HOUSE OF COMMONS

Exiting the European Union Committee

Oral evidence: The progress of the UK's negotiations on EU withdrawal, HC 35

Wednesday 30 October 2019

Ordered by the House of Commons to be published on 30 October 2019.

Watch the meeting

Members present: Hilary Benn (Chair); Sir Christopher Chope; Peter Grant; Wera Hobhouse; Andrea Jenkyns; Jeremy Lefroy; Seema Malhotra; Stephen Timms; Mr John Whittingdale.

Questions 165 - 209

Witnesses

I: Professor Catherine Barnard, Professor of EU Law, Cambridge University; Dr Anna Jerzewska, Independent Customs and Trade Consultant and Independent Advisor, UN International Trade Centre; Raoul Ruparel OBE, Former Adviser to the Prime Minister on Europe; and Dr Jack Simson Caird, Senior Research Fellow, Bingham Centre.

Examination of witnesses

Witnesses: Professor Catherine Barnard, Dr Anna Jerzewska, Raoul Ruparel OBE and Dr Jack Simson Caird.

Q165 **Chair:** On behalf of the Committee, can I welcome our panel this morning? We are very grateful to you for coming to help us with the beginning of the process of scrutinising the EU withdrawal agreement and the political declaration, although it is a process that is about to come to an end temporarily, because following procedures in the House yesterday another event is about to intervene. You are very welcome, nonetheless.

Can I introduce our panel? Professor Catherine Barnard, professor of EU law at Cambridge University, Dr Jack Simson Caird, senior research fellow at the Bingham Centre, Dr Anna Jerzewska, independent customs and trade consultant and independent adviser, UN International Trade Centre, and Mr Raoul Ruparel, former adviser to the Prime Minister on Europe, thank you all very much for giving up your time and coming to be with us today. As ever with this Committee, there are lots of questions to ask. Succinct answers would be really helpful. Please do not feel under obligation, all four of you, to answer every question directed, so we can get through them.

Can I kick off with the new Northern Ireland protocol that has been negotiated? It has been suggested that, when a new trade agreement with the European Union is reached, the protocol would fall away, but that is not the case, as I understand it. The only way it falls away is if consent to it is withdrawn by the consent mechanism in the new agreement. Does someone want to tell me whether I am right or wrong?

Raoul Ruparel: Broadly, you are correct. There has been a conscious shift from the previous protocol that was negotiated. It was quite explicit in the version of the protocol negotiated under Theresa May's Government that the aim was to replace that protocol. It was a backstop and a fallback, and not the main aim. That has been shifted and some of that text has been removed in this protocol. It is very clear in the explainers that both sides have published that the intention is for this to remain unless broad consent is withdrawn in Northern Ireland.

The one point to add is that the protocol allows for it to be replaced by a subsequent agreement. Obviously that has to be built into the agreement, so both sides would have to agree that, whatever is negotiated as part of the subsequent agreement replaces this protocol. The stance the EU has taken so far is clear: it does not see that happening in the future negotiations; it sees this being the long-term solution to this issue. Even the UK, in its explainers, has been clear that it does not expect it to be replaced unless consent is withdrawn.

Dr Jerzewska: From a customs perspective, if you have a free trade agreement, it does not remove the customs border. The problem we have with Northern Ireland is what to do with the customs and regulatory border that needs to be in place. A free trade agreement by itself adds to customs formalities, because you also have the question of rules of origin. Unless there is something that deals with the customs border within that free trade agreement, this protocol will still be necessary. Otherwise we will end up in the same place we have been in for the last three years: what are we going to do with the customs border between the Republic of Ireland and Northern Ireland?

Q166 **Chair:** Thank you. Does anyone think we are likely to reach an agreement on new trading arrangements by December 2020? It is a judgment, but I am interested in your view.

Professor Barnard: It is going to be very difficult. The average period to negotiate a trade agreement is 48 months, and never before has one been negotiated where the parties are diverging, rather than converging. What is striking is that the political declaration now talks about agreements, plural. It may well be that you see a series of agreements staggered over time, and the easier one to conclude would be on goods. That raises the question of how the agreements, plural, would be cut up. If it is on goods, they could just do a goods one under article 207. That would not be a mixed agreement; it would be qualified majority voting. It is in the EU's interest to have an agreement on goods quickly, because the EU has a trade surplus with the UK in goods.

Of course, the UK has a vested interest in having an agreement on services. Services agreements are much more difficult to negotiate, because the problem is not tariffs; it is recognition of regulatory standards. The UK has a much greater interest in having a trade agreement on services than the EU has, because we have a trade surplus with the EU. There is the more general problem that we have to decide how proximate we want to be with the EU. The other thing that has become clear is that level playing-field commitments, in respect of workers' rights, consumer rights, environmental rights and state aid, will become more robust and more demanding the more proximate to the EU we are. That is a fundamental question that we have to address.

Dr Simson Caird: If you look at the scrutiny arrangements on the domestic side, as put out in the withdrawal agreement Bill, and then the scrutiny arrangements for the future relationship on the EU side, just for the negotiations, they present considerable hurdles that will need to be rattled through in a year. On the domestic legislative side, you can see there will be quite a significant programme once the future relationship is taking shape, which would need to be got through. By most estimates that would be extremely condensed, if you had to get through it by 31 December 2020.

Q167 **Chair:** I have a final question on exit summary declarations for goods moving from Northern Ireland to GB. The protocol clearly says that

Northern Ireland is in the customs territory of the United Kingdom. Can one of you try to explain why, then, an exit summary declaration is required, if goods are moving from one part of the UK customs territory to another, when it is clearly not required if goods move from, say, London to Glasgow, which are also both part of the UK customs territory? The answer that has been given refers to international obligations, but I am struggling to understand, if it is the case that Northern Ireland is in the UK's customs territory, why any such exit summary declaration would be required.

Dr Jerzewska: There are two things here. One is that the Union customs code, the EU's customs legislation, will apply to Northern Ireland. Within the Union customs code, there is an obligation, any time a good moves in or out of the EU, for a summary declaration, a pre-notification or safety and security information to be submitted. It is not only for when goods leave the EU, but also when they come into the EU customs territory. That is one part: there is a requirement to do that within the Union customs code and that would apply to Northern Ireland.

In terms of international obligations, it is not necessarily that an international agreement requires countries to have that. Entry and exit summary declarations were put in place, first in the US, in the aftermath of the 9/11 attacks. They were part of the continuous security initiative. As a result of the 9/11 attacks, there was an initiative to make international supply chains more secure and to respond to the threat of terrorism.

The EU version of that is similar to what the US is doing and what the majority of other countries are doing, internationally. I do not have the precise data on that, but some form of pre-shipment notification or advance shipping information is required by most countries in Africa, large parts of Asia and both Americas. This is done by the majority of countries to make sure that security and safety information is passed and risk analysis is done.

Raoul Ruparel: To add briefly to that, my understanding is that these are required under the protocol mainly due to the UCC, the Union customs code. There is a choice going forward about how this is approached in the joint committee. There is a possibility that the UK could argue under article 6, the protection of the internal market, that this should be removed because it limits unfettered access. We do not know whether that would be accepted by the EU, but it is possible.

However, there is a reason why the UK may want to keep something like this in place, particularly to distinguish between trade coming directly from Northern Ireland and that coming from Ireland or the rest of the EU into Great Britain. That would allow for different procedures to be applied on those different types of trade. Trade coming from Northern Ireland, if it has made an exit declaration showing that that is where it has come from, could be subject to fewer procedures than trade coming from

Ireland. It allows some option to distinguish and to give Northern Ireland a preferable position, relative to Ireland or the EU.

Q168 **Mr Whittingdale:** Can I first come back quickly to the point that Mr Ruparel was making about the status of the Northern Ireland protocol? As you said, when the backstop was proposed, both sides expressed the ambition that it would be temporary only and that work would continue on trying to discover what were called alternative arrangements. Am I right that, from what you were saying, there is not going to be any work done on alternative arrangements now, because the proposed solution in the Bill at the moment is regarded as permanent?

