

Six sides to every story:

Trade in goods and the Northern Ireland Protocol

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Introduction

The *Ireland/Northern Ireland Protocol* places Northern Irish traders in a unique position. With a foot in both the UK and EU internal market, these traders can better serve clients in both Great Britain and the EU than those located in, for example, Glasgow, Liverpool, Cork, or Dublin.

However, while exporters from Northern Ireland to Great Britain, the EU, and the rest of the world benefit from the *Protocol*, importers face new challenges.¹

In total, the *Protocol* creates six distinct frameworks traders now must navigate. Different rules apply to:

- Imports into Northern Ireland from Great Britain
- Exports from Northern Ireland to Great Britain
- Imports into Northern Ireland from the EU
- Exports from Northern Ireland to the EU
- Imports into Northern Ireland from the rest of the world
- Exports from Northern Ireland to the rest of the world

Where some firms benefit, others struggle. The complexity associated with identifying and complying with these myriad rules is a barrier to trade and could lead to firms missing out on domestic and abroad opportunities.

Assuming the existing arrangements remain in place — which is far from a given — the composition of Northern Irish trade will adjust as companies minimise their exposure to the more challenging elements of the *Protocol* and position themselves to take advantage of the new arrangements. But suppose Northern Ireland is to thrive in the short-to-medium term? In that case, the EU and UK must make further efforts to alleviate the additional costs facing businesses and create a politically stable environment conducive to realising potential opportunities.

In this paper, I provide an overview of the six border regimes facing traders in Northern Ireland and propose additional measures to improve trading conditions.

1. Imports into Northern Ireland from Great Britain

Goods entering Northern Ireland from Great Britain are subject to numerous controls and processes. Under the *Protocol*, the de-facto position for imports, unless they qualify for specific exemptions, is treating them as if they are entering the EU's customs and regulatory territory. As a result, this has created new costs for companies moving goods into Northern Ireland from Great Britain and disrupted internal UK trade.

Tariffs

Goods for final sale in Northern Ireland can enter tariff-free if the applicable EU duty is zero. However, if the EU duty is *not* zero, they may still enter tariff-free if declared as ‘not at risk’ of onward movement to the EU under the UK Trader Scheme, or qualify for tariff-free treatment under the terms of the EU-UK Trade and Cooperation Agreement.² Goods subject to further processing may qualify for tariff-free treatment under the ‘not at risk’ scheme, so long as the annual turnover of the importer is less than £500,000 and the goods are for an ‘approved purpose’ such as construction or production of animal feed for animals in Northern Ireland.

None of the options mentioned is available for goods subject to EU trade remedies which have, in practice, already created problems. For example, in the moving of steel, which is subject to an EU Trump-era 25% safeguard tariff, and tariff rate quota (TRQ) exemptions. Initially, an EU regulation preventing EU TRQs from applying in Northern Ireland meant that, due to the *Protocol*, British steel moving from Great Britain to Northern Ireland was technically subject to the 25% duty.³ However, the EU and UK agreed to allow steel to move tariff-free, so long as there is still spare capacity in the EU steel safeguard TRQ that otherwise applies to imports from the UK.⁴ (However, a recent change in the EU’s steel safeguard methodology has called into question the ongoing viability of this approach.)⁵ A more sustainable solution would create a flexible, Northern Ireland-specific scheme, allowing steel to move freely into Northern Ireland from Great Britain, tariff-free.

If tariffs are applied, the UK may waive them for the Northern Irish importer. But only if it does not cause the importer to breach de minimis state aid ceilings that cap the amount of government financial support companies can receive question-free.

Customs

Companies moving goods into Northern Ireland from Great Britain must make import declarations – Entry Summary Declarations (ENS) – including customs, safety, and security. Traders can either submit these themselves via the Customs Declaration Service⁶ or use the Trader Support Service, a UK government-funded service that can complete these declarations.⁷

At the time of writing, the UK is unilaterally refusing to apply customs procedures to parcels shipped by Great British businesses to Northern Irish consumers. However, business-to-business shipments valued over £135 and prohibited or restricted goods require parcel declarations.⁸

Despite the facilitations, the new *Protocol* requirements create additional costs and complications for businesses moving goods from Great Britain into Northern Ireland. As a result, there are reports of companies halting sales to customers in Northern Ireland, and the *Protocol* could take further measures to reduce the burden on traders. The facilitations for parcels should be made permanent. The movements are easily traceable, with the parcel delivery mainly being carried out by large-scale parcel operators with a known point of sale in Northern Ireland and pose little risk to the EU. Further simplifications should be made available to traders with a strong compliance history. This will allow them to rely increasingly on existing commercial data and, for example, prevent the need to produce distinct Combined Nomenclature (CN) codes for each product rather than produce distinct customs declarations.

