



## TECHNICAL NOTE: TEMPORARY CUSTOMS ARRANGEMENT

1. When the UK leaves the EU, it will also leave the EU Customs Union. During the Implementation Period, the UK will continue to apply the same rules as the EU, meaning that access to each other's markets will continue on current terms. The UK is committed to securing a new future customs arrangement between the UK and EU, which would operate from the end of the Implementation Period, while also enabling the UK to forge new trading relationships with our partners in Europe and the rest of the world.
2. In determining the future customs relationship with the EU, the UK has been clear on the need to protect the Belfast (Good Friday) Agreement in all its parts, including that there will be no hard border between Northern Ireland and Ireland, and no physical infrastructure or related checks and controls. This commitment was recalled by both the UK and EU in the December 2017 Joint Report, including the need to ensure that any solution protects Ireland's place within the EU Internal Market and Customs Union, and preserves the integrity of the UK's internal market and Northern Ireland's place within it. Upholding these commitments requires a joint solution on both customs, which is addressed in this paper, and an approach on regulatory standards, which will also need to be addressed.
3. While the UK believes that the Joint Report commitments with respect to Northern Ireland can be fulfilled through the overall UK-EU partnership, it is also necessary to ensure that there is an appropriate backstop solution for the Northern Ireland land border in the Northern Ireland protocol element of the Withdrawal Agreement, that would only come into force in limited circumstances.
4. Therefore, to deliver on its Joint Report commitment and ensure the integrity of the UK market, the UK is putting forward a proposal for the customs element of the backstop that would apply to customs arrangements between the UK and EU and avoid a hard border between Northern Ireland and Ireland. The UK's proposal is that in the circumstances in which the backstop is agreed to apply, a temporary customs arrangement should exist between the UK and the EU.
5. This arrangement would see:
  - The elimination of tariffs, quotas, rules of origin and customs processes including declarations on all UK-EU trade;
  - The UK outside the scope of the Common Commercial Policy (CCP), except where it is required to enable the temporary customs arrangement to function. This will mean 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; and
  - The UK able to negotiate, sign and ratify free trade agreements (FTAs) with rest of world partners and implement those elements that do not affect the functioning of the temporary customs arrangement.
6. The temporary customs arrangement will be replaced by a permanent end state settlement, whose terms will need to be agreed by both parties. This temporary arrangement would only come into force following the Implementation Period, in specific and narrow

circumstances, such as a delay in the implementation of the end state customs arrangement, and would be time-limited. The UK is clear that this is not its preferred option.

7. Such a temporary arrangement could only be provided for in law if a Withdrawal Agreement is agreed between the UK and the EU. This Withdrawal Agreement will be accompanied by, and refer to, an agreed future partnership framework, which would set out the new customs end state arrangement.
8. The UK acknowledges that the proposal gives rise to a number of issues that would require further discussion with the EU. This paper provides a summary of the issues, the UK's objectives and an overview of possible options.
9. This paper also includes illustrative legal drafting, setting out possible changes to the text of the EU's draft Northern Ireland protocol to give effect to the UK's proposal. The suggested amendments are limited to parts of the draft protocol concerning customs arrangements. They are not intended to be exhaustive, and should not be regarded as representing the UK's definitive position on any of the points discussed in this paper. The UK may wish to propose further or different amendments as discussions continue.

## **Customs, VAT & Excise**

### Customs

10. During a temporary customs arrangement, the UK's objective is to avoid a hard border between Northern Ireland and Ireland and maintain the status quo for traders in respect of customs processes. It is expected that the arrangement will also apply to the Crown Dependencies.

*Box 1: Potential change to Article 4.2 of EU draft protocol*

Changes made to:

- Apply relevant customs legislation to the whole of the UK and to the Crown Dependencies

Article 4.2

Customs legislation as defined in point (2) of Article 5 of Regulation (EU) No 952/2013 of the European Parliament and of the Council as well as other provisions of Union law providing for customs controls of specific goods or for specific purposes listed in Annex 2.2 to this Protocol **insofar as it concerns the Common Customs Tariff or other tariff measures** shall apply to and in the **territory of the** United Kingdom ~~in respect of~~ **Great Britain and Northern Ireland and of the Channel Islands and the Isle of Man.** The territory of **the United Kingdom** ~~Northern Ireland, excluding the territorial waters of the United Kingdom (the "territory of Northern Ireland")~~, shall be considered to be part of the customs territory of the Union.

*This could also be addressed, as set out below, through the creation of a new customs territory comprising the customs territories of the UK and the EU.*

11. The suggested drafting change to the EU's proposed legal text in Box 1 delivers this objective by applying the provision to the whole of the UK. This could be given effect through providing that 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. The UK proposes that the UK and EU should discuss both options.
12. As noted above, the temporary customs arrangement would eliminate tariffs, quotas, rules of origin and customs processes including declarations on all UK-EU trade. To operate effectively, the temporary customs arrangement would need to provide for the UK's application of the EU customs legislation, which would include the UCC. As part of this arrangement, the UK would also need access to relevant IT systems to enable information exchanges, risk-based enforcement and facilitate customs cooperation. In line with the UCC, the UK would continue to operate the Common Transit Convention and the UK and EU would apply a waiver from safety and security entry and exit declarations on UK-EU trade. The full detail of all elements required to give operational effect to the arrangement will need to be negotiated and addressed as part of the Annex to the protocol.

