



Northern Ireland
Assembly

Committee for the Economy

OFFICIAL REPORT (Hansard)

United Kingdom Internal Market Bill:
Professor Katy Hayward

16 September 2020

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Members present for all or part of the proceedings:

Dr Caoimhe Archibald (Chairperson)
Ms Sinead McLaughlin (Deputy Chairperson)
Mr Stewart Dickson
Mr Gary Middleton
Mr John O'Dowd
Mr John Stewart
Ms Claire Sugden

Witnesses:

Professor Katy Hayward Queen's University Belfast

The Chairperson (Dr Archibald): Katy, welcome to the meeting. First, I congratulate you on your recent chairship.

Professor Katy Hayward (Queen's University Belfast): Thank you very much.

The Chairperson (Dr Archibald): It is well deserved. I will hand over to you to make an opening statement, and then we will open it up to questions.

Professor Hayward: Thank you very much, Chair. It is an honour to appear before the Committee. You have had a lot of reading, so I propose just to give an outline of where the Bill comes from; its key points, both relating to devolution and, of course, the protocol; and then a small conclusion on what it all might mean. With regard to the context, it is worth bearing in mind the model of the EU single market, a couple of its principles, and how it might give us an idea of some of the concerns that have been raised about the UK's approach to the internal market in the Bill, and also some of the logic behind it.

I guess that the principle behind any legislation that relates to single markets and internal markets is that, where you have legislative differences and autonomy in making regulations, that can produce barriers to trade and distort competition. In the EU single market, we saw two approaches to managing that challenge. One is negative integration, whereby you basically remove barriers to trade in order to, in principle, allow goods to be sold across the UK, the movement of services etc. Then there is a positive approach, if you like, which harmonises rules, so you see harmonised standards for toy safety, chemicals etc. We are very familiar with that because, of course, a lot of those come through in the Ireland/Northern Ireland protocol.

The development of the EU model has included measures of governance and justification for exemptions. The legal regime which enables the single market to function is highly developed. As we

know, there are people who are concerned about that as well as those who advocate it. When Brexit comes along, we have a situation in which the devolved competencies which allow distinct legislative activities within the UK potentially give rise to barriers to trade within the United Kingdom. It was the application of those common rules of the EU that allowed devolution to function as it did. Outside of those rules, we have a potential problem. That was identified early in the Brexit process. Analysis that was conducted by the Cabinet Office over time, but confirmed in 2019, talked about there being around 160 areas where you had the EU essentially legislating or giving directives in certain areas for which the devolved legislatures were responsible, and that could, therefore, potentially give rise to difficulties.

There were three main approaches to that. One was to identify areas where you did not really need to do anything other than adhere to general, common principles, such as maximum driver hours, so no change was needed. There were almost 80 policy areas where it was considered that there need to be non-legislative common framework agreements, so, again, essentially, things like memoranda of understanding and working together across the devolved legislatures to agree those in principle. It is notable that some of those areas are in the Northern Ireland protocol with competence. They include such things as waste management. Then, in around 21 areas, it was seen as necessary to have legislation, which is where we have the common frameworks. This was to ensure commonality, and the idea was that the devolved legislatures would work together on this to agree the minimum and the maximum, if you like, standards in those areas. Twenty-one of these related to Northern Ireland, and 17 of them are covered by the protocol, such as GMOs, issues in relation to the sale of medicines, animal welfare etc. This was the way in which we presumed the pressures on the UK internal market were going to be dealt with: through common frameworks. It was becoming clear that the time frame was very tight and that these would not be produced in time for the end of the transition period, and there were rumours in late spring and early summer that there was some plan for UK-wide legislation to address this fundamental issue about the UK internal market. The White Paper was produced in July, defining the UK internal market rather vaguely as:

"the total set of trading relationships that exist across the UK."

It had three main elements. One was a market access commitment, one was the idea of having potentially a monitoring authority, and then the third was a UK-wide subsidy regime. We know that alarm was expressed from Scotland and Wales, in particular, in relation to these. It is worth noting that, on the protocol, the White Paper said in paragraph 29 that:

"The Government's aim is to ensure this legislative underpinning operates on a full UK-wide basis, taking into account the obligations that apply under the Northern Ireland Protocol".

