



HOUSE OF COMMONS

European Scrutiny Committee

Oral evidence: UK's new relationship with the EU - HC 122

Thursday 28 April 2022

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Watch the meeting

Members present: Sir William Cash (Chair); Richard Drax; Margaret Ferrier; Mr David Jones; Anne Marie Morris; Greg Smith.

Questions 158-211

Witnesses

I: Rt Hon James Cleverly MP, Minister for Europe and North America, Foreign, Commonwealth and Development Office, Julian Braithwaite, Director General, Europe, Foreign, Commonwealth and Development Office.



Examination of witnesses

Witnesses: James Cleverly and Julian Braithwaite.

Q158 **Chair:** Good morning, Minister. Welcome to the Committee, and thank you for appearing this morning. Your portfolio is considerable and covers areas of very great political and legal importance. Wearing the hat of Europe Minister, you are partly responsible for the success of the relationship between us and the other parties concerned. In today's session, we are going to ask you about the Government's renegotiation of the Northern Ireland protocol, the first year of operation of the trade and co-operation agreement, the Government's work with the EU on co-ordinating sanctions against Russia for its unprovoked aggression in Ukraine, and the status of negotiations on a trade and border agreement with the EU for Gibraltar.

Before we start, Mr Braithwaite—if you can catch your breath, having just managed to get here—we have heard from you before in evidence, but for the record, would you be kind enough to introduce yourself?

Julian Braithwaite: Certainly. My name is Julian Braithwaite, and I am the director general for Europe in the Foreign, Commonwealth and Development Office.

Q159 **Chair:** Thank you very much indeed. I will start with the first question. I have outlined some of the things that we are going to ask, but would you be kind enough, Mr Cleverley, to explain your ministerial responsibilities, specifically with regard to the Northern Ireland protocol and the trade and co-operation agreement, and how you see them fitting with the Foreign Secretary's responsibilities?

James Cleverly: The role that I have as Minister for Europe and North America means that in much of the work around the Northern Ireland protocol negotiations, the TCA and our broader relationship with the EU, I understudy for the Foreign Secretary. I help her bear the load, because as Foreign Secretary she has a very broad, traditional role. With regard to relations between the UK and the EU, there is a large number of meetings that are quite technical. I have accompanied her to a number of rounds of negotiations with Mr Šefčovič and his team, both here in the UK and in Brussels. I maintain the intensity of the interaction between the UK and the EU. In fact, just yesterday I was over in Brussels, visiting Members of the European Parliament and senior members of the European Union.

Q160 **Chair:** You see people in our mission as well, presumably?

James Cleverly: Yes.

Q161 **Chair:** This has been quite recently.

James Cleverly: Indeed. When I was over, I was, in part, hosted by Lindsay, our ambassador to the EU and UK's permanent rep. Part of my



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job is understudying the Foreign Secretary where she takes the primary responsibility. A big part of it is maintaining the intense level of interaction that the UK benefits from having with the European Union.

Q162 **Chair:** On the protocol, presumably you have to take a similar position as Brandon Lewis, the Northern Ireland Secretary—it is an interactive operation.

James Cleverly: That is right. Again, I had regular informal meetings with both Brandon Lewis and Conor Burns, as the Ministers in the Northern Ireland Office. Obviously, our officials work very closely together. When I speak on Northern Irish issues, for example, on my recent trip to the United States of America when I went to Washington DC, I always make sure I plug in with NIO Ministers. I give them the downlow, as well as the downlow that I provide to the Foreign Secretary.

Q163 **Chair:** Do they give you briefings so that you have a complete picture? It is quite a big role.

James Cleverly: We do have regular, structured cross-Whitehall meetings. However, one of the big advantages that I have found is being able to have very regular informal exchanges—that is very useful. As we know, with many things to do with Northern Ireland, and to do with our relationship with the EU, things can move quite quickly, and conversations are had in multiple places about the same issue. Being able to regularly and informally compare notes means that the UK can put forward a consistent and considered position, whether we are talking in Northern Ireland, in the EU, in Ireland or in the US. I have found that the relationship between the FCDO and the Northern Ireland Office has been working very well.

Q164 **Richard Drax:** Good afternoon. It is nice to see you, Minister. In July 2021, the Government published the Command Paper on the Northern Ireland protocol, “The Way Forward”. This set out proposals for reform on the protocol and was followed by intensive UK-EU negotiations. What progress has been made towards achieving the changes outlined in the Command Paper?

James Cleverly: I think it is important to say that we have made progress. I think the Foreign Secretary and Vice-President Šefčovič enjoy a good professional working relationship, and we do feel that Mr Šefčovič and his team come with a desire to resolve this issue.

The truth is that we have come to something of an impasse, and I don't think that is through a lack of good will; I think it is more through what we regard in the UK as an overly limited negotiating mandate that Mr Šefčovič and his team have. We have put forward a range of, we think, very effective and well worked-through proposals for a technical way of addressing the EU's concerns about the integrity of the single market, which we believe addresses the concerns that they have raised with us. At the moment Mr Šefčovič has not been able to accept those and, as I say, I think his mandate limits him from doing so, rather than any lack of desire to get a resolution on his part.



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The reason I say “something of an impasse” is that while we have made progress, at the moment we are struggling to see how, within the current mandate, he is able to move forward. The simple truth—this is the point we have presented—is that the situation, as we now see it, just is not working. It is not doing what it was meant to do, which is to protect equally north-south and east-west trade, and that, by extension, is causing community tensions in Northern Ireland, which we feel are problems that need to be addressed.

Q165 Richard Drax: Would you just tell us and our millions of viewers exactly what progress has been made, bearing in mind it is clearly not as much progress as you would like?