Regulation

Northern Ireland is within the EU's single market for goods from a regulatory perspective but with some caveats. This means that goods entering Northern Ireland (including from Great Britain) are treated, by default, as if they are entering the EU. Products placed on the market must conform to EU rules and have the necessary authorisations and certification. Manufactured goods on the market in Northern Ireland must be CE marked and, when required, certified by an EU-based certification body (products certified by a UK certification body must have a supplementary UKNI marking).⁹

For highly regulated products such as medicines, the default under the *Protocol* is that Northern Ireland is subject to the EU's authorisations and approvals regime. This creates a scenario where medicine is approved for use in Great Britain but not Northern Ireland, and vice versa. However, the EU has since changed its regulations to allow generic and new innovative medicines authorised by the UK to be placed on the market in Northern Ireland, subject to auditing and labelling requirements.¹⁰

Under the *Protocol*, agrifood products entering Northern Ireland from Great Britain are subject to EU sanitary and phytosanitary (SPS) hygiene controls and restrictions. For example, a vet-approved export health certificate must accompany products of animal origin, entered via a recognised border control post, and be subject to document checks, identity checks and physical inspection. There are also restrictions on certain products entering Northern Ireland, such as chilled meat preparations (e.g. unfrozen sausages).

At the time of writing, the UK is applying several unilateral measures and grace periods which alleviate the burden on traders bringing food into Northern Ireland from Great Britain. These UK measures include:

- Allowing for Great British chilled meat preparations for sale in supermarkets to continue to enter Northern Ireland;¹¹
- Simplified SPS procedures for ‘authorised traders’, such as supermarkets, so long as the products are consumed in Northern Ireland; and
- Low border intervention rates owing to a lack of permanent SPS infrastructure and limited staff.

The EU has instigated infraction proceedings against the UK over the latter two points.¹² The UK is also covering the compliance costs – such as Export Health Certificates – for companies moving agrifood into Northern Ireland via the Movement Assistance Scheme.¹³

More could be done to squeeze frictional costs for traders, such as a permanent footing for grace periods. Trusted traders who submit to stringent audit requirements with clear points-of-sale within Northern Ireland should benefit from an extended not-at-risk scheme, which removes (or significantly reduces) the administrative requirements and checks when bringing food into Northern Ireland from Great Britain. While this could require further changes to EU law – as happened with medicines – the EU has already demonstrated it can accept different requirements for products proven to remain in Northern Ireland regarding tariffs. This is the logical extension of that approach. Some high-risk products, such as citrus fruit, could be entirely exempt from the trusted trader approach.

Better still would be an EU-UK veterinary agreement of similar scope and depth to the EU’s veterinary agreement with Switzerland. This would remove the need for all additional export health certificates and border checks for agrifood products entering Northern Ireland (and the EU) from Great Britain. The UK government has, until now, opposed such a relationship due to its constraints on the UK’s ability to alter its domestic SPS rules and rules as they apply to imports. A small price to pay, putting internal trade with Northern Ireland on a more stable footing, would be welcomed by British food exporters, who generally struggle with the new requirements associated with selling into the EU. Additionally, fears that binding UK SPS rules to the EU

rules will prevent the UK from striking new trade agreements are overstated. Neither the UK's recent trade agreement with Australia nor New Zealand required the UK to change its current, EU-inherited, SPS regime.

2. Exports from Northern Ireland to Great Britain

Companies exporting 'qualifying' goods from Northern Ireland to Great Britain can do so *unfettered* as long as they are already in circulation in Northern Ireland. There are no requirements for export declarations, exit summary declarations, or the like. Some exceptions exist; for example, goods originating in an EU member-state and transiting through Northern Ireland (for example, Irish goods) are still subject to customs obligations. However, this 'qualifying' regime, which is mainly trust-based, is temporary and could be tightened over time. Export declarations and additional requirements apply to restricted goods such as endangered animal species, hazardous chemicals, firearms, torture instruments and the like.

The EU has brought an infringement proceeding against the UK over its failure to meet its commitment to provide the 'export' information to the EU via other means.¹⁴ However, it is unclear why lax controls on outward-bound movements pose a risk to the EU single market.

