Supplementary Written evidence submitted by Traditional Unionist Voice (TUV), relating to the operation of The Windsor Framework

[OWF0019]

We would like to make an additional submission to supplement our original submission on the operation of the Windsor Framework as it relates to trade diversion and Article 16 of the Windsor Framework.

As noted in our submission (and without repeating the arguments) the integrity of the Windsor Framework is placed in jeopardy by the fact that its operation fails to respect the territorial integrity of the UK and thus it fails to comply with the rules concerning what constitutes a valid treaty.

There is, however, another sense in which the operation of the Windsor Framework is placing the treaty in jeopardy, by means of promoting trade diversion.

Article 16 (1) states:

Safeguards

1. If the application of this Protocol leads to serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade, the Union or the United Kingdom may unilaterally take appropriate safeguard measures. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Protocol.

In this provision both parties agree that serious economic, societal or environmental difficulties that are liable to persist provide grounds for the derogation mechanism within the treaty to be initiated.

Similarly, both parties agree that trade diversion is also a ground for initiating the derogation mechanism.

This means that the Windsor Framework was devised in terms that recognised not that: i) the occurrence of serious economic, societal or environmental difficulties that are likely to persist or ii) trade diversion, were difficulties that must be absorbed within the four corners of the agreement but rather that their occurrence was recognised as being inconsistent with the continuance of the agreement, certainly in its current form.

It is not necessary to repeat the reasons why the operation of the Windsor Framework is resulting in serious economic and societal difficulty, because those reasons were set out in our main submission, but it is important to pause to reflect on trade diversion.

The Operation of the Windsor Framework and Trade Diversion

In looking at trade diversion, it is interesting that in the terms of Article 16, trade diversion by itself, is grounds for commencing the derogation mechanism.

In seeking to assess trade diversion, it is important to have regard to both: I] The latest NISRA date and II] the latest ONS Business Conditions and Insight survey. In what follows this paper will consider both.

I] NISRA

The latest NISRA trade data was published on 11 December 2024. It covers the period up until the end of 2023. In his analysis of the data, Dr Esmond Birnie, Senior Economist at Ulster University, concluded 'trade diversion is probably happening'.

On 11 December Dr Birnie wrote:

"Today's data provides further evidence that the NI economy is becoming more trade integrated with the Republic of Ireland (RoI).

Indeed, trade diversion is probably occurring: North-South trade growing at very rapid rates at the expense of what previously was an inflow of goods from GB. All this is indicative of the consequences of the Protocol and the Windsor Framework.

Wednesday's NISRA figures can be put into the context provided by similar data for all the years since 2011 [I have analysed those data in a recent journal article and a Blog, see Note 1].Here are some key points:

<u>*NI's growth of exports of goods (mainly coming from manufacturing) continues to disappoint*</u>

Policy makers here in NI and around the world often speak of trading as a sort of engine to power the economy. They have in mind particularly sales of goods, especially products produced by manufacturing. Comparing 2023 with 2011 NI's exports of goods increased from £8bn to £11.7bn, a 46.5% increase. This might sound quite impressive but much of that growth was actually one of price inflation. The volume of goods sold beyond the UK increased by only 8.4% over that 12 year period [Note 2].

<u>*NI's exports of services have increased very rapidly*</u>

Perhaps policy makers and others need to focus more on the service sector. Here the export value increased from £1.1bn in 2011 to £4.5bn in 2023. Allowing for inflation the volume of services almost tripled (193.4% increase).

<u>*Whilst the current size of the so-called "all-island" economy remains small it has been growing*</u>

In 2023 NI sold goods and services worth £8.7bn to RoI and £17.1bn worth to GB. The total sales to the RoI represented 8.9% of all sales by NI. So, more than 90% of the NI economy sells to other parts of the world other than RoI (in 2023 2.7% of total sales went to the EU beyond the RoI). True, the RoI share of total sales has been growing over time. In 2011 it was 5.4% and in 2022 8.5%.

<u>*What's been going on during the Protocol/Windsor Framework years, i.e. 2021, 2022, 2023: Indications of trade diversion*</u>

Wednesday's data implies that we now have three years of data- for 2021, 2022 and 2023- to look at what was going on in terms of NI-RoI and NI-GB trade during the years in which first the Protocol and then the Windsor Framework were in place.

The terms of the Protocol/Windsor Framework particularly impact on movement of goods from GB to NI: the various frictions and costs which are now imposed as part of the attempt to safeguard the EU Single Market.

The Table shows how imports into NI from GB and RoI have grown during the Protocol years, 2020-23 (the Protocol came into effect in January 2021 so we are using the data for 2020 as a baseline to illustrate possible impact):

Table NI's purchases of goods (nominal values), 2020-23, £m.

	2020	*2023*	*% growth*

From GB	*10,839.1*	*13,442.79*	*24.0*
From RoI	*2,188.8*	*3299.3*	*50.7*

Source: NISRA 11 December 2024, NI Economic Trade Statistics and the Data Portal.

The fact that NI's purchases from RoI grew at twice the rate of those coming in from GB is highly indicative of trade diversion. That NI purchasers are shifting from GB suppliers to RoI ones given the frictions with which Irish Sea trade is now associated. *How will this impact on the overall welfare of the economy and NI society? That is a complex question with a complex, macroeconomic answer. To the extent that previous suppliers (often in GB) were lowest cost ones we may be seeing a ongoing switch which will imply higher prices. Hence a loss from the point of view NI businesses and household consumers. This conclusion is consistent with the previous modelling of the Protocol's impact conducted by economists at the Fraser of Allander institute and the Sussex University trade policy unit.".*

(Emphasis added)

In assessing the above it is important to be clear that because of Grace Periods under the STAMNI scheme, the border did not really arrive for SPS purposes until 1 October 2023. This means that not only is the data that is highly indicative of trade diversion over a year out of date. It also only had the capacity to have regard for three months of the border from October 2023 to December 2023. Had the NISRA data captured the impact of the border for more than three months one would have to assume that trade diversion would become more developed.