James Cleverly: We got a good resolution, for example, on medicines. That demonstrates that where there is a real driver for innovation and reform, that can happen, and it has happened; so that is positive. It is one of these things where you can nail down quite a few issues, but until you get the last one you cannot really get any of them delivered. It is really hanging on a whole load of things where we could work more smoothly and effectively, hanging on a couple of issues around the EU’s concerns around the integrity of the single market. But again, one of the challenges is that we are now regarding this as more about how we protect the Good Friday agreement, rather than a technical trade problem. That is where the gap is between our position and the EU’s position.

Q166 Richard Drax: A colleague of mine will be touching on article 16, but just before that happens, how much longer do you think you can continue to negotiate with the EU over this?

James Cleverly: We want a negotiated settlement. We still regard a negotiated change to the protocol as the best way forward. We have made it clear that that is our desired outcome.

Q167 Richard Drax: And if that is not possible, for how much longer will you go on negotiating, because this thing has dragged on now for an awful long time?

James Cleverly: Yeah, and pressure is building. We have a broader concern. We have a standstill situation, which is far from perfect, and we have seen that that standstill position has been driving community tensions in Northern Ireland. Our concern is that the EU’s position is worse than the standstill position, so for us that really is unacceptable. The point we are making is that the current standstill position, where we are not applying a number of checks that would have to come in under their proposals, is already causing tensions. Their proposals, we believe, would make it worse; and we are saying it has to be better than the standstill. That is the challenge.

In terms of how much longer, we see these tensions building over time. The longer this goes unresolved, the more those tensions build. That is a deeply, deeply undesirable situation. The Prime Minister has made it clear that we will need to look at ways of addressing and alleviating those community tensions. Exactly when that happens, exactly how, exactly



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under what circumstances, I am not able to say and we are discussing what that might look like, but it is something we recognise needs to be resolved.

Q168 **Richard Drax:** As I understand it, the Queen's Speech will have something on this that will help clarify this matter once and for all, will it not?

James Cleverly: We are looking at a range of options about what we can do to ease these tensions. I do not want to go further than that, because conversations about the best mechanism, exactly when and exactly how, are still being had.

Q169 **Chair:** On the question of the essential issue of political stability, the contents of the protocol itself, the failures to be able to carry things forward, as many people perceive them, and the difficulty therefore of sovereignty, integrity, territoriality and also the whole question of the integrity of our constitutional arrangements with Northern Ireland, we only have to look at Northern Ireland questions yesterday to see how these issues cropped up over and over again. And, of course, we have elections taking place in Northern Ireland a few days' time. So it is not just a question of trading relationships; it is getting beyond that and there are really serious questions.

It would be a different context, of course, but the question of sovereignty with respect to part of the United Kingdom being effectively impugned by an agreement that wasn't working is a very serious matter, particularly in regard to the political and civil issues that can arise in the context of Northern Ireland. This question of sovereignty has been dealt with in the withdrawal agreement Act. Section 38 provides a mechanism for doing it, notwithstanding section 38(2)(b), which deals with the question of "direct applicability or direct effect". For practical purposes, there are some very major constitutional issues coming up and there is also the question of the reference to the Supreme Court of the Northern Ireland case, which has been around for some months now.

Against that background, perhaps you might be excused from giving us a direct answer as to what is going to be in the Queen's Speech, but the whole thrust of the sense of concern that has arisen and the importance of the constitutional significance is surely such that we would find it quite surprising if there were nothing in the Queen's Speech, if I can put it to you that way around? This is a fundamental issue of such importance that we would like to believe that these matters will be addressed.

James Cleverly: Sir William, I can assure you that the concern that you highlight in your question is absolutely felt across Government. We have seen that the implementation of the protocol, and the disproportionate way it affects north-south and east-west trade, has already driven the resignation of two First Ministers in Northern Ireland. We see the devolved Government in Northern Ireland not established and not working. We have elections coming up soon. Of course, we hope that those elections get to a stage where the Assembly is up and running, but we can see those tensions are very real and building.



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We absolutely recognise the urgency of resolving the situation. I sometimes fear that when we highlight the strength of our concern about community tensions in Northern Ireland, some of the people we speak to, not just within the EU but more broadly, think that what we are discussing is a technical trade issue about products crossing borders. The point we are making is that many of us have lived through the troubles, in our younger years. We are absolutely determined to protect the Good Friday agreement and not go back to that point in time and that circumstance.

The tensions that are building are the primary focus of our concern. Our belief is that the technical proposals we have put forward address all the issues that the EU are concerned about with regard to integrity of the single market. By implementing our proposals, we could address their concerns and alleviate the pressure, which is the big driver of our concerns.

Q170 **Chair:** Your responsibilities are so extensive that, as you have indicated, you are also in touch with things that are going on in the United States, for example. It is quite clear from the report I saw this morning that Mr Coveney is going to see Mr Biden. It does not take much for us to put two and two together and think, "Well, he is not going to see Mr Biden for no reason; it will be to do with the Good Friday agreement." No doubt it will also be to do with the impression people are getting that we are reaching the end of the line, as it were. Do you have any thoughts on that issue?

James Cleverly: In the conversations that I have had both in Congress and with White House officials, they take the Good Friday agreement very seriously, and I commend them for doing so. But we are closer to it—geographically, obviously—and this is something we look at all the time and in detail. I sometimes think that there is a bit of a misunderstanding of exactly how this situation is playing out on the ground. The American Administration—not just the Administration, but right across the political spectrum in the US—take the Good Friday agreement incredibly seriously, and we are pleased that they do. That is why we are highlighting the risk to the things that the Good Friday agreement was trying to protect.

Q171 **Mr Jones:** On that point, are the Americans aware of the reservations that people, such as David Trimble, have expressed about the impact that the protocol is having on the integrity of the Good Friday agreement? Has that been made clear to the Americans?

