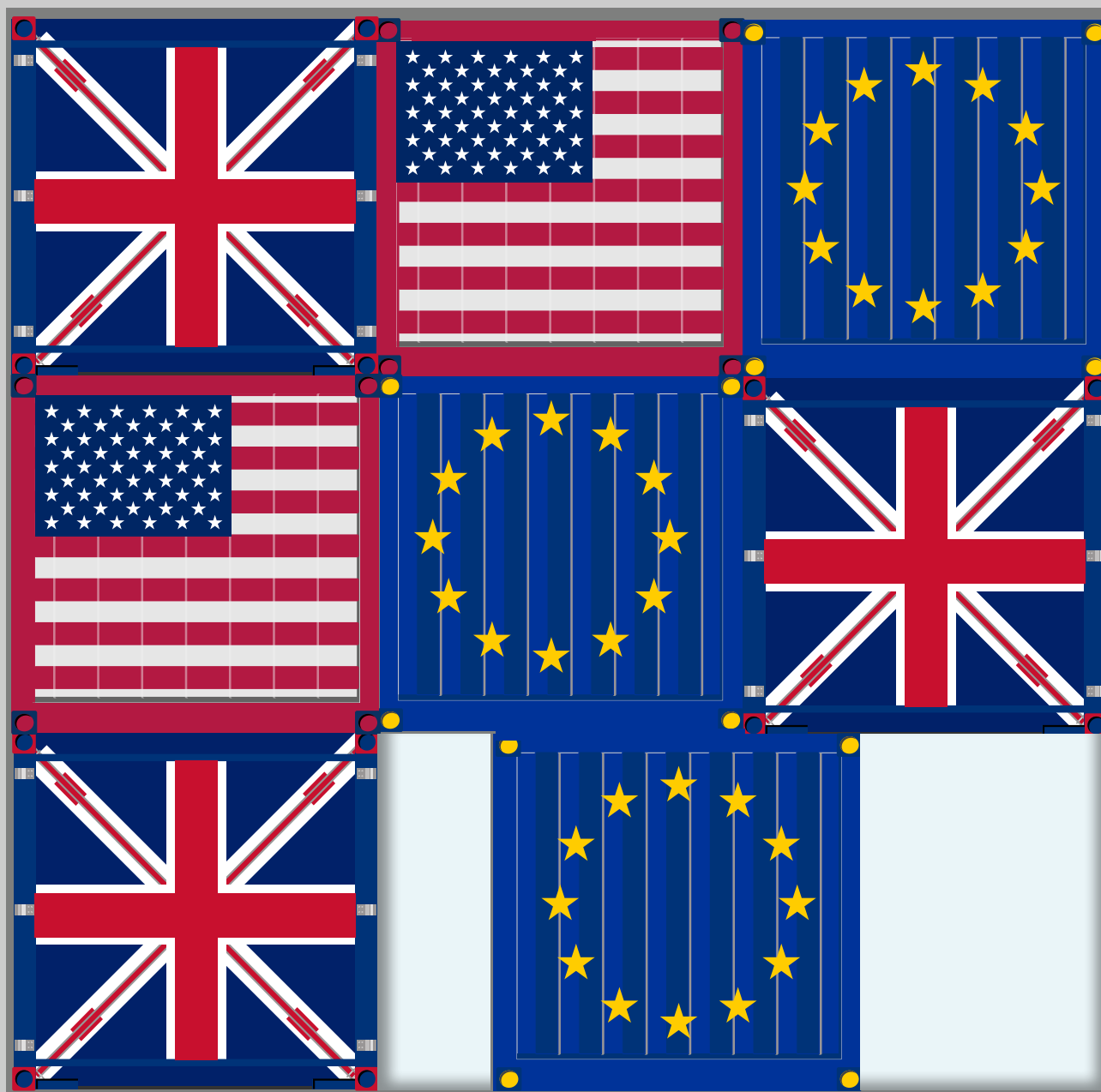


The Moving Puzzle: Trump, Trade Tariffs and the Windsor Framework

Dr Sylvia de Mars and Prof Colin Murray



Executive Summary

The Spring of 2025 has brought with it a huge amount of upheaval in international trade with the Trump administration's tariff proposals in the United States (US) triggering a round of responses and negotiations and coinciding with efforts between the United Kingdom (UK) and the European Union (EU) to reset relations after Brexit. This has led to a flurry of trade announcements. These can be a challenge to track, especially in terms of their impact on goods trade involving the island of Ireland, given the special post-Brexit rules which apply to Northern Ireland. These rules mean that, as well as the primary impacts of tariffs on trade, there will possibly be secondary impacts as trade patterns adjust to make the best of the circumstances. All of this can leave policy makers and businesses feeling like they are trapped in an ever-shifting puzzle, one that is often being shaped by other actors. In this paper, we explore these changes and the challenges and opportunities they present. We explain the extent to which the Windsor Framework operates to differentiate businesses located in Northern Ireland from those in other parts of the UK or Ireland.

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Introduction

“Liberation Day”, 2 April 2025, saw US President Donald Trump in game-show-host mode, complete with placards recounting how other countries and territories would be punished by tariffs for what he perceives to be unjustified and unacceptable US trade deficits. Invoking powers under the International Emergency Economic Powers Act (IEEPA),¹ Trump announced, by Executive Order, a general 10 percent duty on the value of “all imports from all trading partners”. The announcement further provided that this tariff rate “shall increase” on this baseline, with imports from a group of some 57 countries attracting higher tariff rates ranging between 11 percent and 50 percent of the value of imports.² A level of sectoral variation has also been built into Trump’s plans, reflecting strategic and economic priorities (tariffs on aluminium and steel imports had already been set at 25 percent in a precursor to the Liberation Day tariffs, under separate security powers over trade provided by the Trade Expansion Act).³ Under the April announcement, automotive imports would attract a baseline duty of 25 percent, but pharmaceuticals were excluded (likely out of concern for the resultant price shock in relation to non-substitutable medications). The tariffs were thus presented as a means to create competitive advantages for US producers and thereby incentivise domestic production. Within a week of the Liberation Day announcement, however, Trump’s variable tariffs were postponed for most countries, generating a 90-day period in which trading partners could negotiate agreements with the White House over trade arrangements.⁴ During this postponement the new 10 percent baseline tariff remains in place for most goods imports into the US.

