

**UK Trade & Business Commission**  
**Trade Under the Northern Ireland Protocol**

9 December 2021

**Hilary Benn MP**

Good morning and welcome to this, the final session of the UK Trade and Business Commission, and today we're looking at the extremely important and rather sensitive issue of the Northern Ireland Protocol, how it's working, prospects for change, what the triggering of Article 16 might mean, there'll be a great deal to discuss in the next hour and a half. I'm very grateful to our four expert witnesses who have agreed to give up their time this morning. Can I just say Alan I understand that you've got to leave at 11, is that correct, yeah? Well, I wonder if I could ask our four witnesses for the record just to introduce themselves starting with you David.

**David Lidington**

Dave Lidington, former Cabinet Minister.

**Hilary Benn MP**

Welcome, Katy.

**Katy Hayward**

Good morning, everybody, so my name is Katy Hayward, I'm Professor of Political Sociology at Queen's University, Belfast and Senior Fellow in UK in a Changing Europe where I'm working full-time on the subject of the future and status of Northern Ireland after Brexit.

**Hilary Benn MP**

Welcome to you too. Seamus.

**Seamus Leheny**

Thank you Chair, good morning, everyone. I'm Seamus Leheny, Policy Manager for Logistics UK here in Northern Ireland. We represent 18,000 members across the UK involved in road, air, and sea freight.

**Hilary Benn MP**

And a warm welcome to you too, and last but not least Alan.

**Alan Beattie**

I'm Alan Beattie and I'm a Senior Trade Writer for the Financial Times in Brussels.

**Hilary Benn MP**

Well thank you all very much. As ever we have a lot of ground to cover in the hour and a half that we've been allocated. So colleagues will direct questions to particular ones of you and if you want to supplement what they've got to say or the questioner turns to you that's great, but the point I'm making is not everybody necessarily has to feel the need to answer all of the questions all of the time, but I am going to ask each of you to give us an initial response to these opening couple of questions from me. I think everyone agreed of course in these negotiations that there was a need for special arrangements relating to Northern Ireland because everybody agreed that the border between Northern Ireland and the Republic had to be kept as it is today. Do you think, and I'm going to come to you first David, do you think that the parties had different understandings of what the Protocol meant at the time it was negotiated, or is it a question of the way it's being implemented that is not quite what people thought it would be?

**David Lidington**

I'm very clear in my mind that both parties understood what it was they were signing, certainly in terms of the people who were involved in the detail of the negotiation. The problems with implementation, the various trade frictions that have been talked about, were things that were actually identified in the Johnson Government's own published primer on the Protocol, when it came to putting legislation through the House, explanatory memorandums set out all of this in detail and I think that the EU clearly understood what they were doing and most of the officials who were negotiating under Lord Frost to get what is the current version of the Protocol were people who had been involved in the negotiations during the May Government as well. So, I think there was that clear understanding. Whether that was always understood at senior political level I am less confident, I mean one would need to hear those people testify, and the truth is that most members of the House of Commons, most members of any Government actually pay little attention to the detail of what is happening in Northern Ireland.

I think what the Government, the UK Government and the EU overlooked in negotiating this Protocol was the intensity of the Unionist response and so I think what we have today is a more political problem actually than a trade problem given what the Sefcovic proposals say, but we can perhaps go onto that later.

**Hilary Benn MP**

Yes, we will come to those. Thank you very much. Katy.

**Katy Hayward**

Yes, it's a good question did they know what they were signing up to. I think there's three things to bear in mind, the first is that they were kind of doing it in the dark a little bit, obviously Brexit the process had never been contemplated or experienced before and also it was very much in the dark with respect to Northern Ireland's particular positions, including relation to trade in that we didn't have the details on GB to NI movement of goods for example, it had never had to have been

calculated in the past, so there was a lack of evidence and detailed understanding I think in the particular case they were talking about when they were drawing up the Protocol. Again, there are also in relation to that there's political sensitivities which meant that the full working through was particularly in terms of public discourse on the Protocol was not performed and we've seen this in the UK Government's command papers including in May in 2020 where it was very cautious, you know nodded towards the checks and controls that would be needed, it was extremely cautious about really spelling out what that would mean. And another point in relation to that is that of course the UK authorities are the ones responsible for implementing the Protocol, which I think gave confidence on the UK Government's side that it wouldn't necessarily, you know that it had a big handle over all of this in terms of how it would be implemented and its consequences, i.e. a great degree of control. The flip side of that is of course that the EU is particularly wary, it's very conscious it's given responsibility for its external border to a third party, hence its emphasis upon the rules that should be followed.

**Hilary Benn MP**

OK. Alan. You're just on mute.

**Alan Beattie**

Let me answer this from the EU point of view because I know that better. I think one issue here is the EU is used to being a regulatory and rule setting [inaudible 0:06:55.9] right, it sets rules and that's it, you want access to the EU market you follow those rules and that's what its trade deal would largely consist of. And you will get access to the EU market commensurate with your ability or your willingness to follow those rules. It's not used to having halfway houses where it sort of recognises foreign governments, particularly foreign government rules, OK. To some extent foreign governments have implementation of rules but certainly foreign government rules and regulations as being even anywhere near equivalent to its own. And so when it signed this deal, I mean I cannot tell whether they were serious or they believed it or they were being disingenuous but the implementation of it or the way the rules were set was quite traditional, it was quite down the traditional line, which is why I think recently they've made the efforts to try and reduce the bureaucracy involved, recognising that this is a special case. But certainly, that is not the attitude that they went in with, the attitude they went in with is that we set the rules, if you want access then you've got our rules and that's it.

**Hilary Benn MP**

Right, that's very clear thank you. And Seamus.

**Seamus Leheny**

Yeah, probably Chair I think Katy touched on it there quite well, there was the lack of data and evidence before 2016 about the impacts this would have. Coming from our point of view really it was the trade that's between Northern Ireland with the rest of the UK and also with the EU, it's very distinct. Most of the trade, 75% of the goods that come into Northern Ireland from GB is for retail, whether that's new cars, clothes, or food. Whereas 70% of the freight that moves across the Irish border is intermediate products, so it's products and ingredients. So, there's a balancing act here because if you raise barriers GB to Northern Ireland that ultimately affects consumers in Northern Ireland, but if you put barriers across the land border that has a negative effect on our manufacturers, on our exporters. So, there is this fine, this balance that's required that we envisaged

the Protocol would try and address, where you limit the damage or the negative impacts on consumers but also on our local economy as well.

**Hilary Benn MP**

OK, now let me come to my second question and I'll stay with you Seamus to start with. I mean the phrase 'goods at risk' which is part of the Protocol clearly implies that you will have, you might have differential treatment depending on whether goods are at risk of then entering the Republic of Ireland or not and that was never fully defined. So turning now to the proposals that have been made, in particular those put forward by Mr Sefcovic, but if you want to also touch on what the UK side has proposed, although we've not seen the revised in effect text of the Protocol that they've given to the EU because that hasn't been published, to what extent do you think these will provide a basis for stability, practically in terms of handling some of the difficulties that we have seen, getting goods into Northern Ireland and how that's affected individuals and businesses, and then I suppose politically if you want to comment. Seamus.

**Seamus Leheny**

Yeah, I think both the UK command paper from July and the EU's non-paper from October both of them have taken on board I think the concerns of the local economy here, and with the barriers to moving goods across the Irish Sea. Neither of them go where we need them to go, we certainly need more movement from the European Union on this and that's been you know, that's been outlined to the European Union that the local business community here engage with the EU regularly as we do with the UK Government on this. But certainly, it's a good foundation to begin with. The at risk, you are right the at risk definition of what comes in here, that's the key to getting this because Mr Sefcovic talks about the trust a trader scheme, we don't tend to use that there, we tend to use maybe an auditable and certifiable supply chain is the term we use, but if we can get something like that that is something where traders will then implement a system to give confidence to the EU that goods coming into Northern Ireland that they determine as being not at risk, certainly stay in Northern Ireland. So, for example retailers, that is something that they can certainly do through the use of technology. There is IT systems being trialled at the moment voluntarily by some traders, and we would hope that the data that that captures, along with some type of scheme, a trust a trader scheme or businesses sign up to which can be audited by both the UK authorities and the EU, that would give confidence that if we're importing certain produce into Northern Ireland stays here, so I think yeah, to sum up it's a start but it's not where we need to be.

**Hilary Benn MP**

OK that's very clear. David.