Raoul Ruparel: That is my understanding at this point in time. References and the intention towards alternative arrangements have largely been removed, so the commitments given by both sides to work swiftly on those to try to replace the Northern Ireland protocol no longer apply. It does not seem to be the intention of either the UK Government or the EU side to negotiate those alternative arrangements to replace the protocol so, yes, I agree with you.

Q169 **Mr Whittingdale:** Could the alternative arrangements be part of any future agreement that is drawn up during the transition period?

Raoul Ruparel: In theory, yes. As I said earlier, the protocol allows for it to be replaced or changed, in part or in whole, by a future agreement agreed between both sides. The UK Government, for example, could go into the next phase of the future negotiation seeking to agree alternative arrangements. The question is whether the EU would be willing to negotiate on that, given its stance seeing this protocol as the solution to this issue. If it were not willing to negotiate or to agree to that, it would not be possible to replace this protocol, because any agreement replacing it has to be agreed by both sides. That is the only way it can be replaced. It is possible. I guess it is a negotiating strategy choice, in some ways, because we have seen that it is very challenging to negotiate alternative arrangements. There is a question of whether that could lead to the future negotiations running into the ground quite quickly on this complex issue, which in some sense the EU sees as settled.

Q170 **Mr Whittingdale:** If one had the suspicion that the EU were never very interested in alternative arrangements, this would allow it essentially to shelve that and maintain its position.

Raoul Ruparel: Exactly, it is a judgment call on whether you think the EU would be willing to get into that negotiation.

Q171 **Mr Whittingdale:** Can I put a more general question to all of you? You will have heard speculation that the passage of the withdrawal agreement Bill would be subject to considerable amendments. Can you give an indication of the extent to which it is possible to amend the Bill before you run into the need to reopen the entire negotiation with the EU?

Raoul Ruparel: Very briefly, I would say there are limits. On issues such as citizens' rights, the withdrawal agreement is very prescriptive about it having direct effect and sticking entirely to what is in the agreement. That is true of other parts as well, but there is significant scope for amendments, particularly on scrutinising the powers, the way they are deployed and the exact scope of those powers in the Bill. Also, as we have seen, there is scope to put forward amendments dictating or looking to dictate what is done in the next phase of negotiations. If it is about the UK's own stance to those negotiations, it would not breach the agreement.

Professor Barnard: I broadly agree with that. As you know, there are extensive so-called Henry VIII powers. One of the areas that I suspect would be subject to amendment is the introduction of some sort of sifting process, as was done under the 2018 legislation. You will remember the Henry VIII clauses were one of the most troublesome features of that Bill. The sifting process was introduced and applied to the 2018 Act. The WAB, the 2019 Bill, is effectively being overlaid onto the 2018 Act, which is one of the reasons why the WAB is quite complicated to read. The WAB is amending the 2018 Act. It is rather odd that, after much controversy and final agreement on the sifting mechanism in respect of the use of the Henry VIII powers in the 2018 Act, it has not been rolled out to the 2019 Bill. You would expect that to be one area where there may be amendments. Of course, that has no direct impact on EU commitments, our EU commitments being to give effect to the withdrawal agreement.

Essentially the three key areas of the withdrawal agreement are citizens' rights, the Northern Ireland protocol and the money. The other provision in there that is likely to cause concern is the provision in article 4 of the withdrawal agreement on the direct effect of the withdrawal agreement. That has been incorporated into the WAB using a similar mechanism to the one used in the 1972 Act, which took us into the EU in the first place, at a domestic level. It is going to be very hard to amend that, because it gives effect to EU law.

Dr Simson Caird: There is a clear test that you can apply to any amendment, which is whether the text of the amendment is inconsistent with any of the legal obligations set out in the withdrawal agreement. If it is directly inconsistent with any of those legal obligations, there is even an argument that such an amendment would be out of scope. In the 1970s, when the European Communities Bill was going through Parliament, there was quite a controversial ruling from the Speaker at the time that amendments that would require a direct amendment to the withdrawal agreement in order to be effective were ruled out of scope.

That is clear but, on the second point Catherine made, even if you apply that clear rule, there is considerable flexibility on how you implement those obligations on each of these core issues. There is flexibility in that sense and a range of different ways in which a particular legal obligation can be implemented. There is considerable scope for amendment there.

Then there is the big issue of the future relationship. As there are no legal obligations arising from the political declaration, because it is not a treaty—as we have now firmly established—there is considerable scope for amendment to areas of the WAB that are not directly connected to implementing the withdrawal agreement. There are examples we will come on to later, such as the scrutiny arrangements for the future relationship. They are not connected to the withdrawal agreement text, so can be amended without any issue of inconsistency arising.

Q172 **Mr Whittingdale:** There was a suggestion at one point that some of the direction of travel of the political declaration was within the withdrawal agreement. Are you saying that we can make whatever amendment we like to attempt to influence the Government's position in negotiating our future relationship, without being in breach of the withdrawal agreement in any way?

Dr Simson Caird: It is difficult. There is a deliberate grey area in creating the connection in the withdrawal agreement to the aims of the political declaration. The legal position, as I understand it, is that the political declaration does not create legal obligations on either side. That is the key test of the rule of law: there are no legal obligations in the political declaration, so anything that relates to that directly would not amount to a bar to ratification of the withdrawal agreement.

Other questions arise about whether we can do anything we like in relation to the future relationship, as in what would be effective. We will come on to the scrutiny arrangements and Parliament's role in the future relationship. Is it effective to have an obligation to say the Government must negotiate a customs union? Who would enforce such a provision? Even if it were enforceable, there is nothing to say that the EU would have to grant it. On the other hand, a legal obligation that says the Government cannot negotiate a future relationship unless the House of Commons first approves the mandate, which is the text in clause 31 of the WAB, would seemingly be effective and would allow for the sorts of things that you are discussing.

Professor Barnard: If you want to trace it through, article 184 of the withdrawal agreement says that the EU and the United Kingdom "shall use their best endeavours" to take necessary steps to negotiate the "the agreements governing their future relationship referred to in the political declaration". That already makes a link between the withdrawal agreement and the political declaration. If you go into the WAB and have a look at clause 31(3), which has just been mentioned, it states that "a statement on objectives for the future relationship with the EU must be consistent with the political declaration…referred to in article 184". What you see is an attempt in the WAB to bind into the WAB some of the commitments in the political declaration, which in and of itself is not legally binding.

Q173 **Seema Malhotra:** I am picking up further from where the Chair was questioning earlier. I am keen to have a point of clarity on the definition

of customs territory, to start with. Article 4 of the Ireland/Northern Ireland protocol states that Northern Ireland is part of the customs territory of the United Kingdom. How would you legally define the term "customs territory"?

Dr Jerzewska: It is not a legal definition, but a customs territory is where customs legislation applies. In the Union customs code, the EU customs legislation, under the definition of a customs territory you have a clear list for each of the members of which territories are within the EU's customs territory and which are not. The current EU customs territory is very clearly defined in the UCC, the customs legislation. How that would work for Northern Ireland being in both the UCC and the UK's customs territory is another question.

Raoul Ruparel: My sense is that, in the way it is generally approached, if you are moving a good from one customs territory to another, customs formalities and requirements arise, and the need for declarations, potentially tariffs, et cetera. The aim, as I understand it, of being explicit that Northern Ireland remains in the UK's customs territory is to avoid the need for customs formalities on trade, Northern Ireland to GB in particular.

Q174 **Seema Malhotra:** We talk about customs procedures. Could I ask for clarity again? What form of customs procedures might need to be in place between the UK and Northern Ireland under the protocol?

Dr Jerzewska: That is not really defined by the protocol. In a very unhelpful way, the protocol skips over that. It is not clearly mentioned but, because there might need to be tariffs and differences in regulation, in trade defence measures and other areas, you need some way to control it. You can do this normally. If you have a normal border, you have pre-notifications, entry and exit summary declarations and customs declarations through different forms, and other documentation.