Given the sloganeering and garbled economics, and with the end of the 90-day window over implementation on 9 July now looming, the immediate challenge for businesses and policy makers on the island of Ireland is that Northern Ireland finds itself in a distinct position where not one, but two disputes on Trump’s trade table impact upon it. Under the EU-UK Withdrawal Agreement,⁵ updated under the Windsor Framework, Northern Ireland is simultaneously aligned with the EU’s Single Market for goods, and part of the UK’s customs territory. For the UK, Trump’s tariff baseline for imports was set at 10 percent, whereas for the EU it was set at 20 percent. The sectoral variations are also significant. The exclusion of pharmaceuticals cushions the impact of the tariffs on Ireland and Northern Ireland’s exports to the US, whereas the announced 25 percent automotive industry tariff would affect a large proportion of Great Britain’s exports to the US.

Proposals for such differentiated tariff barriers with a major trading partner amount to an external shock to Northern Ireland’s post-Brexit trade arrangements. These remain misunderstood. For all of the debate over Northern Ireland’s trade with Great Britain and with the EU during the Brexit negotiations, and arguments revolving around the protection of the “all-island economy” and concerns over the development of a “sea border” between Northern Ireland and Great Britain,⁶ less attention was given to how these arrangements condition trading relationships between Northern Ireland and the rest of the world. In this paper, we explore how the proposed Trump Tariffs, and the subsequent announcements of a “trade deal” between the UK and the US and a “reset” between the UK and the EU, will impact upon trade involving Ireland and Northern Ireland. In short, these developments create unique challenges, but also potential opportunities.

Northern Ireland’s Post-Brexit Trade Rules

For as long as Ireland and the UK were both EU Member States, goods could flow freely across their borders without tariffs or regulatory impediments. The UK’s withdrawal from the EU, under terms by which it left both the EU Customs Union and the Single Market, ended this state of affairs. All of the UK, however, did not leave the EU on the same terms; Northern Ireland, where the land border with Ireland as an EU Member State would have made Brexit’s upheavals particularly acute, was subject to special arrangements as part of the EU-UK Withdrawal Agreement.⁷ Under the EU-UK

1. International Emergency Economic Powers Act, Pub. L. No. 95-223, § 201–08, 91 Stat. 1625, 1626–29 (1977) (codified under 50 U.S.C. §§ 1701–10).

2. Executive Order 14257, [Regulating Imports With a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits](#), 90 Fed. Reg. 15041, 15045 (2 April 2025).

3. Trade Expansion Act, Pub. L. 87–794, Oct. 11, 1962, 76 Stat. 872 (1962) § 232.

4. Executive Order 14266, [Modifying Reciprocal Tariff Rates to Reflect Trading Partner Retaliation and Alignment](#), 90 Fed. Reg. 15625 (9 April 2025). Separate negotiations have applied to China, Mexico and Canada which are beyond the scope of this paper.

5. Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union (30 January 2020) OJ 2020 L 29/7 (‘Withdrawal Agreement’).

6. See David Phinnemore, ‘Northern Ireland: a “place between” in UK–EU relations?’ (2020) 25(4) *European Foreign Affairs Review* 643 and Stephen Weatherill, ‘The Protocol on Ireland/Northern Ireland: protecting the EU’s internal market at the expense of the UK’s’ (2020) 45(2) *European Law Review* 222.

7. For overviews of the challenges around the negotiation of the special arrangements for Northern Ireland as part of the Brexit process, see Katy Hayward, *What Do We Know and What Should We Do about the Irish Border?* (Sage 2021); Sylvia de Mars, Colin Murray, Aoife O’Donoghue and Ben Warwick, *Bordering Two Unions: Northern Ireland and Brexit* (Policy Press, 2018) and Mary Murphy and Jonathan Evershed, *A Troubled Constitutional Future: Northern Ireland after Brexit* (Agenda 2022).

Withdrawal Agreement's Northern Ireland Protocol, as agreed by Boris Johnson in 2019, Northern Ireland remained aligned with the rules of the EU Single Market for goods after Brexit but was also part of the UK customs territory. These special arrangements, under Articles 5-10 of the Protocol, were covered by the Stormont Lock, provided for in Article 18, by which a majority in the Northern Ireland Assembly has to approve their continued operation at regular intervals (at least every four years, with the first approval vote passing in December 2024). These arrangements were renamed the Windsor Framework in 2023 and amended, inserting new arrangements such as the Stormont Brake, by which a group of over 30 lawmakers in the Northern Ireland Assembly could seek to prevent Northern Ireland being automatically subject to updates to these EU Single Market rules.⁸ Although the Windsor Framework amendments have operated to facilitate trade in goods produced in Great Britain into Northern Ireland, "[the Framework] says very little on the treatment of third-country goods imported into NI".⁹

After Brexit, Northern Ireland has become a territory in which the UK Internal Market and EU Single Market are compelled to co-exist. Northern Ireland is within the UK's customs territory. Although goods produced in Northern Ireland are produced to EU standards, products which enter the UK Internal Market in Great Britain can also be sold in Northern Ireland. Under the terms of the Withdrawal Agreement, goods entering Northern Ireland from Great Britain are treated as being 'at risk' of onward movement into the EU Single Market, with protections in place to prevent the risk of leakage of goods which do not meet EU standards into the EU Single Market.¹⁰ As a result of the Protocol/Windsor Framework, EU tariffs apply to these goods movements in circumstances where the relevant EU tariff is higher than that imposed by Great Britain.¹¹ This is a rule which does not ordinarily affect goods produced in Great Britain (as a result of the zero tariffs and zero quotas terms of the UK-EU Trade and Co-operation Agreement¹² negotiated after Brexit), but it does apply directly to movements of goods from third countries through Great Britain into Northern Ireland.¹³ From the earliest implementation of the Protocol, this raised issues over steel movements from Great Britain to Northern Ireland, as a result of the combination of defensive EU tariffs and the UK importing most of its steel.¹⁴

The combination of provisions can make it very difficult to fully accommodate Northern Ireland within the UK or the EU's trade policies:

"NI complies with EU customs and internal market rules, including EU external trade law obligations, but to the extent that it is not an EU Member State it is precluded from benefitting from preferential treatment granted by third-countries to the EU. NI is part of the UK customs territory and internal market but it does not fully benefit from the preferential treatment secured under the UKFTAs".¹⁵

This challenge is at its most acute when EU and UK trade policies diverge with regard to large trading partners like the US.

