

ALTERNATIVE ARRANGEMENTS FOR THE IRISH BORDER EXECUTIVE SUMMARY

18th July 2019

Prosperity UK was founded in 2017 as a politically independent platform bringing together leading business leaders, academics and policy makers to look constructively at the UK's future outside the EU, and how we build an open, dynamic and balanced economy which maximises prosperity for all.

By far the greatest obstacle to leaving the EU has been concerns surrounding the Irish Border and its future post Brexit. Prosperity UK's Alternative Arrangements Commission is a comprehensive attempt to remedy this situation, firstly by identifying potential "Alternative Arrangements" to ensure the absence of a physical frontier and to ensure that the Belfast / Good Friday Agreement is upheld, and secondly by drafting Protocols which describe how these Alternative Arrangements could be implemented in different scenarios.

When we launched the Commission in April we decided that its work must be objective, expert-led and involve a wide-ranging process of consultation with individuals and organisations in Ireland and Northern Ireland. The Commission has deliberately avoided addressing the UK's future relationship with the EU or other nations, although it does seek to ensure that the UK is able to develop an independent trade policy in the future. Prior to our work, media reports have focussed on the potential for new "high-tech" border technologies and how these are futuristic, and, by definition, unproven. While we see a role for innovation in border processes around the world, we have intentionally restricted our work to existing legal frameworks, administrative processes, software and systems solutions and existing technology devices to ensure that the ideas in this report could be agreed, implemented and tested within two to three years.

In the weeks since publishing our Interim Report on 24th June, we have broadened and deepened our engagement across the UK, Ireland and the EU with interested stakeholders. We are very grateful to those individuals, businesses, representative organisations and political parties who have helped develop our interim recommendations and conclusions, and shared their feedback and questions with us, either face-to-face, at one of our five roadshow events (in Belfast, Berlin, Brussels, Dublin and London), in writing or via the consultation page on our website.

It is worth noting, in addition, that several global border systems providers, leading management consultants and transit firms have provided us with great encouragement and supplied us with their ideas on the condition that we protect their anonymity.

While we thank them for their support, it is regrettable that the current political climate is stifling debate and problem-solving – despite a commitment from all parties to explore such solutions in the draft Withdrawal Agreement. It is our hope that a change of UK political leadership will usher in greater collaboration between politicians, the government and the private sector to ensure a speedy rollout of Alternative Arrangements.

Aside from specific issues relating to the Island of Ireland raised by consultees which are addressed in the report itself, two major themes emerge for policy makers to consider as they seek to advance the debate:

Firstly, Brexit will inevitably involve a degree of change across all segments of the economy; this needs to be recognised by all parties as discussions relating to Alternative Arrangements develop. Our report does not attempt to assess the desirability of Brexit; it seeks to identify practical solutions to the challenges posed by this impending change. As with any changes from the status quo, there will inevitably be extra cost and administration. Policy makers must involve as many groups as possible to ensure that such impacts are mitigated and managed.

Secondly, the Withdrawal Agreement's proposal that the EU and UK "agree to agree a replacement to the backstop" is highly unsatisfactory and risks a major geopolitical threat to the Island of Ireland in the future. Our consultation has highlighted how understandings of the backstop vary vastly across the spectrum of policy makers and interest groups we have met. While all parties accept that the backstop must be "temporary" in nature, there has been no agreement, nor attempt to define an agreement, on the devices that could be used to render it obsolete nor the parameters that ensure that this can be an objective process. Instead the current Withdrawal Agreement relies on a "future agreement to agree" which is untenable. Above all, our work has highlighted that it is vital to agree these parameters now, to avoid a potentially toxic deadlock in the future.

Prosperity UK is enormously grateful to Rt Hon Greg Hands MP and Rt Hon Nicky Morgan MP for agreeing to lead the Commission, and to the technical customs, border, trade and legal experts who have contributed their expertise and time. Everyone involved has worked exceptionally hard to deliver our Report & Protocols in a limited period of time

Our hope is that this work can help break the Brexit impasse and enable all parties to agree a way forward that ensures an orderly and timely Brexit, protects peace on the Island of Ireland and restores business and investor confidence.

Anthony Clake

Board Member, Prosperity UK

As British parliamentarians who voted to Remain in the 2016 EU referendum, who accept the referendum result, who voted for the Prime Minister's Withdrawal Agreement and who want to see Brexit implemented in an orderly way with a deal of some kind, we hope that the Report & Protocols from Prosperity UK's Alternative Arrangements Commission (AAC) will provide a timely resource to both sides of the exit negotiations. We commend the work of the Technical Panel and thank them for the thoroughness with which they have gone about their work – most notably, for the time they have spent talking with and listening to stakeholders and communities in Northern Ireland and Ireland. We tasked members of the Panel with seeking solutions that protect the Belfast/Good Friday Agreement and the team have worked tirelessly to respect this vital remit. We also thank the many organisations, firms and individuals on the Island of Ireland who have participated in the consultation phase of our work.

The Report & Protocols reflect our commitment to find solutions compatible with any of the potential Brexit outcomes, including working within the boundaries of the Withdrawal Agreement and related instruments. The AAC's objective was to develop detailed proposals to avoid physical infrastructure at the border via "consideration of comprehensive customs cooperation arrangements, facilitative arrangements and technologies" as described within the Joint Instrument relating to the Withdrawal Agreement. We believe that the conclusions and recommendations set out in this Report & Protocols demonstrate that acceptable Alternative Arrangements are – with goodwill and pragmatism shown by all parties – available. Furthermore, they can be implemented within two to three years.


Protocol AB has been drafted in such a way that it could be added to the Withdrawal Agreement so that the backstop is never triggered if its conditions are fulfilled by the UK government. Protocol C could be used in any other agreement between the UK and EU where the backstop has been replaced and a Protocol is required for a new agreement to clear the House of Commons.