**David Lidington**

I think there's some really good stuff, I noticed that the non-paper that the Commission published didn't go as far as what had been briefed out to the media by the Sefcovic team which I mean suggested to me that the EU is willing to go further in the direction that Seamus was discussing, but they want to make sure that any concessions they offer are not simply pocketed without any reciprocal gesture being made and so this would require detailed negotiation, you know the phrases like nothing is agreed until everything is agreed come to mind here. But so, I think that is quite important. I mean the basic problem is that the way the Protocol is written, all goods are assumed to

be at risk unless the procedure under the various committees and Commission decisions exempt them from that status and I don't myself think it's actually unreasonable for the UK Government to be seeking to have a more generous interpretation of what's at risk. I mean I might criticise the fact that they signed something that didn't allow for that, but we are where we are. And I think that if I was talking to the Commission what I would be reminding them of is that back in 2017 and 18 when they were insisting that the Northern Ireland/Ireland border was dealt with under the withdrawal agreement rather than under the future relationship negotiations, unlike every other UK border with the EU, they justified that exception for that border on two grounds, one of which was proportionality, the EU's argument drafted by the legal advisors to the Council and the Commission was that the risk to the single market of a some sort of special deal affecting Northern Ireland was very small because the volume of and value of trade crossing that border between the two jurisdictions on the island of Ireland was insignificant, seen in the context of overall EU/UK trade, let alone the size of the single market as a whole, so much of this discussion now is about trying to retrofit onto a Protocol that two parties signed at the end of 2019, a more sort of generous interpretation under which the EU would agree that it would bear a greater degree of risk to the single market and so they needed political discussion upon the side of the 27, the Commission, about what that [inaudible 0:14:43.2] should be.

#### **Hilary Benn MP**

OK that is really helpful. Now, we're going to need to move on in a moment, but I just wanted Katy or Alan whether anything you'd like to add briefly. We're going to get into the detail of quite a lot of this as we continue, but Katy.

#### **Katy Hayward**

Yes, your question was just to what extent do they cause the basis for stability which is a very good question because it's the question of whether it's stability for Northern Ireland or stability in the UK/EU relationship and there is potentially a little bit of tension there. So, the UK's asks in that command paper are not entirely necessarily on the basis of what Northern Ireland's interests would be. So, for example if you take away the jurisdiction of the European Court of Justice, if there's doubt around the fundamental legal basis for these arrangements it's not necessarily an ideal situation for Northern Ireland. And on our public opinion polling conducted for the post-Brexit governance project led by my colleague David Finimore [ph 0:15:39.1], we asked people basically in Northern Ireland how they prioritised these different asks in the UK command paper, and we see from this very clearly medicines an overwhelming concern for people as you might imagine, supply of medicines. Also concerns about customers' paperwork, concerns about Northern Ireland's voice being heard people are not concerned around State aid, maybe because it's too complicated, but they are not concerned around ECJ, not concerned around pets even. And they're not concerned around trade diversion because a lot of that diversion is sourcing from Northern Ireland suppliers which is seen generally to be good ...

#### **Hilary Benn MP**

A good thing, OK. And Alan, can I just briefly ask you, do you think that the EU side is willing to go further provided what they've proposed now isn't just pocketed by the UK side, is that your reading of the politics in Brussels?

**Alan Beattie**

I'm not remotely an expert in the technicalities.

**Hilary Benn MP**

Yeah, no sure.

**Alan Beattie**

I will just make one point with regards to the EU and in fact [inaudible 0:16:45.5] which is this, the more trust you have between trading partners the fewer rules you need. I think the EU will be prepared to be quite flexible, it has dawned on it that this is a special case and Ireland as a member state is obviously very active in this. What they're concerned about is if they give, you know a relatively generous deal which is dependent on UK cooperation and compliance, then if it runs into difficulties in reality they won't be fixed. If they sense that everyone is acting in good faith, if there are problems you know we might have to reinstate rules, we have to have tighter inspections, I think they'd be prepared to go further. At the moment I'm afraid to say that the trust in the UK Government is very low and that's why they don't want to me making concessions.

**Hilary Benn MP**

OK that is a really, really helpful introduction. Claire Hanna, over to you.

**Claire Hanna MP**

Thank you very much Chair and thanks to our witnesses. Just thinking about the context then to the current discussions between the EU and the UK, I just wondered if you could speak briefly about the current business environment and also how you would characterise relationships between the EU and the UK and also potentially the executive. Seamus, could I go to you on that first please?

**Seamus Leheny**

Hi Claire, yes, the environment I suppose with businesses here it's varied, so if I start first of all with GB to Northern Ireland, goods are moving as they are, but it takes them incredibly a lot of work to do that. Now I spoke to one large wholesaler in Northern Ireland, they supply retail, hospitality and the public sector, both for off the shelf produce but also for catering etc, last week and we were involved ourselves with the scheme for moving groupage of food from GB to Northern Ireland which you'll remember in the media at the start of the year was one of the key issues. I put the question to them how is the groupage moving now and they were able to say that it is moving, that there wasn't any problems. Now that's down to two things, that's down to the groupage scheme that we devised with DERA and DEFRA as a solution but also its relations to the grace period we have in place at the moment. So this company is able to move what they need for consumers in Northern Ireland as they did this time last year, but it takes extra administration which is cost and it's reliant on that grace period and ultimately at the end of the grace period that's where it will need to be negotiated out, something that's close to that as possible to keep the administration burden down.

With regards, it's very difficult to give a figure on trade between Northern Ireland and GB because the ONS will only release that data probably end of January/February time. What I can say is that

Office of Central Statistics in the Republic do give us the data probably in a month after each period. Trade with exports into the Republic of Ireland so far this year for the first six months were up 77%. That's nearly an extra €800 million of exports from Northern Ireland into the ROI market. So, when I speak to some of our businesses here that are members, they are incredibly busy if they're dealing with exports, whether that's producers which a lot of our members are, but also people moving the produce. So, it's a tale of two cities basically at the moment. Those moving GB to Northern Ireland which takes a lot of work, a lot of preparation but they're doing it, but the grace period is a help. And then obviously businesses dealing with the European Union are incredibly busy.

And the last point I would say, the ports here in Northern Ireland, the three ports Larne, is up 18.5% volume, Belfast 14.7, and Warren Point nearly 24%. So, the ports here are incredibly busy, they're handling more freight. I would imagine that could be down to two things, it could be additional trade with GB, but I would also say a big factor is the reduction in Dublin and Holyhead. Holyhead is really suffering at the moment because of Brexit, it's down 33% on volumes and as a result, that's because of third country controls at Dublin port and a lot of Northern Ireland trade that historically used to use Dublin Holyhead is now avoiding that. So, it's probably coming in through Northern Ireland instead, which is costing extra money in transport costs. So hopefully that's a good little summary there.

**Claire Hanna MP**

Yeah comprehensive. Katy, maybe on the same thing although I suppose that's a very clear picture from Seamus on the business environment, if you'd anything to add, but I suppose how you would characterise relationships at the moment.

**Katy Hayward**

So I mean Seamus and his colleagues have consistently been asking for certainty and stability and predictability and that isn't there at the moment and if we're looking at public opinion relating to that polling I mentioned before we see that the majority remain concerned around political stability in Northern Ireland and seeing the future of that as being very much tied in with the UK/EU relationship just as it is tied in with the British/Irish relationship. So, we know that ultimately, we have to have an accommodation, we have to have an agreement between the UK and the EU. They recognise that even Lord Frost has been very clear in saying we need a treaty relationship. It's difficult to see that coming out of a situation of increased use of threats and increased talk of potential breakdown in that relationship. And just to say, you know the longer we have that and indeed if we have an escalation of that the more difficult it is for creating the kind of stability and certainty that is needed politically let alone economically.

**Claire Hanna MP**

Thanks, David could you answer the same thing maybe around the relationships as you see them, and could you also maybe comment on the I suppose the UK's side's negotiating approach to Northern Ireland and perhaps just what you know of the Irish Government's diplomatic strategy as well if it's possible to contrast?

### **David Lidington**

I think that the, I mean it's how far back Claire, you want me to go on the last point. I think in terms of the relationship UK/EU I mean it's clearly not in a good place at the moment. And I think the starting point needs to be a greater recognition in the UK that we do not feature anything like as high on the list of priorities of either the Commission or the key EU member states as we sometimes like to think, they are not obsessing about us. You go back and read the German Presidency document when they have a six-month presidency, there was one mention of the UK in about a 40-page document and it was sandwiched between little paragraphs on the United States and on China. The Slovenian presidency when they came in had three mentions of the UK, they were all identically worded about the need to take forward negotiations in a way that respected the treaties, and the interests of members states of the union. So, I see no evidence that member states are wanting to take an initiative, tell the Commission to concede more and intervene. [Inaudible 0:24:20.4] for example has made it very clear that his priority is to restore the Franco-German motor and help Macron make his presidency a success, the coalition agreement in Germany is explicit in taking a pretty tough line on possible countersanctions were the UK to invoke Article 16. And France we know about at the moment.