Ireland, Northern Ireland and the 'Liberation Day' Tariffs

The particular rules operating in Northern Ireland have different implications for imports and exports because of the variation built into Trump's proposals and consequent UK and EU responses. All products primarily produced in Northern Ireland, notwithstanding that they are goods produced to EU standards, will be treated as if they are from the UK. Under the tariffs as announced by the Trump administration in April, this would mean that, in general terms, goods exports from Northern Ireland would face a 10 percent US tariff. As noted above, these baseline tariff rates are not the whole story; automotive products attract a separate 25 percent tariff, whereas pharmaceutical products have to date been excluded.

8. For an overview of the Windsor Framework changes, see Colin Murray and Niall Robb, 'From the Protocol to the Windsor Framework' (2023) 74 *Northern Ireland Legal Quarterly* 395.

9. Billy Melo Araujo and Dylan Wilkinson, 'Northern Ireland's hybrid trade regime: an examination of the relationship between the Ireland-Northern Ireland Protocol and the UK's post-Brexit trade agreements' (2024) 23 *Journal of International Trade Law and Policy* 37, 41.

10. Withdrawal Agreement, Protocol/Windsor Framework, Article 5.

11. See Colin Murray and Clare Rice, 'Into the unknown: Implementing the Protocol on Ireland/Northern Ireland' (2020) 15 *Journal of Cross Border Studies in Ireland* 17, 21.

12. Trade and Cooperation Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the European Union and the European Atomic Energy Community, of the other part (30 December 2020) OJ 2021 L 149/10.

13. See Billy Melo Araujo, 'Protocol on Ireland/Northern Ireland and the Trade and Cooperation Agreement: silos and symbiosis' (2024) 61(3) *Common Market Law Review* 727, 736.

14. Colin Murray, 'From oven-ready to indigestible: the Protocol on Ireland/Northern Ireland' (2022) 73(S2) *Northern Ireland Legal Quarterly* 8, 34.

15. Billy Melo Araujo and Dylan Wilkinson, 'Northern Ireland's hybrid trade regime: an examination of the relationship between the Ireland-Northern Ireland Protocol and the UK's post-Brexit trade agreements' (2024) 23 *Journal of International Trade Law and Policy* 37, 52.

It should be stressed that these tariffs will not, in fact, be paid by Northern Ireland’s manufacturers – instead, if exports continue as they have, tariffs will be paid by those *importing* the products into the US (i.e., local distributors), who are likely to recoup their added costs by raised prices. The current 10 percent baseline tariff generally applies to most trading partners in this way. The *volume* of exports will nonetheless likely decline; demand in the US will go down, as it is unlikely that importers and consumers will continue to desire the same products, where they can be substituted for others, for (significantly) higher prices. The *direct* result of such tariffs will be less export trade to the US, with the Department of the Economy estimating a 0.6 percent drop in Northern Ireland’s overall exports as a result.¹⁶

When it comes to the differentiated Liberation Day tariffs, however, exporters of goods primarily manufactured in Northern Ireland are subject to less of a disadvantage than their counterparts in Ireland. Products primarily manufactured in Ireland, as an EU Member State, will face the tariffs applied to the EU, which are 20 percent for goods in general, and 25 percent for cars and car parts. In the short term, there will be little that producers in Ireland will be able to do to avoid this additional hike to the cost of their products. There will consequently be a more significant cost imposed upon Ireland’s exports to the US than Northern Ireland’s exports.

In terms of imports from the US into Northern Ireland, these will be subject to any EU retaliatory tariffs, whether they are shipped to Northern Ireland directly, or routed through Great Britain. Although Trump’s tariffs on the UK and the EU are arbitrary, their direct consequences for exporters to the US are currently predictable. Importers, however, in both Northern Ireland and Ireland have to deal with the consequences of the trade arrangements to which they are subject; they must apply any measures which the European Commission imposes. If the EU decides that its policy is to retaliate with tariffs on some or all US imports, Ireland and Northern Ireland are bound by the EU Treaties and the Windsor Framework to also apply EU tariffs.

This is the case for Northern Ireland notwithstanding its status as part of the UK’s customs territory under the Windsor Framework. This is because those imports to Northern Ireland from the US would not be seen as goods that are likely to stay in Northern Ireland, as, for example, sausages produced in Great Britain for sale in Northern Ireland supermarkets are seen. Instead, they will be treated as goods that are ‘at risk’ of moving onwards into the rest of the EU, via Ireland. This is also the case where products are imported into Great Britain but are actually destined for Northern Ireland – and then ‘at risk’ of moving on to other parts of the EU. As such, US imports destined for Northern Ireland will be faced in principle with the EU tariff at any time where it is higher than the UK tariff.¹⁷ In the case of Northern Ireland–destined imports, this will invariably increase the number of checks taking place at the Irish Sea Border: the EU will not wish to see its retaliation to Trump’s Tariffs undercut because Great Britain serves as a ‘back door’ to the EU.