The Brady amendment to the Withdrawal Agreement, which sought to replace the Backstop with Alternative Arrangements, did pass the House of Commons with a majority of 16 in January 2019. In March 2019 the Strasbourg Instrument on the Withdrawal Agreement committed the UK and the EU to work "on a subsequent agreement that establishes by 31 December 2020 Alternative Arrangements, so that the backstop will not need to be triggered. ...The Union and the United Kingdom further agree to establish, immediately following the ratification of the Withdrawal Agreement, a negotiating track for replacing the customs and regulatory alignment in goods elements of the Protocol with Alternative Arrangements."

The clock is ticking. We urge colleagues in the UK, Ireland, other EU member states and the European Parliament to read our Report & Protocols carefully, and in a spirit of pragmatism and goodwill. We believe we have illuminated a clear path to a negotiated Brexit; it is now up to the UK and EU to walk down it together before it is too late.



Rt Hon Nicky Morgan MP
Co-Chairs, Prosperity UK Alternative Arrangements Commission



Rt Hon Greg Hands MP

OUR RECOMMENDATIONS

1. Working Alternative Arrangements should be fully up and running within three years.
2. Alternative Arrangements are available by harnessing existing technologies and Customs best practice; futuristic high-tech solutions are not required.
3. A one size fits all solution should be avoided; instead people and traders should be given the maximum possible choice of options.
4. Enhanced Economic Zones, based on relevant WTO exemptions, covering frontier traffic and national security, offer potentially valuable solutions which respect the realities of border and cross-border communities.
5. A multi-tier trusted trader programme for large and medium sized companies should be introduced, with exemptions for the smallest companies.
6. Sanitary and Phyto-Sanitary (SPS) checks should be carried out by mobile units away from the border using the existing EU Union Customs Code or a common area for SPS measures.
7. New technology has a role to support policy, but any technology suggested for deployment in the first instance should already be in use elsewhere.
8. Alternative Arrangements Protocols proposing a way forwards which avoids a hard border and ensures the Backstop is never triggered should (i) be inserted in the existing Withdrawal Agreement, or (ii) be utilised in any other Brexit outcome.

KEY CONCLUSIONS

1. Any proposed Alternative Arrangements must satisfy some specific constraint, notably:
 - the supremacy of the Belfast/Good Friday Agreement (BA/GFA) and the peace process;
 - the preservation of the Common Travel Area agreement;
 - the need for an executable and real UK independent trade and regulatory policy;
 - the need to ensure that East-West trade flows as easily as possible; and
 - the need to make sure that all solutions can be deployed within two to three years.
2. All future proposals must be based on the principle of consent. Second, and derivative of this, there can be no physical infrastructure at the border and no related checks and controls at the border. Third, all stakeholders should understand the need for an executable and real UK independent trade and regulatory policy.
3. There is no one solution to the Irish border – we propose a multi-layered approach, involving many different mitigations. We seek to give traders as many choices as possible; there is a cascade of potential arrangements they could take advantage of.
4. While both dimensions of trade, East-West and North- South are important, the trade across the border is much less in monetary value terms than trade East-West between IE and GB and NI and GB. There is a division between large companies with complex but well known and repeat supply chains and small companies with high frequency, low value trade. While there are a very large number of small traders, the number of small traders (including small service providers) above the VAT threshold is significantly less, and these small traders are already filling in VAT forms. The structure of trade routes also helps to mitigate the risk to the EU single market and customs union since the Island of Ireland is not a natural access point for non-EU trade into the EU-26 markets. However, the economic data also shows that a significant volume (at least 48%) of trade into the EU-26 flows across the UK land-bridge. The vast majority of this trade ultimately enters the continent via Dover-Calais routes (either RoRo or via Eurotunnel). The Irish government therefore has a strategic interest in making sure the land bridge works (Dover-Calais).

5. While the BA/GFA does not discuss the border as such, it does require cooperation between NI and IE, and many in NI attribute to the BA/GFA not only the end of the Troubles, but also the invisible border. The mapping exercise conducted by the UK government, NI executive and IE government covers the areas of cooperation which are set out under the BA/GFA. It is vital to understand and respect the origins of the BA/GFA and that it is built on the principle of consent. Solutions to the border must therefore seek to maximise cooperation in the relevant areas, and must be founded on the principle of consent. Since solutions to the border are designed to mitigate the risks of violence on both sides of the border, the flexibilities and exemptions provided for under the WTO can be used to ensure that any derogations from the application of border measures can be used. Relevant exemptions are the frontier traffic exemption, and the national security exemption.
6. The free movement of people in the Common Travel Area must and will be protected. This requires the UK and IE to agree that the UK will not require visas for EEA nationals and that IE will not join the Schengen Zone. But the current CTA does not have firm legal foundations, especially once the UK leaves the EU. These should be created through a UK-IE agreement; this is particularly important because there are still perceptions in border communities and beyond that Brexit will mean the end of free movement across IE, and UK. At the same time, the new EU immigration system will make it easier for the CTA to continue to operate. Even with the CTA, the border does require security arrangements for counter-terrorism as do all borders. Other all-island arrangements such as the Single Electricity Market, and the Single Epidemiological Unit will continue, but could also be further strengthened by UK-IE specific arrangements.
7. The security cooperation across the border which is mandated under UN resolutions related to terrorism must continue, and the current breakdown in cooperation between the IE, UK and other member state Customs and Border Forces must be resolved urgently. Continued security cooperation should not impact the “look and feel” of the border.
8. There are a number of lessons to be learned from other borders. But a lasting solution that works for the Island of Ireland will not be found by trying to transplant these other borders to NI/IE, but rather about learning specific, applicable lessons from these borders. One example of this is the US-Canada border where the CSA Platinum programme allows highly trusted companies not to deal with customs at all (by filling out the equivalent of tax returns). These sorts of arrangements are particularly suitable for the Irish border and the largest companies that use it.

