragraph about the UK internal market, which is about both the UK and the EU using best endeavours to facilitate trade within the UK; this comes under a watching brief of the joint committee.

Practical arrangements for VAT would be under the remit of the joint committee. Of course, as in the previous protocol, it will keep under constant review the conditions necessary for north-south co-operation, which include such a wide range of areas—as identified by the mapping exercise. If there were a vote in the Northern Ireland Assembly to move away from alignment with the EU, the joint committee would come forward to look at the implications of that and make recommendations as to necessary measures: what might come into play in place of this protocol. It is extraordinarily important.

What do we know about the joint committee? According to the rules of procedure, its proceedings will be conducted on a confidential basis. It is at a very high level. It meets at least annually. One presumes that it would come into force on 1 February next year. We have to take that for granted. But it is meant to be primarily at ministerial level: UK Ministers vis-à-vis the EU.

Lord Jay of Ewelme: How can it work on a confidential basis when it is going to look at issues that are of such huge importance to all of us and in particular to all of you?

Aodhán Connolly: I do not think the decisions will be confidential. How it arrives at the decisions will be.

Dr Katy Hayward: How it arrives at the decisions will be confidential. Obviously, the decisions will not be confidential but, as it is at the moment in the rules of procedure, the way they are come to will be. I do not want to go into too much detail, but there are many things that we could be considering at this stage. For example, according to the rules of procedure, committees could be established to facilitate the work of the joint committee.

This is where you have the possibility of making sure that it functions in a way that you would expect of such an important body. There could, for example, be a joint parliamentary committee between Members of the European Parliament and Westminster, but also MLAs, to facilitate and scrutinise the work of the joint committee. There should also be—as a bare minimum, one would hope—a means of UK Ministers bringing along with them relevant Ministers from the Northern Ireland Executive where the discussions are specifically about the implementation of the protocol.

I will submit written evidence to the Committee on those kinds of issues, but fundamentally the fact that the committee's work is meant to be confidential does raise concerns, given the huge significance of it for NI-GB let alone UK-EU.

Lord Jay of Ewelme: There will presumably also need to be some kind of parliamentary oversight of it—some sort of accountability of the committee to the House of Commons and indeed to the House of Lords.

Dr Katy Hayward: Yes, absolutely.

Ivor Ferguson: As farmers we would like to think that there would be specialised committees which the farmers and the agri-food business would feed into, which would in turn feed into the joint committee. That is something that we would insist on as farmers.

Lord Jay of Ewelme: So there will be a joint committee and there will have to be various sub-committees, and the sub-committees will have to be pretty transparent in dealing with you and others.

Ivor Ferguson: Yes, that is what we would like to see happening.

Lord Sharkey: Still on the joint committee, do we know how it is going to proceed? How will decisions be made? I understand there will be no voting. What is the default position? How will it work?

Dr Katy Hayward: The intention is that it will be on a consensus basis. The details of it are not known, but the decisions will not be made on a voting basis. It will come to a mutual agreement on these matters. But the extent of the matters to be decided has been greatly increased by this new protocol.

Lord Kerr of Kinlochard: The key issue which the committee has to decide in relation to imports into Northern Ireland from Great Britain is whether they are at risk of circulating into the EU across the border. If that is its job, the EU will call the shots on this committee, because "at risk" is clearly a very wide category. It is hard to see what would not be at risk. I would not like to be the British member of this committee, because the other side is going to have an awful lot of firepower. We do not say "at significant risk"—we have not defined what the risk is—we say simply "at risk". I think we will lose out.

Aodhán Connolly: I would hope that anybody who is there to represent Northern Ireland or the UK would have all the evidence they needed, and they would have to do that by talking to experts. From the day and hour that this is agreed and passes Parliament, the UK Government should ensure that they co-ordinate discussion with our industry, farming and others to achieve this.

We recommend that Defra takes the lead to resolve any issues on food, et cetera, as it already has expertise from its work for us. But it would need other parties such as the Treasury to look at that as well. The main thing is that whoever is representing Northern Ireland or the UK needs to lean on the support and the expertise that come from industry, because this is what we do day in, day out.

The Chair: I hope this evidence session is the start of that process. Lord Ricketts has the ultimate question.

Q12 **Lord Ricketts:** I think we can probably assure Lord Kerr that he is unlikely to be the UK representative on the committee, if that is any relief to him.

I have one last question, which is about two other committees we have not mentioned yet but which are potentially quite important. One is the specialised committee under article 14 of the protocol, whose job seems to be to look at implementation of the protocol, and to take delivery of views from the North-South Ministerial Council and issues to do with human rights and equality. Then there is the joint consultative working group, which I think is the working body of the specialised committee, which is there as a forum for exchange of information between the two Governments.

Those are two extra bits of bureaucratic machinery that potentially are less confidential than the joint committee, if they are going to be docking points for views from the Northern Ireland communities and therefore part of the democratic legitimacy of this arrangement. Is that how you would see them? Do you think they are the right sort of vehicle for that wider input and democratic legitimacy?

Dr Katy Hayward: Yes. The specialised committee for this protocol is similar to the specialised committee for the others. It is about having appropriate expertise relevant to the application of the protocol. At the moment, it specifies that it would be UK-EU. I have given evidence to this Committee before, and I mentioned that the EU has said that Irish representatives will be there. Similarly, the UK should make the case that Northern Ireland representatives—for example, from the Northern Ireland Civil Service—will be there. The joint consultative working group is a great opportunity for ensuring that that process of information gathering and mutual consultation will be successful and productive. Aodhán's point is very important here: there is an opportunity there for stakeholder input.

It is worth noting that the unilateral declaration from the UK on the protocol talks about consultation before the vote in the Northern Ireland Assembly; it talks about engaging with businesses, trade unions and civil society groups. That is all well and good before that one-off vote, but what about engaging stakeholders in the working of the joint consultative working group and the specialised committee? It is good that it recognises the institutions of the Good Friday/Belfast agreement, but it would make the operation of it much more efficient and productive if we were to make sure that there was stakeholder engagement and a means of putting that expertise into the operation of that committee.

Aodhán Connolly: One of the best things to have come out of these tough past three years is that the body politic has listened more to business and to Northern Ireland business than it has done probably in the previous 30 years. For that we are grateful, but especially with what is happening now with this withdrawal agreement, that needs to continue.

Baroness Hamwee: Katy, have you given any thought to whether the decisions of the various bodies that we have just been referring to, including the joint committee, could be judicially reviewable? I would be interested to know. Perhaps you could answer in writing.

Dr Katy Hayward: Yes, I will certainly do that.

The Chair: Thank you very much. We have grilled you for an hour and a half, which is rather more than billed, but you have more than held your own. Thank you very much for coming. I formally close the session.