Brexit

Briefing note

FTA Ireland

The UK is leaving the EU. There has been a lot of talk and conjecture on how this 'divorce' will transpire. The reality is we will not know until the talks start! There are a myriad of issues to be discussed, debated and agreed with one thing certain, it will take longer than two years to conclude! How 'hard' or 'soft' and the implications for trade to and from the Republic of Ireland following this divorce will very much depend on what is desirable for both the UK and the EU, what sits well with the electorate in both jurisdictions. All parties must be open to extending the negotiations beyond the initial period. Contingencies must be agreed to ensure that there is minimal impact on trade that gives rise to uncertainty on rules and regulations or access to markets. What is certain is that the harder the 'Brexit' the more issues that will arise for the transport and logistics sector as a whole!

Article 50

Article 50 – Treaty on European Union (TEU) (synopsis)

- Any member state may decide to withdraw from the Union in accordance with its own constitutional requirements
- A member state which decides to withdraw shall notify the European Council of its intention. The Union shall negotiate and conclude an agreement with that state, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty and it shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament
- The Treaties shall cease to apply to the state in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the member state concerned, unanimously decides to extend this period

Timetable for negotiations

There is a tight timetable for negotiations, which will require the EU to respond to Britain's formal request to withdraw. Mr Barnier, the EU's chief negotiator, has said that in practice the countdown for an agreement will be less than two years after the triggering of the official Article 50 exit clause.

There will be less than 18 months to negotiate.

Should the UK notify the EU by the end of March 2017, negotiations will have to start a few weeks later and an agreement reached by October 2018.

Approval for an agreement by the autumn of 2018 would give member states and the UK 'five or six months' to ratify the deal through their parliaments ahead of European Parliament elections in 2019. Germany also heads for key presidential elections in late 2018.

UK trigger → EU response	2 months
Negotiation and agreement	16 months
Ratification	6 months
Total	**24 months**

The view in Brussels is increasingly that the negotiations will only start around late May/June, to give enough time to the Council to adopt guidelines on how Article 50 negotiations should be run, and that the negotiations are likely to concentrate on withdrawal arrangements (exit bill, rights of EU and UK citizens respectively living in the UK and the EU, future of EU agencies in the UK, etc) as a first step, with the trade negotiations only starting later (ie in 2018). Less than a year to negotiate a trade deal (as time would need to be set aside for a vote in the European Parliament) is widely considered insufficient, and many in Brussels are now saying that an extension of the negotiations beyond the two-year period might be inevitable. This could either be done as an extension of the Article 50 negotiating process, which requires unanimity from other member states (and is therefore quite unlikely), or post-Brexit, hoping that transitional arrangements would be in place in the meantime. All of this will become much clearer once Article 50 is triggered and the Council adopts its negotiating guidelines, as requested by Article 50.

Trade links between Ireland and the UK

The trade links between Ireland and the UK are strong as a result of the movement of our people between the islands, our geographical location and history. The Common Travel Area (CTA) further strengthens the relationship. It is a special travel zone between the UK, the Republic of Ireland, the Isle of Man and the Channel Islands and dates back to the establishment of the Irish Free State in 1922.

Common Travel Area

The Common Travel Area is an open borders area comprising Ireland, the United Kingdom of Great Britain and Northern Ireland, the Isle of Man, and the Channel Islands. Based on legally non-binding arrangements, the internal borders of the Common Travel Area (CTA) are subject to minimal or non-existent border controls and can normally be crossed by British and Irish citizens with minimal identity documents, with certain exceptions.

Irish nationals' special status in UK law (Ireland Act 1949)

- Irish nationals have a special status in UK law which is separate to, and pre-dates, the rights they have as EU citizens
- In short, Ireland is not considered to be a 'foreign country' for the purpose of UK laws, and Irish citizens are not considered to be 'aliens'. Furthermore, Irish citizens are treated as if they have permanent immigration permission to remain in the UK from the date they take up 'ordinary residence'

This special status affects Irish nationals' rights across a number of areas, including eligibility for British citizenship, eligibility to vote and stand for election, and eligibility for certain welfare benefits. As a result, they have more advantageous rights than other EU/EEA nationals in some areas. This point must be highlighted from both the UK and the Irish perspective and will aid the frictionless trade between the UK and Ireland but also lend to protecting the stability and accessibility for Northern Ireland people and businesses (http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7661#fullreport).