And I think there's a real problem in how the Government has handled the EU that you know they're perfectly entitled to be tough negotiators if they want, but I think it is the unilateral actions and the way they are then seen by a European Union that is defining itself increasingly against sort of breaches of the rule of law in Russia, Turkey and of course the issues in Poland and Hungary for the moment. If you look at the Internal Markets Bill, you look at the unilateral extensions of the various sort of safeguard temporary arrangements under the Protocol, some of the rhetorics coming out of London and that has undoubtedly severely damaged trust and therefore the willingness of the EU to make concessions.

With regard to the Irish Government, the Irish Government we know was behind the scenes advocating a much, a softer interpretation of the, what was required under the Protocol and when London then took unilateral action, they felt betrayed by that, they weren't given any warning of it. And they felt that they'd been in a very difficult and exposed place as a consequence. And I think you know there needs to be a lot of good diplomatic work done to try to rebuild trust without, it goes back to what Alan said earlier, without trust being restored it's hard to see how we can get a new equilibrium in the UK/EU relationship, including sort of some settled way forward on Northern Ireland.

### **Claire Hanna MP**

Thanks a million, and I know colleagues will pick up on that. Alan, I suppose just if you've anything to add on the same thing about the relationships and about the negotiation strategy. Also, as it pertains to the US as well, what's your thoughts on that dimension?

### **Alan Beattie**

Well, I think the EU is having a bit of a culture shock at the moment because the UK's negotiating as David said not just unilaterally but in a very UK politics kind of way, very colourful language, a lot of negotiations conducted in the press and so forth. Most trade negotiations everywhere in the world are not like that, I mean I can tell you as a trade journalist, most trade negotiations are unbelievably dull, right they are very quiet, they go underground for a long time. It's not in either side's interest normally to come out and say stuff because that will damage it. If someone says you know when a deal is about to be done because everyone goes completely quiet. And one of the reasons you don't



say lots of stuff in public unless it's very measured and thought about, the EU is more likely to do, is that creates hostages to fortune if you have to retreat from that then you look like an idiot, you just look like you're weak and I think that's what happened to the UK back in December 2020.

So, the EU is slightly irritated by this kind of tone but then the EU doesn't really bother about what happens in British papers, I mean why would they care? It's more that they think I don't know how we're going to get to a deal when getting to a deal requires the UK to retreat and to calm down from its fairly extreme position that it's taken, and they're not really used to this kind of negotiation.

**Claire Hanna MP**

Thanks a million. Well, I say from Northern Ireland where we are exhausted, but this I would love a very dull negotiation I think, we would relish it becoming boring but thank you very much Chair, back to you.

**Hilary Benn MP**

Claire thank you very much indeed. Tamara Cincik is next, Tamara.

**Tamara Cincik**

Thank you. My question is to what extent could and would the US put pressure on the UK Government in the event of action they would perceive as damaging to the Peace Process. And I'll start with Alan please.

**Alan Beattie**

OK, so this is really interested, and it actually changed quite radically I think from traditional US practice and not to the UK's advantage. You may have seen in the last few days my brilliant colleagues at the [inaudible 0:28:42.0] the US is withholding a deal to fix the steel and aluminium tariffs that they inherited from Trump, which is a deal that they've given to the EU. This is unusual because, people who have not lived and worked in Washington often don't kind of get this, trade and foreign policy is generally quite distinct in DC and also attitudes to the UK are quite distinct in different parts of the whole system of Government as well. You know the US as we know has separate [inaudible 0:29:13.4] also has different opinions even within the administration. Trade policy is normally the province of Capitol Hill, they have an enormous amount of [inaudible 0:29:24.3]. Capitol Hill is not that bothered about foreign policy really, they're more concerned with this sort of [inaudible 0:29:31.2] and exports and so forth.

The classic example being the Trans-Pacific Partnership which the US originally came up with in a Pacific deal. Now, in foreign policy terms you would think that signing the TPP was an absolute no-brainer, OK, interestingly the administration did not sell it this way, but it is fairly obviously a way of encircling China with countries which are following a US model of development, they don't have to be foreign policy allies, right, they don't have to be under the US security umbrella, but with a US model of development and therefore with economies that orient towards the US. So, you would think that would be an absolutely no-brainer. But not only did the administration, the Obama administration not sell it that way, but Congress blocked it even before Trump pulled the US out. Congress blocked it for the most tedious workaday reasons you could imagine, the tobacco industry didn't like the way that they were being carved out of certain provisions, the pharmaceutical industry

didn't like, they literally didn't like the length of time that their biologic drugs, the data for biologic drugs they could keep themselves before it was released, and on that basis [inaudible 0:30:36.2] the biggest foreign policy issue the US has was killed, or not killed but you know it froze.

And also, you know administrations compared with Capitol Hill tend to be more pro-UK because the very strong relationship is obviously the security and defence relationship, like we all know this right, [inaudible 0:30:57.8] NSC and the Department of Defence and State and so on tend to be more pro-UK. If it comes to a battle between the UK and Ireland, then Congress will tend to be more pro-Ireland because the Irish/American community tend to be particularly strong in Congress.

What's interesting about this and a bit disturbing is this is an administration decision because the decision on steel and aluminium tariffs is an administration decision and they turn, they chose to turn it into a foreign policy decision and to back Ireland over the UK. Now I know we all know [inaudible 0:31:27.7] and he takes that very seriously and so forth, but nonetheless this is still quite a big break with the way that they've done these things in the past. Now you know, a lot of this has been discussed in terms of will the US give the UK a bilateral trade deal. My attitude to that is you know on multiple grounds no, but so what because it hardly means anything to the UK, they wouldn't admit UK exports anyway, you know it would probably, even if there weren't the Ireland issue there Congress would focus very much on the chemical washed chicken type, hormone beef type issues much more than they would on foreign policy. So, I don't think that was going to happen anyway and I don't think it's disastrous [inaudible 0:32:09.8].

When it comes to these irritants that come up in trade all the time, you don't normally hear about because they just get settled, they get settled behind closed doors, there's a conversation and differences are smudged over, and it happens. A lot of the time though you are dealing with the administration not with Congress. Now if we have an administration now which doesn't feel inclined to do the UK favours or even you know to give the UK the same treatment it's giving other people because of a foreign policy issue, that's [inaudible 0:32:38.3].

**Tamara Cincik**

That's really, really interesting. I'd like to bring in Sir David on this question if that's OK. Thank you.

**David Lidington**

Thanks Tamara, I mean I agree very much with Alan's expert analysis there. I mean just a couple of points I would throw in. I think that strategically the Biden administration is now ...

**Hilary Benn MP**

I'm sorry to interrupt you David, someone is not on mute and we're getting a bit of... it sounded like a public address announcement, so.

**Tamara Cincik**

That was where I am and I've put myself on mute, sorry.

**Hilary Benn MP**

That's where you are, I beg your pardon. No don't apologise, you keep your mic open. Carry on, carry on.

**David Lidington**

At least it wasn't the Division bell Hilary. If I look at this strategically, I mean Biden has been pretty clear, but unlike the predictions of some he's not sort of casting the UK into outer darkness, you know he sees the UK as still a really important ally and things like AUCUS [ph 0:33:38.4] I think are evidence of that. But US has also got to have some new best friends inside the tent in the European Union because we can no longer fulfil that role for them and therefore Washington is going to be very alive to sensitivities in Paris and Berlin and The Hague and Dublin on all of these matters. I think also we should never underestimate the investment that Irish Governments have been making for many years in their links both to successive American administrations and to members of both parties on the Hill. And they have really pushed those hard and the Irish/American tradition intensified itself in terms of Irish Nationalists, one of those sorts of things that we face today, actually the Unionists, the British Irish tradition is not really reflected in anything like the same way across the Atlantic. So will they, to answer your question Tamara you know how much pressure would they bring to bear, I think that there would be little sympathy in Washington for the UK, certainly if they felt the Belfast Good Friday Agreement was under real threat there. And I don't know but I just wondered when the Congressional leaders came up with that public statement a few weeks ago that was pretty hard line, the administration was silent and I did wonder at that time whether there had been some private messaging to the UK at top level about the risks and the likely US attitude, but I think there would be political pressure quite how hard it would be might depend on sort of geo-political challenges elsewhere in the world at the time.

**Tamara Cincik**

I'm just unmuting myself and in the interests of time I'm not going to bring this to the other two, if they have points that they want to bring into further questions when they're asked, but I'm going to hand back to the Chair, thank you very much and sorry about the public announcement.

**Hilary Benn MP**

Don't apologise at all, thank you very much Tamara. Caroline Lucas. Caroline, over to you.

**Caroline Lucas MP**

Thanks so much Chair. Yes, I was going to start with Alan Beattie again please if I might and it's about given that there have already been obviously disruption to the UK/EU trading relationship, how much more damage could be done if there were a trade war with the EU, what could that look like for our economy. What do you think that would entail?

