

European Affairs Committee

Protocol on Ireland/Northern Ireland Sub-Committee

Corrected oral evidence: Follow-up inquiry on impact of the protocol on Ireland/Northern Ireland

Wednesday 8 June 2022

4.05 pm

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Members present: Lord Jay of Ewelme (The Chair); Lord Dodds of Duncairn; Lord Empey; Lord Godson; Baroness Goudie; Lord Hain; Lord Hannan of Kingsclere; Baroness O’Loan; Baroness Ritchie of Downpatrick.

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Questions 80 - 86

Witness

I: Sir Jeffrey Donaldson MP, Leader, Democratic Unionist Party.

Examination of witness

Sir Jeffrey Donaldson.

Q80 **The Chair:** Good afternoon and welcome to this public meeting of the sub-committee on the protocol on Ireland/Northern Ireland. This inquiry is a follow-up to the committee’s introductory report published last July and the committee’s examination of individual aspects of the protocol’s operation in the period since then.

Today we continue our engagement with the five largest political parties in the Northern Ireland Assembly after the Assembly elections on 5 May, following our meetings with representatives of the SDLP, the Alliance Party and Sinn Féin on 25 May. We are very happy indeed to welcome Sir Jeffrey Donaldson MP to our committee this afternoon after the discussion we have had just now with Mr Doug Beattie of the Ulster Unionist Party. You are very welcome and we look forward to having your evidence this afternoon.

Today’s meeting is being broadcast, and a verbatim transcript will be

taken for subsequent publication, which will be sent to you to check for accuracy. I refer to the list of members' interests as published on the committee's website. Once again, we are very grateful to you for appearing before us. Perhaps I could ask you, as a first question, to set out the DUP's overall position in relation to the protocol.

Sir Jeffrey Donaldson: Thank you to the committee for this opportunity to address you on the very pressing subject of the Northern Ireland protocol. Thank you for the work of the committee, in relation not only to the general topic, but to the work that I know is undertaken here in relation to EU regulations, which provides for at least some degree of—I will not call it scrutiny but—

The Chair: I think we would call it scrutiny.

Sir Jeffrey Donaldson: —okay, we will call it scrutiny then, my Lord—of said regulations. The DUP's position on the protocol has been clear since the EU withdrawal agreement and the protocol were published. We have very grave concerns about the protocol. In November 2019, when the withdrawal agreement came before the House of Commons, our 10 MPs voted against at every stage. In fact, our votes were crucial in blocking the passage of that legislation, whereupon the Prime Minister called a general election, won an overall majority and pushed the EU (Withdrawal Agreement) Act and protocol through Parliament at that stage.

We have consistently opposed the protocol from the moment it was agreed between the UK Government and the European Union. We believe that the protocol threatens our place in the United Kingdom. It endangers jobs for our people, drives up costs for consumers and reduces choice on our supermarket shelves. It is costing hundreds of millions of pounds to the Northern Ireland economy every year. If existing retail grace periods were to end, checks would increase by between 200% and 300%. The Irish Sea border has eroded the unified internal market of the United Kingdom and, indeed, has undermined the union itself. The union is not just a political union; it is an economic union. Article 6 of the Acts of Union states very clearly that there should be no barriers to trade between the constituent parts of the United Kingdom.

Both the High Court and the Court of Appeal in Northern Ireland have ruled that the protocol subjugates Article 6 of the Acts of Union, and this means that the rights of Northern Ireland people, British citizens, have been undermined by the protocol. We can no longer trade freely within our own country. There has been a very clear and ongoing diversion of trade from Great Britain to the Republic of Ireland, so goods that we were able to source in the rest of the UK we now have to source in the European Union—in the Republic of Ireland.

If I may, my Lord, I would like to make a wider point here as well. The notion has been peddled by some, including the Irish Government, that the protocol is necessary to protect what they call the all-Ireland economy. I do not agree that there is an all-Ireland economy. Northern Ireland operates under a different currency from the Republic of Ireland.

It is in the eurozone. We are in sterling. We have different fiscal laws, different taxation regimes and different business regulations. The idea that there is an all-Ireland economy simply does not add up to any test that one would put forward to judge whether an economy exists.

There are arrangements for co-operation. That is true, and we want to protect those arrangements, but the idea that the protocol is necessary to protect an economy that does not exist while harming an economy that does exist—the United Kingdom internal market, of which we are an integral part—causes a real difficulty for us. I want to reference, if I may, an excellent report by Dr Graham Gudgin on the island of Ireland and the notion of one economy. It clearly makes the case that there are two distinct economies on the island of Ireland. I highly recommend that report.