9. Common all-island regimes that exist now should be continued and where possible built upon. Special arrangements such as enhanced economic zones, which could include Free Trade Zones and other customs facilitations and common regimes for SPS which potentially span not only the Island of Ireland, but the Island of Ireland and the Island of Britain should also be considered. We float the idea of a common zone for the Island of Ireland and the Island of Britain with a common rule book (like the Australia-New Zealand Food Safety Area) from which the UK could diverge. At that point it would be possible for the people of NI through the NI assembly and NI executive as informed by the North-South Ministerial Council and the British-Irish Council to adopt a common SPS area with IE, so EU rules applied on the Island of Ireland as is presently the case for the Single Epidemiological Unit. If the people of NI elect to remain within the diverged UK SPS area, the decision to put checks into the harbours and ports of the Irish Sea would be a decision of the NI assembly; this scenario would follow a decision by IE to break the Common British and Irish Isles rule-book, and continue with a harmonised EU system.
10. The use of the WTO Frontier Traffic Exemption and WTO National Security Exemption could also support larger Enhanced Economic Zones which would ensure that border communities are not disrupted. For example, potential zones around Derry/Londonderry-Donegal, and Newry (to Dundalk) should be considered. These zones could then be marketed as facing both the EU and UK markets creating new opportunities for job creation. In both of these cases, there is already joint activity by both councils on either side of the border; this creates the opportunity for third parties including other governments to interface, for economic purposes only, with a single entity focused on developing economic growth for the local region as a whole.
11. As the first level of a series of solutions for traders of goods, advanced multi-tier Trusted Trader programmes should be developed. This eliminates problems for larger traders, but small companies should be able to take advantage of Trusted Trader status as well, understanding that the level of trust will be different for these companies. It is important that a "ladder" of levels of trust is constructed to encourage smaller traders to begin to establish trusted trader status.
12. For those who are unable to take advantage of trusted trader programmes or who do not want to, existing administrative techniques may be used. One example of this is to use Transit which is a relatively simple mechanism which is heavily used on the Swiss-EU and the Sweden-Norway borders. Some derogations will be needed in order to allow Transit to be used, and traders will need to be eased into using a new system with its requirements for guarantees and bonds, but much of this can

be done by logistics service providers. The use of simplifications are very important to ensure ease for traders such as (Customs Freight Simplified Procedure (“CFSP”) and selfassessment (Entry into Declarants’ Records (“EIDR”)).

- 13.** The most challenging issue is the regulation of agri-food where SPS measures and the requirements for veterinary checks at Border Inspection Posts must be mitigated. In this area, we would need (in the absence of a common SPS area or any of the special zones proposed) to use the geographic flexibilities allowed in the Union Customs Code and BIP Regulation to move any facilities away from the border and to use mobile units to conduct checks where possible.
- 14.** For other technical checks related to standards, and Technical Barriers to Trade (“TBT”) checks, we advocate greater reliance on the private sector to conduct product conformity assessment and increase use of in market checks, together with stronger penalties for non-conformity. The EU will want to see increased market surveillance in IE.
- 15.** Our proposal to minimise the disruption caused by the need to prove origin is to use the Registered Exporters platform (“REX”), since the REX system already applies in the context of bilateral trade agreements between the EU and the partner countries. It would be reasonable for the UK to expect to be granted access to this system especially in the event that a preferential arrangement of some kind is agreed with the EU following its departure.
- 16.** The other group at particular risk are small traders. We therefore recommend a general exemption for traders who are below the VAT threshold. For traders above the VAT threshold, some checks would be required as spelled out above. We recommend a Transitional Adjustment Fund to make this process easier for small traders who could register for this along with their VAT registrations. For small service providers such as plumbers who are regularly crossing the border carrying tools and equipment, we would not require them to perform any customs checks at all for a contiguous zone across the border which would rely on the WTO Frontier Traffic Exemption. This WTO exemption would operate in a band along the border where no checks would be necessary.
- 17.** We then make recommendations regarding how to operationalise the recommendations and what would have to happen to upgrade UK and IE customs. We recommend that the UK pays IE directly for any new infrastructure which is required. There has been a breakdown in direct collaboration and

communication between the IE and UK customs and other related authorities. We recommend that both sides urgently start discussing these issues now, as many of these recommendations require such collaboration. Clearly this breakdown is at variance with the spirit of the BA/GFA and cross-border coordination and cooperation.

- 18.** We believe that the recommendations contained within our Report can be achieved, provided there is goodwill on all sides, quite quickly. Some recommendations such as Transit would be deliverable in months, as they are being used now – the only delay will be the time taken to negotiate the minor derogations for Island of Ireland trade. Some recommendations, such as the trusted trader programme, have been achieved in other countries in 2-3 years. We believe the Trusted Trader recommendations contained in this Report can paper can be delivered in 12-15 months. Some longer term technological proposals which are not necessary to making the seamless border work immediately might take longer, but it is essential that work on them starts now.
- 19.** The role of technology in border management around the world should not be understated. Technology already plays an important role in ensuring that the existing technical solutions and administrative techniques work well, and we recommend short, medium and long term technological solutions. All over the world, technological advances are delivering seamless borders – our goal should be to ensure that the Irish border is the most seamless anywhere and certainly state of the art technology should be an aspirational goal for all policymakers and stakeholders.

CHAPTER 1

The constraints on solutions are as follows:

The first, and most important constraint is that whatever we suggest must guarantee the Belfast/Good Friday Agreement (BA/GFA), and the hard won gains of the peace process. Border communities have stressed in our meetings with them the importance of identity, and that the twin identities of people as both Irish and British, as well as the local identity must be preserved. Perceptions often become reality and there will need to be significant investments by both the UK and Irish governments to ensure that the underpinnings of this identity such as the Common Travel Area are preserved, and understood to be preserved. Brexit has added to the stresses currently being felt by the political system in Northern Ireland. While there will be changes associated with the UK leaving the EU, any disruption should be counterbalanced by meaningful and sustained efforts by both sides to generate new opportunities and sources of support for the people of NI.

Second, given both the importance and high volume of trade between NI and GB, there must be no disruption of trade between NI and GB, acknowledging that some all-island regimes such as the Single Epidemiological Unit (SEU) do exist, and so there are some customs procedures at the harbours of the Irish sea now, livestock inspections at the port of Larne being an obvious example.