James Cleverly: I know that the Secretary of State for Northern Ireland speaks regularly with senior officials and politicians in the United States of America. On my recent trip, I made the case that there are many voices in the Unionist community in Northern Ireland who are expressing real concern. These are people who do not have a direct political advantage in doing so. These are not people who are up for election; these are people who are passionate about maintaining peace and security in Northern Ireland.

I remind our American and European friends that they should listen to this range of Unionist voices because they are all expressing very severe



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reservations—no, it is stronger than that: they are all basically saying, “This is not working.” When peace builders such as Lord Trimble are saying that they are worried, I think everybody should sit up and take note, because he does not say things like that lightly.

The Prime Minister, the Foreign Secretary and the Secretary of State for Northern Ireland—actually, everyone in Government—are focused on ensuring that we do not see Northern Ireland slip back into violence at all, and we feel that this is one of the things that we should address to prevent that from happening.

Q172 Mr Jones: I do not know whether you have seen it, but last month this Committee published a report on the EU Commission’s work programme for 2022. We identified that there were at least 29 proposals for new or amended EU laws that Northern Ireland will have to apply under the dynamic alignment that arises under the protocol—we actually described it as a motorway of EU-derived legislation coming into Northern Ireland. Do the Government’s proposals for reform—the proposals that we have put to Maroš Šefčovič—draw attention to this particular problem, and are there any suggestions for how to stop the motorway of legislation coming into Northern Ireland?

James Cleverly: I confess that I would need to look back at your report to see which bits of legislation are most likely to have an impact on the issues we have been discussing with Mr Šefčovič and his team.

Q173 Mr Jones: I think what we are more concerned about is the principle of dynamic alignment. It is inevitable that whenever a piece of legislation comes from the EU that is covered by the protocol, it will have to be taken on board in Northern Ireland. As a matter of principle, have the Government put forward proposals to stop that state of affairs continuing?

James Cleverly: As I say, the point we have been making to the EU is that the situation as we currently find it—even with the decision not to apply the elements of the protocol as drafted—is causing problems. We are not willing to see anything that will push us more towards that misalignment between communities or that will affect that foundation-stone principle of the Good Friday agreement. I don’t want to speculate further. It is my fault—I will re-check the legislation you are speaking about.

However, our broad principle is that there can be a dynamic, flexible and pragmatic working relationship between the EU and the UK when it comes to Northern Ireland. If we can establish that as a principle—that we are good faith actors; that neither is trying to disadvantage, harm or hinder the other; and that we look at the unique history and the importance of maintaining peace and security in Northern Ireland in all respects—we can have an effective way that works for the future. That is the principle that we need to embed. At the moment, the situation isn’t providing us the comfort that we would want in terms of that community tension.

Q174 Mr Jones: When you speak of a dynamic working arrangement, does that



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include—inevitably—dynamic alignment between EU legislation and Northern Ireland?

James Cleverly: I am highly conscious that terms such as “dynamic alignment” have a very specific meaning and impact, and I wouldn’t want inadvertently to sign us up to anything by misuse of words.

Mr Jones: That is why I raised the question—you used the words “dynamic arrangements”.

James Cleverly: I know, but I misused that. I might bring in my official on that. Our proposals are to have a dual regulatory approach for goods. We are challenging the EU on legislation that we think should not apply in Northern Ireland. Do you want to give more detail on that, Julian?

Julian Braithwaite: One of the real issues, of course, is the dynamic alignment that is written into the protocol. As you know, there are 50 pages of annexes to the protocol, which set out all the EU laws that will apply directly or through the application of UK law in Northern Ireland, which has an immediate impact on the sale of British goods there. Our proposal is that there should be a dual regulatory approach to deal with the immediate issue of Northern Ireland being able to access British goods in the normal way and British manufacturers being able to sell their goods in Northern Ireland because they meet British regulations. The whole issue of dynamic alignment is hardwired right into the protocol over 50 pages. Therefore it gets right to the heart of an issue that we have always said is important, which is that the protocol does require substantial change and needs to be amended. That is the fundamental point where we and the EU have—

Q175 **Mr Jones:** Thank you for that. So that we have absolute clarity on this point, is it the position of Her Majesty’s Government that we want to put a stop to dynamic alignment?

Julian Braithwaite: The immediate issue is around the goods flowing into Northern Ireland and the dual regulatory approach, and the Command Paper sets that out.

Q176 **Mr Jones:** I understand that. The Government want to put a stop to dynamic alignment—is that right?

James Cleverly: I keep going back to what is for us a foundation-stone principle: the desire to ensure the principle in the Good Friday agreement that all communities should enjoy equal esteem, and nothing should happen through the protocol or future amendments to it to undermine that. If the east-west flow of goods is curtailed, as we are seeing at the moment, we feel that would be an unacceptable situation. Again, I don’t want to paint ourselves into a corner in relation to how we protect that principle. I would not want to limit our position for the future—

Q177 **Mr Jones:** Forgive me for interrupting. To summarise, you are unable to tell the Committee now whether the Government’s ambition is to put a stop to dynamic alignment.



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James Cleverly: Our ambition is to make sure east-west trade is not curtailed.

Mr Jones: I understand what your ambition is.

James Cleverly: On how we protect that ambition, I don't want to limit my options.

Q178 **Mr Jones:** So I am correct in saying that you can't help the Committee with that in this particular session.

James Cleverly: I don't want to make a hard-and-fast statement: "We will never do this, that or the other."

Mr Jones: That is fine, so long as we understand what the position is. That is helpful.

Q179 **Chair:** We are proroguing today. Am I right in saying that you are not going to be in a position to let any cats out of the bag at this stage?

James Cleverly: Very wise, Sir William. Very wise.