In conclusion, the protocol undermines the union. It harms Northern Ireland's place within the UK internal market. It has created not just a regulatory border but a customs border between Northern Ireland and the rest of the United Kingdom in contravention of our rights under the Acts of Union. Fundamentally, my Lord, it undermines the Good Friday agreement. The Good Friday agreement, in Article 1, states that there shall be no change to the constitutional status of Northern Ireland without the consent of its people. Some hold that to mean simply that that question can only apply when we have a referendum or a border poll. I disagree with that.

Lord Trimble has stated publicly that he regards Article 1 of the Good Friday agreement as meaning that any change to constitutional status is not simply a matter of a border poll and deciding whether we want to be part of the United Kingdom or some other arrangement on the island, but that it relates to our constitutional relationship with the rest of the United Kingdom. That has been fractured by the protocol. It has harmed the very delicate constitutional balances at the heart of the Belfast agreement. It undermines the cross-community consensus that is essential for the agreement and political institutions to operate.

Therefore, it is our view that, unless the protocol is dealt with, that consensus does not exist for power sharing, on the basis of cross-community consent, to go forward. That is a fundamental problem for all of us.

The Chair: Thank you very much indeed for that. You have raised a number of questions that I am sure will be taken up in subsequent questioning.

Q81 **Lord Hain:** Jeffrey, it is good to see you. We go back a long way, including in our common support for Chelsea Football Club. I thought I would start off on a moment of consensus anyway.

Sir Jeffrey Donaldson: I will not say, "Blue is the colour".

Lord Hain: Given the situation we are in, which, I agree, is extremely difficult for unionists in particular and for your party, given the stance you

have adopted, what alternatives do you now think are practically possible to the protocol as it stands? Would they require treaty change, and, if so, what?

Sir Jeffrey Donaldson: That is a very good question. Can I thank you for your service and work when you were Secretary of State for Northern Ireland? We dealt with some very difficult and pressing issues during that time. I know that you will be very much aware of the importance of cross-community consensus in driving forward the political institutions in Northern Ireland. That is fundamental. We need to get an outcome that both unionists and nationalists can support.

What is the challenge here? What is the difficulty? The EU tells us the difficulty is protecting the integrity of its single market. Now, it is worth noting that less than 1% of all trade across all borders across the whole European Union crosses the Irish border. It is estimated that somewhere around 0.02% of all trade crosses the Irish border. In EU terms, this is minuscule. This is small beer. I should remind the committee that, even when the United Kingdom and the Republic of Ireland were member states in the European Union, cross-border smuggling was a problem. The former Secretary of State will be aware of that. The idea that no risk existed before Brexit is just not true, but we want to minimise that risk and to ensure that whatever arrangements are put in place protect cross-border co-operation and trade.

I cannot believe that the solution to that is to create a customs and regulatory border between Great Britain and Northern Ireland, when one considers that Northern Ireland purchases four times more goods from Great Britain than it does from the whole of the European Union combined. It sells well over half its produce to Great Britain. We need trade to flow freely across the Irish Sea. Can we find a solution that satisfies the EU's need to protect its single market but that also respects the integrity of the UK internal market? I believe we can.

None of us is arguing for a hard border on the island of Ireland. Therefore, as we have stated consistently, we are prepared to have arrangements whereby goods that flow from Great Britain into the European Union via Northern Ireland—and the quantity is small—are subject to arrangements that ensure that they respect and meet the requirements of EU regulations for goods entering the European Union. If Northern Ireland businesses want to sell into the European Union, they must meet EU standards. That is clear. If GB businesses want to sell into the European Union, they must meet EU standards.

Particularly in the light of developments in modern technology where you can track the movement of goods very easily, it is entirely possible to arrive at arrangements that ensure that goods crossing the Irish Sea via Northern Ireland into the European Union can be monitored in a way that respects the EU's right or need to protect its single market but that does not interfere with Northern Ireland's right under Article 6 of the Acts of Union to trade freely within our own country. I believe there are solutions. We have talked to government and the EU about this, and even

the EU recognises that what is in place at the moment is entirely disproportionate to the risk.

Lord Hain: Does it require a treaty change or do you think what you say, which makes a lot of sense, can be done in a lighter-touch implementation of the protocol?

Sir Jeffrey Donaldson: We need a change. The arrangements in the protocol are unnecessary and undermine Northern Ireland's relationship with the rest of the United Kingdom, but I do not see that that is required in order to meet the need of the EU to protect its single market. As I have indicated, they undermine the very delicate constitutional balances that are at the heart of the Good Friday agreement, so the protocol, in its current form, I believe, is not the way to deal with these issues. Therefore, change is required.

