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# Trade Laws Between Northern Ireland and the Republic of Ireland Post Brexit

CLAIRE O'BRIEN

## *Abstract*

*The withdrawal of the United Kingdom (“UK”) from the European Union (“EU”) became known worldwide as “Brexit.” As a result of this major shift in political and economic unions, there was a shift in laws and borders. Since the Good Friday Agreement in 1998<sup>1</sup>, there has been an absence of a physical or “hard” border between Northern Ireland and the Republic of Ireland.<sup>2</sup> The flexibility with the border is attributable to both countries' membership in the EU. However, Brexit has raised questions about whether there should be a hard border, either between Northern Ireland and the Republic of Ireland, or potentially in the Irish Sea, separating the Irelands and Scotland. Implementing a hard border would create adverse economic and political implications for the UK and the Republic of Ireland. The hard border threatens to disrupt the delicate balance established by the Good Friday Agreement and could have far-reaching consequences for trade, the movement of people, and the overall stability of the region.*

## BACKGROUND

On January 31, 2020, the UK officially withdrew from the EU.<sup>3</sup> This withdrawal, in the marketing and referendum run-up, coined the phrase “Brexit.” Almost a year after Brexit, on January 1, 2021, the Northern Ireland Protocol (“The Protocol”) went into effect.<sup>4</sup> The Protocol, finalized in October 2019 and implemented in 2021, established a tailored solution, notably by keeping Northern Ireland aligned to EU customs and internal market rules.<sup>5</sup> However, conflicts between existing trade agreements and the Protocol undermine the ability of Northern Ireland to leverage or even continue to use previously negotiated trade advantages with the rest of the UK.<sup>6</sup>

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<sup>1</sup> See Lisa O’Carroll, *How Did the Good Friday Agreement Come about and Why Is It so Significant?*, The Guardian (Apr. 7, 2023, 3:45 PM), [www.theguardian.com/world/2023/apr/07/how-did-the-good-friday-agreement-come-about-and-why-is-it-so-significant](https://www.theguardian.com/world/2023/apr/07/how-did-the-good-friday-agreement-come-about-and-why-is-it-so-significant) (The Good Friday Agreement came on the heels of a ceasefire from the Irish Republican Army (IRA). The Good Friday Agreement is an agreement between the Nationalist and Unionist parties. The two parties reached a compromise to set up a new government in Northern Ireland which both parties shared power in. After this agreement, the British troops receded and there was eventually an end to the violence from both sides).

<sup>2</sup> Jen Kirby, *Brexit’s Irish Border Problem, Explained*, Vox (Feb. 18, 2019, 8:00 AM), [www.vox.com/world/2019/2/18/18204269/brexit-irish-border-backstop-explained](https://www.vox.com/world/2019/2/18/18204269/brexit-irish-border-backstop-explained).

<sup>3</sup> Nigel Walker, *Brexit Timeline* 74 (2021).

<sup>4</sup> Council of the European Union, *The Protocol on Ireland and Northern Ireland Explained*, [www.consilium.europa.eu/en/policies/eu-relations-with-the-united-kingdom/the-eu-uk-withdrawal-agreement/the-protocol-on-ireland-and-northern-ireland-explained/](https://www.consilium.europa.eu/en/policies/eu-relations-with-the-united-kingdom/the-eu-uk-withdrawal-agreement/the-protocol-on-ireland-and-northern-ireland-explained/) (last visited Feb. 3, 2024).

<sup>5</sup> Federico Fabbrini, *The Law & Politics of Brexit: The Protocol on Ireland / Northern Ireland*, 3, 7 (2022).

<sup>6</sup> Billy Melo Araujo & Dylan Wilkinson, *Northern Ireland’s Hybrid Trade Regime*, J. of Int’l Trade L. & Pol’y, 42 (2023).

## TRADE LAWS

Before Brexit, trade laws between Northern Ireland and the Republic of Ireland were more favorable for the Republic of Ireland (“Ireland”) over other EU countries particularly following the 1998 Good Friday Agreement, with Ireland emerging as Northern Ireland’s largest trading partner, largely due to the lack of a “hard” border.<sup>7</sup> However, trade statistics between the two entities were skewed by worldwide events such as the conflict in Ukraine and the Coronavirus pandemic, making it difficult for researchers to isolate the effects of Brexit on trade.<sup>8</sup>

In 2020, prior to Brexit, “the EU accounted for approximately 43% of the UK's total exports, while the UK was the EU's third-largest trading partner, accounting for around 9% of the EU's total exports.”<sup>9</sup> These statistics are indicative of the UK’s reliance on the EU’s economic and trade benefits, despite the EU having less reliance on the UK for trade. However, the EU experienced turbulence in its supply chains due to an increase in border checks, labeling requirements, and higher costs for transportation route changes.<sup>10</sup>

When the UK was a part of the EU, the UK automatically participated in every trade agreement that the EU entered.<sup>11</sup> The UK-EU Trade and Cooperation Agreement (“TCA”) addressed the key points of trade, transport, fisheries, changes to law enforcement and judicial cooperation, thematic cooperation, union programs, financial management, and dispute settlements, among others.<sup>12</sup> Key provisions from the TCA include restrictions on changes to taxes or trade limits, increased border checks and customs declarations, and alterations to the restrictions on certain food products coming from the UK into the EU.<sup>13</sup>

## BORDER REPERCUSSIONS

One of the most significant challenges post-Brexit is the contentious issue of the border between Northern Ireland and Ireland, carrying significant economic and political complications.