Q180 **Mr Jones:** I think, Minister, that if you had just said that, we would have all understood it. Let me ask you this political question: do you think that dynamic alignment under the protocol is compatible with the sovereignty of Parliament?

James Cleverly: Protected principles, almost like foundation-stone principles, are about the self-determination of the people of Northern Ireland. We have a devolved Government in Northern Ireland, and we want to make sure that nothing is done that undermines either that sovereignty or the sovereignty of the UK Government. As I say, we will always have that as a foundation principle, and we will always seek to protect that, however we move forward. I would not say it is incompatible, but I can absolutely see, if we are not careful in our interrelationship with the EU, how changes on the EU side could introduce pressures that we are seeking to protect from.

Q181 **Mr Jones:** To go back to the Brexit referendum, one of the principal issues for those of us who were opposed to Britain's membership was the fact that we automatically absorbed legislation from Brussels without any input from Parliament. In other words, it was incompatible with the sovereignty of this place. Do you think it is compatible with the sovereignty of Parliament, now that we have left the European Union, for part of our country still to be subject to dynamic alignment?

James Cleverly: Northern Ireland is part of the UK, and we will always, always, always protect that. Again—I keep talking about these foundation principles—that is the starting point of whatever discussions and negotiations we have. Northern Ireland has a unique history and a unique status, and we have to recognise that. That means that Northern Ireland-related issues—particularly when it comes to international obligations, treaties and the practicalities of working in an interconnected world—force on us a degree of extra creativity, flexibility and adaptability. If we all—the UK and the EU—approach all UK-Ireland border-related issues in that



spirit, it can work. Perhaps the point behind your question is that none of us should be blind to the fact that it requires us to be more adaptable, more pragmatic and more creative when it comes to Northern Ireland, because of its unique history and its unique status.

Q182 Mr Jones: But the point I am seeking to make is that the sovereignty of Parliament is surely incomplete for so long as Northern Ireland is a rule-taker and has alignment with the European Union.

James Cleverly: I think the Good Friday agreement imposes a duty upon all of us to protect the status, which is enshrined in it, that people in Northern Ireland should enjoy that relationship with Ireland and that relationship with the rest of the UK. That means there are some things that are more technical and more difficult, in order to ensure that all communities in Northern Ireland can enjoy the status that is protected by the Good Friday agreement. I would not want to imply in any way that we are uncomfortable with that; it just means that there is a bit more tricky work to do to protect that. But we are absolutely willing and able. And we think, with regard to the Northern Ireland protocol, that we have put forward solutions to the EU that do ensure that, whether people's head and heart are more oriented north-south or east-west or whatever, we protect that.

Mr Jones: Thank you very much.

Q183 Anne Marie Morris: Do the Government believe that conditions currently exist to trigger article 16, given all that you have said?

James Cleverly: The Prime Minister said almost a year ago that the situation we see with the current standstill position would be legitimate grounds for triggering article 16. We are very conscious that that is a significant thing to do. We are very keen to get a negotiated settlement with the EU that resolves these issues. But ultimately, article 16 exists for a reason, those community tensions in Northern Ireland are real, and we have committed to do what we can to alleviate those tensions. Exactly when and exactly how is a level of detail that I will not go into today in this Committee, but we are very conscious that things need to be resolved.

Q184 Anne Marie Morris: So the Government are committed to article 16 still being a tool that they will use?

James Cleverly: It is there in the agreement. It exists for a reason. It exists because, even though specific problems were not necessarily envisaged, the idea that there may be a need to resolve differences and disputes, and to address issues, whether related to trade diversion or community cohesion—article 16 exists because those potential challenges were envisaged. So it is relevant and it is there for a reason. The UK Government have always made the case that we will look at resolving those issues; we are not just going to sit back passively and allow these problems to intensify.

Q185 Anne Marie Morris: Has the possibility of triggering article 16 been used actively and discussed in your negotiations, so that those involved on the



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European side are well aware that we are serious and this is something that we will use?

James Cleverly: I don't want to imply that this is your starting point, but this is not about negotiating leverage. We are not saying, as a leverage point, "If we don't get out way, we'll do this." What we are saying is, "There are problems. These problems are real and intensifying. Article 16 exists as a means of addressing these problems." Those are facts and we will have to look at ways of addressing these problems.

Our desire—the best way of addressing these problems—is for the EU to give Mr Šefčovič a bit more flex in his mandate, to get a negotiated position with regard to the protocol that works, and then we can get on with a whole load of other really important stuff that we want to get on with. That is our desired position, and the point we have made. I am not going to go further in terms of what, when and how, but ultimately we do have to resolve those issues because they are getting worse.

Q186 **Chair:** Before you come on to the next part of the question, Anne Marie, I want to refer back to the appalling situation we witnessed over the question of covid regulations, when article 16 was used by the EU, all be it for a short space of time, in a manner that gave an impression of being both aggressive and completely unreasonable. They have a track record on this. I heard Mr Byrne, the Europe Minister for the Republic of Ireland, on the "Today" programme—or it may have been last night—indicating that was just a passing moment and it would all be shelved. I think he more or less said—but I would not want to be completely clear on this—that he thought that article 16 had been disposed of. My understanding is that it is actually still part of the legislative arrangements within the EU, although I accept that it has not been used. However, the implication in the manner in which it was done then, without any justification, was a very serious step. The EU withdrew from that, but do you have any comment on it? Maybe Mr Braithwaite would like to come in as well.

James Cleverly: I have met with Mr Byrne and unsurprisingly we discussed that issue. I absolutely take him at his word. I have no reason to doubt the sincerity of the point he has made. On the one hand that feels very immediate, on the other, it feels like a different universe being in the middle of the international response to covid, when decisions were made very quickly. There are things that in the cold light of day, and with the benefit of hindsight, we might do differently. I did not hear the interview, but from the conversations I have had with him, and from what you relay from the interview, I think that sounds like it echoes his position—I do not want to put words in his mouth.

