

Supplementary written evidence submitted by Tim Ambler (NIP0036) relating to the Brexit and Northern Ireland Protocol inquiry.

Three routes to resolving the Irish Protocol crisis are considered: last week's government command paper¹, "feint" and "The Trojan Horse". The command paper is well written and sets out the way the Government thinks the Protocol **should** have been written, as well as some of the reasons why it was not. The future use of Article 16 is flagged. The trouble is that the EU rather likes the Protocol the way it is: the UK is being penalized for Brexit, the Republic of Ireland is benefiting from trade diverted from Great Britain and it all moves Northern Ireland closer to merger with the Republic, as the latter, and now the EU, have long sought.

Unsurprisingly, the EU immediately responded in the same way it has greeted all previous suggestions for re-negotiation: "no". Triggering Article 16 and some blathering about it being nicer if we all got along better apart, the paper gave no reason for the EU to wish to re-negotiate. That is either Einstein's definition of insanity or ministers are just not listening.

On 15th July, the Commons held an important debate on the Protocol. Some excellent and constructive suggestions were made, two were the diversion of trade from Great Britain to the Republic of Ireland (which contravenes the protocol) and the "manageable alternative" suggested by Lord Trimble writing in the Times on June 10th: under the heading "EU intransigence threatens the Good Friday Agreement"². As one of its two authors, he should know what he is talking about. He went on to write "A couple of years ago I had a meeting with Michel Barnier in which mutual enforcement of trade rules by the UK and the EU was discussed." He said this suggestion had been well received by the EU but maybe the UK government was not listening.

Sir Bernard Jenkin opened the debate and drew attention, inter alia, to the diversion of trade. He said "article 16 states: '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.'³ Later: "The Irish Minister for Foreign Affairs, Mr Simon Coveney, says that the grace periods exist to give supermarkets in particular, the opportunity to readjust their supply chains to adapt to what he refers to as 'these new realities'. I am afraid that confirms in the minds of many that the protocol is being used to create diversion of trade." the amount is already formidable and will grow further when grace periods end.

Carla Lockhart pointed out that the claim that the Protocol is needed to support the Belfast Agreement, is so much piffle.⁴ This was endorsed by Sir Iain Duncan Smith⁵ who went on to say

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1004581/CCS207_CCS0721914902-001_Northern_Ireland_Protocol_PRINT_1_2_.pdf

² <https://www.thetimes.co.uk/article/eu-intransigence-threatens-the-good-friday-agreement-ctmsj0sjx>

³ <https://hansard.parliament.uk/Commons/2021-07-15/debates/65E91ED8-A873-4858-836F-DDB48C5C97AA/NorthernIrelandProtocol>

⁴ <https://hansard.parliament.uk/Commons/2021-07-15/debates/65E91ED8-A873-4858-836F->

that the Protocol was always seen as temporary and therefore capable of change: “That was made clear in every single article: article 184 of the withdrawal agreement, article 13 of the protocol and, importantly, paragraph 35 of the political declaration, which envisages an agreement superseding the protocol with alternative arrangements. The idea that this is somehow set in stone and we only have to work to make it better is an absurdity in itself.” He also had participated in the positive EU talks about mutual enforcement and commended that as the way forward.

Duncan Baker picked up on the comparison of the Brussels’ view that the Protocol must be implemented to the letter with that of Shylock in the Merchant of Venice.⁶ The UK needed the equivalent of Portia’s “not a drop of blood” to void the contract and allow justice to be restored and a fresh Protocol to be prepared to meet the needs of all parties. Unfortunately, as he acknowledged, using the EU’s rather tenuous grasp of whether Northern Ireland was an integral part of the UK, or merely part of its customs territory, was a bit thin in terms of voiding the Protocol. His proposals its replacement had more substance. Brussels is not going to take the use of Article 16 seriously unless they can see a better alternative. For the purpose of these notes, I have labelled this the “feint” strategy: putting an acceptable alternative on the table or unilateral Article 16 if it is not seriously negotiated.

This is the key difference with the command paper: the EU will not negotiate until they want to do so. The first issue, therefore, is how the UK can bring that about. The diversion of trade is a far stronger “drop of blood” than the perceived status of Northern Ireland.

As the Northern Ireland ministers were too busy to attend, the Paymaster General, Penny Mordaunt, summed up on behalf of the government. She gave a fine impression of not having attended either.

The command paper route to resolving the Protocol problem is doomed. According to Saturday’s Telegraph, the PM wanted unilaterally to trigger Article 16 forthwith but was talked out of it.⁷ Just as well because with the UK’s current reputation as the bad guys and the case going to the European Court, the UK would certainly have lost in law despite the evidence. The UK must address its reputational issues. Ministers’ reluctance to listen either to the EU or advice from Parliament or to Irish politicians is contributing to the problem. The “feint” approach may work if Belfast and Dublin are allowed to work it up to a feasible solution likely to be acceptable to Brussels and London. The on-the-bed parents are far more likely to understand and accept the new baby than distant politicians who neither understand the true relationship nor have to live with the consequences.

[DDB48C5C97AA/NorthernIrelandProtocol](https://hansard.parliament.uk/Commons/2021-07-15/debates/65E91ED8-A873-4858-836F-DDB48C5C97AA/NorthernIrelandProtocol)

⁵ <https://hansard.parliament.uk/Commons/2021-07-15/debates/65E91ED8-A873-4858-836F-DDB48C5C97AA/NorthernIrelandProtocol>

⁶ <https://hansard.parliament.uk/Commons/2021-07-15/debates/65E91ED8-A873-4858-836F-DDB48C5C97AA/NorthernIrelandProtocol>

⁷ <https://www.telegraph.co.uk/politics/2021/07/24/boris-johnson-talked-triggering-nuclear-option-northern-ireland/>

Before we finish, there is one more option: “The Trojan Horse”. The EU has always said they would not re-negotiate the Protocol, partly because it already has provisions within it for change and development. What that may mean that they will object to having anything taken away but will discuss additions. It would be difficult to frame some UK wishes, e.g. removing it from the EU Court’s jurisdiction, in EU-speak, but they must learn to put proposals in ways with which Brussels should be comfortable. And that requires listening. For example, the EU Court of Justice could appoint a panel of three judges: a national from an EU member state, a UK citizen and a Swiss or other neutral agreed by the first two.

One of my first lessons at school was not to pick fights with boys bigger than me, especially not with those who did not like me. The perceived belligerence of its negotiators has helped neither the UK’s cause nor reputation. The UK should immediately mount a PR blitz across the EU, Washington, Boston and New York to show just how petty and ridiculous the EU is being. Archie Norman, Chairman of Marks and Spencer, has provided good examples such as the lorry driver being sent back, goods undelivered, just because of a sandwich he had in his cab for his lunch.⁸ 14 professional veterinarians are employed just to fill in forms. If the ink is the wrong colour, the forms are rejected. Modern digital systems cannot even be considered. The only concession to modernity is that the forms do not need to be completed using quills. The absolute priority now is, by using the nonsense inflicted on our people, to change general perceptions and the Brussels mood. Everyone loves a listener.

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⁸ <https://www.telegraph.co.uk/news/2021/07/23/northern-ireland-must-not-caught-in-the-eus-anti-brexit-sandwich/>