

# Introduction to the Windsor Framework

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## Briefing Paper 4

### Key Points

- The Windsor Framework amends the previously agreed Northern Ireland Protocol (NIP) and aims to facilitate the flow of goods between Great Britain and Northern Ireland by establishing a green lane for goods deemed 'not at risk' and a red lane for the rest. The red and green lanes apply to imports into Northern Ireland from the rest of the world, as well as purchases from GB.
- Close examination of the criteria for the red and green lanes suggests that in practice the additional facilitation of trade will apply to a small number of sectors (primarily agri-food) and small (manufacturing) firms. It is likely that many firms will still have to use the red lane, even if in principle (for some of their goods / shipments) they may be able to use the green lane.
- The Windsor Framework does not waive the original NIP requirement that the EU regulations listed in Annex II of the NIP apply to goods sold in Northern Ireland (NI). Most EU regulations included in Annex II of the original NIP (now the Windsor Framework) are still applicable for goods in both the green and red lanes.
- Additionally, the Border Target Operating Model (BTOM) may cause complications for the operation of the Windsor Framework as the BTOM has different evidentiary requirements to both the red and green lane.
- The precise application of the EU's Carbon Border Adjustment Mechanism (CBAM) in Northern Ireland is ambiguous and urgent clarifications are desirable.
- As a result of the Windsor Framework firms in NI, in principle, have better access to Great Britain (GB) in comparison to EU firms, and they have better access to the EU Single Market in comparison to GB firms. This is a potential advantage which is likely to be greater the higher tariffs and tariff differentials are between the UK and the EU, and the higher the degree of product level regulatory intensity. On the other hand, NI firms may have a higher cost of inputs from GB than was the case before the UK left the EU, and it may be more difficult for third country firms to sell to Northern Ireland. The net effect on NI trade, production and investment is ambiguous.
- The somewhat limited scope of the Windsor Framework, the regulatory requirements and future regulatory divergence, the Border Target Operating Model, and the EU CBAM will all impact Northern Ireland's competitiveness, imports from GB and the rest of the world, and thus also on production and investment.
- Given the current arrangements, minimising the impacts on NI can only be achieved by close alignment to existing EU policies and practices be this with regard to CBAM, product level regulations, customs procedures and requirements, or even tariffs.

## Introduction

The original Protocol on Ireland/Northern Ireland (NIP) has been amended and renamed as the Windsor Framework<sup>1</sup>. The new arrangements between the EU and the UK have three pillars: to restore the smooth flow of trade within the UK, to safeguard Northern Ireland (NI)'s place in the United Kingdom (UK), and to address the democratic deficit. They comprise amendments to the original NIP under Decision no 1/2023 of the Joint Committee, a Political Declaration and a set of other joint declarations, unilateral declarations by each party and recommendations. This Briefing Paper focuses on the first of these pillars regarding the complexities of how trade flows are to be managed under the Windsor Framework and thus the implications for NI firms. It also does not cover other issues such as the treatment of VAT, subsidy control, pet movements, and the Stormont Brake.

The operationalisation of the Windsor Framework which is due to start at the end of September 2023 requires both sides (the UK and the EU) to introduce various measures, including legislation, and soft and hard infrastructure. It is not within the scope of this paper to assess the extent to which conformity to what was agreed has been achieved, but it underlines first that processes and infrastructure need to be in place and second that the implementation of green and red lanes is based both on legal undertakings but is also significantly based on mutual trust.<sup>2</sup> In order to strengthen mutual trust, the NI and UK Governments will need to play an active role in regulating the imports of goods into NI from GB and third countries (i.e., those outside the EU and the UK). For Northern Ireland, this responsibility will probably be limited to local regulation and border spot-checks. As for the UK Government, it is required to operate and manage the UK internal market scheme (UKIMS – see below)<sup>3</sup>, provide the EU with information on the movement of goods on a monthly basis<sup>4</sup>, and allow the EU to access that information.<sup>5</sup>

## Green and red lanes

Brexit created the challenge of how to maintain the integrity of both the UK internal market and the EU's Single Market given the unique position of NI. One challenge for the EU was how to prevent smuggling occurring from the UK to the EU market through NI. The lack of checkpoints between NI and the Republic of Ireland meant that north-south trade flows could not be easily regulated. Ultimately the solution, as per the Northern Ireland Protocol, was based on effectively setting up border checks on the Irish Sea between NI and GB. While this arrangement allows for the regulation of trade flows, it also impacts on the selling of goods from GB to NI - making it more difficult. This is because it increases GB (and NI) traders' administrative costs for selling and buying products to and from NI by requiring them to prove the destination of each goods movement and multiple declarations for customs purposes.<sup>6</sup>

The Windsor Framework creates new 'green' and 'red' lane mechanisms to facilitate the sale of non-EU goods from GB to NI. The green lane is the channel which is intended to simplify the process for specific goods and categories of firms by determining which goods are deemed 'not at risk', and reducing cumbersome border

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<sup>1</sup> See Joint Declaration No 1/2023 of the Union and the United Kingdom in the Joint Committee Established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community of 24 March 2023, L 102/87, 17 April 2023.

