



## HFMA UPDATE

by Graham Keen,  
Executive Director

# The great NI Protocol impasse

**H**ere at the HFMA, with the very able assistance of our excellent Public Affairs advisers, Cicero/AMO, we have been watching very closely the recent developments in relation to the Northern Ireland Protocol (NIP), and the seemingly inevitable fallout that is coming fast down the track. With talks over modifications to the NIP seemingly going nowhere, the prospect of the UK triggering Article 16 and disapplying at least some of the measures of the protocol unilaterally after COP26 are rising. This would undoubtedly be met with an EU response that would have implications far beyond the NIP.

So, why does this matter, you may well ask? How will all of this affect us in this industry? Well, aside from the obvious implications for the free movement of goods back and forth between Northern Ireland and the UK mainland, (which is already proving to be extremely challenging), there is a wider implication that goes to the heart of what we have been arguing for throughout the entire Brexit process – that we now have the opportunity to better-regulate ourselves here in the UK, that is more in the interests of our national needs.

That said, I have personally taken part in numerous industry stakeholder meetings over recent months where UK Government officials have regularly cited, as a key reason to not have the option to improve/amend inherited EU legislation, the fear of disrupting the requirements of the NIP. In other words, the rest of the UK has to keep operating within EU law in order to not disrupt the 'free' movement of goods between the GB and NI.

Though the trade deal between the EU and UK in December last year (Trade and Cooperation Agreement, or TCA) was clearly welcome, there

were always concerns that contained within it were the seeds of instability. The long-term sustainability of the TCA is now in question because of the current impasse over Northern Ireland. Any dispute over the NIP could easily spill over into the wider trading and diplomatic relationship between the EU and UK, as we rapidly approach Christmas.

Lord Frost has been signalling for months his view that the NIP is losing the consent of the Unionist community and causing severe disruption to all NI citizens. The UK put forward wide-reaching reforms to ease East/West trade and wants the removal of the CJEU from the governance of the agreement. In response to the charge that the UK signed the agreement and should stick with it, Lord Frost has said that the UK signed the Withdrawal Agreement with a metaphorical gun against its head – boxed in both by Parliament and the EU. The EU responded with a package of measures on October 13, which it said was significant. Both the Commission and EU-27 leaders are frustrated that the UK has not 'engaged seriously' with these measures, which included plans to cut customs checks on British

goods entering Northern Ireland by up to 80 per cent.

The EU believes that the UK will trigger Article 16 of the NIP after COP26 concludes. If they do that, the EU will have several potential options at its disposal:

■ **Suspend the entire UK-EU trade agreement (nuclear option):**

Given the EU has been adamant about the interdependence between the TCA, the Withdrawal Agreement and the Protocol upon each other, it could decide to suspend the TCA.

■ **Resume the two parallel infringement proceedings it had paused at the end of July this year:**

To recall, the EU had previously launched two parallel legal actions, or infringement proceedings, in March after the UK took unilateral action to change the protocol. The EU then paused these proceedings in July, to allow more time for negotiations on the protocol's implementation.

■ **Levy tariffs on UK products to have immediate effect:**

This is an option which last year's TCA allows under the cross-sector retaliation clause.

■ **Introduce immediate**

**countermeasures:** This is an additional option the EU could take to have more immediate impact than the

TCA suspension.

The UK is reportedly already undertaking legal preparations to change customs regulations should Article 16 be triggered. This includes reducing the amount of customs forms required for goods going from Great Britain to Northern Ireland; limiting the need for food products to get special safety certificates beyond those needed for sale in Great Britain when they are sent across the Irish Sea; and allowing medicines that have been approved by UK regulators but not EU regulators to be sold in Northern Ireland.



In practical terms, to give an example of potential impact that directly relates to our industry, on Wednesday, December 1, the grace period ends for imports of medicines to Northern Ireland from mainland Great Britain (and also the end of the grace period for EU CE product standards mark to be recognised in Great Britain), so this could well mean that Traditional Herbal Registration products (THRs) will not be able to be sold into Northern Ireland from companies based in mainland UK.

So, this complex and challenging impasse is one that is not easily solved and, for the reasons I've explained, has broader implications for our regulatory landscape that go way beyond the immediate movement of goods challenges. **hfb**

This is a great example of the work that we undertake at the HFMA on behalf of 140-plus member companies. If your company is not in membership and you would like to help us in our efforts to protect this great industry and benefit from the gold-standard services we provide, you should join the HFMA at the earliest opportunity. To learn more about our activities, please contact me at [graham@hfma.co.uk](mailto:graham@hfma.co.uk)

HFMA membership is vital to ensure that your company keeps abreast of the fast-changing regulatory environment. The HFMA is the UK's best source of information and most effective defender of our industry's interests. To help the HFMA defend your business at this most critical time contact [hfma@hfma.co.uk](mailto:hfma@hfma.co.uk) or call 020 8481 7100.