**Alan Beattie**

OK so there are kind of two questions, from the EU's perspective which I know about there are two questions here, what could they do in a trade war and would they actually do it. The first one unfortunately is a lot, I mean a lot, you know UK is very entwined with the EU. If the EU really wanted to push the button and suspend the TCA that means tariffs, that means a very serious disruption, a really major disruption. Much more disruption and much more pain than the EU could normally inflict on any other trading partner, or realistically inflict on any other trading partner. You know there are tariffs, there are all sorts of things, energy supplies, you know the EU is actually also arming itself, it's not there yet but it's arming itself with a new legal tool called the anti-coercion tool where it enables them to do a whole bunch of things if they feel that they're being pushed into changing a domestic policy and if they feel that the UK is trying to threaten them into a new policy on Northern Ireland they can use that as well. You know, there are also a whole bunch of non-trade things which as I said before rely on some kind of trust, you know the migration deal that the UK has with France, the deal on data where the EU gives the UK data adequacy which is actually not part of the trade deal. Those are not directly connected but all of those will sour the atmosphere, the sense of why are we doing favours. So, they could do an awful lot.

The question is would they do it and I'm afraid yes, they would. The economic aspect in terms of damage to the EU I don't think they would think is enormous, you know we can [inaudible 0:38:03.4] a bit here, fair enough because the UK has not implemented you know it's waiving stuff through, it's not implementing its customs. But even so, the EU looked at what happened so far and thought hmm, that's not too bad, you know even those countries like the Netherlands and Sweden and so on which are exposed to UK trade, it's not a massive subject of discussion and it certainly is not a massive subject of discussion in Brussels at all, not in the top five.

So I kind of feel that they think they could wear quite a lot more if they really had to, you know I think we now all know, or I hope we all know that the German car makers are not going to come, right the German car makers did not come before, the German car makers are not going to come now. So, that's a question of could they and would they from an economic point of view.

Now from the political economy point of view I think they have an even stronger incentive and here's why. If the UK really goes for broke and just says that's it, we're opening the borders, as we all know the EU then faces an incredibly difficult dilemma, does it continue, does it risk the integrity of the single market by having unregulated untested goods coming through, or does it put down some form of control/border whatever, either across the island of Ireland or down the English Channel. It really, really, really doesn't want to do that, not least because of course that will you know seriously affect one of its member states. So, the political economy of this I think, I suspect is this, before they do that, they have to say this is a last resort, like that is an absolute last resort. Before we have that last resort we're going to try a whole bunch of earlier resorts, you know, so we have to really, really show that we have really tried to bring home to the UK how important this is, including inflicting serious amounts of pain, before we're going to do something which we don't want to do which will inflict pain on ourselves.

So, yes, I have to say I think this would be from the UK's point of view this would be one of the really unpleasant [inaudible 0:39:58.5]. You don't want to get into a trade war with the EU, simple as that, they're very, very good at it, they've been doing it a long time, they know how to hurt you without hurting themselves. And if you are a relatively small economy that's very entwined with them, you're extremely vulnerable.

#### **Caroline Lucas MP**

That is extremely clear, thank you very much. Professor Hayward I don't know if you wanted to add anything at this point.

**Katy Hayward**

No, nothing really to add to that. Just to say there is a sliding scale of retaliation and response to what the UK might do and whatever the EU does would have to be proportionate to respond to the actions of the UK.

**Caroline Lucas MP**

Thanks, David, or Seamus anything to add?

**David Lidington**

No, just very, very briefly I think Alan has given a masterly exposition there. You can do a lot without the need for formal legal instruments, I was chatting to a supermarket boss very recently who said that already in their supply chains it was easier to get things through into the Republic of Ireland than into France. And just something like the opening hours at border inspection posts, the location of border inspection posts, decisions that particular trade lines can only go through one place rather than a multiplicity of places. That can screw things up in a very big way if somebody wants to be difficult.

**Caroline Lucas MP**

Thank you.

**Seamus Leheny**

I would just add very quickly sorry Caroline, I suppose yeah it's non-tariff barriers which could be implemented quite quickly and that would have concerns on freight travelling between GB and the EU and the English Channel and so for example the EU is not insisting on export summary declarations for goods leaving the EU bound for GB, that could be done quite quickly as mandatory and also they could increase the frequency and percentage of checks for arrivals into the EU from GB as well. The fact that probably you've about 5,000 lorries a day moving between Calais and Dover, probably between 80-90% of those lorries are EU lorries, so I suppose the concern would be for the UK supply chain that if there's going to be increased downtime for trucks at either side of the Channel because of extra administration and delays, you would be concerned about the appetite of some of those European logistics businesses to continue in offering a service to GB. And if they do continue to offer that service, they would probably look for extra money to cover that as well for the added delays.

**Caroline Lucas MP**

OK, so I think we've concluded that we do not want a trade war. Thank you very much, back to you Chair.

**Hilary Benn MP**

Caroline thank you very much indeed. Philippa Whitford. Philippa.

**Philippa Whitford MP**

Thank you very much Hilary. If I could start with yourself Seamus, you gave a very clear exposition earlier about the impact of the Protocol on GB to NI, making kind of imports to Northern Ireland if you want to call them that from GB somewhat more difficult and more bureaucratic, but exports particularly through the south of Ireland being much easier. How is that impacting if you like on the ground from the point of view of the public. I mean here in Scotland we're kind of pretty close to the end of the supply chain, rural and island shops have lots of empty shelves. My family in Belfast say that's not something they're seeing. So, you know, what's it like at the small business and the public shopper, how does it look to them and do you think there is a difficulty getting data because of the political if you like sensitivities and the arguments, I mean obviously the two communities, certainly their politicians see the Protocol in diametrically opposed ways.

**Seamus Leheny**

Yeah, the first thing probably going back to is the lack of data really on GB/NI trade. The ONS we don't have that yet. I think that will paint a very clear picture hopefully by February to see just the health of trade. It's very hard to say, you know the rural volumes, between Cairnryan and Northern Ireland, Cairnryan has seen an increase of nearly 18% on freight volumes bound for Northern Ireland. What we don't know how much of that is additional ...

**Philippa Whitford MP**

What kind of ONS data, will they give data to businesses as opposed to just what's going through the ports because obviously you did show how the port trade has gone up, so what data is it you're looking for from ONS?

**Seamus Leheny**

It's trade between businesses, so what a business is selling GB to a business in Northern Ireland and vice versa. We don't have that yet. The CSO in the Republic of Ireland gives us that on a retrospective every month, so it's more live. Obviously, the volume of data ONS has to deal with is significantly a lot more and that would suggest why it's an annual. So that will give us the clear picture really on that. With regards to availability of produce, I think if there is difficulty getting produce from GB for sale in Northern Ireland there is the ability to source it locally in Northern Ireland or from across the border in the Republic, because there is no trade barriers at the moment. So, there's probably more maybe more of a varied options for Northern Ireland consumers at the moment. But the concern for us is that, is that costing us more money to substitute those products. And again, it's hard without the actual concrete data there in front of us just yet.

**Philippa Whitford MP**

And what about the kind of business level, does that mean you're not having empty shelves or are there already big increases in prices or decreases in quality of things like fresh produce from Europe, fruit and veg which we're certainly seeing here in Scotland.

### **Seamus Leheny**

Again, you know we're still waiting by the retail sector would need to tell us, I did speak to one [inaudible 0:45:56.2] a logistics business earlier this week in Belfast and a lot of the fresh fruit and veg that used to come for distribution in Northern Ireland used to come in via a huge distribution centre at Heathrow, that is now coming in direct from Spain into Ireland then for distribution in Northern Ireland. So, you're seeing some businesses are starting to react and they're cutting out, taking goods in for distribution in GB and taking it straight to distribution in Northern Ireland, so again, you know that's probably a question maybe for the retailers to answer there.

### **Philippa Whitford MP**

So it's more I suppose could be seen and may be seen by members of the public as an advantage that Northern Ireland has, maybe if I can come to yourself Katy, I don't know whether you've done obviously polling with the public what the perception of the public is and particularly in both communities as opposed to the two sets of politicians, how their view is of what they can access and whether you think we do have an issue with not just the data Seamus is talking about but the data around the view of the public, the view of small businesses over the Protocol.