<sup>2</sup> The UK Government still needs to design a pre-vote scrutiny process for the Stormont Brake. What is more, the EU and the UK still need to translate the Windsor Framework solutions into national legal orders and set out further detailed implementing guidelines for traders. See the Windsor Framework: A new way forward, paras.62 and 73-74.

<sup>3</sup> See Decision No 1/2023 of the Joint Committee Established by the Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Community of 24 March 2023 laying down arrangements relating to the Windsor Framework [2023/819], Article 15(2)(c).

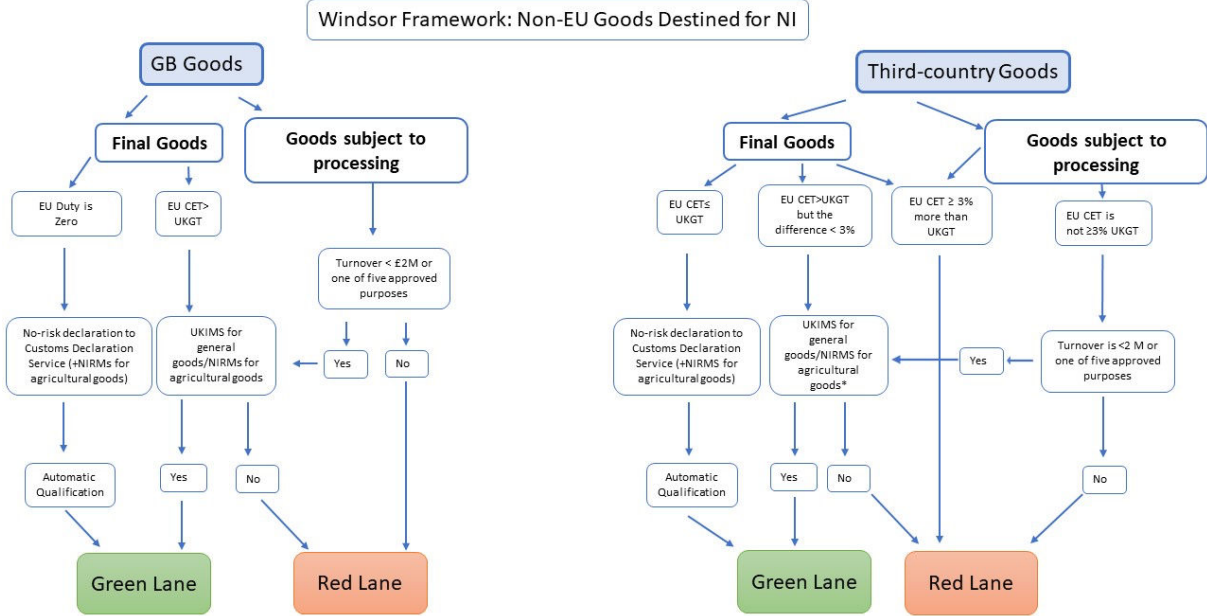
<sup>4</sup> Ibid, Article 14.

<sup>5</sup> Ibid, Article 14(1)(a)(b).

<sup>6</sup> Businesses should provide the customs commodity code and 80-field supplementary declaration for every single goods movement. Please see Article 47 of the NI protocol and Article 199 of the Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code.

checks in those circumstances. In order to move goods from GB to NI through the green lane, firms will need to be registered as 'internal traders' and use the existing Trader Support Service. In comparison to the NIP, the conditions for becoming an internal trader have been eased by not restricting this to firms with a physical presence in NI, by raising the turnover thresholds, and through sectoral exceptions for the sale of food to an end-consumer, for animal feed, healthcare, construction and not-for-profit sectors (See para.13 of [the Windsor Framework: A new way forward](#)). Goods within the red lane will still be subject to the original border checks.<sup>7</sup>

The following discussion provides a more detailed explanation of the operation of the green and red lanes. The key features of the Windsor Framework in this regard are summarised in Figure 1.



\*Note: agrifood goods imported from the rest of the world may only use the green lane if on a specific list which requires UK import conditions to be identical to EU ones.

**Goods that must go through the red lane**

The purpose of the red lane is to ensure that the EU can appropriately control and regulate goods entering the EU single market. Hence it applies when (1) a trader intends to move non-EU goods to the EU market from GB or third countries through NI; and/or (2) to prevent smuggling non-EU goods legitimately sold to NI to the EU market. The second point is particularly aimed at NI final goods containing non-EU (including GB) inputs. This is to ensure that inputs incompatible with EU standards do not enter the EU market as part of processed goods (i.e., final goods). Therefore, preventing smuggling, ensuring regulatory compliance, and ensuring that the correct import tariffs are levied are three rationales underlying the operation of the red lane.

