

# Northern Ireland Affairs Committee

## Oral evidence: [Brexit and the Northern Ireland Protocol](#), HC 157

Wednesday 16 June 2021

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Members present: Simon Hoare (Chair); Scott Benton; Mr Gregory Campbell; Stephen Farry; Mary Kelly Foy; Mr Robert Goodwill; Claire Hanna; Fay Jones; Ian Paisley; Bob Stewart.

Questions 941-1012

### Witnesses

**I:** The Rt Hon. Lord David Frost CMG, Minister of State for the Cabinet Office, and Mark Davies, Deputy Director, Transition Task Force Northern Ireland, Cabinet Office.

## Examination of witnesses

Witnesses: Lord Frost and Mark Davies.

Q941 **Chair:** Good morning, colleagues, and welcome to this session of our inquiry into Brexit and the Northern Ireland protocol. May I ask if any colleagues have any declarations of interest before we begin the meeting?

**Ian Paisley:** I am involved in a legal action against the protocol with a number of commercial entities.

Q942 **Chair:** Thank you. Lord Frost, you heard that, so that is under advisement, as it were.

Minister, let me begin by establishing a few basic facts, because I think there is some uncertainty in the media and in the world of politics. Hopefully this will be a sort of quickfire yes or no round to get us into second gear. Could you confirm that Her Majesty's Government negotiated with the European Union the Northern Ireland protocol?

**Lord Frost:** Thank you, Chairman, and good morning. Before I answer that question, I would like to make one remark up front. It is a pleasure to be here today. I just want to be clear, first of all, that my primary responsibility in this new ministerial role is to the European Scrutiny Committee and the European Affairs Committee in the Lords. Obviously, the treaties cover a wide range of other issues, and those are primarily for other Departments to take forward with their Committees as regards scrutiny. I say that by way of preamble to make clear that I appear before you this morning as a courtesy. I am very happy to do so, but it is obviously not a precedent for my general appearances before the Committee. Obviously, the Secretary of State for Northern Ireland is your primary interlocutor. I apologise also for the fact that we only have 90 minutes today; I am afraid I have a pressing commitment at 11 am. However, we are very happy to be here, I and my co-witness, Mark Davies.

Q943 **Chair:** Okay. As we do not have much time, may I first of all say that I am disappointed to hear that caveat about attendance? We will look at that offline, as they say.

Turning back to the question, could you just confirm that Her Majesty's Government, with the CDL as lead, negotiated with the European Union the Northern Ireland protocol?

**Lord Frost:** Actually, in 2019, it was I, working for the Prime Minister, who negotiated the protocol. CDL, in 2020, negotiated the provisions that eventually surfaced as decisions of the joint committee at the end of 2020. CDL was the lead in that process while I was negotiating the trade and co-operation agreement.

Q944 **Chair:** Thank you. I presume that we are correct to assume that Her Majesty's Government understood the protocol that they negotiated and



signed up to.

**Lord Frost:** Indeed. We have a clear understanding of the intention behind the protocol. As you will be very well aware, Chair, it is a very delicately balanced set of provisions, with quite a lot of loose ends and open-ended provisions for subsequent negotiation. The spirit of good faith that is so necessary to make the protocol work was prevalent in 2019, and we hope that it can continue to be as we find ways of operating it.

Q945 **Chair:** When Mr Gove, as Chancellor of the Duchy of Lancaster, concluded the negotiations in that flurry of activity in early December, as the Prime Minister's right-hand man, sherpa, lead negotiator and the person in whom all the trust was vested, you signed off the document that we now refer to as the Northern Ireland protocol.

**Lord Frost:** The protocol was agreed in 2019 and obviously came into force in part in January 2020, and the rest of it at the end of the year 2020. The joint committee decisions, which expand and interpret it, as I said, CDL was responsible for negotiating, but of course we were all part of one team, trying to get the best deal for the UK as we ran into the end of 2020.

Q946 **Chair:** So nobody was blindsided on any of this.

**Lord Frost:** I think we exchange information within Government pretty well about what is going on, so we all had a good understanding of the decisions. We all had a good understanding of the things we wanted to negotiate in both frameworks and, for whatever reason, had been unable to.

Q947 **Chair:** Could you just tell the Committee what assessment you make, as a senior Minister, member of the Cabinet and close confidant of the Prime Minister, with regard to the importance of political trust and business confidence in the robustness and reliability of a regulatory regime, both now and moving forward?

**Lord Frost:** I could expand on that question for some time, as it is quite a significant philosophical question, but I won't do so—

**Chair:** It is not quite a PhD question.

**Lord Frost:** Obviously, stability and predictability in a regulatory framework is an important element in business confidence. I think the difficulty that we have had since the start of the year, or at least since the end of January, is that there has been the very visible weakening of consent in one community in Northern Ireland for the arrangements in the protocol, and that has obviously produced a kind of instability and uncertainty about how it is going to operate in the future.

Q948 **Chair:** I am going to come on to that issue in a moment. Let me just ask about business confidence. As you and the Chancellor of the Duchy of Lancaster know, we as a Committee have heard throughout this process—I summarise the message of business, whether that is business in NI or business in GB—a message that runs like this: "We don't really



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care what the rules and regulations are as long as they are clear and deliverable, and we know that those rules are going to be there for a period of time. If there is instability and chopping and changing and uncertainty, don't expect us to invest personnel resource and financial resource in getting used to them and putting in place processes, or in their implementation, if they are likely to change in short order." Can you confirm that you understand the importance of the stability and confidence requirement of business on both sides of the Irish sea?

**Lord Frost:** Everything we have done has been trying to build stability and confidence among business. I agree with you that they look at the current situation with some nervousness. I think they also look at the way the protocol is operating and the impact it is having on their supply chains and ability to deliver for consumers, and that is also an issue of concern for them that has come out of the consultations I have had.

Q949 **Chair:** Do you think the perpetual bubbling threat of the UK Government triggering article 16 assists, or otherwise, that confidence and trust process?

**Lord Frost:** All options remain on the table as regards the steps forward. Obviously, we would prefer to find negotiated ways forward if we can. If that is not possible, obviously, other options remain on the table, as the PM said over the weekend. This is a sort of intellectual debate, really. There comes a point where the unsatisfactoriness of the current situation and the attempts to operate it in itself contributes to the uncertainty and instability, and then a responsible effort to bring stability and certainty can improve the situation, rather than make it more difficult. Obviously, if we judge that that's the situation, then we look at the range of options that might bring further stability.

Q950 **Chair:** Do you hear the tearing out of hair, the "throwing the book through the window" moment from some at that answer, where you refer to the unsatisfactoriness? Effectively, you are saying that there are elements of the protocol which are unsatisfactory, but this is a protocol that the Government negotiated and signed up to.

**Lord Frost:** The difficulty is that the way the protocol is being operated is not, in our view, consistent with the intentions of us as negotiators. To take one point to illustrate it in a concrete way, it is simply not enough for people to point to the provision in the protocol which says that that the Union customs code should apply, because there is also a provision in the protocol, article 6.2, which says that everybody—both sides—should do their best to minimise checks and controls in the ports of Northern Ireland. Obviously, that provision cannot be read straight. It is a matter of judgement as to whether both sides are exercising their responsibility under article 6.2. It is not a simple, black and white question; the way of implementing the protocol is purposive.

Q951 **Chair:** Yes, I agree. Lord Frost, you mentioned the word "negotiator" there. I don't want to ask you another doctoral thesis question, but if you were filling out a form that said, "David, what are your strongest qualities or skills?" do you see yourself principally as a negotiator, or do you see



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yourself now as an implementer? I am not trying to engage in linguistic semantics; as you know, in a political sense, those are two very different things.