### **Katy Hayward**

Well, we've been doing as part of this research stakeholder workshops that include businesses and retailers and we have seen a change over the course of the year and things have got better, partly because people are more familiar with the systems and businesses have adapted as necessary. But also, the systems are designed to operate the Protocol are functioning much better than they were, the trader support service in particular, and there's also better communication. But it is very clear that different sectors and sub-sectors are experiencing the Protocol in very different ways as you would expect given the varied nature of trade and business. So, some are really struggling, and we should bear in mind we are not having the full implementation of the protocol yet, the grace periods that exist are really significant and there would be grave problems if those were suddenly to disappear. So, it is important that we have these talks at the moment to see adjustment to the protocol and your point about reliable information is absolutely critical. So, I think the fact that we now have very direct involvement of the business community from Northern Ireland with Aodhán Connolly and Seamus and colleagues, that's really critically important. And that engagement is both on the UK side and with the EU and that means that they have detailed evidence and experience from these people directly on the ground managing these issues and I think, you know that's the only way in which we're going to have a Protocol that operates more effectively and this is why just my last point, this is why the non-paper on stakeholder engagement that the EU put forward is critically important because it's about getting evidence directly from here in Northern Ireland around proposals from the EU or the operation of the Protocol, whatever it might be, feeding that directly into the UK/EU decision-making on the Protocol, it's really vitally important.

**Philippa Whitford MP**

And just to ask you what about from the public, I mean you've said you'd done surveys and things what's the perception among the shopping or working public to the Protocol?

**Katy Hayward**

Yes, so there's been polling by the Consumer Council here in Northern Ireland. They're doing one now, the earlier ones were reporting problems and difficulties with respect to the protocol, particularly at the beginning of the year so I don't know what their latest polling will show on that. We don't ask, we haven't been asking people about their experiences of shopping, although I should say, I mentioned before like on that polling the majority of people now see economic opportunities coming through the Protocol, but there is very different views on that according to people's political perspectives and that's the variable that matters more than anything, whether people are Unionist or Nationalist and other.

**Philippa Whitford MP**

Sure, I mean obviously that was the deal we were trying to get, my constituency just looks at you across the water, so in Scotland we were trying to get what you have. We need to wind up, anything you need to add burningly David to that. No, OK back to you Chair.

**Hilary Benn MP**

Well thank you very much indeed Philippa. I'm now going to turn to Stephen Farry. Stephen.

**Stephen Farry MP**

OK thanks Hilary and good morning to all of our witnesses. Caroline Lucas has already asked around the impact of a wider UK/EU trade relationship from a triggering of Article 16. I just wanted to ask a bit more specifically in relation to the impact on Northern Ireland in the event that that was triggered, areas such as the potential movements of goods on the island, impact on business confidence from resultant uncertainty. Maybe as a subsection of that ask, is there anyway obviously the Protocol is there to protect Northern Ireland but in the event of a breakdown in relationships is there any way in which the EU can act to try to insulate Northern Ireland from the impact of any wider UK/EU confrontation? So maybe start with Katy and Seamus first and then turn to Alan and David.

**Katy Hayward**

Thank you, Stephen, I'll try and be as succinct as possible. I mean with anything in relation to Article 16 you'd always have to be questioning well what would it be used for, what specific safeguard measures would be bought forward by the UK Government. If it isn't specific then if it is generally like suspending Articles 5, 7 and 8 for example, then that is not necessarily a proper use of Article 16, it's not the kind of what it was designed for given it's meant to be very specifically a response to remedy the problem. So that's part of the issue that we have here, that the Government has never been clear what it would use Article 16 for. And in terms of its economic impact therefore we're only really



speculating. I don't think we're talking about a situation in which the UK Government would say OK no more checks GB to NI and then the EU is contemplating a harder border on the island of Ireland, we're not in that territory at all. I think if the EU wants to respond first and foremost as the rebalancing mechanisms which would have to be in accord with the safeguard measures triggered to begin with, and then we also have those other measures that Seamus and David have mentioned before, i.e. to try and have an impact on the UK as a whole rather than directly on Northern Ireland, and I think ... the issue here is that it's difficult to see the use of Article 16 as being economically something of value and worth, because economically all it does is disturb that context for stability and certainty that businesses need. Politically it would be its primary use I think and it's worth bearing in mind from our polling here that only 39% of people in Northern Ireland say that the UK Government would be justified to use it, that's a large proportion but it's a clear minority and therefore if you're thinking around the political ramifications of triggering Article 16, even aside from the UK/EU relationship, it would be very difficult to manage here. Partly because the calls for triggering Article 16 are being very much on one side.

### **Seamus Leheny**

Stephen if I just come in there. I think with regards to the border what could be done, the three fundamentals for any border control, whether it's the US border or the EU border or anywhere in the world is do you know what's crossing the border, where and when and do you have the ability to intercept it before it crosses the border. The situation with North/South border is that at the moment that's impossible to tick all those three boxes. I'll go back to the point I made earlier about the level of trade that is classed as intermediate trade. People talk about the value of trade GB/NI, and they try and compare it like for like with trade North/South, but they're two very different supply chains because the supply chain between GB and Northern Ireland is the finished product. It's the television, it's the PlayStation, it's the car. So naturally it costs a lot more hence the value. And to give you one example, probably one of our most famous exports in Northern Ireland, Bushmills Whiskey, I have one of our members that runs a fleet of vehicles, they move raw materials across the border daily between County Cork and Bushmills in County Antrim to manufacture that whiskey. So, if you did have some type of control procedures, administration, or worst-case scenario tariff on those raw materials it jeopardises products like Bushmills, a bottle of Bailey's Irish Cream for example, to get the finished bottle of Bailey's Irish Cream requires seven cross border transactions in trade. Again, you don't need me to outline the damage that would do and potentially jeopardise a lot of that trade and that bottle of Bailey's actually being bottled in Belfast as well.

So that would be the concerns for us, what we do to safeguard it, probably going back to the non-tariff barriers that the EU could do on the English Channel rather than being seen to punish Northern Ireland. It could be taken elsewhere at other border control posts.

### **Stephen Farry MP**

And Alan and then David as well please.

### **Alan Beattie**

I have very little to add to that very expert comment except more or less to repeat what I said before which is more or less by definition if you get to the breakdown in relationships where Article 16 has been triggered in the entire basis of trading has gone, it has been very hard to get any kind of trust,

any sort of functioning relationship between the EU and the UK side which is going to facilitate, you know which is going to ameliorate, facilitate being able to ameliorate that kind of shock.

### **David Lidington**

I've not got much to add, I think the two points I'd make are these, first of all there is a clear risk in that were Article 16 to be invoked in the way that, and the EU to respond, in a way that cast legal doubt upon whether customers in the Republic of Ireland could treat Northern Ireland produce going into their supply chain or their production system as meeting the required EU standards for imports, they might decline to accept those. It's something we looked at in Government in doing No Deal contingency planning, that actually take an example the farm in Northern Ireland sending milk to a dairy in the Republic. If there were no legal framework governing post-Brexit trade relations then you know would that dairy in the South continue to feel it could bear the legal risk of accepting a food product from Northern Ireland where there was no guarantee, you know, and the paper chain wasn't there to show it met the required EU standards. And so, there's an element of risk there. I think the EU what it could do to protect Northern Ireland the way others have described, the very clear impression I get from Brussels is that the nuclear trigger for them is if the UK invoked Article 16 in a way that appeared to threaten Ireland's place in the European single market and that, as I understand it, is sort of the key political point that the EU is very concerned about and that is what would trigger I think some quite dramatic and asymmetric response from them.

### **Stephen Farry MP**

Thanks for that David. Chair, if we're OK for two seconds if I could just ask either Katy or Seamus to pick up on the issue around business confidence, I mean we've seen for example the Almack [ph 0:58:53.9] investment in Northern Ireland which has almost taken advantage of the Protocol in terms of the dual access to markets. Will the time lag between the triggering of Article 16 and then some of the responses from the European Union maybe coming a year later, what sort of happens in the interim around business confidence, is that something we should be conscious of, is it a particular risk or loss of opportunities?

### **Hilary Benn MP**

Brief answers, if possible, because of the time, sure.

### **Katy Hayward**

So again, it really depends on how Article 16 is triggered, if it's minimal or maximal and I think fundamentally the question is if Article 16 is triggered what sort of, what status that puts Northern Ireland in as a place for investment and trade. And it goes in the opposite direction of the kind of area of predictability that businesses have been asking for and Stephen Kelly from Manufacturing NI has said you know triggering Article 16 won't make anybody in GB want to trade with Northern Ireland more because of that uncertainty and it will certainly cause doubts for some people who are already investing or thinking about it, thinking about expanding business in Northern Ireland or trading with it, it would cause doubts. So, as I say, economically it's very difficult to see the benefits of triggering Article 16. Most particularly because we have to have a negotiated outcome at the end of it. So why use that method when they're already negotiating, and we already have the standstill.

**Stephen Farry MP**

Thanks Katy and thanks for your indulgence, Chair.

**Hilary Benn MP**

Stephen, thank you very much indeed. Can I just add he's had to leave now but on behalf of the Commission can I say a retrospective thank you to Alan Beattie for giving evidence to us today. Shearer West, over to you. Shearer.