In summary, non-EU goods must go through the red lane in four scenarios:

1. The good is destined for the EU market.
2. There is uncertainty as to the ultimate destination, which may arise from a given trader’s previous performance and/or their inability to declare goods movement and/or where the trader is not registered as an internal trader (see Section 4 on trusted UK internal trader).
3. For goods subject to commercial processing in NI. The Windsor Framework does provide exceptions for some goods in this regard (See Section 3).

<sup>7</sup> Ibid.

4. Where third country goods<sup>8</sup> are subject to an EU duty higher than the applicable UK duty by three percentage points or more.<sup>9</sup>

### ***What goods can go through the green lane?***

Goods eligible for the green lane are those which are deemed either not at risk of moving to the EU market or goods in sectors listed in the Windsor Framework as exceptions to the general rule.<sup>10</sup> Goods deemed not at risk include:

1. GB final goods:<sup>11</sup>
  - a. Where the EU customs tariff is zero.<sup>12</sup> In this case, firms do not need to be authorised as an internal trader.
  - b. Where the EU tariff is greater than the UK tariff for entering NI, goods for sale to, or final use by, end consumers in NI can go through the green lane if the GB seller is certified as a UK internal trader (i.e., under the approval of the UK Internal Market Scheme or the original UK Trader Scheme).<sup>13</sup> As the applicable UK tariffs between the GB and NI are always zero, this condition applies for any good for which the EU tariff is greater than zero.
2. Third country (final) goods
  - a. Where the EU tariff is greater than the UK tariff but by less than three percentage points. In this case, the green lane can be used if the third country firm is certified as an internal trader.<sup>14</sup> If the firm is not certified as an internal trader then the red lane would have to be used.
  - b. Where the applicable UK tariff is equal to or higher than the EU tariff.<sup>15</sup> In this case, firms do not need to be authorised as an internal trader.

Goods subject to commercial processing in NI are required to meet additional criteria (see discussion below).

Where goods meet the specific custom duty conditions, traders can submit a non-risk declaration to the Customs Declaration Service to qualify for the green lane. If goods cannot meet the custom duty conditions, traders selling general goods (i.e., non-agrifood goods) must complete the UKIMS (i.e., the original UK Trader Scheme) to qualify for the green lane (see Section 4). As for the movement of agrifood goods, traders should apply for the Northern Ireland Retail Movement Scheme (NIRMS), which provides for SPS controls for agricultural goods, including a general export health certificate, 'not for EU' labelling (see Section 5), and the sealing of consignments and lorries. The NIRMS will replace the existing Scheme for Temporary Agrifood Movements into Northern Ireland (STAMNI).

The Windsor Framework also allows for some green lane exceptions. This is where the processing of goods is non-commercial, which applies when a traders' annual turnover is less than £2 million (this amount is four times

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<sup>8</sup> For the purposes of this paper 'third-country' does not include the UK, whereas 'Non-EU' comprises the UK plus all third countries.  
<sup>9</sup> This condition does not appear explicitly in the Windsor Framework, but can be found in the UK government guidance at Article 7(1)(b)(ii) of the Decision No 1/2023 of the Withdrawal Agreement Joint Committee on laying down arrangements relating to the Windsor Framework.

<sup>10</sup> Exceptions include goods sold by an authorised UK internal trader, approved goods subject to commercial processing, and goods granted by the UK Government a grace period (i.e., veterinary medicines).

<sup>11</sup> i.e. "for sale to, or final use, by end consumers"

<sup>12</sup> See Article 7(1)(a)(i) of the Decision No 1/2023 of the Withdrawal Agreement Joint Committee on laying down arrangements relating to the Windsor Framework.

<sup>13</sup> See Article 7(1)(a)(ii) of the Decision No 1/2023 of the Withdrawal Agreement Joint Committee on laying down arrangements relating to the Windsor Framework. See also <https://www.gov.uk/guidance/check-if-you-can-declare-goods-you-bring-into-northern-ireland-not-at-risk-of-moving-to-the-eu#processing>.

<sup>14</sup> See Article 7(1)(b)(ii) of the Decision No 1/2023 of the Withdrawal Agreement Joint Committee on laying down arrangements relating to the Windsor Framework.