We continue to have a strong bilateral relationship with Ireland. I will be visiting Ireland in my ministerial capacity soon—I cannot remember what date. We want to work towards an outcome where the utilisation of article 16 is not necessary—that is our desired outcome. At the moment our view is that the best and most effective way of resolving that is a bit more flexibility on the part of Mr Šefčovič's negotiating mandate, and then we



can get the amendments and those negotiated changes to the protocol. That is our desired outcome.

Q187 Anne Marie Morris: Are the Government considering the introduction of legislation to disapply parts of the protocol in domestic law? If so, when and what will it cover? I am not asking you, Minister, to tell me what is in the Queen's Speech, but I am asking you to tell me whether the Government are seriously considering such legislation, and whether we are looking at something short or long term?

James Cleverly: I am going to go back to the answer I gave to your question on article 16. We are driven by a desire to resolve the issues that we can see building up in Northern Ireland, particularly the community tensions. We are looking at the best and most effective way of doing that. We have said we are considering what options are available to us.

I am not comfortable going into any more details because, as I say, we are discussing and thinking about the best way of doing this, protecting the things that we want to protect. Obviously, we want to protect trade and commerce in Northern Ireland and our international relationships but, first and foremost, the most important thing for us, is that we want to protect peace and security in Northern Ireland.

Q188 Anne Marie Morris: So Minister, in the spring statement, as I recall, the Chancellor suggested that there would at least be a negotiation with regard to the application of VAT on green infrastructure, if I can put it that way, because there was a perception that it would be very difficult to reduce the VAT on such infrastructure on the mainland as well as in Northern Ireland, because of the protocol and there would therefore be a debate. Given that we have already had the announcement in the spring statement, is that the sort of thing that would require such legislation? Is that something that has been discussed?

James Cleverly: As I say, we are thinking about and discussing a range of things that we could do to address those tensions. Addressing these tensions is always the driving force—that is what we are seeking to do. We have not finalised exactly how we do that. We are looking at and discussing the best way of addressing those tensions while also protecting the other things that we feel need to be protected.

Q189 Anne Marie Morris: Would you agree, Minister, that it is perhaps a breaking of the concept of sovereignty if a country cannot impose levels of taxation across all its territory as its right? We all understand that one of the points of the protocol was where there was a concern about products moving across border, and the implications and the impact that might have for the EU and indeed for the UK going the other way. But there are some things, for example energy in people's homes—your gas, your electricity—where there is a peculiarity in the way it is looked at within VAT legislation, so it gets caught and cannot be separated from the treatment of VAT in mainland Britain.

That could be tested in court and that is something that Government could look at, but that seems to me to be an example of something that



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would be precisely right in terms of desire to retain sovereignty, and would not negatively impact the EU, because the way we use gas and electricity within our own homes is not going to impact trade between north-south and east-west. Would you agree with that sense and position with regard to taxation? Is that something that fundamentally should be the sovereign right of the state and, therefore, something that that Government will be taking seriously to try to address?

James Cleverly: I can absolutely see the point you are making. Again, one thing that is important is that people in Northern Ireland are not, and do not feel themselves to be, disadvantaged by virtue of the fact that they are in Northern Ireland. Ultimately, we want to make sure that decisions by the UK Government, particularly decisions that alleviate some of the cost of living challenges that we are seeing, are enjoyed by everybody. Ultimately, of course, we want to see the devolved Government in Northern Ireland up and running, because that is the most effective way of making sure that Northern Ireland can protect its unique status and character, while also enjoying all the benefits of being part of the Union.

Q190 **Greg Smith:** If we can broaden out the discussion to the TCA, I appreciate my opening question could end up with quite a lengthy answer. The TCA has been operational for over a year. The exam question is: how would you assess its first year of operation?

James Cleverly: I have not had the opportunity to see the whole of the infancy and growth of the TCA, having only stepped into the portfolio in the last few months, but it is now in place and up and running. The governance structures that it has within it have been established. For example, the specialised committees are established and have all met at least once. The Partnership Council, the Trade Partnership Committee and the Parliamentary Partnership Assembly are up and running. These structures, which are embedded within it, are working, but it is obviously still in its infancy and some of the elements of it have come into meaningful existence only very, very recently. It gives the UK and the EU the opportunity to have regular interactions around trade-related issues, which is valuable. It is not setting off alarm bells at the moment, which for a new institution like that is not a bad starting point.

Q191 **Greg Smith:** I appreciate that answer. You stated—the Committee has had an evidence session on this—that the specialised committees have all met at least once, but what is less clear is what they actually did. Could you perhaps expand a bit more on what the UK Government position is and what has come out of the sittings of those various committees and partnership boards that has actually led to a meaningful change to fix some of the unintended consequences, such as the unforeseen issues we have seen at the border that, when the TCA was signed, we did not expect to happen?

James Cleverly: I am actually going to ask Julian to come in on that. It is fair to say, in broad terms, that these are relatively new structures. Coming straight out of the traps into delivery phase would be right at the upper end of anyone's range of expectations. I think these structures

reflect more the way the EU works than the way the UK Government works, but in a partnership you need to make sure you respect each other's ways of working. Julian, do you want to bring up any specific examples?

Chair: Just before you do, I ought to mention that there are things going on outside this room regarding Prorogation, and we are getting to a point where we could easily find that Parliament will prorogue within 12 minutes or so. In which case, I am truncating some of the questions.

James Cleverly: I completely understand.

