



## How to implement the Northern Ireland Protocol

by Sam Lowe

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**The UK must face up to its responsibilities and work with the EU to ensure goods can move as freely as possible between Great Britain and Northern Ireland. This insight offers a range of suggestions for how to ensure the Protocol, and the issues it creates, can be de-dramatised.**

Disagreements over the implementation of the Withdrawal Agreement's [Protocol on Ireland and Northern Ireland](#) threaten to scupper the EU-UK trade negotiations. The EU has been unnerved by [statements](#) from Prime Minister Boris Johnson that imply he does not intend to uphold the agreement he signed in January. The EU is also bothered by the UK's apparent foot-dragging when it comes to bringing the Protocol into effect on the ground in Northern Ireland. The UK, for its part, believes the EU is failing to be flexible and take into account the need to keep Northern Ireland's Unionists on board. Tensions most recently boiled over with a squabble over whether the EU would be allowed to open an office in Belfast, from which its officials can monitor the implementation of the Protocol. The UK government has refused the request, saying a permanent EU office would be unnecessary and locally divisive.

Yet despite continued frustrations, there are signs that the UK is beginning to take its commitments more seriously: it has [reportedly](#) told the Commission that it has hired some of the new vets needed to check animal products entering Northern Ireland from Great Britain. This is a positive step, for if the two sides are to make progress on the Protocol in time for the transition period concluding at the end of year, the UK must first face up to the consequences of its decisions.

As the only UK nation to share a (until recently, violently contested) land border with the EU, Brexit threatened Northern Ireland's position in the UK's single market from the beginning. My colleague John Springford [argued](#) in early 2018 that the UK would need to choose between close continued economic integration with the EU, or a customs and regulatory border between Northern Ireland and Ireland, or between Northern Ireland and Great Britain.

And so it came to pass. When Johnson agreed to the Protocol in October 2019, he made two choices. He rightly chose to avoid reinstating a land border between Northern Ireland and Ireland. But he also chose to prioritise Great Britain's regulatory flexibility and ability to sign new free trade agreements

over Northern Ireland's economic integration with the rest of the UK. In doing so he created a de facto customs and regulatory border between Great Britain and Northern Ireland in the Irish Sea.

In practice, his decision means that once the transition period ends, the default for goods entering Northern Ireland from Great Britain and the rest of the world is that they shall be treated as if they were entering the EU, and they will face all the associated checks and bureaucracy this implies. However, the Protocol stipulates that exceptions to this rule are allowed so long as there is little risk of the products destined for Northern Ireland being diverted into Ireland and the EU. The EU and its chief negotiator Michel Barnier have also reiterated throughout the negotiations that the EU is willing to discuss measures to "[de-dramatise](#)" the GB-NI border, taking into account the special circumstances of the region.

Trust can be rebuilt, but only if the UK accepts its obligations and engages constructively on the implementation of the Protocol, and discussions move onto the litany of ways in which the Protocol can be made to work more smoothly for the UK and Northern Ireland. However, while the Protocol will come into effect regardless of the outcome of the trade talks, it is difficult to see how any sustainable arrangement can be found in the absence of EU-UK agreement on their future relationship. Assuming an amicable working relationship between the EU and UK, what follows below are some suggestions for how the Protocol, and the issues it creates, can be de-dramatised.

### **Determining whether goods are at risk of onward transport to the EU**

Under the Protocol, the default is that goods entering Northern Ireland from outside the EU are deemed 'at risk' of being moved into the Union, and therefore EU tariffs apply. However, the Protocol proceeds to caveat this and lists different criteria to be taken into account by the Withdrawal Agreement's [Joint Committee](#), when determining which goods are to be treated as at risk, and subject to EU tariffs, or not. These criteria include incentives for smuggling, the final destination of the good, the nature and value of the good, and the nature of the movement.

From an EU perspective, the wrong tariff being levied does not pose a fiscal risk. While the UK is obliged to levy EU tariffs on imports into Northern Ireland, the Protocol does not oblige it to transfer the collected money to the EU. This means that the EU's only real concern is that goods will be imported into Northern Ireland, either tariff free or under a lower UK tariff, and then shipped on into the EU or used to create products in Northern Ireland that are then sold in the EU, giving the Northern Ireland-based producer an unfair advantage over EU-based rivals.

The EU and UK intend to negotiate a free trade agreement that removes all duties and quotas, but the trade talks are currently being held up by disagreements over fishing rights and level playing field commitments, among other things. This could lead to the EU and UK failing to reach a deal, and trading on the basis of their WTO commitments come the end of the transition period. Such an outcome would make the implementation of the Protocol trickier.

An EU-UK free trade agreement would help to soften the border between Northern Ireland and Great Britain in a number of ways. Assuming there are no tariffs on trade between the EU and UK, there is only a risk to the EU when EU tariffs are higher than the UK's. This risk applies both to products directly imported into Northern Ireland from the rest of the world, and goods entering from Great Britain that might originate from another country. But in all likelihood the EU and UK will apply the same tariff to many goods imported from the rest of the world. In these cases imports into Northern Ireland do

not threaten the single market and do not need the additional controls possible under the Protocol. Furthermore, any goods which face an EU most-favoured-nation tariff of zero do not need additional controls because there is no risk to the EU.