Additionally, goods placed on the Northern Irish market require no further authorisations for marketing to the wider UK. While Northern Irish (EU) product rules remain broadly aligned with UK rules, this poses little challenge. However, if the regimes diverge, it could create difficulties. For example, the UK government wants to phase out the recognition of EU CE marking for most products by the end of 2022. CE marks will still be recognised in Northern Ireland, and goods placed on the market in Northern Ireland do not require further authorisations when moved into Great Britain. However, CE marks will de-facto continue to be recognised UK-wide without further government intervention. The UK government could avoid this confusion by continually recognising CE marking in areas where the underlying EU and UK standards remain the same (most products).

3. Imports into Northern Ireland from the EU

Unlike goods moving from the EU into the rest of the UK, EU goods entering Northern Ireland can do so without requiring additional customs

declarations, regulatory obligations, and border inspections. This allows Northern Irish businesses and consumers to continue importing EU goods on similar terms to when the UK was a member of the EU.

However, Northern Irish businesses must comply with some minor new requirements. For example, companies moving goods between the EU and Northern Ireland under the *Protocol* must notify HMRC. They must also add an XI prefix before the UK VAT number on documentation shared with EU customers to record the transaction in line with EU VAT rules on intra-EU movements.¹⁵ In addition, as was the case pre-Brexit, Northern Irish companies that import over £500,000 worth of goods from the EU must complete EU Intrastat declarations.¹⁶

4. Exports from Northern Ireland to the EU

As with imports, goods exported from Northern Ireland to the EU are largely able to move friction-free. Unlike companies based in Great Britain, this means Northern Irish firms continue to export to and compete in the EU market on pre-Brexit terms.

However, there are some differences. As with imports, traders must notify HMRC and apply additional information to their VAT declarations. Additionally, Northern Irish companies producing goods for the EU market that require third-party certification must use a certification body within an EU member-state. Although, in some instances, UK providers may be used where the certification must be carried out on location. For example, such as veterinary certificates and certificates of good manufacturing practice for Northern Irish medicine manufacturers.¹⁷

5. Imports into Northern Ireland from the rest of the world

The *Protocol* emphasises Northern Ireland's status within the UK's customs territory and ability to partake in UK free trade agreements.¹⁸ However, goods imported into Northern Ireland from the rest of the world (excluding Great Britain and the EU) are treated, by default, as if they are entering the EU's customs and regulatory territory.¹⁹ UK tariffs and free trade agreements can apply under certain circumstances, but navigating the different regimes in practice is complicated – particularly if a trade remedy or TRQ is involved.

Tariffs

Goods entering Northern Ireland from the rest of the world are subject to the EU tariff-rate unless they are deemed 'not at risk' of onward movement into the EU, where the UK rate may apply. Imports are considered 'at risk' if the applied UK tariff is lower than the applied EU tariff, and the difference is equal to or greater than three percentage points. So, for example, if a Northern Irish firm imported LED lamps, where the UK tariff is 0%, and the EU tariff is 3.7%, the goods would be considered 'at risk', and the higher EU tariff would apply.²⁰

If the imported goods are not automatically deemed 'at risk' due to the tariff differential, importers authorised under the UK Trader Scheme can apply the UK tariff. But only subject to specific requirements for further processing and on the basis that the imports are not subject to EU trade remedies. And as with imports from Great Britain, the UK can choose to waive any tariffs due for traders so long as it does not breach state aid limits.

At the time of writing, there is a further complication concerning TRQs. The EU's 2020 tariff rate quota regulation prevents EU TRQs from applying in Northern Ireland.²¹ This creates problems in instances where the UK applies a TRQ, either unilaterally or in the context of a free trade agreement. In such instances the applied UK tariff, under the TRQ might be the same or similar to the EU's, if the EU TRQ was accounted for. But due to EU TRQs not applying in Northern Ireland, the out-of-quota tariff must be accounted for instead, which will invariably have a tariff differential vis-à-vis the UK tariff well above three percentage points. For example, New Zealand sheep meat is subject to an EU and UK WTO TRQ, allowing for 114,184 tonnes and 114,205 tonnes respectively of New Zealand sheep meat to enter tariff-free (usually underfilled for both). Despite tariff-free trade technically being on offer in the EU and UK, Northern Ireland importers cannot benefit.

Building on the compromise found for steel moving from Great Britain to Northern Ireland, an obvious solution would be to:

- allow Northern Irish firms to use the EU's TRQs; or
- allow importers to use the UK-in quota tariff rate so long as it was the same, or within three percentage points, of the equivalent EU in-quota rate and the EU TRQ has spare capacity.

This would avoid the current situation, which sees Northern Irish importers being penalised with high tariffs not faced by importers of the same product in either Great Britain or the EU.