Q82 **Baroness O'Loan:** Thank you, Sir Jeffrey, for coming to give evidence to us today. We have heard a very clear articulation of your concerns about the protocol, both constitutional and economic. I want to focus on the economic impact for the purposes of this question. You have just told us that you believe that there are systems already available on the market that could provide for electronic checking of goods crossing the border without what is happening at the moment. We have heard a significant amount of evidence about paper checks and the delays that are inherent in the current systems that are there.

Perhaps you could assess the economic impact of the protocol since it came into force and, if you can, identify any benefits that you have seen, and perhaps you may wish to say more about the economic drawbacks.

Sir Jeffrey Donaldson: If I may take the latter first because it will be a short answer, I struggle to find the benefits. I am aware of some companies that trade mainly across the border and regard having the protocol as at least enabling them to continue with that cross-border trade. I do not believe it is in any way impossible to arrive at revised arrangements to replace the current Irish Sea border that enable that trade to continue.

However, the difficulties are very significant. You only have to visit our supermarkets to see that, even supermarkets that are UK-based such as Sainsbury's. Sainsbury's does not have any supermarkets in the Republic of Ireland, and yet, despite this, it is unable to bring a large amount of its own-brand products, which were previously available, into Northern Ireland because it is just too difficult with the amount of paperwork and additional cost that is required.

I have asked Maroš Šefčovič, Simon Coveney and Micheál Martin, "How does it threaten the integrity of the EU single market if a supermarket chain such as Sainsbury's, which sells goods only in Northern Ireland and does not sell anywhere else on the island of Ireland, brings its products into Northern Ireland?" I know this may seem trivial, but it is important to people. Marks & Spencer, last Christmas, could not bring its Christmas range to Northern Ireland. It is ridiculous.

Therefore, we are limited in choice in terms of the products that we have in our supermarkets. Many of our businesses have had to source new supply chains because their traditional supply chains are gone. It is estimated that somewhere over 130 major retailers from Great Britain are no longer willing to do any business in Northern Ireland because of the protocol. Again, that limits choice. Economists at the University of Strathclyde have concluded that under no reasonable circumstances could access to the EU market compensate for the cost of disruption to trade with Great Britain. That is an important point.

In the balance between the perceived benefit of continuing trade across the Irish border versus the impact on trade across the Irish Sea within the United Kingdom, I do not think that any reasonable person can conclude that the outcome is anything other than harmful to the economy of Northern Ireland. Let us bear in mind that peace and prosperity are twins. They go hand in hand. You harm the Northern Ireland economy; you undermine economic and political stability. Therefore, the impact of the protocol goes beyond just what is available in the supermarkets and choice to the consumer.

I could go on. There is plenty of other evidence. There is an increased cost in haulage and bringing goods from Great Britain to Northern Ireland. The Road Haulage Association now estimates that the increased cost as a direct result of the protocol is now in the region of 30% or more. That is driving up the cost of living in Northern Ireland because the additional cost of transporting goods from Great Britain does not get retained by the haulier or the retailer. It gets passed on to the consumer, and the evidence is there.

If you take a typical shopping list in Northern Ireland, it is now significantly more expensive to shop in a supermarket in Northern Ireland in comparison with shopping in Great Britain for the same products and brands. It is 8% higher in Northern Ireland than it is in Great Britain. When you look at chilled meats products, for example, the differential is 19% more expensive in supermarkets in Northern Ireland than in Great Britain. These are the harms being caused by the Northern Ireland protocol.

Baroness O'Loan: I have listened to you very carefully. You were talking about digitisation of processes and accepting that there have always been some forms of checks on some products coming into Northern Ireland. Would a digital process of some kind that did not apply to goods that could be certified as remaining within the United Kingdom, which would have the effect of checking goods that are possibly going on to Ireland, satisfy your need for change in the protocol?

Sir Jeffrey Donaldson: It would have to go beyond that. For example, it is wrong that Northern Ireland is subject to EU rules on state aid and that significantly impacts on our competitiveness. It is wrong that Northern Ireland is subject to EU laws on VAT, for example, which means that, when the Chancellor gets up in the House of Commons to announce measures designed to benefit hard-pressed households in the United

Kingdom, he cannot apply those benefits to Northern Ireland because the protocol precludes the UK Government from interfering on matters relating to VAT.

Let me be clear. The free movement of goods remaining in the UK internal market from Great Britain to Northern Ireland is a huge issue for us. That goes to the heart of our Article 6 rights under the Acts of Union. However, there are other matters, such as state aid, that need to be addressed as well, so that Northern Ireland and its economy can compete.

