



Northern Ireland
Assembly

Committee for the Economy

OFFICIAL REPORT (Hansard)

EU Exit: Professor Katy Hayward and
Professor David Phinnemore, Queen's
University Belfast

20 January 2021

NORTHERN IRELAND ASSEMBLY

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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 Gordon Dunne
Mr Gary Middleton
Mr John O'Dowd
Mr Christopher Stalford
Mr John Stewart

Witnesses:

Professor Katy Hayward	Queen's University Belfast
Professor David Phinnemore	Queen's University Belfast

The Chairperson (Dr Archibald): Item number 4 is our briefing from academics in Queen's on the UK trade and cooperation agreement (TCA) and its impact on the protocol.

I welcome to this morning's meeting Professor Katy Hayward, who is a professor of political sociology at Queen's, and Professor David Phinnemore, who is a professor of European politics at Queen's. If I hand over to you to make an opening statement, we will open it up to members.

Professor Katy Hayward (Queen's University Belfast): Thank you very much, Chair. I will begin by outlining the TCA and its link to the protocol, and then I will pass over to David to give his analysis and look ahead.

Among important beginning points is the need to recognise that we are still in the process of provisional application of the trade and cooperation agreement between the UK and the EU, so it is going through the process of the European Parliament scrutinising it. They have made it clear that they are not going to be rushed in that process and that they are going to be very careful in their approval of it. They need to give consent to it before member states then confirm that they also approve the TCA, so bear in mind that it is provisional at the moment.

Another point to make about the TCA is that it was fairly hastily made, and the focus was very much on achieving the UK's objectives, which, obviously, were reclaiming sovereignty and minimising ties with the European Union. We see that reflected in the nature of the deal.

One more point is about the lack of UK scrutiny of the details of the deal. We know that the UK Parliament approved it in a very short time frame. The consequences of that, potentially, are that the

details and the small fine print of the TCA will only be recognised over time. Lawyers will be busy, I suspect, in the coming years.

There is also quite a lot of bureaucracy surrounding the TCA. There are, for example, many specialised committees associated with the running of various parts of it. They will be making decisions around reviewing it etc, so there is a sense of a work in progress. We are still to see the full meaning of the TCA come into play.

As you are all aware by now, the TCA has three pillars. There is the FTA part of it, which covers a range of areas, including energy and transport. The second pillar is law enforcement and judicial cooperation, which is a really important area. The final pillar is overarching governance. There are also some unilateral decisions that have significance, for example, the unilateral decision on data adequacy, which will run out in six months' time.

Part of the TCA on the FTA that we have can be summarised as a fairly thin deal that does nothing in itself, or does very little, to soften the Irish Sea border, so to speak. If we step back to the timing of the TCA, with it being announced on Christmas Eve, that came just a week after we had the decisions of the Joint Committee around the implementation of the protocol. We had been waiting for those decisions because, as you know, businesses had been told, on many important areas regarding information for goods crossing from GB to NI, that we were still waiting for decisions to be made at the UK-EU level.

Those decisions were facilitated by the UK agreeing to drop what it had proposed to do in the UK Internal Market Bill and the Taxation Bill, which would have been unilateral action counteracting the protocol in some areas. In itself, the fact that we had those decisions confirmed on 17 December was particularly important, obviously, for Northern Ireland.

I would not necessarily say that those decisions with regard to implementing the protocol are mitigations. It is important that they are recognised as being grace periods that have an end point. Those end points are quite sharp. The first one is 1 April for ending the grace period with regards to sanitary and phytosanitary (SPS) rules for goods moving from GB to NI, and more specifically the fact that we do not need the full official certification for those goods to enter Northern Ireland, but they will be needed after 1 April. We have the grace period on particular animal products, such as chilled meat. After 1 July, those goods will not be allowed into Northern Ireland from GB, just as they cannot go from GB into the EU. Then, we have the 12-month adaptation period for human and veterinary medicines. In relation to all of those, we have a UK unilateral declaration to align with EU rules up to the end of those points, after which the UK can diverge. It is important to recognise that the more the UK diverges from EU rules, the more implications there will be for the movement of goods from GB to NI.

On the FTA, the critical point is that it is extremely unusual for any FTA to be adding friction because that is the opposite of what most FTAs do. This is a really peculiar arrangement in itself, and it is worth recognising that because, essentially, the integration that we have between the UK and the EU is based on the context of EU membership. Now that that is no longer there, we do not have the framework for the level of cooperation that existed before. The same is true of the protocol. We have to expect that it will cause disruption and change to the previous integration between GB and NI in economic terms; I am not talking about any other terms.

Before I conclude, I will mention four things in relation to the TCA that are significant. On agri-food, there is no equivalence made between the UK and the EU in relation to SPS standards and mutual recognition of SPS measures, for example. That highlights the importance of the export health certificates that will be required on more goods coming in after 1 April. That means that the checks on agri-food products will be particularly significant after that time, which is why the EU is being very careful about it.

The rules-of-origin issue is also important. That possibly reflects the fact that it is very unusual for the EU to do any deal with a country where it expects goods to go from the EU into the third country and back into the EU again. The nature of the UK land bridge and the nature of trade between the UK and the EU, including Ireland, means that the rules-of-origin issue is particularly complicated.

The third issue, services, which is extremely thin in the TCA, will have implications in the longer term for the island of Ireland. The most obvious example in relation to that is the mutual recognition of qualifications. Essentially, what we are looking at there is country-by-country and profession-by-profession agreement.

Finally, on the level-playing field issue, which was a really controversial element in reaching an agreement between the UK and the EU. On state aid, Northern Ireland is in a different position. EU state aid rules apply in Northern Ireland. A clarification was issued yesterday to say that that includes, for example, manufacturers in GB but with goods for sale in Northern Ireland.

Essentially, across all the level-playing field areas, if one side believes that the other has changed standards in a way that gives them a competitive advantage, they have the right to use counter measures or rebalancing measures. So, theoretically, tariffs could be imposed. It is worth recognising that tariffs, if applied between the UK and the EU, will have consequences for GB to NI trade. After four years, if one party considers there to have been too many breaches of level-playing field matters, they can trigger a review of the whole trade agreement or part of it. Again, that could lead to complications for Northern Ireland, given its distinct position, and place extra pressure on the protocol. I will leave it there and hand over to David.