You do not necessarily need both. I should have mentioned earlier that Norway and Switzerland have a separate agreement with the EU, whereby you do not need an entry and exit summary declaration between Norway and the EU, or Switzerland and the EU. There is an agreement that says both parties agree their risk analysis is equally sufficient and good so, once the good enters Norway and is checked for risk purposes, it is fine to enter the EU. The UK and the EU could also have this sort of agreement but, in that case, would need customs declarations, because you need some way of tracing what moves between those two territories. They are also for the purpose of future trade agreements with other countries and to control what you are doing on your borders. The joint committee will decide how this works and whether customs declarations will be required for all goods or only those goods that are considered to have a high risk of entering the EU's territory, so the Republic of Ireland, but we will have to have something in place.

Q175 **Seema Malhotra:** In practical terms, what might this mean for

businesses in Northern Ireland trying to work out and navigate what this could all lead to?

Dr Jerzewska: The customs declaration has a number of data that you need to provide. Submitting a customs declaration is one part of the problem, and that is usually not done by the company, but by a broker or customs agent—for a fee obviously. So one element is that extra cost for the company to hire someone to deal with these procedures on its behalf. However, the information that needs to be provided and entered into a customs declaration needs to come from the company, because it is related to the goods that the company is importing or exporting. It is only the company that can provide this information.

For a lot of these data elements, complex customs rules need to be followed in order to provide this information. For example, for a commodity code, there is an entire discipline of customs classification that determines what commodity code every single product should be classified under. Depending on the commodity code, you have different tariffs, customs measures and provisions. We have talked about rules of origin a lot in the last couple of years. Even something as simple as the value of the product is determined by a set of complex rules. It is more about the amount of time, effort and investment that companies need to make before they are able to export, so the internal cost and time required to provide this information and to understand, get your head around, customs in general.

Q176 **Seema Malhotra:** This is a final question, unless any other panellists would like to come in. What investment of time might be required? Is it straightforward for a business to understand or is it likely to be complex? What could some of the legal consequences be of businesses getting this wrong?

Dr Jerzewska: HMRC published its third version of the impact assessment about three weeks ago, which estimated that, even for a large business that exports and imports regularly, it will take up to one hour and 45 minutes per declaration to find that information. For a business that has never imported or exported, it is very hard to estimate. It is the same as if, all of a sudden, you started to submit your own tax or VAT declarations for your company or income tax. You would need to spend some time understanding how it works before you do it, but there is a learning curve whereby you invest time at the beginning and then it gradually take less time. Again, you would probably hire a customs broker and then you would probably need someone advising you internally, either an in-house customs person, a consultant or external help, at least initially.

Raoul Ruparel: To add to that, there is certainly the potential for new cost, in terms of administrative burdens or fees for hiring these brokers. A lot depends on the actual implementation and what the joint committee agrees. For example, you can see in article 5(6) some of the options that could be undertaken. It is possible that the customs formalities could be

waived or that the fees or administrative costs could be reimbursed, subject to state aid rules. There are things in here that the UK Government can do to help businesses deal with this, either to remove or reduce the upfront costs or to reimburse them after the fact. Exactly how those are applied will have a big bearing on how much impact this has on businesses.

I will just pick up the point about enforcement and legalities. This is an interesting question. All these checks or processes are to be administered by the UK Government. Now, the protocol sets out that the EU has the ability to oversee, come in and check these processes, and make sure they are being done to sufficient standards. If it believes they are not being done, it can go to the dispute resolution and arbitration mechanism set out in the withdrawal agreement.

The question then is what remedies there are to force a change. There is the option to fine the UK Government if they are not properly implementing parts of the withdrawal agreement or protocol. There will be a question, at some point, if they go down that road, of whether that fine is better or lower than the cost to business of implementing to the letter of the agreement. There is an interesting question, going forward, about exactly how this stuff will be enforced on the ground, given it is UK authorities doing it and given the dispute resolution mechanisms we have set out in the withdrawal agreement.

Chair: For the assistance—and we have all done it—of those following our proceedings, when we use the term "WAB", as not everyone may understand what WAB or the WAB is, it is the withdrawal agreement Bill. My colleague has made the helpful point that, if we refer to it as the withdrawal agreement Bill, people will know what we are talking about.

Q177 **Jeremy Lefroy:** Continuing with customs documentation, having been involved for many years in exporting between countries—where it is a lot more complex than within the UK, within the EU or, nowadays, between most countries—I have never found customs documentation to be a huge issue, even in the days when we were doing it all on typewriters. Given that, for any goods being transported or sent within the UK, you get some kind of written document that you sign, would it not be possible for all customs-relevant information to be put on to those kinds of air waybills, bills of lading or whatever we already use so that, actually, it is only a few extra lines on a pre-prepared form? Would that not be possible? Would it therefore not be quite easy for companies and businesses to do it themselves and not have to incur additional costs?

Raoul Ruparel: We looked at these issues quite a lot during my time in Government. Generally, my experience is that the types of invoices and documentation that people draw up as part of everyday business do not quite go as far as customs declarations. There are additional bits of information, particularly in terms of the commodity codes that Anna was talking about, but also the origin of goods in the supply chain, that would be a new thing for people to deal with.

That being said, there is scope within the protocol to negotiate on this issue. The starting point and default is for the Union customs code to be applied and, therefore, customs declarations or entry and exit requirements are there. They are standard in terms of what needs to be provided. Of course, it could be possible during the joint committee to negotiate a different form of document or approach to that. I do not know whether the EU would be willing to do that; that is a judgment call people will have to make. But that is potentially open, to make it more streamlined and easier for businesses. It is just a question of relative priorities in the negotiations and how much time you want to spend getting this ready to go.

Dr Jerzewska: I will add two points to this. One is that these documents, such as air waybills and so on, are international documents, so changing them adds an additional level of complexity. If one company uses these documents and has a template in its ERP system to send goods to China or to the US, for it to change its internal processes to have a different form for the EU is quite complex, so that might not necessarily be helpful. In terms of customs documentation, I do not have the percentage, but I knew of very few companies that submit them themselves. It is usually done by a third-party provider. That is why the complexity is outsourced to a third-party provider.

Q178 **Jeremy Lefroy:** I imagine that, because this is a unique situation, people will adapt to it relatively quickly and introduce streamlined systems, which are pretty cost-effective. We are talking about something that has not been done before, at least not in this part of the world, so I imagine people could be fairly quick to adapt to it.

Dr Jerzewska: Yes, it is definitely the case that, if you have a need to streamline processes, you probably get there quicker than otherwise. However, it would probably be easier to do it within the existing systems, such CHIEF and the existing IT systems. As we know, even upgrading the CHIEF system can take a long time and is not necessarily successful. It would be easier to streamline within the existing forms and systems.

Raoul Ruparel: As we have already touched upon, there is potential for variation in the protocol about how this is approached for different types of businesses and trade. This is hypothetical, but you could see a scenario in which small businesses doing relatively irregular trade across GB to NI basically have their requirements waived because they fall below the threshold of state aid. Therefore, they are able to trade and both sides accept that happening with relatively little formality.

You then see larger businesses doing regular trade across this border being subject to AEOs or trusted trader procedures, where they can conclusively prove the destination of their goods. That then leads to a streamlined process that these businesses are used to using in their existing systems. If there are additional administrative costs to pay agents, they could be reimbursed by the UK Government, again within the state aid rules. It would only be large-volume irregular trade that is

going into processing, say, in Northern Ireland, where the final destination is not clear, that would be subject to the most formality. There is a lot of scope within this protocol to vary, and make it streamlined and tailored to certain types of trade, depending on what is taking place.

Q179 **Sir Christopher Chope:** Are any particular models for the future political relationship ruled out by the political declaration, at this stage?

