

European Scrutiny Committee

Oral evidence: [UK Exit from the EU](#), HC 1798

Wednesday 6 February 2019

Ordered by the House of Commons to be published on 6 February 2019.

[Watch the meeting](#)

Members present: Sir William Cash (Chair); Geraint Davies; Martyn Day; Richard Drax; Kate Hoey; Kelvin Hopkins; Mr David Jones; Stephen Kinnock; Andrew Lewer; Michael Tomlinson; Dr Philippa Whitford.

Questions 119-241

Witnesses

[I](#): Rt Hon Dominic Raab MP.

[II](#): Suella Braverman MP.

Written evidence from witnesses:

– [Add names of witnesses and hyperlink to submissions]

Examination of witnesses

Witnesses: Rt Hon Dominic Raab MP.

Q119 Chair: Good afternoon, Mr Raab. Welcome to the Committee. I will ask the first question. In your resignation letter of 15 November, which, as it happens, was two days after the Attorney General's letter about the indefinite extension of the backstop, you specifically stated that the proposed deal "is, at its heart, a matter of public trust." Can you please enlarge on that in the context of the draft withdrawal agreement, which you voted against on January 15?

Dominic Raab: Thank you, Chair—it is a pleasure to be back in front of your Committee. There were two specific substantive issues in the letter of resignation that I gave.

The first related to the extent to which the Northern Ireland-specific regulatory approach envisaged would prise Northern Ireland away from Great Britain, and the extent to which I felt that was consistent with paragraph 50 of the joint report—but more generally the political design of that, and the fact that I felt it was deliberate. The second was the lack of an exit mechanism, and the idea that we would be trapped permanently in what I regard as a hybrid customs-union/single-market arrangement.

I suppose that is the rational dissection of the two key problems I have with the withdrawal agreement, but there is a trust issue in relation to, first of all, whether we have delivered faithfully on the referendum, and secondly, the political commitments that all parties—certainly the Labour party and the Conservative party—made to leave both the EU and the single market, and for us, as Conservatives, the customs union. It is about the practical implications of the deal for Northern Ireland, and for the long-term relationship that the UK has with the EU, and the more political, instinctive question of whether we have kept our promises.

Q120 Chair: What impact do you think the Brexit experience from the referendum through to today has had on public confidence in and engagement with parliamentary democracy in the UK, and what do you think are the lessons that can be learned?

Dominic Raab: How long do we have? The reality is that the public is far better informed than most people suggest. I think people knew exactly what they were voting for. That works on both sides of the debate. Also, this was a gut, instinctive vote. We often vote with our heads and our hearts in elections and referenda. I think the public knew what they were doing.

There is a predictable degree of frustration and, I suppose, anxiety about the length of time it has taken to deliver on this. Part of that is just the inherently complicated nature of extricating ourselves from the EU and, secondly, probably the way the Government have conducted it and the underlying fact that it has not been easy with a minority Government.



HOUSE OF COMMONS

There are all sorts of lessons that could be learned in terms of when article 50 should have been triggered. The issue that interests me most is the conduct of negotiations, and how we can learn on the UK side from the interaction between the crucial official level of advice that we get and the political direction and leadership required.

Chair: Thank you very much.

Q121 **Mr David Jones:** What were the respective roles of DExEU and No. 10 in relation to setting the direction and conduct of the negotiations? It has been suggested that there was some tension there.

Dominic Raab: You will know, Mr Jones, that there was some inherent tension. I come at this probably from a slightly different point of view. I started my career as a business lawyer in the City. I had six years at the Foreign Office as a Foreign Office lawyer. I served under the Blair years, and I remember in particular as a Foreign Office legal adviser all the tensions over the Iraq war. My boss at the time, Ms Wilmshurst, resigned, so I have seen this both ways, and I have nothing but respect for the huge and vital role that the civil service does.

Equally, both then and now, I think the principle of ministerial accountability is crucial: that is, Ministers are not just signing off or ticking a box to say yes or no, but are in meaningful control of the decisions that are made, in this case in the negotiations, in order that they can go to the Dispatch Box of the House of Commons and the wider public and defend those decisions.

Some of that has been frayed by the extent of the licence given to the technical teams in Brussels—that is without any personal disparagement to anyone involved—and it is quite an important constitutional principle. A lot of practical things follow from that in terms of the effective conduct of negotiations.

Q122 **Mr David Jones:** I do not know whether you have seen or read the evidence that Steve Baker gave to this Committee last week, but he said to us that “we ended up with parallel process of policy development. Within the Department, Ministers led by David Davis were developing one policy and the Cabinet Office Europe unit was clearly developing another... It seems that something similar happened to Dominic Raab as his successor.” Is that correct?

Dominic Raab: It is not quite right, although I take Steve at face value in terms of what it was like during his and David Davis’s tenure. When I took the role, given the challenges there had been, I sought a number of reassurances. The first was that I would be deputising for the Prime Minister in the negotiations, which meant the day-to-day or week-by-week conduct of negotiations with Michel Barnier. That was important because, although the Prime Minister quite rightly leads the negotiations, I do not believe any Prime Minister of any political hue, however brilliant they might be, could meaningfully, substantively exercise line-by-line ministerial oversight in relation to the huge level of technical detail in both



HOUSE OF COMMONS

the withdrawal agreement and the political declaration. That was one thing.

The second assurance was to ensure that on the question of dual tracks, there was nothing that went to the Prime Minister that did not come either in a “one-two submission”, as it is known in the civil service—to me and then to the Prime Minister—or to me first so that I could agree it and then submit it directly up.

The point was that, however the civil service teams were configured, the Prime Minister would have the benefit at the right moment of both the political and ministerial advice and the technical civil service advice. Then at least the Prime Minister, whatever her view might be, would take a choice based on having full access to both sets of advice. I think we began that way, but it frayed from around the end of July.

Q123 Mr David Jones: Do you know why that was?

Dominic Raab: I suspect, but I do not know, and therefore I am slightly reticent about imputing intention. I suspect I took what was regarded as an overly robust line on a number of key issues, in particular including the need for an exit mechanism from the backstop. As I think I have said previously before Select Committees, I made very clear to Michel Barnier in July that we would need an exit mechanism, whether it was a sunset, a time limit or a mechanism we could control. Mr Barnier made it very clear that he recognised that it would need to be a short period of backstop, and at that point there was some pushback.

Q124 Mr David Jones: Is it the case, as Steve Baker suggests, that there was separate policy development going on in your office and in the Cabinet Office Europe unit, and that you were not aware of that other process going on?

Dominic Raab: No, it was not quite like that in terms of a parallel process of policy development, because when I took the role, in fairness, we shifted some of the negotiating team over to the Cabinet Office Europe unit. Of course, much was made at the time of the idea that that was humiliating for the Secretary of State, but in fact I readily agreed it, because what I did not want was dual track.

The quid pro quo was the process of ministerial accountability, which would ensure that I was inserted properly, in accordance with that principle, between civil servants and the Prime Minister. That was basically, from my point of view, how a coherent and effective process would work.

As often happens, the challenge is when the senior civil servant is both the personal adviser to the Prime Minister and leading a civil service team. This sounds a very boring and dry thing, but that creates problems, because you can then circumvent the ministerial line of accountability, which is not just a boring abstract principle—it is vital to the effective conduct of negotiations.

Q125 **Mr David Jones:** So is it the case that you were not always kept sighted of the development that was going on in the Cabinet Office Europe Unit?

Dominic Raab: I don't know what I don't know.

Q126 **Mr David Jones:** But you might have found something out later.

Dominic Raab: Well, that certainly happened.

Mr David Jones: That did happen.

Chair: I know what I do know, and that is that when the change took place, after David Davis resigned, and even more poignantly when Steve Barclay took over, it became increasingly apparent that the real decision-making centre of gravity was in No. 10. That is reflected, is it not, by the fact that the White Paper produced after Chequers was not really anything to do with decisions that had been taken in the normal fashion. Ministerial responsibility was bypassed. As I said to Olly Robbins when he appeared in front of this Committee, it seems to me that the Cabinet had been bounced.

I take what you say as you put it, but I do think there have been serious problems. We will come on to the ministerial code and the "Cabinet Manual" in relation to the Law Officer's opinion a bit later.

Q127 **Michael Tomlinson:** Out of an abundance of caution, I should declare that I was a PPS in the Department for 48 hours prior to Mr Raab's resigning, but you will be pleased to know that I am not asking about that.

Dominic Raab: He was brilliant!

Michael Tomlinson: Too brief to show brilliance.

Mr Raab, you will have seen Mr David Davis's evidence that he believed that too many concessions had been made—his phrase was "excessive concessions"—and errors had been made in the negotiations in the early days by the UK Government. I am going to ask you about that, combined with a question specifically about strategic errors. He mentioned sequencing; I am sure you will have seen that in the evidence that he gave. Do you agree with that view? What is your assessment of his evidence?

Dominic Raab: I have always been quite careful about this, because I think it is helpful and healthy to look forward rather than back and because I don't want to criticise anything that was done previously—it is never a particularly constructive thing to do—but I certainly agree with David's assessment that the process and some of the compromises on process were mistaken. The sequencing was one thing. I think we could see very clearly in the joint report in December that concessions were made there. Some of the process concessions can then dictate the substantive outcomes of the negotiation.



HOUSE OF COMMONS

In my view, healthy negotiation is all about exercising smart pressure through providing positive proposals that create a win-win but also deliver on the UK national interest, and doing that with sufficient rapidity that the other side is under pressure, but positive and smart pressure, to come to a mutually beneficial solution. Partly because of the sequencing, we lost that.

I also think about simple things, like why did we concede at the outset that all the negotiations would take place in Brussels? One of the EU's big things was that we were going to be treated like a third party. I think for that reason alone we should have made sure there was a more equitable balance of the process. Little things like that can matter. I think we should probably have had some of the fights early on. I say that with great respect for the Ministers who served before I joined the Department, because I know they argued for that very strenuously.

Q128 Michael Tomlinson: I agree that it is preferable to look forwards rather than backwards, but of course this inquiry is looking backwards, specifically in relation to your role. Do you think there is anything that you could have done differently, in relation to the negotiations, given what you said about the different roles and responsibilities and who was precisely heading up what at the time?

Dominic Raab: I took a bit of persuading to take the role, because of what I understood to be the tensions. I think it was right to ask for the assurances that I specified in my earlier answer; I guess they would be exactly the same ones that I would ask for again in the same position. If they had been followed through, I think we would have had a more effective conduct for the negotiations and I think that eventually the minutes will show that.

Q129 Richard Drax: Mr Raab, I am fascinated to listen to your advice. I have huge respect for you and your position, and the position you took when you left. You were incredibly polite and diplomatic. To me, it looked like a complete shambles, and Mr Baker was clear in his evidence that there was an effort made by others in the Cabinet, of a remain orientation, to do all they could to keep us as closely linked to the EU as possible.

Did you find that, and was that a major factor in making your job extremely difficult? You were trying to do what the British people had instructed us to do and were offering positive solutions to the problems, as you just said, which of course were impossible to offer because you were being stabbed in the back.

Dominic Raab: The first thing to say is that the Cabinet as a whole benefited from having a range of advice from different points on the spectrum. My experience of Cabinet discussions on Brexit matters is that they did not divide into binary positions—"I voted leave," "I voted remain"; it was much more nuanced than that. Actually, I found that Cabinet was the right place to thrash out the issues. This isn't an old-fashioned attachment to Cabinet Government. I think it is an effective way of thrashing out the issues, getting the benefit of different points of view and then coming to a conclusion, which was delivered.



HOUSE OF COMMONS

The problem would be the extent of the licence that No. 10 gave to the civil servant team and the extent to which it was exercised without the meaningful ministerial accountability that a Secretary of State assigned to DExEU should have been exercising. I don't know the extent to which other Cabinet Ministers were involved in discussions to which I was not privy. I certainly have my suspicions, but I don't know, so I will only talk to what I know.