II] The latest Office for National Statistics Business Insights and Conditions Survey

The Office for National Statistics Business Insights and Conditions Survey demonstrates that just 13.1% of currently trading manufacturers based in Great Britain said they had sent goods to Northern Ireland over the past 12 months, whereas 81.9% said they had not. That contrasts with figures for January 2021 when 20.1% of manufacturers said they had sent goods to Northern Ireland in the previous year.[1]

This suggests that the volume of goods – which critically includes inputs – has nearly halved in four years.

Parcelhero's Head of Consumer Research, David Jinks, a Member of the Chartered Institute of Logistics and Transport observed:

'Only 15.1% of retailers based in Great Britain said they had sent items to Northern Ireland in the last 12 months compared to 77.6% who said they had not, while 4% said they had stopped sending to NI as of December 2024.

He continued:

'As a result of these (Irish Sea Border) changes, the ONS figures reveal 32.7% of Northern Ireland-based businesses reported challenges related to the NI Protocol agreement, with 9.6% saying differences in rules and regulations were a major cause of these issues. Of businesses based in England and trading with NI, 11.3% reported significant challenges around the Protocol agreements.

[1] As the UK braces for new Northern Ireland parcel rules, costs are already rising and volumes falling | London Daily News

'The knock-on effects of increased red tape and delays mean a whopping 28% of NI-based companies said transport costs have become a challenge and 13.3% of companies based in England also reported significant concerns about the cost of shipments to NI.

'Ultimately, all this upheaval means that 25.9% of transport & storage sector companies (the category which includes logistics, parcels, haulage and warehousing businesses) have seen their volumes to NI decrease in December compared to the previous month. Only 1.9% reported increased activity.

'Of course, Christmas peak and issues with Holyhead Port following Storm Darragh will have impacted these figures, but they do build on the previous comparable ONS data, from June 2024, when 34.4% of transport & storage firms said their volumes to NI had decreased. In June, just 1.9% of transport & storage sector companies said goods volumes to NI had increased and 11.7% said they had now stopped moving goods to NI entirely.

'Businesses will be required to upload commercial data to their traders' goods profile to reduce the administrative burden each time products are imported into NI. Parcel companies must join this scheme by 31 March and ensure they gather the correct data from their customers and that it is integrated with HMRC.

'It's no wonder that some major couriers have announced that they will now only provide a B2C/C2C service to Northern Ireland and will not cover B2B movements. Similarly, carriers are warning that they may not be able to move parcels into Northern Ireland if the data requirements haven't been met by their customers.'[2]

III] Data from Businesses

It is also possible to gain a sense of what has happened since then in 2024 and 2025 by engaging with hauliers who have continued to carry things across the border throughout this period. In this regard the following points are striking.

First, at a presentation to parliamentarians in September 2024, the Road Haulage Association and its members said that 30% of lorries were (as of September 2024) now returning to Northern Ireland from Great Britain empty, whereas before the imposition of the border they would have always returned full.

Second, in November 2024, a haulier observed:

'Within the last week we were made aware of 4 traders who have had a combined total of 13 GB suppliers withdraw services to Northern Ireland with immediate effect sighting the complexities of the Windsor Framework and the struggle to comply with incoming General Product Service Regulation requirements on the 13th December 2024. This would appear to be just the tip of the iceberg.'

In December 2024, the impact of the border became significantly more pronounced with the implementation of the EU Regulation on General Product Safety (2023/988) in Northern Ireland, under the Windsor Framework, but not Great Britain, from 13 December. We were made aware of 11 providers in the craft sector in GB who responded to the new legislation by deciding to cease providing Northern Ireland. That is just one small sector. While we simply don't know how many providers withdrew across all sectors, it is likely to be significant, thereby further impacting trade diversion.

In the above context, it would plainly be reckless to sit back and say that until with have the next NISRA figures in December 2025, we can take no action. In the first instance, we have to

[2] Ibid.

acknowledge that the Windsor Framework has been defined in terms of safeguards the violation of which the 2023 NISRA data is highly indicative of. In the second instance, all the subsequent available data the ONS and hauliers suggests there has since been a significant deterioration in the presenting situation.

Not a Surprise

The existence of Trade Diversion is no surprise. By May 2023 businesses were planning for the arrival of the border in October 2023. This was demonstrated by a slide in a Tesco presentation to their supply chains that month, which was entitled 'Packaged Food approach. For products currently moving from GB to NI:' They said that under the Retail Movement Scheme from 1 October they would want to get as much product as possible from ROI to avoid both the Green and Red lanes. Under the sub-heading 'Ireland Supply Routes' the slide says: -

'More Direct from the EU

- Move all common products from the ROI DC to NI stores

- Align some range with the ROI range'

Conclusion

In a context where it is not possible to assess the operation of the Windsor Framework, which is partly defined in terms of Safeguards, without having regard for the operation of those Safeguards and their impact on the Windsor Framework as a whole, we have to engage with the fact that the red lines provided by the Safeguards now appear to have been crossed. Given that the effective deployment of the Safeguards depends on the actions of the UK Government and the EU, one would have to say that if the state parties are not prepared to act in these circumstances, the Safeguards are effectively voided and the integrity of the treaty, as a treaty that embraces Safeguards, breaks down. (This is, of course, in addition to the fact that the treaty is already voided on account of non-compliance with the rules concerning valid treaties in failing to respect the territorial integrity of the UK, see our main submission.)

February 2025