Free trade agreements

Northern Irish importers can use either the EU or UK free trade agreements. However, to use a UK free trade agreement, the importer must be registered under the UK Trader Scheme, and the imported goods must meet strict qualifying criteria:

- The difference between the applied EU or most favoured nation tariff and the UK's applied preferential or most favoured nation tariff must not exceed three percentage points.²²
- The preferential EU tariff can only be taken into account if the EU and UK have a trade agreement with the same partner country and the import meets the rules of origin requirements of both the EU and UK free trade agreements.

In instances where the UK agrees to free trade agreements with countries that do not also have a free trade agreement with the EU, there will be some products that, unlike the rest of the UK, cannot enter Northern Ireland tariff-free. For example, at the time of writing, the UK has agreed (but not yet implemented) a free trade agreement with Australia, whereas the EU has not. Under the terms of the free trade agreement, in year one, the UK will allow Australia to export up to 35,000 tonnes of beef to the UK tariff-free. However, Northern Irish importers will not be able to take advantage of this liberalisation because the 0% in-quota tariff is more than three percentage points lower than the EU's applied most favoured nation tariff, which ranges from 12.8% + €176.8/100kg to 12.8% + €303.4/100kg.²³

Whether this is positive or negative is a question of perspective. For example, some Northern Irish producers might value the continued protection from foreign competition (especially when you consider, as discussed below, that they can still benefit from UK free trade agreements from an export perspective). At the same time, consumers might feel cheated out of greater choice.

Regulatory requirements

From a regulatory perspective, goods imported into Northern Ireland from the rest of the world are treated as if they are entering the EU. This means

that, for example, were the UK to amend its SPS requirements to allow US products produced using methods banned in the EU entry to the UK market, these changes would not apply in Northern Ireland. Were an extended 'not at risk' trusted trader scheme to be created, it is technically possible this could also apply to imports from the rest of the world. In doing so, allowing for goods produced in Great Britain that do not conform with EU rules to enter Northern Ireland for sale directly to consumers

Here some precedent applies: despite applying EU sanitary and phytosanitary rules, Switzerland can import beef produced using hormones banned in the EU on the condition it is adequately labelled and measures are taken to avoid onward movement into the EU. This is due to the EU ban contravening its WTO obligations. However, this is a largely hypothetical issue at the moment, given there has been no substantial UK divergence from EU approaches. As above, there is a strong argument for the UK re-integrating its sanitary and phytosanitary regime with the EU.

6. Exports from Northern Ireland to the rest of the world

Goods exported from Northern Ireland are British and treated as such. Unlike imports, where Northern Irish firms can choose to use EU free trade agreements, exports can only qualify for UK free trade agreements.

From an exporting perspective, UK free trade agreements offer more advantages for Northern Irish firms than their EU equivalents. Many of the UK rollover free trade agreements – for example, with Japan, Switzerland, Canada and Chile – include extended *cumulation rules of origin* provisions. These allow UK exporters to account for EU-originating inputs as British to meet the free trade agreement's local content requirements and qualify for preferential tariff treatment. So, for example, a cheese producer sourcing milk on an all-island basis may be able to meet the rules of origin provisions of the UK's trade agreement with Japan (which require all of the materials to be 'wholly originating'). This is because EU-sourced milk can be treated as British, but not the EU's, where UK-sourced milk is considered non-originating. (Although, in this instance could potentially rely on accounting segregation methods to differentiate between milk ingredients sourced in Ireland and Northern Ireland).

As above, Northern Irish firms can benefit from access to the new market via the UK's free trade agreements while remaining sheltered from increased

competition from imports in the other direction. This asymmetry is unique in a UK context and not unnoticed by the UK's free trade agreement partners: new UK free trade agreements include clauses explicitly giving precedence to the *Protocol* in the event its obligations conflict with those of the trade deal.²⁴

Conclusion

Whether the impact of the *Protocol* is positive or negative depends on the type of trade a company engages in.

Northern Irish firms exporting to the EU and UK are in an advantageous position relative to those based in the EU or Great Britain. Those exporting to the rest of the world are well-placed with those importing, depending on perspective; either constrained by EU protectionism or sheltered from UK largess. Those sourcing goods from the EU can do so as before Brexit, while those dependent on imports from Great Britain must navigate reams of new costly bureaucracy. For those companies engaging in various cross-border movements at any one time, the experience is decidedly mixed. Having to deal with six different border regimes for goods (and this is before accounting for arrangements regarding trade in services) creates a layer of complexity. It will inevitably disincentivise some firms considering trading with clients outside Northern Ireland.

While long-term adjustments are inevitable, either in response to this arrangement or another, there are measures the EU and UK could agree on to alleviate problems for traders and position them to take advantage of the opportunities provided by Northern Ireland's unique trading status. However, these measures require political willingness, trust, and flexibility from the EU and UK. All of which are in short supply.