Third, there cannot be physical infrastructure to apply to customs procedures at the border on the Island of Ireland. Implicit in this is the acknowledgement that there can be some registration procedures away from the border as indeed there are today.

Fourth, while our objective is to ensure that the lived experience of the border communities changes as little as possible, the UK is leaving the EU and some change is inevitable. The goal is to ensure these changes have as little impact as possible. In doing this, it is necessary to understand that there is a border now for VAT, excise duty and currency.

Fifth, any set of solutions must protect the integrity of the EU single market and customs union for it to be acceptable to the EU.

Sixth, and finally, the purpose of Brexit, and its economic gains – namely an independent trade and regulatory policy – are vital and should, if at all possible be protected. Whatever solutions are agreed for the Irish border should not unduly prejudice those economic objectives of the UK as a wider entity. Furthermore, the UK's independent trade policy must be a real and executable one and not merely a token in order to deliver the real economic gains that are required to offset the potentially

disruptive effects of Brexit. These gains should be spread to all the people of the UK, including the people of NI. As we discuss options, we will evaluate how much of this potential is taken off the table by the options suggested. It will then be for politicians to decide where to draw the line.

All of the proposals set forth here are measured against the need to protect the BA/GFA and the UK and EU's commitments under WTO rules. The WTO provides considerable leeway for different approaches to deliver an invisible border and the non-application of certain border procedures that would be normal and required in other circumstances. First, there are flexibilities under the WTO's national security exception. Second, there are flexibilities in the WTO's general defences to protect human, animal or plant life or health. Third, there are protections for frontier trade that can be relied upon. The UK and EU could seek a waiver under WTO rules, or they could simply assume that WTO exemptions give them a full defence and seek to rely upon it in the event that any WTO member brings a case. In any event, we consider it extremely unlikely that any WTO member would challenge an attempt by the UK, Irish and European governments to preserve peace on the Island of Ireland.

Conclusions

- UK stakeholders should understand the constraints which operate on the island of Ireland (as explained in the paragraph above).
- Stakeholders in Ireland and NI should understand the UK constraint which is the requirement to have an independent trade and regulatory policy in future.
- The EU needs to understand the constraints which govern both UK and Ireland stakeholders.
- The UK and Ireland need to understand the EU constraint which is the need to protect the Single Market and the Customs Union.

If all stakeholders can fully understand all of the constraints that each of them is operating under, then we should have the foundation for an agreement.

CHAPTER 2 – Economics of the Border

First, a much greater monetary value of trade exists East-West than North-South. The majority of IE and NI trade is with GB and not to each other.

Second, of the trade across the border, the breakdown is a small number of large companies with very well understood supply chains across the border which lend themselves to specific, tailored solutions.

Third, there is very high-frequency, low value trade of very small companies that may not be as eligible for tailored solutions, but for whom nevertheless solutions must be found.

Fourth, IE trade with the EU-26 is dependent on the UK land-bridge and the Dover-Calais route. IE government therefore has a strategic interest in ensuring that the Dover-Calais route remains as viable and operational as possible. This will require immediate cooperation between the UK, IE and French customs authorities.

CHAPTER 3 – BA/GFA / CTA / Peace Process

The starting point for the detailed work on people and goods movements at borders is the protection of the BA/GFA and peace process. We will need to ensure that the areas where the BA/GFA contemplates cooperation are properly fulfilled even as a customs border emerges in addition to the pre-existing VAT, excise and currency borders. We will also need to ensure that any arrangements contemplated here do not deviate from the hard won gains of the BA/GFA.

However, we must also recognise that a number of NI-IE all-island arrangements such as the CTA which are crucial to the BA/GFA and peace process do not rest on strong legal foundations, particularly when the UK leaves the EU. Therefore, the CTA could itself be enshrined in some form of UK-IE Agreement, since it requires the UK not to impose visas for EEA nationals for tourist travel and IE not to join Schengen. Such a UK-IE Agreement would be necessary to provide a proper legal basis for their existence. Such an UK-IE Agreement could also encompass other meaningful co-operation consistent with the BA/GFA such as in the areas of customs cooperation.

A more ambitious version could also incorporate the continuation of the single electricity market and the Single Epidemiological Unit (SEU) on the Island of Ireland, including the Single Epidemiological Unit plus we discuss in Chapter 6.

Finally, we recognise that law enforcement agencies may require additional data and technology to enable them to properly risk assess people and goods circulating between IE and NI. In addition, moving checks traditionally conducted at borders to inland locations raises questions as to how, where and by whom such checks might take place. These are discussed in more detail at Chapter 13 – but we do not see any insurmountable reason as to why these cannot be properly and lawfully established with

the consent of the relevant communities, particularly if we avail ourselves of the existing WTO and UCC flexibilities, such as the Frontier Traffic Exemption.

CHAPTER 4 – Movement of People

It is obviously desirable that the CTA is at least retained in its current form or better still merged in an updated form into a new UK-IE Agreement. This should include the following issues:

- (a) That IE will continue to retain the “opt out” to the Schengen zone, thus preserving passport and immigration controls on all persons entering IE from locations outside the CTA;
- (b) That both the UK Border Force and the Irish Nationality and Immigration Service will operate a “perimeter strategy” whereby permission to enter the CTA may be granted or refused on behalf of the other (recognising that rules of entry for EU / EEA citizens may diverge between the UK and IE);
- (c) That Irish citizens will not be required to register to reside in the UK, and will continue to benefit from the free movement provisions of the CTA. Similarly British citizens will enjoy reciprocal rights to reside in IE;
- (d) That both IE and the UK will continue to share passenger data and intelligence on third country nationals entering and exiting the CTA perimeter;
- (e) That wherever possible a common visa requirement will be applied to third country nationals entering the CTA;
- (f) That wherever possible residence permits issued to third country nationals in either IE or the UK will be mutually recognised across the CTA;
- (g) That no visa requirement will be imposed upon EU / EEA citizens entering the CTA at UK ports (although entry and stay in the UK may be regulated thereafter); and no visa requirement will be imposed upon British citizens entering the EU at EU ports (although entry and stay in the EU may be regulated thereafter)
- (h) That any EU electronic travel information authorisation system (ETIAS) or entry / entry system (EES) will apply only to the external Schengen border, and not to the external EU land border between IE and the UK;
- (i) That any UK electronic travel authorisation system (ETA) would only apply to passengers arriving by sea or air routes, and not via the Irish land border; and
- (j) That the UK Home Office the Irish Department for Justice and Equality would work together on a joint strategy for identifying third country nationals entering or remaining unlawfully within the CTA.