It explicitly said that the White Paper did not set out the Government's approach to implementing the protocol — it referred then to the Command Paper issued in May — or on delivering unfettered access. It noted that Northern Ireland will continue to apply a subset of EU rules and that goods being placed for sale in Northern Ireland will have to comply with those EU rules. The consequence of that is that goods entering Northern Ireland, including from Great Britain, will face some restrictions in that regard. They have to meet those EU standards.

The Bill is much more comprehensive than had been anticipated. It includes market access commitments. These are broadly interpreted, and I will mention that in a minute. It covers services as well, and it covers mutual recognition of qualifications. It has new roles and functions for the Competition and Markets Authority (CMA), and it gives the UK Government regulatory powers over the use of subsidies, including being able to prevent the use of subsidies if they are seen as distorting the UK internal market. Fundamentally, one thing that makes this Bill quite different to what was anticipated and noted in the White Paper is that it is, essentially, trying to legislate for unfettered access from Northern Ireland into Great Britain, thus meeting the commitment made in the 'New Decade, New Approach' document as well as elsewhere.

The two key principles behind market access commitment are mutual recognition and non-discrimination. These will be given direct legal effect if this Bill is passed. They are really about new regulations or about amendments to existing ones, rather than those that exist already. That is not too surprising, because, of course, we do not have any problematic divergence to a great degree at the moment. Mutual recognition is basically saying that if a good or, indeed, a service is sold in one part of the territory, it should be legally provided in the other. This will apply to rules governing product requirements such as ingredients and packaging. For Northern Ireland's interests, it means that qualifying goods from Northern Ireland will be able to be sold in Great Britain. We have yet to see what "qualifying goods" actually means; it is likely to be different for different goods. The consequence of

this is that it significantly limits the ability of the different parts of the UK, namely Scotland and Wales, to enforce their own economic and social preferences.

On the principle of non-discrimination, direct or indirect discrimination based on differential treatment between local and incoming goods is prohibited by this Bill. Essentially, an upshot of all this is that it might effectively render the autonomous decisions of the devolved legislatures redundant in practice because of the overwhelming size of the English market compared with those elsewhere in the UK.

A key concern is what the Bill lacks. It lacks safeguards, and the definition of the scope of the rules and the range of justifications for exemptions is actually quite tight. When the Bill is passed, the devolved legislatures will be blocked from passing legislation that may conflict with it. There are several consequences of that, the primary issue being that it does not prevent a race to the bottom, if you like, so there is potential for significant deregulatory pressures within GB. That is important for businesses in Northern Ireland because there is concern about Northern Ireland continuing to produce to EU standards. These tend to be more costly, and therefore businesses will face indirect competition when they enter the market in GB.

There are also concerns about there being a very limited set of exemptions — much more limited than are allowed in the EU single market, for example — and there are no guarantees of the UK internal market system operating to certain minimum consumer standards or with protections in such areas as environment and consumer protection. Another concern is around the ability of the Secretary of State for Business, Energy and Industrial Strategy to amend the restrictions on statutory requirements. In principle, there may be a requirement to consult with the devolved Governments but not to seek their consent.

Another concern is about the amendment of the devolution Acts in order to add reserved powers, so effectively giving the UK Government power to regulate subsidies. That power was formerly held by the EU for GB, and, in certain respects, it will still be held by the EU with regard to Northern Ireland in-trade covered by the protocol. Finally, there is no mechanism for intergovernmental relations to manage the internal market. The monitoring authority — the CMA — is accountable to Parliament, but the representation of the interests of devolved Governments is very limited on that body.

I will move on to the part of the Bill that was unexpected and has generated a lot of controversy, I think it is fair to say, and that relates to the Ireland/Northern Ireland protocol. This is essentially clauses 40 to 45. Clause 40 is about Northern Ireland's place in the UK internal market and customs territory, and, although an upshot of that is essentially to allow for the full functioning of the protocol, the language is notably vague. Authorities implementing the protocol are to have "special regard" to "Northern Ireland's integral place" in the internal market, its place in the UK customs territory and:

"the need to facilitate the free flow of goods between Great Britain and Northern Ireland".

Clause 41 is about:

"Unfettered access to UK internal market for Northern Ireland goods".

In some ways, that clause really says that it does not necessarily prevent a check if it is:

"necessary to secure compliance with ... any international obligation".