Professor David Phinnemore (Queen's University Belfast): Thank you for the invitation to give evidence. I do not have much to add to what Katy has said. However, I would like to make a number of comments on, mainly, the implementation of the protocol.

First off, I would like to stress the thinness of the trade and cooperation agreement that has been concluded between the UK and the EU. As Katy said, it is quite a unique agreement because it is about creating frictions and reducing the level of cooperation and integration between the UK and the EU. That said, it is important to stress that it provides the basis for a relationship, so, in that respect, it is welcome. We have avoided the no-deal scenario, which was a distinct possibility for much of 2020. The question for the future is the extent to which the thinness is built on, using the structures created by the trade and cooperation agreement, to address some of the issues that are being increasingly picked up, as people analyse the agreement and realise what is not in it, particularly around services, mutual recognition of professional qualifications etc.

This is where we are at the moment for the UK-EU relationship. It will be interesting to see how that evolves in the future, although I would say that the clear emphasis from the British Government at the moment is that this is as far as the relationship goes and, if anything, we are going to see further divergence in due course.

I would like to make some comments about the agreements that were reached between the UK and EU on the implementation of the protocol. That is of huge importance for us in Northern Ireland because the protocol has fully taken effect from 1 January this year. As Katy indicated, a number of important grace periods were agreed on the initial implementation of elements of the protocol. The key point to make there is that they are temporary, essentially non-renewable and, from the end of those grace periods, the obligations into which the UK and the EU have entered will apply. That needs to be prepared for.

It is also important to note that, among the decisions that were made in December were important arrangements around permissible levels of support for the fishing industry and agriculture. Those were agreed. Also, we have arrangements regarding the rights and obligations of EU officials for monitoring the application of the protocol in Northern Ireland. That is important because one of the key challenges for the years ahead is to rebuild trust between the UK and EU in terms of the UK's commitment to meeting its obligations under both the withdrawal agreement and the new trade and cooperation agreement.

Another point to make about the decisions taken in December is that there were some additions made to the annexes to the protocol. This may seem mundane, and I do not think that the issues included attracted much attention, but the point to make here is that the protocol is dynamic. We will see change coming through the protocol in the legislation applicable in Northern Ireland in order to avoid that hardening of the North/South border. So there is a job to be done, in the coming months and years, to ensure that we are fully aware of what may be coming down the line, so that the Northern Ireland voice can be input into the available processes, such that there is a full understanding of both what is in store and the way in which it is going to impact on Northern Ireland.

I have a couple of other observations about what was decided back in December. As I said, there is great emphasis on the eventual application of EU law at the end of the grace periods. Also, it is important to note that, in the declarations that were made, the EU reserved the right to initiate infringement proceedings, if the UK were to be seen to be in breach of its obligations. The point to make here is that Northern Ireland continues to be subject to the jurisdiction of the Court of Justice, in the application of the EU law covered by the protocol.

A further point is that, even though there were some grace periods, there was no renegotiation of the protocol. One sensed very much that, "This is the set of arrangements that apply, this has been agreed and the emphasis now has to be on implementation". That was emphasised yesterday with the announcement that the Commission is disbanding the UK task force that negotiated the trade cooperation agreement with the UK and was responsible for initially overseeing the implementation protocol, and is replacing it with the service for the UK-EU agreement. It is there:

"To support the efficient and rigorous implementation and monitoring of the Agreements with the UK".

Therefore, it includes the protocol. Looking at the implementation from the EU side, the focus is very much on effective implementation. We shall see how that plays out in due course.

My final set of points relates to thinking through what might be happening in the future. It is to underline the point that the protocol is not static, and there will be further changes coming forward. It is important in that process for there to be an awareness of what is going to be happening but also that there will be opportunities for the Northern Ireland voice to be fed-in to the arrangements in place to manage that process and the decisions around it, particularly in the Joint Committee, the Specialised Committee and the still-to-be-formed, joint consultative working group. If the protocol is to work effectively and minimise disruption, it is important that the Northern Ireland voice is heard in those arrangements. The key challenge ahead is to make sure that voice is both formulated and heard.

Thank you, again, for the invitation, and those are my initial set of comments.

The Chairperson (Dr Archibald): Thank you both very much for that. It was really useful to get that overview of the TCA in general, how it interfaces with the protocol and the initial roll-out that we have seen over the past couple of weeks. Obviously, there has been a focus on trade over the past few weeks. Katy, as you highlighted, some of the difficulties were entirely foreseeable. Both of you have highlighted that the trade agreement has increased friction and reduced cooperation. Obviously, that will have implications.

I will pick up on a few things that are and are not in the agreement, and how it has impacted on what we have seen so far. First, I will pick up on the Trader Support Service that was supposed to prepare businesses for trade post-agreement. As has been highlighted, the TCA came very late and left very little time for preparation. How effective is the Trader Support Service at this time? What more needs to be done with that service?

Professor Hayward: It is early days yet for the Trader Support Service. There was a little confusion, for the first few months after it was announced, about, precisely, what it would be able and was intended to do. Of course, as we all know, it did not go live until 21 December, and that was very late in the day. That said, there was a push on people registering for the scheme and, particularly, that message got through here, in Northern Ireland, in time to make a difference and enable people to meet the requirements for goods moving to GB from NI. From what I can gather, the concern about the scheme is that it only gives fairly standard responses and is not able to very detailed individual advice on some of the more complicated issues that are arising, and that was foreseeable, given the short time that everyone has had. As I say, it is early days yet but, by and large, it seems to be functioning ok.

The Chairperson (Dr Archibald): Thanks for that. That is familiar in terms of the feedback that we are getting on it as well. Why has the joint consultative working group not been set up and constituted yet? It is a forum that has been designed to deal with what we are looking at now.

Professor Phinnemore: Perhaps I could come in on that. We understand that the Joint Committee has signed off on the terms of reference for the joint consultative working group and the provisions in the protocol state that it will meet monthly. I think that we are still at the stage where everyone is consumed by reaching agreement on the various decisions that were made before December and putting in place the trade and cooperation agreement. The understanding is that there is an intention to ensure that the joint consultative working group gets up and running before too long, and I would expect that to be the case. It is just that we are very much in the early months of the agreement. The terms of reference have been agreed, but, as you indicated, we are still to see further detail about the composition and the schedule of meetings of the group this year. The same can be said about the Specialised Committee; we do not know what its schedule will be. Nevertheless, one thing that was

noted by the Joint Committee last December was that it is committed to meet quarterly four times this year whereas, under the protocol, the normal requirement is that it only meets annually.