I want to make a general point on this that relates to the democratic deficit. We had an American delegation from Congress in Northern Ireland recently. I reminded them of a historical event in New England some centuries ago when those who were concerned about restrictions on their ability to trade adopted the mantra "No taxation without representation". Yet, in part of the United Kingdom today, we are subject to rules on taxation over which we have no say or control. We are subject to rules on taxation, and I, as a Member of Parliament, have no say in how those rules are drawn up. Perhaps what we should be doing is throwing tea chests into the harbour at Belfast, because it is ridiculous that elected representatives in Northern Ireland have no say in how major issues and decisions on taxation are made that impact on our economy and our people.

The Chair: Can I just go back for one second to what you were saying earlier on? We have heard evidence in this committee of some companies that are benefiting from growth in trade between north and south, and we have also heard evidence of trade generally growing. Are those, in your view, results of the protocol and how do they balance against the difficulties you have rightly just been describing?

Sir Jeffrey Donaldson: When you look at the figures for trade and inward investment pre protocol and post protocol, there is not a great difference, particularly on investment. Where the protocol hits us is on trade between Great Britain and Northern Ireland within the United Kingdom itself. That is where the problem is. There will always be businesses that will exploit any situation. Even in wartime, businesses will find a way to get around and overcome, but that does not mean that they are by any means the majority of businesses in Northern Ireland. They are not. The majority of businesses that trade with Great Britain are finding it increasingly difficult, given the added cost of doing business with the rest of the United Kingdom, the customs checks and fees, the paperwork and the need to employ additional staff.

I had one small company in the former constituency of Lord Dodds, in Newtownabbey, a small manufacturing company employing probably no more than 15 people. They sat down and calculated the additional cost of the protocol. They bring a lot of the component parts for their manufacturing process from Great Britain. They estimate that the additional cost to them in the first year of the protocol's operation exceeded £100,000. This means that that small business's ability to

expand and grow is seriously inhibited because any additional income it had was being ploughed into employing more staff to do the paperwork and customs checks, et cetera.

Yes, there may be a small number of businesses in Northern Ireland that will say that they have reoriented to trade across the border, but that pales into insignificance in comparison to the number of businesses that are being hurt by the protocol. We also need to consider the human aspect of this. This is not just about businesses. It is about people and consumers.

I want to give another example, if I may. I have a constituent, a lady who lives in Dromore in County Down, one of the oldest and most historic towns in Northern Ireland. She is disabled and confined to a wheelchair. She has a disability-adapted motor vehicle. The ramp on the back of the motor vehicle broke. She contacted the company in England to order a spare part to repair the ramp. They said, "Yes, we have the spare part. We can supply it to you. What's your home address?" When she gave her home address as Northern Ireland, they said, "Oh, dear. Are you a registered business with HMRC?" "No, I'm not. I don't work. I'm disabled. Right now, I'm confined to my home because I have no vehicle to take me out".

This constituent contacted me, and I had to go and find a local business registered with HMRC to order the spare part on her behalf, so that her ramp could be repaired and she could get out of her home again. I asked the Taoiseach when he visited Belfast two weeks ago, "How does it threaten the EU single market for my constituent to have her ramp repaired on her disability-adapted motor vehicle? Why is that necessary? Why is it necessary to put my constituents in that situation to protect the integrity of the EU single market?" He did not have an answer.

Lord Hannan of Kingsclere: It is nice to see you here, Sir Jeffrey. I just wanted to press on that last point. Do you ever get an answer? When you make the similar point about own-brand Sainsbury's goods to Maroš Šefčovič, the Taoiseach, Simon Coveney and so on, do you ever get an answer? I have never had an answer from any eurocrat or any Irish Minister on this, which makes it difficult not to conclude that there is not really any interest in solving this and that it suits the EU for the protocol to rub, chafe and irritate, so as to teach us a lesson for Brexit.

Sir Jeffrey Donaldson: That raises a number of questions, if I may say so. There are some who would argue that the main and real purpose of the protocol is to reorient the Northern Ireland economy away from Great Britain and to use the protocol as a means of developing the all-Ireland economy that does not really exist, by binding the Northern Ireland economy more closely into that of the Republic of Ireland.

Now, I have asked Irish Ministers about that. I always get vague answers. They talk about cross-border trade, but there is a difference between cross-border trade and the concept of an all-Ireland economy. It is frustrating. I listened to the comments made earlier by the Irish Prime

Minister, and I found them deeply disappointing. The Irish Government are tone deaf to the concerns of unionists on this—absolutely, utterly tone deaf. They do not get it, and, if they do, they ignore it.