<sup>15</sup> See Article 7(1)(b)(i) of the Decision No 1/2023 of the Withdrawal Agreement Joint Committee on laying down arrangements relating to the Windsor Framework.

the previous amount specified in the NI Protocol), or when the goods are sold for one of the approved purposes below:

1. Food for sale to end consumers in the UK.
2. Construction – where the processed goods form a permanent part of a structure that is constructed and located in NI by the importer or one subsequent entity.
3. Directly providing health or care services in NI by the importer or one subsequent entity.
4. Non-profit activities in NI, where there is no subsequent sale of processed goods by the importer or one subsequent entity.
5. The final use of animal feed on premises in NI by the importer or one subsequent entity.<sup>16</sup>

## How to become part of the UK Internal Market Scheme?

The Windsor Framework names trusted GB traders qualified for the green lane as UK internal traders. GB and third country traders must complete a UKIMS authorisation to obtain the status of UK internal trader. The conditions for this are:<sup>17</sup>

- A good customs and tax compliance record.
- No record of serious criminal offences related to economic activity. The record builds on the three years before application or all available information, including any previously involved business. There must be no record of any serious or repeated infringements of customs rules).
- Details of the records, systems and controls that allow the applicant to accurately declare that goods are not at risk of going to the EU market. These details should show where the applicant sources goods and how and where they will be used or sold. They include:
  1. The systems and processes to track goods from import to end-use (e.g., logistics systems or stock control processes).
  2. Documented procedures and administrative systems to determine whether goods are not at risk.
  3. Internal controls and processes that ensure goods are not at risk.
  4. Commercial or transparent records – such as delivery records or inventory systems which conform end use of the goods.

Small and medium enterprises (SMEs) also need to show the internal processes that allow them to document the imported goods and purchase and sales records (i.e., evidence for goods movement). This requirement is lower than those for big companies. It remains to be seen to what extent this will prove easy or difficult for SMEs in practice.

It is worth noting that the transition from the UK trader scheme to the UK internal market scheme could be more challenging, as the latter requires more information, as mentioned above.

## Special arrangements for the green lane

The UK and the EU agreed on certain special arrangements for the regulation of trade flows in the green lane involving: agrifood, medicines, plants, seeds, used agricultural and forestry machinery, trees, and veterinary medicines.<sup>18</sup>

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<sup>16</sup> See Article 6 of the Decision No 1/2023 of the Withdrawal Agreement Joint Committee on laying down arrangements relating to the Windsor Framework.

<sup>17</sup> See Article 11 of the Decision No 1/2023 of the Withdrawal Agreement Joint Committee on laying down arrangements relating to the Windsor Framework. See also <https://www.gov.uk/guidance/apply-for-authorisation-for-the-uk-trader-scheme-if-you-bring-goods-into-northern-ireland>.

<sup>18</sup> See The Windsor Framework: A new way forward, at 10-18.

Given the sensitivities and importance of agrifood (agricultural goods and processed foods), the Windsor Framework aims to facilitate trade in these products by providing the UK with more regulatory autonomy. Although agrifood goods are subject to various health and safety standards (i.e., the SPS control) under the NIRMS, these goods can still be exempted from the EU's customs tariffs by the green lane. The general principle in the Windsor Framework (The Windsor Framework: A new way forward, para. 21) is that *'UK public health and safety standards will apply for all retail food and drink in the UK internal market'*. And that *'UK standards will also apply more broadly for this trade, covering rules on public health, marketing, organics, labelling, genetic modification, and drinks such as wines, spirits and mineral waters'*. However, para. 21 then goes on to state that *'where relevant, these goods will still need to meet EU standards on animal and plant health diseases'*.

Under the Windsor Framework, the UK Government is committed to introducing a UK-wide labelling scheme (i.e., the so-called 'not for EU' labelling) for high-disease and health-risk products to declare food safety. This is due to be introduced in October 2023 for meat and fresh dairy in some parts of the UK, extended to all dairy products UK-wide from October 2024, and will also cover composite products, fruit, vegetables and fish UK-wide from July 2025.<sup>19</sup> The labelling measures are intended to remove the need to meet EU standards for moving non-EU agricultural food to NI, for the benefit of GB and third country sellers.

Medicines are another category of highly regulated goods. The original protocol applied EU rules to the marketing of medicines. The Windsor Framework removed EU standards and drug authorisation is under the remit of the UK's Medicines and Healthcare Products Regulatory Agency (MHRA).<sup>20</sup> Hence, it is now the MHRA that can approve drugs for the entire UK.

Note, however, that there is some residual ambiguity, which could prove problematic. Following the introduction of the Windsor Framework, the EU amended regulation 2023/1128 to simplify customs formalities for trusted traders and for sending parcels into NI from GB. The regulation excludes certain 'category one' goods (listed in Annex IV of Decision No 1/2023)<sup>21</sup> from the free circulation of goods. Category one goods refer to those goods subject to:

1. restrictive measures in force based on Article 215 Treaty on the Functioning of the European Union, insofar as they relate to trade in goods between the Union and third countries<sup>22</sup>;
2. total bans and prohibitions;
3. trade defence instruments as set out in section 5 of Annex 2 to the Protocol;
4. Union tariff rate quotas when the quota is claimed by the importer;
5. Union quotas, other than tariff rate quotas.

The second scenario could potentially exclude UK-authorized medicines from the green lane if they are banned in the EU. If so, regulatory divergence on medicines between the EU and the UK potentially could still adversely affect the imports of medicines from GB into NI. The impact of this regulatory difference on NI citizens' daily lives remains to be seen.

