

How Are We Doing on Brexit?

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Understandably we have heard little recently from Remainers or the second referendum brigade. As the football fans chant “they’ve all gone quiet over there”. Right from 10pm on election night when an accurate forecast announced Boris Johnson’s stunning victory the opponents of Brexit have been too shocked to say much.

This quiescence is unlikely to last. Already we hear confident predictions that a comprehensive free trade agreement cannot be negotiated within the now legally-binding 12 months allowed for doing the deal. Even after a deal we can expect the hard-line Remainers to become Rejoiners. Like the Jacobites of the 18th century, resistance may continue long after all is lost.

Once Boris Johnson’s Withdrawal Bill has completed its House of Lord’s formalities and become an Act there will be nothing preventing the UK from leaving the EU at 11pm on the last day of this month. After all of the opposition from parliament and the courts in 2019 it feels a bit like a ship entering sheltered waters after a particularly rough passage, but are the waters really as smooth as they temporarily seem?

The Withdrawal Agreement was certainly not as good as it could and should have been. By the end of last September, the UK was negotiating with one hand tied behind its back once the Benn Act outlawed any possibility of an exit from the EU on WTO terms alone. Since the UK had then to make an agreement with the EU in order to leave, the EU could have dictated whatever terms it wished.

By this late in what had become to look like interminable talks even the EU wanted to bring things to end. By that stage it was in any case obvious that the EU had got much of what it needed. The financial settlement from Theresa May’s earlier flawed agreement was carried forward. Similarly, the agreement on the treatment of EU citizens was included in a revised deal.

The changes from the May deal to Johnson's Agreement amounted to only a few pages but crucially they removed the hated stipulation that the UK remain in the EU customs union and in alignment with EU regulations until the EU agreed some alternative arrangements satisfactory to themselves.

In fact, the EU was happy to drop these since they had come from May not itself. The EU's preferred option had all along been to keep only Northern Ireland inside the customs union and aligned to EU regulations.

In the rushed last few days before the latest extension expired on October 31st 2019, a new deal was done which essentially did keep Northern Ireland harnessed in this way. To prevent any land border in Ireland it was agreed that a border of sorts would be set up in the Irish Sea between Northern Ireland and GB. Any tariffs payable for exports from the UK to Ireland via Northern Ireland would be paid before entering Northern Ireland.

Goods liable to be involved in the production of exports from Northern Ireland to the EU would also be liable for tariffs. More significantly any sectors in Northern Ireland which produced goods which could potentially be exported to the EU would need to observe EU rules.

The scope of these restrictions would be determined by the new Joint Committee set up in association with the Withdrawal Agreement and disputes would be adjudicated by the European Court of Justice. The writ of the Joint Committee ran as far determining limits for agricultural subsidies in Northern Ireland and a need for Irish vets to check standards of food production.

All of this occurred after Boris Johnson had earlier received a rapturous reception at the DUP annual conference for promising no border in the Irish Sea. It became clear that in its rush Government Ministers did not know what had been agreed. DExEU Minister Stephen Barclay had to correct himself when he told a Commons Select Committee that there would be no checks on goods passing from Northern Ireland to GB.

In fact, under the EU's Union Customs Code, export declarations are needed. Whether this meets the Withdrawal Agreement's clear

stipulation that goods from Northern Ireland should have 'unfettered access' to GB is a moot point.

The DUP and the wider unionist community in Northern Ireland not surprisingly felt betrayed. Large public meetings of loyalists were reminiscent of those that greeted the signing of the Anglo-Irish Agreement in 1985. Not-so-veiled threats of loyalist violence began to be heard. These mirrored earlier threats of republican violence which had unwisely been aired by Tony Blair, John Major and other supporters of Remain.

Some advisors in Number 10 were said to be distressed at what had been hurriedly agreed. Johnson himself told one MP that he believed that the DUP had backed the deal, something which was to say the least highly improbable.

The PM has responded to the DUP's distress by asserting that there will be no checks in the Irish Sea. These assertions are widely viewed as not credible but there is much that can be done. Firstly, it is highly likely that a free trade agreement will be in place before the end of the transition period at October 31st 2020.

This may not be the full and final agreement on commercial relations with the EU, but it should at least cover tariff-free trade in goods with no quotas.

This will be enough to remove the need for most tariff checks at the Irish Sea or indeed any UK border with the EU. Johnson is surely also correct to say that there will be no need for Northern Ireland firms to complete export declarations on sales to GB.

Checks may still be needed at ports in Northern Ireland and GB on trade with Ireland flowing through Northern Ireland, but this is hardly a matter of constitutional importance.

The issue of regulatory alignment in Northern Ireland remains, but applies only to goods exportable to the EU and these will be needed to observe EU regulations anyway. It is clear that much detailed negotiation remains to be done but to quote T S Eliot, Brexit in Northern Ireland may end 'not with a bang but a whimper'.