This represents a significant package of work, which is why we are suggesting that the CTA may have to be revised and/or modified in a new UK-IE Agreement.

Notwithstanding the above challenges – and assuming that the principles of the CTA and the BA/GFA prevail – there will be no requirement for passport checks on the Island of Ireland post Brexit.

Existing security checks at other UK ports within NI and Great Britain will be preserved. All persons (regardless of nationality and citizenship) travelling within the CTA will continue to be subject to selective security examination by accredited officers where they are believed to be involved in hostile acts. These checks will be conducted only in accordance with the approved codes of practice; and will not require any routine stops or infrastructure at CTA ports or within the border area.

The European Commission should also be encouraged to engage with the British-Irish Intergovernmental Conference (BIIGC) to examine opportunities for collaboration in areas of data sharing, intelligence, watch lists, irregular migration and visa policy to facilitate the genuine movement of people across the external CTA border whilst intercepting those whose presence in either the UK or the EU may be non-compliant or harmful to the respective laws of each country.

Notwithstanding the fact that this Report deals mainly with goods trade, it is important that the UK and IE governments agree mutual recognition of qualifications for service providers trading across the border.

Most importantly, the UK and Irish governments should continue to work closely together in order to facilitate the swift and efficient movement of legitimate travellers across all entry points into the Common Travel Area; whilst simultaneously intercepting those intent on non-compliance or harm.

CHAPTER 5 – Lessons from other borders

Learning lessons from other borders does not mean we are advocating replacing the current border with one of the other borders we have studied. It means learning what elements of how those borders are managed could be applied positively to the Irish situation.

The aim of the parties post-Brexit is, to create a land border without infrastructure being erected at the border itself. The cases described in this chapter, especially the borders between Norway and Sweden and the Swiss-EU border, can be used as we develop the Northern Ireland border with no infrastructure for general cargo. For general cargo, the risk assessment of the declarations can identify high risk goods that can be inspected at the point of loading or unloading. The CSA Platinum type programmes should be investigated for the larger companies with very well understood supply chains.

The US-Canada border shows how advanced Trusted Trader schemes such as CSA Platinum can move customs from an inspection point to a pure tax point. Such reliance on self assessment, where the most trusted companies, and there will not be many, can essentially not deal with customs at all. Customs declarations by Trusted Traders can result in even lower risk profiles and can even further considerably lower the need for inspections.

The Aus-NZ border illustrates how it is not necessary to have harmonized customs legislation in order to have a seamless border, and also stands for the proposition of mutual recognition more generally.

CHAPTER 6 – Use of Special Zones and Regulatory Areas

Clearly some of the most difficult issues relate to SPS checks, which is why we have suggested regulatory areas building on the Single Epidemiological Unit to include animal feed and grains trade.

We also suggest investigating the possibility of a common SPS area on the Island of Ireland under EU SPS rules. In the event that this is not politically feasible, we suggest that a common SPS area for the British and Irish Isles be considered. This would have a common rule-book, which initially would be the EU's SPS rule book. At such time as the UK diverges from the EU's SPS regulations, IE would remain within the EU's SPS rule book, and NI would have the choice as expressed through the NI assembly, and informed by the North South Ministerial council, British-Irish Council and other relevant BA/GFA bodies, as to whether it remained in the EU SPS rule book or joined the rest of the UK in its divergence. In the event of divergence, the UK would seek in the Future Economic Partnership the maximum of deemed equivalence such as the EU has already given NZ and other countries in this area.

We should also note that many countries operate dual regulatory approaches in the SPS area. Their producers have a line of products that are fully within the EU's closed loop system for export to the EU, while also maintaining production intended for the domestic market and unrestricted foreign markets. Producers can then make the decision based on whether they believe that production in these combined markets is profitable.

We investigate the possibility of enhanced economic zones in the Derry-Donegal and possibly Newry-Dundalk regions. An Enhanced Economic Zone can include a Special Economic Zone, Free Trade Zone and other customs facilitations including bonded warehouses. It can also include favourable tax rates for small businesses and measures to make it easier for business registration and zoning.

A Special Economic Zone or Free Trade Zone can be a significant boost for manufacturing as facilities can export products to other markets and have the duties and taxes deferred until the product enters the destination market. It is true that a free trade zone across the border does not avoid the need for checks outside the zone, but these are, in the main customs registration procedures as opposed to physical checks which can be minimised, be data and intelligence led, and take place in the destination facility.

We have visited the Derry/Londonderry region, including the wider Donegal catchment area. We are persuaded that this area represents a single region for economic activity and one that spans the border. It is simply not possible or economically sensible to contemplate separation of the Donegal catchment area from the Derry economic area. We believe that the WTO Frontier Traffic Exemption should be used to ground an Enhanced Economic Zone which encompasses the entire region and acts as a spur for additional economic growth.

The region has many untapped advantages. It has a very important relationship with the City of London Corporation which could act as a supporter, promoter and lobbyist for the Enhanced Economic Zone. It has historical ties to the US that could also be exploited. To this end, we recommend that a UK official be designated with responsibility for working with the combined Derry-Donegal legal entity, the NI Executive and the Irish government to ensure appropriate funds are raised for initial investment, and appropriate marketing efforts are made to ensure that the advantages of a border zone that faces both the EU regulatory system and the UK's regulatory system post Brexit can be realised.