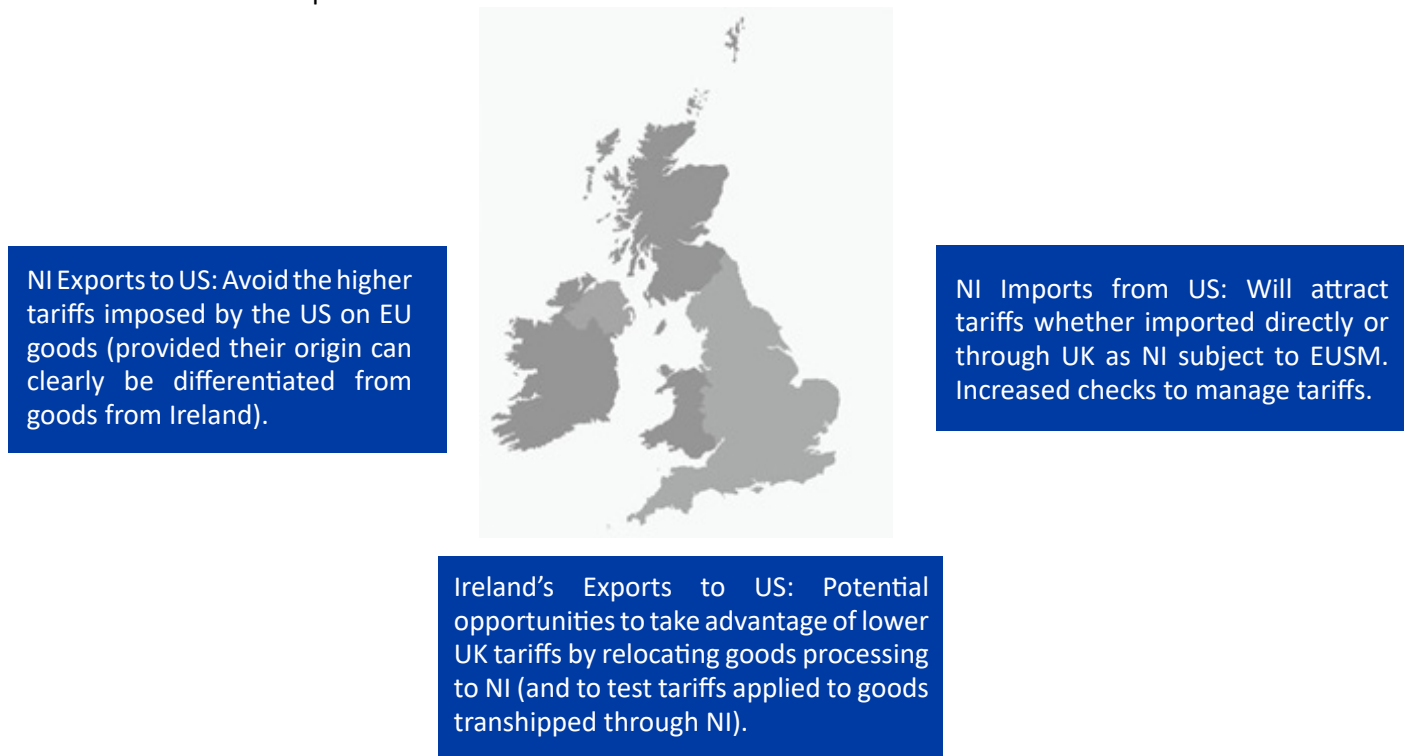


Figure 1: Overview of the impact on trade flows involving NI of the UK enjoying favourable trade terms with the US than the EU.

16. NI Department for the Economy, ‘[The Direct Economic Impact of the New USA Tariff Regime on the Local Economy](#)’ (June 2025) 4.

17. Billy Melo Araujo and Dylan Wilkinson, ‘Northern Ireland’s hybrid trade regime: an examination of the relationship between the Ireland–Northern Ireland Protocol and the UK’s post-Brexit trade agreements’ (2024) 23 *Journal of International Trade Law and Policy* 37, 42.

Alongside that headline picture come additional administrative and logistical pressures. If there is an advantage in exporting to the US from Northern Ireland, as opposed to directly from Ireland (or any other part of the EU), this creates an incentive for export businesses to set up in Northern Ireland. What matters for the purposes of applying tariffs is the degree to which goods could be said to *originate* in Northern Ireland. But, for products which involve components and processing on both sides of the border, as facilitated by the post-Brexit arrangements, these questions become particularly complex and may need to be assessed on a case-by-case basis. Rules of origin might, moreover, be increasingly difficult for the US to track in light of the free flow of goods from Northern Ireland into Great Britain, only to then be exported to the US.

Importers would also face increased bureaucracy as the differentiated tariffs are administered at ports of entry into Northern Ireland. There is a Duty Reimbursement Scheme,¹⁸ which operates to prevent the North's importers having to pay both UK and EU tariffs in such circumstances, but there are costs and administrative burdens associated with making applications. In order to recoup the difference between these tariffs, importers in Northern Ireland would have to incur upfront costs and then prove that their imports were not moved onwards to the EU. The UK guidance was updated with regard to EU trade defence measures in late May 2025, in expectation of looming retaliatory tariffs. This may, sometimes, be worth the associated administrative burden and cost, but Stuart Anderson, Director of Public Affairs at NI Chamber, has already warned that most businesses “just don't have the capacity or resources to manage it”.¹⁹ Much depends on the actual disparity in UK and the EU retaliatory tariffs; in some instances, including when the tariffs themselves are volatile, it may make more sense to attempt to pass these costs onto the consumers.

The Emerging Terms of Trade

The UK Government's stated position is that it will do everything that it can to avoid being pulled between the US and the EU: ‘we will never choose between either side of the Atlantic’.²⁰ This intention not to get drawn into trade wars has seen the UK prioritise new trade arrangements with both the US and the EU in recent months, with the express aim of either circumventing or mitigating trade frictions. May 2025 saw two major announcements in this regard. First, the UK was able to limit its exposure to Trump's Liberation Day tariffs as a result of an arrangement with the US, set out in outline as the “General Terms for an Agreement”, or rather more grandly the “Economic Prosperity Deal”, on 8 May.²¹ It needs to be emphasised that this announcement is not a comprehensive trade deal, nor is it legally binding on the US and UK; it might at best be characterised as an “agreement in principle”, but even then some elements remain no more than negotiating presumptions.²² It depends on President Trump's (notoriously fickle) goodwill. Its headline elements provide for a set of mitigations for the UK from some of the Liberation Day tariffs (to the extent that they take effect), particularly with regard to tariffs on cars, aluminium and steel (a concession which became more valuable when the US increased these latter tariffs to a prohibitive 50 percent in June²³), in return for the UK opening up market access to US ethanol and beef exports.