Q130 Kate Hoey: Mr Raab, you obviously used the backstop in your letter as a very important reason why you resigned. There wasn't any time limit on it and no way that the UK could withdraw after a certain period of time—three to six months. Looking back at it, how much were you involved in any discussions about the Northern Ireland-Ireland border, or were you not directly involved because it had all got to that stage before you came in? When did you suddenly pick up and think, "Hang on. This is not right"?

Dominic Raab: When I joined, we were still having the debate between whether or not there would be a UK-wide approach for customs purposes, and that battle was won. I always thought that it would be won, but the price for it would be two things: first, the extent and scale of Northern Ireland-specific regulation without representation; and, secondly, we would be expected to see the argument about finality to the backstop, whether it was a sunset or an exit mechanism that we could control. I raised that in the very first meeting that I had with Michel Barnier. In fairness, we had lots of detailed discussions internally within the Government about it.

You are right that I arrived at a certain point in time when a lot of work had been done. I certainly didn't feel that it was beyond repair. In fact, the biggest frustration was the failure to take the opportunity in July, when Michel Barnier had accepted to me that he recognised that the backstop would need to be short.

The truth is that there are all sorts of elaborate arrangements in there for regulation and all the rest of it, but if you are only talking about a short space of time—I will let the other interested parties, including the DUP, speak from themselves—it is less of a practical problem. What mattered was whether it was going to be an indefinite period or whether it would last for more than six or nine months.

Q131 Kate Hoey: You raised this yourself, didn't you, with Simon Coveney, the Irish Deputy Prime Minister?

Dominic Raab: Yes. I think it was on 30 October. It was in a private meeting that was then made public by the Irish side.

Q132 Kate Hoey: I know that there was some controversy over that.

Dominic Raab: There is no controversy about this. There was on the Irish side, because they feel very much locked down. It is very clear what happened.



HOUSE OF COMMONS

I was asked to have a private meeting with Mr Coveney, whom I hold in very high regard. I explained to him some of the options for how this can be dealt with in a win-win way, because I realised the political constraints on him, and a totally skewed version of that was misreported, picked up by the Taoiseach and presented as the offer that was made. Frankly, either he did not check with Simon Coveney or he knew it was not a fair representation of the discussion I had. Either way, it was not very helpful to the Irish or the UK side.

Q133 Kate Hoey: Your reputation was unsullied after the event, but perhaps it shows more about the relationship between the Taoiseach and the Deputy Taoiseach. At the same time, is it true that the Minister for the Cabinet Office, David Lidington, was also speaking to the Irish Government and saying something slightly different about the backstop?

Dominic Raab: I spoke to Mr Coveney on 30 October, more or less. I know that the Foreign Secretary had breakfast with him the next day, and the line that we both took was as near to identical as Cabinet Ministers can be expected to take. I am not confident that the same message was imparted by the CDL when he saw him a few days later.

Q134 Kate Hoey: That must have worried you.

Dominic Raab: We come back to the process point. I was not going out on a limb—I had spoken to the Prime Minister and No. 10; I had explained and it had been agreed that we needed to go into bat on this issue. We were a long way on from July at that point; it was October so we had missed the October Council. It was an opportunity to get resolved the single most important roadblock to getting a deal.

I would have thought it was only correct that a line agreed would be consistently adhered to by the Cabinet. I certainly found the Foreign Secretary to be absolutely meticulous in doing that.

Q135 Kate Hoey: Between these four walls—I am aware that the Brady amendment was passed in Parliament and the EU have said they will not reopen the withdrawal agreement—do you feel that there is still a chance that we will get that changed?

Dominic Raab: I think it is difficult to judge. Let me put it this way: even if it is 50:50 or slightly less than that, it is worth a go. We should test the sincerity, good faith and pragmatism of the EU side. I have always argued in front of this Committee and elsewhere that I would favour a deal. I still would; I think we should press to the 11th hour and beyond to get one. Equally, I do not think we should hand the EU a veto over our departing the EU or allow them to dictate or craft the terms on which we do it.

Q136 Kate Hoey: You mentioned a WTO or no-deal situation. Looking back, do you remember any discussion about how we might have to consider leaving with no deal—or did it not get to the EU until more recently that this might be something we would consider? My idea of a negotiation is that you go in and say, “We’d love to work with you and we’d love a deal, but we can leave without one.”



HOUSE OF COMMONS

Dominic Raab: We had always argued, domestically and publicly, that no deal was better than a bad deal. Again, I had made it very clear in Brussels and had written to Martin Selmayr at the end of August, I think, asking that he lift the block that the Commission had on discussions between both the EU and the UK, and member states and the UK. In fairness, that block was inconsistently applied, because discussions were already going on. It struck me that a sensible contingency plan, away from the public eye and separated from the negotiation, was to have those discussions, so we could mitigate the risks for both sides—European jobs and livelihoods for UK jobs and livelihoods.

He replied in October, “No—let’s just focus on the withdrawal agreement.” That is a matter of public record. I thought that was disappointing. I talked to Michel Barnier about that. I said, “I don’t want this to eclipse things.” I always gave Michel advance warning when we did our technical notices on no-deal planning, because I did not want him to be flustered by that or to think that we were trying to play hardball or doing anything other than a responsible job of contingency planning.

At the same time, I thought that most of the residual risks that we cannot control of departure without a deal are either accentuated or magnified by not being able to have a sensible conversation with the EU, if they just say, “We are not going to play ball with you at all; we are not going to engage in sensible co-operation.” It seemed to me worth at least trying to remove that block, for both sides’ interests. It was very clear that Martin Selmayr did not wish to do that. I can only assume—I don’t know—that that was a negotiating pressure tactic.

Q137 **Kate Hoey:** Finally, do you share my optimism, and the optimism of many, many people who have looked into it in detail, that there is no need for a backstop—that there are solutions if there is good will?

Dominic Raab: As I said to the Northern Ireland Affairs Committee, I certainly do not think that this backstop is fit for purpose. It is designed as a high-level legislative alignment method of dealing with the undoubted issue on the border, whereas there are all sorts of technical operational ways of dealing with that problem.

It feels to me—I think it is pretty transparent, actually—that this was part of a political tactic to peg the United Kingdom into being bound by a whole swathe of EU rules, well beyond the customs union, into single market territory. There is no doubt in my mind that that was the aim. I do think there is a need for a backstop, but I guess the way I would put it is that there is a big difference between the one proposed, which is legislative high alignment, and an operational technical backstop, which I think none of us would do anything other than agree to.

Q138 **Chair:** In the context of what you have just said, let us bear in mind the conclusion to the Attorney General’s advice, which, as I pointed out, was produced on 13 November, just two days before you resigned. You will note that he says that ultimately, after you weigh the risk “against the political and economic imperative on both sides to reach an agreement,”



HOUSE OF COMMONS

this is “a political decision for the Government.”

We anticipate, from what we can gather, that he will give some further advice on the question of the backstop and the indefinite time that it may extend to. If the decision, as you just implied and as he said, is primarily a political one, would it not be really quite absurd for us to be in a position where we were faced with wording that gave an impression that was not justified by the substance?

In other words, are we actually going to leave or are we not? Are we actually going to have effective termination under the backstop or not? I am reminded of Alice in Wonderland: “Words mean what you choose them to mean. The question is who is to be master, that is all.” Would you like to comment on that? Not just on Alice in Wonderland.

Dominic Raab: I might swerve the Alice in Wonderland metaphor, though I understand exactly the point. There are two points. First, I thought it was extraordinary that the legal advice stated that GB was going to be treated as a third country from Northern Ireland for regulatory purposes. From memory, it is paragraph 8. That was one of the most striking things, which I do not think has been picked up on. It is an extraordinary thing. People have questioned whether it was consistent with the Belfast agreement and the principle of consent. I think there is a huge question mark about whether it was consistent with paragraph 50 of the joint report. That is, I suppose, at a constitutional level.

Q139 **Chair:** You are referring, of course, to paragraph 8 of his advice.

Dominic Raab: Yes—sorry. The question whether the Government can come back with a change without opening up the withdrawal agreement is really not a complicated one as a matter of international law. Every undergraduate textbook will point this out. If you want to have a statement of interpretive declaration, if you like, it can be legally binding or it can be hortatory—a political declaration. It is all in the language.

You will recall that we had a similar debate when David Cameron came back with his deal from the EU that preceded the referendum. A lot of the language was hortatory. I think we will have exactly the same again. I say “I think”; I am guessing that if we go down that avenue, we will have some sort of interpretation of the existing language—tempering and good faith—in relation to the existing withdrawal agreement, and the question will be whether it changes the substance.

As a matter of public international law, it is very difficult for an interpretive declaration, unless it uses very strong, legally binding, mandatory language, to change the terms of the withdrawal agreement. Whether we have a protocol to the protocol, whether we have some form of—in my experience, the term “codicil” is never used in relation to treaty making. It is a trust law mechanism.

Q140 **Chair:** It is usually effective only on death.

Dominic Raab: If you read Ian Brownlie, or any general textbook on public international law or treaty making, it is not something that is



HOUSE OF COMMONS

generally used. This may be a rather technical word, but it is really rather meaningless. The question is: will the language legally amend, and be intended to legally amend, what is in the withdrawal agreement? If not, it is useless.

Q141 **Chair:** One last point—just to get this on the record, for the purposes of this session. Is it not also true that references in the Attorney General's advice to an international agreement are not the correct construction? Although he may anticipate that it would become an international agreement, the one certain thing at the moment is that the withdrawal agreement has not been signed, or even initialled, and could therefore at the moment be said to be no more than a piece of paper.

Dominic Raab: Normally, as a matter of treaty law, under the general customary principles of public international law, and also under the Vienna convention, those who sign a treaty should then proceed, in good faith, to ratify it. I think that this arrangement is rather different. In any event, the point you make must be right.

Q142 **Chair:** The very last point I want to make is on the Comprehensive Economic and Trade Agreement-type joint interpretative instrument. In fact, it is rather apples and pears, because CETA, the Canadian arrangement, was very much to do with trading and things of that kind, whereas here we are dealing with deep political and constitutional issues about leaving and not leaving and about the constitutional nature of Northern Ireland and so forth.

When dealing with an attempt to get wording that might have the effect of massaging the problem and avoiding the substance of the issue, as you have indicated, making a comparison with the Canadian experience is not very sensible. Would you tend to agree with that?

Dominic Raab: Yes. All these agreements are dependent on their terms, but the basic principles and pillars of international law are relatively straightforward: you have to go back and change the legal language in the text. That can be done by some sort of appendage, which you would normally call a protocol, by an interpretive declaration or by an exchange of letters. Exchanges of letters can be political and/or legally binding, but I think you have to be very careful on whether that would be consistent with the EU's internal constitutional requirements.

Q143 **Mr David Jones:** On that point, is it your understanding that a legally binding interpretive document would have to be agreed by the EU27 in Council?

Dominic Raab: It seems to me very difficult to see how an agreement, such as the withdrawal agreement and the protocol, that has been agreed through one process could be amended by a shortcut process.

Q144 **Mr David Jones:** On that basis, it is really no more difficult to reopen and reword the withdrawal agreement to that extent than it is to get the agreement of the entire EU27 on an interpretive document.



HOUSE OF COMMONS

Dominic Raab: On the EU side, it is fair to say that we cannot have anything signed off without a further European Council, in which case it seems to me that the proper thing to do is to go through the correct constitutional requirements.

Q145 **Geraint Davies:** Have you received any independent legal and other professional advice, other than from the Law Officers, that we either have to be in a joint customs union with single market alignment, to avoid a hard border—as would be the case with a hard Brexit or no deal—or that, if we have a deal with free access, we will not be able to control immigration, so that either way there is a fracture in the Brexit argument?

Dominic Raab: No, I have never received that advice.