**Lord Frost:** I think it's both, to be honest. Obviously, I have some broader responsibilities than purely looking at the Northern Ireland protocol. What we are trying to do is operate a system in a way that is consistent with the purpose of the system and the overriding political situation in Northern Ireland and the Belfast/Good Friday agreement. That involves finding and negotiating ways to make these arrangements work in a satisfactory way. We haven't found that yet; that is obvious, I think, looking at the situation in Northern Ireland. It is going to take discussions and negotiations to improve it.

Q952 **Chair:** Are those discussions timely, at speed and well-resourced? Or are they a sort of post-lunch, Sunday afternoon stroll?

**Lord Frost:** There are discussions going on the whole time. I think there have been very few days in the last month or two where there haven't been technical discussions of some kind or another with my team or with HMRC, DEFRA or other Departments involved. We have some more technical discussions coming up in the next few days. So it is happening all the time; it is just that we are not making much progress, despite all the ideas that we put in.

Q953 **Chair:** Let me just ask you to say something that many people want to hear from the Government. Can you confirm that it is your view, the Secretary of State for Northern Ireland's view and the Prime Minister's view that the only way that the constitutional integrity of Northern Ireland as a key part of the United Kingdom could be altered is via a border poll, and that there are no constitutional impacts that flow from the Northern Ireland protocol? Can you say that clearly? We have been hearing from witnesses who identify as coming from the loyalist tradition within Northern Ireland that they want to hear this loud, proud, clear and unambiguous.

**Lord Frost:** There is an allusion in what you're saying, I think, to the legal case that Mr Paisley referred to earlier. Obviously, I reserve my position, in so far as anything I say could be construed as a comment on that, which is obviously sub judice and I shouldn't comment.

The position of principle is clear: the protocol is 100% clear that nothing in it affects the territorial integrity or the state responsibilities of the UK. I think that's written into the protocol, so that is a fundamental provision.

Q954 **Chair:** I know the answer to this, but can you confirm, just for the record, that there is nothing in the small print, explicit or implicit, within the protocol which could in any way lead to, trigger, expedite, or whatever, a change to the constitutional integrity of Northern Ireland, and that that could only be done through the mechanism of a border poll, which is outwith any competence of the Northern Ireland protocol?

**Lord Frost:** Article 1.1: "This Protocol is without prejudice to the provisions of the 1998 Agreement in respect of the constitutional status of



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Northern Ireland and the principle of consent, which provides that any change in that status can only be made with the consent of a majority of its people.” I think that’s clear. It’s also why it’s super important that we keep in mind the purposive nature of the protocol, which is to support the Belfast/Good Friday agreement and not to undermine it, as it risks doing.

**Q955 Chair:** In shorthand terms, it’s a trading agreement, not a constitutional arrangement agreement.

**Lord Frost:** Obviously, it covers more than trade. It covers some of the human rights issues in the Belfast/Good Friday agreement. It covers the common travel area. And obviously it has in it very important provisions on consent, which relate to its applicability. But the core of it was an attempt to reconcile the regulatory and trade requirements with the delicate balance in Northern Ireland and the Belfast/Good Friday agreement.

**Chair:** Thank you, Minister, for that. Ian Paisley.

**Q956 Ian Paisley:** Thank you, Mr Chairman, and good morning, Lord Frost. You will know that the Unionist people of Northern Ireland feel utterly betrayed by this protocol. You will know that the business community feel, at best, hamstrung, if not under pressure, as a result of it. And you will know that there has been community unrest.

I want to look at some of the mixed messages that have flowed as a result of that. A few weeks ago, your stated position was that the protocol is not sustainable. This morning, you are saying you are looking at ways of operating it. We have also had Government Ministers talking about implementing the protocol in full. I would like to understand what the Government’s current objective is. If it is not sustainable—I agree with that position that it is not sustainable—what is the objective from here on to fix this problem?

**Lord Frost:** I think my accurate quote, in fact, was that I said that it’s hard to see that, as currently operated, it can be sustainable for long, which I think is a sort of slightly different nuance on this. It was an attempt to reflect the fact that there are ongoing political developments in Northern Ireland and the situation there changes over time.

Our wish, and I think the PM was fairly clear about that both in public and in private over the weekend, was that we need to find agreed solutions which enable the protocol to operate in a way that is consistent with the Good Friday agreement in all its dimensions, so east-west as well as north-south, and that doesn’t undermine the consent of either community in Northern Ireland—either broad community—to its operation. If we can’t do that—and at the moment, we aren’t making a lot of progress on that—then all options are on the table for what happens next, but obviously we would rather find agreed solutions that work for everybody, because they are the most durable and most likely to last.

We have to keep in mind also the consent provisions in the protocol, which are highly unusual, very important to what we agreed in 2019, and make



it clear that it can be sustained only with the broad consent of people in Northern Ireland and their representatives. That makes it different—

Q957 **Ian Paisley:** Other colleagues will come to the issue of consent in a moment. Could we look at the issue of the options that you have available to you? The previous Secretary of State told this Committee in 2019 that the protocol would be “light touch” for businesses. The Prime Minister went further: in my constituency, he told businesspeople that they could bin it if it was not working. What are the options? The Government says that everything is on the table. Are you seriously going to unilaterally scrap it if it does not work and these operations cannot be sustained? Are you going to invoke article 16? If so, what is the timeline for taking action to resolve it? Whatever happens, Lord Frost, this can’t go on much longer before something gives. I am seriously worried about the fabric of our society at this point.

**Lord Frost:** I don’t think it would be right for me to go into the detail of our thinking about options. The Prime Minister has been clear that all options are on the table. He mentioned article 16 over the weekend in his comments to the media—“we will obviously not hesitate to invoke article 16” were his words. He also pointed to the EU’s action in January on that. He said several times that we will do whatever is necessary, and that is the view that is held across Government here. We are extremely concerned about the situation, like you. The EU’s action in January has set off a train of events that has meant that support for the protocol has corroded rapidly. Obviously, we have seen the First Minister depart and the change of another leader of a Unionist party. We have seen a chain of political developments that reflect this underlying corroding of consent and impacts on identity. That worries us a lot.

We are very conscious of the timelines. There are a number of timelines here, obviously. There is at least one grace period, on chilled meats, that expires at the end of the month. There is a political timetable in Northern Ireland of various components, which we obviously need to work with and shape. Then we have the real-world timetable of business and sustaining business operations from Great Britain to Northern Ireland, which affects and shapes business decisions throughout our supply chains. None of those timetables is very long. Without being specific, we have to try to find solutions within timetables that reflect that reality.

Q958 **Ian Paisley:** Even the Irish Government are suggesting that this needs sorting out before the middle of July. Obviously, there are historical reasons why the middle of July is very important in Northern Ireland. I just hope that is on your timeline. It appears that it could be.

Could I just turn back to something you said about the constitutional issue of article 1.1 of the Belfast agreement? At the weekend, one of the other partners to this didn’t seem to understand that Northern Ireland is actually part of the United Kingdom—namely Monsieur Macron, in his comments about the constitutional position of Northern Ireland. If one of the other partners who has signed up to the protocol doesn’t understand that Northern Ireland is part of the kingdom, does that give you opportunity to



move on this?

**Lord Frost:** I think it is part of the context. I was quoting from article 1.1 of the protocol itself, by the way, not the Good Friday agreement, just to be clear. I think we sense that this slight misunderstanding about the status of Northern Ireland has been around for some time—possibly quite a long time. As the PM said, some of that came out of the discussions, without going into detail about them. It is obviously rather concerning if people see things in that way. It doesn't seem to us to be consistent with the provisions of the Good Friday agreement, which are very clear on that, or article 1.1 of the protocol.

