

PROTOCOL ON IRELAND / NORTHERN IRELAND

NON-PAPER – CUSTOMS

1) Issue

1. One of the key concerns raised by the Government of the United Kingdom (UK) and by many stakeholders in Northern Ireland, in particular business, is the new obstacles since the end of the transition period to the flow of goods from Great Britain to Northern Ireland i.e. East/West trade. They have pointed, in particular, to the customs procedures and requirements, such as the supplementary declarations¹, which apply now to such movements that create administrative burden and compliance costs.
2. The UK's withdrawal from the European Union (EU) had indeed as a consequence that customs formalities and compliance requirements apply to movements of goods between the Union and the UK, which did not exist when the UK was part of the Union's Single Market and Customs Union. The firm commitment of the Union and the UK to no customs and regulatory checks or controls and related infrastructure at the border between Ireland and Northern Ireland has led the Union and the UK to agree to a common balanced solution for customs in the Protocol on Ireland/Northern Ireland (the 'Protocol'). As a result, the external border of the Union's Single Market for goods and Customs Union has been established between Northern Ireland and Great Britain respective territories. This external border of the Union is managed and controlled by the UK authorities.
3. The UK Government refers now to obstacles resulting from the Protocol in the area of customs that have a negative impact on Northern Ireland business as regards East-West trade and the place of Northern Ireland in the UK internal market². It has however not provided any concrete economic evidence nor substantiated the precise difficulties faced resulting from the implementation of the agreed solution which would outweigh the benefits and opportunities that Northern Ireland business has by remaining de facto part of the Union's Single Market for goods and are confirmed by a majority of Northern Ireland businesses³.

¹ A supplementary declaration, in the form of a full customs declaration, must be submitted to the customs authorities by the holder of an authorisation to submit simplified declarations. Such authorisations allow for some particulars of the declaration to be omitted at the time of lodging of the customs declaration. Some of the data requirements are postponed to the supplementary declaration, in general 10 days after the release of the goods.

² 'Supply chains have been disrupted and costs increased, with staff redeployed to deal with new bureaucracy, impacting investment and growth. Consumers have seen real impacts: at least 200 companies in Great Britain have stopped servicing the Northern Ireland market; ... supermarkets have reduced their product lines due to the delays and barriers in moving goods; and the costs of deliveries for those who do serve the market have continued to increase. ... In turn we have seen changes to longstanding trade flows as businesses in Northern Ireland either divert their supply chains, or businesses in Great Britain decide to no longer supply into Northern Ireland. ... Half of the membership of the Northern Ireland Chamber of Commerce believed Northern Ireland's trade relationship with Great Britain under the existing arrangements had been negatively impacted, and half considered this would remain the case in the future –with only 8% seeing positive benefits. Many more have noted the increased costs and the challenge that poses to their viability in the longer-term.' *Northern Ireland Protocol: the way forward*, July 2021, Command Paper 502.

³ Northern Ireland Chamber of Commerce and Industry, *Cause for optimism as NI's economic recovery gathers pace*: (i) Business confidence improved strongly in Q2 2021, (ii) More businesses are now making plans to invest, particularly manufacturers; and (iii) 67% believe that NI's status post EU Exit presents opportunities for the region. When asked on the impact of Brexit 29% of members said that their business has adapted well to new trading arrangements, up from 15% in Q1 2021. At the same time almost a third (32%) are finding new trading arrangements difficult, however significantly less than in Q1 (41%). The Central Statistics Office of Ireland has also reported that the value of goods imported from NI to IE rose by 60% to €1bn in the first four months of 2021, compared with the same period in 2020 (€697m). Exports from IE to NI rose

