

Brexit: Changes coming down the line

"We are not there yet, but we are getting there"

by Paul Lynam

While the world has been preoccupied with a once in a century pandemic, the wheels continue to turn on the post-Brexit political and trading landscape. In our view there was never going to be a 'Good Brexit', in fact from a British – Irish trade perspective, there is no such thing. Great Britain is out of the Single Market and Customs Union and therefore the seamless trade enjoyed between Ireland and Britain has been disrupted. While we must bear in mind the unprecedented challenges that businesses are facing with Covid-19, it is clear that the first eight months of Brexit have indeed been challenging for British – Irish trade, especially British exports to Ireland.

The inevitable imposition of the full Union Customs Code on imports from Great Britain since January 1st has had a significant impact on the level of goods imported from Great Britain. This has caused significant disruption for Irish importers who traditionally relied on goods imported from Great Britain as an integral part of their supply chain. Prior to Brexit, imports from Great Britain accounted for one in every four of all Irish imports.

According to the Central Statistics Office, imports from Britain are down 31% on last year and 37% prior to Covid (Jan – August) with food, live animals and manufactured goods hit hardest. Conversely, Irish exports to Great Britain have more than rebounded with exports of goods up 21% on last year (Jan v August). However Irish exporters haven't felt the full brunt of UK customs controls yet. As is the UK Government's right, they decided to implement customs controls on a phased basis but, for the second time this year, they decided to push out that timeline:

The Timeline for the Phasing out of the UK Government's Import Customs Easements.

- The requirement for pre-notification of agri-food imports will be introduced on 1 January 2022 as opposed to 1 October 2021.
- The requirement for Export Health Certificates and Phytosanitary Certificates, and for physical checks on SPS goods at Border Control Posts will be introduced starting from 1 July 2022 as opposed to 1 January 2022.
- The requirement for Safety and Security declarations on imports will be introduced as of 1 July 2022 as opposed to 1 January 2022.
- The timetable for the removal of current easements in relation to full customs controls and the introduction of customs checks remains unchanged from the planned 1 January 2022.

While appreciating the frustrations of businesses that have invested significant sums of money into their preparations, we do believe this is the correct decision for the UK Government to make. This pragmatic approach is necessary so that the UK Government can make the necessary preparations for full customs controls to ensure an orderly transition that does not unduly disrupt trade. This extension also allows businesses on both sides of the Irish Sea additional time to prepare for the new import restrictions and administrative barriers that will soon come into force.

The Northern Ireland Protocol

The Northern Ireland Protocol (which keeps Northern Ireland aligned to EU rules on Goods) which dominated the first phase of the Brexit negotiations, the Exit Talks, continues to be the dominant point of friction between the EU and the UK. The UK Government is making the case that the current implementation of the Protocol is having a profound impact on trade between Great Britain

and Northern Ireland, an impact that will be exasperated even further when the grace periods on GB – NI trade expire.

Lord Frost, the UK's lead negotiator has called on the EU to apply "flexibility", "pragmatism" and "common sense solutions". The UK Government's Command Paper "Northern Ireland Protocol: the way forward" sets out areas which they want changed within the Protocol including the following:

1. **"Remove the burdens on trade in goods within the UK while managing the real risks to the EU Single Market."** Effectively they want to invert the Applied Risk Principle from all goods being deemed at risk of entering the Single Market unless otherwise agreed by the Joint Committee to all goods considered not at risk unless otherwise flagged.
2. **Implement a "full dual regulatory regime in Northern Ireland".** The UK wants goods, whether manufactured or SPS goods to be able to circulate within Northern Ireland if they meet either UK or EU rules.
3. **"Normalise the governance basis of the Protocol".** In essence, the UK Government wants the oversight of the European Court of Justice (ECJ) in the application of the Northern Ireland Protocol to be removed.

EU Proposals

The EU has responded to the UK's command paper by issuing four 'non-papers' which address some of these areas. Three of the four proposals address the more technical 'nuts-and-bolts' issues raised by the UK such as burdens on the trade of goods and regulatory checks. The EU's proposed solutions offer a bespoke arrangement on SPS checks on goods entering Northern Ireland, offering a reduction of 80% and streamlined customs checks,

estimated to reduce paperwork by 50%. The third technical solution offered by the EU regards medicines, which under the proposal could originate in Great Britain, follow UK regulations, yet circulate in the UK. These proposals are being cautiously welcomed by the UK as signals that the EU is willing to negotiate on areas which were billed as being off the table at the beginning of the year.