Q146 **Geraint Davies:** How do you respond to the idea that, if we are not in a customs union and do not have single market alignment, we need to have a hard border? Secondly, how do you respond to the idea—

Dominic Raab: In Northern Ireland?

Q147 **Geraint Davies:** In Northern Ireland. How would you respond to the second argument that, if we have an open border, we cannot control immigration, or goods going in or out?

Dominic Raab: Well, we had the common travel area, including Northern Ireland and the Republic, since well before—

Geraint Davies: But that is because we are in the EU.

Dominic Raab: No, it is from before our membership of the EU.

Chair: It was 1982, I think you will find.

Dominic Raab: So I think it is possible. I think the answer lies in practical and technical arrangements. However, no one is suggesting that the border would not be enforced for goods or animal checks. It is a question of whether it would be enforced at the border. I take the advice of Jon Thompson, head of HMRC, on that point.

You have touched on one point, Mr Davies, which is very interesting. We talk here about models such as the customs union, Norway, the single market. The EU—I am only talking about my experience—does not divvy up in the same way. Therefore, whenever I have talked to Michel Barnier or the technical teams in Brussels about the customs union option, it has always been merged with the single market option.

By that I mean that if we had what I think some people in this country understandably think would be the optimum of the customs union arrangement, without free movement, the EU would regard the four freedoms as indivisible. Therefore, one of the reasons why we should be careful about the backstop, as currently configured with no exit mechanism, is that the second half of the negotiations will not just be the EU trying to patch up the bits of the single market that are not covered by

our pitted hybrid version of the customs union and the single market: I think they will come directly for free movement.

- Q148 **Geraint Davies:** If Northern Ireland is not in the backstop—is not in the customs union and single market alignment—and there is an open border, what is to stop products like hormone-impregnated beef coming into Britain and crossing the Northern Ireland border into the EU? Does the EU not have to have a hard border to stop us exporting all sorts of stuff that we would be required to after Brexit?

Dominic Raab: That is an analogue answer to a digital problem in a digital age. If you look at most global practice, rather than solely EU practice, given the flow and scale of trade, you would have intelligence-led checks. You do not need those checks to be at the border. There is quite a lot of scope, with the tagging of cargo and freight, to make sure that the integrity of assignments has been checked at the point of departure and that there has been no tampering at the point of arrival. That does not need to be done at the border.

In lots of these areas, there is no question but that you need checks, but I come back to the point that you do not need them at the border. To take a concrete example, if you go to the Port of Larne in Northern Ireland, which I have been to, already in relation to animal checks, something like 10% of the animals that come through the Port of Larne are taken off for a proper check, so it is intelligence-based. It works very well within the rules and very effectively in terms of practice.

- Q149 **Geraint Davies:** So if a tariff is imposed by the EU on the border of its customs union on a product that arrives in Britain without a tariff, for argument's sake, what is to stop people bringing it into the EU via Northern Ireland, if there is an open border?

Dominic Raab: There are plenty of other global examples of what I would describe as reasonably porous borders for trade flows where there is a degree of intelligence-led policing, but they do not have the kinds of problem at scale that you have described. It depends what you are talking about.

The vast majority of the trade flow between Northern Ireland and the Republic—I say the vast majority; a big chunk of it—are small businesses that are very well known with very predictable trade going up and down both ways. I do not think you would see over time that it would be possible for them to continue doing that in a way that evaded any of the rules that you have described. I think it would be fairly straightforward to manage that, and they do in other borders around the world.

- Q150 **Dr Whitford:** Following up on that, obviously the idea of checking at the company that is exporting and then checking at the receiving company can be done, but would that not end up with us having to employ an awful lot more inspectors and customs staff than when they were all on one site? They could be anywhere in the Republic, the North of Ireland or the UK, so you would end up with a less visible cost if you were going to have customs inspectors roaming around the UK.



HOUSE OF COMMONS

Dominic Raab: It can be digitised—in fact, I have a company in my constituency that works on the tagging that can be done, so that the integrity of the consignment as it leaves as compared with when it arrives can be checked digitally. I am sure there would be a requirement to have personal checks done at warehouses or other different distribution points, but you would have a digital system with intelligence-led manual checks as and when, which is perfectly practical.

Again, there are other people with greater knowledge on global trade practice, but there are plenty of other precedents where this works in a fairly straightforward way.

Q151 **Dr Whitford:** But you are just saying “checked”. I don’t mean “checked” by the company themselves; I mean “checked” by an independent person, which is what would be happening at the border.

Dominic Raab: No, but it wouldn’t be. The vast majority of consignments going through any international border, with the kind of scale of trade flows that I think we are envisaging—they won’t be checking every consignment. They would have an intelligence-led approach and, you know, a fraction of them are checked.

Q152 **Dr Whitford:** I totally accept that. It’s just that if you are doing it, even if you are only doing it in 5% of cases, it is still vastly cheaper to be doing that in one place than to be doing it right across the United Kingdom and randomly visiting companies across the Republic and—

Dominic Raab: I am not sure you would need to do it in a random way. You could have distribution points; they just wouldn’t need to be at the border. They seem to do rather well elsewhere—if you look at the Swiss border, or at the challenges in North America, or you look elsewhere around the world.

Again, I think that technology is our friend in relation to a lot of this. I take your point—you need to have a careful cost-benefit analysis of this, but I think there will be fairly fine margins. The point is you don’t need any infrastructure at the border to make this work.

Q153 **Dr Whitford:** Although obviously North America and Switzerland have significant infrastructure at their border.

Dominic Raab: But there are very few checks for the vast majority of consignments, which comes back to the relative cost burden. I think you are right to raise this question about the relative cost burden, as to where it is, and I don’t think the geography of where those checks takes place is a major saving. But I’d have to look at the cost-benefit analysis of it.

Q154 **Dr Whitford:** Considering that obviously the Irish backstop is where all the pressure and disagreement is—particularly on the Government Benches: people who support Brexit but are happy with a backstop, or not happy with a backstop—may I ask at what point you were made aware that this was being included in the draft withdrawal agreement? And where did it come from? Was it a suggestion of the UK Government from No.10, or did it come from the EU?



HOUSE OF COMMONS

Dominic Raab: It was obvious straight away that the backstop issue was in play. Of course, we always felt on the UK side that the Chequers proposals were designed to resolve this issue in relation to the future relationship, through the alignment with the common rulebook for goods and also with the facilitated customs arrangement. So the UK attempt was to say, "This is why we need to get on to talking about the future relationship". Obviously, by the time I had arrived, that was very much in play.

In relation to the backstop, the question of whether we needed a UK-specific or a Northern Ireland-specific backstop had been going to and from, I think for weeks before I had arrived. Indeed, if you look back to the December joint report, that was really at the crux of that. So it was very obvious that this was an issue.

I have talked to David Davis since and I have seen what he said about this—that the necessity of a backstop in terms of a legislative high alignment backstop, and I made the distinction earlier, as opposed to an operational backstop that gave reassurances of no return to a hard border. That didn't come from me; I'm not aware it came from the UK side, certainly not with my knowledge. And I'm confident David Davis says the same.

Q155 **Dr Whitford:** So was it there when you came into post, or did it come in after?

Dominic Raab: There was already shuffling of texts to and from, in relation to this issue of whether the customs arrangement should be Northern Ireland-specific or UK-wide. On our side, we were very keen that it was UK-wide, in order to protect the economic integrity of the United Kingdom as a whole.

Q156 **Dr Whitford:** And obviously you feel that there are both technical and digital solutions. The Irish backstop is only meant to come in if a solution isn't found. If you have such confidence in the alternative arrangements, do you not think that you can therefore support the backstop because you believe it will never be needed?

Dominic Raab: There is definitely going to be a backstop used if we continue with the kind of arrangements—it is very obvious, because by the end of the implementation period there won't be the future relationship ratified as a treaty. I have never heard anyone give practical advice that thinks—we might be able to conclude the text of it, but it wouldn't be ratified by then, which means that we will obviously have a backstop.

That is why the exit mechanism is so important. My view, for what it is worth, is that it has been configured that way to put pressure on us in the negotiations. So, no, I wouldn't take what I felt was—I'm not using the language—a "hit and hope" approach, and think, "Oh well, we'll never have to use it." There is no doubt in my mind that we will not wrap up, in terms of entering into force, the future relationship as a treaty before the end of the implementation period. I have never had any advice that has

suggested that we could do that, if only because of the ratification procedural requirements on the EU side.

Q157 Dr Whitford: But obviously it is that gap that the backstop is meant to cover. Therefore, do you really think that the technical and digital solutions would be in place to avoid a backstop, if you don't even think that the trade agreement will be there to avoid a backstop? Do you understand why people are afraid of having a gap between actually getting to a trade agreement and having no cover for the Irish border?

Dominic Raab: I totally understand the concern about a gap, but equally I am confident that within the 18-month, or whatever, implementation period, with not just technological solutions but goodwill from Dublin, Brussels and London, we would work out a way technically of avoiding any extra infrastructure at the border. I am confident that could be done.

For the record, my personal view—and this was the proposal I put to Mr Coveney: it is not rocket science—is that we should have a review mechanism, which would begin after three months, four months or six months, and at the end of the period, whether it was a month, or whatever, it would only continue with joint agreement. That would give the UK a sense that we wouldn't be perpetually in it, but that we would only exercise, unilaterally, the ability to pull out of it, once we hit the condition for the exercise of that exit. We would be providing reassurances on all of the operational technical elements that I have described.

That has the advantage of not having a deadline, which the EU has been very resistant to. It would tell the United Kingdom side that we would not be trapped with an EU veto over the future relationship and stuck in indefinite limbo, but it would give Dublin the assurances—and they could be legally binding assurances—that we would work with them and not exercise the withdrawal right that we have at the end of the new mechanism until we had put in place the technical proposals.

Q158 Dr Whitford: Though only being able to continue it with agreement implies that if the UK didn't agree at the end of a review period they could walk away. While the solution that you are proposing does depend on digital and technological, it has to be said that public development of digital solutions to big problems has not always been terribly quick.

Dominic Raab: You are absolutely right about that, Dr Whitford. I think the answer would have to be that we would exercise the unilateral right, but we would have to do it based on the assurances that we have given, and at some point—I can't remember who asked it—this becomes an exercise in trust and good will.

But at least if you have the clear track towards the exit—the clear means of providing the assurances—and you depoliticise it in that way, and it genuinely becomes a question of technical, practical and operational good will, I think over the course of the implementation period we have enough time working with Dublin to put that in place. It would almost take the heat out of this issue.



HOUSE OF COMMONS

The truth is, I think, that the backstop does not get passed in the House of Commons without a means by which we can exit it. I know of no democratic country in history that has ever signed up to a regime that abdicates so much democratic control to an international organisation without representation, without the means of coming out of it.

Q159 Dr Whitford: And you do not see the backstop as the assurance that you want to give. So you don't want the backstop; yet you feel there would need to be an assurance that the UK would not unilaterally use the review process to leave.

Dominic Raab: No, I don't think that is quite accurate. I am all for a backstop. I want it to be an operational backstop, not a legislative high-alignment backstop, because one solves the problem and the other one is trying to hook us into abiding by a whole bunch of rules for extraneous political reasons. That is, crudely, what I think is going on.

Q160 Chair: Just to nail this question of where it came from, the question of the nature of the backstop, as it now is, is really something I have heard repeatedly from radio, television and the rest, as being a proposal that came from the United Kingdom Government. Now you have just said—I think you have said—that that is not the case, but I am hearing over and over again from the Brussels end of things, "This was all a proposal put forward by the UK Government." When we had Olly Robbins here in front of the Committee, I ventured to suggest that it was a very stupid idea. If it came from the Government, that is one thing, but did it come from Brussels? Can you throw any more precise light on this?

Dominic Raab: I always, if I may say so, thought this was a slight distraction. The idea came from the joint committee report in December. The paragraphs in there were then the building blocks on which the concrete proposals for the backstop worked.