Endnotes

- ¹ Movements of goods between Northern Ireland and Great Britain are not officially classified as imports/exports, but for the purposes of this paper both are used to aid reader comprehension.
- ² HM Government (2020) *Declaring goods you bring into Northern Ireland ‘not at risk’ of moving to the EU*. Available at: <https://www.gov.uk/guidance/check-if-you-can-declare-goods-you-bring-into-northern-ireland-not-at-risk-of-moving-to-the-eu#applicable-duties>.
- ³ Official Journal of the European Union (2020) Regulation (EU) 2020/2170 of the European Parliament of the Council, 16 December. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R2170>.
- ⁴ European Commission (2021) *Letter from VP Šefčovič to Michael Gove, MP*, 10 February, p. 4. Available at: https://ec.europa.eu/info/sites/default/files/letter_from_vp_sefcovic_to_cdl_rh_gove.pdf
- ⁵ Lowe, S. (2022) ‘Safeguarding Northern Ireland’, *Most Favoured Nation*, 3 August. Available at: <https://mostfavourednation.substack.com/p/most-favoured-nation-safeguarding>.
- ⁶ HM Government, *Where are the goods coming from? – Guidance*. Available at: <https://www.tax.service.gov.uk/guidance/check-if-you-need-to-declare-goods-you-bring-into-or-take-out-of-the-UK/outcome-3-the-goods-must-be-declared-in-northern-ireland>.
- ⁷ Trader Support Service, *Home – Trader Support Service*. Available at: <https://www.tradersupportservice.co.uk/tss>.
- ⁸ HM Government (2020) *Sending parcels to and from Northern Ireland – Guidance*. Available at: <https://www.gov.uk/guidance/sending-parcels-between-great-britain-and-northern-ireland>.
- ⁹ HM Government (2020) *Using the UKNI marking*. Available at: <https://www.gov.uk/guidance/using-the-ukni-marking>
- ¹⁰ European Commission (2022) *EU-UK relations: European Union ensures continued supply of medicines to Northern Ireland, as well as Cyprus, Ireland and Malta*, 12 April. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2385.
- ¹¹ HM Government (2021) *Move chilled meat preparations to Northern Ireland: certificate 1704*. Available at: <https://www.gov.uk/export-health-certificates/move-chilled-meat-preparations-to-northern-ireland-certificate-1704>.
- ¹² European Commission (2022) *Press Release*, 15 June. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3676
- ¹³ The Northern Ireland Protocol (2020): Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/950601/Northern_Ireland_Protocol_-_Command_Paper.pdf.
- ¹⁴ European Commission (2022) *Protocol on Ireland/Northern Ireland: Commission launches four new infringement procedures against the UK – Press Release*, 22 July. Available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_4663.

- ¹⁵ HM Government (2020) *Guidance: Trading and moving goods in and out of Northern Ireland*. Available at: <https://www.gov.uk/guidance/trading-and-moving-goods-in-and-out-of-northern-ireland>.
- ¹⁶ HM Government, *Notice 60: Intrastat general guide*. Available at: <https://www.gov.uk/government/publications/notice-60-intrastat-general-guide/notice-60-intrastat-general-guide#from-1-january-2021>.
- ¹⁷ See: Article 7(3) of the *Ireland/Northern Ireland Protocol*.
- ¹⁸ See: Article 4 of the *Ireland/Northern Ireland Protocol*.
- ¹⁹ See: Article 5 of the *Ireland/Northern Ireland Protocol*.
- ²⁰ HM Government (2020) *News: UK Global Tariff Backs UK businesses and consumers*. Available at: <https://www.gov.uk/government/news/uk-global-tariff-backs-uk-businesses-and-consumers>.
- ²¹ Official Journal of the European Union (2020) *Regulation (EU) 2020-2170 on the application of Union tariff rate quotas and other import quotes*. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R2170>.
- ²² HM Government (2020) *Guidance: How to make sure the correct duty is applied to goods you bring into Northern Ireland from countries outside of the EU and UK*. Available at: <https://www.gov.uk/guidance/how-to-make-sure-the-correct-duty-is-applied-to-goods-you-bring-into-northern-ireland-from-countries-outside-of-the-eu-and-uk>
- ²³ Agriculture and Horticulture Development Board (AHDB) *EU and UK import tariff rates for selected beef products*. Available at: <https://ahdb.org.uk/eu-and-uk-import-tariff-rates-for-selected-beef-products>.
- ²⁴ See: Article 1.2(3) of the UK-Australia free trade agreement.