Our concern is that we cannot trade freely within our own country and that we are subject to laws and rules over which we have no say. We were told that Brexit would mean taking back control of our borders, laws and money, and yet, in Northern Ireland, we have laws that are made over which we have no say, an internal border within the United Kingdom and taxation rules that the Treasury cannot control. When it comes to the protocol, we have not taken control of our borders, laws and money. We have abrogated that responsibility, and, as a unionist, I find that wrong. I find it wrong that I am being treated as a second-class citizen in my own country.

The problem for all of us is that this fundamentally undermines the spirit, the constitutional reality and the balances at the heart of the Belfast agreement, because unionists, I believe, are entitled to have that balance respected. If we are to restore the political institutions in Northern Ireland, it can be only on the basis of a cross-community consensus. If the Irish Government want to see those institutions restored, including the North/South Ministerial Council, which is the basis for co-operation across the border, they are going to have to start listening to unionist concerns.

In response to your question, no, they do not answer the questions because they are not listening to the concerns that we have. The Good Friday/Belfast agreement is not an agreement between the Irish Government and the UK Government. At its heart, it is an agreement between unionists and nationalists in Northern Ireland. Strand 1 is fundamental to the agreement. Without strand 1, without that cross-community consent, none of the other institutions can operate. I want to see that cross-community consent restored, and the Irish Government need to recognise that the time has come to make changes that will ensure that happens.

Baroness Ritchie of Downpatrick: Sir Jeffrey, you were making comments there in relation to north-south trade. I understand that Dr Mike Johnston, whom we both know, the chief executive of the Dairy Council, has indicated today, because of the north-south trade and the nature of the processing of milk, butter, cream and all that, that it actually is working for the dairy industry. I noticed today that a bakery in your own constituency of Dromore has received an increased number of orders as a result of north-south trade. It has put that down to the fact that the protocol is working. Therefore, would you recognise that there are some positive outworkings of the protocol in terms of increasing business for local businesses in Northern Ireland through north-south trade?

Sir Jeffrey Donaldson: As I said earlier, Margaret, in response to a question, I do not doubt there are businesses that will look for the opportunity. I want to be clear. I am not looking for a solution that

prevents businesses in Northern Ireland trading across the border, and particularly the agri-food sector. I want an outcome that ensures that our agri-food sector, our biggest sector and biggest employer in Northern Ireland, can continue to operate effectively. That does not mean that we need all this other stuff going on in terms of the Irish Sea border.

If I may, on agri-food, let us not forget that we are still in the grace periods, and, if those grace periods are removed, the agri-food industry in Northern Ireland is going to take a hammering because our biggest market is Great Britain. It is true that, for example, on dairy processing, my milk farmers send their milk in the tanker across to Monaghan to be processed and much of it probably comes back across the border for sale in the supermarkets, I am not wanting to interfere in that. What I want to do is ensure that our beef farmers who sell their meat into Great Britain can do so, and our farmers who want to buy cattle in Great Britain and bring them into Northern Ireland can do so.

Yes, we did have SPS checks pre Brexit to protect the integrity of our herd. No one is arguing that we want to diminish the protection of our herd in Northern Ireland, but my potato farmers cannot bring seed potatoes in from Great Britain. We cannot bring British soil in from England to Northern Ireland. There is proportion, Margaret, and there is reasonableness. The protocol is neither. It is disproportionate and unreasonable; fundamentally, for me, it is unacceptable. It is harming the Northern Ireland economy.

Yes, some businesses can continue to trade, and I am delighted for Graham's of Dromore that it won a contract for Lidl that enables it to supply to supermarkets on both sides of the border. I do not want to stand in the way of that business and north-south co-operation, but I am not prepared to accept a protocol that stands in the way of me trading with the rest of my own country.

Q83 Lord Empey: Welcome to the committee, Sir Jeffrey. I am going to ask you a question I have asked every party leader who has come in. How would you assess the political and social impact of the protocol in the context of the 5 May elections, including on the functioning of the Executive and the Assembly?

Sir Jeffrey Donaldson: Before the Assembly elections, I took the decision to withdraw the then First Minister because I had made it clear that we could not sustain a situation where unionist Ministers are expected to implement a protocol that is harmful to the Northern Ireland economy and our place within the United Kingdom, and that something had to be done about this. I gave months and months and months to the UK Government and the EU to find solutions. The talks went on and on and on, and no solution was forthcoming. I felt I had to act to send a very clear message to both London and Brussels, and indeed to Dublin as well, that we cannot go on like this.