On the UK's side—I am confident that this was David Davis's view, and it was certainly always my view—in terms of where the initial idea came from, we would prefer an operational rather than legislative high-alignment backstop. Then, as the ideas were batted to and fro, it is true to say that the UK went back and said, "Okay, this is what we are insisting on. We would consider a UK-wide customs approach—legislative alignment."

Then there was the separate question about what you do with other Northern Ireland-specific regulation. At that point, different proposals were batted to and fro, and we go to where we got to. The original insistence on a legislative alignment backstop clearly came from the EU.

Chair: Thank you.

Q161 Stephen Kinnock: Good afternoon, Mr Raab. Do you see the Malthouse compromise as a credible alternative solution?

Dominic Raab: Yes.

Q162 Stephen Kinnock: I was in Brussels with the Exiting the European Union



HOUSE OF COMMONS

Committee on Monday. We met with Mr Selmayr and Mr Verhofstadt. They made it absolutely crystal clear that the negotiations on the withdrawal agreement finished on 25 November. It is a done deal. It is closed. It is not going to be reopened. They see it as Pandora's box, which, as soon as they reopen it for one issue, will lead to a whole range of other issues being raised by other member states. In light of what they have said, do you still see the Malthouse compromise as a credible proposal?

Dominic Raab: I think it is a credible proposal in the sense that it provides answers to the problems that we have. That does not mean that it will be accepted on the EU side. You will forgive me if I do not take at face value your record of what has been passed to you by our EU interlocutors, because my previous experience was that you put to me that Michel Barnier had said that the Chequers proposals were dead in the water. It subsequently became evident that he had not said that.

Stephen Kinnock: We can certainly have a discussion about that. I paraphrased what he said in the meeting, which was then absolutely confirmed.

Dominic Raab: It is very clear from him and from the transcript that you put it to him that the proposals were dead in the water and he said that that was not correct—in fact, he went on to say some rather positive things about it. All I am saying is: forgive me if I treat rather lightly your first-hand record back to me of what EU interlocutors have said to you, given my previous experience before you in Committee.

Stephen Kinnock: Sure, I understand what you are saying, but in fact my interpretation of what happened in that meeting with Mr Barnier was entirely correct, because the proposals that were on the table—

Dominic Raab: Mr Kinnock, it was roundly rubbished and you were actually engaged in political posturing. I am happy to take any further questions you have.

Q163 **Stephen Kinnock:** Thanks very much; I am certainly happy to take a lecture from you on political posturing. The comments that Mr Selmayr and Mr Verhofstadt gave us are both on and off the record—it could not be clearer.

Just to get into this concept of what is a credible proposal and what is not, how can it be that the Malthouse proposal is credible, if it is not considered to be credible by the European Union?

Dominic Raab: With the greatest, again, respect, the negotiations will be conducted not through Select Committees—either this one or the Exiting the European Union Committee—but between principals. At every stage of the negotiations we have had some of the—what shall I call them?—more intransigent figures in Brussels give fairly tough lines, but that is part and parcel of negotiation, as you well know.



HOUSE OF COMMONS

The reality is, in my view, that the EU has a choice to make. One thing the House of Commons has done, quite rightly, is give a very clear message that we need some legally binding changes to the withdrawal agreement, particularly in relation to the backstop. I think the Malthouse proposals provide a sensible template for that. They are fairly contained and focused. It is not a case of re-writing everything. With such changes, I think this deal will pass in the House of Commons, but without them, it won't. Therefore it is decision time for the EU, in the same way that it is decision time for the United Kingdom.

Q164 Stephen Kinnock: The focus of the inquiry is learning the lessons of what has happened over the last couple of years. Surely, one of the lessons that we should learn is that when the EU has said something, it has meant it. One hundred per cent. of the way, the British Government have said, "Well, they would say that, wouldn't they?" or "Well, they're just playing politics," or "Well, they're just posturing," or whatever phrase you may wish to choose.

But in fact, that is precisely what has ended up happening. All the way through, anyone who has tried just to point out that that is the reality of the negotiations has been accused either of talking the country down or of being a naysayer. In fact, the lesson to be learned from all of this is that when the EU says what it means, it means what it says. Would you not agree with that?

Dominic Raab: No. I think that there were a variety of tweets and off-the-cuff remarks from the Salzburg conference, where off-the-cuff remarks were made and a number of other senior figures across Europe came back and said, "Hold on, that is not correct and not helpful."

That is part and parcel of the negotiations—you get press conferences, tweets and comments relayed via Select Committees, in order to toughen up the position. That does not accurately reflect the substantive negotiating position, not least because the EU is not one homogenous whole—nor is the Commission, indeed. It has a whole variety of different views and even more so when you spread that across European capitals.

Q165 Stephen Kinnock: Can you give a substantive example of where the EU has said something of importance—say, for example on the backstop or whatever issue you may choose—that has not, in the end, ended up being precisely the position that the British Government have had to accept?

Dominic Raab: It was being bandied around that we would pay £100 billion in the finance settlement; it is now £39 billion, so that is one example.

Q166 Stephen Kinnock: Okay, thank you very much. On the issue of the backstop, last week Sabine Weyand said on the record that negotiators had "looked at every border on this earth, and every border the EU has with a third country—there's simply no way you can do away with checks and controls." Do you think that is just empty rhetoric as well?



HOUSE OF COMMONS

Dominic Raab: I heard an interesting anecdote—I will have to protect its source—whereby the point was made to UK officials at a very senior level that, given the porous nature of the border on the Mediterranean and the finite length and nature of the challenges on the border between the Republic and Northern Ireland, if the situation in the Mediterranean borders was tolerable, it was not beyond the wit of man and woman, with the goodwill of the Irish and British Governments, and the Commission, to resolve that problem. I will respect the integrity of how I learnt about that, but I think it rather addresses Sabine Weyand's concern.

Q167 **Stephen Kinnock:** Thank you very much. A final question: on the assumption that some sort of deal passes between now and 29 March, clearly, we would have to pass the EU (Withdrawal Agreement) Bill in order to be able to leave the European Union. Do you think that it is possible or credible to do that without having to have an extension beyond 29 March?

Dominic Raab: That looks very challenging. Whether it is physically possible will depend on how much you are willing to extend the sittings. At this point I am open minded—or, at least, not opposed—to the possibility of a modest extension by, let's say, a week or two, if we had an acceptable to deal for the United Kingdom, in order to put through the relevant legislation. I do not think that is going to be the deal-breaker on our side.

Stephen Kinnock: Thank you very much. Thank you, Chair.

Q168 **Chair:** I want to turn to the question of the ministerial code and Cabinet manual, and the very important and extremely clear statements in them on taking the opinions of the Law Officers. We have had a lot of correspondence, and I have had many exchanges with the Prime Minister over this, both on the Floor of the House and in the Liaison Committee. I would like to ask you a straight question on that. Given the importance of these issues, why is it, do you think, that we are left with one opinion, dated 13 November, which is described anyway as being an evolving text—or, at any rate, describing the advice as being based on an evolving text? It seems to be absolutely astonishing. Would you not agree as a lawyer in your own right that when you are dealing with matters of this importance, and the legal issues that arise, it is astonishing that a legal opinion was not sought on the many questions careering through the system over the last few months, or that the advice might not have been offered? Can you throw any light on that? It seems an astonishing state of affairs to me.

Dominic Raab: First, on the point of principle, I think it is wrong to publish the actual legal advice. I say that as a former Foreign Office lawyer. What we really want is the most candid and robust legal advice given to Ministers and the Prime Minister of the day. It is perfectly acceptable—we had a similar debate during the Iraq war—for a summary of the legal opinion to be given in order to clarify the issues in which Parliament is rightly interested. But I want to preserve the space for Attorney Generals to give as candid and clear advice as possible without



HOUSE OF COMMONS

fear or favour. That is my personal view, although I obviously respect that Parliament has decreed, or demanded, otherwise.

On the second question, within that umbrella, that safe space, legal advice was solicited and provided all the time. I spoke to the Attorney General regularly—

Q169 **Chair:** In written form as well?

Dominic Raab: Yes.

Q170 **Chair:** This is where the problem lies. We have a very clear resolution of the House of Commons, where the issue of contempt was raised and dealt with by resolution of the House. I took part in the debate, and the motion itself quite clearly specified the full and final legal advice with regards to the withdrawal agreement. So far, we only have this one letter, which is couched in rather vague terms. You tell us that there is a lot more, but it does not appear anywhere, despite the fact that the House of Commons—whether you like it or I like it, whether the Government like it or otherwise—clearly stated in that resolution that the advice must be published. Where is it?

Dominic Raab: That was the last piece of formal advice that was provided, and it preceded my resignation. I cannot speak to any further evolution of it subsequently. Previously, a whole range of advice was provided to me but, more than often, I would call the Attorney General, to formally ask him to come up with solutions or to bounce ideas off him, so that every step of the way what we were doing was couched in the clear understanding of the legal implications and—putting aside the rights or wrongs of demanding to see legal advice in public, as I said—Ministers could give clear statements to the House of Commons about what the position would be, so that Parliament and the public had a very clear view of the position without it being subject to suspicion and all the rest of it. But I don't know what was provided after my resignation.

Q171 **Chair:** I am not quite sure about the timing of this question in relation to what you just said, but one thing that was clear to me as a former shadow Attorney General and as someone who is very interested in this question of a Law Officer's opinion was that, first, you would expect them to be there and to confirm what they are and, secondly, there is one fundamental question—which I raised at the beginning, on 9 July actually, after Chequers, and several times since with the Prime Minister—which is the compatibility of section 1 of the withdrawal Act, which got Royal Assent on 26 June last year, with the withdrawal agreement. They are incompatible. You cannot say, on the one hand, we will repeal the 1972 Act and, on the other hand, have a withdrawal agreement that under article 4 and various other parts of it quite clearly invades that space. The withdrawal agreement itself is not a signed document, it is not an international treaty and it has not in fact been endorsed by an Act of Parliament. So we are in this strange position. One would have expected that at a very minimum the Attorney General would say, "It is impossible to reconcile those two positions."



HOUSE OF COMMONS

Dominic Raab: I have not seen the formal advice from the Attorney General in relation to the Bill, but I think it was inevitable, or at least highly likely, that the EU withdrawal Bill and Act were passed before the negotiations on the implementation period were concluded. It is that bit of the negotiations that required what in layman's terms would be regarded as a saving clause that brings the dilemma that you have raised into focus. I don't think it is surprising that we have had that challenge. When the EU withdrawal Bill was brought through the House of Commons, I was asked about this. I was brought on to the Bill team from the Ministry of Justice. I remember it being discussed, but I don't have the details in front of me to be able to address any more of that.

Q172 **Chair:** Are you now telling me that there is no opinion anywhere in the archives or anywhere in the correspondence between the Ministers, the Prime Minister or anybody to try and give a legal answer to that very simple question?

Dominic Raab: I am sure there must have been legal advice. Whether it came from the Attorney General or otherwise, I could not say off the top of my head.

Q173 **Kelvin Hopkins:** Good afternoon, Mr Raab. There has been some disquiet that Cabinet Ministers might not always have had access to the full range of papers, information and so on in sufficient time to make informed decisions on Brexit. Our Chairman, Sir William, was sufficiently concerned to write to the Prime Minister about it. During your time as Secretary of State, were you content that information required to enable Ministers to make informed decisions on Brexit matters was always made available to them in a timely manner?

Dominic Raab: Speaking for myself, when I got information it was always in a timely manner.

Q174 **Kelvin Hopkins:** Secondly, could the process of disseminating information to Ministers have been better handled, and would it have made a difference to the conduct or outcome of negotiations?

Dominic Raab: You would have to ask other Cabinet members. I know that some of the disquiet you have described was felt more widely. As the Secretary of State for DExEU at the time, getting the papers on time and having enough time to read them was not really the issue.