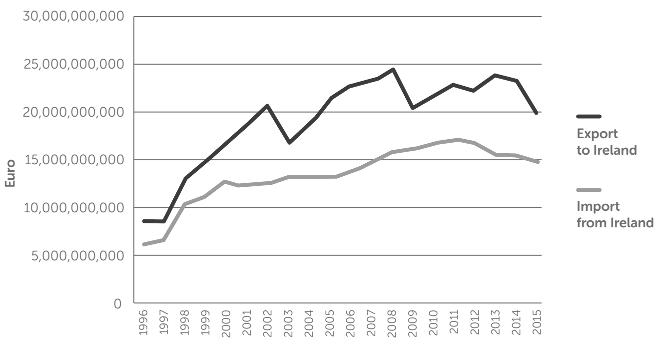
Transport and logistics (and consequently the consumer) are going to be faced with significant increased costs of doing business if negotiations on the UK's exit from the EU do not pass smoothly. Irrespective, Ireland's geographic location ensures that we, as a people, will be the most badly affected European member state.

- In 2011 there were 112,259 UK nationals living in the state (our population then was 4.5 million)
    - 8,295 residents of Ireland commuted across the border with Northern Ireland to work or study
    - 6,456 residents from Northern Ireland commuted across the border to work or study in Ireland

CSO, December 2016

- In 2015 Ireland exported €112.4bn of goods and €15.6bn of these goods went to the UK
    - the UK purchases 50 per cent of Ireland's beef exports
    - 42 per cent of our food and drink exports
    - 55 per cent of Irish exports in the timber and construction sectors goes to the UK
    - in contrast, the UK exports more to Ireland than it does to China, India and Brazil, in fact Ireland is Britain's fifth largest market!

Republic of Ireland – UK goods trade (Euro)



The main issues facing the Irish transport and logistics sector

Members of FTA Ireland are very concerned with the consequences of Brexit in terms of the movement of goods, particularly accessing the UK and the European marketplace. The world is a different place compared to the 80s and 90s where border checks and customs checks were par for the course. At that time business knew no different and prepared for the consequence of completing TIR Carnets, had contingency plans in place for border and customs delays. However, the new reality is that most people negotiating Brexit, involved in the process, do not remember or understand what it was like to move goods before the Single Market. Businesses have developed around delivery efficiencies.

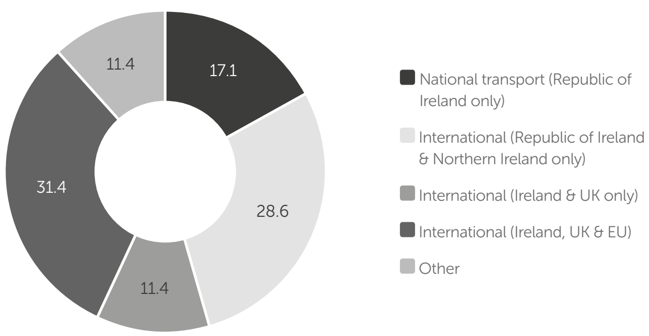
Border with Northern Ireland

FTAI carried out a survey of its members recently. Specifically it asked questions of members on the impact of Brexit (if any to date), and more importantly what were the main issues faced by members as a consequence of Brexit. The results are outlined below.

The survey was directed at all members of FTAI operating and managing a commercial fleet.

To find out the geographical locations our members are operating in we asked if they provided services on a national or international basis, requesting some detail as to what exactly the international element of their operations entailed. Seventeen per cent of respondents operate in the Republic of Ireland with 29 per cent operating internationally but just covering the Republic and Northern Ireland. Forty-six per cent of respondents operate on the Island of Ireland only. A further 11 per cent carry out their activities between Ireland and the UK and 29 per cent of respondents operate in Ireland, UK and EU. This sets the scene in terms of what Brexit issues will be important to the members, in that for the 46 per cent operating on the Island of Ireland, the border between the Republic and Northern Ireland will have significant implications.