Chair: There are one or two matters, including the questions of Gibraltar and Ukraine, that we want to touch on. I am going to ask David Jones to ask the next question, if you don't mind, Greg. Otherwise, we are going to be out of time and there will not be a Parliament sitting.

James Cleverly: I will try to break the habit of a lifetime, Sir William, and give concise answers.

Q192 **Mr Jones:** This is essentially to do with the full border checks that were introduced by the EU on 1 January 2021. We have heard reports of British businesses facing difficulties, and EU VAT and customs regulations being applied differently by different member states. Do you recognise those reports? If so, how is your office working with your EU counterparts to try to resolve the difficulties?

James Cleverly: You may not have seen it, but a written ministerial statement was laid this morning. The remaining import controls on EU goods will not be introduced from July 2022. Instead, traders will continue to move their goods from the EU to GB as they do now. That is the situation as per—

Q193 **Mr Jones:** So what it effectively means is that EU exporters to the UK can continue to do so without any checks, whereas in the opposite direction British exporters are being subject to those checks. Are there any discussions to try to resolve those difficulties? Mr Braithwaite?

James Cleverly: Go on—he cuts straight to the technical bit.

Julian Braithwaite: You are right that we have been getting these reports. The EU customs code is implemented by the individual member states. We have heard of cases where they have been implementing them in ways that we don't think are compatible, and we have been raising those with the individual member states. We haven't got any evidence that this has been systematic, but we have been raising the individual issues. In terms of the trade figures over the last year, UK exports to the EU have actually held up. There are plenty of individual cases. The new service that was set up—the European export service—is following up on those details to support our exporters, but we are raising those specific issues with the member states concerned.

Chair: If that is alright, David, I would like to move to Ukraine.



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Q194 **Margaret Ferrier:** In a recent letter to the Committee, the Foreign Secretary stressed the importance of working in concert with European counterparts on sanctions against Russia. How are the Government working with the EU on the imposition of sanctions against Russia? How are the Government working with the EU to broaden and co-ordinate the coalition of countries currently imposing sanctions?

James Cleverly: The imposition of sanctions against Russia in response to the invasion of Ukraine is one of those areas that has really demonstrated how effectively we can work with the EU, even though we are no longer formally an EU member state. Co-ordinated sanctions do not mean that they are identical. We, for example, moved further on oil and gas and on banking. Elements of the EU have moved faster on sanctioning oligarchs because their legal structures allowed them to do so, but we are all pulling in the same direction and jointly applying that pressure.

We speak regularly at ministerial, senior official and political director level to ensure we co-ordinate to have the maximum effect in closing off the supply of funding for Putin's war machine. In all the conversations I have had here in the UK and in the EU, I think our co-ordination of work over sanctions is highlighted as one of the real success stories of our response to the situation.

Q195 **Chair:** On that question, if I may as Chairman, just to remind you that I mentioned Gerhard Schröder in the House the other day as an example of somebody who, I thought, deserved sanctions in these circumstances. I just want to get that on the record for this sitting.

James Cleverly: As you know, we never comment on future sanction designations, but I know the point you have made has been heard.

Q196 **Margaret Ferrier:** You mentioned energy, Minister, and the EU's dependency—we know that—on Russian energy. Could that limit the appetite of member states for more stringent sanctions? How are the Government assisting the EU to decrease consumption of Russian gas and to persuade member states to impose tougher energy sanctions?

James Cleverly: We have been working closely with our colleagues in Europe and other parts of the world, including North America, the Gulf and further afield, about alternative energy provision to alleviate some of the pressure that some European states are under. I know sometimes there is an instinct to be critical, but we need to recognise that, particularly the further east you go in Europe, the more certain countries' economies are integrated and the more their hydrocarbon supply chains are with Russia.

Some of those eastern European countries have taken incredibly brave and difficult decisions about imposing sanctions, knowing that Russia had this ability to damage their economies. None the less, Poland and Romania have done so, as well as Germany with regard to scrapping Nord Stream 2 and coming out of elements of the SWIFT banking system. That was done fully in the knowledge that they were highly at risk of repercussions from Russia and nevertheless they did that. We want to help them and work with them to go further, recognising that the best way of doing that is



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helping them to get alternative hydrocarbon energy in the short term. Ultimately, and the Prime Minister is absolutely spot on, the most effective way of doing this is weaning ourselves off Russian hydrocarbons completely within Europe and being much more energy self-sufficient, whether that be through renewables, nuclear or whatever else.

Q197 Margaret Ferrier: On 7 April, the Government published their energy security strategy. Minister, do you agree that the role of co-operation with the EU will be so important in securing long-term UK energy security?

James Cleverly: Yes, working with the EU will be an important part of it. Ultimately, the UK, at heart, has always been a very international country. We have always had a very international outlook. As our energy needs evolve and we move away from hydrocarbons towards other energy sources, we will need to develop and maintain relationships with many other countries around the world. Of course, working closely with the EU will be part of that—for both our benefit and that of EU member states. However, we will also need to look at sourcing materials for battery technology and wind energy technology, where we have real strengths and very strong potential markets. Of course, the other thing is working internationally in co-ordination with regard to the next generation of smaller, cheaper, more efficient nuclear energy production. All those things require international work, both in the UK-EU relationship and in UK global relationships.

Q198 Chair: There is one other point, which is with a great respect to the role of Germany in all this. I know that the best way to keep a secret is to make a speech in the House of Commons. In 2001, I wrote an article about the geopolitical instability I could see coming as a result of the deal that was done in 1990 between Kohl and Gorbachev, and then taken up by Merkel and all the dependents. In return for the reduction of debt under the Paris Club arrangements, because Russia owed so much money to Germany, Germany was entitled to take shares in companies that became Gazprom, and so on and so forth. This is actually a long-standing series of mistakes and failures that have been made over a period of time, which has now, effectively, turned into a situation in which Russia is able to hold people hostage. The cutting off of gas with Poland and Bulgaria only yesterday is a good example of this. It is an extremely long-term problem. Could you reflect on that? For all the promises we have been hearing, the German position is still not satisfactory.