Q175 **Kelvin Hopkins:** One thing comes to mind, from before your time as Secretary of State: in the Chequers discussions over the weekend, the actual paper setting up the document was not provided to Cabinet members until late in the weekend with not enough time to read it. Was that the case?

Dominic Raab: With respect, Mr Hopkins, I was not there at the time, so I cannot answer that question. The obvious illustration that I can point to is paragraph 23 of the political declaration, which was changed at the last minute effectively to make the backstop the frontstop. There had been a lot of debate around that paragraph, and I was very surprised to see it change the night before the epic Cabinet meeting that we had the day



HOUSE OF COMMONS

before my resignation. That is the only example I can think of where something clearly had changed substantively without my knowledge, let alone my agreement.

Kelvin Hopkins: I accept your position, but, as to Chequers, there was a lot of press comment. Clearly, some Cabinet members were leaking what had happened and that was something we were worried about.

Q176 **Richard Drax:** On the point about legal advice, from what some Cabinet Ministers have said and continue to say—shall we say on a remain-orientated nature?—it seems they are sometimes ill informed. At the Cabinet meetings that you sat at, which lasted—I don't know—half an hour, an hour, presumably they did not have the detail that you had. When you were there, did you find that you were surprised at the lack of depth of knowledge on such an important issue when Cabinet Ministers were speaking to the press and the public beyond the collective responsibility of the Cabinet?

Dominic Raab: Of the two biggest Cabinet meetings that went on, the one on no-deal planning, which was in September, I think went on for three hours. The one on the deal the day before I resigned was five hours. In relation to either of those meetings, I don't think anyone was unsighted. Indeed, I think arrangements were made to make sure that all the papers were disseminated, and time was allocated for a proper chance to read the papers in advance. In relation to broader issues that arose, you would have to ask the other Cabinet members. All I know is that as Secretary of State, the receipt and consumption of material was not the problem.

Q177 **Richard Drax:** My point is that the information that comes out about how we are all going to hell in a handcart, and planes will not fly and all the rest of it, has to come from somewhere. As we now know, a lot of the information we have been given is just not true.

Dominic Raab: Well, there are leaks, and that is entirely reprehensible and a clear breach of the civil service, and indeed ministerial, code. In relation to the technical notices—if I am correct, we put out 106 notices over the period between August and October—all of those were checked at ministerial level. In my case, I would check them two or three times and push back where I did not agree, or test assumptions. The scare stories have not been derived from those 106 technical notices; indeed, they were designed to inform, advise and reassure. The scaremongering has come from leaks or from non-governmental sources. I think that is correct.

Q178 **Chair:** We are running a little short on time with the next witness waiting, but there is one question that I do want you to answer, if you would be kind enough. It relates to the issue of laws. We are discussing this with you as the European Scrutiny Committee, and since the 1970s, this Committee has been involved in the scrutiny of laws coming from Europe. Every single law that comes through comes to us after it has been through the Council of Ministers, during the process of discussion and negotiation. Those laws then become the law of this country through



HOUSE OF COMMONS

section 2 of the European Communities Act.

The trouble is that under the transitional period, it is clear under article 4 of the withdrawal agreement that we are going to be faced with laws that are made by a majority vote of the other 27 member states, or by consensus between them, behind closed doors without a transcript, so nobody will know the basis on which it has all been done. For a period of maybe up to three years, this country is going to have laws imposed on it that are made by other countries. Never before in the entirety of British history—to use your analogy—has this ever been done.

The question I ask is what you really think about the idea that we should allow this as a principle during this transitional period. It will also create vast uncertainty for business, because the rulebook and, indeed, the whole of our legal system is going to be affected by the decisions that are taken. They are going to impose laws on the United Kingdom, and the degree, surely, to which the business community is going to be affected by changes that may make us very uncompetitive might put us at the mercy—in my opinion, will put us at the mercy—of our competitors. What is your reaction to that, and do you think that it is justified under any circumstances? If so, what are they?

Dominic Raab: The only point I would disagree with you on, Mr Chairman, is that you said it would apply for three years. Unless we get an exit from the backstop, it could be indefinite.

Chair: I said “for at least three years”.

Dominic Raab: I stand corrected. There is the optimist in you, Mr Chairman, but what I am worried about is that—

Chair: I am on the record as saying I think it could go on indefinitely.

Dominic Raab: That is what worries me. It is entirely indefensible, both in principle and in practice.

Q179 **Chair:** So you would find yourself in a position of simply having to say that this withdrawal agreement, for the reasons you have given during this session and, in particular, the control over laws as well, makes this a no-go area. This withdrawal agreement is substantially defective for those reasons, and perhaps some others as well.

Dominic Raab: This was the basis on which I resigned, so of course I would vote against it.

Chair: Thank you very much indeed, Mr Raab. We have to move on now, because it is nearly 3.45. You can catch up with Suella Braverman later.

Examination of witness

Witness: Suella Braverman MP.

Q180 **Chair:** Good afternoon, Mrs Braverman. We have just had Dominic Raab here. I would like to ask you, first of all, about your resignation letter, in which you referred to the backstop as “a betrayal” and said that the concessions made in the negotiations “do not respect the will of the people”. You don’t say things like that without feeling very strongly about it—otherwise you would not have resigned—but could you enlarge on that as a starter, please?

Suella Braverman: Thank you, Chair and members of the Committee, for the invitation to address you this afternoon.

You are right: they were very strong words that I used in my resignation letter. I felt very strongly about the situation, and I chose those words deliberately. Essentially, they reflect the culmination of my experience in the Department, which could be summed up as a growing erosion of my faith in the policy being honestly delivered.

The straw that broke the camel’s back for me was the final iteration of the Northern Irish backstop. I considered it a betrayal, because the clear and unequivocal promise by the Government in manifestos, on the Floor of the House, in speeches and in policy documents was that we would be able to leave the EU’s customs union, leave the EU single market and bring an end to free movement of people. The terms of this backstop did not honour that, in that we would be locked indefinitely into a customs union and, as a corollary, single market rules. That flies in the face of what has been promised, and for me that is ultimately a betrayal—to be offered a treaty taking the British people and our nation down a route that was not their expectation or what was offered.

Q181 **Chair:** What lessons do you learn from this, in terms of parliamentary democracy and public confidence in our political system?

Suella Braverman: I have learned a lot of lessons in that regard. I think I have had an eye-opening experience. There is obviously a disparity between expectations and the reality, but I do not think I went into the Department with unrealistic expectations or an extremely idealistic outlook; I think I have enough experience to know that there will always be battles and fights to win, obstacles in the way, and a need for compromise and pragmatism. However, I have learned that compromise is inevitable and intrinsic to this process of extricating ourselves from a complex union—political and legal—with the EU, but there comes a point when compromise becomes total surrender, and politicians at the head of that process have to bear the responsibility for it, ultimately.

Q182 **Chair:** Would you go so far as to say that you had experienced things which you might regard as lies?

Suella Braverman: That is a very strong word as well. There is a disconnect between what has been said in terms of grandiose policy



statements—for example, I have lost count of the number of times that I have heard or read that the UK is leaving the single market on 29 March, leaving the customs union on 29 March, free movement will come to an end, and we will be taking back control of our laws, borders and trade, but that has not been borne out when you look at the detail and the legal text. On 29 March, under this deal, were we to go ahead with it, the free movement directive would continue to apply, because of the implementation period. We would still effectively be a member of the customs union and the single market. The jurisdiction of the ECJ would continue. Worse still, that would even continue beyond the end of the implementation period, the end date of which is now unclear in this agreement. So those sound like laudable aims and policies that I can get behind, but I had a growing anxiety that I could not honestly state those positions without misleading. “Lies” suggests deliberate action, and I don’t want to go that far—to say that there have been lies—but there has definitely been a difference in reality and perception.

Q183 Chair: If I may, I will move on to the question of the backstop and the customs union issue. Given the recent statements from the EU27 that the EU withdrawal agreement cannot be reopened, do you believe that a revised agreement, without a backstop, could still be agreed before 29 March 2019?

Suella Braverman: Yes, I do believe the backstop could be dispensed with. I should just say that I was not specifically working on the Northern Irish matter while I was in the Department. My responsibilities covered legislation—in particular, the withdrawal agreement Bill, for which we prepared the White Paper, which was published in July—and borders more generally and outwith Northern Ireland. But on the Northern Irish question and the matter that you raise, Mr Chairman, yes, I think we could deliver a viable deal, a withdrawal agreement, covering citizens’ rights, covering an implementation period—I signed up to the implementation period—and covering other separation issues, which of course were covered, finally, in the final text, without the need for a backstop that involves us being members of a single customs territory.

Q184 Michael Tomlinson: Good afternoon, Mrs Braverman. You have just been asked about the backstop, and you have obviously heard and read about and seen the details of the Malthouse compromise. I would like your view on that and also on how it is being taken forward, given your previous role in the Department.

Suella Braverman: I did start off in January working on borders, and that involved my visiting Dover and Eurotunnel, Heathrow, Immingham and Southampton, which I found very informative. I was also able to meet with border technicians and experts. I requested, on the back of his report at the end of 2017, to meet with Lars Karlsson, and I found that a very useful meeting—one which gives me a lot of confidence about my previous answer that there isn’t a need for a single customs territory or for the UK to be a member of the customs union to avoid infrastructure between Northern Ireland and the Republic.



I am convinced that there is a solution to the Northern Irish border that does not involve, as I say, a customs union membership, but could involve existing administrative procedures. Lars Karlsson himself had extensive expertise in delivering the roll-out of effective and up-to-date authorised economic operator schemes and trusted trader schemes in ports like Dubai and in Brazil—two countries and case studies that he cited to me where he had recently worked with much success. And these were cost-effective and deliverable within a reasonable timeframe. Had we commissioned Lars when I met him, which would have been the spring of 2018, he would have estimated about 10 to 12 months to roll out a scheme for the Northern Irish context, which is much shorter than what was estimated in internal reports about maximum facilitation, which was used as an argument against invoking maximum facilitation in the ultimate Chequers plan.

There are also trusted trader schemes; there is a whole range of robust procedures in use today that actually increase the likelihood of detection of smuggled goods or illicit trading, because there is much more active engagement with the importers and exporters, and the intelligence gathered by the authorities and the customs and revenue bodies can be enhanced through some of those schemes. An AEO scheme rolled out in Northern Ireland would replicate and mirror, to a large extent, the EU's existing AEO, which is part of their union customs code. You could have a system of pre-border checks and exemptions, bearing in mind that the vast majority of traders around this border are small traders. That, I believe, would be a viable solution in this context.

The Malthouse compromise has given me a lot of optimism over the last week, because I believe the fact that it has enabled lead spokesmen from both sides of the Brexit debate to come together is very encouraging. It also presents a way forward out of the mess we currently find ourselves in, and I would be very supportive of that if it were the final version of a deal presented to Parliament.

Q185 Michael Tomlinson: You have mentioned meetings and visits while you were in your ministerial role, I think, with Lars Karlsson and others. How far did you get along the journey with that? To a certain extent we have not seen the fruits of that; perhaps we will do during the course of the working group and the Malthouse compromise. How far were they explored? Were they brought to fruition within the Department, if not formally published?

Suella Braverman: I faced a battle to meet with Lars Karlsson in the first place. There was a huge amount of resistance. I thank David Davis for giving me some internal ministerial cover with the civil servants to instruct them to approach him and arrange a meeting and follow-up discussions. I believe, but this is just my view, that that resistance was because of a sense that it would not be helpful for a Minister to be engaging with an external expert who might have provided a viable solution that was at odds with their agenda of remaining in the customs union. I felt there was a deliberate attempt to obstruct such a meeting. Once I gathered the evidence directly from Lars, I was keen to keep presenting that to HMRC



HOUSE OF COMMONS

officials with whom I worked on the borders brief, and I wanted to get him commissioned in and contracted in some way as a consultant, which he was very happy to do, but it was just impossible. I was met with resistance and blockade and “No”, essentially. Then eventually the decision on a customs option was made in July and obviously we were not going with maximum facilitation but with the hybrid new customs partnership, and Lars Karlsson was deemed completely irrelevant as a consultant after that.