Then, of course, we have clause 42. As you will be aware, the principle of unfettered access has been interpreted, particularly by the UK Government, as meaning that there should be no paperwork whatsoever on goods from Northern Ireland entering GB. As the UK Government have acknowledged in the Command Paper and elsewhere, the EU would officially expect there to be at least exit summary declarations on goods leaving Northern Ireland. That is a point of negotiation and discussion in the Joint Committee, and the explanatory notes accompanying the Bill say that the UK is:

"discussing the disapplication of the requirement".

However, clause 41 provides a power to disapply or modify that requirement. Clause 43 relates to article 10 of the Northern Ireland protocol, which is about state aid. Article 10 allows that EU state aid rules will apply to trade and electricity, and it covers all trade coming to Northern Ireland, as is covered by the protocol. It is worth reminding ourselves that it does not ban state aid, but, if the state aid reaches a certain threshold, it falls within the scope of EU supervision. Notification should be given to

the Commission, and a decision will be made on whether it is acceptable or whether it poses a threat to the EU single market. Clause 43 will give the Secretary of State power to make regulations in which he or she will set out how the article should be interpreted. That only the Secretary of State will have that power is set out in clause 44.

Clause 45 relates to clauses 42 and 43, which cover unfettered access and state aid, and states that they are to:

"have effect notwithstanding any relevant international or domestic law with which they may be incompatible".

I watched the Secretary of State giving evidence to the Northern Ireland Affairs Select Committee earlier. He repeated his statement that these provisions are an insurance policy — a safety net — in the event of a no deal or no agreement at the Joint Committee level. However, there is nothing in the Bill to indicate that. It does not have that as a particular clause or condition for this to come into effect.

Where does that leave us? The issues around devolution and devolved powers have been greeted with alarm in Scotland and Wales. The Bill has been described as:

"a full-frontal assault on devolution".

It is worth bearing in mind that these powers cover services and the recognition of qualifications, not just goods. It has been long assumed that there would not be legislative consent from the Scottish and Welsh Parliaments on this, and the consequences for UK/EU relationships are just as, if not more, severe. We have seen the letter from Maroš Šefčovič— he and Michael Gove co-chair the Joint Committee — in which he calls on the UK to pull pack on these plans, and to do so clearly by the end of the month. There is no indication of that happening, as yet. We have yet to see what will happen in Parliament with amendments to the Bill, but it is pretty clear that it is the intention of the Government to give themselves these powers. Fundamentally, therefore, we see a significant increase in the likelihood of a no deal between the UK and the EU, which will inevitably mean negative consequences for Northern Ireland. What that will mean for the implementation of the protocol and the wider stability of the political scene here is yet to be discussed. We may talk about that during questions. Thank you.

The Chairperson (Dr Archibald): Katy, thank you very much for that. You have addressed some of the questions that I had. You mentioned the Scottish and Welsh Governments' responses, in which they described this as:

"a full-frontal assault on devolution".

Contrary to that, we have had provocative claims from British Ministers that it is supposed to protect the Good Friday Agreement, when, in fact, it undermines all three of its strands with regard to what it does for devolution, not being able to pass legislation that conflicts and removing some of those powers to Westminster. It also undermines North/South cooperation and coordination, particularly in relation to EU matters and other areas of cooperation. It ignores the obligation on the British and Irish Governments to use best endeavours to reach agreement on areas of cooperation and mutual interest. How do you respond to that?

Professor Hayward: It is quite clear that, reflecting what the Secretary of State has been saying, the justification for it, in some ways, has been about meeting the interests of Northern Ireland's economy and giving certainty to businesses. There has been considerable mention of the Good Friday/Belfast Agreement.

The key question is this: "Will the protocol will be implemented, and will it be implemented effectively?" A lot depends on that. We should be clear that the effects of this Bill, as it relates to the protocol, are quite limited. We could have expected that the EU might well have given way on the issue of exit summary declarations because, one might argue, the negative impact of that could be the UK, as there are consequences for it in knowing what is circulating within its own market. The EU may well have conceded on that. On the issue of state aid, the protocol is not wholly undermined by the powers that could be given to the UK Government under this Bill.