Free circulation of plants, seeds, agricultural and forestry machinery and trees to NI is also guaranteed under the Windsor Framework. These goods are not subject to EU standards. GB traders only need a plant passport

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<sup>19</sup> See para.23 of the Windsor Framework: A new way forward.

<sup>20</sup> See para.36 of the Windsor Framework: A new way forward.

<sup>21</sup> Decision No 1/2023 of the joint committee established by the agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European atomic energy community.

<sup>22</sup> See Treaty on the Functioning of the European Union, Article 215. These measures include those adopted based on the provisions in Chapter 2 of Title V of the Treaty on European Union due to a foreign and security (defence) policy. They can be the interruption or reduction, in part or completely, of economic and financial relations with one or more countries and other measures against natural or legal persons and groups or non-State entities.

through the UK plant passport scheme to move them to NI.<sup>23</sup> The plant passport is a UK-wide label qualified for internal movement within the UK. It costs £120 per year for a single firm.<sup>24</sup>

With regard to agricultural and forestry machinery, there are no certification requirements and traders need to use a single label to indicate the machinery will not enter the EU.<sup>25</sup>

The last point to note is that the free movement of veterinary medicines is temporary. The UK and the EU have established a grace period until the end of 2025.<sup>26</sup> They have yet to make a permanent solution. Before the end of this period, traders can use UK standards to move non-EU veterinary medicines to NI.

## Additional issues and complications

The introduction of the red and green lanes is a clear improvement on the original NIP. However, this does not mean that trade between GB and NI is on the same terms as for example trade between England, Scotland and Wales. There are several complicating factors.

First, many firms are likely to use the red lane, even if in principle (for some of their goods / shipments) they may be able to use the green lane. This is partly because many firms may also wish to sell to the Republic of Ireland and dealing with mixed loads (groupage) has not been resolved.

Second, it is important to note that the Windsor Framework does not waive Article 5(4) of the original NIP, which provides that the EU regulations listed in Annex II of the NIP apply to goods sold in NI. Most EU regulations included in Annex II of the original NIP (now the Windsor Framework) are still applicable for goods in both the green and red lanes.<sup>27</sup> This means that firms selling both to NI and GB may need to produce to different standards and may need to apply different measures for conformity assessment.

Third, and relatedly, there is the issue of regulatory divergence. This may occur because of changes (new regulations, amendments or repealed regulations) in either UK or EU regulations. With regard to the latter, the Windsor Framework introduced the much-publicised Stormont Brake, which allows the UK Government to suspend the implementation of amendments and replacements to the EU regulations listed as part of the Windsor Framework. However, in practice, the UK Government will most likely keep dynamic alignment with EU standards. Nevertheless, regulatory divergence will also occur from changes in UK regulations. The greater the regulatory divergence the more the issue of needing to produce to different standards depending on the market of sale will arise.

Regulatory divergence may also impact NI's imports of non-EU goods. First, as explained above there are circumstances under which the green lane may no longer be applicable such as category one goods in Annex IV of Decision No 1/2023. EU regulations provide the legal basis for excluding those goods from the green lane. Application of the second scenario (i.e., total bans and prohibitions) could displace goods to the red lane on the ground that they cannot/no longer meet EU standards. While the probability of this may be low, that probability will increase as regulations diverge.

What is more, the impact will become more significant as regulations diverge over time. Legal developments, including but not limited to environmental law, professional qualifications, employment law, procurement,

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<sup>23</sup> See para.39 of the Windsor Framework.

<sup>24</sup> See <https://www.gov.uk/guidance/issuing-plant-passports-to-trade-plants-in-great-britain#:~:text=A%20UK%20plant%20passport%20is,some%20seeds>.

<sup>25</sup> See para.39 of the Windsor Framework.

<sup>26</sup> See para.47 of the Windsor Framework.

<sup>27</sup> To know applicable EU regulations in Annex II, please see <https://eur-lex.europa.eu/content/news/index.html>.



immigration, banking, data, and a wide range of services and other rules, could cause regulatory differences, increasing the cost of compliance for non-EU goods entering NI through the red lane.

Fourthly, the UK government is also committed to introducing the Border Target Operating Model (BTOM), by the end of January 2024. The aim of the BTOM is to simplify and facilitate imports into the UK. The BTOM may cause complications for the operation of the Windsor Framework in several ways. First, in order to be able to use the green lane, firms need to have detailed records and systems in place in order to provide the requisite evidence that goods are not at risk. The BTOM simplifications may make this harder / impossible. Second, firms using the red lane also need to provide the level of evidence as required by the EU, and not the BTOM. To the extent that UK imports have a lower evidentiary requirement, this may make it harder for firms to be able to export to NI and the EU via the red lane. This applies to both sales from GB to NI, but also from the rest of the world to NI directly where the BTOM will also operate.

