

# **“Rumoured deal on Protocol nothing but a UK capitulation”**

With talk of a deal in the offing over the Northern Ireland Protocol, we maintain our scrutiny of the situation in the following article from our *Affiliate Briefings for Britain*.

The likely ‘deal’ which the Sunak government will try to sell to the British people is as damaging to the UK as Theresa May’s infamous Irish backstop, argues Harry Western in a withering assessment which we publish in full below.

If speculation is correct, the economic consequences will damage not only Northern Ireland but seep into mainland Britain with all the unforeseen repercussions for the business community over here.

It also represents a constitutional outrage, effectively signing the death-knell to the 1801 Act of Union and its successors.

If the Sunak government thinks it can smuggle a ‘Backstop Part Two’ past the British people, it had better think again. They, and we, will be all over it like sniffer dogs.

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## **Sunak’s Northern Ireland Sell out**

**by Harry Western**

Media reports suggest 'a deal' to reform the Northern Ireland protocol may be close. But don't be fooled. The recently floated proposals would not represent some kind of sensible compromise but would rather be a capitulation by the UK on all the key points at issue.

They would do nothing to ease the problems caused for the Northern Ireland economy by the protocol and might even worsen them. The concern is that Sunak's government is trying to repeat what Theresa May's did by dressing up a surrender deal as a 'win for Britain'.

The media has recently been full of speculation and briefings about a possible deal between the UK and the EU to reform the Northern Ireland Protocol. What should we make of this? UK government sources would like us to believe that the talks that have been taking place have led to real movement by the EU in key areas, resulting in an acceptable compromise. But based on what we know about what is being proposed, this is misleading.

## ***Two Existing Difficulties***

Before we examine the recently-floated proposals in detail, we should first reiterate what the problems with the protocol are. There are two principal areas of difficulty – economic and constitutional.

### ***1. Economic***

Economically, the protocol is a bad deal for Northern Ireland (NI). GB is by far NI's largest trading partner, but the protocol has significantly increased the costs of trade between Great Britain and Northern Ireland, stopping some trade flows entirely.

Based on estimates of additional costs produced by firms

engaged in GB to NI trade, we have previously estimated that the protocol may have increased costs of this trade by around £600 million per year or 1.2% of Northern Ireland's GDP. In 2021, we estimate that NI goods purchases from GB stagnated or grew very slowly in real terms, in a year when UK GDP rose by a strong 7.5% in real terms.

There has been inefficient trade diversion, damaging NI living standards. Northern Ireland's economy has been growing more slowly than the GB economy since the protocol was introduced, as have its exports to the EU – which were supposedly 'protected' by the protocol.

Over time, these economic costs will grow steadily unless the protocol is radically changed. Some of the increased cost of trade administration between GB and NI has been absorbed by the government's Trader Support Service – this is expensive (around £350 million so far to support around £11 billion of GB to NI trade) and is not guaranteed to stay in place. In addition, the UK government's extension of 'grace periods' on full border checks for supermarket deliveries, medicines and parcels has significantly diluted the impact of the protocol on trade flows.

A fully-implemented protocol would have a dramatic negative impact on GB to NI trade with detailed modelling by the Fraser of Allander Institute suggesting it would reduce NI GDP by almost 3%, equivalent to £1,600 per household in NI. Costs are also likely to build over time due to regulatory divergence as NI remains subject to new EU regulations in many areas while GB takes its own path.

## ***2. Constitutional***

Constitutionally, the protocol is deeply problematic. It leaves NI subject to laws passed by a foreign authority with

no input at any stage from any elected representative from NI. These laws are governed and interpreted by a foreign court, the ECJ, which also has no representation from NI.

The protocol has also, as the UK Supreme Court has recently confirmed, effectively overwritten parts of the 1801 Act of Union. The governance framework of NI has been changed against the will of one part of the NI population. This drives a coach and horses through the principle of consent that has underpinned the NI peace process since the late 1990s and as such it is unsurprising that power sharing in NI has collapsed – possibly permanently.

### ***Requirements for reform***

From the above, it should be clear what is needed from any reform of the protocol.

Restrictions on GB to NI trade need be removed entirely or reduced to very low levels and NI's constitutional position as a full part of the UK needs to be restored by removing the jurisdiction of the ECJ and ending the undemocratic automatic imposition of EU regulations.

The UK government's command paper of 2021 outlined a set of proposed ways forward that could lead to an acceptable new deal for NI.

### ***Unsatisfactory trade arrangements***

So how do the recently-floated proposals match up with the needs for reform outlined above? If the proposals have been accurately described then the answer is, unfortunately, badly:

#### ***'Green lanes'***

One of the UK government's key proposals was that GB to NI

trade be separated into goods intended to stay in NI from those being sent on to the Republic of Ireland (and beyond) by a system of 'green' and 'red' lanes at NI ports. Goods staying in NI would pass through the green channel and not be subject either to standard border checks or border bureaucracy such as customs declarations, export health certificates or safety and security declarations. Goods travelling beyond NI would enter the red lane and be subject to the full set of checks and customs processes.