The Chairperson (Dr Archibald): It is useful to know that the terms of reference have been signed off.

Both of you mentioned what is not in the agreement, such as things around equivalence on SPS checks; services, which are important across the island as well; and the mutual recognition of professional qualifications (MRPQ) directive. Can you elaborate a wee bit on the potential problems around those issues? SPS is the one that is likely to be the most visible most quickly, but an opportunity was lost in the agreement to make those things a bit more frictionless, if that was at all possible.

Professor Hayward: Again, that reflects the UK's priority of minimising those ties to the EU and to enable it to diverge. We see that reflected in the nature of the deal as it specifically relates to SPS, which is, of course, an area of particular scrutiny and careful regulation, which comes into effect on the EU's external borders and which will also be implemented with regard to the protocol from GB to NI.

We will see that more if it is the case that any Government, indeed, in Britain decides to diverge. As we know from the UK Internal Market Act 2020, if any part of GB decides to change its rules, all of those goods have to be able to be in free circulation within GB. Therefore, if we see a divergence in rules or a change of rules — for example, in the use of pesticides or in relation to gene editing — that will have implications for what is allowed into Northern Ireland. However, I would expect that to take place after a time, when the protocol is functioning relatively smoothly — speaking optimistically — and the processes for managing that will be in place and familiar to people.

The issue of mutual recognition of professional qualifications is an opportunity for the common travel area and the memorandum of understanding between the UK and Ireland to come into play. There is potential for allowing the recognition of professional qualifications and to do something more formal on that in the memorandum of understanding. That is possible between the UK and Ireland, and it should, arguably, be a priority now for the two Governments to focus on. It is a complicated area; a range of professions would be affected, recognising diversity even within the UK. It should be seen as necessary to address that fairly quickly. I think that that is the first step to enabling the free movement of services across the island.

Professor Phinnemore: I will add one point to that. As Katy said, the TCA provides a framework in which to address the mutual recognition of qualifications. It is also worth noting that, when the European Union signed off on the withdrawal agreement, it adopted, in its Council decision, arrangements that allow for the possibility to ensure the proper functioning of the protocol for some bilateral agreements between Ireland and the UK. We do not know what really is envisaged there in terms of potential, but I think that it does offer one route to possibly addressing some of the perceived or actual shortcomings of the arrangements in place. It may be that, if there is a wish to address some of these issues on a more formal basis, that may be a route to consider or, at least, explore.

The Chairperson (Dr Archibald): That is useful. Thanks for that. That is something that the Committee will want to pick up on.

I will finish on this question for now. Last week, it was reported in, I think, the 'Financial Times' that there were moves by the British Government to move on some of their workers' rights legislation. In respect of that, there is the non-diminution principle in the protocol that applies to specific rights, and employment rights is a devolved area. Can you speak to what is covered by the protocol with regard to the non-diminution principle? What is the actual impact on employment rights, and what is covered in the TCA?

Professor Hayward: I can make an attempt to answer that, although you must recognise that I am not, by any means, an expert in rights. The non-diminution principle in the protocol is about those rights that are outlined in the Good Friday/Belfast Agreement. I guess that there are various interpretations of what that includes. Some say that it should incorporate workers' rights, and others are more cautious about that. This is where the TCA comes in. Labour standards, including workers' rights, are covered in the stuff on the level playing field. I should say that both sides in the TCA are clear in stating that they do not have any plans to diminish rights or standards in these areas. Now there is the fact that that is covered in the TCA, and they are looking to prevent a situation where one side lowers standards in such a way that gives them a competitive advantage over the other. This is

where there is potential for the whole of the UK-EU relationship to be affected by that particular area. In some ways, it is a really important point that we do have this deal and that we do have that legal framework for the UK-EU relationship, and it puts those concerns around workers' rights into that bigger picture, with the overarching framework for dealing with that, including the counter measures and rebalancing measures. Then there is a twist in it because it could, potentially, in theory, have some impact, probably a very minimal one, on movement from GB to NI, given that you would have the addition of tariffs.

The Chairperson (Dr Archibald): Thanks for that. I think that the specific concern that was being raised last week was around the working time directive, and, that is, I suppose, one that potentially could have an impact on trade and investment because of the differences that may manifest themselves between the EU and Britain in respect of that. It is one where a watching brief is needed, to an extent.

Mr Dickson: Good morning, everybody, and thank you very much for what you have been saying to us. I have been reading some of the things that you have been writing recently.

May I focus for a moment on the subject of article 16? I think that most of the transport people, logistics people and supermarkets have been saying that, in the grand scheme of things, it has not been that difficult. Food is getting through and nobody is starving in Northern Ireland, but there have been political calls to invoke article 16.

Is it fair to say that there is a perception that that would end the protocol but that, in reality, it would not at all? In fact, if it were to be invoked, there would be an equal and opposite movement from the EU in respect of how that would impinge on us. What do you consider to be the level of the bar that would be necessary to invoke or trigger article 16? How do you see us resolving the issues that have arisen so far without the need to trigger article 16? It would be helpful to get your understanding of perception of the two sides of article 16, what people are calling for and what the actuality of that is.

My other question is in respect of the current grace period. You ably set out in a number of comments the lateness in the day of where we got to in the agreement at the end of December. Are we going to be in the same situation as we approach the end of the grace period or are the Government and the EU determined that the grace period will be used as a genuine working opportunity so that when it ends we will see a smoother transition rather than a worse situation than at the moment?

Professor Phinnemore: On the grace periods, what is important to note about the three-month one, ending at the end of March, is that it has been agreed by the UK that that is non-renewable. The focus is very much on providing additional time for those affected by the implementation to adjust so that there will be full implementation of the obligations from the date on which the grace period expires. That is a clear focus of the arrangements. Yes, additional time has been created in order to adapt to the requirements of the protocol. That is a reflection of how things were possibly rushed late on but, equally, a recognition that there was a lack of preparation. The lines are clear from the UK and the EU that the focus is on full implementation from the day after the grace period ends.