James Cleverly: Having spoken with my German counterparts and looked at this, I can understand the long-standing German foreign policy desire to bring Russia into the international community by integration of economic activity. I think it was an understandable aspiration. It was a policy that transcended a number of German Governments of pretty much all political persuasions. It didn't prevent Russia from invading Ukraine. The willingness that the new German Government have had to fundamentally review some incredibly long-standing positions—in terms of their defence expenditure, their foreign policy and their energy policy—and to accept that that long-standing policy had not had the desired effect and revisit a



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number of really key, long-standing policies is something that we should recognise and, if not celebrate, certainly thank them for. We want to make sure that we work with Germany and Poland, Bulgaria and the other countries that are at risk of energy blackmail from Russia to help them to do what they have told us they want to do, which is do the right thing.

Q199 **Chair:** But, Minister, the money that Russia is receiving is so monumental. As I said again in the House recently, the reality is that Russia is being put in a very powerful position on this. Basically, the money from Germany and other countries is bankrolling Russia's invasion and war in Ukraine. It is a very serious problem. Only a matter of weeks ago, I had to mention in the House that Germany had supplied only 5,000 helmets—something like that. Admittedly, that has changed, but the question is: where's the beef? What's actually happening? What's your assessment of that?

James Cleverly: We come at this situation from very different starting points internationally. At the time of the invasion, the UK had very low direct exposure to Russian hydrocarbons—we did not rely on them very much—and that enabled us to be much more flexible. Announcements like the scrapping of Nord Stream 2, coming out of much of the SWIFT system, and a very deep change of German defence posture were not easy decisions for Germany.

Q200 **Chair:** Well, they haven't made them yet, because to some extent there are big divisions within the coalition, are there not?

James Cleverly: To an extent, I think that is a by-product of coalition government. I am conscious that I am sounding slightly like a spokesperson for the German Government.

We have enjoyed incredibly close working relationships across Europe. Within the Quint, we have weekly calls at a political level between the UK, US, France, Germany and Italy. Our senior officials speak very regularly, and there is a degree of integration co-ordination that we know has really confounded Putin's expectation that there would be some western fragmentation. We should pursue every opportunity that we can find to reinforce that co-ordination and reinforce decisions that are taking European countries in the right direction, which is unplugging from Russian hydrocarbons and employing sanctions on them.

Not everyone can move at the same pace. As you said in your question, Sir William, there are a whole load of historic decisions, and particularly countries in eastern Europe that were part of the USSR have physical infrastructure links to Russia that they depend on. They are seeking to extricate themselves from that, and it is in our interest, their interest and the interest of global peace and security that we help them do that.

Chair: And there is the complexity of the Hungarian situation and various other matters. I don't think we can go into every detail of this at this moment, but I just wanted to get your reaction to that. We now want to move on to another set of questions relating to Gibraltar.



Q201 Mr Jones: Mr Cleverley, you wrote to us recently setting out what the current state of play was. You still expressed confidence that you would be able to achieve a solution, although you acknowledged that the negotiations were politically complex. There has been quite a lot of delay, apparently. We took evidence from the Gibraltarian Chief Minister back in November, and he expressed hope that we would see a resolution of the negotiations by the end of December, which was then extended to Easter. There is still no sign. Can you give us a flavour of why the negotiations are taking so long? What is your best guess as to when an agreement will be achieved?

James Cleverly: I will start by not answering the last question. I don't want to guess at a date and make myself a hostage to fortune. We obviously enjoy an incredibly close and strong working relationship with the Government of Gibraltar. I knew the Chief Minister long before I was in this ministerial position. I have now got to know my opposite number in the Spanish Government. We get on very well, and we speak formally and informally quite regularly. The ingredients are in place to get a resolution on this. It started much, much more slowly than any of us would have wanted. The EU's internal processes finalised their negotiating position only in October 2021, so the starting gun wasn't fired until much later than we would have liked.

It is a sensitive, complicated issue. I am confident that it can be resolved. It will be resolved in the way that many of these things are resolved: with a good dose of good will on the part of everyone involved in the negotiations. I have made it clear, both to the Gibraltarian Government and the Spanish Government, that the integrity of Gibraltar is an absolute non-negotiable. They know that. The tone of the conversations is positive. I do not want to speculate on when this will be resolved, but it strikes me as an eminently soluble problem.

Q202 Mr Jones: Could you tell us which parts of the negotiations have been the subject of agreements so far, and which are yet to be resolved?

James Cleverly: I suppose, like a lot of things, the devil is in the detail. Rather than me talking about generalities, perhaps Julian could highlight a couple of areas where it is stuck.

Julian Braithwaite: The negotiations have had seven rounds so far with the European Commission. The basis for the negotiations is the joint agreement between the UK and Spain reached at the end of 2020. Those rounds have cleared away the rest of the issues, and at the nub is the issue around mobility, and particularly implementing the agreement between us and the Spanish about how Schengen would work, the degree to which Spanish officials would be involved and how it would be managed in a way that was seamless. There was an agreement in the joint agreement on how that would work. That is where we are focusing our negotiations now.

Q203 Mr Jones: We have heard reports recently of British citizens being refused entry to Spain at the border with Gibraltar if they cannot provide



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so called “valid reasons” for entry. Is that a toughening of the Spanish approach, in order to put more pressure on the Gibraltar and British side in these negotiations?