The Assembly and Executive can function only on the basis of cross-community consent. That is at the heart of the Belfast/Good Friday

agreement. Not a single unionist MLA elected to the Northern Ireland Assembly in May this year supports the protocol—not one. Over 40% of the seats in the Northern Ireland Assembly are held by unionists opposing the protocol. There is not cross-community consent for this protocol, and, therefore, the political institutions cannot operate without that consensus. We need to get back to that consensus, which means we need to address the problems created by this protocol, find a solution that people can live with and move on so that we can restore the fully functioning political institutions, which is what I want to see happening.

Lord Empey: How do you feel that the attitudes to the protocol are evolving within the different communities?

Sir Jeffrey Donaldson: An opinion poll published earlier this week indicates very clearly that over 75% of unionists believe that the unionist parties should not re-enter a power-sharing Executive until the protocol is being dealt with decisively. The protocol has polarised opinion in Northern Ireland, and that is unhelpful when you have to operate political institutions on the basis of consensus. The more the community is polarised, the more difficult it is to achieve that consensus.

If I leave no other message with this committee than this, let me echo the words of the former Prime Minister, Sir Tony Blair, who said very recently that the protocol is “a bad deal” that places the Good Friday agreement at risk. That is what we are dealing with here. The agreement is at risk. The cross-community consensus that is the lifeblood of the political institutions in Northern Ireland has been so undermined and eroded by this protocol that it threatens the future of the agreement and the political institutions. That is why this protocol needs to be dealt with and dealt with now, and decisive action is required.

There should be no more prevarication. We need this matter dealt with so that the political institutions can be restored and we can rebuild the consensus that is essential to make politics work and for Northern Ireland to progress.

Lord Empey: Would you not accept that a lot of this was foreseeable? Is it not the case that the negotiating position of the UK Government in the period subsequent to the referendum, until the various Acts were passed in Parliament, was actually a very flawed position and that this is the outworking of that?

Sir Jeffrey Donaldson: I am afraid there is a lot of truth in that. If you take, for example, the first concept that came forward, the so-called backstop, that would have been even more harmful to Northern Ireland. We would have had a situation where the United Kingdom would have remained in the customs union and single market but Great Britain would have the option to opt out after a two-year transitional period. Who here for one moment believes that GB would have remained in, in those circumstances? The argument would have been very clear in this Parliament for GB to leave the customs union and single market.

In any event, there was a huge risk to Northern Ireland that we would be left behind, abandoned in the single market and the customs union, and cut off from our main market in Great Britain. The backstop would not have worked for Northern Ireland. I have explained why we believe the protocol is deeply flawed and why it is disproportionate to the need to protect the single market. It cuts off Northern Ireland, in many respects, from our main market. It creates major frictions on trade between Great Britain and Northern Ireland.

Fundamentally, it also has at its heart a deep flaw, which is the democratic deficit it creates. The former First Minister, Arlene Foster, in a letter she penned in 2016 with the then deputy First Minister, the late Martin McGuinness, to both the Prime Minister of the day and the Irish Prime Minister, stated very clearly that, while there would be a necessity for distinct arrangements to deal with cross-border trade, it was important that those arrangements had the approval of the institutions.

Now, we have argued that any arrangements that apply to Northern Ireland must have cross-community consent in the Northern Ireland Assembly because, if they affect Northern Ireland, and if the Northern Ireland Assembly and Executive have roles to play in making those arrangements work, our consent should be required for those arrangements. The protocol does not make provision for that. It did not make provision for any arrangements relating to cross-border trade to be approved by the Northern Ireland Assembly by a cross-community vote.

Instead, after four years of the operation of the protocol, we could have a vote in the Northern Ireland Assembly on whether to retain certain aspects of the protocol, but it would be a majority vote and there would be no requirement for cross-community consensus. This is an important point, because, for the first time since the Good Friday agreement, the concept of cross-community consent for a major decision of that nature was abandoned—and abandoned by a UK Government who ought to have known better.

Q84 Lord Godson: I join in the welcome of all quarters here for your contribution today. I have two questions I would like to ask—a brace of questions, as it were. First, what is your response to the Foreign Secretary's recent announcement of legislation in the coming weeks to make due changes to the protocol? Secondly, referring in the presence of a representative of the *Irish Times* to your own letter to the *Irish Times* in July 2019, when you talked about your concerns, you said that the interventions to preserve north-south co-operation under the protocol were misconceived and that Brexit, far from reducing north-south co-operation, would require more north-south co-operation, but within strand 2 of the Belfast/Good Friday agreement of 1998, thus enhancing that agreement rather than undermining it. I just am doing a sense check on your latest views on that.