**Shearer West**

Thank you very much. This has been fascinating and you've all been very clear and articulate about the conundrums that we're facing. So, I'm going to ask a slightly different question. If the EU insists on some border somewhere between Great Britain and EU and the UK Government insists on no regulatory alignment, what sort of arrangements could gain broad approval in Northern Ireland and would a wider political agreement be required or a greater role for Northern Ireland's politicians help in this. And I want to start with David and then go to Katy next.

**David Lidington**

Well, I mean I think that a stable solution on the current Protocol or a revised version of it should involve Northern Ireland politicians more and I think that various ways of being explored in which to do this. There is obviously the Stormont lock on the continuation of the current Protocol arrangement that's written into the deal itself, but actually it's open to the UK Government to insist that its delegation is at the various committees and sub-committees and working parties involved include significant numbers of people from Northern Ireland, who they could be elected people or they can be trade representatives or whomever, but it seems to me that that should be a very important element of the way forward in terms of implementing whatever sort of treaty or protocol we end up with. And you know as someone has said earlier, even David Frost is saying that the trade across the Irish border needs to be governed by a UK/EU treaty of some kind.

**Shearer West**

Thank you. Katy, do you have anything to add to that?

**Katy Hayward**

Yes, it's a very good question because I think you've set out exactly the kind of environment that we're talking about i.e., the UK doesn't seem inclined towards regulatory alignment in a way that would soften the UK/EU border including therefore the GB/NI border. So, we are looking for adjustments to the protocol, the EU is clear that this won't come in the form of a new, a totally new protocol, so this can't come under Article 13.8 which is what the UK Government has been asking for. But I think if you're looking at public opinion in Northern Ireland in terms of what would be acceptable, it is important to, I mentioned before Unionist views are clearly different from Nationalist and other views and funnily enough basically reflects the situation in the Brexit referendum itself. But there is a varied opinion amongst softer Unionists, those sort of in the more middle ground, centre

ground of Unionism and I would think there is space there, they're particularly concerned around Northern Ireland's voice and that's just not an identity issue, it's also around knowing and having confidence that the decisions being made at that UK/EU level are based on evidence from Northern Ireland and on input. And it's interesting when Maros Sefcovic came before the committee of the Executive Office in the Northern Ireland Assembly last week he was mentioning this point recognising the need for consultation with Northern Ireland. The fact that even he is there giving evidence is really important and the EU's non-paper on that stakeholder engagement is really vitally important as well, mentioning a particular role for the Northern Ireland Assembly vis-à-vis the UK/EU parliamentary partnership assembly. All of that is very important. But fundamentally we come back to the point of needing trust in the UK/EU relationship as Alan mentioned before and until that is built with a view to the longer-term, the joint committee won't function properly and there will continue to be wariness particularly amongst Unionists on this here in Northern Ireland around the long-term implications of the protocol.

So, we've got a long way to go on building that first and foremost at that UK/EU level.

### **Shearer West**

Thank you, that's very clear. I'll hand back to the Chair now and I think we're back on time Hilary.

### **Hilary Benn MP**

Thank you very much indeed Shearer. I'm now going to turn to Paul Girvan, Paul the floor is yours.

### **Paul Girvan MP**

Thank you Chair and I do want to thank the panel for those coming along this morning to answer questions. Just before going into my question, I want to make an observation. The EU are putting an extreme amount of focus on what is effectively 0.1 of a per cent of their GDP relating to what goes through trade with the Irish Republic and what the impact of Northern Ireland on that, so there seems to be quite a little bit of focus being put on what is potentially so miniscule amount of their overall GDP, but that's by the way. The access of trade issue is what I want to maybe ask on and the cost absorption to business. Business and probably more so businesses from the UK, the additional administration required in relation to importing into Northern Ireland and Seamus probably is well aware of the documentation and the additional costs that that's bringing to many businesses and the hauliers are the ones at the end of the day that are having to present all the paperwork and do all the bits and pieces and they end up with a lot of grief from that. And we're getting indications of £30 per document that has to be produced, to such a degree many SMEs, small businesses in England are deciding no longer to trade with Northern Ireland because of the additional costs that are associated with it. So that's that aspect and I just wanted maybe the access of trade in relation to what is actually happening with supply chains, people now having to trade with the Irish Republic finding new supply chains because it was one of the areas within the Belfast Agreement that was protected, that there would be no economic change in relation to the access of trade. Most trade with Northern Ireland was East/West, now you can see the change. And even when we mention about the trade to the ports and the increase in traffic to some of the ports being up by 16, 14-16% in relation to some of that trade much of that is Republic of Ireland companies taking advantage of the access onto the UK market by using Northern Ireland as their back door. I'm just saying that.

But I want to move onto my question directly and it's probably one that's going to be fired back anyway. What is the best-case scenario for the economy of Northern Ireland and what should all

parties do to help to achieve this? And I'm talking about my own party as well, but I'm talking about not just political parties I'm talking about parties around the table including Europe, because there does need to be certain flexibilities there. And probably that will go first to, I'll ask Seamus maybe if he wants to make comment on that. Thank you.

### **Seamus Leheny**

Thanks Paul, yes, you're right you know there is the burden of this logistics as a service provider. Your industry is a problem-solving industry, so trade have these new barriers, it's up to us to facilitate that and keep the level going. And you're right as well, you know the small percentage of trade with the EU has with Northern Ireland, that gateway is small. Probably from my experience dealing with the Commission it's not so much the level of trade, it's the risk that SPS poses. We know from scandals in the past around food etc, it's about a commodity of food arriving at Northern Ireland and ending up on dinner plates in France and that food maybe coming from somewhere where it shouldn't have come from, and the problems that would create further on. Probably coming down to what are the opportunities your question is, it's without doubt it's the dual market access for Northern Ireland businesses. People do talk about the trade diversion as a result of the Protocol. I know you know, this time last year we knew it was inevitable that there would be, Northern Ireland could capitalise on that, we could trade more with the EU and that's not necessarily a good thing for businesses in England, Scotland or Wales but it's something businesses here have really capitalised on. I know some of our members they've got sales teams now in places where they never had salespeople before. We have one member here that operates a large fleet of vehicles, but they prepare vegetables for the dinner tables, and they've capitalised where they have now a new market in the Republic of Ireland because retailers there used to source those products from GB instead. And that's reflected in increased sales, so I think the dual market access is the big thing that we have, if we can iron out the problems GB to Northern Ireland, which is fundamentally the at risk profile, so when we talk about EU being worried about SPS, if we can make sure the companies involved in moving the vast majority of those products are part of a scheme that adhere to rules agreed between the UK and the EU under a negotiated terms I think we can iron out a lot of that administration cost and time in moving that.

And then basically we could focus on Northern Ireland being a great place to do business. We've seen there recently we have a large manufacturer making an announcement to build a new factory and employ about 150 people in North Belfast, that's the largest single investment in manufacturing in Northern Ireland since John DeLorean decided to open up a car factory in Belfast which says it all really. And I think really we were speaking to [inaudible 1:10:58.0] that's something we can capitalise on in the future, so if we can protect Northern Ireland consumers to make sure we can still get the products we want in our shops from GB, and then basically capitalise on Northern Ireland being a place where you can trade dually with the GB and the EU, I think that's where we want to get to at the end of this journey.

### **Paul Girvan MP**

OK, could I ask Katy?

### **Katy Hayward**

Thank you, Paul. Yes of course it's a fundamentally important question in terms of the best case scenario and I think fundamentally when we're talking about what people can do and what parties can do to achieve it, we need flexibility of course in the UK and the EU, but most importantly we

need to distinguish between the constitutional questions, political questions, questions of identity and those relating to trade and the economy. Because fundamentally speaking as Seamus has explained there, Northern Ireland does have a huge advantage through the Protocol with the dual market access and this is a great strength, this is the reason why the EU is being very cautious because it's moved much further in this than it ever has for any other place, any other non-member state region. And we understand too why the UK is cautious as well, given Northern Ireland's distinct position and that new friction on GB to NI trade. We do need the relationship of trust to be built between the UK and the EU so that as much flexibility as possible from the EU can be given. And if we have that longer-term the joint committee functioning properly as mentioned good representation from NI directly into the drug consultative working group and into the specialised committee, we have a great potential here.

And for the Union itself it potentially gives Northern Ireland the best possible position for the endurance of that Union, not least because that dual market access, UK Internal Market Act, would not apply in a United Ireland for example. So, there's a lot to be positive here about from the Union's point of view. Notwithstanding their concerns, but if this thing functions properly, if we see more movement from the EU then potentially it's a great thing for the Northern Ireland economy and indeed potentially if you like for the Union itself.