Less than two weeks later, the UK and EU announced a package of measures to enhance post-Brexit trade. Like the US-UK announcement, this “Common Understanding” is not a binding agreement, but an account of the areas of strengthened bilateral cooperation which are being actively explored.²⁴ Unlike the US-UK negotiations, this announcement was not concerned with tariffs and quotas (already covered under the terms of the Trade and Cooperation Agreement), but with smoothing out other frictions in the post-Brexit relationship. In trade terms, the most significant of these is a pledge to “work towards” an agreement on UK alignment with EU Sanitary and Phytosanitary (SPS) rules, which is intended to improve trade in food and agricultural products which had become subject to intense checks post Brexit.²⁵

This has particular consequences for trade between Great Britain and Northern Ireland, for it was the sudden imposition of the Protocol, and with it the dense EU law protections for plant and animal-related safety and quality standards, over long-standing supply chains without mitigations that caused such upheaval in early 2021.²⁶ Such an arrangement

18. HM Revenue & Customs, [‘Apply to claim a repayment or remission of import duty on “at risk” goods brought into Northern Ireland’](#) (30 May 2025).

19. Freya McClements, [‘US tariffs: For distillery north of the Border, the picture is further complicated by Brexit’](#) *Irish Times* (31 March 2025).

20. Sir Keir Starmer, HC Debates, Volume 763, Column 25 (3 March 2025).

21. White House Statement [‘General Terms for the United States of America and the United Kingdom of Great Britain and Northern Ireland Economic Prosperity Deal’](#) (8 May 2025).

22. House of Lords International Relations and Defence Committee, ‘Oral evidence: The UK's future relationship with the US’ (14 May 2025) Q69 (Dmitry Grozoubskiy).

23. Proc. 10947 [Adjusting Imports of Aluminum and Steel Into the United States](#) (3 June 2025).

24. UK Cabinet Office, [‘UK-EU Summit - Common Understanding’](#) (19 May 2025).

25. *Ibid.*, para. 24.

26. Colin Murray, ‘From oven-ready to indigestible: the Protocol on Ireland/Northern Ireland’ (2022) 73(S2) *Northern Ireland Legal Quarterly* 8, 20.

has thus long been touted as a way to avoid trade frictions between Great Britain and Northern Ireland and do away with the need for the cumbersome “not for EU” labelling introduced under the Windsor Framework to address these issues.²⁷ Doing so will curtail some of the UK’s freedom to set its own food standards, but as it was already conspicuously refusing to dilute those standards in the context of trade arrangements with New Zealand, Australia and the US, the restriction of the room for policy manoeuvre is essentially notional. Such an SPS agreement would not fully replace the Windsor Framework, but certain current requirements of the Framework around plant and animal products would fade into the background for as long as the new terms continued to operate.²⁸

These efforts towards post-Brexit trade triangulation by the UK Government, however, become increasingly difficult to manage if the US and EU move into an open trade war. As we discuss below, the prospect of the Liberation Day tariffs applying to the EU and triggering EU retaliatory tariffs poses particular difficulties for the UK Government when Northern Ireland, even though it is part of the UK, will be locked into the EU’s retaliatory measures. Even on their face, however, the concessions that the UK has apparently gained from the US come at a considerable cost in terms of its World Trade Organisation (WTO) commitments.

The US-UK General Terms might appear unexceptional in an era of acute pressure on global trade rules; they are just one example of an increasing number of bilateral preferential trade arrangements which pay at best lip service to WTO rules.²⁹ In reality, however, these terms (insofar as they are known, given the unclear or conditional framing of many aspects of the General Terms) are a direct challenge to the WTO system. The principle of non-discrimination, as underpinned by the General Agreement on Tariffs and Trade’s (GATT) most-favoured-nation clause,³⁰ is foundational to the WTO rules. Exceptions do exist for customs unions and free trade areas,³¹ but by no stretch can the US-UK arrangements fit within these terms:

“[I]f you are going to offer preferential tariffs with a partner country, to make it WTO compatible it has to cover substantially all trade. It is far from obvious, from what we see in that document, that what is being negotiated would cover substantially all trade. If what was finally negotiated involved preferential tariff reductions and preferential market access—namely, not according to the most favoured nation principle, where you give all countries the same degree of market access, and not for substantially all trade—then that would be a serious error on the part of the UK Government.”³²

The second Trump administration is not trying to adjust the globalised trading system; its express intention is to break it, because of the threat it supposedly poses to the US’s position in the global economic order. As the US Vice President J.D. Vance recently told a Silicon Valley summit, “we assumed that other nations would always trail us in the value chain, but it turns out that as they got better at the low end of the value chain, they also started catching up on the higher end”.³³ It is axiomatic that this administration is acting in breach of WTO rules.

The General Terms, however, pull the UK into this project and use its involvement as leverage to try to induce other trading partners to knock further holes in the WTO system. The trumpeting of the preferential elements within these US-UK proposals potentially makes both countries a target for other actors, especially if they wish to preserve the WTO system or cannot achieve equivalent terms in their negotiations with the White House, making it more likely that it will be challenged under WTO rules. In this regard, the EU has worked assiduously to sustain the WTO, including by setting up an interim Appellate Body in an effort to circumvent the US’s efforts to block the work of this vital WTO organ.³⁴ The UK’s efforts to stabilise its relationship with one major trading partner could thus generate tensions with the other.

27. Colin Murray, ‘Northern Ireland’s post-Brexit governance crisis: what to do when the post-1998 centre cannot hold’ (2024) 75(3) Northern Ireland Legal Quarterly 584, 611.