Q186 Michael Tomlinson: Very briefly, if I may, you say “their agenda” and a “deliberate attempt to obstruct”, and you say that “they” said no. Who is the “they”?

Suella Braverman: I should say I have no criticism of the excellent civil servants with whom I worked. I was very impressed with their professionalism and their knowledge and their energy; there is a hugely talented bunch of people at DExEU. I had an idea; I wanted to meet with Lars Karlsson. I asked my office to arrange it, to track him down, find him and call him in. That was met with a “No” from various civil servants in various policy departments, and that was when I escalated it to David Davis, which opened a door for me. We had those meetings, again with lots of last-minute advice—“This is not necessarily a good idea, this might be damaging to policy development,”— but I decided to go ahead with it. It was very useful, as I said. As I gathered the information, it was institutional. Various civil servants, with whom I worked, on whom I depended to arrange the logistics of this, were not keen. They just did not want to do this. It was very difficult to make practical progress.

I am not able, as a Minister, to get a contract together, meet up with Lars and say, “Sign here and let’s get the job done.” It needs to go through various processes. A business case needs to be made, and authorisation needs to be provided. It was impossible to secure those steps in the process.

Q187 Chair: Did you discuss any of this with Olly Robbins, for example?

Suella Braverman: I met Olly Robbins once, and very briefly.

Q188 Chair: Quite clearly, from what you have said, you were being obstructed. There is no doubt about that.

Suella Braverman: I felt I was being obstructed, yes.

Q189 Chair: Having said that, going back to Michael Tomlinson’s question about who did the obstructing, you said that you thought that the people you were working with in DExEU were doing the best that they could in the circumstances. So we can only infer from that the obstruction was coming from somewhere else.

Suella Braverman: Yes. It was people following orders, who were reporting to me.

Q190 Chair: From No. 10?

Suella Braverman: I can’t say. I don’t know.



HOUSE OF COMMONS

Q191 **Chair:** Well, it can't have been anywhere else because that is the hierarchy.

Suella Braverman: My suspicion is that it was either No. 10 or the Treasury, because this involved HMRC. On the borders brief, I worked with officials from HMRC, who were very good, I have to say, but ultimately they were accountable to ministerial guidance there. That is assumption.

Q192 **Chair:** So basically you were put in an impossible situation on this.

Suella Braverman: I felt I was. I felt I had a solution there. I felt it was not me being wild-eyed and crazy. I felt it was tested and at least worth exploring in more depth, and it was impossible to move it forward.

Q193 **Chair:** He was quite clear on the "Today" programme in the last few days, when I heard him in the early morning, that he had not changed his opinions and, furthermore, that he has a very substantial track record, which came from his engagement in Brussels.

Suella Braverman: Yes. He is an expert, and he is a serious person in this industry. As you say, Brazil, Dubai and the Netherlands are recent case studies. I have to be clear: he did not necessarily say, "Copy and paste what I did in Dubai for Northern Ireland," and he does not totally eliminate technology, but he is an expert in AEOs and trusted trader schemes, and that would have been very useful for this issue.

Q194 **Mr David Jones:** To what extent are you satisfied that the UK will have sufficient influence over EU legislation that may apply to it during the transitional period, and afterwards, should we accept the withdrawal agreement?

Suella Braverman: Our influence will be minimal, if not non-existent. One of the reasons for my growing anxiety during my time at the Department was my increasing realisation that the text, as it was in very draft form after the March European Council, left the UK in a very exposed position and did not honour manifesto pledges, as I said before.

One of those areas of concern was new EU laws coming down to the UK during the implementation period. We would technically not be members of the EU. We would not have a right to attend meetings—this is set out in the text—automatically. We would have to get special permission in exceptional circumstances from the EU, if an issue related directly to UK interests, to attend particular meetings and summits, but essentially we would be at the mercy of the EU when it came to new EU laws. That is set out in black and white in the treaty.

Q195 **Mr David Jones:** That state of affairs would be incompatible with the repeal of the 1972 European Communities Act. If we were to accept this, presumably there would have to be further legislation that unwound the repeal of the 1972 Act.

Suella Braverman: There you get to the big problems, which were on the legislation for the withdrawal agreement—the withdrawal agreement Bill. One of the proposals for the legislation, which is in draft form—it is pretty



HOUSE OF COMMONS

much complete, actually, but waiting for approval of the deal to be introduced in the Commons—was the effect on the withdrawal Act.

As you know, section 1 of that Act repeals the ECA on 29 March 2019 at 11 pm. Subsequent legislation, in the form of the withdrawal agreement Bill, would strip that clause of any legal significance, because we were proposing to include a saving mechanism so that, notwithstanding the ostensible repeal of the ECA at 11 pm on 29 March, immediately following that, when the next Act came into force, its almost total effect would be reinstated. So the pipeline of the ECA, which is the pipeline that we use for EU law and EU-derived legislation to apply in the UK, would flicker away and then it would kick back into action instantly. That was a very difficult issue to resolve.

Q196 Mr David Jones: In other words, we would be left with an inferior form of continuing membership of the European Union.

Suella Braverman: Yes. EU laws would continue to apply, much in the same way as they do today, but we would not have any membership rights during the implementation period.

Q197 Chair: Do you remember a point I made to the Prime Minister last week? You may not know that I put the question to her about whether she would guarantee and instruct her officials to ensure that, in relation to the legislation that follows on the withdrawal agreement, if it is ever passed by Parliament, there will be an express provision in the second piece of legislation that implements the withdrawal agreement that reasserts, unequivocally, that the 1972 Act will be repealed. One Act can overtake another, as we know, and we do not want to get into that situation.

The Prime Minister said that she would ensure that that was the case and I am having meetings and discussions with the Attorney General on that question. I am hoping—in fact assuming, for the sake of argument, in the light of what she said on the Floor of the House—that we will see a provision in that second piece of legislation, if there is a withdrawal agreement, that will rectify the position that would otherwise have occurred. That is that the '72 Act, because of the indefinite nature of the backstop and the nature of article 4 of the treaty, albeit connected to article 132 that extends the period of time—that we would still be repealing the '72 Act.

I have had an absolute assurance on that point. I want to get that on the record and ask you whether you heard what I said and what you made of the reply. You are telling us that the withdrawal Bill is still in the works, and you do not know of any provision in that Bill at the moment that would continue to ensure the repeal of the '72 Act at this juncture.

Suella Braverman: No. If we were to approve it, the Bill would be introduced. At the beginning of that Bill, it would amend the withdrawal Act to save the effect of the ECA—

Q198 Chair: I go back, if I may, before I bring in David Jones, to the provisions



HOUSE OF COMMONS

that have been given for the first time in our history to the Supreme Court and the courts to disapply and to quash any legislation, on which we have had extensive correspondence with the Prime Minister, which is on our website. That means that they would be able, in the light of the subsequent enactment, to disapply the previous Act—the withdrawal Act—section 1 of which repeals the 1972 Act. To say the least of it, this is a massive constitutional question.

Suella Braverman: The withdrawal Act will essentially be paused until the end of the implementation period, the extended implementation period or the backstop. We have gone through an extensive exercise—

Q199 **Chair:** You have actually seen the text of the Bill, so you know what it says.

Suella Braverman: Yes.

Q200 **Mr David Jones:** I have just one brief point. You say that the withdrawal and implementation Bill is almost good to go. Does that Bill deal with the issue of the Acts of Union 1800, which provide that there should be no disparate treatment of Ireland, as against the rest of the United Kingdom? The withdrawal agreement, if implemented, would treat Northern Ireland entirely differently from mainland UK.

Suella Braverman: In November, the draft Bill was complete, in that it covered citizens' rights, the implementation period—the saving of the repeal of the ECA—financial settlement provisions and other separation issues. Everything was on pause and awaiting the Northern Irish backstop. I did not see any legislative drafting to do with Northern Ireland; I imagine that work has taken place since I left. However, there was no reference to Northern Ireland or the Acts of Union in the draft Bill that I saw.

Q201 **Andrew Lewer:** Notwithstanding what we have heard about the supremacy and continuation of EU law under the withdrawal agreement, there is a provision within it for a joint EU-UK committee with a remit to prevent and resolve disputes and oversee the agreement as it functions. Do you think that Parliament should have a role in scrutinising that joint committee? Perhaps I should ask whether you think Parliament could have a role in scrutinising that joint committee, and if so, how that would be best achieved?

Suella Braverman: Yes. There were two avenues of dispute resolution. The joint committee was one, for institutional, high-level questions of application of the treaty—not legal disputes as such—to be dealt with at a political or ministerial level. It was foreseen that the joint committee would comprise ministerial representatives or Executive-level actors. That is far as the agreement goes, in terms of setting out the structure and remit of the joint committee. It also covers a list of issues that it may deal with. I see a strong case for a parliamentary say to feed into a process of accountability and the resolution of issues in that political sense, yes.

Q202 **Andrew Lewer:** I will just lead on with that a little bit. Do you think there would be a case for this Committee to take on that role, given its background and expertise in the examination of European legislation?

Suella Braverman: That sounds like a very sensible idea to me.

Q203 **Chair:** Can you recall what happened with the ports regulation? I do not think you were necessarily in office then—

Suella Braverman: No.

Q204 **Chair:** It is a matter of public record. It was opposed by every single one of the 47 port employers and by all the trade unions in the United Kingdom as a whole. We fought it tooth and nail in this Committee, and also in a Standing Committee, but when it came to it, it went through.

I have never known, in my 34 years on this Committee—I have been on it that long—a single EU law to be overturned in Parliament. That speaks for itself. I do not know where anybody gets the idea that the arrangements that will be in place during the transitional period will benefit business. What do you think businesses are going to make of it when the penny drops and they suddenly discover that their competitors are passing legislation that will affect Scotland, Wales, Northern Ireland and England? Businesses are currently clamouring for this transitional period on the grounds that they need legal certainty, but what kind of legal certainty will they have if they are affected by the legislation passed over our heads by 27 countries, largely dominated by a caucus inside the Council of Ministers, no doubt led by Germany? What do you make of the prospect of this transitional period for business and the clamourings of the CBI?

Suella Braverman: The voice of business and any other interested parties will be silenced, effectively. They will not be able to have a voice or representation at the legislative level of the EU in this scenario. It is aggravated by the fact that the implementation period no longer has a strict time limit, despite what we were led to believe. It was supposed to be strictly time-limited. It could go on for an uncertain period of time, increasing and exacerbating the level of unknown for businesses and making it harder for them to make planning decisions.

Q205 **Chair:** So the withdrawal agreement could be construed as subjugation?

Suella Braverman: Yes. The aspect whereby we would be a rule-taker without any opportunity to be a rule-maker would definitely classify as subjugation.

Q206 **Dr Whitford:** As a Minister, what was your role in the negotiations with the EU on the UK's exit? How well did you feel that you were supported by your officials and the wider civil service, particularly in the light of some of the comments you have already made?

Suella Braverman: I wasn't directly involved in the negotiations. I was on the receiving end of the negotiations. That commenced after the March European Council, when the first draft of 70% of the treaty was agreed. You will remember the Council where David Davis and Michel Barnier stood up and had screens shaded green and yellow, with parts that were still unshaded; 70% was shaded green. Citizens' rights, the financial settlement and the implementation period had been agreed. The Northern Irish backstop was unshaded—or non-existent at the time—and there was



HOUSE OF COMMONS

list of about 13 standalone issues, which were called “other separation issues”. They were really about transition matters at the point of the end of the implementation period, pending cases, goods on the market, and customs and excise arrangements.

I took that draft treaty and was responsible for getting legislation ready to reflect that, and for explaining the practical effects of what had been agreed to stakeholders and interest groups. As and when sections of the treaty were shaded in green and resolved, they would come back down to me. At times, I was able to feed in, but essentially I was not part of the negotiation strategy.