If the protocol continues to stand and be in effect, there are considerable reassurances for Northern Ireland vis-à-vis the free movement of goods across the single market and, indeed, on North/South cooperation. Article 11, for example, covers quite a lot in that regard. I would be cautious about saying

that the Bill challenges or undermines the Good Friday/Belfast Agreement, because so much protection of that comes through the protocol.

The Chairperson (Dr Archibald): How difficult is the implementation of the protocol without a free trade agreement? Where does that clash directly with what is proposed in the Internal Market Bill?

Professor Hayward: It seems a little crass to say, but it is fundamentally true, that, if we have a breakdown in the UK/EU relationship, which, I reiterate, the UK and the EU say they do not want, there will be a breakdown in trust. If the UK is really not prepared to move on this at all and the EU is not prepared to move, and we have a breakdown and a no deal, the biggest challenge will be the lack of trust. There would be a complete lack of trust in that relationship.

This will be a worry with regard to the protocol because, in many regards, the protocol is a risk for both the UK and the EU. Fundamentally, for the EU, it is a bit of an act of faith because it trusts that the UK authorities will implement the protocol and the necessary checks and controls on goods entering Northern Ireland from GB and elsewhere. Similarly, as we know, the UK Government have been seeking negotiations with the EU in relation to the full force of the protocol and what it means, particularly on restrictions on goods entering Northern Ireland.

If you have a situation where there is a lack of trust in that relationship, there is a consequence of pressure. There will be increased suspicion around what might be happening in Northern Ireland. It is not just political, of course; there are all sorts of knock-on effects with regard to how people view Northern Ireland and on the reputation of goods from Northern Ireland in the single market and elsewhere.

The consequences of a no deal for here would be very severe. Even if we had a situation where the protocol was being properly implemented, we would have a range of goods at risk. With tariffs needing to be applied on them, at least in principle, when entering Northern Ireland from GB, that risk would go up considerably, and the scope and impact of the protocol would be felt all the more in the event of a no deal. That is one reason why it would be a negative outcome for Northern Ireland.

The Chairperson (Dr Archibald): You mentioned the Bill potentially helping businesses in that particular market. Businesses argued for the protocol. They support it and the protections provided by it. Is it a contradiction to have a Bill that undermines trust between the British Government and the EU as well as undermining the chances of getting a trade agreement that would protect businesses and allow a smoother implementation of the protocol? Is it a contradiction in terms to introduce legislation to protect businesses while completely undermining that negotiation?

Professor Hayward: Businesses have been wanting certainty for some time. I am not speaking for every one here by any means, but, in response to the consultation on the White Paper, the general sense from businesses here was that it would be good to be clear, or to have reassurances that Northern Ireland goods would not be discriminated against in GB and that there would be market access from Northern Ireland into GB, even if there were constraints in the other direction. That is the principle behind some of this Bill: that it would attempt to give certainty and assurances in that regard. As I said, its scope is considerable, and there are concerns about that, which we may discuss in more detail, but, fundamentally, businesses had asked for that certainty.

It is worth noting that a lot of the controversy was about the principle of unfettered access, which was a concern. However, Northern Ireland businesses were also looking for certainty on very many other issues, such as the implementation of the protocol, what is meant by qualifying status and very technical, detailed things around labelling etc. That is what businesses want certainty on. In some ways, this could be said to go some way towards giving certainty in a very specific area, but a knock-on effect of this attempt to take powers to disapply parts of the protocol is leading on to a whole environment in which we are having to prepare for the end of the transition period.

The Chairperson (Dr Archibald): Article 2 of the protocol commits to no diminution of rights. Given some of the statements in the British media over the weekend on the intent to disapply the European Convention on Human Rights (ECHR) and look again at the Human Rights Act 1998, are there concerns that other areas of the protocol could be under threat?

Professor Hayward: Again, this is why the protocol is seen as important. It covers not just trade but key issues around human rights, North/South etc. Look at the progress made on those matters. While I am not an expert in that area, I know that there are many outstanding concerns. Fundamentally,

there are indications of trying to protect human rights and to follow on from the commitments made in the protocol. There has been some progress on that bit, although it is not yet quite adequate. Again, it all depends on the full implementation of the protocol. The Government are repeating that they intend to implement the protocol, and you see other signs of that in the Trader Support Service etc. So, I want to be careful about giving the impression that the protocol itself is under threat, but, if it is, we are in a very dangerous situation.