Do you provide transport services nationally or internationally? (response per cent)



For the 40 per cent that operate to the UK and the EU, access to the EU through the UK may be an issue, delays at ports and customs checks may also pose major concern.

To date 77 per cent of respondents said that Brexit has not had an impact on their business.

Of those that did say there had been an impact, the following are the key issues they have faced.

Exports Imports Exchange

Significantly the weak currency is affecting companies' confidence to proceed with long-term projects, with some even saying the cost of fuel is a concern at the moment.

FTAI members' main issues as they see them (at the time of writing March 2017) are as follows.

1 No hard border with Northern Ireland (94 per cent)

2 Trade on the island of Ireland (85 per cent)

3 Customs clearance (70 per cent)

When asked what are the main points you would like FTAI to consider on the Brexit issue that are most important to you and your business, the following was the result.

Access Border Delays Costs
Customs Tariffs Border
Paperwork Port Access
Additional Europe Hard
Border Trade

The uniqueness of the relationship between Northern Ireland and the Republic of Ireland cannot be understated in preparations for negotiations. Aside from the fact that cross-border trade amounts to approximately €3 billion annually with approximately €1.5 billion in the food and drink sector alone (http://www.intertradeireland.com/researchandpublications/trade-statistics/sectoral_cross-border_trade/), the implications for jobs and the movement of people across the border is massive.

Notwithstanding that the 'Good Friday Agreement' states that *(vi) recognise the birth right of all the people of Northern Ireland to identify themselves and be accepted as Irish or British*, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both governments and would not be affected by any future change in the status of Northern Ireland: how the future distribution of goods and customs issues surrounding the Northern border is dealt with will be most interesting. It is absolutely imperative that as a consequence of the uniqueness of our relationship that all Government bodies collectively agree a solution that is palatable to all parties that will not cause undue delays and disturbance to fair trade on the Island. It is important that an all-island Ireland approach is taken in future negotiations.

Imports/exports to a non-EU member

We are heading into the unknown in some respects, not in terms of what is required for importing and exporting to 'non- EU' or as they are known 'third countries', but will these same rules apply to doing trade with the UK. This, of course, will be dependent on the deal reached as part of the terms of Brexit and will not become clear for some time. Having said that, this is what to expect if the UK leaves the Customs Union and the Single Market.

- Delays at borders
- Hindrance to trade
- Barriers to entry and exit
- Tariffs on goods
- Sustained period of uncertainty
- Increased costs
- 'Red tape'

Customs

Imports

- **Pre-arrival of the goods in the EU**
  An electronic safety and security declaration called an Entry Summary Declaration (ENS) – must be lodged by the carrier of the goods with the customs authorities at the office of first entry in advance of arrival of the goods. This is done using the Import Control System (ICS)

- **Arrival of the goods in the EU**
  Where can the goods be brought to?
  Goods may be imported or landed only at a place approved by Revenue and in the presence, or with the authority, of the proper Revenue official. Goods landed contrary to this are liable to forfeiture. All goods, which arrive at an approved place, must be presented to Revenue

- **What places are approved?**
  The following places are approved in Ireland:

  — for goods imported by sea, an approved sufferance wharf – in practice, any of the main ports

  — for goods imported by air, an approved customs airport. The only approved customs airports are Dublin, Cork and Shannon

  — for goods that are not cleared by Revenue at a port or airport, an approved premises such as a transit shed, container compound, a transit depot

How are customs duties set?

The customs duty rates chargeable on imported goods from outside of the EU are set out by the EU Commission in a regulation commonly known as the Combined Nomenclature (CN). These duty rates are common across the member states.

How do I make a declaration?

Goods imported into the EU must be declared to Revenue electronically through the Direct Trader Input (DTI) facility.

Two of the most important pieces of information required in the electronic customs declaration are the:

- Commodity Code (also called Tariff Heading, Tariff Code, Classification Code or Harmonisation (HS) Code

- Customs Procedure Code

There are a number of EU electronic customs initiatives which have been developed to better serve the needs of businesses and customs administrations while also increasing the security and safety aspects for all concerned.

The Economic Operators' Registration and Identification System (EORI) is a system whereby every trader who interacts with customs authorities in any member state of the EU is allocated a unique reference number. This reference number is valid throughout the EU and serves as a common reference number for the trader's interaction with the customs authorities of any member state. The EORI is used by traders in all import and export declarations.