Q207 Dr Whitford: Obviously, you said earlier that you had issues in your role with being obstructed or at least not supported by civil servants—whether your own officials or others. Is that a fair summary of what you described earlier?

Suella Braverman: The issue with Lars Karlsson is a good example of that. Generally speaking, I think that the officials served me very diligently and well.

Q208 Dr Whitford: Was that issue the main one where you felt obstructed, or did you have several occasions where you felt that you weren’t able to take things forward?

Suella Braverman: The issue of the borders was one big fight that I had. Another area where I didn’t feel justice was being done—I did feel a sense of injustice—was on the conditionality of the money payment. I was led to believe the policy that nothing was agreed until everything is agreed, as set out in the December 2017 report. That being the case, the £39 billion that had been agreed that the UK would pay the EU would be a price for something in return—a free trade agreement—and we weren’t good for that money until a free trade agreement was forthcoming. However, that political position was in no way reflected in the legal text. The text I saw in March, right up until November, did not include any kind of condition on that payment. It did not include any mechanism for the UK to cease payments in the event that a certain criterion wasn’t met or an event wasn’t realised. I did make the case vociferously within the Department that we needed to inject some element of conditionality on this money—taxpayers’ money; a large amount of money—or else it could be fatal to the success of the agreement.

Q209 Dr Whitford: You describe injecting some measure of conditionality, but do you accept that some proportion of that money is not conditional on buying a free trade agreement but was the UK meeting obligations that it already has? Or do you think that the entire £39 billion was purely about going forward rather than recognising our obligations?

Suella Braverman: There is a very authoritative and extensive legal view set out in the House of Lords Committee report, which says that that money, in its entirety, is not legally owing. So there is that view, which I tend to support, but I am very mindful of the opposing legal view, which was presented to me regularly in the Department. It was that, if we are



HOUSE OF COMMONS

having an implementation period, we are essentially still a member for 2019, and that would be the £10 billion for 2019, and still a member for 2020, so another £10 billion for 2020. At the end of that implementation period, that second legal view purported that we would still have financial obligations for pensions and RAL—reste à liquider. I would say that part was more disputable, but that is how that legal view broke it down.

Q210 Dr Whitford: So the aspects such as pensions and ongoing commitments, you don't particularly accept that part?

Suella Braverman: I think there is a weaker argument for the long tail of payments at the end of the implementation period, yes.

Q211 Dr Whitford: And if there was no agreement, you wouldn't be concerned that the UK might be seen in the wider world as not having honoured its financial commitments, and that that might be damaging in itself?

Suella Braverman: If there was no deal, and there were no implementation period and we were to leave on a WTO basis, I would be very comfortable defending the UK's position that there was no money owed to the EU.

Dr Whitford: Of paying nothing.

Suella Braverman: We would no longer be a member state. We would no longer be bound by our obligations or treaty duties. In the spirit of compromise and bearing in mind that the implementation period is there as part of this deal, where we are not at the table but still experiencing many features of a member state, you can make a case for the £10 billion and £10 billion for those years, but I would say that that is in light of the implementation period.

Q212 Dr Whitford: But outwith the implementation period, you don't particularly accept the other aspects of having ongoing commitments?

Suella Braverman: Yes. That is correct.

Q213 Dr Whitford: Obviously, in this inquiry we have heard quite a lot around the views in No. 10 and the views in DExEU. Was that something that you experienced in the course of your responsibilities?

Suella Braverman: Towards the end, yes. Definitely. I guess on two occasions. The first occasion would be in the run-up to the publication of the Chequers paper. DExEU had been engaged in a long standing exercise of drafting what we thought would be a viable free trade agreement on all manner of sectors. It was a lengthy document, which covered areas in considerable detail. I read the evidence that Steve Baker gave you about the model for a Canada-plus-plus style free trade agreement—an advanced free trade agreement. That was essentially the model of the initial paper authored by DExEU. However, the ultimate product was not what we had all been working on—presumably it had come from No. 10. That is one example of where there were definitely parallel work streams.



HOUSE OF COMMONS

The second example is the final publication of the text of the withdrawal agreement in relation to issues such as article 132 and the extension of the implementation period, which was not a policy position or negotiating mandate that I had ever come across through either Cabinet or Cabinet sub-committees.

Q214 **Chair:** So where did it come from?

Suella Braverman: That is a great question. I don't know where it came from; it appeared suddenly. The first I heard of it was at the October European Council, when the Prime Minister mooted the possibility of an option to extend the transition as an alternative to the backstop. Her words were very deliberately chosen: it was just an option, not a firm policy position. That is how I understood it. I never saw any written documents reinforcing an agreed Cabinet position that the IP could be extended. The first I saw of it was article 132 in the final draft.

Q215 **Chair:** Of course there are huge implications, when you consider the question of indefinite extension and add to that the question of repealing the 1972 Act. Just to run this off: as we speak, this document is not signed and not initialled, and it is therefore no more than a piece of paper, although it depends on what happens when the vote is taken in the House of Commons.

Suella Braverman: Yes. The other issue is the political declaration. A version of it had been worked on, primarily by Dominic Raab, in the run-up to the November Council. The final version bore no resemblance to the piece of work that he had led.

Q216 **Dr Whitford:** Were you conscious at the time that there appeared to be two tracks running, or was it all a surprise when something else came out?

Suella Braverman: One those occasions, it was always a surprise.

Q217 **Dr Whitford:** Do you think that if there had been a previously agreed balance of responsibilities—in one of the Prime Minister's very early speeches, she talked about consulting the EU and agreeing what she wanted from it before going there—it might have been easier to have achieved an outcome that was more widely supported, compared with having it change and evolve as a moving feast?

Suella Braverman: Yes. With hindsight, it is easy to say that. I was only there for almost a year—not even a year. I am reading David Davis' evidence, in which he acknowledges that there was tension and that it could have been dealt with better or avoided by having a single author, but the Prime Minister was always the lead negotiator—even more so after July 2018. I think that was an attempt to clarify roles.

Q218 **Dr Whitford:** Looking from the outside, things always seem to be moving on the hoof—from the Lancaster House speech to the withdrawal agreement. What is it that the UK wants? Looking at think-tanks and media in Europe, what the UK wants seemed to be a revolving question. It seemed that the UK, whoever was negotiating, did not have the



HOUSE OF COMMONS

answer. Do you think that it would have made a difference to have first the debates about what the UK wanted from Brexit, then try to negotiate it?

Suella Braverman: I believed it was pretty clear what the UK wanted from Brexit in 2016. I did not think that there were any big questions. I think there have been very strong views on both sides of the debate, but the policy has been pretty clear and not complicated to understand.

Q219 **Dr Whitford:** But obviously there are trade-offs. If you want to leave the customs union and the single market, you gain something and lose something. That debate—asking whether it is worth this price to get that—does not seem to have been worked out in advance. Impact assessments and exactly what type of Brexit the UK is going for, how far away to go and the trade-offs of going further way and therefore having a degree of barriers—none of that was worked out in advance. It all seemed to move backwards and forwards during that time.

Suella Braverman: I generally feel it has all been complicated a lot more than it had to be. I think there was a very simple agenda to deliver and I do not think it was beyond our grasp. Donald Tusk made an offer of a perfectly viable free trade agreement in March; we should have agreed to that. We would not be in this situation now.

This has been clouded and muddled because of various forces conspiring to stop it from happening, frankly. I am afraid to say that DExEU was left behind in a lot of the process. If it had been the other way around, where we had people who really believed in the mission, had a clear idea of what it should look like, and were not fazed by confected problems or obstacles, we might not be in this position.

Q220 **Dr Whitford:** Which group do you feel were making that key decision not to take the Canada-plus free trade approach?

Suella Braverman: It is very difficult for me to point the finger at anyone, but it was the people in that negotiating room; people who were agreeing text with the EU and signing this thing off. They have to bear some responsibility, because it did not really reflect—

Q221 **Dr Whitford:** And you feel that was predominantly No. 10, rather than DExEU.

Suella Braverman: Definitely from July, No. 10 took full responsibility for the negotiations.

Q222 **Richard Drax:** May I put on the record my admiration for you, Mrs Braverman, for resigning and taking such an honourable and courageous stance under the circumstances? I will briefly paraphrase as I see it, and then perhaps you would agree or disagree. The aim to leave was a simple one. It was not to be complicated or muddled by deals or this or that, or how much richer or poorer we would be. It was simply to leave. We voted to leave the EU.

It is my view that the EU has held the upper hand throughout these



HOUSE OF COMMONS

negotiations because the Government, whose Ministers are very substantially remain, have wished to remain as closely aligned to the EU as they possibly can be. At the same time, whether intentionally or not, they have misled MPs and the public into thinking we are leaving. You have stated that when you look at the facts, we are not leaving. We could be stuck in it. Is that your view of why we are in this mess?

Suella Braverman: Yes. There is an inherent inconsistency between the message and the reality. We have great policy lines, which sound good on a television broadcast, in a speech or on a leaflet, but the reality will lead to a lot of disappointment, because expectations have not been met at all. It seems there has been a gradual erosion of those expectations, to the point that the reality bears no resemblance to what was promised. That is why it was difficult for me to defend it.

Q223 **Richard Drax:** Do you think that once article 50 had been initiated, if the Government had said the Departments, "Prepare for no deal. You have two years: get on with it, while we try to get a free trade deal," we would be in a different position?

Suella Braverman: Definitely. We are the stronger partner in the negotiation, if you look at the facts: our trade deficit with the EU, our net contribution to the EU budget and our net contribution to EU security measures. There is a lot of dependency by EU member states—not just the smaller, poorer member states, but generally speaking—on the UK. We never fully inhabited that strength. We gave in at every point in the argument and we did not make the most of those strengths.

I agree that walking away with no deal would have definitely been a symbol and a manifestation of that strength. I think the EU would have come running and offered us a very good deal. In fact, that is not off the table. If we were to leave on a no-deal scenario, I am sure that is one of the strongest incentives for the EU, in the few months following, to come back and say, "Let's reduce that £39 billion. Let's offer you a good trade deal, which serves your interests." In a very strong way, it would be a very big incentive to lead us to a good deal.

Q224 **Stephen Kinnock:** As we are in a somewhat philosophical mood about all of this, musing on why certain decisions were taken, I just wondered whether we can go back to first principles, which is the 52:48 mandate. Why do you think that the Prime Minister chose to interpret that mandate as having to leave the single market and customs union? One could argue that such a narrow vote is a mandate to move house, but stay in the same neighbourhood.

Suella Braverman: The nature of our democratic system is that majorities win elections and public polls. If we wanted to set a particular threshold, which rendered the vote acceptable, that should have been determined when we were having the arguments about the referendum before we got to it.

To say that the goalposts have to be moved and that 52% is not enough, but it has to be 65%, is an after-the-event tactic to render the result



HOUSE OF COMMONS

meaningless. I do not agree with that position. We don't run general elections or other polls in that way. It was a decisive win. The turnout gives this vote a lot of credibility. It was endorsed at the general election the year after, when 80% of voters supported leave-backing parties. I don't believe that we have to deliver a remainder's Brexit, as I think it has been referred to, because of a 52:48 result.

Q225 Stephen Kinnock: You are right that when we go through a democratic exercise, you have the result that it delivers. But as the Prime Minister discovered to her cost in June 2017, a narrow result in a general election delivers a hung Parliament. By that logic, a narrow result in a referendum would deliver a certain form of Brexit.

As was said earlier, the only thing we know about what people voted for on 23 June 2016 is that they voted to leave, but what "leave" meant was never really defined until the Prime Minister's Lancaster House speech. With hindsight, do you think it would have been better to have a much broader, national conversation about whether voting leave actually meant leaving the single market and the customs union? Who decided that that was what it meant? Was it just the Prime Minister and Nick Timothy?

Suella Braverman: To check again with the British people whether they properly understood what they were voting for?