**Paul Girvan MP**

I don't necessarily follow your logic in relation to the Union.

**Katy Hayward**

I would just say if Northern Ireland is a small region on the edge of the EU and on the edge of GB we've known that it's struggled for a very long time economically and now it is in a distinct position, it's not all advantageous but it is in an advantaged position compared to elsewhere in the UK. There's a lot there, so if instead of being a basket case, if it's actually attractive for investment, Invest NI has the potential to sell this unique dual market access position, the Northern Ireland executive needs to be in a position where it can make and be in a clear, have a clear and agreed stance on the Protocol, that would really transform the situation and from that basis Northern Ireland could do very well and that could only be seen to be a positive thing for those who want to see Northern Ireland continue to endure.

**Paul Girvan MP**

I do take on board but I do believe that Northern Ireland should be treated as any other region within the United Kingdom and free to trade within that market without the problems that we have and I do think that that's something that we should be looking at in relation to the trust a trader and the at risk, goods at risk. I think that there is a little bit of movement can be made around that goods at risk, and I did make mention yesterday when we were on the International Trade Committee along with Aodhán yesterday, I have clarified my issues, I have the names of the individuals concerned and I know the case that I mentioned in relation to the Port of Larne and the customs official who was involved in that, got the name, know the details, know where they were from, the whole details of it and I'm happy to actually say that there seems to be a little bit of ... well, and I did mention it to Aodhán yesterday when he was on and I did probably use the wrong term in the first instance, but I did think that we are being punished as the UK for leaving the EU by the volume of checks that they've put in between what actually happens with Northern Ireland and the rest of the United Kingdom. The checks that are coming from East to West and I do think that that has a detrimental

impact upon supply chains. It is driving up costs. Costs have risen and you have to look at the price that you will find if you go on to buy certain items and you are based in the UK mainland you will get a different price to what you ask whenever you order the same item for Northern Ireland which is within the United Kingdom. But that's just something that is there. And it's good to see you again David and I'd maybe ask you David for your comments on that point.

**Hilary Benn MP**

Well, we'll need to do that very quickly Paul because we've got to move on.

**David Lidington**

I'll answer it very quickly, good to see you Paul, I mean point one, this is where I will cross swords with you slightly, you know all parties in Northern Ireland have to accept that disruption to trading arrangements is inherent in Brexit and in leaving the single market and the customs union, and there's no evading that. In terms of what could be done, I think one, I really continue to push that de-dramatization of controls, so that you know you want there to be as little friction as possible between GB and NI as we all know of course there was with livestock in particular, some always for a long time has been some additional checks and controls there. But one could do that. It's more challenging because the Johnson Government has moved away from the May Government's position of accepting alignment on agri-food and industrial goods, you know that's a political decision which they're entitled to take. But that has a consequence. But really pushing de-dramatization, pressing the EU on the second of the two principles I alluded to earlier which is necessity, they argued in 2017/18 the Peace Process in Northern Ireland is an essential core interest of the EU. Well, they're on the record as saying that so de-dramatization seems to me to fall neatly into that category. Second, help business adjust particularly investing in new systems, training people, Government both in Stormont and London can help there. Third, a big push to promote FDI into Northern Ireland and the advantages of a Northern Ireland location for businesses that want access to both the UK and the EU markets. And finally, this is a longer-term thing, really ramp up the work on smarter borders, I've talked to businesspeople who think that this is a realistic medium-term possibility although I never believed it was going to be ready in time for when Brexit took place.

**Hilary Benn MP**

OK David and Paul thank you very much indeed. I'm now going to move to Aodhán Connolly. Aodhán, over to you.

**Aodhán Connolly**

Thank you very much Chair. It's absolutely wonderful to see our panel of witnesses this morning. Very strange for me though usually I'm on the other side beside Katy and Seamus rather than asking them questions so I shall try and be as nice as possible and it's wonderful to see you too David, and in fact David I'm going to start, it's a question for all three of you but I'm going to start with you David. Has the operation of the Northern Ireland Protocol come as any surprise, considering for example the warnings of Northern Ireland politicians and Northern Ireland business leaders in 2019 and specifically, for you David, it's the sort of surprise that came from the UK Government stance? So, at the start of the year, we had there is no trade border, there is no sea border and that quickly

moved on to there's so much of a sea border that we need to pull the thing down. What's your sort of impression of that and then Katy and Seamus will come in.

### **David Lidington**

I was quite startled when the British Government agreed to the Protocol in its current form. And ... for what it's worth I voiced some concerns at the time in Parliament. But you know they had a mandate and they fought at the General Election to secure an electoral mandate for the deal that they negotiated, so you have to take it in, bring it in. I think that there is a bit of wishful thinking on the part of the UK Government in it wanting through changes to the Protocol or to its implementation to make things appear as they would like it to have been and, in some instances, claimed it would be, rather than the reality. But the direct answer to you Aodhán is no, I don't think anybody who has followed these issues in any detail would be remotely surprised by what happens and as others said earlier, particularly Alan Beattie, if we can rebuild trust that I think can persuade the EU to take greater risks on the legal side. It is the absence of trust that is holding back progress on de-dramatization and making some of these checks less onerous.

### **Aodhán Connolly**

Thank you, Katy I'm going to ask the same question whether any of this was a surprise, but also has public opinion evolved during this time on the operation of the Protocol? Seamus I'm going to come to you afterwards and I'm going to ask has business opinion evolved during this time as well. So, Katy, over to you please.

### **Katy Hayward**

So, technically speaking it wasn't a surprise. I mean some of the most significant disruption experienced at the start was avoidable given the lack of preparation and the lack of response that existed during the transition periods to the concerns being raised by business etc. I do think that Unionist concerns around the protocol are perfectly understandable of course and they were very much encouraged by some of the language used by British Prime Ministers, both Theresa May and Boris Johnson in the promises that were made and reactions to the draft withdrawal agreement of February 18 and indeed in relation to the back stop too, i.e. the idea that Northern Ireland could not be divided in any way from GB etc. So, there was a lot of raising of unrealistic expectations given the nature of Brexit. In terms of public opinion, we have seen it evolve so this polling, we've done three polls so far on the Protocol. We've seen it evolve to the latest poll which is showing a majority thinking that the Protocol is overall a good thing for Northern Ireland. Consistently we've seen a majority thinking that Northern Ireland does need special arrangements or specific arrangements arising from Brexit. What hasn't really changed over the past year has been Unionist concern around the Protocol, that's been present from the beginning particularly amongst the more hard-line Unionists, very much opposed to it, seeing it as having gone against what the Prime Ministers had promised them. And but what we have seen particularly from those who are neither Unionist or Nationalist is an increasing support for the Protocol and indeed increasing belief that it protects the Good Friday Agreement, and it brings economic opportunities for Northern Ireland. So that is possibly in reaction to what's been happening in GB as the impact of Brexit has become more apparent and as Northern Ireland doesn't seem to have experienced those same shortages as has been experienced in GB at certain times.



**Aodhán Connolly**

Thanks Katy, one thing you said there resonated with me at the start as far as the opinion of the newest community in Northern Ireland, one of the things I keep saying this, one of the things that annoys me more than anything is the fact that on social media particularly people try and discount those when they are realistic and they have to be listened to. Seamus what about business, has, was any of this a surprise to the business community and has public opinion or business opinion evolved during this time?

**Seamus Leheny**

No Aodhán you know this is pretty much predicted, I remember back in 2019 we knew that there had to be some type of special settlement with regards to Northern Ireland and the whole out workings of Brexit. The Protocol is not something we envisaged problems, we all did, warned everyone at the time that there would be as well. The Withdrawal Agreement was signed, you know we were told to support it and there were certain elements we could but it was difficulties around the Protocol and probably you know I can think of my own organisation Logistics UK, we published the policy paper in February 2020 after I had enough time to analyse the Protocol and as a good man of Irish literature yourself you know the Old Moore's Almanac and pretty much that's what my policy paper was like because the key policy [inaudible 1:24:33.4] in that paper have all come true and back then I said that we needed a type of trusted trader scheme for the movement of retail goods, I said that we needed a system to enable traders to continue movement of goods, assistance with the customs, as a result we got the trader support service and there's other things in there that still we're asking for today. So, I think the business community we knew that the Protocol was never going to be a garden of roses but was certainly better than a No Deal scenario and all the problems that would create really for trade with Northern Ireland, both with our GB neighbours and our EU neighbours.

**Aodhán Connolly**

Thank you. I'm going to move on to a question that's for you Katy and Seamus, David you get a ball on this one, what sort of reaction would you expect in Northern Ireland, we've already heard what the EU might do, we've already heard what the UK Government might do, what would you expect the reaction in Northern Ireland to be, both societal Katy and business Seamus on if Article 16 is triggered?

