



Brexit deal done – now for the hard part

by John Springford

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Theresa May's Brexit deal offers some crumbs to Tory hardliners, the DUP and soft Brexiteers. But if the deal passes through parliament, a UK-EU customs union is likely.

In the knowledge that no deal was not an option, Theresa May has agreed a withdrawal deal that is on the EU's terms, but gives a little something for various factions in parliament. However, it is far from clear whether it will be enough to satisfy them. The [woolly political declaration](#) points towards a single market exit, with talk of a "free trade area", and financial services trade being governed by unilateral equivalence decisions rather than joint rules. That is the result of her – and her country's – desire to end free movement, and the Tory right's distaste being subject to EU laws.

The withdrawal agreement includes most of the EU's Northern Ireland protocol from March, which she had rejected, saying that no prime minister would ever sign up to it. But it is complemented by a customs union for the whole UK and EU. That customs union would prevent the tariff and quota checks for goods crossing the Irish Sea, in the hope that the Democratic Unionist Party (DUP) will support the deal.

A customs backstop might also pose some problems for Labour – since it is their policy to negotiate one if they form a government, and journalists will ask why they will reject a deal in parliament that includes one.

However, since the agreement is largely on the EU's terms, it only provides some crumbs for supporters of hard or soft Brexit. EU officials described the backstop as a 'swimming pool Brexit', with the UK as a whole in the shallow end of a customs union, and Northern Ireland in the deep end, participating in the single market for goods – if there is no other agreement on the future relationship that prevents a hard border returning to the island of Ireland by the end of the transition period. Yet the customs union is [extremely minimal](#). If the backstop is triggered, the UK will maintain the EU's tariff regime, which prevents customs checks in the Irish sea and between Great Britain and the continent. But the backstop does not cover regulatory agreements between the EU and the UK, such as free movement for lorry drivers, agri-food

regulatory alignment, a common VAT regime, which would prevent a hard border between Dover and Calais – and regulatory checks between Great Britain and Northern Ireland.

At the time of writing, the DUP has not denounced the deal. The withdrawal agreement makes it explicit that the UK may unilaterally align with EU goods and agrifood standards, which would mean no checks on goods moving from Northern Ireland to Great Britain. But there would be checks going the other way, and since the DUP has made it a red line that there should not be a regulatory border whatsoever, their support is very unlikely. For their part, Labour can bat away journalists who ask why they do not support the customs union, by saying that it is so limited that it will not lead to frictionless trade in goods.

However, even this minimal customs union – which, it is important to remember, is not guaranteed to come into force – has enraged hardline Tory Brexiteers. A UK and EU joint committee will oversee the Northern Ireland protocol and the customs union backstop. Both parties must agree to end it. There will be no time limits on the Northern Irish backstop or the whole-UK customs backstop, or unilateral UK withdrawal from them. Since Dominic Raab pressed hard for the UK's right to withdraw unilaterally, despite the fact that was clearly not negotiable with the EU, it is not surprising that he and other Brexit-supporting ministers resigned from the government the day after the deal was agreed in Cabinet.

If triggered, the customs union backstop will require the UK to sign up 'level playing field' provisions, including EU rules on state aid, the environment, and labour laws, which would dash any hopes for deregulation in those areas. And while the agreement repeatedly says the UK and EU will seek to prevent a hard Irish border through the future relationship, so far the UK's various ideas about how to do so have already been rejected by the EU, including the Chequers plan for the whole of the UK to participate in the single market for goods (but not services and free movement of people).

While the deal does not rule out a hard Brexit, in the form of a free trade agreement between Great Britain and the EU, the price would be a harder border between Great Britain and Northern Ireland. Hardliners are unlikely to achieve a Canada-style Brexit, because it would break up the UK's single market, and the manufacturing lobby will take the customs union backstop and press for an improved version to become the future relationship. The EU might agree [to supplement the UK customs union](#) with more of the bloc's regulations to reduce frictions at the UK-EU border. Moreover, the withdrawal agreement does not rule out the UK staying in the entire single market and the customs union – and neither does the political declaration, because it is not legally binding.

The direction of travel is towards a customs union for the whole UK. If talks break down, the UK will be in a bare bones customs union thanks to the backstop. A customs union is in the EU's interest, because it maximises the territorial extent of its tariff regime, providing it with a larger market to sell to other countries in their own trade negotiations. A customs union is now the baseline for the future relationship, and soft Brexiters can press for full single market participation to complement a customs union during the transition.

That is, of course, if May survives and wins the parliamentary vote.

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