Q959 **Ian Paisley:** Very finally, is the port of Dublin being considered as the main interface, instead of Larne or Belfast, for a future fix to this protocol?

**Lord Frost:** Can you expand a bit on that?

**Ian Paisley:** As you know, the sense is that the United Kingdom is being partitioned because trade in Northern Ireland has to come through Larne or Belfast, where it is checked, and that is where the friction has come about. That is all done to protect the European single market, so even goods that are not a risk coming into Northern Ireland are still being checked. Would it not be better to check those goods at the port of Dublin, which is in the single market?

**Lord Frost:** I don't think there is a straightforward answer to your question, and we are not trying to shape that. We agree that goods going into Dublin, as with any other direct entry into the single market, should be checked in accordance with the EU's rules for the single market. That applies whether it is Calais, Dublin or wherever. Those checks do apply. The problem is that some of that process applies at the moment in the way it is operating when goods move to Belfast or Larne. That is the problem. There has been quite a lot, as far as we can tell, of reassessment of trade patterns in and around the island of Ireland since the first of the year, and some of that is quite striking. To the extent that those changes are responses to things that may or may not be permanent, that would be a problem. We have already seen the chilling effect, as it were, of companies wanting to move goods from Great Britain to Northern Ireland directly, and that is one of the factors we try to take into account. So I am afraid it is not a straightforward answer, and it is not entirely in our hands, but that is the framework in which we are trying to operate.

Q960 **Chair:** Thank you. Before I go to Bob Stewart, Lord Frost, I have identified four options. I am not asking you to say what, if any, others there may be, but whether there are any others in terms of quantum. In terms of options open to HMG, it seems there are four: negotiate successfully, extend unilaterally, suspend via article 16, or legislatively repeal. How many more options are open to the Government?

**Lord Frost:** I think that you are right intellectually to identify that those are possibilities that could be considered. Some of them are much more plausible than others as a way forward. The most plausible is negotiation.



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If we can't do that, other things remain on the table. I would not want to comment on which were more likely. I would just point to—

Q961 **Chair:** Sure, but can we just confirm that those are in essence—there is some nuance around some of them—the four options? There is not a bag marked “options four to eight”, four to 10, or whatever.

**Lord Frost:** I don't confirm as a political statement that those are the options being considered.

Q962 **Chair:** No, Lord Frost, what was being considered wasn't my question. I am not asking which consideration you are giving those four, but are there any more options that I have not identified that take options open to the Government over the number four?

**Lord Frost:** It is probably fair to say that most, if not all, of the possibilities could be encompassed within one of those four headings.

**Chair:** Okay, thank you. I am grateful to you for that. Bob Stewart now.

Q963 **Bob Stewart:** Lord Frost, thank you for the work you have done on this problem over the last few years. It is appreciated, certainly by me. You said earlier, “We will do whatever is necessary” to make the protocol work. You did not say “make the protocol work”, but that is what you implied. Are you able to say how you would like to see people tweak the protocol and be more flexible about it? Do you have an idea? If stakeholders were to slightly change position to make it work, how would you like to see that happen? It is clear that you believe the protocol is there and people have got to be flexible about its application. What do you imply by flexibility?

**Lord Frost:** The biggest problem at the moment is—well, there are two big problems, I suppose. One is the fact that, on trade and the movement of goods between GB and NI, there clearly is a chilling effect and there is some trade diversion and goods are not flowing quite as they should for whatever reason. Then, partly as a result of that, partly as a result of some other things, there is a broader identity issue for Unionism that is generated by the protocol and some of the statements that are made in and around it. I think those are the two problems and they obviously go together to some extent.

What we would like to see at a minimum is that the GB-NI movements of goods could work in a much more free-flowing, open way that is much more commensurate with the real risk of goods ending up in the EU's single market. We think that risk is quite low. We have proposed various ideas—a trusted trader scheme, an SPS-equivalence scheme, changes to the UK trader scheme and so on, which we think would all make a big difference to that. It wouldn't totally eliminate the problem, but we think it would make it a lot easier to work. We haven't had a lot of feedback from that.

Then there are other issues—notably, medicines and pharma—where we think it is very important that medicines can be available in the whole of the United Kingdom and goods that are regulated by UK regulators are



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available to everybody in the UK. Again, we have proposed solutions to that problem. We are told that there will be a proposal coming from the EU, but so far I have only read that in the *Financial Times* and heard about it in the joint committee—we haven't actually seen any proposal yet.

So that is the nature of the problem. I apologise for being a bit long about it, because it is complicated and there are a number of elements to it, but that is the core of what we have to try to do, at a minimum, if we are to improve the situation.

Q964 **Bob Stewart:** Thank you, Lord Frost. I accept that. You believe that the protocol is a basis and we have got to be flexible—we have got to use it and try to find a way through, and that is the Government's position.

**Lord Frost:** Yes. Our position is that we would like to find negotiated agreements that bring it back to the sort of light-touch agreements that we thought we were agreeing, and one that is consistent with protecting the EU single market and all the other purposes of the protocol.

Our frustration, and the frustration that comes out of some of the comments, is that we are not getting a lot of traction. We feel we have put in a lot of ideas and we haven't had very much back to move these discussions forward and, meanwhile, as Mr Paisley pointed out, time is running out.

**Bob Stewart:** And what we want is the light touch, and that is the aim. Thank you.

Q965 **Stephen Farry:** Good morning, Lord Frost. Just to pick up on some of the earlier answers, it is important to stress that, while a lot of discussion in the media and politically is around the Unionist reaction to the protocol, and of course they are an important stakeholder, the majority of people in Northern Ireland understand why the protocol exists and they don't see it as a constitutional issue, they don't see it as a breach of the Good Friday agreement, they do recognise the problems and they want to see some practical solutions to addressing that. In particular, Minister, the community want to have clear legal certainty on what the future is going to hold.

In that spirit, I want to ask a few questions around the SPS and veterinary agreements aspect, which I have been banging on about for most of the year and is now very much at the core of discussions. As a first question, could I ask you to update us on the discussions around this issue at the joint committee last week?

**Lord Frost:** Yes. The joint committee was a stocktake generally of the whole range of discussions. A lot of the substance came out in the two statements we put out. On the SPS issue in particular, I am afraid there was not a huge amount of discussion, in the sense that we referred to the proposal on equivalence and explained it briefly.

The Commission said they thought the right way forward was dynamic alignment and that that would solve the problem. Obviously, that is not



something we can accept, for reasons I won't go into now but which you know about. That is sort of where it was left. As far as we are concerned, our proposal on equivalence remains on the table, and we have not yet had substantive discussions about it or any sort of reaction to it.

Q966 **Stephen Farry:** To follow up on those answers, do you recognise that, if a decision was taken to align dynamically with the European Union rules, even on a temporary basis, that would be a sovereign decision for the UK Government to make? We would not be compromising our sovereignty or, indeed, the nature of Brexit.

**Lord Frost:** There are various aspects to that question. One is that it is not clear to me that the Commission is willing to see any kind of alignment without some ability to police it through its institutions, which obviously would be even more unacceptable. It is not clear to me that that commitment would be a sovereign decision; it would be an abrogation of sovereignty, if that's what the EU has in mind.

The broader problem is that having control of your own rules is important both for future trade agreements—obviously, we have reached one in principle already with Australia yesterday—and the ability to keep a modern set of rules that respond to developments in food safety, agriculture and science. We aspire to have the best SPS food safety rules in the world. That might mean we could not stay aligned with the EU, even if we wished to. That is the core of the problem.

