

Northern Ireland Food and Drink Association - Written evidence (FUI0020)

Background and context

Northern Ireland Food and Drink Association (NIFDA) represents a key strategic sector in the NI economy. Food and drink generate £4.9bn value added in Northern Ireland and supports 113,000 workforce jobs. It is a sector crucial to balanced regional development with 86% of food and drink firms based outside Belfast city. The sector is at the heart of communities across the geographical spread of Northern Ireland. Food and drink demonstrated its resilience during the Covid-19 pandemic and is back to pre-Covid levels – indeed the sector was 6 times more resilient than the rest of the NI economy during Q2 2020. Food and drink rank among the top two sectors in the UK in terms of uptake of patent relief relative to its size. NI food and drink is world leading in terms of quality, integrity and commercial success. It is the second largest goods exporter in Northern Ireland, with some 77% of local agricultural products sold outside of Northern Ireland.

Brexit has dominated the strategic planning for Northern Ireland food and drink manufacturers for the past 6 years. Since the decision to leave the European Union was taken, the food and drink industry has urged an approach that maintains frictionless movement of goods on and between these islands. Our supply chains are highly integrated both north-south and east- west, and we have consistently warned that new barriers to trade in either direction could be highly disruptive. NIFDA supports the Northern Ireland Protocol as it has been vital to ensuring continuity of trade in goods across the island of Ireland, and between Northern Ireland and Great Britain.

Crucially, it helped us avoid a catastrophic 'no deal' Brexit.

For a majority of NIFDA members the Protocol is satisfactory, with some oncosts. However, there are several difficult areas affecting a significant minority of our members. NIFDA has poured thousands of hours of work into illuminating the issues and presenting workable solutions.

The Commercial (Customs) and Scientific (Standards) issues are clear and will require political agreement to minimise the danger of creating unnecessary reductions in choice, increased food costs and wastage.

Overview

(1) What is your assessment of the overall socio-economic and political impact of the Protocol on Ireland/Northern Ireland since the publication of this Committee's introductory report in July 2021? What lessons can be drawn from the Protocol's operation since it came into force?

The majority of the current debate on the impact of the protocol is on the added difficulties and costs of trading GB to NI. It is useful to reflect on the original reasons for the Protocol:

- avoidance of a customs border on the island and consequent negative impact on border communities

- avoidance of economic hardship: especially for cross border micro businesses and for the farming sector with livestock on one side of the border who are dependent on a processing facility on the other side of the border for the processing and onward sale of their product
- Avoidance of disruption of significant cross border trade in semi processed products requiring multiple movements across the border for further processing
- Avoidance of financial incentives for smuggling by organised crime gangs with historic links to paramilitaries and dissidents. Such incentives run the risk of destabilising the border area of Northern Ireland.

Most of these challenges to trade flows (and related socio-economic) impacts have been avoided because of the Protocol and the gains “banked”. Thus, they are seldom debated now, but if the Protocol is significantly changed, these gains may become lost as a result of solutions solely focused on GB to NI trade.

The final outworking of the Protocol is still to be determined. Few statistics on trade flows are available to draw conclusions from as yet and those that are available reflect trade flows and trading levels affected by the impact of Covid.

The type of exit chosen from the EU, the decision to diverge on tariffs and standards, is a very challenging scenario for the Protocol to address and has required Europe to look once again at easements. It is early days for the Protocol, but it is achieving a majority of its objectives. The Protocol does need improved in the area of GB to NI trade flow, but NIFDA members must not be asked to choose between UK and EU access, both of which were expressly promised. This is vital as the final issues are resolved, or economic damage will be significant.

Suggested improvements to the Protocol are:

- Educate and support GB businesses trading into Northern Ireland. Smaller business or those with a marginal exposure to NI trade are perceived to have stepped back from trade due to the perception of it being “too difficult to trade”
- Establish a tri-partite working group with NI Industry, EU and UK as a clearing house to provide clarity on interpretation and application of the Protocol. Misunderstandings are arising from apparently conflicting advice given by the UK and EU. For example, the administrative burdens required for supplementary declarations and whether State aid rules apply to the duty rebate system (that is still to be implemented in respect of at-risk goods) and navigating the complex interactions of UK law and EU regulations: for example, on labelling requirements on NI business when selling into GB.

Uncertainty over the legal framework for trading with NI (both UK and EU), as a result of ongoing negotiations, is undermining trade and potential inward investment opportunities.

(2) How can the current political impasse between the UK and the EU over the Protocol be resolved?