2) Framework

4. As provided for in Article 6(2) of the Protocol, having regard to Northern Ireland's integral place in the UK's internal market, the Union and the UK should use their best endeavours to facilitate trade between Northern Ireland and other parts of the UK, in accordance with applicable legislation and taking into account their respective regulatory regimes as well as the implementation thereof⁴.
5. As provided for in Article 5 of the Protocol goods imported into Northern Ireland from Great Britain are subject to standard customs rules, procedures and formalities according to the Union customs legislation. In particular, by default, the EU tariff applies.
6. However, imports of goods into Northern Ireland which are considered as 'not at risk of being subsequently moved into the Union' are subject to UK customs duties. As regards East/West trade, that means no customs duties are collected but, standard customs procedures apply. Indeed, there is no further customs facilitation for goods considered as 'not at risk'.
7. This concept of goods 'not at risk' has been further defined in the Joint Committee Decision No 4 of 17 December 2020⁵. The Protocol provides that goods subject to commercial processing i.e. goods which are imported for the purpose of manufacturing in Northern Ireland, are systematically considered as 'at risk' goods.
8. However, the Decision provides for some flexibilities: small businesses in Northern Ireland (on the basis of a turnover threshold) and businesses which process goods for a specific purpose such as the sale of food to end-consumers in Northern Ireland, for construction located in Northern Ireland, for health or care services, for animal feed or for not-for-profit activities, can be considered as carrying out 'non-commercial processing'.
9. As regards goods not subject to commercial processing, the Decision provides for a comparison between the UK and the Union customs duties payable. For goods brought in from Great Britain, the good is considered not at risk of being moved to the Union if the Union customs duty is equal to zero⁶.
10. The Decision also provides for additional flexibilities regarding East/West trade flows. In particular, the Decision provides for a regime of authorisation for certain traders. They are considered as importing 'not at risk goods' if they can guarantee that these goods will solely be sold, via physical direct sales from physical outlets, to, or provided for final use by, end-consumers in Northern Ireland⁷. The scheme is available to business established in Northern Ireland and to business which have a fixed place of business there⁸.

by 40% to almost €977m over the same period, reflecting increased IE-NI cross-border trade since Brexit as NI remained in the EU's single market for goods.

⁴ The Joint Committee should also keep the application of this paragraph under constant review and adopt appropriate recommendations with a view to avoiding controls at the ports and airports of Northern Ireland to the extent possible.

⁵ Decision No 4/2020 of the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 17 December 2020 on the determination of goods not at risk [2020/2248], OJ L 443, 30.12.2020, p. 6.

⁶ For goods brought from the rest of the world, the UK tariff applies if the Union tariff is equal to or less than the UK customs tariff.

⁷ These flexibilities are also applicable to goods brought from the rest of the world if the difference between the UK and the Union customs duties payable is lower than 3% of the customs value of the good.

⁸ Non-established traders with an indirect customs representative in Northern Ireland and who have their customs-related operations carried out in the UK.

11. The main purpose of this scheme is to reduce the costs of moving goods from Great Britain as UK customs duties applies, which means no duties⁹ for retailers established in Northern Ireland such as supermarkets and stores depending on supply chains and distribution centres established in Great Britain. In addition, such traders do not need to calculate the Union customs duties which would be payable¹⁰. Their compliance costs are therefore reduced.
12. The UK Trader Scheme (UKTS) implements the Joint Committee Decision in the UK. Until now more than 3.000 applications for the regime have been received by the UK authorities and close to 3.000 authorisations have been granted, which shows the great interest in this regime.

3) EU Interest and Conditions

Union Interest

13. It is in the Union interest that a proper and full implementation of the agreed Protocol on Ireland/Northern Ireland takes place. However, should a precise problem in that implementation be identified, including as regards trade between Great Britain and Northern Ireland, which would affect Northern Ireland citizens and business, it would be in the Union's interest to find creative, effective and long-term solutions to such difficulties, within the framework of the Protocol.
14. In addition to the protection of the Good Friday (Belfast) Agreement, the fundamental interest of the Union is the protection of the integrity of both the Customs Union and the Single Market for goods. Considering that customs authorities play a major role in the correct application of EU market legislation on goods, and taking into account that the Union has given up its control of its external border between Ireland and Northern Ireland to the UK customs authorities, it remains of utmost importance for the EU that an effective control is in place for that purpose.