James Cleverly: That is not the tone that I am picking up in the conversations that I have had. I have not seen those specific reports. People crossing borders on occasions have difficulties; it is undesirable, but it is a by-product of the administrative processes that you have at borders. I have not seen those specific reports, therefore I would not want to go further on that.

Q204 **Mr Jones:** You have not been notified of any change of policy or stance by the Spanish on the admission of British citizens?

James Cleverly: Not that has been brought to my attention by either our side or the Spanish. In the conversations that I have had with my Spanish opposite number we speak frankly, but in a very friendly manner. I am not detecting anything that would lead me to believe that there is a formal or mandated toughening of their position on that.

Q205 **Mr Jones:** Could I ask you about the role of the European Court of Justice, which I guess is problematic in these negotiations? On 1 December last year, the Prime Minister said that he saw no future role for the ECJ in relation to Gibraltar. Can you confirm to the Committee that any agreement with the EU over Gibraltar will preclude any role for the European Court of Justice?

James Cleverly: The point to make is that the Gibraltar border and the Northern Irish border with Ireland have a very different set of circumstances. There has always been a customs and immigration border between the UK and Gibraltar, for example. It is a different beast. In terms of the ECJ, we do not believe that there is a need for EU law to apply directly. Therefore, we do not feel the need to have oversight of EU institutions like the ECJ in this instance.

Q206 **Mr Jones:** Is that a red line in the negotiations?

James Cleverly: I do not want to negotiate by proxy in a different room. That is the longstanding position of the UK Government, and I do not think that is a surprise to the EU or the Spanish.

Q207 **Mr Jones:** We took evidence from your predecessor, Wendy Morton, in September last year. We expressed our concern about EU proposals for Gibraltar to align with some EU laws, and for any agreement to include level playing field commitments. Does that remain a concern of the British Government?

Julian Braithwaite: The original mandate did indeed have these elements in it. The progress that has been made in these negotiations is that we have made progress on that. In particular, the UK-Spain political framework agreement on which these negotiations are based does not mention any role for the European Court of Justice, so we are now narrowing it down, particularly to the mobility issues where there is the Schengen border code. The Schengen border code is a Schengen-wide



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code, but the issues around mobility are the area where this debate is now taking place.

Q208 **Mr Jones:** And alignment with EU legislation.

Julian Braithwaite: As I say, with our political framework with the Spanish, we do not think there is a need for the European Court of Justice to play a role at all.

Q209 **Mr Jones:** Is the position so far as that is concerned the same for both the United Kingdom Government and the Gibraltar Government? Are the two Governments on the same page in their negotiating approach?

Julian Braithwaite: Yes, we are very much aligned.

Q210 **Chair:** As you may know, we recently launched an inquiry into the UK's EU representation after Brexit. Can you explain what the Government's strategic aims and objectives are in respect of the UK mission to the EU?

James Cleverly: As you and the Committee will know, the formal status of the team in Brussels changed from UKRep to UKMis, so they are a mission rather than a representation. I was with them just yesterday, and they of course then become more like our ambassadorial presences in other institutions in other parts of the world. They seek to influence, to explain, and to uphold our interests. I think we have a very effective team over there.

Obviously, during the departure from the EU, it became quite a big organisation because there was a lot of technical stuff to do. As, bit by bit, we have resolved and put behind us some of those workstreams, the mission has gently reduced in size quite organically, reflecting the fact that these things have been resolved. I do not have a final figure for what the headcount will necessarily be, but it is now getting down towards a sustainable size, which will be the team that we have in place—as I say—to explain, to influence, and to uphold our interests. As is the case with any British post overseas, that is the fundamental role of the mission over there in Brussels.

Q211 **Chair:** Of course, for those people who are watching us as we go forward in this exchange at the moment, it is significantly different from UKRep, the United Kingdom Permanent Representatives. I have been on this Committee since 1985, and I have seen a huge change. We did go over to see Lindsay Croisdale-Appleby and the others, and we had an extremely informative two days. That was extremely welcome, so I put on record our thanks to the team there for what they did.

You will also be aware—this is the last question—that Lord Frost, when he was in post, committed to appear before us quarterly, and the Foreign Secretary will appear at least once a year. Will you make up the difference and appear before us three times a year, and commit to appear before the summer recess? There is so much going on at the moment, Mr Cleverly. There is massive decision taking in the pipeline, we've got the House being prorogued, and we've got the Queen's Speech on 10 May. I just want to get it clear that you will appear, because we ask questions that are based



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on a lot of expertise and knowledge from our staff, and so on and so forth. Perhaps you could recognise that by making sure you come back again.

James Cleverly: I know my team are working with your fantastic Committee Clerks. I would never want to commit to something I then fell short of. I think we are discussing how to make sure we have a regular pattern of engagement, because as you say, there are still lots of moving parts and there is lots going on. I think we are quite close to nailing that down, and as you say, the Foreign Secretary has committed to appear at least once a year. I would envisage that I will be appearing before you a couple of times a year in addition to that.

In terms of sitting down in front of the Committee again before the summer recess, I think that is entirely reasonable. To steal a phrase from my previous middle east portfolio, a number of the issues we have discussed today, inshallah, will have been resolved by the time we are heading towards the summer recess, and I might indeed want to update the Committee on movement on a number of the issues we have discussed today. I will let my office know that that is my desire and intention, diary management permitting. As I say, our desire is to make sure that between the Foreign Secretary and myself, we do have that regular rhythm of engagement with the Committee.

Chair: At the beginning of this session, I noted—and you agreed—that you have this enormously wide responsibility, interactive throughout many parts of the world as well as with Northern Ireland, Gibraltar and the United States, and with the EU as a whole. It is a very wide-ranging series of responsibilities, and I would just like to put on record the fact that I have personally found this an extremely interesting insight from somebody who has had to take on a lot of complexity, as well as depth. Thank you very much indeed.