**Katy Hayward**

So, we know from the polling that there isn't general understanding of what Article 16 means in Northern Ireland and that's perfectly understandable given the lack of information and clarity that has been offered publicly around Article 16. And for many they see this as suspending the Protocol, so there'd be that matter to deal with in the first instance. We know that I can assume Paul may wish to correct me but the DUP would welcome it if the Government trigger Article 16, but as I mentioned before the economic ramifications would seem to be only negative and politically we must bear in mind that the Protocol is not just about trade of course, there are other really important elements to the Protocol, including with respect to rights and safeguards and equality of opportunities and we know that people would be very much concerned that those things would be undermined and challenged by the invoking of Article 16. They may not have ... [inaudible 1:26:52.6].

**Paul Girvan MP**

Sorry for jumping in on this but do you believe that if Article 16 were triggered it would have a bigger impact upon the UK in general as opposed to just Northern Ireland?

**Katy Hayward**

You mean in terms of the EU's reaction? So this is where we go back to why it would be being used and how and I think, no I don't think it would have a bigger impact on the UK, I think economically speaking putting a big question mark over the standing of Northern Ireland and also like highlighting Northern Ireland as the crux of a dispute and disagreement between the UK and the EU would only be negative for Northern Ireland. So, we can't imagine, even if the EU brings in immediate responses in the non-tariff ways that have been mentioned and that has a most great impact in GB, most immediately, economically speaking it would still have an impact on Northern Ireland. For all those reasons I've already mentioned. So Northern Ireland would far from be insulated from any consequences. And just one last thing, I don't think it's just Article 16 that is a risk here, I do think wider questions around the potential for the UK Government may choose to sort of undermine the standing of the Protocol is something that would also be of concern. So, we may focus on Article 16 but there are other things that the UK may choose to do in an attempt to downplay the implications of the Protocol that could have much greater consequences longer-term for the political and economic situation.

**Aodhán Connolly**

Seamus business, how do you expect business to react?

**Seamus Leheny**

Yeah, I'll keep it as concise as possible because I'm just looking at time Aodhán and ultimately businesses, we only deal in legal certainty and what Article 16 does really with regards to investment and the movement of goods in and out of Northern Ireland from wherever, it questions you know obviously the legal certainty of those goods and it does nothing really to address the whole stability, certainty and clarity that businesses crave, really with regards to investment and ongoing business. It would obviously jeopardise many businesses here whether anyone likes it or not, our supply chains are deeply integrated with both GB and the Republic of Ireland, its nature of business here, you know I've been working in the logistics sector for nearly 20 years, I've dealt with many businesses through mergers and acquisitions, opened up factories in Dublin and Belfast and so on. And the questions basically the movement of the ingredients and the components between plants and then obviously it raises queries with regards to businesses in GB about how they send goods either for processing or for sale in Northern Ireland as well and vice versa. So, I think it makes people very nervous in businesses if that happens and it certainly makes this place a back water in terms of attracting foreign direct investment.

**Aodhán Connolly**

OK I'm going to ask you all to be very brief on this last one and I shall try and leave on a positive. So, how can the UK Government and the EU work better with the political process in Northern Ireland in whatever the steps they choose to take, whether that's triggering Article 16, not triggering Article 16, and these continuing negotiations. If you had one or two short key asks to both the EU and the UK

about how to make this a more smoother process with the Northern Ireland political process, what would that be. And David since you've been sitting on the side-lines, I'm going to bring you back in first please.

**David Lidington**

Well, I will try to be very brief. A lot has been said already on this Aodhán, but I think that from the UK point of view, the key thing is to bring in representatives elected or business from Northern Ireland in visible positions both advising UK Ministers and the stance they should take and having them as members of the various committees and sub-committees to be established under the Protocol. There may be a case for seeing whether the UK and EU could agree some sort of further Stormont involvement, but that's certainly involved perhaps the Northern Ireland grand committee at Westminster could be reconvened to as well to discuss operation of the Protocol at regular intervals, particular aspects of it. The Brussels side, I mean I would very genuinely ask them to spend more time talking to and listening to Unionist's opinion because I think if you talk to them they will say they've done that, and I'm sure they believe that they have used best endeavours but I think that you know and it's not just talking to you know business leaders or some political leaders who happen to be, who are Unionists, but it's actually ... I tried to persuade Michel Barnier that he should you know have at least a day immersing himself in Unionism, starting with an Ulster Fry and sort of you know spending time actually in Ballymena or East Belfast or somewhere, just talking and listening to Unionists until he really understood what the fears and concerns were. And so, I think in terms of trying to rebuild trust that could be an element of it.

**Aodhán Connolly**

Thank you, David. Katie.

**Katy Hayward**

Yes, fundamentally I mean I mentioned it many times before but the structured engagement with stakeholders and with Northern Ireland elected representatives and continuing to engage with Northern Ireland Assembly committees would be really important and more broadly on both sides the need for clarity of information and transparency in those talks in particular would be very useful in calming fears.

**Aodhán Connolly**

Thank you very much. Seamus, I know that you've said previously that you wanted statutory consultee status for Northern Ireland on EU regulations but what would be your guess to the UK and the EU to best work?

**Seamus Leheny**

I think yeah, a formal structure obviously in place, it's a case of don't talk at us, talk with us. You might remember Aodhán we were involved several years ago with the formal working group with the Cabinet Office on the Alternative Arrangements. That was really good because we were working with Government proactively about the solutions that would sit in Northern Ireland. So I think we need more of that, we need the EU and the UK to have a formal for both political, civic and business to

make sure that any changes how the Protocol works and actually works for us, because we have to remember at the end of the day the Protocol is for our interests, not for Brussels, it's not for London, it's to make this place work as a society and a place to do work in. So, involve us formally.

**Aodhán Connolly**

Thank you very much Chair, I'll hand back to you.

**Hilary Benn MP**

Aodhán thank you very much indeed. I'm just going to take advantage of my position to ask one final brief question and it's about the ECJ because I think we've heard and it's been a fantastic session this morning, people listening I hope can see how you can find a way through this with pragmatism and trust, a point that all of you have emphasised, but I just wonder how if you think that the introduction of the issue of the ECJ in the Protocol has become a hook on which the UK Government has impaled itself, how does it get off? Is there a re-drafting or a reinterpretation or additional phases, I know this is probably a whole evidence session in itself, but I'd just be interested if I could ask David and then you Katy briefly, how do we get over this particular issue?

**David Lidington**

Well you start by accepting the limitation, the European treaties of course define the role of the Court and say that it is the arbiter of what European law means and we've seen with the Schrems judgements in particular that the European Court ultimately can instruct the Commission and the Council, they may not continue to be party to an international agreement they've negotiated if in the Court's view it breaches treaty requirements. So that's the reality.

What I think could be done is to interpose probably for a separate standing UK/EU treaty, some kind of dispute resolution or arbitration mechanisms on aspects of how the Protocol is implemented in practice that would then you know reduce the number of occasions when anything was likely to end up in the CJEU itself. The EU has got arrangements with Switzerland, with New Zealand that are different from each other, and I think one should look for a model that would work in the UK and Northern Ireland circumstances.

**Hilary Benn MP**

That is really, really helpful. And finally, Katy.

**Katy Hayward**

Yes, it's a big one and I think this goes back to the point around information as well and people's anxieties increasing on the basis of misinformation. So, for example I've heard some people being worried that they would be hauled before a foreign Court for something that involved breaching the Protocol, do you know, so this is why people need to tread very carefully on this and is why there is such a need for more information on the Protocol from the highest levels. I mean I think maybe Lord Frost has moved a little bit on what the UK is seeking, so acknowledging the need for direct effect through the Protocol and the value of the ECJ as interpreting EU law. And there is potential landing point there I think but there is no way that the EU would be wanting to move in that direction until

we have agreement on much more, much less contentious issues and so for example we've got the opportunity there to fix the medicines point and the UK has not come forward to find joint agreement on that. So until we can sort of get movement on those fundamentally important things that matter most to people in Northern Ireland then there is a worry that those points of principle and it really is a point of principle I think from the UK side, that those would actually scupper the potential for, you know this is the real priority of the UK in these negotiations, it's seen the window open and it wants to get that movement from the EU so potentially using Northern Ireland in a rather cynical way and that just increases a sense of anxiety here. And there's no end point to those talks, you know, so that is a worry.

**Hilary Benn MP**

Well thank you very much indeed. Can I say to you David, to you Katy and to you Seamus and also Alan for before he had to leave us, this has been a really, really interesting, and useful session and a great way to conclude this year's work for the Commission. And to those of you who have been watching our evidence sessions I hope you've enjoyed them, and we'll be back in the New Year and a very merry Christmas and a happy New Year to everybody. That concludes this morning's event. Thanks.