Trust needs to be rebuilt. NIFDA needs a focus on delivering workable outcomes. (Inevitably some degree of political compromise will be required.) The UK’s “Green” and “Red channels” or the EU’s at risk/ not at risk classifications are perhaps different ways of saying the same thing; and, where large tariff differentials on third country goods and SPS standards divergence pose challenges, a “trusted trader scheme” is the potential mechanism for resolution in both cases. In essence, regardless of the terminology used, the two

drivers of a successful scheme will be:

- A risk-based approach that limits burdens on movement of goods to those proportionate to the risks involved
- A supplier assurance scheme capable of providing the appropriate levels of assurance, where material risks exist, that those risks are robustly mitigated.

The practical impact of the Protocol

(3) What would you identify as the main practical issues that have arisen in relation to the Protocol's operation, including both for GB and Northern Ireland-based businesses? To what extent have these issues been ameliorated or exacerbated over the past year?

Main practical issues are the customs and SPS administrative burdens that exist today including:

- The NI residency requirement for businesses to make use of the not at risk facilitations
- the high level of administrative burden on customs and SPS declarations
- the loss of tariff free access to goods from EU entering NI if they are distributed via GB.

However, note should also be taken of future challenges:

- The withdrawal of the existing EU easements on SPS certifications
- Future divergence of energy policy that risks damaging the efficient functioning of the all-island electricity market
- Rolling out of UK trade deals which introduce goods to GB that creates SPS compliance challenges and price differences arising from tariff

differences that drive criminal smuggling activity

- Access to tariff rate quotas for agricultural cereals (and steel products), without which NI may at times be the most expensive place in the British Isles to land such products for local production and consumption.

We are pleased to see that there seems to be willingness from both sides to move on our key remaining issues, namely: trusted trader, tariffs, tariff rate quotas, SPS agreement, unintended consequences of Country-of-Origin rules, divergence, dispute resolution, and overall costs. However, these have not yet been agreed and effectively we feel we are in a 'holding pattern' at present.

(4) Which aspects of the Protocol's operation are creating most difficulties? Which practical modifications to the operation of the Protocol would make it operate more effectively?

- Customs administrative burdens and supplementary declaration requirements
- Lack of access to tariff rate quota allowances (either UK or EU) that puts agri-food (and steel businesses) at a disadvantage versus Irish and British businesses for imports
- Imports of food for final consumption by the NI consumer from GB through the supermarket channel, where the risk of divergence on labelling/SPS and documentation/declarations required risk loss of access to products currently supplied from GB
- Restriction of not at risk facilitations to businesses who are importing for consumption rather than for intermediate processing or onward distribution in NI.

EU goods supplied via GB distribution channels which as a result of failure to further process lose their duty-free status when resold into NI.

(5) What impact has the Protocol, and UK withdrawal more broadly, had on trade flows between Great Britain, Northern Ireland and Ireland, and between

Northern Ireland and the EU? What trade data is available to illustrate these impacts?

Trade flows are still settling post Covid and are likely to be distorted as a result. It is our view that it is too early to have access to meaningful statistics to understand impacts. Anecdotally, some supply chains have adjusted to avoid GB distribution complications, shipping now direct from the EU.

Re-routing of NI freight away from Dublin/Holy head to NI ports to avoid the customs process on this route has also been noted. Generally, the Protocol has greatly benefitted NI trade to Ireland/EU in sustaining pre-Brexit trade flows, that under the TCA would have required substantial customs documentations and procedures. Once the UK implements its border operating model, we may see further relocation of haulage trade flows away from Irish ports to NI ports, as the extra distance to be transported is offset by the administrative burdens avoided.

(6) What is the impact of regulatory divergence between the UK (in respect of Great Britain) and the EU upon the operation of the Protocol and the ability to identify solutions to the current problems?

Divergence is likely to grow over time, further stressing the operation of the Protocol.

Duty divergence is likely to grow as the UK import tariff rates diverge from the EU tariffs and as the UK strikes independent trade deals, which will result in moving more goods into the "at risk category", increasing the costs and administrative burdens to deal with them.

Standards (SPS) divergence is likely to restrict NI's access to imported goods for processing over time verses GB competitors creating a competitive disadvantage into the UK market place.

Benefits and potential opportunities

(7) What, if any, benefits has the Protocol had for Northern Ireland, and what, if any, potential opportunities might it provide for?

The protection of trade flows to and from Europe and the heavy dependence of the agri-food sector on accessing processing capacities, livestock and the accommodation of multistage processing of goods crossing the border multiple times are obviated as they don't impose an issue. The Protocol in theory offers NI the prospect of being the best location of anywhere in the UK/ EU for establishing a manufacturing facility which wishes to trade into both markets as product will uniquely have unfettered access to both markets (no customs procedures/tariffs for exports).