Q967 **Stephen Farry:** You accept, for example, that Switzerland is very self-conscious of its sovereignty over many centuries. You have many other examples of countries around the world that have concluded veterinary agreements with the European Union and, as such, are able to trade on easier terms on agri-food with the European Union than the UK, which is the EU's closest geographic neighbour. To me, that just looks absurd.

**Lord Frost:** New Zealand has a veterinary agreement; Canada has one that is subsumed into CETA. Both of those are based on equivalence and obviously they do not compromise sovereignty of Canada or New Zealand in any way. That is the kind of arrangement we have put forward. I would not want to speak for Switzerland, but the practical effects of the Swiss SPS deal is that they have to remain aligned with EU rules on food safety, whatever they are, or deal with the consequences. For reasons I've said, that is not a commitment that we feel we can make.

Q968 **Stephen Farry:** Is it correct that the European Union have offered or are prepared to accept even a temporary arrangement, which would not block the UK in perpetuity but would keep options open for the future?

**Lord Frost:** They say they are open to a temporary arrangement. They claim that such an arrangement could be negotiated in a couple of weeks, which I have grave doubts about, I've got to say, on the basis of how long these things take, even with goodwill, given what is at stake here. The timetable is very short. As I said, we have already agreed a deal with Australia, and we have aspirations with New Zealand, the CPTPP and so on, so even if we were willing to contemplate a temporary agreement—we



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are not—it might be very temporary. Indeed, I could imagine that developments make it irrelevant even before we finish the negotiation.

Q969 **Stephen Farry:** I will just pick up on the reference to the Australia deal, and in doing so will reference reported comments from the Biden Administration. I picked up yesterday that the Prime Minister's spokesperson, I think, said that the Australia FTA was not mutually exclusive from a Swiss-style veterinary agreement. It is also reported that the Biden Administration has said that there is no immediate prospect of a US free trade agreement and that given how conscious they are of the Good Friday agreement, they do not see any obstacle to the UK pursuing a veterinary agreement, at least in the short term, and indeed would encourage the UK to do so without any prejudice to a future free trade agreement.

**Lord Frost:** I think that the issue with the United States really relates to our support for the Belfast/Good Friday agreement. Those are the kinds of discussions we have had. We are both united on that, and that is a fundamental point of both of our policies. As regards the FTA with the US, we have aspirations to agree FTAs with a large number of countries and trading blocs, and obviously the US will be a big and important one, but that does not change the nature of the problem. The fact is that you need control of your own rules to conclude any trade agreements with anybody.

Q970 **Stephen Farry:** Chair, I have just two more questions. Is there essentially a trade-off between the level of alignment between the UK and the European Union and the level of checks across the Irish sea? You will have seen that very handy chart produced by the European Commission, which shows that with a Swiss-style deal it is green-lighted all the way down, that with a New Zealand-style model there is a lot of reds, and that with equivalence there is a huge amount of reds. Obviously, you may say that that is their framework, but working on that basis do you accept that there is, essentially, that trade-off—that the more the UK wants to have its own freedom, in terms of rules, going forward, the more difficult the level of checks and the implementation of the protocol will be?

**Lord Frost:** That is the EU's decision. The difficulty is that they insist on applying SPS rules designed for global, third-country trade to the very different circumstances of Northern Ireland, where we obviously operate essentially the same rules. They take the view that if you are not in their legal framework, or if they do not have very strong assurances that you will remain dynamically aligned with them, as would be the case with a Swiss-style agreement, there have to be checks. That is a political position. It is not a depiction of some sort of existential reality about the world. They could change their rules in the context of Northern Ireland if they wanted to. In circumstances where the politics are so delicate and where we all say we are trying to support the Good Friday agreement—we take the EU at their word on that—it would seem sensible to look at these things in a more reasonable way.

Q971 **Stephen Farry:** My final question will pick up on that. If we were to ask



the European Union to recognise the realities of that very close geography and to move away from the rigorous approach to the Swiss-style approach, which they would be entitled to do, in terms of the rules around their single market, you are essentially asking them to trust the UK around some form of equivalence—trying to meet them halfway, in that regard. Then we come back and say that the UK has, shall we say, on numerous occasions unilaterally breached terms of the protocol and has raised uncertainties regarding its future intention around the protocol; there are issues around how faithfully things around border control posts and the sharing of data have happened until now. How can we ask them to trust the UK a little bit more and give us a little bit more of a reality around geography if there is that legacy, and current reality, of perceptions of lack of trust and bad faith?

**Lord Frost:** I am not sure I see that as really relevant to this problem, because our SPS rules are a matter of public record. We have proposed to the EU a mechanism whereby if they think our rules cease to be equivalent to theirs because they have gone in a different direction in some area, the level of processes could respond to that. I think that is quite an unlikely situation in the short run, because we intend to have very high standards.

Q972 **Stephen Farry:** But surely you are asking the EU to trust us, and they will say, “We have in the past, and you have not necessarily delivered.”

**Lord Frost:** In enforcing our own SPS rules, that is a matter of public record and the legal framework, and if the EU—for whatever reason—do not like the way our rules develop over time, they can obviously respond to that. The reality now is that we are operating the same rules, and the reality in the future is that we will always be two extremely high food standard countries. We just think the arrangements between us ought to reflect that reality.

Q973 **Stephen Farry:** Thanks, Lord Frost. I do hope that both sides can reach some form of agreement on this over the coming weeks.

**Lord Frost:** I hope so, too.

Q974 **Chair:** Lord Frost, can I just ask you about your perception of sovereignty? Do you see it as a carved, monolithic thing—akin to Stonehenge, as it were—or as an organic, iterative, deployable concept?

**Lord Frost:** Gosh, I really could talk about that for hours. To me, the issue is, “Where is the ultimate source of legal authority within the country?” If the ultimate source of legal authority is not within your country in certain areas, then you have lost some sovereignty in that respect, and what we did with Brexit was bring back that sovereignty.

Q975 **Chair:** Well, you haven’t lost it: you have ceded it as a proactive decision. That is the point that Mr Farry made. Do you recognise the figure that has been bandied around—I am guilty, because I have used it and taken it as a given—that with some form of equivalent SPS agreement, between 80% and 85% of checks would be redundant literally at a stroke?

**Lord Frost:** That is the EU’s figure.



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Q976 **Chair:** What is your figure?

**Lord Frost:** I am not sure how they reach it.

**Chair:** What figure do you arrive at?

**Lord Frost:** I do not think you can compare it in that way, because it comes back to the point I was making earlier. The EU use that figure because their view is that, unless you are dynamically aligned with them and they have control over it, there have to be checks. We do not accept that: we do not see why, in the context of Northern Ireland, there could not be a more understanding and risk-based approach to these arrangements.

Q977 **Chair:** The conceptual definition may be different, but surely one of your officials must have, while using the rubric of the EU, run a check on that figure to see if—even from the EU's perspective—80% to 85% is a robust, defensible figure, or if they have just plucked it from thin air. Has that exercise been done?

**Lord Frost:** There is limited value in doing it, in that we do not intend to agree the dynamic alignment arrangements that they have proposed. Obviously, we have seen the charts with lots of green and red, but I repeat: it is only true in their view of the world if you dynamically align. We do not see why that need be the case. We believe it is possible to eliminate checks and processes in other ways, consistent with high standards on both sides.

Q978 **Chair:** I get concerned that sometimes we all end up dancing on the head of a pin on this, so can you just confirm that there is no political appetite in No. 10, DEFRA, your Department, International Trade or in Westminster and Parliament as a whole to see a race to the bottom in standards and the lowering of our standards? In essence, the UK's proposition is that our standards are—whether by accident or design—either going to be maintained and equal to what they are now, or higher. To go anywhere other than in that direction would require legislation and votes in Parliament. That is correct, isn't it?