## The impact of climate policy differences on Northern Ireland's imports

The EU and the UK appear to be applying different climate policies. Negotiators of the European Council and Parliament reached a provisional agreement on a Carbon Border Adjustment Mechanism (CBAM) on 13 December 2022 and signed the final draft of the CBAM regulation (final regulation) on 10 May 2023. The CBAM involves the EU levying climate-related charges on imports of carbon-intensive goods. The final regulation provides that the EU will commence the EU CBAM transitional period on 1 October 2023 and implement all CBAM measures in 2026.<sup>28</sup> During the transitional period, between 1 October 2023 and 1 January 2026, EU importers falling within the six CBAM-related industries have to declare annually the number of imported goods and the number of embedded emissions they embody.<sup>29</sup> The UK has yet to establish a CBAM.

This divergence will create different charges on goods imported to the UK and the EU from 2026. Affected sectors within the EU CBAM scope include cement, steel, aluminium, fertiliser, retail electricity and hydrogen. Without a UK CBAM, these goods are more likely to be subject to a UK charge which is lower than that of the EU. As discussed earlier, duty differences impact on whether the green lane can be used. Whether the difference in carbon charges will affect NI's imports therefore depends in part on whether carbon adjustment taxes (such as the CBAM credit) is a customs duty. The prevailing view seems to be that CBAM "taxes" are not a customs duty. If they are not, then the EU could not apply EU CBAM measures to goods which have qualified for the green lane. This is because the difference in carbon charges at this point does not constitute a tariff difference. If the EU still wants to implement CBAM rules in NI, there would need to be a legal basis, such as integrating the EU CBAM into the Windsor Framework through the EU-UK Joint Committee. However, the UK Government could refuse, which in turn could lead to the EU considering the use of trade remedies. The situation is highly ambiguous.

Most of these goods are subject to commercial processing in NI. This means that for firms who cannot satisfy the green lane exceptions, the EU CBAM will not affect the choice of green vs. red lane. However, firms that do meet those exceptions and have been trading under the green lane may well be affected and could bear the CBAM cost imposed on these goods at NI ports.

In addition, the Stormont Brake<sup>30</sup> could impact on the implementation of the EU CBAM in NI. As a new EU regulation, the EU CBAM does not come under Article 13(3a) of the Windsor Framework, which is concerned

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<sup>28</sup> See Article 32 of the Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism.

<sup>29</sup> See Articles 32-35 of the Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism.

<sup>30</sup> The Windsor Framework's Stormont Brake provides a suboptimal solution to resolving potential CBAM-related trade friction in Northern Ireland. The Windsor Framework allows 30 Members of the Legislative Assembly (MLAs) from two or more political parties of Northern Ireland to sign a petition to initiate the Stormont Brake. If the pre-veto scrutiny process confirms eligibility for activating the Stormont Brake, the UK Government can implement the Brake to suspend immediately the EU CBAM measures targeting non-EU goods (i.e., GB and third country goods) destined for Northern Ireland.



with the Stormont Brake. The Stormont Brake applies to changes/amendments in the EU regulations listed in the annexes of the Windsor Framework. Hence, with regard to the EU CBAM the Stormont Brake could apply with regard to any of the existing regulations that are part of the Windsor Framework and which may be necessary for implementing the EU CBAM. Or, if the UK Government were to accept the inclusion of the EU CBAM in the Windsor Framework, the NI Assembly could then also, in principle, apply the Stormont Brake, in response to subsequent amendments. The EU has announced that it will amend the EU CBAM regulation to provide essential rules (e.g., for calculating indirect emissions) in 2026 and extend the scope of CBAM-regulated industries one day.

There is also another scenario. With regard to **new** EU regulations, the relevant clause in the Windsor Framework is 13(4) of the original Northern Ireland Protocol, which sketches out the process of inclusion (or not) of new regulations. The UK Government has committed to “the same constraints, in statute, as proposed under the Stormont Brake”<sup>31</sup> applying to new EU regulations (see the CITP Working Paper 4 ‘Where Technical Meets Political: The Complexity of EU CBAM in Northern Ireland’).<sup>32</sup>

## Possible impact of the Windsor Framework on NI firms’ competitiveness

One of the outcomes from the Northern Ireland Protocol / Windsor Framework, and the Trade and Cooperation Agreement between the UK and the EU, is that firms in Northern Ireland, in principle, have better access to GB market in comparison to EU firms, and they have better access to the EU single market in comparison to GB firms. In each case, this potentially gives NI firms a degree of competitive advantage. In good part, this arises from NI remaining in the EU single market, and the agreement on duty-free trade between NI and the EU.