The recently-floated proposals accept the principle of green and red lanes. But unfortunately, the 'green' lane maybe nothing like that originally envisaged. While routine border checks could end on goods moving through the green lane, the other costs of GB to NI trade – which are far more important – look like staying in place and there may even be additional burdens:

- Customs declarations and other paperwork could still be required, and this is where the real costs of GB to NI trade lie. There may be some slimming down of customs paperwork, but it could be minimal. Expect these minor changes to be heavily spun, as earlier misleading EU claims that it was offering to reduce customs paperwork by 80% were.
- It is not clear how GB and NI businesses would qualify to use the 'green' lane – this may involve additional, non-trivial, costs e.g., by needing to join a Trusted Trader scheme.
- It is also possible that GB firms would need to follow NI-specific labelling requirements which would add even further to trade costs and could well dissuade GB firms from dealing with NI entirely given the small size of the market.
- It is not clear whether the 'green' lanes would operate only for final goods destined for NI or also for goods being sent to NI for processing. It is also unclear how

goods that come from GB but may be partly or wholly of third country origin will be dealt with.

- The EU would retain the power to monitor trade flows through the 'green' lane and instruct UK border force to intercept suspect movements. What guarantees would exist that this power would be properly used?
- Finally, would the EU demand that the current grace periods on supermarket deliveries and other goods are ended if the green/red lane system comes into place? If so, this would pile on even further costs, and it is possible that the easements created by the 'green' lanes would not be enough to offset these new costs, leaving the situation actually worse than it currently is.

From the above it seems likely that the 'green lane' outlined in the recently-floated proposals would come nowhere near freeing up trade between GB and NI. Its scope would be too narrow, and its impact on trade costs too limited to deliver any significant liberalisation of trade compared to the current situation. It could even lead to a net increase in trade restriction given the likely quid pro quos demanded by the EU.

One further area of concern is that the UK government is all of a sudden moving ahead with constructing permanent border inspection posts at NI ports. Ostensibly, these are for dealing with 'red lane' goods but there are worries that these might ultimately be used for GB to NI flows as well. In any case, their presence is a visible entrenchment of the protocol.

## ***On-going ECJ Jurisdiction***

UK sources have been suggesting that recently-floated proposals would feature a new body to initially deal with disputes concerning GB to NI trade, with the ECJ's role

limited to ruling on points of EU law. It is not clear if the EU will in fact accept this, but even if it did, the interposing of a body between the ECJ and such disputes will change little.

In practice, this body would be obliged to refer all significant decisions to the ECJ and so would be reduced to little more than a post box for sending and receiving decisions to/from the ECJ. So, this proposal is pure window dressing.

### ***‘Dynamic alignment with EU’***

Alarmingly, briefings on the new proposals suggest problems with agri-food trade between GB and NI might be dealt with by a separate deal between the UK and EU on SPS regulations. Such a deal would almost certainly involve the UK dynamically aligning with EU regulations in this area (more limited deals on equivalence would only solve some of the issues, at least from the perspective of the EU).

This means the UK giving up control of this key area of policy to the EU, with huge negative ramifications for the UK's global trade policy plans. Indeed, it could even derail the UK's attempts to join the Trans-Pacific trade area (CPTPP). This is of course one of the things the EU has been angling for from the start.

### ***Other issues***

The proposals as briefed would also do nothing to remove other problems caused by the protocol:

- The UK's proposed dual regulatory system that would allow goods regulated by the UK authorities to freely circulate in NI would not be implemented.

- The overwriting of parts of the Act of Union would remain.
- NI would remain within the EU's VAT area.
- NI would remain subject to the EU's state aid rules. This is a particularly problematic area because by virtue of this, the EU retains an influence on state aid rules UK-wide. Under Article 10 of the protocol, EU state aid rules can also apply to GB firms if they supply NI – this little-known part of the protocol is likely to be weaponised by the ECJ if and when relevant cases are referred to it (as they inevitably will be).

Overall, it seems clear that the recently floated proposals for reform of the protocol would not deliver any of the substantive changes to the protocol that were outlined in the UK's 2021 Command Paper.

### ***Current proposals 'cosmetic'***

The proposals as briefed offer merely cosmetic alterations to the protocol both on trade flows and the key jurisdictional issues and ignore other areas entirely. They even imply the UK emasculating its own independent trade policy. The government might attempt to spin them as 'a win for Britain' or an 'EU climbdown' and the EU would probably be shrewd enough to allow them to do so. But the proposals would be nothing of the sort.

### ***'Surrender deal'***

The concern is that the Sunak government might be trying to do the same thing here as Theresa May's government did with its 'surrender' deal, which is to dishonestly represent capitulation as 'compromise' and bounce its supporters and NI unionists into accepting them. The recently-floated proposals deserve to meet the same ignominious fate as May's.



By Harry Western, 09 Feb 2023

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**About the Author:** Harry Western is the pen-name of a senior economist working in the private sector.

How the Sunak government and those who are negotiating on our behalf can satisfactorily explain away these objections is one we look forward to hearing. The end of the road is approaching. There can be no hiding place.

The original article can be found [here](#).

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