Article 16 is very much a last-resort mechanism to be used when there are serious difficulties that are liable to persist. There is no strict definition of what is classified as "serious" or "liable to persist". It is worth noting that those so-called safeguard clauses are common in free trade agreements but are rarely used, the assumption being that you have a framework in place that allows you, through normal means, to try to address the difficulties and to identify what solutions there may be within the context of the obligations that both parties entered into.

I can understand why people might want to take radical action such as triggering article 16, but it is worth pointing out that it does not disapply the protocol. They are to be used in quite restricted and temporary measures. Before you get to the point where you would be contemplating article 16 being triggered, you really do need to exhaust the existing means by which there is scope to, potentially, resolve the issues that are causing difficulties.

Mr Dickson: That was very helpful. Thank you.

Professor Hayward: I fully agree with everything that David said. Article 16 is very clear that it is about enabling the continuity of the protocol agreement. Measures taken are meant to be agreed between the two sides and to disrupt the functioning of the protocol as little as possible. It is certainly not about overthrowing the protocol or seeing it come to an end. It is the nuclear option [*Inaudible*],

especially if you decide to do so considering exceptional circumstances; that is, without the three-month notification period etc. It would be a very bad sign of the relationship between the UK and the EU if one side were to decide to take such unilateral measures. I should say that I think that the UK and the EU want the protocol to work. They both want the TCA to work. It is extremely unlikely that the UK would decide to disrupt the protocol in such a way. It is meant to be a last resort.

To follow up on the point about grace periods, again, I agree with what David said. The UK and the EU want the protocol to work. The grace period ending points are significant. They are not open for renegotiation, so we should not expect to see any extensions to them. That is not to say that they are not very significant challenges, particularly the end of the three-month one — 1 April will be a critical time. Adjustments will need to be made. There will be cost and price pressures on companies that are trying to adjust to meet the requirements, so there will be a potential need for financial support to meet the compliance costs. There is also a need to adapt systems to be able to meet those challenges, which are very unusual. I cannot stress enough how unusual the situation is. The agreements are not generally designed for trade that is as integrated as it is. There is the potential for the UK and the EU to work out pragmatic, practical ways to reduce the burdens on businesses, while recognising the unique situation of Northern Ireland. As I said, if they want the protocol to work, they have to be able to do that.

Finally, we will see an adjustment or reorientation of business. There will be more local sourcing of produce, for example. That is the natural thing to do to try to maintain supply and to keep costs as low as possible. We will see businesses adjusting. That is not to say that there will not need to be very significant adjustments made in some cases. Fundamental to it all is the idea that the protocol has to work in a way that causes minimal disruption.

Mr Dickson: Thank you. I want to move on briefly to one final question. I am not sure whether you have a particular comment to make on this. The UK Government have replaced the European health insurance card (EHIC) with what they describe as a global health card. However, they have excluded some of the non-EEA countries from the global health card, notably Switzerland and Norway. I appreciate that very few people are travelling at the moment and that travel insurance is not high on people's priorities, but it will be as, hopefully, the vaccine rolls out and time progresses. At this stage, are you aware of any comparison between the benefits of the former EHIC and the new global health card? You will also appreciate that the Irish Government introduced legislation before Christmas. In large part, it looks as though the legislation that they introduced that allows Northern Ireland citizens to have access to the EHIC through Ireland's membership of the EU is now largely redundant. Is that a fair comment to make?

Professor Phinnemore: I cannot really comment. I do not know sufficient detail around the comparison between the EHIC and the global health insurance card, unfortunately.

Professor Hayward: I am sorry that I am not able to add anything either. Sorry, Stewart.

Mr Dickson: In that instance, I will refer that question to the Chair and suggest that we, as a Committee, might want to look at that. I appreciate that it is probably more health-orientated, but it also relates to travel, which is an area that we do have an interest in.

The Chairperson (Dr Archibald): Yes; it is particularly about tourism, so we will pick it up with the Department.

I have one question about article 16. Annex 7 of the protocol, which is how article 16 is applied, is very much about resolving the issues that would cause article 16 to be implemented in the first place. The notion that it would do away with the protocol does not really stand up to scrutiny.

Professor Hayward: No; absolutely. It is part of the protocol, as these things are part of every agreement, in the interests of enabling the longevity of that agreement and for it to work properly without causing undue harm.

Mr Middleton: Thanks to Katy and David for their contributions. I have found it very useful. My first question is on some of the correspondence that we received in our packs today from the Minister of State, Robin Walker. He said that, where teething problems have arisen, they are often related to the wider COVID response. How much of this do you put down to the COVID response? We, as elected reps, are hearing of issues, whether it be *[Inaudible]* or the haulage industry. Is it fair to say that the majority of that is down to COVID, or is it down to issues around the protocol itself?

Professor Hayward: Again, I am speaking not as a businessperson but as somebody who has liaised closely with business on this. Yes, COVID is a very significant factor. We saw the shutdown of the UK-EU border just before Christmas. That has had knock-on effects, not least in getting goods into Northern Ireland in that first week after Christmas and the first week of the new year. Bearing in mind the delays that were then entailed and the knock-on effects on shelf life, for example, we definitely saw the impact of that. COVID has had a wide range of impacts even on the nature of supplies in supermarkets and the kinds of demands that there are. There was a little bit of increased purchasing of certain products, which also had an effect.

COVID is definitely a very significant factor, but there are other factors that are shaping things. The protocol is very much one of those, as is the TCA. Two big things are just the realities of the protocol and of the TCA. They are the realities of the hugely significant change in the relationship between the UK and the EU and, indeed, the movement of goods between GB and NI. It will take time for people to come to terms with or to adjust to that. We have seen that somewhat in the movement of goods from GB to NI, not just in a lack of preparation but in reduced flow. Again, that is partly COVID-related, but it is also partly people holding back and waiting to see how things settle.

The other factor is, as David has already mentioned, the last-minute nature of the decisions. Information around what was necessary to move goods from GB to NI came very late in the day. Those decisions from the Joint Committee were not confirmed until 17 December. Then, very major schemes, like the UK Trader Scheme and the Movement Assistance Scheme, were developed over the Christmas period. It is extraordinary really. All that has had an effect. I expect that we will continue to see disruption because of the significant nature of that adjustment. Fundamentally, it is good that we have that UK-EU deal, as things would be much more serious without it. There are several things in the protocol and its implementation that are still to be properly worked out. Therefore, even if we are looking at NI to GB movement, it is clear that the arrangements for that are in phase 1 and will have to be adjusted a little bit down the line in order to prevent exploitation of that unfettered access. I think that businesses can expect to see continued disruption and change in the coming year, just as, across the board, in the UK and EU, including Ireland, they are having to adapt to the very new environment.

