

17 July 2018

Summer Brexit fun

It is past the mid-point of July but Brussels is not quieting down as of yet. The CAP reform, Trump's trade wars, EU trade talks and intervention tendering make sure it is another hectic week. But all of this has been overshadowed again by Brexit (and football) since the infamous Chequers "body bag" cabinet meeting that was followed by the resignations of now ex-Brexit Secretary David Davies and Foreign Affairs Secretary Boris Johnson (a few days later so as not to compete for news space with England's victory over Colombia).

Despite the resignations, the long awaited 100 page white paper outlining the UK's vision of its future relationship with the EU was finally released on 12 July. While a good number of the proposals it contains are probably not workable or compatible with the integrity of the EU single market and customs union, the paper certainly has some merit in that it clarifies what the UK (or at least its current government) actually wants. The starting point remains unchanged. The foreword of the Prime Minister begins as follows:

"In the referendum on 23 June 2016 – the largest ever democratic exercise in the United Kingdom – the British people voted to leave the European Union. And that is what we will do – leaving the Single Market and the Customs Union, ending free movement and the jurisdiction of the European Court of Justice in this country, leaving the Common Agricultural Policy and the Common Fisheries Policy, and ending the days of sending vast sums of money to the EU every year. We will take back control of our money, laws, and borders, and begin a new exciting chapter in our nation's history".

Great. But at the same time the goal is to *"preserve the UK's and the EU's frictionless access to each other's markets for goods"* through the creation of a new free trade area without any tariffs or quotas. An FTA providing for duty and quota free market access is no problem as such, it is with the customs and food law aspects where things get tricky.

On food safety, the UK is advocating a "common rulebook", i.e. close and continuous harmonisation with EU rules. But will this be enough to avoid veterinary checks at the border? And does it in any event constitute an acceptable solution from a UK perspective as it would continue to be tied to EU rules without having a say on them? Moreover, the common rulebook would only apply to SPS measures but not food standards or labelling as the latter are not subject to border checks. A certain degree of harmonisation of product standards (in our sector for instance the marketing standards for butter, SMP or casein) would however be necessary for the free trade area to function properly.

Certainly the most controversial part of the white paper is the proposed solution on customs matters. The new Facilitated Customs Arrangement would allegedly *"remove the need for customs checks and controls between the UK and the EU as if they were a combined customs territory"*. Within this free trade area without customs checks, the UK would still be free to negotiate its own



trade deals and apply a different external tariff. How? By levying EU tariffs on behalf of the EU at the UK border if the product's end-destination is the EU. But how would one be able to ensure that products formally destined for the UK and customs cleared there would not be further shipped to the EU? The paper suggests that in most cases the end destination of the product could be "*robustly demonstrated by a trusted trader*". Where this is not the case, the higher of the EU and UK tariff would have to be paid, with the possibility to claim repayment (between the higher and the lower duty) at a later stage (if applicable). According to the paper, this will be the regime to be applied to most intermediate goods (such as dairy ingredients). Simplification is not the first word that comes to mind...moreover, it is not clear how goods entering the UK via the EU would be treated. The paper merely states that it would not be required for the EU to apply the UK external tariff (an amendment put forward by UK MPs is already backtracking on this particular aspect).

Another complexity in the context of the Facilitated Customs Area relates to rules of origin. If trade between the EU27 and the UK of products originating in or ultimately shipped to third countries is to be frictionless, there would have to be diagonal cumulation between the EU, UK and a given FTA partner. This means that a dairy product containing both UK and EU ingredients would have to be recognised as a product with a single origin for instance by Canada or Japan but there are no guarantees that any third country would be inclined to do so.

The white paper claims that the solutions put forward together will ensure frictionless trade on the island of Ireland, eliminating the need to use the backstop solution enshrined in the draft withdrawal agreement (whereby Northern Ireland would remain part of the single market and the customs union). It is however highly doubtful whether the proposed approach will be seen as watertight by the EU.

In light of the indivisibility of the four freedoms (people, goods, services and capital), the UK's wish to chart its own path in areas such as services, investment and migration constitutes another challenge.

It is hard to see Team Barnier swallowing this. A lot of the proposal amounts to what the Commission likes to call "cherry picking" or "having their cake and eating it". We will know more about the EU's stance after this Friday's Council meeting.

Despite its shortcomings, the paper is basically positive from a dairy trade and a broader food industry perspective. If something even close to this can be agreed upon, it would mean dairy products will likely be able to cross the channel and the Irish Sea without too much additional friction. But that is a big IF, especially since the white paper is already under heavy fire by UK MPs and some troublesome amendments. It will be a monstrous task to come to something workable and capable of ratification by the October deadline and preparations for a no-deal scenario ("Brexit preparedness") should certainly continue in force.