

**Briefing Notes: A Possible Trade War between the UK and the EU?**  
**Mark S. Bergman – October 12, 2021**

Talks continue over the Northern Ireland Protocol (available [here](#)), raising the spectre of a trade war between the UK and the EU. The Protocol left Northern Ireland in the EU single market, meaning that goods could move freely between Ireland and Northern Ireland, obviating the need for a hard border between the two. The border in effect was moved to the Irish Sea; goods exported to Northern Ireland from the rest of the UK became subject to border checks and controls.

The UK wants to roll back border controls on goods shipped to Northern Ireland from the rest of the UK. As set out in its July 2021 “Command Paper” (available [here](#)), the UK position is premised on assurances that Northern Ireland would not be used as a means for goods to find their way via Ireland to the rest of the EU in contravention of single market principles. The Command Paper calls for rewriting Article 5 (customs documents). The UK is seeking modification of state aid rules in Northern Ireland (Article 10) and elimination of ECJ jurisdiction over issues involving Northern Ireland (Article 12) in favour of an alternative dispute settlement mechanism. ECJ jurisdiction continues to be a fundamental issue for the British.

Interestingly, on Monday, media reports carried both the expected UK position (that would be released on Tuesday) and the expected EU response (that would be released on Wednesday).

Failure to reach agreement could see the UK trigger Article 16 (which allows either side to take “safeguard” measures to avoid “serious economic, societal or environmental difficulties”) and refuse to implement, for example, Articles 5 (customs duties) and 7 (certification and standards) of the Protocol. Invoking Article 16 was foreshadowed in the Command Paper. The UK might also include Article 10, which requires notification of state subsidies benefitting UK businesses exporting goods to Northern Ireland. The UK would need to give one month’s notice of the intention to invoke Article 16, unless it claims “exceptional circumstances.” Article 16 provides that any unilateral measures should be limited in scope and duration to what is “strictly necessary” to remedy the situation.

The EU would have the option of retaliating under Article 16 with “proportionate rebalancing measures.” The EU could also re-activate two lawsuits that it filed in March 2021 following the UK’s unilateral delay in introducing border checks for certain goods entering Northern Ireland from the rest of the UK. The two lawsuits were suspended in July 2021. Other casualties of the Protocol dispute could include progress on the financial services memorandum of understanding or UK participation in EU R&D effort known as Horizon Europe. The most extreme response would be the imposition of tariffs.

It is unclear how dynamics among the EU 27 would play into any decision to retaliate and whether there would be a consensus on tactics. The French can be expected to take a hard line, in light of their anger following the announcement of AUKUS and the termination of the submarine deal; continued disagreements over fishing permits and disputes over asylum seekers crossing the Channel. As predicted by so many following the signing of the Trade and Cooperation Agreement that paved the way for UK withdrawal from the EU single market and customs union, the relationship between the UK and the EU will continue to be fraught for years to come. It is fair to be asking whether the UK is posturing to obtain concessions at the margin or whether the UK will only accept a deal that crosses EU red lines.