**Lord Frost:** We campaigned in the manifesto in 2019 as a Government that we would be a high-standards country as regards food safety and food standards. That is obviously true and we believe that is what we are doing and intend to carry on doing.

Q979 **Chair:** There are cynics—and let me stress that I am not one—who say that the manifesto of the party in Government also campaigned to defend, "proudly" I think was the word used, 0.7% of GDP of overseas aid, but that has changed because of circumstances. I am not going into the debate about that, but what one campaigned on may be in poetry, but governance is usually in prose.

**Lord Frost:** I don't think I should get into the 0.7% issue.

Q980 **Chair:** No, I am not asking you to. The point I am making is that the cynical could say that it is not a great defence to say we were going to do



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something because it was in our manifesto.

**Lord Frost:** With the greatest respect, I think that slightly misses the point. For these purposes, if the EU does not think we are operating a high-standards regime, it can reflect it in the level of checks and processes it puts in place. Nobody is suggesting that we do not operate a high-standards regime. The problem is that the EU accepts that but says there have to be checks anyway. That is the core of the difficulty here.

Q981 **Chair:** I keep asking you philosophical questions. That is not my intention, but on Tory pragmatism versus ideological purity, where do you put your last fiver?

**Lord Frost:** I don't regard this as a question of ideological purity. I don't regard it as a controversial statement that a country ought to have control over its own laws and rules. Every other country in the world has that.

Q982 **Chair:** I agree. My question was: are the Government in a pragmatic mood or an ideological mood?

**Lord Frost:** We like to find pragmatic solutions within the ideological framework that has shaped Brexit and which we believe is the right and only meaningful form of Brexit that delivers the opportunities.

Q983 **Chair:** I am never quite sure that Tories can be ideological, but there we are.

**Lord Frost:** Mrs Thatcher might have felt—

**Chair:** She was always a pragmatic Tory.

Q984 **Mr Goodwill:** I am not sure if our Chair was just playing devil's advocate there, but I certainly endorse the robust stance that you are taking on the arguments between dynamic alliance and equivalence. Having spent five years in the European Parliament and engaged in some of the horse trading, and also served as an Agriculture Minister at the Council of Ministers, I am afraid to say that some of the European Union rules often have a lot to do with politics, and if there is no sign of support for them, they can also fall back on the precautionary principle.

With that in mind, what are the chances of getting an agreement on chilled meat and sausages, which has certainly been in the headlines? If we don't get some sort of agreement quite soon, will we have to extend the grace period?

**Lord Frost:** Thank you. I certainly agree with your early comments about how laws get made everywhere, to be fair—the sausage machine, as it were, which I think Bismarck referred to, is true everywhere.

We obviously face a difficulty on the chilled meats issue. We have suggested to the EU that the right way forward would be to agree to extend the grace period, at least for a bit, to provide a bit of breathing space for the current discussions to continue and try to find solutions. I still hold out some hope that they might agree to that, because it seems a very narrow point to take such a purist view about. But, again, we are not



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having much progress, but there is a little time left before that. If we can't agree it, we will obviously have to consider all our options. I wouldn't want to tie us down to anything at this point.

It seems to us that it is a very purist point for the EU to insist upon, given that, as far as we are aware, there is no risk of Great British sausages ending up in the single market. We are not aware that it has happened, and I would like to think somebody would have told us if it had—I think they probably would have—but as far as we are aware it hasn't. It would seem to me to be a pity to make this negotiation, which is already pretty complex and tense, more so by being very purist about that, but there we are.

**Mr Goodwill:** I think Otto von Bismarck said that most of these things have to be decided through "blood and iron." I hope it doesn't come to that.

**Chair:** That could be black pudding, Mr Goodwill.

Q985 **Mr Goodwill:** Absolutely. Do you agree that it would be ridiculous to apply the same rules to meat products coming in from say Botswana, or other developing countries, to produce produced here in the UK, which has never been a problem in the past? Indeed, although we do not have dynamic alignment at the moment, that is a starting position in terms of rolling over the acquis.

**Lord Frost:** Yes, I agree with you. One of the difficulties we have had generally since Brexit as regards other areas and the 27, and that we accepted as a consequence, but it is odd, is that things that were perfectly legal and safe—for example, certain kinds of shellfish—suddenly stopped being legal and safe from 1 January. There is no rational reason for that, but it is the legal case. So there we are.

Q986 **Mr Goodwill:** Although the European Parliament agreed with us on the issue of bivalve molluscs and the purification of those.

**Lord Frost:** They did. There is a variegated view among member states on that question but, EU law being what it is, we are stuck with it for the time being.

Obviously, the point we keep trying to land is that movements from Great Britain to Northern Ireland, movements within a country, movements controlled to help protect the EU single market and to protect the Good Friday agreement, small quantities of movements—multi-pack, multi-pallet, multi-product—that is not the same thing as a normal EU external border. If we treat it like an EU external border, you have problems and that is exactly what we have got. We would just wish for a more pragmatic approach to that question from the EU.

**Mr Goodwill:** Thanks very much. That is very clear.

Q987 **Fay Jones:** Good morning, Lord Frost. Thank you for joining us. I want to ask about the UK trader scheme. How is that currently operating? Are there any changes that you anticipate making?



**Lord Frost:** The difficulty with the way it is operating at the moment, with the agreement last year, is that it requires a company to have a fixed place of business in Northern Ireland. Obviously, not every company in Great Britain has that. In particular, SMEs simply won't—they send to a few suppliers. So, it is limiting the number of people who can use this in practice and it is limiting it for companies for which it would be of most value—that is, small traders and people who can't deal with the paperwork in other ways.

We said last year that this would be a problem and, unfortunately, we have been proved right on that. We have sent in proposals to try to find a way through and loosen these establishment criteria in some way. We have not had a firm response yet. I hope it is not a flat no, now that the EU can see some of the problems that have arisen. I hope that we can have a discussion, but it has not happened yet. Mark, is there anything you want to add?

**Mark Davies:** No, definitely. The scheme operated at lightning speed, agreed in December but still stood up by January. It is worth saying that HMRC had over 3,000 applicants and managed to get more than 2,000 businesses on there, so we have done what is possible to make sure that firms can draw on its facilitations but, as Lord Frost has said, we pushed for a much more broader base for who could qualify for its use. The negotiations came with a solution for firms established in GB. It is narrow, and it is narrower than it should be. We have had feedback, exactly as you were saying earlier in the session, about responding to business concerns. There is a real push to make sure that GB firms that are keeping their goods in Northern Ireland can benefit from the scheme. HMRC had some pragmatic easements that have been able to operate during the year, to ease some of those burdens for those working, for example, with supermarkets and other large retailers, but it is very clear that this needs a solution. We have put some options down. That is all obviously within the framework of the protocol and the decision-making powers of the joint committee. That is one where we can hope to make some progress.

Q988 **Fay Jones:** Thank you. I also want to explore the concept of goods at risk, which strikes me as a strange term to be starting with, because risk implies something negative and, surely, trade is only ever a positive—though that is a broad thing to say. Do you think that the way in which the concept of goods at risk is being applied is narrow? Would you like to see that broadened out?

**Lord Frost:** Yes is the short answer. The obvious difficulty is that the protocol has a very broad definition of this. Indeed, it says that most goods are at risk unless decided otherwise subsequently. That is what a lot of the discussions have been about. We still think that, for example, the commercial processing restrictions, the turnover limits, are too low, and that some of the exemptions are too narrow. Whether or not you are at risk does not affect the declaration and the process; it only affects whether you have to pay a tariff up-front. As we have discovered, the existence of the process is as much of a problem as whether you pay a tariff through it, in terms of deterring trade, particularly for SMEs.