Raoul Ruparel: The political declaration is not a legal document, as we have discussed already. It is an aspiration and a desire, set out by both sides. It is clear that the current aspiration in the political declaration is for a free trade agreement, not for a different type of relationship. But what will determine what happens in the future and the way negotiations go is the mandate set by each side. The mandate given by the European Council to the European Commission will provide a clear framework under which it is able to negotiate. As envisaged in the withdrawal agreement Bill, Parliament will provide the mandate to the Government. Those documents will set out the direction and framework for the future negotiations. The political declaration is a guideline, but it does not necessarily rule anything out, one way or the other. It can always be changed.

Professor Barnard: I suspect the European Economic Area model is more or less ruled out, at least if the political declaration is followed, because there is a clear statement that we shall not continue with free movement of persons, which would be an integral part of staying in or re-joining the European Economic Area.

Q180 **Sir Christopher Chope:** On 12 December, there will be an issue for the British people to decide: do they want to "get Brexit done", in the Prime Minister's words, or not? I would be interested in your views on this. Monsieur Barnier has apparently said that it will take at least another three years to get Brexit done. What can be done by the new Government to prevent such a long period? The Prime Minister has said he would be quite happy to leave without a deal but, if we have a deal, we must not have a transition period going beyond December 2020.

Professor Barnard: With respect, it is slightly more complicated than that. The transition period, as you rightly say, is a year, assuming we go into a transition period and the withdrawal implementation Bill is passed. For argument's sake, the transition period will go from 1 February 2020 to 31 December 2020. That is really a period of 11 months only, which is very short indeed to negotiate an international trade agreement, especially one of the ambition and scope that the political declaration indicates. It is not just about trade, but about both internal and external security. That is why a lot of people are paying attention to what will happen on 31 December 2020. Will we in fact leave without a deal then? That will get Brexit done at one level, but will not resolve the many issues that follow on from that.

The real question for you perhaps is what happens in June 2020. The relevance of June 2020 is that it is possible, by 1 July 2020, to ask for an extension of the transition period. It is a one-off request, and it can last for one or two years beyond the end of 2020. That process of requesting an extension, which will happen within three or four months of us having left, is foreseen in the withdrawal implementation Bill. There is a process by which Parliament can scrutinise whether a request should be made, but not actually trigger the asking of an extension. That is quite a long-winded explanation to say that, because it takes a long time to negotiate trade agreements, it is very unlikely that the ambitious future economic partnership that the UK envisages will be concluded by December 2020.

A further point is to remember that the future relationship will not be negotiated under article 50. It will be done under a different set of legal provisions, probably articles 217 and 218. I can see that non-lawyers think this is what lawyers get excited about and non-lawyers get cross with, but the reality is that the EU functions as a system based on law. Therefore, we have to comply with that. If there is a complex agreement or agreements, they may have to be ratified by national and regional Parliaments, and all of that will take time. So there is a good chance, it seems to me, that we will have to ask for an extension of the transition period.

Q181 **Sir Christopher Chope:** The Prime Minister has said he will not apply for an extension to the transition period. Under his Prime Ministership, we will be leaving at the end of December 2020. I am trying to find out whether it would be easier for us to leave without a deal on 31 January next year, rather than get ourselves into the neverendum of trying to find and sort out a future political relationship within such a short space of time.

Dr Simson Caird: In relation to the first point, one of the lessons from the article 50 process is that it might be helpful not to rush the initial period before the negotiations begin. If you look at clause 31 and the arrangements for parliamentary scrutiny, the Government are proposing a very different procedure, because Parliament will have a veto on the negotiating mandate before the negotiations begin. In that sense, you might not even get the negotiations properly started unless the House of Commons has approved the negotiating mandate. That has to line up with the timeline that Catherine has mentioned, with the implementation period extension having to be requested by the middle of 2020. What I am saying is that, the way this process is looking, there will be a lot more work to be done in the early part of 2020, before the negotiations even begin. It might be that the negotiations have not even properly begun in a way that leads to them being concluded by the end of the transition period, as you have set out, which on paper would be 31 December.

The second thing is about the relationship between the negotiations and the domestic legislative process, which is not clear. There are different frameworks or models that could work. For example, if there was an

overarching agreement on the future relationship and then sub-agreements in particular areas, you might be able to leave more quickly than under other forms of future relationship. Then that would have knock-on effects on the legislation Parliament would need to pass to implement those different agreements. There are different possible ways of ordering it, which would all have different implications, but it is not yet clear which one the Government will go for.

Dr Jerzewska: To add to this, it is a false premise to think that, if we leave on a no-deal basis, it will get Brexit done. What does it actually mean to get Brexit done? If we leave with no deal, straight after that we will be back at the table trying to sort out customs and other areas. We will be talking about Brexit for years to come. Even if we leave on the 31st with no deal, we will still be talking about Brexit and negotiating issues relating to Brexit. I do not think you can have a clean Brexit and get it done.

Q182 **Sir Christopher Chope:** A "clean Brexit", for people who use that expression—which I think is a good one—means that we will be free to negotiate our future trading relationships with the rest of the world. We will have left the European Union and will not be in a transition or in the European Union. That is what we mean by a clean break. What we have heard seems depressingly complicated. How are we going to get Brexit done if, as you are saying, it will take years and years in this neverendum?

Dr Jerzewska: I see what you mean. I am talking about the relationship between the UK and the EU. It is important to make this distinction but, yes, if we leave with no deal, we can start negotiating. We are already rolling over the continuity agreement, so we are in that process already, to a certain extent. Yes, I see what you mean.

Q183 **Sir Christopher Chope:** Basically, you are saying that those of us who want to get Brexit done need to make clear to the electorate that the only way to do it is either to leave on 31 January without a deal or, by then, to have got a really strong negotiating mandate from the Prime Minister, so that he can drive it through Parliament and the European Union, with the same success that he drove through the last deal, in a period of fewer than 100 days.

Dr Jerzewska: That is not quite what I am saying. I am saying that, if we leave without a deal, we will still have to negotiate with the EU what our future relationship would look like. On anything else, we have a clear choice: to leave with a deal or leave without a deal.

Q184 **Sir Christopher Chope:** This is my last point. If we leave without a deal, we will still have the ability to pressurise the European Union into giving us a deal, because we would not have parted with tens of billions of pounds. If we part with tens of billions of pounds, we really will be at the mercy of the European Union, will we not?

Dr Jerzewska: That is not quite what I was saying. Our attempts to pressurise the EU might not have worked as well as we hoped, initially. I will leave it at that. That is not something I can talk to.

Professor Barnard: It is perhaps worth bearing in mind that, as we know, the EU is based on a system of rule of law. We will want some form of trading relationship other than under WTO terms, going forward. The EU will only be able to negotiate with us if the Commission has a negotiating mandate. The EU has made it clear that it will not give a mandate to negotiate very practical things, such as customs arrangements, until we have sorted out the issues of the Northern Ireland border, money and citizens' rights, which looks very much like the withdrawal agreement. The EU says it will not talk to us, in any form, unless those three things have been sorted out. That is why you are absolutely right that, if we leave with a deal on 31 October, it will be a form of clean Brexit, but in fact there will be constant negotiations about how trading relationships will work. But the EU will insist on those three things being sorted out.

Q185 **Sir Christopher Chope:** We say the EU will insist on it. That is the negotiating position at the moment, but we saw the EU insisting that Mrs May's deal could not be re-examined, yet the pressure from a good negotiating Prime Minister with a strong mandate will force it to accept a new reality.

Professor Barnard: You are right that there was a lot of talk that the withdrawal agreement could not be amended. However, it is worth bearing in mind that Theresa May's deal still forms the core of the withdrawal agreement and that is what is being replicated in the withdrawal implementation Bill. You will remember that Theresa May's deal was 600 or so pages long, and the first 300 pages have not been touched at all in Boris Johnson's renegotiation.