Ms McLaughlin: Thank you very much, Katy, for that briefing. I believe that every Member of the Legislative Assembly should be concerned about this Bill, because it is really a power grab. Scotland and Wales have kicked up a fuss about it, while the Northern Ireland Executive seem to be sitting back and waiting for things to happen to us rather than being proactive and preventing this Bill from going forward.

An awful lot of bombastic statements are being made by the Tory Government, but can you finally say once and for all whether the withdrawal agreement threatens food supplies to Northern Ireland? In your opinion, does the UK Internal Market Bill offer unfettered access from GB for Northern Ireland goods if there is no agreement on the critical route via Dublin? About 50% of the food produced here goes to the GB market via Dublin, and I am concerned about that aspect of the Internal Market Bill as well.

Professor Hayward: Your first question is about the purported threat of the EU blockading food supplies into Northern Ireland. Essentially, that is not a threat for three main reasons. One is that it is the UK authorities that are implementing the protocol. The second is that the issue has arisen from the fact that the EU has not yet given the UK third-country listing with regard to SPS and animal-related products entering the EU, including Northern Ireland. That is because the EU is waiting on the UK to state the standards that will be met and how those standards will be conformed with. It is waiting for the necessary information from the UK on that, and it may well have mentioned that to the UK in the negotiations. I do not know. It is not the same as a blockade. The EU has already a couple of times listed the UK for that when there were concerns about a no-deal outcome. The UK still needs to be listed, but it needs to provide the information to do that. The third point is that article 16 of the protocol has safeguards in such an eventuality that either side can act unilaterally to avoid such a dire situation. So, the threat of a blockade really is non-existent.

On the issue of unfettered access, you are picking up a really important point. Even if you are looking in detail at how unfettered access is defined, what we have seen in the command paper and elsewhere is that the UK Government have been focusing on direct access from NI into GB. You can understand that to some degree. They have not yet promised unfettered access via other routes, specifically Dublin, and that is because, of course, you then have another port involved. You have another authority, so, for full, unfettered access, you would have to have the Irish, with the permission of the EU, waiving paperwork on export declarations for goods from Northern Ireland going to GB. That would be a huge ask. The UK Government could act unilaterally and say that, for Northern Ireland goods entering Holyhead, for example, they will not require import declarations. We have not yet seen that, and the Bill does not go as far as to specify that or particularly allow it. I would not be reassured at all that unfettered access by indirect routes is guaranteed by this Bill.

Ms McLaughlin: What issues does the state aid decision by the UK present for the delivery of the protocol agreement and the future relationship? What do you see as the challenges there?

Professor Hayward: We know that state aid has been a huge point of contention between the UK and the EU. It is the real crux of the matter because it goes beyond the Northern Ireland/Ireland protocol to being about the UK/EU future relationship. That provision in the Bill recognises the fact that there could be a reach into GB as a consequence of the protocol. It would be, basically, that state aid rules of the EU would affect GB-based businesses if they are operating in Northern Ireland; it affects trade as it relates to Northern Ireland. Clearly, the UK Government want to prevent that. It states explicitly in the Bill that it relates to beyond Northern Ireland.

It is possible to see it as a real negotiating tack in that the UK Government wanted to up the ante a wee bit and say, "We can take matters into our own hands in this regard and try to change the dynamics of what was being negotiated and the standoff that was happening at the UK/EU level". If that was the intention, it has not worked the way that they expected it to. As I say, a big point is about the trust between them because it really suggests that even the agreement that was negotiated between them is now in doubt. You can see the rationale behind that approach perhaps, but the consequences of it are far-reaching and go way beyond the protocol.

Ms McLaughlin: OK. There is a lot for us to be worried about. Thank you very much again, Katy, for your briefing this morning.

Mr O'Dowd: Thank you, Katy. That was another very interesting presentation this morning. I do not know if you managed to hear the presentation prior to your own on the state of the economy and its likely state up to 2024. The uncertainty around this obviously adds to our economic worries.

Why use a hammer to crack a nut? This could have been worked out in the negotiations of the Joint Committee. What is the strategy here? What do you think the British Government are trying to achieve through this strategy? That might be an unfair question to you as an academic, but what is your opinion?