Q226 Stephen Kinnock: No, I am not suggesting that. I think people absolutely knew that they were voting to leave the EU. But given that, for example, two months before the referendum, Nigel Farage said on "Question Time", "Look at Norway and Switzerland. They are rich, happy and self-governing countries," and Owen Paterson said, "Only a madman would leave the single market," and a whole range of other so-called Brexiteers were banging the drum for the Norway option in the run-up to the referendum, would you not accept that there is an argument to say that there was a lot of confusion about what leave meant, because so many on the Brexit side were advocating what we would now call a soft Brexit?

Suella Braverman: I think there are many reasons why people voted to leave. Migration, sovereignty and trade are some of them. But I do not think that that undermines a basic vision of what leaving the European Union means. It needs to look like we are leaving the European Union and it needs to feel like we are leaving the European Union.

If we try to mix and match, and try to make it look like we are leaving, but actually in reality we are not, or some other mish-mash, which is trying to please everybody, we will fail. Ultimately, that is why this deal has failed, because it hasn't been an unequivocal departure, as we have seen from the evidence today. That is only going to break trust in our politics and our democracy.

Any attempt to check again with the people, to verify whether they really knew what they were doing or to question it—this constant questioning has only been damaging for public confidence in this whole process. It was a clear, authoritative, huge vote, historic in its nature, and it is incumbent



HOUSE OF COMMONS

on all of us, whichever way we voted, to accept it. Unfortunately, we are in this position because many people in this Parliament have refused to accept it.

Stephen Kinnock: For the record, I absolutely agree that we should leave the European Union and that we should accept and respect the result. My point is about the fact that there is total and utter confusion about what leave actually meant, and that there are many, many ways to skin the cat. That has been at the heart of the confusion in Government and across Parliament. "Leave" seems to mean so many different things to so many different people.

Moving on to another point, on the backstop—

Q227 **Chair:** Before we move on to that, I would like to ask the witness a question relating to a point you made. If you consider the treaties as a whole, the European Communities Act 1972 incorporates all the treaties. There are voluminous consolidated texts that show anybody who cares to look at them precisely what the competences, the powers and the functions are. It specifies a customs union and it specifies a single market. I am putting this to the witness, not to you, Mr Kinnock.

The *acquis communautaire*—that corpus of law—specifies a whole range of legal requirements, which include the customs union and the single market. If we have said we are going to leave that and we are going to repeal that Act, which repeals all the laws that relate to it, do you find it rather difficult to imagine that somehow we could then extract from it the bits that we thought were desirable to stay in, like the single market or customs union? It just applies to the whole shooting match, does it not?

Suella Braverman: Yes. There are fundamental, emblematic and intrinsic elements to what membership of the EU means, and repeal of the ECA brings an end to those fundamentals of EU membership.

Q228 **Chair:** In our domestic law.

Suella Braverman: Exactly. But what we have is a kind of roundabout way of keeping that still having effect, but not. It is a façade, and it is not a real Brexit as a result. So yes, I agree with what you say.

Chair: But it can be if we follow through what section 1 of the withdrawal Act states, because then that achieves its objective. Sorry, Stephen, I want to come back to you.

Q229 **Stephen Kinnock:** Going back to the Lancaster House speech and the Prime Minister's red lines, she said, "Right, so Brexit means leaving the single market and leaving the customs union, but also having no infrastructure on the Irish land border." Do you agree that that third red line is fundamentally incompatible with the first two, and that that is part of the reason we have got ourselves into this awful mess?

Suella Braverman: No, and I think the presumption in your question belies the situation we have got into—this unacceptable position where membership of the customs union is seen as the only solution to avoiding



HOUSE OF COMMONS

a hard border. I fundamentally disagree with that. As I set out earlier, there are existing administrative, technical and—if you want, but you don't even need them—technological resources in use today that could be applied to this context and would avoid the hard border but allow us to leave the single market and the customs union and, importantly, not annex Northern Ireland from the rest of the country.

Q230 Stephen Kinnock: But fundamentally, by putting that red line down, the Prime Minister gave the European Union the opportunity to state, perfectly accurately, that there is nowhere in the world and no border in the world that the EU has with a third country that does not involve checks and controls. Whatever view you take about these fantastical technological solutions that are out there, the fact is that by giving that red line—by putting that red line down—she fundamentally placed herself and the British Government in an impossible position, because she said, “No single market, no customs union, no hard border”, thus opening up the opportunity to the EU to say, “Well, there is nowhere in the world that this arrangement exists, so until such time as you can cook something up, we’re going to have to keep you in this arrangement”. Why do you think that such a fundamental strategic error—I mean, from your point of view it would be an error—was made?

Suella Braverman: If the EU have said that, and I know the remarks that you are referring to, why have they also said—and I’m quoting in terms Michel Barnier, why has he also said that in the event of a no-deal, the EU will not erect any hard border in Northern Ireland? The Taoiseach himself has said they won’t be responsible for putting up any infrastructural or border in Northern Ireland, and the UK has made that similar commitment.

The EU says a lot of things and I think we should look at the facts, and the facts are that all around the world there are, as I’ve said, mechanisms and methods that we can apply—with some goodwill; it will take some goodwill. And it will take political incentive. But it’s not impossible. It’s far from impossible and it’s eminently achievable. I’ve seen the solution with my own eyes, and I endorse the proposals that have been put forward subsequently in a better deal.

Q231 Stephen Kinnock: For your information on that, there was a meeting with Martin Selmayr on Monday with the Brexit Select Committee. What he said was that putting infrastructure on the border wouldn’t be immediate, but as soon as it becomes clear that there is divergence between the United Kingdom’s regulatory framework and the European Union’s regulatory framework there would have to be checks and controls on the border. That’s the position of the Commission and I’m assuming that the Irish Government would have to go along with that if they wish to remain a member state of the European Union.

Suella Braverman: And that is exactly where, with a free trade agreement and with a protocol or an arrangement for Northern Ireland, you can avoid any kind of border inspection post and a man with a wet stamp, an inspector of goods. You can do checks before the border at the

exporter's premises. As I said, you can have AEO and trusted trader schemes—they provide for exactly that kind of scenario. And it doesn't have to mean infrastructure at the border.

Q232 Stephen Kinnock: Yes, although of course they will insist on having the safety net of the backstop for that.

Just one final question. If there is a deal—if Parliament votes something through—and that all gets signed off before 29 March, we will also have to ratify the withdrawal agreement implementation Bill, in order to give legal force to the withdrawal agreement. Do you think it's credible, possible or realistic in any way to expect that we could do that before 29 March, and would you therefore accept that an extension to article 50 is now inevitable in any case, unless we leave with no deal?

Suella Braverman: I do not accept that an extension is inevitable. There are emergency procedures within our parliamentary rulebook to allow legislation to be passed quickly. It's not ideal and as Dominic Raab said earlier it would be a challenge, but it's not unprecedented. We have passed legislation in very short and truncated periods of time in the past.

The timing of this Bill was an issue that I was working on, and on various scenarios, and we hadn't quite foreseen that we'd be in February without an approved deal when I was in the Department, I have to say; I'm sure they're thinking about the timetables now.

However, if we were to get an approved deal next week, I don't think we would need an extension of article 50, for example. But if we were to get an approved deal on 28 March, which would need implementing legislation, yes, I can see an argument to extend for a very narrow and strictly time-limited period.

Q233 Stephen Kinnock: Obviously, the political reality of the withdrawal agreement implementation Bill is that it gives force to, for example, things like the transition period. Given some of the views that colleagues on the Committee have expressed today about their deep reservations about the transition period and the so-called vassal state issue, do you think that the withdrawal agreement implementation Bill could just sail through without dozens of amendments being thrown at it?

Suella Braverman: It would be a challenge, definitely, but as I said, if we get a deal on 28 March, we are going to have to make some provision to pass legislation. That will be responsive to the circumstances and very unique—it would be an emergency situation.

Q234 Stephen Kinnock: Do you think it is acceptable that we still have not seen a draft of the withdrawal agreement implementation Bill?

Suella Braverman: The position was that it would be published immediately after the deal was approved by Parliament. That was an agreed position, but yes, I can see the case that in the interests of time, it might have been advantageous to publish draft sections to allow scrutiny to commence ahead of time, in light of the time issues. But that was the decision that was made.



HOUSE OF COMMONS

Q235 **Kelvin Hopkins:** It seems to me that what you are suggesting is that it is just a matter of political will and that procedural difficulties are there just to cause a bit of a fog, but that if the negotiations were being handled according to the view that you and I share, we would be there by now.

Suella Braverman: I have no doubt about it: yes, I agree. But there have been obstructions and obstacles placed in the way at every step of this process, and it is regrettable.

Q236 **Chair:** And they seem to have come from No. 10.

Suella Braverman: I haven't seen it with my own eyes, but that is my supposition, yes—No. 10 or the Treasury.

Q237 **Geraint Davies:** I know that you are concerned about getting out of the grip of the EU rules, and indeed the backstop, but aren't you concerned that in moving towards a WTO regime, we would be just one member amongst 160, governed by a council of Ministers with a much larger commission and fewer British appointees, and overseen and enforced by a panel of elected judges who would basically stop us from doing any state intervention, enforce higher prices for generic drugs on the NHS and so on? You would very much be moving from a system of weakness—in your view, perhaps—to one of even more weakness. After all, in a nutshell, at the moment we are able to influence Europe from within, in terms of the rules, and have leverage with Europe as a big block within the WTO. If we move towards a WTO regime, we will not have influence over any EU rules that we will still have to obey, and even less influence in the WTO. How can that possibly be regarded as taking back control or sovereignty?

Suella Braverman: I disagree with the premise of your question. The UK was a founder member of the WTO.

Geraint Davies: So what?

Suella Braverman: I think we have a heritage when it comes to the WTO. It is the foundation of world trade that the majority of countries all over the world use perfectly well and profitably. Importantly, it does not mean signing up to a superior legal system that subordinates our own courts.

Geraint Davies: It does.

Suella Braverman: It doesn't mean accepting uncontrolled migration, whereby our own elected representatives have no say over the number of people coming into this country or where they come from. It doesn't mean following swathes of rules and regulations that are regulated by an unelected body. From a Brexit point of view of taking back control, signing up to the WTO really does not betray those objectives at all.

Q238 **Geraint Davies:** You are aware, of course, that the EU has just negotiated procurement arrangements with the WTO.

Suella Braverman: Yes.

Q239 **Geraint Davies:** That has been blocked for the UK by Moldova, so we would not be in a very strong position there. You will know that the panel of judges in the WTO can impose fines on member states for state intervention in their own state and overrule our courts, which the ECJ would not.

Suella Braverman: Of course there is going to be a dispute resolution mechanism. There are rules underpinning the framework of the WTO, but if there is breach or a transgression of those rules, it is right that there is a body that is independent and sits alongside it to resolve those disputes. But that is a very different situation from the European Court of Justice, which has the final say on our jurisprudence, is part of our legal order, and renders our domestic judges and lawyers secondary when it comes to the interpretation and development of our laws and rules. That is a very different situation from dispute resolution. All trade agreements have dispute resolution ingrained in them.

Geraint Davies: May I ask—

Chair: I think you have received the answer to the question, Geraint, which is that there is a different legal order. You have heard the answer, and the reality is that on no conceivable basis would anyone be able to say that the WTO was like the European Union in terms of the legal order. You have had the answer, and now we have to leave it at that.

Q240 **Geraint Davies:** Now we can be fined by the WTO, but not so much by the ECJ, so it is much worse.

Suella Braverman: Well, our own laws can be overturned by the ECJ.

Q241 **Geraint Davies:** The WTO can overturn our courts.

Suella Braverman: You don't get the WTO quashing an Act of Parliament that has been passed in a sovereign way here. It is a very different situation.

Chair: Anyway, thank you very much indeed for your extensive evidence and for coming along this afternoon.