Q186 **Stephen Timms:** I want to ask a specific question about rules of origin checks. The new political declaration says at clause 22 that the future economic partnership between the UK and the EU should have "appropriate and modern accompanying rules of origin". Last week in the Chamber of the Commons, I asked the Prime Minister if he understood the worries of manufacturers about the prospect of new rules of origin checks. His answer was: "The reason I am not worried about that is that there are no new rules of origin checks". I thought that was quite a surprising answer, given that the political declaration explicitly refers to "appropriate and modern" rules of origin checks. I may be I am missing something here, but does it look to you as though there are going to be new rules of origin checks under the current proposals?

Dr Jerzewska: There is a very clear answer. If you have a free trade agreement, you have preferential rules of origin. That is just how a free trade agreement works. He used the term "checks", which are a little different from rules of origin formalities. Checks are when you check whether the formalities have been completed in a compliant way, which

you would need to do at some point, but you will have rules of origin if you have a free trade agreement. That is standard.

Then the protocol itself introduces other origin-related procedures around where the goods will end up, whether in Northern Ireland or the Republic of Ireland. You will have not only rules of origin under an FTA and every single other FTA the UK signs, going forward, but also some form of origin determination within the Northern Ireland protocol. This is different from rules of origin; it is more about the destination of the product, where it ends up. There will be additional layers, not necessarily of checks, because there will be the same customs checks as there are for origin, but of compliance and internal requirements.

Q187 **Stephen Timms:** Is the currently proposed political declaration different from the previous political declaration, in this respect? From what the manufacturers were saying, I got the impression that they are more worried about the prospect of rules of origin checks now than they were under Theresa May's deal. Is that correct? If so, what is it about the new political declaration that makes them more onerous?

Dr Jerzewska: It is just that, in this one, we are clearly referring to a free trade agreement, which comes with rules of origin. The framework makes it very clear that we will have rules of origin. The previous one talked about customs arrangements and customs areas, which was vaguer, because you could say it was perhaps a customs union. It was not clearly defined. This one is very specific about which customs arrangement we are going for: it is an FTA.

Raoul Ruparel: There is a more distinct difference, which is that the previous version of the political declaration was explicit that there would be no checks on rules of origin, whereas the current version is explicit that there will be checks. That is a distinct difference, and the reason behind it is that the customs arrangements the previous Government were seeking to negotiate, particularly the facilitated customs arrangement, essentially looked to maintain the UK and EU in a single customs territory, with differential tariffs through a hybrid customs system, as we are now seeing employed in the Northern Ireland protocol, but done for the entire UK. That ambition was combined with the ambition of frictionless trade. There was an agreement in the political declaration that there would be no checks on rules of origin, because the idea was that whatever the customs arrangement was allowed for it to be enforced at the UK's external border and for the EU to be confident that its rules and tariffs had been enforced at that border. Therefore, it would not need additional checks, particularly on rules of origin, between the UK and the EU.

Q188 **Stephen Timms:** Why has the previous commitment to avoiding rules of origin been dropped from the current proposal? What are the benefits for the UK from introducing these new rules of origin checks?

Raoul Ruparel: The benefits are to do with international trade. The tension and challenge under the previous approach was negotiating a novel customs arrangement, this hybrid customs arrangement, for the entire UK. Many people questioned whether that would have been possible. If not, it would have implied something close to the UK being in a customs union with the EU. That would therefore have restricted international trade opportunities, when it comes to goods and tariffs, for the UK.

This new approach, as has been said, is very explicit about a free trade agreement. There will be no question about the UK enforcing any of the EU's rules or tariffs at its external border. Therefore, it will be entirely free to negotiate international agreements and free trade agreements. It also means that, when trading with the EU under its own preferential free trade agreement, it will have to be able to prove that the goods are produced in the UK and eligible for those preferential tariffs. Therefore, you will not get any leakage from any free trade agreements with other countries into the EU via the UK, and that is enforced in free trade agreements through rules of origin checks.

Dr Jerzewska: You can be a member of a number of free trade agreements. It is much more difficult, not impossible but quite difficult, to negotiate your own free trade agreements if you are a member of a customs union, because of the external tariffs. You can only negotiate on other issues, not on trade of goods and external tariffs. That might be one of the benefits.

Q189 **Stephen Timms:** What are we to make, then, of the Prime Minister's statement that there are no new rules of origin checks?

Raoul Ruparel: We will have to see exactly what happens in the future and how the future relationship works. It may be that his ambition is to negotiate no new rules of origin checks. If that is his ambition, it is a very high ambition to try to negotiate under a free trade agreement. As we have discussed, most or all free trade agreements require rules of origin. Therefore, if origin requirements are there, you will need some checks somewhere to enforce them.

Q190 **Stephen Timms:** You say it is a high ambition for the Prime Minister to aim for. Is it conceivable that we end up with a free trade agreement, but do not have any rules of origin checks?

Dr Jerzewska: No, it is not. The whole point of rules of origin is to prevent trade diversion. For example, if we have an agreement with the US and the EU does not—that is a whole other can of worms but, for the sake of the argument, say we have an agreement with the US and the EU does not—how is the US to prevent goods being shipped through the UK to the EU, or the other way round? You have to have something. It could be China, for example. If you have an agreement with Vietnam or any other ASEAN countries, how are you going to prevent goods from China being shipped through ASEAN countries and into the EU?

You need something that says that the preference you are giving your FTA partner is only for your FTA partner; otherwise you are opening your market to everyone, which is not what a free trade agreement tries to do. These checks are the core of an FTA, because you are giving preference to the country you have negotiated with and your aim is to give it only to that country. That is what rules of origin do. You cannot have an FTA without them. An FTA without rules of origin is basically a unilateral lowering of tariffs, because you are opening your market to everyone, provided that the product is shipped roughly from that direction geographically.

Q191 **Stephen Timms:** Do you think the Prime Minister should have grasped the implication of what he has negotiated?

Dr Jerzewska: I cannot really answer that.

Q192 **Stephen Timms:** It seems to me he probably should. On the practical impact of these new rules of origin checks, manufacturers have expressed concern. Are they right to be worried or is this just something that they will take in their stride, when the time comes?

Dr Jerzewska: Rules of origin are something that a number of companies around the world deal with. It is customs; it is not impossible. It is not something that will prevent a number of companies from trading. It might be an issue for small companies, because of low margins and the amount of work required. It is an administrative hurdle. However, complying with rules of origin, calculating them and understanding where your goods come from is possibly the most time, effort and resource-consuming part of customs. You need to understand exactly how your goods are made and where your inputs come from.

You need to get paperwork from your suppliers. In some cases, you need to understand the types of processing. If you are a trader who purchases goods from someone else who makes them, you need to enter into conversation with your supplier to ensure that the cumulation of origin it is supplying is correct. You are liable for this documentation, not the person who sells you the goods, so it is a complex area that requires a lot of time.

It is also important to point out that rules of origin are not across the board; they are different for every product and under every single trade agreement. For a multinational company, trading a number of goods under different trade agreements, the complexity of that is quite significant. You often see an entire origin team within larger multinational companies, because rules of origin are often for one product in one specific market. There are similarities across certain industries in different FTAs, but there are often different rules of origin for each product the company trades. That is quite a significant investment on the company's behalf. It is much more than a customs declaration, basically. You also need ongoing maintenance because, if anything changes—where your goods are coming from, prices, margin or anything else—your rules of

origin calculations might also change, so you need to keep an eye on your rules of origin at all times.

Q193 **Stephen Timms:** Can I raise one more question? The Prime Minister has also told the Commons, on a number of occasions now, that there will be no checks across the Irish Sea between Northern Ireland and GB. What are the prospects of that proving to be true, under these proposals?

Raoul Ruparel: If we are talking about NI-to-GB trade, as we have said and has been documented, the initial stance is that exit declarations are likely to be required. It is a question for the UK whether it checks those on entry to GB or on the passage from NI to GB. It may be that the Government's current intention is to say, "You have to do those exit declarations, but we are not actually going to check them when you come in". That is an option. As I said, another option would be for the UK Government to seek to negotiate away this requirement under the joint committee, in terms of how the protocol is implemented. That could be part of his ambition.