There are, in addition other border areas such as the Newry-Dundalk region which could also qualify for this type of Enhanced Economic Zone. The WTO Frontier Traffic exemption would also apply to the rest of the border (albeit less extensively) so that small tradespeople, shoppers and so forth can move back and forth without disruption. In this way the FSB's call for all NI to be a special zone could be carried out on a smaller scale. We would suggest the UK government consider setting up a fund, along the lines of the Prosperity Fund to promote these activities. The fund would continue to make investments in the region as long as Alternative Arrangements were being developed but would cease because they would be unnecessary if the backstop was activated.

CHAPTER 7 – Trusted Traders

The new Trusted Trader programme which will be deployed to facilitate trade across the Irish land border should be broader, more accessible, contain an extensive benefit programme and have full system support. It should be based on international standards and best practices upgraded to fit the specific requirements of a post-Brexit environment.

As mentioned, it should also be a multi-tier programme with international TTP/AEO standards as the top tier and a low threshold SME tier at the bottom. The top level AEO tier should be designed based on international standards, making it possible to sign technical MRAs with as many countries as possible to increase the value of the programme.

The top tier would be appropriate for the largest of exporters across the Irish border. There are a few significant companies that export with a high frequency across the border – such as Coca Cola, Diageo and Lakeland Dairy. These companies could be granted super trusted status, where the border is treated simply as a tax point, but not an inspection point. These firms would not have to deal with customs authorities at all in terms of checks but would submit paperwork on a quarterly basis (along the lines of the CSA Platinum programme for example). They would be liable for any violations in their paperwork, and they could be at risk in terms of their status, but given the scale and sophistication of these companies, it is anticipated that they would be unlikely to jeopardise their trusted trader status.

The top tier could be split into two sub-categories, the first tier for trade outside the EU and a second tier for EU trade. Middle tiers could be designed to suit different types of businesses with each tier having additional requirements and different benefits. This would create a tiered maturity model allowing companies to advance up the tiers over time, meeting new requirements and receiving new benefits based on their own business need.

A fully comprehensive TTP could also incorporate features to establish a ladder for SMEs to enter built up on the following basis:

- A top-tier international AEO level;
- Additional middle levels based on risk and identified business segments;
- An SME lower threshold level;
- Benefit packages for each of the tiers (consolidating existing simplifications adding new best practices);

The new TTP application process should be entirely digital and managed on-line to lower the cost of entry for all participating businesses.

Clearly, these programmes must be recognised by the EU. TTP mutual recognition agreements are technical agreements that regulate customs procedures and controls and non-tariff barriers and thus are much easier and faster to negotiate than, for a free trade agreement. AEO MRAs have a positive impact on the ability to do business and reduce costs across the entire supply chain.

A new broad holistic multi-tier TTP could be designed and developed in 12-15 months, taking into account that it will need to be more advanced and much broader than any of the programmes existing today. In addition, such a programme needs to be piloted and implemented and the potential population of companies need to be prepared through training/education, communication and capacity building.

For the future of customs clearance in the UK and the EU modernised Trusted Trader programmes will be crucial. International experience shows that if the TTP is designed in line with best practices it can grant benefits to all types of companies becoming a platform for modern and simplified processes managed with high compliance levels. Ambitious countries are aiming for 90% plus of traders to become Trusted Traders.

A new TTP can also be used to reduce costs and formalities for traders associated with the high cost application processes and simplifications for several of the other procedures presented in this document. As an example the TTP could confer "Authorised Consignor/Consignee" status when using the transit procedure. If the company starting the transit procedure (e.g. in NI) has been granted the status of authorised consignor the consignment does not need to pass through the customs office of departure. If the person receiving the goods (e.g. in IE) has been granted the status of authorised consignee the consignment does not need to pass through the customs office of destination.

Other examples of procedures that might only be granted to TTP eligible enterprises, and that could have a great impact as Alternative Arrangements, would be those intended to remove customs declarations to be replaced by simplifications like "entry into declarants records" and the use of company "self-assessment" to replace controls and inspections. These examples of simplifications can be offered under international standards but also according to the conditions established in the EU Union Customs Code (UCC).

We believe these proposals could be realised within a two or three year window. The cost/benefit calculation is justified as this would be a significant customs clearance facilitation and could conceivably go beyond customs formalities, for example, security clearance advantages and fast track privileges.

There could also be entry-level programmes for small traders (such as our proposed Inward Storage Relief (ISR)) that, once taken up and validated, could be a qualifying step for further facilitations and advantages. ISR is one example of the kind of programme which is suitable for smaller companies and could be developed over the medium term. These can fulfil the purpose of creating a ladder for businesses to climb and attain enhanced Trusted Trader status as they become more and more familiar with customs processes.

The advantage of this is it will assist NI and IE businesses scale up for the benefits of international trade.

By demonstrating compliant businesses and certifying them as reliable economic operators, a partnership between customs and trade could be created including the regulatory agencies involved in cross-border trade regulation. Different levels of compliance can bring corresponding reduced risk assessment, facilitation and simplification in customs procedures. This could considerably alleviate the need for infrastructure being erected on the border.

CHAPTER 8 – The General Case without Special Arrangements or Trusted Trader

We advocate the use of the Transit system in the general case, as it can best take advantage of in-facility clearance and facilitated trade.

The Transit system makes it possible to make export declarations in other locations than a customs office. In principle, the barcode scan, or a similar measure could be abolished. This will require the UK, IE and EU to agreed to do it, and present it to CTC members. CTC members will be unlikely to resist a minor derogation which is deemed critical to ensuring peace at the Irish border. Legislation could be formulated in such a way that the trader using the Transit procedure can provide another form of electronic proof of the fact that a border has been crossed by the goods at a specific time. New techniques could be considered to correspond with the actual implementation requirements for example:

- Using a report on a mobile electronic device that provides this information by tracking and tracing of the means of transport. (“Geo-tracking”)
- Using administrative track and trace proof of transport.
- Using an app on a mobile phone of the trucker that transports the goods

The UCC also allows the transfer of other customs formalities and procedures to a location not physically located on the border, such as the premises of an importing company, or a customs warehouse where goods are stored under customs control.

While in the past, these procedures were more frequently used for cross-border trade on the continent, there is no reason why they cannot be adopted to facilitate cross-border trade on the Island of Ireland without setting up border and customs infrastructure.