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<sup>7</sup> John Doyle & Eileen Connolly, *Brexit and the Future of Northern Ireland* 1 (DCU Brexit Inst., Working Paper No. 1 – 2017, 2018).

<sup>8</sup> Matthew Ward & Dominic Webb, *Statistics on UK-EU Trade* 4 (2023).

<sup>9</sup> International Trade Council, *The Impact of Brexit on International Trade*, *International Trade Council - Solving Trade-Related Issues*, <https://tradecouncil.org/the-impact-of-brexit-on-international-trade/> (last visited Mar. 5, 2024).

<sup>10</sup> Marius Kriege, *Navigating Post-Brexit Impact with Smart Logistics Solutions*, Maersk (July 14, 2023), [www.maersk.com/insights/resilience/2023/07/14/brexit-logistics-impact#:~:text=Ivalue%27s%20survey%20shows%20that%20, brought%20to%20the%20average%20business.](https://www.maersk.com/insights/resilience/2023/07/14/brexit-logistics-impact#:~:text=Ivalue%27s%20survey%20shows%20that%20, brought%20to%20the%20average%20business.)

<sup>11</sup> Giambrone Law, *A Guide to EU and UK Trade Agreements Post-Brexit*, [www.giambronelaw.com/site/advice/dispute-resolution/commercial-cross-border-disputes/guide-to-eu-and-uk-trade-agreements-post-brexit/#q11](https://www.giambronelaw.com/site/advice/dispute-resolution/commercial-cross-border-disputes/guide-to-eu-and-uk-trade-agreements-post-brexit/#q11) (last visited Feb. 3, 2024).

<sup>12</sup> Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part [2021] OJ L149/10 (signed 30 December 2020, entered into force 1 May 2021).

<sup>13</sup> Tom Edgington, *Brexit: What Are the Key Points of the Deal?*, BBC News (Dec. 30, 2020), [www.bbc.com/news/explainers-55180293](https://www.bbc.com/news/explainers-55180293).

Economic complications include delays in trade due to border checks, increases in tariffs and other trade laws, and uncertainty regarding trade terms previously agreed upon while Northern Ireland was a part of the EU.<sup>14</sup>

Politically, the situation is equally fraught, with possibilities ranging from the potential deconstruction of The Good Friday Agreement, removal of Northern Ireland from the British government, or Northern Ireland leaving the UK.<sup>15</sup>

When Ireland, Northern Ireland, and Britain agreed upon the Good Friday Agreement, it brought an end to what was known as the Troubles; thirty years of sectarian violence between loyalists who wished to remain a part of the UK and nationalists or republicans who wished to join Ireland.<sup>16</sup> There is no direct statement in the Good Friday Agreement regarding the permissibility of a hard border, however, the Agreement does state that “the development of a peaceful environment... can and should mean a normalization of security arrangements and practices.”<sup>17</sup> The Agreement indirectly places a bar on a hard border as it would indicate a disruption to the “normalization of security arrangements and practices.”<sup>18</sup>

Before the Good Friday Agreement, regular security checks were conducted by the British army when crossing the border from Ireland to Northern Ireland.<sup>19</sup> There were two impacts of these security checks at the border. The first was the slower process of moving goods and materials when adding a stop to cross between “countries” but the second was the perception that, given the longer-term nature of the historical conflicts between the two entities, at any random point, a political issue could end up suspending trade between Ireland and Northern Ireland.

Since the separation of Ireland and Northern Ireland, there has been a “Common Travel Area” agreement between the two countries.<sup>20</sup> The existence of this agreement further complicates the prospect of a hard border, as it would violate this agreement and cause political and economic dissension.

Whether there will be a hard border between Ireland and Northern Ireland or in the Irish Sea in either the Protocol or the Windsor Agreement has yet to be addressed.<sup>21</sup> The optimistic arrangement is that both agreements are silent on the matter, and all parties remain satisfied without a border, keeping with the precedent of the past twenty-six years since the passing of the

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<sup>14</sup> Przemysław Biskup, *The Long-Term Implications of Brexit for Northern Ireland*, European Policy Centre, 42-43 (2020), [www.epc.eu/content/PDF/2020/5\\_The\\_long-term\\_implications.pdf](http://www.epc.eu/content/PDF/2020/5_The_long-term_implications.pdf).

<sup>15</sup> Charles Landow & James McBride, *Moving Past the Troubles: The Future of Northern Ireland Peace*, Council on Foreign Relations (Feb. 16, 2024, 12:15 PM), [www.cfr.org/background/moving-past-troubles-future-northern-ireland-peace](http://www.cfr.org/background/moving-past-troubles-future-northern-ireland-peace).