Exports

There are three specific types of export.

- **Direct exports:** goods leave Ireland directly for their destination outside the EU
- **Indirect exports:** goods leave Ireland, travel to one or more other member state(s) and leave from there for their destination outside the EU
- **Exports made on the basis of a Single Transport Contract (STC):** although goods leave Ireland and travel to one or more other member state(s) from which they leave for their destination outside the EU (in the same way as indirect exports) they are treated as if they are direct exports and all customs formalities are completed in Ireland at the request of the declarant

An STC may also be referred to as a through Bill of Lading (for maritime) or a through Air Waybill (for air freight) and is used where the commercial contract of carriage is end-to-end. An example of this would be where an exporter makes a booking with their freight forwarder, the terms of which are, for example, Dublin to Shanghai. The export will not move directly between these locations, but may be moved using various modes of transport (including by four road) through any route determined by the freight forwarder or ocean carrier. The precise details of this routeing may be unknown to the exporter or declarant.

What law governs customs procedures relating to exports?

The main legal provisions for the export of goods from the EU are contained in Regulation No 952/2013 (Union Customs Code), Implementing Regulation No 2015/2447 and Delegated Regulation No 2015/2446.

Issues for ports

A significant volume of goods pass through the Irish ports to the UK. Based on the 2015 figures from the CSO (Central Statistics Office) the imports and exports through Irish ports to Great Britain and Northern Ireland are as follows.

IRISH PORT TRAFFIC 2015			
IMPORTS FROM GB AND NI		EXPORTS TO GB AND NI	
CATEGORY	VOLUME 000s TONNES	CATEGORY	VOLUME 000s TONNES
Liquid bulk (oil and gas)	3,961	Liquid bulk (oil and gas)	975
Dry bulk (agri, ore and coal)	490	Dry bulk (agri, ore and coal)	993
Lift on / lift off (container)	307	Lift on / lift off (container)	662
Roll on /roll off	2,872	Roll on /roll off	2,853
Unaccompanied trailers	3,350	Unaccompanied trailers	2,905
Forestry / steel	149	Forestry / steel	167
Totals	**11,129**		**8,555**

The UK Freight Transport Association warned the UK Parliament that exiting the European Union without some arrangement for ‘frictionless trade’ could lead to expensive customs delays for ports, hauliers and shippers.

FTA says, the UK’s customs authorities need to prepare for a wave of additional clearances. At present, UK customs waves goods from the EU through without significant checks, but once Theresa May carries out her Brexit promise, the customs system will have to be scaled up to handle up to an additional 300 million import declarations per year. The additional checks could lead to delays of up to four days in port! We already know the impact of port delays – just one hour’s delay adds £15,000 cost to the road haulage industry – so a streamlined process is vital (http://www.maritime-executive.com).

The main trade ports with Ireland in the UK are Holyhead, Milford Haven and Liverpool.

The main issues for ports will be ‘space’: space for checking loads, space for increased customs and excise checks, space for queueing vehicles, warehouse space.

Points for consideration

The complexity of the future of trading with the UK will be dependent on the outcome of negotiations that will no doubt carry on after the initial two years. Remember Article 50 has not been triggered before, indeed when it was written, it is likely it was not done so with the expectation that the first country to trigger it would be one of the main world economies in the EU! From a transport and logistics perspective it would be prudent to plan for the worst outcome!!

- Tarrif codes – familiarity with World Trade Organization (WTO) codes for products exported or imported would be advisable
  - talk to your IT people and start reviewing how these codes can be built into your system
- Review the current destination or source of your goods and check if these will possibly be impacted by Brexit. Consider the UK out of the Single Market and Customs Union and start making contingency arrangements
- Do you export or import from non-EU countries? If so, plan for the processes and procedures to extend to the UK imports and exports in a couple of years
- Review recruitment requirements as a consequence – will you need to hire a ‘customs clearance agent’?
- Meet with your clients and contractors and review the situation regularly. Plan as a team!
- Work with your trade association to highlight issues that you consider important and ensure the industry lobbies to get the smoothest, fairest outcome possible. ‘Frictionless trade!’
- Technological advancements – review and choose what is best for your business