**Mark Davies:** I would just add that some of the burdens are definitely ones that, in obvious terms, do not apply to those whose trade is not moving beyond Northern Ireland. There is a degree of detail—commodity codes, or Meursing codes, which are very technical but are about the level of milk protein in a good. If you are bringing something from Great Britain to Northern Ireland, is it going to be sold or used in Northern Ireland? Is that a useful legitimate burden for a business to have, to be sourcing the degree of milk protein in its goods? Is that a proportionate thing? As Lord Frost said, it is about looking for pragmatic ways through to reflect the nature of the movement and whether a good is at risk. Those are certainly things that we want to explore with them.

**Fay Jones:** I wish you luck with it. Back to you, Chair.

**Chair:** Thank you, Ms Jones. Ms Hanna?

Q989 **Claire Hanna:** Thank you, Chair and witnesses. I am sure we all agree that the protocol is not perfect, nor widely adored, though I would echo comments from Stephen Farry and others to reflect the fact that the clamour to dump it is not universal either. A lot of people are solutions-focused and want to chart a course through this. I want to look at some of the solutions. Of the 27 or so issues identified for discussion in the Joint and Specialised Committees, how many now have an agreement or a solution, even in principle?

**Lord Frost:** Not many is the short answer, unfortunately. Discussion has taken place on most but, as we said in the statement that we put out after the joint committee, there is quite a small number of areas where we have actually made progress. Unfortunately, the areas where we have made progress are niche ones—important, but still niche. On guide dogs, for example, we are hopeful of a solution, which is important, but we are still left with a problem on broader pet travel. We seem to be moving forward to a solution, we hope, on that and on second-hand car sales. We have proposed solutions on access to databases in Northern Ireland for trade and some very technical stuff such as EORI number allocation—the XI numbers in Northern Ireland. But on the bigger issues—the SPS agreement, the trusted trader scheme, how we change to the UK ETS, pharma, TRQs and so on—we are not making much progress, unfortunately.

Q990 **Claire Hanna:** How many of those require action, development or systems from the UK side to be in place?

**Lord Frost:** For many of them to work properly, they would require the development of systems used by both sides. Ideally, you would want the integration of UK systems in some way with those of the single market. To get the most benefit out of the trusted trader schemes, movement assistance schemes and that things like that, you obviously want to use those things to reduce process, not merely digitise it. We are absolutely up for being collaborative about that. The proposals we have made are intended in that spirit and would work best if done in that way. The problem is that the EU single market external border processes do not



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normally work like that—that is the hump we have to get over to make them really work.

Q991 **Claire Hanna:** But there are systems that were envisaged and are in development on the UK side, which you think would help but are not ready yet—is that what you are saying?

**Lord Frost:** The digital assistance scheme is one where we are trying to digitise the movement to Northern Ireland and beyond out of the UK. We can do some of that ourselves, obviously—that makes life a bit easier—but it works so much better if it is part of a broader trusted trader arrangement that actually reduces process and simplifies it. You can go so far yourself, and we will, but it would be much better if it could be more collaborative.

Q992 **Claire Hanna:** That seems like a fundamental part of the infrastructure for trusted trader. What is the status of the business consultative group that was discussed in February and the joint committee said it would consider? Is there a timeline for establishing that?

**Lord Frost:** It is one of those issues that has come up from time to time in discussions but has not been formalised, probably because we are all consulting business in other ways at the moment, and obviously, Maroš Šefčovič and I have done so jointly, and we have all talked to people separately. There is also the Northern Ireland Brexit business group under Aidan, which feeds in views. I personally think it would be quite good to at least semi-formalise this in the joint committee framework, but we have not got round to it yet.

Q993 **Claire Hanna:** Okay. It is very clear that there are dynamic, adaptive and creative people there who are making this work. I know there is the political aspect, and people have positions that they have to reflect, but in terms of problem solving, they seem to be a really good resource.

**Lord Frost:** I agree.

Q994 **Claire Hanna:** Article 14 of the protocol provides for the committee to receive representations from the North-South Ministerial Council. Have you given consideration to how it could be used to address some of the concerns that have been raised, as a way of having Unionists and nationalists and others working together to seek solutions? It is a way that is solution focused and gets around the fact that a lot of people are quite focused on ideological and identity-based issues. Have you given thought to how that could be practical and help with desectarianising the issue?

**Lord Frost:** I think it could be very useful. It is probably fair to say that the somewhat tense atmosphere since January in the main negotiation in specialised committees has meant that things have tended to focus on making that negotiation work, rather than broadening it out. If we could get into a better atmosphere, you are obviously right that article 14 provides for all these things to happen, and I think it would be very good if some of them did happen, but we just have to get to the sunlit uplands bit, if we ever can, on the broader discussions.



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Just on your point about business, I will just say, because it is important that it is on the record, that I think Northern Ireland businesses have done an amazing job in making this work. We talk to business informally all the time, as well as through the groups. They have done everything they possibly can to make some quite unsatisfactory arrangements, as they are currently being operated, work really well. If they had not done that, we would be in a significantly more difficult position than we are already.

**Q995 Claire Hanna:** I agree, and it is notable that they are not out calling for the protocol to be scrapped. Related to that, this is the region with the lowest productivity in the UK. What efforts have you been able to make to maximise the potential benefits of the protocol? Have you met businesses or representatives to explore possibilities that I presume were in your mind when you negotiated and signed it?

**Lord Frost:** Obviously yes, I have talked to quite a range of businesses. It is absolutely fair to say that some point to the benefits of the kind of access they get to the single market. That was obviously in people's minds when this delicate balance was negotiated. The problem is that the reality is obviously that east-west trade is much more important than north-south trade to the Northern Ireland economy, so if one comes at the cost of the other, we have a problem. That appears to be the situation and is why we keep saying we need to find the right balance. We have not found the right— The balance that was in our mind in 2019 is not there in reality in 2021.

**Q996 Claire Hanna:** Of course. I know you have set up a working group in recent weeks and months to look at the possibilities and benefits of Brexit, and I suppose that the whole Brexit project was about changing the arrangements as they are and looking for new opportunities. Have you tasked officials, or would you consider setting up a group or tasking someone, to explore those benefits in more detail, if Brexit is about going out in the world and finding new things?

**Lord Frost:** It is important to remember that although we focus a lot on the specific arrangements in the protocol, the economy of Northern Ireland is overwhelmingly governed by UK-wide rules. The services trade is not covered by the protocol, which is obviously much bigger than the goods trade. There are whole areas of economic life where rules are set either by the UK Government or through the Northern Ireland Executive. This is probably a sort of philosophical disagreement, but we believe that the form of Brexit where the country has control of its own rules and can develop its own regulatory framework to respond to the future will bring benefits. That will apply in Northern Ireland as in everywhere else.

**Q997 Claire Hanna:** I see the Char looking at his watch so I will not get into philosophy. We are obviously extensively discussing east-west and the undoubted frictions there, but I am sure you are aware that Brexit has created frictions and challenges for north-south in areas such as health and services. Is much thought being given to that in your Department and the joint committee?



**Lord Frost:** We don't want to do anything that increases north-south friction. The commitment on that is absolute. That was one of the underlying purposes here. The idea that we would ever go back to the hard border and infrastructure—obviously we are not going to do that. We believe in free trade and liberal arrangements, and that is what we would like to see.

**Chair:** Lord Frost, may I just say that I hope you recognise how important and appreciated those engagements with you and Mr Šefčovič have made business organisations and others in Northern Ireland feel? I have had really good feedback from that, and hope those can continue as they are seen as incredibly valuable and inclusive. On behalf of our Committee, I thank you for what you have been doing—it has been hugely helpful and welcome.