Professor Hayward: To be fair, they never asked me about the strategy in relation to any of this *[Laughter.]* The Secretary of State says that it is a safety net: just in case there is no agreement at the Joint Committee level — on unfettered access, in particular, and the need for exit summary declarations — those can still be disapplied or waived by the UK Government. They say that that is in order to give businesses certainty; that, at least in that direction, we can be sure that no paperwork will be needed on entering GB directly.

When it comes to a strategy, though, I do not know. It is too easy to speculate about what on earth is going on. However, because of state aid being included in the Bill very particularly, and the fact that that is the main way in which the Northern Ireland/Ireland protocol affects GB, I do think that it is no coincidence that this is the one on which they are enabling themselves to act in a way that is incompatible and inconsistent with domestic and international law. It is in order to take that power to themselves and, in some ways, to put clear blue water between what applies in Northern Ireland and what should apply in GB.

Mr O'Dowd: Britain will enter trade talks, it hopes, around the world, and there is speculation about one with Japan at the moment. However, is it not the case that the state-aid rules in those negotiations and in that agreement are actually stricter than those that the EU is seeking? Is it the case that, when any nation enters into a trade agreement with Britain, it will allow an unfair advantage to traders in Britain against its own companies?

Professor Hayward: State aid was always going to be a big issue in the future-relationship negotiations because of the need for a level playing field, to avoid distorting competition, and to maintain the EU's internal market. We can see why state aid is included, with some exceptions, in the protocol. One upshot is that, if progress is to be made in the UK/EU talks, in a funny way, it will actually be by looking at what is coming from Brussels and elsewhere. It has made the issue that much harder. Where the EU wants certain things from the UK, mainly reassurances on independent regulation, it will be even more hard-line on what it wants to see before it is prepared to make an agreement on that matter. That is one reason why, regardless of the intentions behind this move — as I say, we can only speculate on that — the outcome increases the likelihood of a no deal.

Mr O'Dowd: Given the powers that are bestowed on the Secretary of State as a result of the Bill, who will hold him or her to account in the future? I understand that there may not be recourse to judicial review on some of the decisions, and it strikes me that we might end up giving somebody significant power. I have an image in my head of an old colonial governor sitting in the big house on the hill looking down on his subjects and directing their operations. That devalues completely, in my opinion, the institutions of the Good Friday Agreement and the power-sharing institution that I am sitting in. My main thrust is this: who will hold the Secretary of State to account?

Professor Hayward: That is a concern around quite a number of matters in relation to the Bill and, indeed, other matters around secondary legislation and the powers that Ministers have as a consequence of the handling of the repatriation of powers from Brussels. Devolved legislatures are raising concerns in many regards. In principle, those powers are in the hands of Ministers and, as to holding them to account, they have those powers. The CMA, which is the monitoring authority for the UK internal market, will have new functions that will involve reviewing the operation of the UK internal market every few years or so, so that could be the point at which concerns are brought to the fore. That is as much as I can say. I may be missing something obvious, but that is the answer that I can give at the moment.

Mr O'Dowd: I suspect that you have not missed anything obvious, because it is not your style to miss the detail of these things. It is a concern that, as elected representatives in a locally elected institution,

we cannot hold him to account and it appears that no one can hold him or her to account in the future on what is such an important matter. Thank you for your contribution.

The Chairperson (Dr Archibald): Katy, with regard to the claim that it is being put in place as an insurance policy, the deadline that they have attached to that is 15 October, which is a very tight turnaround. Is that deliberate to try to force the pace of negotiation?

Professor Hayward: A huge amount of legislation needs to be passed to give us relative clarity about what will happen after the end of transition, not just in relation to the Bill. The EU has set the deadline of the end of September for the UK Government to do an about-turn on that particular matter. That is really because of the timetable that the EU is facing. The next European Council is around that time, in the middle of October. As you know, that had been the Council at which we all expected — well, not expected — anticipated the final UK/EU deal would be signed off. That will not happen now. Therefore, at least in one area of domestic legislation — albeit one that is contested and, obviously, will not have the consent of, at least, Scotland and Wales — if that is in UK-wide legislation at that point, it will give certainty in some regards, albeit a type of certainty that raises great concerns from many quarters.