Hence, NI firms can sell in the EU market with the knowledge that tariffs will not be levied, without needing to prove adherence to rules of origin, EU regulations or conformity assessment to mandatory standards, and with no additional customs / border related bureaucracy. While GB firms also have tariff-free access to the EU market this is only the case if they can prove that they meet the rules of origin requirements. Out of 5369 products at the HS 6-digit level the EU levies a positive tariff on 3989 of these. In addition, GB firms do need to prove conformity to EU regulations and face additional customs / border related bureaucracy. Somewhat analogously NI firms can sell to GB on more advantageous terms than their EU counterparts.

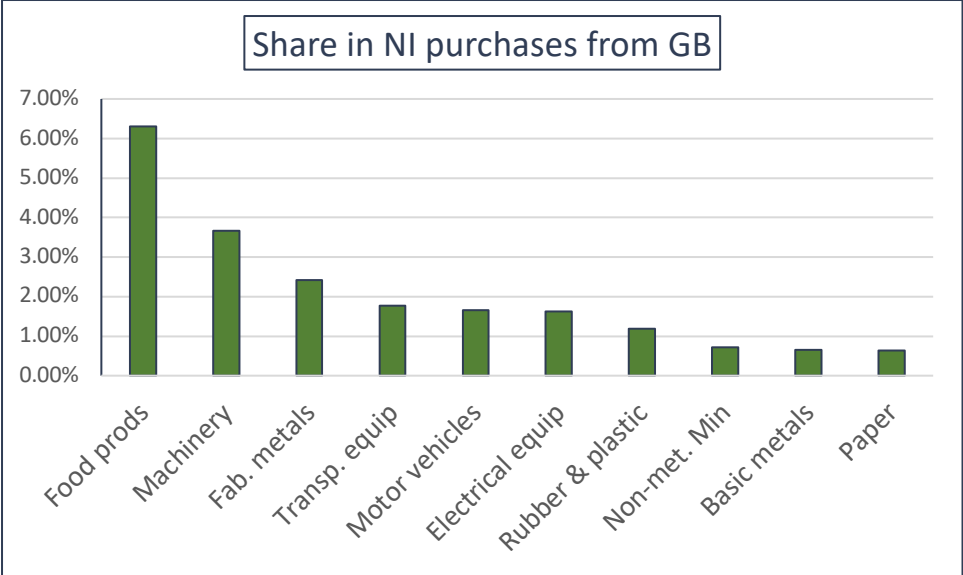
The Windsor Framework may additionally have an impact on the competitiveness of NI firms. This is because it makes it more difficult for GB firms to sell to Northern Ireland than, for example, it is for GB firms to sell to Scotland. For **final** goods this is because to use the green lane route firms selling those goods (for use by end-consumers) for which the EU has a positive Common External Tariff, need to be certified as internal traders, and does not apply to all goods. While this hurdle may not be high, nevertheless it constitutes an additional bureaucratic hurdle. For **intermediate goods** i.e. goods which are subject to commercial processing and may thus be used as inputs by NI firms, unless the firms have a low turnover threshold or meet one of the five exceptions, they have to go through the red lane.

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<sup>31</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1138989/The\\_Windsor\\_Framework\\_a\\_new\\_way\\_forward.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1138989/The_Windsor_Framework_a_new_way_forward.pdf), paragraph 68.

<sup>32</sup> See Xinyan Zhao and Dongzhe Zhang, Where Technical Meets Political: The Complexity of the EU CBAM in Northern Ireland, CITP Working Paper 4, 4 September 2023: <https://citp.ac.uk/publications/where-technical-meets-political-the-complexity-of-the-eu-cbam-in-northern-ireland>.

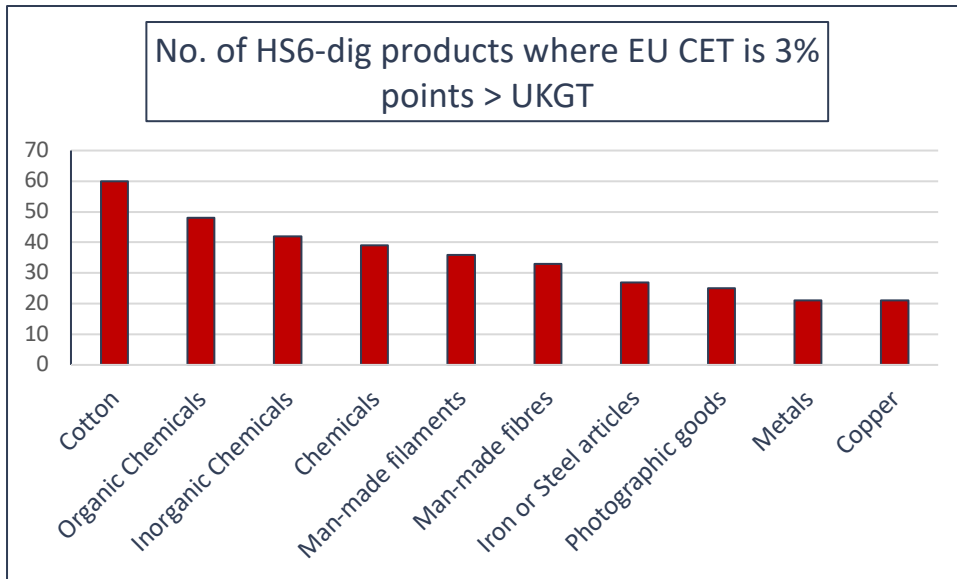
The chart below gives the share of the top 10 goods purchased by NI from GB in 2021<sup>33</sup>. Perhaps not surprisingly food products comprise the largest share (just over 6%) and providing these are for final consumption then they could go through the green lane. Many of the other sectors/goods (machinery, metals, electrical equipment, non-metallic minerals etc.) are clearly potentially subject to further commercial processing and thus depending on whether or not the firm can meet the additional conditions may well need to go through the red lane.



