

Brexit customs questions

Blog post by Senior Director Stephen Adams, 16 August 2017

Yesterday, the UK floated a set of ideas for managing the future of the customs frontier between the EU and the UK. They were broadly divided between two proposals: a first, based around some very practical ideas for using technology to streamline the movement of goods across a future EU-UK customs border. The second was a much more radical idea that the UK would offer to implement the EU's own external border protocols on its behalf as part of a wider approach that would remove any need to process goods moving between the two markets. The first is sensible enough. How serious is the second?

If we assume that the UK proposal is genuine (which is a fair question), it is certainly paradigm-shifting. It follows from an attempt to make two things compatible: completely free circulation of goods between the EU and the UK market with no requirement for customs processing at that border, and UK freedom to negotiate and set its own external tariff as a part of an autonomous trade policy. With a very open mind, this raises some important practical questions.

The first attaches to the practicalities of managing two parallel import regimes. It is impermissible in WTO terms for a state to levy variable tariffs on the basis of where goods are destined within a market rather than their point of origin, so the UK proposal looks vulnerable in that respect. More practically, if the UK is proposing to have a more liberal import regime than the parallel one that it is offering to implement on the EU's behalf, then the temptation to arbitrage this regime will exist and goods in the regime would need to be traceable and monitored at every stage of their market life. As an alternative, the UK government suggests a system of refunds for firms willing to pay a higher EU tariff upfront. Goods intended to be transformed in the UK for onward shipment to the EU would presumably need to be subject to the EU, not UK tariff to remove the need for origin requirement checks at the non-existent border. This also would need close enforcement.

Presumably, the EU would have to agree to undertake the same service for the UK - tracking imports bound for the UK and levying (lower?) tariffs on them on the UK's behalf. The scope for attempted circumvention here is also obviously huge, as would be the traceability requirements required to have any chance of making sure that goods entering the EU market at these preferential UK rates never found their way onto the EU market. Why the EU should agree to undertake this policing exercise for goods is not clear.

While such exercises in traceability are probably not impossible - it is done with farm produce of some kinds in the EU market - to do it for the totality of goods trade would be a huge undertaking. It all adds up to adopting a complex goods traceability system and a burdensome tariff refund system....to avoid the imposition of a relatively simple (in principle) trade processing system. Nevertheless, this is part of the contortion required to permit the idea of the UK autonomously negotiating its own external tariff without requiring trade processing at the EU-UK (and Northern Ireland) border.

But it is only part of the problem. The bigger issue is the underlying reason why trade processing actually takes place at all, which is not just about levying tariffs, but recording and control of what

is placed on a market. The UK is proposing to make this unnecessary, but that would require alignment in a very wide range of EU and UK practice. As just one example, most physical customs checks are undertaken to confirm the conformity of foodstuffs with sanitary rules. In its proposals for Northern Ireland today, the UK government seems to have pledged to mirror the EU SPS regime to allow the relaxation of border checks. Implicitly this also means creating a mechanism whereby the EU can enforce this.

It is hard to believe that the EU would not demand that this extend to almost all product standards, competition and subsidy, and state aid protocols, as an open border with different product standards on either side of it begs the question of how arbitrage across that border would be controlled, and there is no way that the EU would allow this to be through purely post facto enforcement of product compliance with EU rules. If this proposal is to be taken at face value, then it would suggest that the UK will need to be willing to pay a high price in domestic upstream regulatory autonomy to secure something close to 'frictionless trade'. Whether that is indeed what the UK is proposing is less clear.

You would not be blamed for suspecting that this is a mid-August boondoggle designed to suggest (not least to Dublin and with respect to the Northern Irish border) that the UK is willing to think 'boldly', before getting down to the business of the UK's other proposal, which is to work on the practical but plausible questions of using technology and customs cooperation to make cross-border trade processing as simple, fast and virtual as possible. And securing a long enough transition period on status quo terms to put such a system in place.