Union Conditions

15. Therefore, adjustments to the current framework, which are legally feasible under the Protocol, could be considered. However, certain conditions should be met and certain guarantees should be provided by the UK.
16. The UK should demonstrate that the existing customs simplifications and facilitations provided for in Union legislation have been fully implemented by the UK authorities and have been used by the traders and that they have not been able to address the issues which are faced with by the traders given the unique situation of Northern Ireland.
17. The solutions to be identified should not require a renegotiation of or amendments to the Protocol and should ensure stability, predictability and legal certainty in Northern Ireland for the benefit of citizens and business while fully protecting the integrity of the Union's Single Market and Customs Union and the Good Friday (Belfast) Agreement.
18. In particular, while not eliminating them completely, the solutions should reduce formalities, checks and controls at the border for East/West trade without threatening the integrity of the Union's Single Market and Customs Union.
19. The UK should have fully implemented what has been agreed under the Protocol in the area of customs. The main open issues include:

⁹ Anyway, under certain conditions, as provided for in Article 5(6) of the Protocol, the UK may reimburse the customs duties levied on such imports in respect of goods that can be shown not to have entered the Union.

¹⁰ Customs duties depend on the customs value of the goods, the customs tariff to be applied and the origin of the goods.

- i. the implementation of Union's prohibitions and restrictions on export of goods from Northern Ireland to Great Britain (the prohibitions and restrictions applying at export should include dual-use items, cultural goods and waste shipment);
- ii. the implementation of the customs legislation and of the UK unilateral declaration on 'unfettered access', for goods exiting Northern Ireland to Great Britain¹¹;
- iii. the correct implementation of the customs legislation at entry into Northern Ireland of B2B¹² parcels; and
- iv. full and real time access of the Union Representatives to the UK IT systems in order to carry out their monitoring duties properly as provided for in the Joint Committee Decision N° 6/2020 of 17 December 2020¹³.

20. The UK should also commit to:

- i. implement appropriate monitoring and enforcement measures for such adjustments in order to ensure a sufficient level of confidence that the integrity of the Union's Single Market and Customs Union is protected. Additional data collected should be shared with the Union representatives;
- ii. continue the support, in particular with the Trader Support Service, which has been provided to the business in the UK when implementing the Protocol as regards East/West trade.

4) Possible Solutions

21. In order to facilitate East/West trade, the scheme applicable to 'goods not at risk of being subsequently moved into the Union' which already exists in the Protocol, and is further implemented under Joint Committee Decision No 4, could be further developed in terms of both scope - the beneficiaries and products covered - and benefits such as genuine simplifications for the business and supplies of goods eligible.
22. Criteria related to the status of the sender and recipient of the goods (e.g. business or consumer), the business activity of the parties involved (e.g. retailers, wholesalers, manufacturing industry), the nature of the goods (e.g. intermediate goods or consumers goods), the value of the goods, the nature of the consignment (e.g. parcels), the record of compliance with customs or/and taxation requirements of the business involved, could be used in the design and the scope of the scheme.
23. In terms of benefits, additional facilitation measures with regard to customs formalities and processes could be put in place for the 'goods not at risk'.
24. In any case, the eligibility criteria, the requirements to be met, the reporting obligations and enforcement tools of such a revised scheme should be robust enough to guarantee that the goods moved to Northern Ireland under the scheme would be subject to final consumption in Northern

¹¹ https://ec.europa.eu/info/publications/unilateral-declarations-uk-and-eu-export-procedures-goods-moving-northern-ireland-great-britain_en

¹² Business to Business.

¹³ Decision No 6/2020 of the Joint Committee established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 17 December 2020 providing the practical arrangements relating to the exercise of the right of Union representatives referred to in Article 12(2) of the Protocol on Ireland/Northern Ireland [2020/2250], OJ L 443, 30.12.2020, p.16.

Ireland and, therefore, would not be moved subsequently to the Union. Union representatives and relevant market surveillance authorities should play an active role in monitoring the scheme.

25. The impact of the revised scheme on the implementation of indirect tax rules (Value Added Tax (VAT) and excise duties), the operation of market surveillance in respect of products made available on the Northern Ireland market and EU quotas should also be considered in this context. It should be ensured in particular that EU quotas could not be circumvented under the scheme and goods could not be consumed in Northern Ireland free of VAT and excise duties.
26. Without amending the Protocol, such a scheme may require amendments to the Joint Committee Decisions adopted in December and/or to Union legislation made applicable to the UK in respect of Northern Ireland by the Protocol.

5) Structural safeguards

27. A review clause and a termination clause in case of non-compliance.
28. Full use of the relevant alert mechanisms to flag any identified problems in relation to individual products or traders.

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