*Box 2: Potential change to Article 4.3, 4.5 and 4.7 of EU draft protocol*

Changes made to:

- Prevent customs duties on imports and exports between the UK and EU
- Prevent internal taxes on imports as a disguised trade restriction
- Enable the UK customs authority to operate during the temporary customs arrangement

Article 4.3

Customs duties on imports and exports, and any charges having equivalent effect, shall be prohibited between the Union and the United Kingdom ~~in respect of Northern Ireland~~. This prohibition shall also apply to customs duties of a fiscal nature.

Article 4.5

The Union and the United Kingdom ~~in respect of Northern Ireland~~ shall not impose, directly or indirectly, on the products of the other party any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products. Furthermore, the Union and the United Kingdom ~~in respect of Northern Ireland~~ shall not impose on the products of the other party any internal taxation of such a nature as to afford indirect protection to other products.

Article 4.7

For the purposes of the customs legislation and the provisions of Union law listed in Annex 2.2 to this Protocol, the United Kingdom customs authorities ~~competent for the territory of Northern Ireland~~ shall be considered as customs authorities within the meaning of point (1) of Article 5 of Regulation (EU) No 952/2013. ~~By way of derogation from Section 7 of Chapter 2 of Title I of Regulation (EU) No 952/2013, customs controls as defined in point (3) of Article 5 of that Regulation shall be carried out jointly by the Union and the United Kingdom customs authorities competent for the territory of Northern Ireland. The Union and the United Kingdom shall determine the practical arrangements for carrying out such controls in accordance with paragraph 10.~~

VAT and Excise

13. At present, different rules apply to the movements of goods between Member States and rest of world partners for VAT, due in large part to the presence of customs declarations for rest of world movements.
14. To avoid a hard border between Northern Ireland and Ireland, the application of common cross-border processes and procedures for VAT and excise would be necessary, as well as some administrative cooperation and information exchange to underpin risk-based enforcement. This would need to be negotiated and addressed in the Annex to the protocol.

*Box 3: Potential change to Article 4.8 and 4.9 of EU draft protocol*

Changes made to:

- Provide for application of common cross-border processes and procedures for VAT and Excise.

Article 4.8

The provisions of Union law on value added tax listed in Annex 2.3 to this Protocol concerning goods shall apply to and in the United Kingdom ~~in respect of Northern Ireland~~.

Article 4.9

The provisions of Union law on excise duties listed in Annex 2.4 to this Protocol shall apply to and in the United Kingdom ~~in respect of Northern Ireland~~.

## Trade

15. For the duration of the temporary customs arrangement the 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.
16. This will enable the UK to pursue an independent trade policy in areas not covered by the temporary customs arrangement. It will also require the UK to be bound by the tariff related elements of existing and future FTAs to deliver the CET for the period for which the arrangement is in force.

### Securing continuity in EU FTAs

17. To operate the CET during a temporary customs arrangement, the UK will need to apply the preferential tariff rates to rest of world trade as set out in the EU's existing FTAs. Further technical discussions would be required with the EU to explore a shared solution to ensure the UK is able to apply the CET in full, and so that the UK continues to benefit from existing EU FTAs or any new ones signed during the period, and ensure that we remain WTO compliant.

### Future EU FTAs

18. To keep pace with any changes to the EU's tariff policy and apply the CET, it will be necessary for the UK to continue to participate in any new FTAs that come into force during the period of the temporary customs arrangement. Further discussions will be required to determine a solution to this, including with respect to EU FTAs.
19. Whatever approach is pursued, it will be necessary for the UK and EU to agree a mechanism to ensure that the UK national interest is represented in future FTA negotiations affecting the UK.

### The UK's independent trade policy during a temporary customs arrangement

20. As the CCP would no longer apply in full, the UK would be able to negotiate, sign and ratify new bilateral, plurilateral and multilateral trade agreements and bring into force any provisions not covered by the terms of the temporary customs arrangement.

## **Participation and Governance arrangements**

### Participation in committees

21. Administering the EU's trade and customs policy in relation to tariffs at the UK's border would require the UK to adopt existing and new rules in these areas for the duration of the temporary customs arrangement. The UK has helped shape current EU rules relating to trade and customs through its participation in EU committees. During a temporary customs arrangement, it is important that the UK has the ability to continue to help develop the rules that govern trade and customs policy.

### Dispute settlement

22. The UK recognises that these arrangements would need to be underpinned by appropriate governance arrangements, including a mechanism for the resolution of disputes.

23. The Prime Minister set out in her Mansion House speech that, if as part of the future partnership, parliament passes an identical law to an EU law, it may make sense for UK courts to look at the appropriate ECJ judgements, so that the laws are interpreted consistently; and that should the UK continue to participate in an EU agency, the UK would have to respect the remit of the ECJ in that regard.

24. In this context, and respecting the integrity of both parties' legal orders, the UK and the EU will need to work together to develop governance arrangements that ensure:

- Rules are applied appropriately;
- Rules are interpreted and enforced consistently; and
- Disputes between the parties related to these rules are resolved effectively.

### Allocation of duties

25. The UK currently remits 80 per cent of customs duties collected on trade with third countries to the EU budget under the EU's Own Resources Decision, which sets out how member state contributions to the EU budget are calculated. The UK retains 20 per cent to cover administration costs. After the Implementation Period, the UK will no longer have a legal requirement to remit revenue in this way. The UK notes that the Commission's draft legal text as set out in the Northern Ireland protocol suggests that a specific mechanism may be required for revenue collection and distribution. The UK would like to understand this proposal further in discussions with the EU.

### **Time limiting the agreement**

26. The UK is clear that the temporary customs arrangement, should it be needed, should be time limited, and that it will be only in place until the future customs arrangement can be introduced. The UK is clear that 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. There are a range of options for how a time limit could be delivered, which the UK will propose and discuss with the EU.