Q998 **Mary Kelly Foy:** Thank you, Chair. Following on from the last question, could you update the Committee on some specific outstanding areas? You have already mentioned that we have not got far with the VAT margin scheme, but what about the long-term supply of medicines, the Northern Ireland access to tariff-rate quotas on steel products and the movement of livestock within the UK, specifically on tagging, scrapie controls and show licenses? Could you update us with the progress on those?

**Lord Frost:** Absolutely, and I will be brief as I am conscious of time. On medicines, the underlying problem is that we cannot have a situation where UK authorities cannot license medicines for the whole of the UK and, for regulatory reasons outside our control, medicines do not go into the Northern Ireland market. We have put in various solutions to deal with that. We are concerned we are seeing the beginning of withdrawals of products, as the Prime Minister has said. There was the case of a new cancer drug where we had to find a way and exploit the flexibility in the rules for a drug that had not been licensed by the European medicines authority. That is not a sustainable situation, so we put in solutions. We are told that something is coming from the EU, but do not know whether it will solve the problem. We just have to wait and see what they deliver—I hope it is soon, as it is a pressing problem.

TRQs are fiendishly complicated. The core of the problem is that Northern Ireland business does not benefit from either the UK or EU TRQs because of the way the rules intersect. We have found a fix for now through our legislation—the Finance Bill—but we need something more durable. It was clear in the protocol that Northern Ireland should benefit from UK trade arrangements with third countries in the same way as other parts of the UK. We need to find a way of doing that. I am not without hope that it can be done. It is exactly the kind of technical question the Commission is good at solving, if they wish to. However, we have not had a clear response from them on that.

On livestock, it is one of those areas where the atmospherics are good, even if we have not found solutions. It does not make sense to have cattle repeatedly and unreasonably tagged, and if cattle are taken to shows in GB, they then cannot come back into Northern Ireland afterwards. On



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scrapie, the EU's rules are that you have to be part of their scheme if you are a third country to prove you are scrapie free. However, because we were not outside the EU, our farmers have not been part of that scheme, but are still scrapie free. It seems logical to find a more pragmatic way through on that. Again, though they are very technical, I am not without hope that we can reach an agreement with the Commission on those. However, they are not at the core of the problems with the protocol.

**Mary Kelly Foy:** Thank you for that.

**Chair:** Thank you Mary. Gregory Campbell, please.

Q999 **Mr Campbell:** Thank you, Chair. You alluded to Unionist concerns regarding the implementation of the protocol and issues arising there from. You will be aware of the number of thankfully peaceful protests in the past few weeks, attracting hundreds of people, and one last week that attracted several thousands. Obviously, the way the political developments are going at the moment, with Sinn Féin's attitude in the last few days, devolution could well come to a shuddering halt in the next few days, which would only add to the tensions even more. What do you think can be achieved in the next few days or weeks with the EU, to try to de-escalate tension rather than increasing it like the words we heard from the Tánaiste overnight about a united Ireland?

**Lord Frost:** I certainly think everyone has the right to say what they think, obviously, and we respect that, but we would also say that it would be good if people could be conscious of the way their words land at a sensitive moment in Northern Ireland. We try to be very responsible in that, and I would hope that others would be.

If we can re-inject some momentum into this negotiation and show that solutions are possible, I would like to think that that would help, but they have got to be fundamental solutions that change the balance of where things are at the moment. If the EU would make clearer statements to that effect, I would hope that it would help things. The trouble is that ever since they intervened at the end of January with their vaccines proposal, it has made things worse, not better.

The fact that the EU is a party to the protocol is an acceptance that they have a responsibility to support the peace process with us in Northern Ireland. I would like to see some of that in real deeds, in the way they help us work through the protocol, and not just words on the subject. That is the core of the problem: we need real-life solutions that make a difference and deliver the protocol's commitment to minimal change to everyday lives in Northern Ireland, and obviously that is not the situation at the moment.

Q1000 **Mr Campbell:** I have one final question. On the issue of all options being on the table, which you have alluded to, and to which the Prime Minister has alluded to several times, is there an acceptance, both in our own Government and in the EU, that previous talk about a hard border and



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the EU wanting security of the internal market would lead to possible—I don't know what it would mean—checkpoints, or delivery of items on the border that would be checked by some process? Everyone in Northern Ireland now knows—they did not initially—that that would be physically impossible with 300 crossing points. Is there an acceptance that that is the case? Whatever all the other options are, the EU must understand. Do they understand that, whatever they do to protect the single market, it will not be to put checkpoints on the border, because that is physically and politically impossible?

**Lord Frost:** I believe they understand that. I do think that is a fundamental part of their approach, as, obviously, it has been to ours. It is absolutely fundamental. We are trying to make trade flow freely north-south and east-west, not make life more difficult. I do believe that that is the EU's approach on north-south and that border as well. Let us hope we can find more collaborative ways through on this than going to that situation.

Q1001 **Scott Benton:** Good morning, Lord Frost. You are clearly aware of the feelings of grassroots loyalists in relation to the protocol, but do you think the Prime Minister and the Government fully appreciate the scale of unease within the loyalist community at the moment? What are the Government doing to reassure that part of the community, who in some cases feel completely abandoned by the protocol ahead of what could be a very difficult summer season?

**Lord Frost:** I believe we are. We try to stay in touch as closely as we can with all range of opinion in Northern Ireland, of course. The Secretary of State for Northern Ireland is obviously in the lead on that and has the primary responsibility for the politics. But we are well aware of this. It's very clear in the spiralling political developments we have had ever since the end of January.

Although we were heavily criticised for it at the time, I believe that the decision we took on extending the grace periods at the beginning of March was reassuring that we would not simply just watch things develop and do nothing. Although the EU has overreacted, in our view, by launching potential legal proceedings on the subject, we still think it was the right thing to do and defensible and legal. As the PM said, we'll do whatever we have to to make sure we support the peace process and the Belfast/Good Friday agreement.

We keep reminding people that the protocol depends on consent. It is very difficult to operate it if there is not consent and willingness from one segment of Northern Ireland opinion, and the polling I have seen shows there is something close to a 50:50 split about whether the protocol is a good thing or not. That obviously is a situation that is hard to—that doesn't generate stability, which is what we want.

**Chair:** Mr Benton, anything else?

**Scott Benton:** No thank you, Chair. I will come back for my next question, though, if there's time.



**Chair:** There is now; we are going to turn to you now.

Q1002 **Scott Benton:** Thank you, Chair. My understanding is that the construction of border posts has ceased at the moment. Are you able to confirm that that is indeed the case, and if so, is the position of the UK Government one of still instructing the Northern Ireland Executive to continue constructing those border posts without delay?

**Lord Frost:** The situation is that temporary facilities are in place—and they have been approved by the Commission as temporary—at Belfast, Larne, Warrenpoint and Foyle, and I have seen some of these myself. Obviously we have funded going further. Checks and processes are being administered there in practice, contrary to popular belief. Indeed, as we have said, about 20% of all checks and controls in the EU are happening around these ports; and without the grace periods, they would be much higher. The EU law would require much higher levels of checks than those we can conduct within the current facilities, and we have reminded the Northern Ireland Executive that they are responsible for this. But, at the moment, it's the temporary facilities that are operating, and I would say that, even though the EU would like us to be doing more, I don't believe there is a risk to the single market from the way these checks are operating. I have personally, myself, seen goods that were destined, wrongly, for the single market being pulled over and stopped. Checks are happening; processes are happening in a rational way. That is the current situation.