Mr Middleton: Thank you, Katy. David, did you want to say something?

Professor Phinnemore: The only thing that I would add is that I think that we sometimes forget that the end of the transition period would involve disruption. If you remove yourself from the customs union relationship or from your major trading partner, and you are coming out of the regulatory alignment framework that is provided by the single market, that will cause disruption. It is very difficult to actually quantify the extent to which the disruption that we have seen is due to the end of the transition period, adaptation to the trade and cooperation agreement, adaptation to the protocol, lack of preparation, lack of information or late delivery of the new services. COVID will have had an impact. However, it would be inappropriate to blame it all on COVID. There is a whole array of issues at play here.

Mr Middleton: Thanks for that, Katy and David. It is obvious that there is a number of factors. I take your point that it would be inappropriate to blame it fully on COVID. It is unfortunate that a number of storms, if you like, are happening at the one time.

We are dealing with the issue with regard to the Northern Ireland Chamber of Commerce and Industry. Its survey of businesses in Northern Ireland found that 51% were worried about GB customer attitudes to Northern Ireland businesses. Katy, in your contribution, you mentioned GB to NI trade. Obviously, given the tight nature of discussions and limited time, there was a role to play to prepare GB businesses for what are, effectively, new rules. If you flip that on its head, with the position that Northern Ireland is in currently, how aware do you think businesses are of Northern Ireland's position with regard to access to both the UK and EU markets, and how do you feel that presents an opportunity to Northern Ireland going forward? I know that we are talking about that in the context of a very disruptive period at this time. However, do you see there being a swing with regard to that discussion point?

Professor Hayward: Awareness of Northern Ireland's distinct position is relatively low in GB. I think that it is also lower than you might have expected or hoped in Ireland and the rest of the EU. Therefore, it will take some time for the consequences of the protocol, the fact that Northern Ireland is still in the single market for goods and the opportunities that that means for Northern Ireland to be fully realised and secured.

Northern Ireland is in an interesting position because we have the commitment on the UK side that goods in Northern Ireland can circulate freely and have full market access in GB. That is not to say that there will not be difficulties in some specific areas. However, principally, the idea that goods that are certified in Northern Ireland are able automatically to be sold in GB gives us a strong advantage there. You could see that, potentially, over time, people would recognise the benefits. With unfettered access to the GB market, particularly in highly regulated areas, as well as access to the single market for goods in the EU, Northern Ireland would be an attractive place. That would have to be fully supported and enabled by not just the Northern Ireland Executive but, of course, the UK Government and the EU. Longer term, you can see how there could be some benefits for Northern Ireland in that distinct position if the thing beds down in a way that causes minimal disruption and the unique position of Northern Ireland is recognised in GB and the EU.

Professor Phinnemore: I agree with Katy on that. One of the big challenges is to make sure that potential investors and those who trade with Northern Ireland are fully aware of what the arrangements are. There has been a tendency to hide the particular position of Northern Ireland in recent months. We need to be critical of the UK Government for the lack of information that was provided, particularly for GB suppliers, about moving goods to Northern Ireland. One sincerely hopes that, once there is greater familiarity with the arrangements, the costs of adaptation will be lower and people will, in due course, adapt to the new circumstances. A key lesson to be learned is that we need to be open about what the arrangements are and to make sure that they are fully understood. There is a tendency at the moment to focus particularly on the situation in GB, understandably because of its importance in trade terms for Northern Ireland. There also needs to be an understanding in the EU and its member states about the particular position of Northern Ireland. When you talk about the movement of goods from, say, Germany in to the UK, you need to be aware that there are different arrangements if those goods are moving from Germany to Northern Ireland. Equally, the investment opportunities that Northern Ireland provides are different because of its access to both markets compared with those that exist in GB.

Mr Middleton: Thank you.

The Chairperson (Dr Archibald): Can we bring Sinead in to the spotlight, please?

The Committee Clerk: Can we bring Sinead McLaughlin in to the spotlight, please? There we go.

Ms McLaughlin: Sorry. Can you hear me?

The Chairperson (Dr Archibald): Yes, we can.

Ms McLaughlin: OK. Sorry about that; someone knocked at my door.

Thank you very much, Katy and David, for your insight this morning. As always, you make difficult situations much clearer. The truth is that business is experiencing difficulties and challenges at the moment. It is more difficult to do business. The truth is that there are more barriers and disruption. We have to get into solution mode and solve the current problems. We cannot just keep on screaming about it. Too much of that is going on in the context of politics here in Northern Ireland; there is a bit of point-scoring. David's last point was that we have to find opportunities and where our distinct offering is in Northern Ireland and to speak to that. That is really important for all of us.

Do you have any clarity on what criteria there are for goods that are determined to be at risk, particularly those goods going forward to transportation in the Republic of Ireland?

Professor Hayward: An important part of the Joint Committee decisions that we had mid-December was to manage the question of that risk. That was critical, particularly given that, at the time, we did not know that there would be a UK-EU deal. The challenge is reduced somewhat by the fact that we have that deal. The UK Trader Scheme is a really important element in helping to manage that situation. At the moment, of course, it relies on businesses signing up to the scheme and self-declaring that their goods are not at risk of going in to the EU if they are coming from GB. At some point, those claims have to be checked, and there has to be some means of verification to prove that that is the case. We do not yet know the details of that, such as what the requirements will be for proving it or what will happen in the bad situation in which a company is found to have not met the criteria to prove that those goods are not at risk. That is one of the nitty-gritty problems that will

potentially be faced by business, and it is one of the areas that HMRC and others will have to issue clarification on, along with assurances to business with regard to the UK Trader Scheme and how it will operate in a more formalised and established way in the long run.

Ms McLaughlin: Katy, in your presentation, you mentioned that the protocol is very dynamic. Can you speak a little bit more about that situation going forward?