Dr Jerzewska: If there is any kind of incentive, such as a tariff differentiation or another reason why you might profit from misdeclaring your goods—if there are any customs formalities with benefits on either side that provide an incentive for non-compliance—the EU will probably need checks. As with corporate tax or any kind of tax, if a company knows that no one will check its declaration, if there is a good incentive, what are the chances of everyone complying?

Q194 **Peter Grant:** From listening to much of what you have all said today, it seems that, even if we left under the Prime Minister's deal tomorrow night, or even if we leave under the Prime Minister's deal on 31 January, there would still be an awful lot of further deals to speak about and a lot of discussions and negotiations to take place. Is it fair to say that, even if we leave with this deal sometime in the near future, there will still be a significant degree of uncertainty about how everything pans out in the end? I see some nods from the witnesses. For the record, would somebody like to say yes or no?

Professor Barnard: In respect of the withdrawal agreement Bill, there is still considerable uncertainty, given the scope of the delegated powers, and how they will be used and scrutinised. Going forward, some major policy choices have to be made. It concerns me somewhat that the inevitable trade-offs that are associated with a future trade deal have not been clearly articulated. There does not seem to have been much public discussion about what we really want from a future trading relationship with the EU. As we have already heard from the discussion we have just had, it looks like we are going for something more distant through a free trade agreement, with the benefits that it allows the UK to negotiate free trade agreements for goods with the US, China and India. But the reality is that the EU is still our largest trading partner and, therefore, it would be in the UK's economic interest to have a future trade deal with the EU.

It is not just about trade. It is important to emphasise that, although we focus on and have spent a lot of time talking about customs and goods, our interests extend significantly beyond just trading goods. Of course there is trade in services, but there are bigger issues as well, particularly security, data exchange, continued membership of or access to the EU provisions on sharing criminal records and those sorts of databases. We have been actively involved in setting those up, as EU member states, and would like continued access to them. Wearing my university hat, I would add that we have significant interests in maintaining access to the research infrastructure and research environment offered by the EU.

Dr Simson Caird: I agree with that. One of the overarching themes of the Brexit process and Parliament's role so far is that the Government are trying to provide legal certainty on the statute book. You can see that in the form of the WAB. Essentially we would have EU law, in terms of UK domestic law, potentially staying as it is until 31 December 2022. That is a positive in a sense, in that you have a long degree of legal certainty. In terms of long-term legislative uncertainty, it is clear that what comes after the end of what the Bill calls completion date, which is the end of transition, will not be sorted until we see the final shape of the future relationship. There are some optimists who think that that could be done next year; then there are other views that it is more likely to come after an extended transition period. In that case, the uncertainty is inescapable and will not be resolved until we get to the very end of the implementation period, which might not be until the end of 2022.

Raoul Ruparel: There is obviously uncertainty, but it arises from the phasing and sequencing of the negotiations. We have had phase one of the withdrawal and divorce, and then will have phase two on the future negotiations. That was largely instituted by the European Commission. There are views on whether it was desirable, but it is inherent when you have this kind of sequenced approach that there will be uncertainty, because you are taking different bits in phases and taking time to pin down what the future will be. It will be done after we have left the EU.

Q195 **Peter Grant:** Is it reasonable to say then that "get Brexit done" is empty rhetoric? Whether we like it or not, whether we think that Brexit can be done tomorrow, next week or in a few months, the actual hard work of making it successful or minimising the damage will be with us for a long time to come.

Dr Jerzewska: To give you one example, when we were still planning for the 31st and no deal, we had the no-deal tariffs published a couple of weeks before the deadline, but even they were not the final tariffs. From a business's perspective, thinking the 31st is it, they still do not have certainty. The tariffs apply for 12 months, but what happens after that? It is still very difficult for businesses to plan.

Q196 **Peter Grant:** Can I come back to the questions and answers we have had about the proposed arrangements for trade, first between Northern Ireland and the Republic of Ireland, but also between Great Britain and

both parts of the island of Ireland? Is it fair to say that what has been proposed just now means that the trading relationship Northern Ireland has with the Republic of Ireland will be different from the trading relationship Scotland, England and Wales have with the Republic of Ireland? Again, I see nods from at least two of the panel.

Professor Barnard: It depends on how you cast it, but Northern Ireland will have a foot in two camps, both the EU's customs territory and the UK's customs territory. We have already heard that this will lead to complexity, in terms of the additional bureaucratic requirements, which is not to be sniffed at. On the other hand, goods in Northern Ireland will certainly enjoy much greater freedom and access to the single market, in a way that Scottish goods will not. There is an argument that goods from Northern Ireland are in a more favourable position.

Raoul Ruparel: We have to look at the reason why we have come to this favourable position for Northern Ireland. Both sides have accepted it is because of the unique circumstances and the unique position Northern Ireland has, in having a land border with the EU. The lesson from these negotiations is that what can be done at a land border is very different from what might be done at a sea border. One of the issues, and why we have ended up in this position, is the unique circumstances, history, politics and geography of Northern Ireland, in having that land border.

Q197 **Peter Grant:** I do not know if you remember, but Joanna Cherry and I raised this with some of you, some time ago, when it was first published. The Scottish Government produced a document, at the end of 2016, called *Scotland's Place in Europe*. Some of us can see a lot of similarities between what has been proposed now for Northern Ireland and what the Scottish Government promised as a compromise, either for Scotland or the whole of the United Kingdom, as a way that we could try to get consensus between those who voted for Brexit, but possibly not hard Brexit, and those who voted to remain, but who are willing to look at a soft Brexit.

I take the point that has been made about the unique circumstances of Northern Ireland where, as a matter of international law, we are not allowed a physical border. Had the UK Government, in 2016-17, not taken the political decision that the proposal from the Scottish Government was not acceptable, would an agreement between the UK Government and the EU about a different status for Northern Ireland not indicate that, with political will, the same agreement could have been reached for Scotland and possibly the whole United Kingdom, rather than making Northern Ireland different from the rest of the UK?

Raoul Ruparel: If I remember that document correctly, it argued for the entire UK to remain part of the single market and customs union. We have to look at applying that. If you look at what has been done for Northern Ireland, as I said, these are particular, unique circumstances. Therefore, the requirements of the wider rules and regulations, particularly on the free movement of people, have not necessarily come

into that, although the common travel area has been maintained. If you were looking to apply this to the entire UK, it is clear that that kind of relationship would have required continuation of the free movement of people between the UK and EU, but also adoption of all single market rules and regulations, as we see for Norway and other areas.

Applying that kind of relationship to the entire UK, rather than just Northern Ireland, is a very different proposition. This is something on which we have seen Parliament vote a number of times in amendments, but also through the indicative votes, and there was not a majority in Parliament for it. While it was a choice of the Government not to go down that road, it was also a choice of this Parliament not to pursue that type of relationship.

Q198 **Peter Grant:** The point remains, does it not, that the argument from the UK Government in 2016-17 was not that they did not want to do it? Their argument was that it was not possible to create a situation in which one part of the United Kingdom has a different relationship with the EU than another. Is it not the case that what is now being proposed by the Prime Minister is precisely that? The situation in Northern Ireland is unique; nobody argues about that. Is it not the case that the special circumstances in Northern Ireland made some kind of different arrangement essential? That is not what made it possible; what made it possible was that politicians knew they had to find an answer and they found one. Had the politicians wanted to find a similar answer for other parts of the UK, that alternative answer would have been available at the time.

Raoul Ruparel: Briefly, before I hand over to others, my recollection of the approach of the Government in 2016, of which I was a part, was not that this was not taken on because it was not necessarily possible to have differentiation. It was because it was not preferable for the entire UK. If you are asking whether the differentiated arrangements applied to Northern Ireland could be applied to Scotland, I do not think they practically could, because of the land border. It is a simple matter of geography, not to mention the unique circumstances that apply because of the politics. This is not something that could be negotiated for the entire UK under the withdrawal agreement. It is something to be negotiated in the future. Again, the reason why this was negotiated in the withdrawal agreement for Northern Ireland was that both sides accepted the unique circumstances. There is a question of whether those unique circumstances apply in Scotland; I am not sure they do. That is something both sides have accepted.