28. UK Cabinet Office, ‘[UK-EU Summit - Common Understanding](#)’ (19 May 2025) para 25.

29. See Silvia Nuzzo, ‘“No safe haven”: Why the GATT “regional exception” does not apply to technical barriers to trade’ (2024) 15(3) *Global Policy* 528, 528.

30. General Agreement on Tariffs and Trade (1947) 55 UNTS 194, Article I, para 1.

31. General Agreement on Tariffs and Trade (1947) 55 UNTS 194, Article XXIV, para 8.

32. House of Lords International Relations and Defence Committee, ‘Oral evidence: The UK’s future relationship with the US’ (14 May 2025) Q69 (Michael Gasiorek).

33. J.D. Vance, ‘[Remarks by the Vice President at the American Dynamism Summit](#)’ (18 March 2025).

34. EU Commission, ‘[Interim Appeal Arrangement For WTO Disputes Becomes Effective](#)’ (30 April 2020).

EU Retaliatory Tariffs and the trading position of Northern Ireland

Following the US-UK trade announcement, Trump sought to increase the pressure on the EU to reach an agreement, at one point suggesting a general 50 percent tariff on imports.³⁵ In this section of the paper we therefore assess what would happen, in terms of trade affecting Northern Ireland, if a trade war flared up between the US and the EU, with substantially higher duties being put in place upon trade between the US and the EU than exist between the US and the UK. In the current febrile circumstances, business planning for such an eventuality is notoriously difficult. There is no telling how long such tariffs might last, if they are ever rolled out as announced, or how they will be enforced in the US domestically: they may disappear or become inactive within another few weeks, or they may last the duration of the Trump administration.

In a scenario in which more significant trade barriers apply to US-EU trade than apply to US-UK trade, the Windsor Framework generates both very real challenges and (at least theoretical) opportunities for businesses operating on the island of Ireland. When it comes to imports from the US, businesses operating in Northern Ireland will be subject to EU retaliatory measures and the bureaucracy of claiming rebates through the UK Government if they can establish that the goods in question remained in Northern Ireland. This is likely to be a significant administrative burden on any business reliant on US imports and will place them at a competitive disadvantage (with regard to this activity) with businesses operating in Great Britain.

On the other hand, goods producers in Ireland with significant US exports may wish to consider moving portions of their business activity to Northern Ireland – so that they can benefit from the UK's lower tariffs while retaining free access to the EU Single Market for goods. Such shifts would potentially be economically beneficial for Northern Ireland, without directly disadvantaging businesses already operating in Northern Ireland. Much depends upon whether these products are produced, part processed in, or merely shipped through Northern Ireland.

If the EU is ultimately subject to higher tariff barriers on its exports to the US than the UK, much of Northern Ireland's supposedly advantageous position for businesses exporting to the US hinges on whether products are "primarily manufactured" there. The rules that determine where a product originated, for customs purposes, are known as rules of origin. These are complex and take into account not only the production of component parts but also assembly processes and related manufacturing activity. If exports to the US are produced in Northern Ireland, or subject to "substantial transformation" within Northern Ireland, then they could legitimately benefit from the UK-US tariff arrangements.³⁶ But Northern Ireland could also, in such circumstances, operate as a potential "back door" into the US market, at a favourable tariff rate, for products that are in practice manufactured predominantly in the EU. The UK Government has hitherto struggled to operate its own internal market to differentiate between "Qualifying Northern Ireland Goods" moving into the UK and goods moving from the EU Single Market, through Northern Ireland, and on into Great Britain.³⁷ As soon as it attempts to differentiate such goods movements, it creates bureaucracy and the need for checks.

If such "leakage" of goods was to happen, the consequences would largely depend on the extent to which the US retains the capacity to trace production processes and accurately apply rules of origin to such imports originating in the EU but arriving from the UK. When the so-called Department of Government Efficiency has been pulling up much of the Federal Government's wiring, this would rely upon United States Customs and Border Protection functioning effectively. Whether the processes which have been applied to a product amount to a substantial transformation should be readily understood, but must be assessed on a case-by-case basis. The beverage industry provides an example of how this works in practice. If a distiller buys grain from Kildare and uses it to produce whiskey in Antrim, there will have been a substantial transformation in Northern Ireland. If the same distiller buys casks of whiskey in Dublin and bottles them in Northern Ireland, the same cannot be said. This concept must be applied to a vast range of manufacturing processes, and grey areas always exist. If a business buys two whiskeys in Dublin and blends them in Antrim, the arguments over whether a substantial transformation has taken place can quickly become complex. The Northern Ireland Department of the Economy's study of the direct impact of the Liberation Day tariffs predicted a 0.6 percent drop in overall exports, but also a knock-on 0.5 percent drop in Northern Ireland's imports. This illustrates the degree to which businesses in Northern Ireland are engaged in transformation of materials and intermediate products as part of complex international supply chains.³⁸

35. Michael Race and Natalie Sherman, 'Trump reignites tensions with EU tariff threats' *BBC News* (23 May 2025).

36. *United States v Gibson-Thomsen Co., Inc.*, 27 C.C.P.A 267 (1940). See Hasegawa Jitsuya, 'Standardization of complex and diversified preferential rules of origin' (2021) 55(4) *Journal of World Trade* 545, 550.

37. Colin Murray and Jonathan Evershed, 'The Afterthought: Wales and the Operationalisation of Brexit' (2024) 28(1) *Edinburgh Law Review* 86, 94.

38. NI Department for the Economy, '[The Direct Economic Impact of the New USA Tariff Regime on the Local Economy](#)' (June 2025) 4.