Sir Jeffrey Donaldson: Given the significant change that Brexit represents in the relationship between the Republic of Ireland, which continues to be an EU member state, and Northern Ireland, which

remains part of the United Kingdom and no longer in the European Union, we would have to make adjustments to north-south co-operation. I have made it clear that there are areas where we can enhance co-operation post Brexit, but all that has to come with the cross-community consent of the Northern Ireland Assembly and Executive. That is the safeguard that is built into and is at the heart of the Belfast agreement. That is why I think we can have sensible co-operation on a north-south cross-border basis.

We do not need the protocol to regulate those arrangements. Therefore, this is another example of how the protocol undermines cross-border co-operation. Far from protecting the Good Friday agreement as the EU and the Irish Government claimed it would do, the protocol has undermined cross-community consensus, and we now have a situation where the Northern Ireland Assembly and Executive are not properly functioning. The North/South Ministerial Council is not meeting, and east-west relationships are at the lowest ebb they have been for years.

I put this to the Irish Prime Minister. If he seriously believes that the way forward is to continue implementing the protocol, what does that say about the Irish Government's desire to protect the political institutions created under the Belfast/Good Friday agreement? We are entitled to an answer to that. Simon Coveney, the Irish Foreign Minister, said that the continued operation of the protocol was in the Irish national interest. My question is: where does that leave north-south co-operation?

Lord Godson: What is your view on the legislation proposed by the Foreign Secretary—my first question?

Sir Jeffrey Donaldson: We would very much welcome legislation that would address the problems and difficulties created by the protocol. What would that legislation need to look like? It would need to address the points that Baroness Ritchie made about the friction on trade between Great Britain and Northern Ireland. I want to see that trade restored to the pre-Brexit situation that applied. I believe that, where goods are moving from Great Britain to Northern Ireland and remaining within the UK internal market, they should not be subject to customs checks, paperwork and declarations. Where goods are moving from Great Britain via Northern Ireland into the European Union, we can make arrangements to ensure that those goods meet the EU requirements.

We need to deal with the state aid issue. We need to deal with the whole question of how, in the future, you regulate VAT for the whole of the United Kingdom, and, ultimately, we need to restore Northern Ireland's place within the UK internal market. That is what the legislation needs to do, and I look forward to its publication in the near future.

Q85 **Lord Dodds of Duncairn:** Jeffrey, I wonder whether I could ask you about the EU's proposals, which were put forward some time ago, about more consultation or some mechanism to try to give better notice of EU laws to Northern Ireland. We have heard that medicines have not yet been dealt with completely, although the EU has acted unilaterally in that

regard. It proposed a reduction in the level of checks but not their abolition, and an SPS agreement. What is your assessment of that package, which also entails the end of the grace periods? Does it go any way to dealing with the problems of the protocol? How does it address the democratic deficit? How does it address the issues of the Acts of Union and the identity problems that you have pointed to? Is it a basis for a solution?

Sir Jeffrey Donaldson: It goes some way to addressing particular problems related to the supply of medicines, but it does so for a limited time. There is a sunset clause built into the EU legislation. It does not deal with all the issues and problems related to medicines. Furthermore, it does not deal effectively with veterinary medicines and this is a big problem in Northern Ireland. If the grace periods come to an end at the end of this year, 51% of veterinary medicines authorised for use in Northern Ireland could be discontinued. That is a very significant problem, particularly for our agri-food sector in Northern Ireland.

It does not deal with the identity issue at all. I have to say that both the EU and Irish Government are blind to this particular issue that, for unionists, this is not just about our ability to trade within our own country, the democratic deficit and the fact that we have laws imposed upon us over which we have no say. It is also about our sense of citizenship and belonging to the country of which we are citizens. It undermines our rights under the economic and political union we are part of. The EU's proposals do not even scratch the surface of those problems, and that is why I believe we need the UK Government to bring forward legislation that is comprehensive in nature and that seeks to address those issues as well as dealing with the practical trade matters.

The protocol is not just a question of trade. It is much more than that, and that is why it is impacting to the detriment of every citizen in Northern Ireland, undermining political stability, and has resulted in the loss of the cross-community consensus essential for the political institutions to operate effectively.

Lord Dodds of Duncairn: Just to follow up, people have talked about continuing negotiations and talking to the EU. The EU has ruled out changing the protocol. It has talked about mitigations within the protocol and making it work better, with these suggestions it has put forward, but it, the Irish Government and others rule out any structural change to the protocol. Without addressing those sorts of issues, what are the prospects for future negotiation? My understanding is that the EU refused a meeting of the joint committee recently because the British Government were talking about changes not within the remit of the protocol. What is your assessment of the EU's approach to negotiating the fundamental problems of the protocol?