Q199 **Peter Grant:** Does your answer not effectively say—although it has not been put in these precise words—that we are now talking about a border down the Irish Sea? You are talking about the line between Scotland and Northern Ireland having a different status in customs and regulatory terms from the borders between Scotland and England, and England and Wales. It is easier to do that because there is water there, instead of just

a line on the tarmac. You are talking now about some kind of border down the Irish Sea, as part of the Prime Minister's deal.

Raoul Ruparel: We are talking about there being customs formalities between GB and NI, because NI is enforcing the Union customs code. I think that is fair. It is the reality.

Professor Barnard: Your earlier question was essentially why Scotland was not given the same sort of arrangement that Northern Ireland has. The EU side recognises the unique circumstances of Northern Ireland. Of course, the EU has pumped a lot of money and used a lot of its regional and other funds to try to facilitate the peace process. The EU side recognised that Northern Ireland is in a unique situation, which is why its focus was on making sure that there should be no hard border in Northern Ireland, certainly not the north/south border.

Going back to the phasing that Raoul talked about, you may recall the EU produced a document a month after we triggered article 50. That laid down the phasing that has caused problems for the UK, but it was clear that phase one identified the Northern Ireland border as one of the three issues of particular concern. So it has always been in the EU's mind since the beginning that Northern Ireland was separate, different and needed particular attention.

Q200 **Andrea Jenkyns:** Continuing with the Northern Ireland question, the joint committee will play a crucial role in the transition period and the future relationship. What measures can be taken to ensure the committee reflects the political concerns of the Northern Irish communities?

Dr Jerzewska: I cannot respond on the political side of this, but the joint committee will have a considerable task in terms of customs. The solutions that we need now are not the typical solutions we have talked about. We need to streamline procedures, preferably under the existing framework. The only thing I can think of in terms of customs is to ensure that it has input from customs officials. Very often, a free trade agreement or other international agreement is done at a trade or ministerial level, but the customs authorities are not included or they provide input, but are not part of the negotiations. That makes it more difficult to then apply or implement these provisions. I strongly suggest that customs officials or customs authorities are involved in these discussions regularly to make this easy and quick to implement, and actually work on the ground.

Raoul Ruparel: While the joint committee sits at the top and the UK will put in its representatives, what sits underneath that and the process for taking decisions to the joint committee is up for the UK Government to decide.

Q201 **Andrea Jenkyns:** What could that look like then?

Raoul Ruparel: Take something that was proposed by the previous Government. We made a proposal for what was then termed the

Stormont lock or something along those lines. It was essentially to ensure that any new rules added to the previous draft of the Northern Ireland protocol would have to have been approved by the Northern Ireland Executive or Assembly—the institutions there. That was clear. We proposed a process for saying that, if any new rule wanted to be added or proposed, it would have to go through approval in Northern Ireland. Then the UK representatives in the joint committee would take a stance on that rule or regulation being added to the protocol, based on what Northern Ireland institutions had decided. That is one example of how Northern Irish views could be fed in. You could imagine building a similar process around certain decision points or issues. It is up to the UK Government and Parliament to feed into how that process is designed and which key stakeholders need to be consulted.

Dr Simson Caird: In supervising the joint committee, you need the sort of mechanism that Raoul is talking about. You need a combination of things. You need some kind of formal, legal power, such as a scrutiny reserve or a legal veto of what the UK Government can or cannot do in the committee. You need also to ensure there is a conduit of information that the Government supply to Parliament, so that that position can be scrutinised well in advance and the veto can be exercised. Most challengingly, you need the informal scrutiny arrangements to work effectively, so there is a co-operative process to ensure Parliament is on board with whatever Government are doing in the joint committee. Because we have not done that sort of thing before, it is quite challenging to imagine how it would work in practice.

Professor Barnard: I was going to add that what is surprising about the withdrawal implementation Bill is how little there is on joint committees. There is just one short section, clause 35, about ministerial co-chairs of the joint committee. If you look at the text of the withdrawal agreement itself, there are provisions on the joint committee in article 164, but, in addition, there are provisions on the specialised committees that are going to be set up. There are six of them, and one is specifically on Northern Ireland, as you ask. It is extremely unfortunate that there is a total lack of engagement, even powers, in the WAB on how any of this is going to be rolled out in the UK system.

Q202 **Andrea Jenkyns:** So that needs looking at. Similarly to where the panel was going, on the ministerial presence on the joint committee, as set out in the WAB, what parliamentary influence could there be to scrutinise the progress of future secondary legislation, in your opinion?

Dr Simson Caird: There is a provision in the WAB to allow the European Scrutiny Committee to raise an issue with a new EU law that is going through in transition. In theory, if the committee raises an issue of vital national interest with a piece of EU law going through in transition, it could trigger a legal duty on the Government to lay a Motion, which would then be subject to a vote in the Commons, to say, "We have a problem with this new EU law."

The problem is that I am not sure how it would have any practical legal consequences. It is a political mechanism that could then feed into what the UK does, when it can diverge after transition has ended. It says, "We did not have a say over a particular EU law; it came into force while we were in transition and we do not like it, so we would like a future Government to get rid of it, amend it or do something about it". But in practical terms, I do not think we could stop that law coming into effect in the UK anyway.

It is really just a political mechanism to give us some way of expressing a view on EU law that takes effect in transition. Obviously we are going to have quite a strange situation, in which we will be accepting all EU law during transition, but will not have a seat at the table in the institutions to influence how that law is made. Especially if the transition period is extended to a three-year period, quite a significant amount of law could become part of UK domestic law. That is an issue in terms of legitimacy.

Andrea Jenkyns: That is why I would probably like to see a majority for no deal, but thank you.

Raoul Ruparel: It is up to Parliament and the Government to decide how extensive they want these processes to be. You could design a process in which, before any decisions are taken in the joint committee, they need to be approved by a motion of Parliament or something along those lines. You could produce something where there has to be regular reporting to Parliament about the actions of the joint committee and the work of each of the sub-committees. These are all choices for Parliament to make. There is no set framework for how it should or needs to work. It is finding the balance between allowing this committee—which will have a huge amount of work to do, and will need to move and take decisions quickly—and Ministers to have the ability to take those decisions and do those negotiations, and having the valid and right level of scrutiny from Parliament. Where that balance lies needs to be teased out, because it is not something we have done before.

Q203 **Andrea Jenkyns:** This morning, the remainer alliance struck with doom and gloom again with the National Institute of Economic and Social Research statistics that stated that GDP would be 3.5% lower in 10 years' time under this deal, yet this discounts the Government's plan for a more ambitious, comprehensive trade agreement with the European Union. What gains does the panel think can be made for the UK from the removal of the customs union and barriers, under an independent trade policy with the US and the rest of the world?

Raoul Ruparel: There are certainly potential gains. They are always difficult to quantify. When I was in Government, we attempted this with the economic modelling that was published by the previous Government, which showed some potential gains, albeit initially small, from these free trade agreements. It is something that economic modelling struggles to deal with, looking forward at the changing flows in trade and how removing barriers to that future evolving trade can have benefits.

It is clear that the approach and shift from the current status quo baseline of no barriers between the UK and the EU will have an impact on costs of business, which will have an impact on the economy. The question then is what response the Government make, in terms of not just policy with the EU, but wider economic and fiscal policy, and then their trade agreements with the rest of the world. These models are part of the assessment of any agreement we strike with the EU, and it is right that we take them seriously. We also have to recognise that they are looking at the impact of a deviation from a baseline. Yes, there are costs when you put in barriers.

Andrea Jenkyns: We need to address the opportunities as well.