We advocate the use of mobile inspection teams to inspect the goods at the location mentioned on the transit or other customs declaration. In this way customs formalities do not have to take place at a port or border but can be dealt with at any inland location. No physical checks would need to be made at all in the areas covered by the WTO Frontier Traffic Exemption. Physical checks would be very rare in other areas, and would be intelligence-led.

Smuggling and fraud occur presently at the border and will likely continue in the future. There is significant smuggling at other EU borders (both external and internal) and so the fact that smuggling may exist on the border after Brexit cannot be used by the EU as a reason not to contemplate Alternative Arrangements. Ultimately smuggling into IE (which is what the EU will be concerned about) can be limited by legislation and market surveillance, neither of which is controversial in IE.

First, the UK would have to pass appropriate laws that require administrative formalities to have the benefit of trading across the border. Most important in this respect is that a 0% VAT on exports may only be charged if a correct customs export declaration is filed.

Second, the UK has to take care that the IT-systems that have to process the declarations are operational. The migration from CHIEF to CDS is a big concern. Without IT-systems working, trade gets very frustrated.

Third, the capacity and enforcement capability of HMRC has to be strengthened. HMRC will have to intensify administrative controls, and also will have to provide operational capacity to perform inland checks.

Fourth, we suggest a new set of UK laws to combat fraud and illegal smuggling with very severe penalties, combined with a commitment to effective enforcement. This could convince the EU to accept that the risk of circumvention of anti-dumping and anti-subsidy duties can be adequately managed without loss to the EU budget or the threat of the non-collection of such duties. It would also act as a deterrent. Such an approach has been suggested by others, notably the Northern Ireland Executive in its Discussion Paper on the Northern Ireland and Ireland Border.

Fifth, the Strand 2 North-South cooperation bodies could be used to monitor developments on the border to ensure there was not a significant increase in smuggling.

CHAPTER 9 – Movement of Agricultural and SPS Goods: The General Case

We recommend the adoption of a Single Epidemiological Unit Plus which covers livestock and all products intended for livestock for the Island of Ireland. We also recommend a common SPS area for the British and Irish Isles initially, which could be broken if the UK seeks to diverge and IE remains in the EU SPS area. If the people of NI wished to remain in an all-Island SPS regime, they could make the decision at this time. This is consistent with the Good Friday Agreement since the consent of the people of NI will determine the SPS rules in their region. Until that point, the British and Irish Isles Zone will maintain a common rule-book of SPS regulation which while theoretically being capable of diverging from EU SPS rules, in practice would only do so if and when the UK chose to diverge. At this point we assume IE would remain in the EU SPS area and UK would seek deemed equivalence to ensure minimal checks between the UK and the EU. These checks can be further minimised by placing them in natural break points such as the ports and harbours of the two islands.

In the event that no common SPS area of any kind is pursued, or to prepare for the situation that there is regulatory divergence between NI and IE at some point in the future, there are flexibilities in the BIP Regulation (and under the changes to EU BIP Regulation) that allow the BIPs to be away from the border, and for a number of checks to take place in facility if necessary. Provided the UK has some sort of deemed equivalence relationship with the EU at the least, it is possible for the impact of these checks to be minimised. In order to effect this the same sort of derogations will be necessary from the UCC as are being offered to France in its No Deal planning and with regard to the French Border Inspections Post set away from Calais. SPS checks are to be differentiated from veterinary checks as SPS checks may be carried out inland away from the border in any event. We note that increasingly, the EU's own rules in this area are changing and allowing more and more inspections to take place outside of BIPs. Our recommendations follow the grain of EU changes in this area.

Considering the specific situation in Calais with the ferry terminals and the Chunnel, in preparing for a no deal, the EU has accepted that veterinary inspections can be done at a BIP located away from the coast inland in France. Trains that go through the Chunnel can't stop for inspections of specific containers with veterinary goods. Trucks with veterinary goods can't be inspected at the ferry terminal as there is no parking space and no facility for a BIP.

As now, checks on SPS goods may be performed at Designated Points of Entry which may be located away from the border inland.

In addition to taking advantage of the geographical flexibilities of the BIP regulation itself and the direction of travel of EU regulation, the WTO frontier traffic exemption also allows deviation from customs formalities for an area away from the border as explained in Chapter 12.

Instead of performing inspections at the premises of the importer, they could also be done at the premises of the exporter, for example by Irish veterinary teams visiting premises in NI. We advocate a distributed BIP structure which would consist of documentary and verification checks taking place remotely. Any invasive physical inspection that may be required according to the risk assessment of the authorities would be carried out in premises of dispatch or arrival, or at other premises such as those of the logistics service providers, if particular premises do not have sufficient space for adequate inspection as per the BIP regulation that would apply in IE.

To accommodate the unique geographical requirements of the border between NI and IE, the analysis of the paperwork could be centralised and assessed remotely both in NI and IE. Continued access to TRACES for UK traders of Veterinary and SPS goods would greatly assist in the reduction of the paper trail and indeed would provide a mutual benefit for both the UK and the EU. Currently access to TRACES is granted to non-EU exporters, but NI would need access to more levels of TRACES than are currently available to some of the third country beneficiaries of the system. Parallel to these processes, each transaction could fulfil the customs obligations of making export, Transit and import declarations. In practice these processes are very much intertwined and will support each other.

CHAPTER 10 – Cross-Border Trade in Goods, Technical Regulation and Conformity Assessment

As it currently stands, the Political Declaration foresees that Technical Barriers to Trade (TBT) disciplines in such an agreement should set out common principles in the fields of standardisation, technical regulations, conformity assessment, accreditation, market surveillance and labelling. The possibility of cooperation of UK authorities with EU agencies operating in this field is also envisaged. Of particular importance to future cross-border trade on the Island of Ireland, it is also mentioned that regulatory cooperation, including with regard to alignment of rules, could be taken into account in the application of related checks and controls, considering this as a factor in reducing risk.