Somewhat similarly, the Windsor Framework also makes it more difficult for third country goods to be sold in NI. Hence, all third country goods for which the EU tariff is more than three percentage points greater than the UK tariff have to go through the red lane. Effectively this means that for all products, which NI imports from third countries and where there is the three percentage point differential, then it is the EU tariff which applies and not the UK tariff. Note this would appear to apply even if the UK had signed a free trade agreement with a third country.

The chart below lists the ten HS 2-digit sectors with the greatest number of HS 6-digit products for which the EU CET > UKGT by more than 3 percentage points. Any of these products imported by NI from third countries would have to go through the red lane, and the EU Common External Tariff would be applied. Prima facie this would appear to be the sectors most likely to be affected by this.

<sup>33</sup> Source: BESES dataset.



It is of course not clear ultimately how all this will impact NI firms. On the one hand:

- Better market access of NI firms to the EU market (relative to GB firms), and to the GB market (relative to EU firms) may enhance production and the desirability of NI as an investment location. This is more likely to be the case the more restrictive the product specific rules of origin are between the UK and the EU, the greater the regulatory compliance costs for UK firms exporting to the EU, and for EU firms exporting to the UK.
- Similarly, the increased costs / barriers for GB firms selling into NI may also enhance the desirability of producing / investing in NI. This is in order to have a greater capacity to supply the goods domestically as opposed to purchasing from GB. Downstream industries may receive more orders from local manufacturers than they did before. This is more likely to impact firms purchasing products subject to commercial processing that cannot meet the green lane conditions.
- Similar considerations apply to imports by NI from third countries with regard to goods subject to commercial processing. It also applies to goods for which the greater than 3% tariff differential applies. The imposition of the EU CET which is greater than the UKGT grants greater 'protection' to NI firms – though at the same time raising prices for NI consumers.

On the other hand:

- The increase in costs / barriers between GB and NI, and between third countries and NI risk raising the costs of NI firms. This is likely to impact their competitiveness and ultimately on profits and/or sales. In turn, this may impact negatively production and investment incentives.
- There may also be further impacts on the sectors / products subject to an EU CBAM.

## Conclusion

The Briefing Paper provides a detailed explanation of the operation of the Windsor Framework's green and red lanes, as well as an initial assessment of the potential impact of the Windsor Framework on NI firms.

While the Windsor Framework aims to facilitate the sale of non-EU goods from GB to NI, the extent to which it does so is somewhat limited. Many firms are likely to use the red lane, even if in principle (for some of their goods / shipments) they may be able to use the green lane as the issue regarding mixed loads (groupage) has not been resolved.

The somewhat limited scope of the Windsor Framework and the designation of the red and green lane criteria, the regulatory requirements and prospect of future regulatory divergence, the BTOM, and the CBAM will all impact Northern Ireland's competitiveness, imports from GB and the rest of the world, and thus also production and investment.

These changes do not preserve the 'pre-Brexit' degree of market access between NI and GB. This is an inevitable consequence not simply of the decision to leave the EU, but the way in which the UK Government chose to leave the EU and the subsequent agreement negotiated with the EU. Given the current arrangements, minimising the impacts on NI can only be achieved by close alignment to existing EU policies and practices be this with regard to CBAM, product level regulations, customs procedures and requirements, or even tariffs. While this is of course unpalatable to some, it is important that there is clarity and transparency regarding what has been agreed and the consequences for the people, firms, and those that they employ.

We recommend that:

- The UK Government aligns its carbon policies with those of the EU and minimises product level regulatory divergences. In the longer term (and this will not be straightforward) this may lead to greater possibilities for mutual recognition. This would be positive not just for NI, but also for the UK.
- The UK Government is transparent about its estimates of the effects of the Windsor Framework on Northern Ireland and publishes its work on this. This will allow for an informed and open debate. Something that the Prime Minister recently announced he was keen on.<sup>34</sup>

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<sup>34</sup> "A politics that is transparent, and the space for a better, more honest debate about how we secure the country's long-term interest" See: <https://www.gov.uk/government/speeches/pm-speech-on-net-zero-20-september-2023>