US officials appear to be tightening the application of substantial transformation, by “lip service” to established tests, adding uncertainty for business.³⁹ The US authorities have been adopting an increasingly stringent approach to the application of rules of origin and the significance of such determinations increases when disparate tariff rates apply. For example, the United States-Mexico-Canada Agreement, in replacing the North American Trade Agreement, is much more stringent than its predecessor on rules of origin, in a manner “designed to shut out more third-country trade” (where businesses in another country took advantage of minor processing of products in one of the countries party to this agreement to get favourable terms of access to the others).⁴⁰ In circumstances in which one small trade partner, like Northern Ireland, is subject to unique rules, and the capacity of the relevant US authorities is limited, there is thus a danger of over-enforcement of US rules. When it comes to substantial transformation, US officials are already widely “suspected of ‘weaponizing’ this rule to maximize collection of retaliatory tariffs”.⁴¹ In such a climate, products which are genuinely from Northern Ireland might end up being over-policed, and even misidentified as being from Ireland, and subjected to higher tariffs, which would then need to be challenged, if leakage becomes a major issue.

The US is not the only relevant actor enforcing rules. The EU prides itself on being a ‘rules-based’ order: the Single Market is a point of particular pride, and even if the US government fails to apply its own trade policy in full, the EU will push all of its Member States and all other territories reflecting on the Single Market, including Northern Ireland, to apply their trade infrastructure to the best of its ability. In other words, although Northern Ireland might potentially benefit from a lack of capacity on the part of the US to check compliance with its trade policy, it is unlikely that the EU would encourage businesses to flaunt trade rules in this way.

Judicial Intervention

On 28 May 2025, the rollercoaster journey of the Liberation Day tariffs took another steep plunge, when the US Federal Court of International Trade ruled that the tariffs were unlawful in *V.O.S. Selections v United States*,⁴² in response to a challenge to Trump’s tariff policy brought by a number of importers and US states. Markets immediately rallied, perhaps with traders hoping that the whole tariff experiment had been a bad idea that could be halted at inception by judicial action.

This judgment should not have come as a surprise. Under the US Constitution, it is Congress, not the Executive Branch, which has the responsibility for setting tariffs.⁴³ And although the International Emergency Economic Powers Act (IEEPA) involved the Congress partially delegating this power to the Executive, there is a body of precedent which treats purported exercises of such delegations as invalid if they do not conform to the principles underlying the delegation.⁴⁴ Under the IEEPA, Congress gave the President powers to regulate imports, including imposing tariffs, on the basis that they “may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared ... and may not be exercised for any other purpose”.⁴⁵ The Liberation Day announcement was therefore couched in the President recognising that a national emergency had arisen as a result of a number of factors, including “a lack of reciprocity in our bilateral trade relationships, disparate tariff rates and non-tariff barriers, and U.S. trading partners’ economic policies that suppress domestic wages and consumption, as indicated by large and persistent annual U.S. goods trade deficits”.⁴⁶

The Court of International Trade, of equivalent status to a US district court, did not get drawn into the supposed economic merits of the Trump tariffs, but rather addressed in detail how they did not conform to the limits imposed within the IPEEA. It concluded that the statute “does not authorize anything as unbounded as the Worldwide and Retaliatory Tariffs”⁴⁷ and that “an unlimited delegation of tariff authority would constitute an improper abdication of legislative power to another branch of government”.⁴⁸ As a result, the Court enjoined the US Government against

39. John Peterson, ‘Substantial transformation: The worst rule for determining origin of goods-except for all the rest’ (2023) 56 *Vanderbilt Journal of Transnational Law* 1065, 1065.

40. Thomas Schoenbaum, ‘The Biden Administration’s trade policy: Promise and reality’ (2023) 24 *German Law Journal* 102, 116.

41. John Peterson, ‘Substantial transformation: The worst rule for determining origin of goods-except for all the rest’ (2023) 56 *Vanderbilt Journal of Transnational Law* 1065, 1085.

42. *V.O.S. Selections, Inc. v United States*, No. 25-00066 (USCIT, 28 May 2025). This judgment was followed the next day by an even narrower reading of presidential tariff powers in *Learning Resources, Inc. v Trump*, No. 25-1248 (D.D.C., 29 May 2025)

43. US Constitution, Article I, § 8, clause 1.

44. See, for example, *Mistretta v United States* 488 U.S. 361, 372 (1989).

45. 50 U.S.C. § 1701(b).

46. Executive Order 14257, [Regulating Imports With a Reciprocal Tariff to Rectify Trade Practices That Contribute to Large and Persistent Annual United States Goods Trade Deficits](#), 90 Fed. Reg. 15041, 15041 (2 April 2025).

47. *V.O.S. Selections v United States*, USCIT 25-00066 1, 26 (2025).

48. *Ibid.*, 27.

enforcing the Liberation Day tariff regime. This is a carefully reasoned judgment, with the Court drawing explicitly upon recent US Supreme Court case law on the “major questions” doctrine in construing the IEEPA’s delegation of powers to the Executive. Under this case law the doctrine has been applied restrictively, with the Supreme Court insisting that when Congress delegates powers of “vast economic and political significance” it must “speak clearly”.⁴⁹

Even so, the judgment does not with a single action put an end to the Trump tariff policy. As the President moved to delegitimize the judgment, accusing the judges of being motivated by ‘pure hatred’ towards him,⁵⁰ the US Government swiftly appealed to the DC Circuit Court of Appeals, with that Court immediately accepting the Trump administration’s application to stay the injunction on the tariff scheme. It will all-but inevitably pursue the case before the US Supreme Court if necessary, where even tightly reasoned decisions can be at the mercy of the Court’s partisan tendencies. Although the “major questions” doctrine recently operated to constrain the Biden administration’s decisions, this does not necessarily mean that the same will apply to such a high-profile White House policy:

“[The major questions doctrine] provides an additional mechanism for courts to exercise what is essentially political oversight of statutes—inviting judges to opine on what policies are sufficiently controversial and thus require special authorization, an inquiry that may often depend on the judges’ own deeply held politics”.⁵¹

The US Government will remain confident that a majority of Supreme Court justices have, in cases involving the Trump administration, adopted a more expansive account of executive authority under the US Constitution than any of their predecessors on the bench.⁵²

And even if that fight is somehow lost, President Trump only has to turn to Congress, with Republican majorities in both the House and the Senate, to expand upon the legislative delegation of powers over tariffs. For domestic purposes, this prolonged fight might even suit Trump. If mechanisms like the Senate filibuster are used to delay the implementation of his plans, he will proceed towards the midterm elections on a platform that the Democrats are undermining his plan to save American jobs, without having to incur the costs which will accrue once sweeping tariff arrangements are implemented. An alternate or additional avenue is for the administration to shift to the national-security-oriented tariff powers under the Trade Expansion Act, which already provide the basis for steel, aluminium and automotive tariffs. The threat of US tariffs will thus undoubtedly continue to loom over international trade.