Alternatives to the Protocol

(8) Is there a viable alternative to the Protocol? To what extent would such alternatives address the priorities and concerns of each side?

The purpose of the Protocol is to avoid the need for the EU to put in place a border to protect the EU single market. Any solution, whether it be based on the command paper or on adjustments to the Protocol, needs to provide the levels of assurance necessary to the EU to avoid their need to implement a border.

Such solutions will be built around an assessment of duty avoidance risk, giving rise to price differentials that might encourage smuggling, and the level of robustness of supply chain integrity, enabling risk, where it exists, to be effectively managed. It is the focus on workable mechanisms, rather than the broad concepts of Protocol or command paper-based solutions, that will resolve the matter. It is vital that the Integrity of NI food, and by direct connection food from the island of Ireland, is not undermined by an erosion of integrity created by differentials.

Social and political attitudes to the Protocol

(9) How would you characterise the attitudes of the communities in Northern

Ireland in relation to the Protocol? Are these attitudes evolving, and what impact is this having on inter- community relations?

NIFDA exists to support its members in commerce and science. As such, it has no mandate to comment on social or political attitudes.

(10) What impact has the Protocol had on continued political instability and uncertainty in Northern Ireland, and vice versa? In the context of the outcome of the May 2022 Northern Ireland Assembly elections, how can these political disagreements over the Protocol be overcome?

NIFDA exists to support its members in commerce and science. As such, it has no mandate to comment on social or political attitudes.

(11) How can concerns about the perceived democratic deficit at the heart of the Protocol, in view of the continued dynamic application of significant areas of EU law to Northern Ireland in the absence of UK participation in the EU institutions, be addressed?

The UK and EU approach

NIFDA exists to support its members in commerce and science. As such, it has no mandate to comment on social or political attitudes. However, proposals have been made by Queen's University Belfast on stakeholder engagement mechanisms to address the democratic deficit that exists, building on those practices that already exist for European countries that trade with the EU that align with their regulations.

(12) What is your assessment of the UK Government's approach to and management of the impact of the Protocol since the publication of its Command Paper in July 2021?

The perception is that there are now two entirely different propositions on the table, the command paper and the Protocol, and that both parties are seeking to engage only on their own position papers.

(13) What would be the political, legal and socio-economic impact if the UK Government a) brings forward domestic legislation in relation to the Protocol, and/or b) uses the safeguarding mechanism contained in Article 16 of the Protocol?

The threat of such actions will undermine trade with the EU and internationally, due to the lack of clarity of the regulatory framework under which NI will operate.

If UKG opts for domestic legislation and implements the concept of dual regulatory standards, it is likely that the EU will require a border on the island to manage the risk of SPS divergence and tariff avoidance arising. Criminality seeking to arbitrage tax and standards differentials that will exist either side of the border will undermine the integrity of both marketplaces in their respective export markets.

Europe will recognise this risk and thus, in response to legislation to implement dual regulatory standards, may seek to respond through the TCA, rather than resigning itself to creating a border. The result: a possible trade war.

(14) What is your assessment of the EU's approach to and management of the impact of the Protocol over the past year, including the publication of its four 'non-papers' in October 2021? Has it done enough to take account of concerns over the Protocol?

It would be helpful if the EU could go further on its four papers. Accepting the need for a trusted trader type solution for goods for final consumption brought into NI would be a significant step. Recognition of the robustness of the business-to-business supply chains in the agri-food sector which is underpinned

by controls contained in the food hygiene regulations would be another positive step forward. It should also allow businesses without residency in NI to be able to avail of easements for “at risk goods”.

(15) Are the EU’s proposals sufficient to mitigate the impact of the Protocol on movement of goods between Great Britain and Northern Ireland?

No, they have to go further on retail goods for final consumption, so as not to impose unnecessary financial burden on the NI consumer or unnecessarily restrict choice. They also have to resolve the lack of access to TRQs for the agri-food (and steel sectors) and reduce the administrative burdens for trading with GB. In addition, the existing easements need to become permanent.

(16) Do you see any grounds for compromise between the UK and EU’s positions that would respect both sides’ concerns?

Yes. A risk-based approach to dealing with the issues being managed could bridge the gap and facilitate the streamlining of administrative burdens. Granting NI businesses a fixed quantity licence to apply the UK tariff regime, including UK tariff rate quotas for goods that would otherwise require EU tariff rate quotas that NI is not able to access.

6 June 2022