**THE ACT OF UNION v. THE BACKSTOP**

**News Letter version published 5 April 2019 ‘Backstop would drastically alter the 1800 Act of Union’:**

<https://www.newsletter.co.uk/news/opinion/jeff-dudgeon-the-backstop-would-drastically-alter-the-1800-act-of-union-1-8878939>

The 1800 Act of Union between Ireland and Great Britain is actually two Acts, one of the Irish parliament and one of the Westminster parliament. The second is entitled ‘Union with Ireland Act’ and remains in force.

As it created the United Kingdom of Great Britain and Ireland (later just Northern Ireland), it is a major constitutional statute that has unique importance. Because of that foundational and fundamental status, it cannot be ignored or amended indirectly. It also created a free trade area between the two countries. If the EU Withdrawal Agreement ever gets as far as becoming Westminster legislation, the Act of Union will have to be repealed or changed so drastically it will be unrecognisable.

That 1800 Act was very much the creation of our most notable politician, Robert Stewart, Lord Castlereagh. After being acting Irish Chief Secretary during the United Irish rebellion, in furtherance of both his own political vision and the Prime Minister William Pitt's policies, he began in 1799 lobbying in the Irish and British Parliaments for an official union between the two, convinced that it was the best way to soothe the long-standing divides in Ireland, and insulate Ireland from further radical disaffection.

To pass the Act in Dublin required the distribution of copious peerages and honours. Contrary to Castlereagh’s wishes, who steered the Acts to success in both parliaments, it did not come with Catholic emancipation which would have permitted Catholics to sit in parliament and not just vote in elections. That took another 30 years.

The most important part of the Act after the union of the parliaments was the creation of an internal market within the new United Kingdom. This was to come about with all tariffs on trade between the two countries progressively ceasing over a twenty-year period. The schedules to the Act of Union with Ireland list goods like carriages, cotton yarn, muslins, beer, hops, brass, bricks, tiles etc, and how and when the tariffs on these would be ending in the years up to 1821. These transitional arrangements were partly necessary due to depressed economic conditions caused by the then war with revolutionary France.

Article sixth of the Act brought about the customs union in these words: “The subjects of Great Britain and Ireland shall be on the same footing in respect of trade and navigation…[and] That from the first day of January 1801 all prohibitions and bounties on the export of articles, the growth, produce or manufacture of either country, to the other shall cease and determine; and that the said articles shall thenceforth be exported from one country to the other without duty or bounty on such export.”

These critical words then appear: “In all treaties made by his Majesty his heirs and successors, with any foreign power, his Majesty’s subjects of Ireland shall have the same privileges and be on the same footing as his Majesty’s subjects of Great Britain.”

It is almost as if the drafters in 1800 could see the possibility of a Backstop and moved against it pre-emptively.

Neither the government nor indeed the DUP have mentioned how the Act of Union will be protected in the event of a Backstop and whether it can be. The Withdrawal Agreement, a treaty with a foreign power, the EU, will not leave HM’s subjects in Northern Ireland “on the same footing” as those in GB where trade is concerned. Such a treaty is expressly prohibited.

The Irish protocol in the Withdrawal Agreement outlines how if there is no agreement by December 2020 and the transition period has not been extended, a single customs territory between the EU and the UK will come into force. Northern Ireland however would remain a part of the EU customs union, with GB outside that union but joined in a new custom territory. This means that there would be paperwork formalities on trade between GB and Northern Ireland.

Secondly, Northern Ireland would have to stick to the rules of the EU’s single market in areas such as technical regulation of goods, agricultural production and regulation, state aid and other areas of North-South cooperation. It will also be included within parts of the EU’s VAT and excise regimes while GB would not. This situation would be maintained indefinitely.

In truth, although London does not question the matter, the Belfast Agreement says little or nothing about the EU and the economy, despite Dublin’s fake assertions. Its cross-border co-operation bodies, far from being undermined by regulatory differences become even more important. A ‘hard’ border at least in trade and customs terms is therefore not at odds with the Agreement although its basic cross-border function was to enable bilateral negotiations to protect the Agreement, the fledgling peace and trade.

The Irish protocol, if given effect in domestic law, would breach the Act’s 6th article unless repealed. That Act with that article is our only statute dealing with the two islands’ economies, including taxation and international trade.

However the UK government, if it ever came to giving effect to the Irish protocol, would, I imagine, be reluctant to expressly repeal the only economic article in the foundation statute of the UK state. Or would it?

Casual inattention, an indifference to history and constitutional norms are already threatening the unity of the UK and its sovereignty in a way no Irish government would ever countenance. Instead, London foolishly threatens Northern Ireland with direct rule, something that a majority of people here would welcome to unfreeze decision making.

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