Professor Hayward: Yes. In annex 2 of the protocol, there is a vast range of legislation — the EU acquis — that continues to apply in Northern Ireland. That has been applying across the UK through EU membership and has been written into UK law, and we may see a divergence in the future. That will continue to apply in Northern Ireland. If those particular legislative instruments are amended or updated, those amendments and updates will automatically apply in Northern Ireland. As David hinted at, there is an issue in Northern Ireland of how we keep an eye on that and how we know about what is being updated. Formally, the UK should be notified through the Joint Committee. However, the point is that those automatically apply in Northern Ireland.

Another element to it is that, if the EU thinks that an aspect of its acquis — a new directive, for example, which is a regulation that will come in — should apply to Northern Ireland and which is about its single market for goods in particular, it will make that clear to the UK. In theory, they are meant to agree on that and to incorporate it into the protocol. As David mentioned, the annex has already been updated with regard to what applies in Northern Ireland. If there is disagreement on that, we could see a potential need for a resolution or potential countermeasures being taken by the EU. That would be a worrying scenario. However, the principle is essentially that Northern Ireland remains dynamically aligned because what is updated in the EU will automatically apply to Northern Ireland. That is the case in the EEA — David knows much more about it than I do — where they have the means of making sure that they know exactly what is being updated and that they are able to comply with that. Northern Ireland's distinct position and the fact that it is so small gives us particular challenges in adjusting to the dynamic nature of the protocol and, most particularly, in the UK with Westminster recognising Northern Ireland's very distinct position and in allowing for that, particularly in the development of the UK internal market.

Ms McLaughlin: The other thing that really speaks to that, as well, is the reorientation of business in Northern Ireland as a result of that. How do you see that that can or will take place over time?

Professor Hayward: As I said, there is the potential for making the most of unfettered access from NI into GB, and there is also the potential for making the most of Northern Ireland's free access to the EU's single market. Therefore, in some ways, it is in a very distinct position because it has access to all of GB's market plus all of the EU's single market, which is extraordinary. As I said, hopefully, when things have stabilised and people are not only clear about the rules but familiar with them as it becomes part of their operation, there is then the potential to make the most of the fact that Northern Ireland is in that distinct position. What that means in practice is this: is the all-island economy being made the most of? We are talking about the whole of the EU. For that to be exploited to its full potential, the way in which goods are moved between the UK and the EU, particularly across the land bridge, will need to settle down. I suspect that the fact that Northern Ireland has direct movement into the EU means that it is in a really strong position, and those direct routes away from the UK land bridge will probably be used more.

Ms McLaughlin: Maybe an all-island economy, supply chains closer to home and fewer barriers can maximise any opportunities. Thank you very much, Katy and David. Your contributions are always welcome.

The Chairperson (Dr Archibald): Thank you. Can we bring John Stewart in to the spotlight, please? Is John still on mute? There we go.

Mr Stewart: David and Katy, can you hear me OK?

Professor Phinnemore: Yes.

Mr Stewart: Thank you for your presentation. As always, it was very informative and helpful.

Most of my points have been covered. Following on from Gary's point about the attitude of some British Ministers, Brandon Lewis reaffirmed yesterday that the government position is that there is no

border in any shape or form down the Irish Sea, there are no problems with supply chains, and these are just hiccups related to problems around COVID. Is he completely detached from reality, given what we are hearing from supply chains in the haulage industry on the problems that they are encountering? Do you not think that it is quite worrying that the British Government are either blissfully unaware or are unable to acknowledge the fact that there are problems with the implementation of the protocol and the difficulties that we are seeing?

Professor Phinnemore: I have concerns about the UK Government's willingness to acknowledge the level of disruption that the end of the transition period would cause. I will go back to a point that I made earlier. If you are coming out of the single market and the customs union, increased formalities, checks and controls will be introduced, which will lead to disruption. Anybody who has closely followed the process of the UK's withdrawal from the EU and the negotiations on the trade and cooperation agreement knew that this would be the case. If Ministers are not willing to acknowledge the extent of the disruption that would ensue, that is a problem.

Mr Stewart: I totally agree with you on that. Unfortunately, I do not see any change of attitude so far. Hopefully, the noise that businesses are making will be picked up by Ministers, and they will start to realise that there are issues. We are getting a consistent message from businesses across all sectors calling for an extension to the grace period. David, you said that the British Government have agreed that the three-month period is finite. If there were broad agreement that things were not working to plan and that difficulties were still presenting, what would the process be? How would the grace period be extended? Would it be through the joint consultative working group or through another mechanism?

Professor Phinnemore: The obvious mechanisms will be those provided for in the protocol. There is the Joint Committee, which, we know, will meet quarterly. Before that, the role of the specialised committee is to identify the difficulties that implementation of the protocol may be causing. There is a formal route there. Once the joint consultative working group is up and running, it will provide another mechanism by which the issues around implementation can be discussed. Those are the formal mechanisms. What we are aware of, and as part of any relationship that any state has with the EU, is that officials are in touch. Issues will be identified, and there is a means to communicate them.

We should also be aware that the EU has officials based in Northern Ireland who are overseeing the implementation of the European Union's customs code and some of the SPS checks. There are concerns about having such people present, but they provide a valuable means of getting an EU understanding of the situation on the ground. I am sure that those mechanisms will be used. I do not think that it is the case that the EU or the British Government will not be aware of the issues, but there are mechanisms through which they can be discussed and, at least formally, considered. Whether that will bring a change in the position whereby the grace periods will not be extended — that is the current understanding — is open to question.

Personally, I think that the EU has been quite clear that the protocol was coming into force on 1 January. It identified a number of issues that the UK was anticipating or knew that there would be difficulties, and agreements were reached between the two sides whereby grace periods were agreed, always on the understanding, however, that the obligations into which both sides entered in the withdrawal agreement would be fully implemented from the end of those grace periods.

Mr Stewart: Thank you for that. We also see that a number of businesses in GB — for example, big internet firms — are putting Northern Ireland on the leper's list of being unable to receive those goods, or, if they are sending to Northern Ireland, it is at drastically higher shipping rates. Do you think that that will increase over time, or is it a "teething problem", for want of a better term, and that businesses over there do not really understand how the mechanisms currently work in shipping goods to Northern Ireland? I am sure that all members are getting those issues from constituents. Northern Ireland consumers are now unable to receive things that had been readily available. It is worrying that that is increasing daily.