Q1003 **Scott Benton:** A few seconds ago, you stated that EU law would require enhanced facilities, compared with what we have at present, but as far as you are concerned, the facilities that are in place at the moment clearly make sure we can fulfil our obligations. Would that be the case if no further work commences over the next two years? Would the UK position be, "We've done enough. We are fulfilling our obligations. And it's that simple"? Is that the position of the Government at this stage?

**Lord Frost:** It is obviously swept up slightly with where we go in the negotiation more generally, but it does come back to the point that I made right at the start of this hearing that we are all under an obligation to minimise checks and controls at Northern Ireland's ports. That is written into the protocol. If we are confident that we are protecting the single market, supporting the Good Friday agreement and doing all the other things that are in the purpose of the protocol, we regard that as being compliant with article 6.2.

Q1004 **Chair:** Lord Frost, could you say a word or two about IT compatibility and the ability of the UK to garner in, in real time, the trade movement data that the EU require—it is there in the protocol—in order to act as a belt and braces. There has been some delay in the compatibility of IT. Are you able to talk about that?

**Lord Frost:** A little—I am right up against my time now, but I can do another five minutes or so, if that suits the Committee.

**Chair:** That would be more than helpful, thank you.



**Lord Frost:** There are obviously different aspects of the data problem, which sometimes get confused. There is an issue about the compatibility of some of our systems with the EU systems and how we can make them compatible, which is ongoing work. Then there is the other issue, of access by the EU to our systems in Northern Ireland, so they can verify what we are doing. On that, we have just made another proposal to the EU, which we believe deals with that problem—an interim arrangement for the next month or two, and then something more fundamental while we are doing workarounds. So it is not true to say that there is no access to information in practice for Commission officials; I have met some of them, and it is clear that there is. We are trying to do more, because we think that that is reasonable. Wherever things go, the more transparency and availability of information about things, the more reassuring that is, so we have no difficulty with that. It is simply a practical problem of separating out GB and NI data.

**Chair:** Thank you. Mr Goodwill has a quick question about tariff reimbursement.

Q1005 **Mr Goodwill:** Under article 5.6 of the protocol, the UK can allow tariff reimbursements up to €200,000, as defined under the state aid rules. Will that system be in place by the end of the year? Do you feel it is adequate for, say, larger companies, like motor manufacturers, who would certainly use up that quota very quickly?

**Lord Frost:** We are working on that. Obviously, that is only one of the many ways in which companies can declare that they do not need to pay tariffs—the fact that we have a zero-tariff, zero-quota deal is obviously a big part of that. We are reflecting on it. Mark, is there anything more we can say at this point?

**Mark Davies:** No. There is a lot of work under way. The design of a scheme is obviously a complex undertaking, so that work is under way across a number of Departments at the moment. As we have said publicly, we will announce details as soon as those are finalised. We completely understand that the waiver scheme and other schemes might not cover it for all businesses, so this is still a very clear Government commitment, to establish a scheme.

Q1006 **Mr Goodwill:** Do you agree that it should be an easy-to-use scheme? There are certainly GB companies exporting to Europe who have found the hassle too big, and several millions—hundreds of millions, possibly—in tariffs are not being reclaimed, because it is just too hard to do for smaller companies. I saw Lord Frost nodding there.

**Lord Frost:** I 100% agree. One of the general difficulties in this area is that schemes that are designed to make things easier and simpler and reduce costs are still things that business has to engage with and work out how to use. Therefore, the simpler and the lighter touch they are, the better. This is all very complex, but we are doing our best to make it as simple as we can for business.

Q1007 **Mr Goodwill:** Thank you. If it is any consolation, I had to apply for an



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EORI number for my own company. Contrary to the problems in January, it took me 20 minutes and was very straightforward. Some things at least are getting better.

**Chair:** Mr Goodwill is now offering consultancy services to GB plc, Lord Frost. He has skills that are available for deployment. A quick penultimate word from Claire Hanna—it will have to be quick, I am afraid.

Q1008 **Claire Hanna:** Minister, you have just spoken about seeking a delicate balance. How will you know when that is achieved?

**Lord Frost:** We will know it when we see it, I suppose is the honest answer—

**Chair:** When nobody falls off the see-saw.

**Lord Frost:** It is when we are confident that the east-west balance, as an element of the Good Friday agreement, is working as well as the north-south aspect of it. Obviously, there are various ways that can be done. We've got to try to eliminate the chilling effect of companies in Great Britain thinking that they can't be bothered to apply to supply to Northern Ireland. That is at the core of a lot of the problems—not all of the problems, but certainly some of the unease. If we could eliminate that, so much the better.

Q1009 **Chair:** On that point, Minister, do you think BEIS as a Department have done enough of the heavy lifting, explaining to GB businesses what it is they need to do? My hunch is that they have done something, but not as much as one might have hoped.

**Lord Frost:** I am confident BEIS have done a lot. Obviously, trying to reach every company in the country that might be affected and getting them to engage with it is not necessarily straightforward. Having run a trade association myself outside Government, I know that people in Government often underestimate how difficult it can be to interact with Government. They underestimate how many things businesses have got to juggle and deal with. Reaching them, making people pay attention to one thing that's important when they're trying to run a business, obviously is not straightforward, but we are doing everything we can to try to make it happen.

Q1010 **Claire Hanna:** Do you recognise that those most vocally protesting reject the concept of divergence in this regard, or is it your belief that, if you get some of these mitigations, those people will be happy?

**Lord Frost:** I can't speak for everyone. Our wish is to do what we believed we were agreeing to with the protocol, which is that there should be as close as possible to a free flow of trade between GB and NI. That is obviously not the situation at the moment. The frustration is that there are ways around that and ways of solving it, but we don't seem to be able to have that discussion.

Q1011 **Claire Hanna:** But you understand that it can't be exactly the same as it was before Brexit, and you understand that there are people who are



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conceptually unhappy with any divergence? Do you understand that those two things are mutually exclusive?

**Lord Frost:** That's probably too big a question to answer in the time I have left. The PM and I have always been clear, and I said this in my article in the FT, that we accepted—exceptionally—the duty to control movements of some goods within the country to help protect the single market and the peace process. That is self-evidently a super delicate situation, and if it can't be operated in a delicate way, then we have a problem. That's where we are.

**Claire Hanna:** We do have a problem.

Q1012 **Chair:** Lord Frost, can I just say in conclusion, of behalf of colleagues on the Committee, thank you for your time and thank you for taking our questions and for the detailed answers that you have given. We wish you well in negotiations, in that spirit of positive pragmatism.

When we talk to the Northern Ireland Ministers, they of course say that a lot of these details and all of these things are properly dealt with by you and your office, that they don't feel that they can answer, etc. I hear what you said at the top of the meeting with regard to which Committee you technically report into, but I know that you will understand the seriousness, the passion and the interest—perfectly legitimate on all fronts—that this Committee takes, and the unique importance of the Northern Ireland protocol within your brief. Could I urge you, on the record, to reconsider what I interpreted your opening remarks as being, which is that this was a one-off rather than the start of a beautiful relationship? I think we would all like to have a beautiful relationship with you, Minister, rather than merely a one-off encounter. If I could ask you to consider that, and hopefully to do so positively, that would be helpful. I think all the people of Northern Ireland would expect that, and would be disappointed if we, as a Committee, didn't have the opportunity to come to you directly, on the record, to put questions on behalf of the people of Northern Ireland.

Thank you for your attendance this morning. *[Interruption.]* Sorry, did you have a closing remark?

**Lord Frost:** No, I don't. I was simply going to say that, obviously, we take seriously what you say in that regard, Chairman, and give it due note. Thank you; it has been a pleasure to join this hearing and answer questions.

**Chair:** I am grateful to you.