TACO Belle?

After months of fiery tariff proposals by the Trump White House, followed by pauses or climbdowns as consequences loom, the Trump Always Chickens Out (TACO) hypothesis was developed by the *Financial Times*’s Robert Armstrong.⁵³ With the Liberation Day tariff plan mired in legal difficulties, the European Commission must find itself increasingly tempted to play hardball with punitive retaliatory tariffs proposals in the expectation that Trump will ultimately back down, rather than face the consequences. Indeed, he has already done so, mooting immediate 50 percent tariffs on EU imports, and then reverting to the 90-day pause (set to expire on 9 July).⁵⁴ Even taking the UK-US “General Terms document” as indicative of what can be achieved through negotiation with the US, the new best-case scenario for the trading partners of the US is a 10 percent baseline of tariffs. Should the EU end up in an equivalent US tariff position to the UK, then many of the notional advantages of the UK’s trade position with the US will have been neutralised. But, when the UK Government is determined to impose no retaliatory tariffs on the US, even smaller differences than are presently contemplated will have an impact.

If a 10 percent tariff is taken to be a new minimum level tariff for imports into the US, then comparable retaliatory tariffs from the EU will generate a situation with no advantages for businesses based in Northern Ireland for export purposes, but additional challenges for importers of US goods in both Ireland and Northern Ireland, in their having to incur costs which would not apply to businesses operating in Great Britain. In circumstances in which the EU secures favourable trade terms to the UK with the US, even in particular sectors, the current hypothetical advantages for some businesses operating in Northern Ireland be reversed. The rules of origin challenges facing the US authorities would

49. *Alabama Association of Realtors v Department of Health and Human Services*, 594 U.S. 758, 764 (2021).

50. Dominic Rushe, Kalyeena Makortoff and Robert Mackey, ‘Trump wins temporary reprieve as he fights against court block on tariffs’ *The Guardian* (29 May 2025).

51. Daniel Deacon and Leah Litman, ‘The new major questions doctrine’ (2023) 109(5) *Virginia Law Review* 1009, 1015.

52. See Martin Redish and David Epstein, ‘The Unitary Executive in the Age of American Authoritarianism’ (2024) 59 *Wake Forest Law Review* 451.

53. Katie Martin, ‘The “Taco” factor has spurred markets higher’ *Financial Times* (16 May 2025).

54. Rachel Hagan, ‘Trump agrees to extend EU trade talks after 50% tariff threat’ *BBC News* (25 May 2025).

remain, however, as the ability of products from Northern Ireland to circulate freely within the EU Single Market would make it difficult to determine applicable tariff rates where they are shipped to the US through EU ports.

At the end of the analysis, moreover, the position in all of these permutations is one of relative degrees of disadvantage for traders into the US, with no sign of a way back to the position established in decades of US trade policy. In the words of former US State Department economist Kent Jones:

“Trump still thinks in terms of a trade balance scorecard as the determinant of winners and losers in trade, so he may once again try to negotiate quantitative import commitment deals ... If all else fails with universal tariffs, he will still have his trade war and national security tariffs in his trade policy toolkit. There are no WTO-friendly policies in sight.”⁵⁵

If the 10 percent tariff baseline is the new best-case scenario for many US trade partners, across a range of sectors, the US economy is considerably more closed off to international trade than it was before Trump’s second term in office. Where domestically produced goods are not immediately substitutable for imports, this amounts to a price hike which will dampen demand for all but absolute necessities. Where products, such as many alcohol imports into the US, are substitutable, then the immediate result will be to make any products subject to tariffs much less competitive compared to products produced in the US. For many businesses in the UK, Ireland and Europe, this means that sales to the US are likely to be affected even if tariff rates ultimately differ between the UK and the EU.

Consequences for the Island of Ireland

Following the announcement of UK-US arrangements and UK-EU reset, Jonathan Reynolds, the UK Government’s Business Secretary, lauded Northern Ireland’s position as a “unique gateway” for trade.⁵⁶ And as we have illustrated, there are, in terms of the arrangements as they are emerging, certain instances in which being a business operating in Northern Ireland will enjoy notional advantages over businesses in other parts of the UK, or in Ireland. But this is not necessarily the making good of the Windsor Framework’s hype of Northern Ireland as the world’s “most exciting economic zone”;⁵⁷ business confidence matters more than the terms of these announcements.

Amid so much trade upheaval, these arrangements are unlikely to generate a genuine basis for attracting foreign direct investment into Northern Ireland. They provide no security for potential investors or established trading businesses. Their notional advantages will only be realised if the current arrangements become the “new normal”, which is questionable given the likely legal and political issues with the current deals. Even if they have a level of longevity, and this precarious applet is not tipped by new upheavals in the US-EU trading relations, unknown factors remain in terms of the extent to which EU goods are able to simply be routed through Northern Ireland, or subject to minimal processing there, to benefit from the UK-US terms. For the Trump administration, the clock towards 9 July 2025 and the end of the pause in the differentiated tariff rates is still ticking. When businesses are engaged in long-term decisions over the base for their international operations, however, they are unlikely to reorientate operations to Northern Ireland on this basis alone.

55. Kent Jones, ‘The Global Trading System: What’s Left of the Most-Favored Nation Rule?’ (2025) 49(2) *Fletcher Forum* 85, 96.

56. Brendan Hughes, ‘Northern Ireland a “unique gateway” for trade’ *BBC News* (22 May 2025).

57. Peter Walker, ‘Sunak draws ire after hailing Northern Ireland’s access to UK and EU markets’ *The Guardian* (28 February 2023).

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