The fourth proposal by the EU aims to address an area which is indicative of larger ideas around sovereignty and democratic accountability around the protocol- governance. The EU proposal suggests increased engagement between the EU and Northern Irish stakeholders through structured dialogues. The proposal however comes short of the UK's call to replace the ECJ as the arbiter of EU law in Northern Ireland, replaced with an international arbitration system like that set up under the TCA.

It is on this fourth proposal where the most daylight exists between the position of the EU and the UK. The technical solutions proposed by the EU

bring the positions of the two parties on these technical issues so close that a compromise deal on these seems inevitable. It is around governance where there is the least commonality, where one side will have to make a significant concession for there to be progress.

For its part, the UK argues that it is objecting to more than just having the court of a third jurisdiction oversee laws within its borders; it argues that the whole governance structure of the protocol is weighted in favour of the EU.

The EU's position is that being that it is EU laws that rulings need to be passed on, it can only be an EU court that can do so. While these positions may seem mutually exclusive, the past number of years of Brexit negotiations have shown that novel solutions can be found. The EU's willingness to compromise on a raft of technical issues shows that there is a desire there to make the protocol work into the future.

The Current Outlook

For the Chamber's part, we have been intensely engaged with our members who have been directly impacted by the Protocol, both in a positive and negative way, and we have held numerous meetings with the various business representative groups in the North. We heard from one member that

"The Protocol has been a critically important element of our Island of Ireland operations allowing our integrated supply chain to work seamlessly, with both production sites in Northern Ireland continuing to work at maximum capacity serving both domestic and international markets."

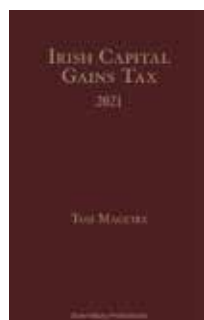
While trade stats are far from perfect in painting the whole picture, the first eight months of the year for which trade of goods stats are available show that North – South trade has increased by 45% compared to January – August 2019. Ireland's exports to Northern Ireland are up 35% ('21 v '19) while imports of goods from the North are up 54% ('21 v '19).

However, the general feedback we

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have received from our Northern Irish Members has been of some frustration. Businesses in Northern Ireland have faced the dual headed challenge of Brexit and Covid-19 with a remarkable level of resilience and pragmatism and are - for the most part - committed to making the Protocol work. That is not to ignore the significant challenges that the protocol has meant for business, including consistent supply chain issues with goods from Great Britain, higher costs, added levels of red tape and longer time frames - all headaches that businesses are trying to overcome. They realise the opportunities that can be obtained from uniquely having market access to both the UK and EU market, but these are hard to realise with the current challenges still in place.

The recent alliance of the Unionist Parties of the North to unite to oppose the Protocol and the growing possibility that the UK may trigger Article 16 reemphasizes the importance of both sides adopting a pragmatic approach to ensure that this Agreement that works in

theory can work in practice. There are practical changes that can help, such as electronication of Export Health Certificates, a greater voice for Northern Irish representatives and business leaders and streamlining trade processes, and the EU proposals are promising steps in the right direction. The Joint Committee must also engage with businesses in good faith to simplify processes and reach the necessary mitigations and derogations needed to ensure the free flow of trade between Great Britain and Northern Ireland. The Chamber would also like to see a comprehensive EU – UK Veterinary Agreement that adopts a principled approach akin to the innovation we saw that broke the deadlock in the negotiations on the Trade and Cooperation Agreement.

The Chamber will continue to play our part in offering proactive solutions to the current challenges facing the Northern Ireland Protocol. Whatever agreement is finalised must ensure that businesses have the time and the support needed to ensure it is workable, not just in the

short term, but permanently.

We have come a long way over the past few weeks, the immediate hazard of Article 16 being triggered has been abated and both parties are working tirelessly to find a mutually beneficial agreement. There is still some way to go, we are not there yet but we are getting there.



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