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**Subject:** Slides on UK technical note on temporary customs arrangements.

**Origin:** European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU.

**Objective:** Presented at the Council Working Party (Art. 50) on 8 June 2018.

**Remarks:** These slides present an analysis of the 'Technical Note: temporary customs arrangement' published by the United Kingdom on 7 June 2018.

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# **Withdrawal Agreement Protocol on Ireland/Northern Ireland**

## **UK technical note "Temporary customs arrangement"**

**AD HOC WORKING PARTY ON ARTICLE 50  
8 June 2018**

# Joint report (December 2017)

"49. The United Kingdom remains committed to protecting North-South cooperation and to its guarantee of avoiding a hard border. Any future arrangements must be compatible with these overarching requirements. The United Kingdom's intention is to achieve these objectives through the overall EU-UK relationship. Should this not be possible, the United Kingdom will propose specific solutions to address the unique circumstances of the island of Ireland. In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement."

"46. The commitments and principles outlined in this joint report will not pre-determine the outcome of wider discussions on the future relationship between the European Union and the United Kingdom and are, as necessary, specific to the unique circumstances on the island of Ireland. They are made and must be upheld in all circumstances, irrespective of the nature of any future agreement between the European Union and United Kingdom."

# A "temporary customs arrangement"

1. Is it a workable solution to avoid a hard border?
2. Does it respect the integrity of the Single Market and Customs Union?
3. Is it an all-weather backstop?

# Need to address two types of control to avoid a hard border

- **Customs**

- Duties, VAT and excise, trade policy, governance

- **Regulatory** [no UK proposal]

# Two options for customs territory

- **UK technical note**

- "the territory of the UK would form part of the EU's customs territory  
**or**
- creating a new customs territory comprising the customs territories of the UK and the EU"

- **Issues**

- Two very different customs union models
- Important implications in terms of application of customs legislation (UCC, GSP, FTAs, etc.), regulatory controls, governance, allocation of EU own resources

- **EU backstop**

- Northern Ireland as part of the Union customs territory (no border)
- Full regulatory alignment on EU goods acquis in Northern Ireland
- Full EU supervision and enforcement mechanisms

# Common external tariff

- **UK technical note**

- "applying the EU's common external tariff (CET) at the UK's external border"
- "alongside the Union Customs Code (UCC)"
- "and such other parts of the Common Commercial Policy that are required to enable the temporary customs arrangement to function"

- **Issues**

- Preferential rules of origin
- Tariff rate quotas (TRQs), tariff suspensions
- Trade defence measures
- Allocation of customs revenue

- **EU backstop**

- Full application of EU customs legislation in Northern Ireland
- Specific arrangements for the customs revenue collection and distribution to be determined by EU-UK Joint Committee
- Full EU supervision and enforcement mechanisms, including OLAF

# Trade policy and FTAs

- **UK technical note**

- "UK would continue to apply the CET but would no longer be bound by the EU's Common Commercial Policy, unless elements are necessary for the temporary customs arrangement to function"
- "Further technical discussions ... required with the EU to ensure the UK is able to apply the CET in full, and ... continues to benefit from existing EU FTAs or any new ones signed during the period"
- "UK able to negotiate, sign and ratify [its own FTAs] ... and implement those elements that do not affect the functioning of the temporary customs arrangement"
- "mechanism to ensure that the UK national interest is represented in future FTA negotiations affecting the UK"

- **Issues**

- Uncertainty on scope of EU trade policy applicable to the UK
- Need to renegotiate existing EU FTAs and cover the UK in future FTAs on a temporary basis?
- Risks of misalignment of UK and EU trade policies and FTAs

- **EU backstop**

- EU decision-making autonomy in trade policy
- Full EU supervision and enforcement mechanisms

# VAT and excise

- **UK technical note**

- "application of common cross-border processes and procedures"
- "some administrative cooperation and information exchange to underpin risk-based enforcement"

- **Issues**

- Piecemeal application of EU VAT and excise rules
- Serious risks of fraud on a significant resource for Member States

- **EU backstop**

- Full application of EU VAT and excise rules on goods in Northern Ireland
- Full EU supervision and enforcement mechanisms, including OLAF

# Governance

- **UK technical note**

- "need access to relevant IT systems to enable information exchanges"
- "important that the UK has the ability to continue to help develop the rules that govern trade and customs policy"
- "it may make sense for UK courts to look at the appropriate ECJ judgments"
- "need to work together to develop governance arrangements"

- **Issues**

- How can a third country continue shaping and applying EU rules and carry out controls without proper EU supervision and enforcement?

- **EU backstop**

- Preserves autonomy of EU decision-making and role of the CJEU
- Full EU monitoring, supervision and enforcement (Commission, OLAF, Court of Auditors, CJEU)
- Forum to discuss implementation of the Protocol (Specialised Committee, Joint Committee)

# Time-limited nature

- **UK technical note**

- "would only come into force following the [transition], in specific and narrow circumstances, such as a delay in the implementation of the end state customs arrangement, and would be time-limited."
- "should be time limited" and "will be only in place until the future customs arrangement can be introduced"
- "the future customs arrangement needs to deliver on the commitments made in relation to Northern Ireland"
- "The UK expects the future arrangement to be in place by the end of December 2021 at the latest."

- **Issues**

- Is this a backstop?
- Complex and unprecedented arrangement for short duration
- Covers issues to be discussed as part of the future EU-UK relationship
- Risk of multiple adaptations for businesses and authorities

- **EU backstop**

- Workable solution at the end of the transition period
- Protocol applies in whole or in part unless and until a future agreement addresses the unique circumstances on the island of Ireland

# Assessment

## EU 'backstop' for Ireland/Northern Ireland

- Timely and workable solution
- Covers all necessary customs and regulatory controls to avoid a hard border
- Addresses the specific circumstances on the island of Ireland without pre-determining the future EU-UK relationship

## UK 'temporary customs arrangement'

- Key questions unanswered
- Does not cover regulatory controls, leading to a hard border
- Time-limited only, UK-wide