Professor Hayward: We got the information about deliveries from GB to NI on New Year's Eve. It is unsurprising that companies have erred on the side of caution. They did not want to break the law or not be compliant with it when it came to what was needed to move goods, so they held off from promising delivery of parcels from GB to NI. Also, there was everything else that was going on at the end of the transition period, including, as I said, the knock-on effects of the shutdown of the Dover-Calais border etc.

We are already seeing an easing of that in some cases, but we are conscious that that provision, in relation to parcel movement and the provision of goods to individual consumers, is temporary. That has to be agreed before the end of March, and it will be difficult. There is then the difference between business to business and business to consumer to consider.

Hopefully, the distinct position of Northern Ireland is not the same as GB to the EU on all fronts. This is one area in which that distinction can be clearly made, because it is clear that the product in question is not at risk. There is a clear end point. Hopefully, some provision can be made for recognising that and enabling it to be addressed in a reasonable way. I would expect to see more disruption, particularly before the end of March. It is definitely one to keep an eye on.

Mr Stewart: My last point, Chair — thank you for your indulgence — is about specific problems. For example, a big pet wholesaler came to me last week to say that products like frozen pet food are now not allowed to come into Northern Ireland because the EU has said that it is not willing to sign off on that through veterinary certificates. Over time, we are starting to see more problems. At what stage will they be ironed out? What is the mechanism for finding these products, flagging them up and getting a solution to them so we can have them here in Northern Ireland?

Professor Hayward: Fundamentally, rules apply on goods moving into the EU single market. I mentioned sausages, for example. At the moment, we have a grace period for that kind of product, but that has an end point and it will be a hard end. After that point, you will not be able to bring those goods in. We have seen some cases, such as that of your constituent, where things were maybe not considered or recognised. That is part of the complication in deals of this nature. It is just so unusual to allow for the divergence and disintegration of markets rather than their integration. It is reversing the instincts and the trends, so we will see those challenges. It would be wrong of me to suggest that we will get a solution that will allow for exceptions because the EU is rigorous about protecting its single market, particularly when it comes to SPS. There is a reason for that, but, unfortunately, it entails big disruption. That is why the voice of business is being heard, particularly on meeting the cost of compliance and the cost of adjustment and the disruption that that brings, especially in the short term. That voice must be heard loud and clear.

Mr Stewart: OK. Thanks, Katy and David; I appreciate your time today.

Mr O'Dowd: Thank you, David and Katy, for, as always, a very informative briefing on a very complex issue.

I want to return to the issue of reorientation, not only of supply chains but of the economic strategy. Given that we are in a new economic reality, it strikes me that the Department will have to reorient its economic strategy to take that into account. Suppliers who are having difficulties, for whatever reason, in getting certain goods directly from Britain will have to find them elsewhere. Is there a need for that reorientation of the economic strategy, not only for North/South but for east-west?

I do not want to put words in Katy's mouth, but this is on the point that she made earlier. It appears that the Department should be tasking Invest NI to go into Europe and to sell the North as a unique place to invest in order to reap the benefits, limited as they are, of the protocol and try to have a strategy that mitigates the worst impacts of Brexit on our economic well-being.

Professor Hayward: You can see how Invest NI could consider that because Northern Ireland's distinct position, particularly with unfettered access into GB and the EU's single market, brings potential benefits. The EU will be keeping an eye on the situation, just as the UK will, and it will not want companies to start relocating to Northern Ireland in a way that suggests that there is a problem or some exploitation of a loophole. The UK will not want that either; it cannot be too dramatic.

Northern Ireland cannot be on the hard edge of both if its unique position is to bring benefits. That is why it needs to be carefully managed with Northern Ireland's voice, particularly but not exclusively its business voice, to make the most of the unique position and have investment follow from it, which would be really important.

One thing to keep an eye on — it is a challenge — is Northern Ireland's position vis-à-vis the EU and UK FTAs. That issue still needs to be resolved. The EU was not willing to consider it in much detail because it has to be done on an FTA-by-FTA basis. It would be worth keeping an eye on that because it has wider potential benefits for Northern Ireland's trading position when it comes to international trade. Northern Ireland could benefit from EU FTAs as well as UK FTAs.

Professor Phinnemore: In the four years since the referendum, there has been a distinct uncertainty around the nature of the UK's trading relationship with the EU and the rest of the world. With the protocol and the TCA, we now have the certainty that was missing. It had been difficult to develop a strategy in some respects, but here is an opportunity to develop one, whether through the reorientation of a strategy or the revisiting of a strategy, to take the new realities into consideration. That needs to be done.

I will pick up on Katy's point about access to UK trade agreements. I would not blithely use the "best of both worlds" language, which some politicians seem to be deploying, because we are a long way short of that. There are shortcomings in the protocol, and more work probably needs to be done to maximise that sense of the best of both worlds for Northern Ireland. One key issue will be the question of access to the terms of EU trade agreements with third countries, in exports and imports. We are already seeing that lack of access impacting on some businesses. There is an argument that the new realities, which have been created by the existence of the TCA and now the implementation of the protocol in the context of the TCA, need to be reflected in any strategies that any Department is developing. That goes for Departments not only here but in London. London has a responsibility to ensure that particular arrangements for Northern Ireland are made clear to potential investors in the UK. They need to be clear about that.

Mr O'Dowd: I do not expect you to comment on this, but do not believe for one second that London will reflect that to businesses or to the EU, because it is not to London's advantage. We have to rely on our Department for the Economy to do that. In the short to medium term, is there an opportunity for investment in InterTradelreland, which in turn will allow investment in businesses to reorient their trading relationships across the island of Ireland? A NISRA report shows that more small to medium-sized enterprises are now operating North/South. Some businesses will have no recognition or familiarity with North/South relationships and will need support to have those.

Professor Hayward: InterTradelreland played an important part in helping people to prepare for the end of the transition period by advising on customs adjustments etc. It is clear that there is still work to be done on familiarising businesses, particularly in the South, with Northern Ireland's distinct position, and that is particularly true among smaller businesses. It is hard for people to think of the UK as being outside of the EU and to get their heads around Northern Ireland's distinct position in the single market for goods. It is an unusual arrangement. First and foremost, a priority for the likes of InterTradelreland should be to make sure that that distinct position is recognised by businesses of all types and then to begin to think about how to invest, as is its remit, to enable North/South trade and facilitate growth in that area. That is what it is there to do in many ways.