Sir Jeffrey Donaldson: The mandate given to Maroš Šefčovič is so limited that, even if there was the will, there is not the capacity on his part to negotiate any of those things. His mandate is limited to how the protocol is implemented. It does not deal with the fundamental flaws in

the protocol or the impact the protocol has on political stability in Northern Ireland, on our relationship with the rest of the United Kingdom, and on inter-community and cross-community relationships in Northern Ireland. It does not do any of those things. Therefore, as the Foreign Secretary has said, unless the EU changes the mandate for negotiation, those negotiations are going nowhere, and they are certainly not going to get to the nub of the problem. They are not going to get to a solution that satisfies the need to restore cross-community consensus.

Therefore, the EU and Irish Government, if they are genuine in their declared intent to have arrangements that protect the Belfast/Good Friday agreement, need to go way beyond the mandate they have given to Maroš Šefčovič.

Q86 **Baroness Ritchie of Downpatrick:** You have me again, Sir Jeffrey, for the final question. How can the divergent concerns and priorities of all communities in Northern Ireland as well as those in London, Dublin and Brussels be reconciled? Now, I have asked this question to most party leaders and I realise that it is a tall order—but over to you.

Sir Jeffrey Donaldson: Margaret, you and I come from a part of Northern Ireland where we can both see the Mountains of Mourne. I grew up in the shadow of the Mountains of Mourne, and, therefore, I often use this analogy. The mountains in front of us are no higher than the ones we have already climbed. In Northern Ireland, we have overcome great adversity. We have met many challenges, faced them and found ways to overcome them. I am convinced we can find ways to overcome these current difficulties and challenges.

However, there needs to be the will, and I do not see that at the moment. I have to be honest. I do not see that from the European Union. There is too much ideology in this debate and not enough pragmatism. This is too much about, on the one side, punishing the UK for daring to leave the European Union and, on the other side, whatever Brexit means to some people.

I supported Brexit. I make no apology for that, but I do not believe that it has been right for Northern Ireland to be used as a political football in this ideological game that has developed since the referendum in 2016. Northern Ireland has been used as a pawn. That is a high-risk strategy. I do not think that the former Prime Minister, Sir Tony Blair, when he made his comments recently, was resiling from the notion that, when you play around with the politics of Northern Ireland, you undermine the progress and put that progress at real risk. Therefore, we must find a solution. We absolutely have to find a solution here. I believe there are solutions to be found.

Baroness Ritchie of Downpatrick: Could you maybe specify what they are, Sir Jeffrey?

Sir Jeffrey Donaldson: First of all, Margaret, we need the European Union and our own Government to put first in this debate Northern

Ireland, the peace process and the political progress that has been made, to set the ideology aside, and to find practical solutions. What might that look like? In my opinion, to protect cross-border trade and to protect the integrity of the EU single market, there is no need to impose customs checks on goods that are not leaving the United Kingdom.

Northern Ireland's place within the UK internal market should be respected, and we should agree practical agreements to deal with the movement of goods that are going into the European Union. I believe it is entirely possible to do that and to find a solution that respects that it is the will of the people of Northern Ireland that we remain part of the United Kingdom, but that we have political institutions and arrangements that provide for cross-border co-operation.

As a unionist, I do not want to see arrangements impeding that co-operation, but nor, as a unionist, am I prepared to accept a situation where unionist Ministers have to impose restrictions on the people of Northern Ireland and their ability to trade within their own country. Therefore, I believe it is entirely possible to find practical solutions, but it is time to set aside the ideology, stop playing political football with Northern Ireland and get down to the business of sorting this out.

Baroness Ritchie of Downpatrick: One company quite near me, Finnebrogue Artisan, which you would know, is already operating a pilot scheme that deals with the green and red channels and it is actually working quite well, as I understand it. It would be quite happy to see that implemented in terms of the overall protocol, it said to me.

Sir Jeffrey Donaldson: I have met some large technology companies that have developed technology and are specialists in dealing with the movement of goods, customs and so on. I believe there is technology that is capable of assisting in finding this solution that respects the integrity of the United Kingdom internal market and Northern Ireland's place within it, but offers adequate protection to the EU single market and its integrity, and that is proportionate to the risk.

I come back to this. Maybe it is a good place to draw this to a close. Which is the greater risk between the movement of goods across the Irish border representing 0.02% of all the trade across all borders in the European Union or the future of Northern Ireland, its prosperity and its peace? That is the question we all need to ask ourselves.

The Chair: Thank you very much indeed for that. As you say, that is a good point on which to end. I also keep in mind what you said just now. We must find a solution. That is a positive way of perhaps completing the session also and something on which I hope we can all agree. Thank you very much indeed for coming and giving evidence to us this afternoon. It has been extremely helpful. We are very grateful to you.