Raoul Ruparel: It is a question of what the wider economic policy will be, which remains to be seen. In pure modelling terms, my experience is always that the gains from these types of FTAs with the US or other countries are relatively small. There are wider questions about strategic and political objectives that have to be taken into account, when we are considering those deals.

Dr Jerzewska: As a final point, from a customs perspective—not talking about wider issues—there are always more costs, red tape, formalities and effort required when you are in an FTA, versus a single market or customs union. We know that EU/UK trade will have additional requirements, costs and so on. In terms of other FTAs, yes, utilisation of these agreements globally is an issue. That depends to a large extent on how they are implemented. If no one uses these trade agreements, there are no benefits, so you have to make sure that companies use them to maximise the benefits. There will be this trade-off between how much additional costs and red tape we are putting in for the EU versus how much we are removing for other countries and how much we utilise them. It is incredibly difficult to quantify, but that is where the balance is.

Q204 **Wera Hobhouse:** To confirm what I have gathered from today's discussion, there will be a big increase in red tape. One of the big promises was that the red tape would decrease if we left the European Union, but I get the feeling, from everything that we have been listening to, that it is becoming much more complicated, particularly for trading with the European Union, and red tape will increase dramatically. Is that correct?

Dr Jerzewska: Yes. If you look at the stages of market integration, you have WTO rules on one side; then you have preferential trade agreements, free trade agreements, a customs union and finally a single market with a customs union. We are moving from the highest degree of integration possibly into a FTA, which by definition increases the red tape and formalities. That is how international trade works. That is not to say there are not other reasons but, purely from a customs administrative perspective, that is absolutely the case.

Q205 **Wera Hobhouse:** Let me clarify that. Being part of a single market and

customs union is the least red tape we can have as a country.

Dr Jerzewska: That is one of the main reasons why countries go into these agreements and these forms of regional integration: it is to reduce formalities, red tape, border procedures and so on. It is one of the key reasons.

Q206 **Wera Hobhouse:** That is the opposite of what has been promised. If the UK diverges very significantly from EU regulations, will it lead to a hardening of the border in Northern Ireland? We have been talking about the Northern Ireland border. First, will it do that if the regulations diverge quite significantly and, secondly, what else can we do not to harden the border?

Raoul Ruparel: A lot of this depends on the exact implementation, as we have already discussed, so we are talking in hypotheticals here. I do not think that significant divergence would harden the border under this version of the protocol, because you have customs formalities in place that should provide the necessary information. I do not necessarily see that that divergence in regulation would lead to a hardening of the border, compared to the previous protocol negotiated by the previous Government, where the focus was on regulatory checks. The idea was that, if there was more alignment, these checks could be lighter-touch and be reduced. This is a slightly different kettle of fish. I am not sure that the variation and divergence would have as big an effect as it would have done under the previous protocol, given the formalities in place.

Dr Jerzewska: I would slightly disagree in one area. It is not only a customs border in the Irish Sea; it is also a regulatory border. Look at product standards. As it stands, a producer in England supplying to Scotland and Northern Ireland, if the UK diverges, would need to supply two different products, one with EU product standards and one based on UK standards. By definition that leads to a hardening of the border.

Q207 **Wera Hobhouse:** The other idea we keep hearing is that, under big pressure from this Prime Minister, the EU has now changed its politics after all and said, "We are opening the withdrawal agreement again". Is it not true that the proposal the Prime Minister has now put forward was originally on the table, but the previous Prime Minister did not want it to go forward, because it would put a border in the Irish Sea?

Raoul Ruparel: Having worked for the previous Prime Minister, I will try to give a view. There were similar proposals around, both the original from Commission for the Northern Ireland-only backstop, as it has become known, but also proposals such as this considered by the UK Government. There are a couple of important differences from the original Commission proposal. The first is the consent process, which was not previously considered in any of the proposals. It allows for some democratic input and validation of the approach in Northern Ireland, and a potential exit mechanism to a point where there is no defined solution or answer for how to avoid a hard border. In all previous iterations, the

European Union has been clear that it wants an entirely legally operable solution in all scenarios. That is an important divergence from the previous iterations and ideas.

The second difference is on customs. While the Union customs code is being applied at the border between Great Britain and Northern Ireland, Northern Ireland will remain in the UK customs territory, which potentially allows it to be part of any FTAs that the UK strikes. That, combined with this hybrid customs approach we have been discussing, in terms of the potential for rebates or tariff differentiation, is a difference from the previous Northern Ireland-only backstop that was proposed by the European Commission in February 2018. There are lots of similarities, but there are some crucial differences.

As to why this sort of approach was not adopted by the previous Government, there are a couple of reasons I can see, based on my experience. The first is that the Democratic Unionist Party was not willing to allow the Government at that time to move in that direction and negotiate anything of this sort. They had previously been opposed to any kind of regulatory differentiation between Northern Ireland and the rest of the UK.

Wera Hobhouse: And they still are.

Raoul Ruparel: Even in the proposals put forward by the Government originally, they accepted the regulatory difference. They did not accept the customs difference, but accepted the previous versions of those proposals put forward by this Government in September. That was a change from the Theresa May Government to this Government, which gave the Government more leeway to negotiate. In the end, it was not something that the DUP ended up agreeing with and it may not have been the right choice for them, but it was a significant change.

Also under the previous Government, the type of future relationship we sought to negotiate looked to apply this type of hybrid customs model on a UK-wide basis. When you are trying to do that, it is not feasible to argue also to apply it on a Northern Ireland-only basis. That shift in the aim of the future relationship, not making a judgment on whether it was right or wrong, opened up a different avenue for what was possible to do on a Northern Ireland-only basis. Doing this kind of Northern Ireland hybrid customs would not have worked if you were also trying to do hybrid customs for the entire UK.

Q208 **Chair:** Finally, clause 36(1) of the withdrawal agreement Bill says, "It is recognised that the Parliament of the United Kingdom is sovereign". First, I cannot recall ever encountering the phrase "it is recognised" in legislation before. I may have missed something. Was there ever any doubt that the Parliament of the United Kingdom is sovereign? What do you think that is in the Bill for?

Dr Simson Caird: There is a previous example in the European Union Act 2011 where this sort of provision was put through before.

Q209 **Chair:** Why does it need to be repeated then?

Dr Simson Caird: That is a very good question. The public law analysis is that, if Parliament is sovereign, it is not as a result of any provision that Parliament has enacted, because those two statements are incompatible. If it is sovereign, it does not need stating. Why it is there is the issue of article 4 in the withdrawal agreement and the idea that this gives special constitutional status to the provisions of the withdrawal agreement, i.e. they have direct effect and supremacy. Clause 5 of the withdrawal agreement Bill would mean that, in domestic law, when a UK court comes to enforce the provisions of the withdrawal agreement, it looks at what is now clause 5 of the WAB, which tells it to treat the withdrawal agreement like EU law was treated when we were a member state, i.e. to give it direct effect and supremacy. This is there as a counterbalance in declaratory form. The fact of having supremacy and direct effect of the withdrawal agreement does not mean that Parliament is not sovereign.

Professor Barnard: I think that is right. It is somewhat odd to see this there, because you could take the counter-intuitive view: if it is sovereign for this, might it not be in respect of the other myriad Bills that do not have that clause? That would clearly be nonsense. You could argue that it is a degree of window dressing or reassurance. Given our international obligations under the withdrawal agreement, specifically under article 4, which gives direct effect and supremacy to the withdrawal agreement, that will be incorporated into UK law through the WAB.

Of course, the WAB could be reversed at any stage, in the same way that the European Communities Act could, because it is a manifestation of parliamentary sovereignty. That would put us in breach of our international obligations, with the consequences that ensue. But having a statement that Parliament is sovereign does not actually have significant legal effect.

Raoul Ruparel: During my time in Government and in our previous work on the withdrawal agreement Bill, this clause was never included or seen as necessary. It is of new origin and, as has been said, I do not think it adds much.

Chair: That concludes our session. On behalf of the Committee, can I thank all of you for coming today? It has been extremely useful and very interesting—to be continued.