To expedite the process of identifying which products pose a risk to the EU because of lower UK tariffs, the UK should publish its final applied most-favoured-nation tariff schedule as soon as possible, so that a more focused list of at-risk products can be produced. Any future changes should be immediately notified to the EU, and the list of at-risk products should be made publicly available. In practice (again, on the assumption there are no tariffs applied to trade between the EU and UK) this will probably remove a large quantity of goods from the at-risk list, allowing risk-free goods to enter Northern Ireland duty-free whether they enter from Great Britain or somewhere else.

The risk of goods being imported into Northern Ireland under UK free trade agreements, say with the US, and finding their way onto the EU market is also low, because in order to qualify for the lower tariff in this instance the importer would need to identify themselves to the British authorities and demonstrate that the product meets the rules of origin criteria of the UK-US free trade agreement, and show that the final sale was in Northern Ireland (which is a lot of hassle, leaving many not to bother).

For those imported goods from Great Britain and the rest of the world that remain at risk, imports will be subject to the EU tariff unless the Northern Irish-based buyer can demonstrate that the final sale will be in Northern Ireland. However, tariffs need not be paid when goods cross into Northern Ireland if a 'deferred accounting' system is set up. That process would allow customs duties to be paid, say, every three months, in the event that the importer cannot evidence the final sale, as suggested previously by [Martin Sandbu](#) and [Raoul Ruparel](#). The deferred accounting could be bundled in with VAT, which locks in an incentive for compliance because, while goods will be liable for tariff payments if they are re-exported to the EU from Northern Ireland, they will also be eligible for a UK VAT refund. Enforcement could be carried out via risk-based and randomised audits, with the involvement of EU officials when appropriate.

For large-scale importers of food products, where tariffs are often particularly high, a specific scheme could be created. Subject to audit, wholesale food markets and distributors selling to Northern Irish restaurants could be exempt from any import duty, due to the fact that final point of sale is clearly in Northern Ireland.

### **Reducing checks and bureaucracy**

Perhaps the bigger issue facing Northern Irish businesses is the additional cost associated with the new checks and bureaucracy required to send goods back and forth to Great Britain. Unfortunately, due to the nature of the UK's desired future relationship with the EU, it is difficult to see a way in which the current status quo can be maintained, but new costs and burdens can be kept to a minimum.

In the case of agrifood, which dominates Northern Ireland's trade with the rest of the UK, checks are already carried out on live animals entering Northern Ireland from Great Britain. But the Protocol extends the need for paperwork and inspections to all products of animal origin. There are options available to the UK to reduce or remove associated bureaucracy and the need for physical inspections: if the EU and UK reach an equivalence agreement on food hygiene (SPS), like the EU has with New Zealand, then paperwork could be simplified. There would still be a need for identity and document checks, but the rate of physical inspection could be reduced to near zero. Were the UK to increase its ambition, it could

attempt to negotiate an agreement similar to the one the Swiss have with the EU, which removes the need for all additional paperwork, checks and inspections. But this would require the UK to continue to apply EU food hygiene rules throughout the country and to imports from the rest of the world indefinitely. Such an approach would suit Northern Ireland, and British farmers in general (as it would remove these checks on all border frontiers with the EU), but would make it [more difficult](#) for the UK to strike a free trade agreement with US.

As for general customs paperwork, all goods entering Northern Ireland from Great Britain will need to be accompanied by a customs and security declaration. However, UK officials are responsible for the enforcement of export/import formalities on both sides of the sea border (although in the case of the Northern Ireland side of the internal border the officials will be required to apply the rules of the EU's Union Customs Code). This increases the potential for enforcement to be pushed away from the border itself and for additional requirements to be folded into pre-existing procedures.

For example, under the [simplified declaration procedure](#) of the Union Customs Code, importers are already allowed to digitally submit minimal information upon import, with more detailed declarations submitted after the fact. In a no-deal scenario, the UK intended to roll out a similar approach (the so-called [transitional simplified procedure](#)) to all UK importers; this should now be introduced for all importers in Northern Ireland. Customs compliance could then be dealt with via a combination of risk-based and random audits of importers (with the involvement of EU officials to assuage any fears), keeping checks at ports of entry to a minimum.

The UK could also attempt to negotiate away the need for security declarations, as Switzerland and Norway have done with the EU. Such an arrangement could remove the need for Northern Irish companies sending goods to Great Britain to complete an exit summary declaration, as is normally required by EU rules.

For smaller importers, the British government should create a new Northern Irish customs office that completes import and export formalities on their behalf. It should also waive import duties for smaller amounts, taking into account state aid rules governing how much money the government can give a company (waiving a duty technically constitutes the government paying the duty on behalf of the importer).

The EU's rules of origin and product standards are largely enforced away from the border and on the market so pose less of a direct problem. However, the UK will need to communicate with Northern Irish producers to ensure they are fully aware of their new obligations: for example, products produced to European standards and imported from Great Britain will need to be labelled with the address of the Northern Irish-based importer or distributor.

While ultimately the change being inflicted upon Northern Ireland is a mess of the UK's making, the EU does have a role to play in ensuring that the Protocol is sustainable in practice, and does not further destabilise the region. Some of the suggestions made in this piece will be palatable to the EU, and some will not. But on the condition the UK is also upholding its end of the bargain, there is a mutual interest in finding practical solutions that all parties can live with.

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