<sup>16</sup> BBC, *Good Friday Agreement: What Is It?*, [www.bbc.com/news/uk-northern-ireland-61968177](http://www.bbc.com/news/uk-northern-ireland-61968177) (last visited Mar. 5, 2024).

<sup>17</sup> John Campbell, *Brexit: Does the Irish Peace Accord Rule out a Hard Border?*, BBC News (Oct. 4, 2019), [www.bbc.com/news/uk-northern-ireland-46988529](http://www.bbc.com/news/uk-northern-ireland-46988529).

<sup>18</sup> *Id.*

<sup>19</sup> BBC, *supra* note 16.

<sup>20</sup> Doyle, *supra* note 7, at 2.

<sup>21</sup> Council of the European Union, *supra* note 4.

Good Friday Agreement and removal of British forces from the Northern Ireland border.

## CURRENT EVENTS AND FUTURE IMPLICATIONS

In the years since Brexit, the UK has entered “approximately 40 agreements with 70 countries and also managed to rollover existing deals with 63 of the 70 countries.”<sup>22</sup> In essence, the UK is in a position akin to non-EU countries pre-Brexit, with remaining discrepancies largely due to ongoing EU negotiations aimed at maintaining similar terms to those that were in place while the UK was a part of the EU.

The largest change post-Brexit has been the UK’s trade relations with EU countries. Brexit's political repercussions and subsequent economic effects have revived the movement to unify Northern Ireland and Ireland.<sup>23</sup> The prospect of a hard border or restrictions on the Common Travel Area between Northern Ireland and Ireland or in the Irish Sea has stirred political disarray, potentially violating the Good Friday Agreement.<sup>24</sup>

The political party Sinn Féin stands for the unification of both Ireland counties and the Northern Ireland counties.<sup>25</sup> For the first time in the history of eleven unionist leaders, the Vice President of Sinn Féin; an Irish Nationalist party, Michelle O’Neill, was elected as the first minister of the government of Northern Ireland.<sup>26</sup> This unprecedented development reflects the rampant discontent by the citizens of Northern Ireland from all sides of the political spectrum as a result of Brexit and the subsequent trade agreements, which may entail a return of the hard border. By electing the party Sinn Féin, for the first time in Northern Ireland’s history, the citizens are showing that they wish to invoke a change, and the timing indicates that it is directly related to Brexit, contrasting with the Democratic Unionist Party’s (“DUP”) support for Brexit.<sup>27</sup>

The future implications of Brexit and the Protocol remain uncertain, ranging from a drastic change in trade relationships between Ireland and the United Kingdom to potential stagnation. Nevertheless, the Windsor Framework to overhaul the Northern Ireland Protocol marks the end point of the frantic and fraught EU-UK relationship between 2016 and 2023.<sup>28</sup>

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<sup>22</sup> Giambrone Law, *supra* note 11.

<sup>23</sup> Dieter Reinisch, *A Sinn Féin Victory in Northern Ireland Could Represent a Sea Change*, The Washington Post (May 4, 2022, 6:00 AM), [www.washingtonpost.com/outlook/2022/05/04/sinn-fin-victory-northern-ireland-could-represent-sea-change/](https://www.washingtonpost.com/outlook/2022/05/04/sinn-fin-victory-northern-ireland-could-represent-sea-change/).

<sup>24</sup> BBC, *supra* note 16.

<sup>25</sup> Paul Arthur & Kimberly Cowell-Meyers, *Sinn Féin*, Encyclopedia Britannica, [www.britannica.com/topic/Sinn-Fein](https://www.britannica.com/topic/Sinn-Fein) (last updated Mar. 4, 2024).

<sup>26</sup> Brian Melley, *For the First Time, an Irish Nationalist Will Lead Northern Ireland’s Government*, The Seattle Times (Feb. 3, 2024, 1:07 PM), [www.seattletimes.com/nation-world/world/for-the-first-time-an-irish-nationalist-is-set-to-lead-northern-irelands-government/](https://www.seattletimes.com/nation-world/world/for-the-first-time-an-irish-nationalist-is-set-to-lead-northern-irelands-government/).

<sup>27</sup> Dan Haverty & Brendan Reaney, *Why the Irish Border Matters*, Atlantic Council (Dec. 18, 2018), [www.atlanticcouncil.org/blogs/new-atlanticist/why-the-irish-border-matters/](https://www.atlanticcouncil.org/blogs/new-atlanticist/why-the-irish-border-matters/).

<sup>28</sup> Joris Larik, *Writing for ‘Brexiternity’? Reflections on Legal Scholarship on a Moving Target*, 50 Legal Issues of Econ. Integration, 211 (2023).

## **CONCLUSION**

In conclusion, the trade laws affected by Brexit, particularly between the UK countries and EU countries like Ireland, are more significant on the Emerald Isle than elsewhere. These effects include the changes in border checks, international import tariffs, and the revival of the political question of Irish unification. Looking ahead, the UK continues to seek to maintain its “special” relationship with Northern Ireland outlined in the Windsor Framework. Still, the trade winds may be blowing in a different direction given the experiences of the residents and businesses in Northern Ireland and the Republic of Ireland since 2021.