Mr O'Dowd: Thank you, David and Katy.

The Chairperson (Dr Archibald): David and Katy, I have one final question. You mentioned in your presentation that one of the strands is governance of the TCA. A number of committees, specialised committees and a partnership council have been established. The North has a unique position in the protocol, and certain aspects of EU law continue to apply here. How do you see the oversight of the TCA, and the involvement of representation from the North and the institutions here, continuing in the new arrangements? I assume that the new council and new committees will not be established until the EU ratifies the agreement — is that correct? — or will there be a provisional set-up of those bodies in the interim?

Professor Phinnemore: The provisional application of the agreement involves the institutions, so, even if there were a delay to the EU's final approval of the agreement, those institutions can still meet. There is a major challenge here because the UK Government will view the various UK-EU committees as being the responsibility of the UK Government in addressing UK concerns, but what will be really important in the operation of the TCA is consideration of the implications for the operation of the protocol and, therefore, Northern Ireland's position.

It is obviously a very political issue for the UK Government to determine how they will formulate their position within those bodies by bringing in, or not, the position of the devolved Administrations, because there is clearly an argument for having some formal consultation of Northern Ireland, given the implications of what happens in the TCA for the protocol. However, the politics around that are very difficult in the UK context because that, essentially, would require effective consultation of Scotland and Wales.

One of the disappointing things about the last four years has been the limited effective engagement by UK Departments with the devolved Administrations to ensure that they are fully informed of and have opportunities to engage in the work of the teams involved in the negotiations. One would hope that that would be remedied in the implementation of arrangements for the governance of the TCA, but we have not seen what those arrangements will be.

If arrangements are put in place, that will require Northern Ireland to identify what its position is. That will be a major challenge because, despite its thinness, the TCA covers a huge range of issues, and there must be questions about resourcing and capacity in Northern Ireland to do the local monitoring and engagement that we would necessarily want to see to ensure that the interests are represented. There is an important issue there, and we look forward to getting some clarity from the UK Government on the extent to which they will involve the devolved Administrations, particularly Northern Ireland, in the operation of the governance arrangements for the TCA so that it works for the interests of Northern Ireland as well as the rest of the UK.

The Chairperson (Dr Archibald): Is there an overarching piece on where those bodies and committees might interface with the Joint Committee and the specialised committee?

Professor Phinnemore: No, they are technically separate. You have the Joint Committee, the specialised committees and the joint consultative working group, which were set up by the withdrawal agreement and the protocol, and I am not aware of there being any formal linkages between the two or, indeed, any consideration being given as to how the two would interrelate in the arrangements for the implementation of the TCA and the protocol.

The Chairperson (Dr Archibald): In your view, is there a need for some sort of interface there?

Professor Phinnemore: I think that there is. Clearly, the development of the TCA and its implementation have implications for the operation of the protocol and for Northern Ireland's position, particularly in trade terms, with the EU. Some joined-up thinking is needed about how they both operate and interconnect. That can be left to government, but there is also an important role for the bodies that are scrutinising both the TCA and the protocol. You cannot take scrutiny of the protocol on its own. It needs to be put in the context of the broader scrutiny of the UK-EU relationship, of which the implementation of the Northern Ireland protocol is part.

The Chairperson (Dr Archibald): That is very useful. Thank you.

Mr Stalford: Thank you for your presentation; it was really interesting. As always, it is good to hear from you. I want to ask a direct and quite political question. Was Edwin Poots right when he said that the emperor had no clothes? The Secretary of State has claimed that there is no friction in east-west trade when it is quite apparent that friction is happening. What is your assessment? Who is right? Is it the Secretary of State or Edwin Poots? Who wants to go first? *[Laughter.]*

Professor Phinnemore: As I said, if the UK is leaving the customs union and the single market of the European Union, there will be friction on the movement of goods between the UK and the EU. Once you put in place the protocol, whereby Northern Ireland is effectively in the customs territory of the European Union and its single market for goods, there was bound to be friction on that border.

Mr Stalford: Yes. For the Government, the Northern Ireland Office and their representative, the Secretary of State, to persist in the repeated denial of what we can all see happening tests credibility to destruction. Would you agree? *[Laughter.]*

Professor Hayward: It is very unhelpful because of the need for GB businesses, in particular, to be aware of Northern Ireland's position. It is contradictory. If you want to facilitate the movement of goods from GB to NI, businesses need to know what is necessary. There is a very particular set of new rules and procedures with which businesses have to comply to get goods from GB into Northern Ireland. The UK Government have a responsibility to make that absolutely clear and to facilitate it as best as possible. They have done many things to do that, such as the movement assistance scheme, the UK Trader Support Service etc. However, fundamentally, businesses need to know that there has been a change. That is why it is unhelpful to confuse people simply by saying, on the one hand, that it is necessary to get something across and, on the other hand, that there is no friction.

Mr Stalford: Yes. Later today, a new Administration will take over in the United States of America. Obviously, there is a hope that there will be a UK-USA trade agreement at some point during the coming period. Will the practical outworkings of the arrangements that have been put in place mean that, in reality, it will be a USA-GB trade agreement rather than a USA-UK trade deal? That is to say, would Northern Ireland be excluded from the provisions of any such agreement?

Professor Hayward: As Northern Ireland is still part of the UK's customs territory, it should benefit from the UK's FTAs. That is a commitment from the UK in the first instance and has been recognised by the EU. It is part of the protocol. It should benefit from any FTA that the UK does; however, because of the protocol and the application of the TCA etc, there are very particular implications for Northern Ireland. I would point to agri-food as a most obvious example. If you have a UK-US FTA that covers that and allows goods into GB that would not be allowed into the EU, there would be implications for what could come into Northern Ireland. We would be more careful about that. It is a very complicated situation. In theory, Northern Ireland should benefit from all the UK's FTAs, but, in reality, the more that it does, the more complexity there will be for Northern Ireland in the first instance.

Mr Stalford: Thank you.

The Chairperson (Dr Archibald): Thank you, Katy and David. That was really helpful, as always. Hopefully, if we need you to come back, you would be willing to do so. Thanks very much.