Mr Middleton: Thanks, Katy, for your presentation and sharing your views. It is very much appreciated. I have two questions. I will ask the first and let you respond before I ask the second question. Like you, I have been following the conversation with the Secretary of State at the Northern Ireland Affairs Committee this morning, whilst, of course, engaging in the very interesting conversations that we have had in our own Committee. Brandon Lewis indicated that the UK Government have been very clear that they do not want to see, and will not return to, a customs border on the island of Ireland. That is what he said. It is for others to interpret how that can be done. Obviously, from a unionist perspective, there has been a lot of concern about the idea of a border in the Irish Sea. A lot of emphasis has been placed on the fact that the Good Friday Agreement should be adhered to and that a border on the island of Ireland would breach that. Would an internal border in the United Kingdom, a border in the Irish Sea, breach the Good Friday Agreement?

Professor Hayward: Certainly, concerns have been expressed about an Irish Sea border, to use that phrase — it is not a great phrase. Those concerns have come not just from unionists but businesses and, indeed, consumers. The greater the restrictions, the more costs involved in bringing goods into NI from GB and the worse it is for the economy. That is just a fact.

Another fact is that the more the UK diverges from the EU, the greater the challenges for NI. A consequence of the protocol, as it was written, and agreed by Johnson, is that the full force of that divergence, in effect, comes into play in the Irish Sea. As was pointed out in the Northern Ireland Affairs Committee this morning, at the time, Johnson was absolutely clear that it did not breach the Good Friday/Belfast Agreement and was entirely in accordance with it.

In and of itself, it does not necessarily breach the agreement. However, there is the question of what it actually means in practice. This goes back to the point that it is rather unsatisfactorily vague, but it is true that if you have, first and foremost, a no-deal scenario, the restrictions on goods coming into NI from GB would be that much greater. If you then have a breakdown in trust, and if what we are going through now is just a small indication of what may happen, after transition, we will be in a very dire situation. That would lead to instability, not just with the UK-EU relationship, but the British-Irish relationship and would, therefore, put the whole context of the 1998 agreement under pressure.

Mr Middleton: OK. Thanks for that. You are right: businesses are very concerned about that. I think that we would all agree that the lack of certainty is not good and the sooner they can get clarity, the better for us all.

My next question follows on from Sinead's point about the alleged potential food blockade on Northern Ireland. You will be aware of the position of the UK chief negotiator, David Frost, on those conversations with the EU. He said that the EU's position is that listing is needed for Great Britain only and not Northern Ireland, so, if GB was not listed, it would be automatically illegal for Northern Ireland to import food products from GB. Do you think that David Frost is not telling the truth? Is he overstating the reality of the situation?

Professor Hayward: The use of the word "blockade" was not helpful. It is true that, if GB goods do not meet the standards and are not listed as compliant — the same as goods from anywhere else — they would be officially prohibited from entering Northern Ireland. In such a situation, whereby the UK

does not produce the necessary information — the UK would have insisted on that when it was in the EU; it is standard, uncontroversial and there is logic and a reason for it — the EU cannot list the UK, and yes, in principle, there will be a difficulty with those goods entering Northern Ireland. That is why I mentioned the safeguard in article 16(1) of the protocol, which states:

"If the application of this Protocol leads to serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade, the Union or the United Kingdom may unilaterally take appropriate safeguard measures."

There are also all those opportunities for negotiation, arbitration etc around the implementation of the protocol. At no point has there been a risk of the kind of scenario where we will all starve; it was never really on the cards. The key point stands though: the consequence of the protocol is that Northern Ireland will follow those EU standards and those are the standards for goods entering Northern Ireland.

Mr Middleton: OK. Katy, thanks for your time. It was much appreciated.

Professor Hayward: Thanks.

The Chairperson (Dr Archibald): Katy, thank you very much —.

Mr O'Dowd: Can I ask one more question?

The Chairperson (Dr Archibald): Go ahead, John.

Mr O'Dowd: Katy, on that last point, has the EU ever placed a food blockade on any nation?

Professor Hayward: I do not know the answer to that question *[Laughter.]*

Mr O'Dowd: I do. I think that it is no.

The Chairperson (Dr Archibald): Katy, thank you very much. That was really useful, and we appreciate you taking the time to talk to us. I am sure that we will all be watching with interest as this all plays out in great detail over the next few weeks. Maybe you will come back and enlighten us some more at a future date. Thank you.

Professor Hayward: Thank you.