At the looser end of bilateral cooperation arrangements, the possibility of Mutual Recognition Agreements (MRAs) for product and/or sector-specific trade in manufactured goods is a possible solution to alleviate this issue for future trade between the UK and IE. A series of MRAs on the one hand, or a comprehensive MRA covering all product certifications for regulated manufactured products on the other, between the UK and the EU would make a significant contribution to reducing the need for controls and checks along the land border.

We advocate a mechanism which could be agreed to manage possible divergence by the UK with the EU's technical requirements and standards. This would require a mechanism to allow the accreditation of new UK regulations and standards as comparable with those of the EU on a dynamic basis. Such a mechanism exists, for example, in the EU-Japan Economic Partnership Agreement whereby if one party considers that a new technical regulation has the same objectives and product coverage are equivalent to that of the other party, a procedure is in place to allow the other party to recognise those technical regulations as equivalent.

A broad range of mechanisms could be agreed to facilitate the mutual acceptance of the results of conformity assessment procedures by the other side. These could, for example, include:

- (a) the incorporation of mutual recognition agreements for the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other party;
- (b) cooperative and voluntary arrangements between conformity assessment bodies located in the territories of the parties;
- (c) plurilateral and multilateral recognition agreements or arrangements to which both parties are participants;
- (d) the use of accreditation to qualify conformity assessment bodies;
- (e) government designation of conformity assessment bodies, including conformity assessment bodies located in the other party;
- (f) recognition by one side of results of conformity assessment procedures conducted in the territory of the other; and
- (g) permitting and/or facilitating manufacturer's or supplier's declaration of conformity.

For trade in industrial goods across the Irish border, we also suggest checks in-facility for TBT/product regulation which would allow the compliance of these products with the relevant standards to be verified by both UK and Irish authorities. Not only would this eliminate the need for checks at the border for compliance; it would also allow the competent authorities to check the products against the documentary product approvals which are normally held at the manufacturer's premise.

Greater use of market surveillance techniques would also greatly alleviate the need for border control inspections and so reduce the need for any physical infrastructure to be placed on the land border. This would mean that products placed in the respective markets of the UK and IE could be analysed and investigation in the market-place. Indeed, this kind of surveillance already takes place in the markets of both countries with non-complaint merchandise being withdrawn from the market under powers conferred by domestic law upon inspectors. This kind of surveillance could also be designed on an effective risk assessment basis which would in turn not impose a significantly greater resources requirement on the authorities of either country.

Increased market surveillance would not inherently conflict with the application of the Union UCC provisions since these activities are carried out under national legislation independent of the functioning of the UCC. In other words, there is no legal reason why these checks have to be carried out at the border. It is simply the choice of some EU Member States (notably Belgium and France) to carry out TBT inspections at their borders and, to a very large extent, these inspections are restricted to import inspections at ports where non-EU goods arrive. The UK and IE are free to opt not to carry out such inspections and checks at the border and instead focus more on investigations in the market-place. From our stakeholder engagements in IE, we do not think this will be controversial and indeed, the EU will require a greater level of market surveillance in IE to give them confidence that the customs union and single market are being protected.

Enhanced UK and IE legislation could also be introduced to discourage the placing on the market of non-conforming products so that there is a more significant disincentive from putting non-conforming products on these markets. EU legislation relating to the placing of products on the market does not recommend or restrict the ability of EU Member States, in this case IE, to sanction traders engaged in selling non-conforming products. In fact there is considerable latitude conferred on the Member States to adopt whatever level of penalties they deemed desirable as long as these are not disproportionate to the offence involved.

The combination of checks and market surveillance should be sufficient to persuade the EU that the system is sufficiently trustworthy to allow effective compliance in IE with the applicable EU rules as far as imports of industrial products made in the UK are concerned.

Finally, market surveillance co-operation between the UK and the EU-27, separate from and carried out after conformity assessment procedures, could be achieved by the extension of current EU-based IT platforms to the UK authorities. For example, the UK authorities could report into the RAPEX system and/or similar IT-platforms to engender confidence in the functioning of overall system of control over manufactured products being exchanged over the Irish border. The EU would, of course, have to agree to grant permission for the UK to continue to have access to this resource at least as far as government-to-government exchanges of information are involved.

CHAPTER 11 – Rules of Origin

There are recently introduced systems available similar to REX and importers knowledge, that can be used to claim and proof the origin of traded goods which involve hardly any or even no formalities. They would also help small businesses by not requiring new formalities for their cross-border trade.

In addition, alternatives are available to lessen the impact of these formalities drawn from the most recent FTAs negotiated by the EU and which include the following. First, in the EU-Japan EPA and CETA, a general tolerance rule has been added that allows manufacturers to use non-originating materials as long as their value does not represent more than 10% of the ex-works price or the free on board price of the product. Higher tolerance thresholds could be agreed in a future UK-EU settlement.

Second, the exclusions to the general tolerance rule can be reduced facilitating origin acquisition to UK and EU manufactured products.

Third, The EU-Japan EPA provides for bilateral and full bilateral cumulation while CETA allows full bilateral cumulation. Bilateral cumulation allows inputs/materials originating in Japan to be considered as originating in the EU when further processed or incorporated in the EU and exported to Japan (and vice and versa). Full bilateral cumulation allows the processing/operations carried out in Japan to be counted as qualifying operations in the EU, regardless of whether the processing is sufficient to confer originating status to the materials themselves (and vice and versa).

Fourth, and finally, the EU-Japan EPA and CETA allow a product considered originating in the EU or Japan to keep its originating status even if transported via a third country if the product does not undergo further processing, transformation or logistical operations other than unloading, reloading, splitting of consignments or any other operation necessary to preserve it in good condition and remains under customs supervision.

Similar kinds of simplifications could be included in a future UK-EU agreement in order to mitigate the impact of satisfying trans-border shipments across the Irish land border in order to move towards the goal of frictionless trade.

The UK should request not only full bilateral cumulation, but also diagonal cumulation with all other FTAs as this will materially assist manufacturers in NI and IE as well as the GB / NI / IE supply chains.

CHAPTER 12 – Small Traders

EU law already gives a range of existing simplifications and exemptions to facilitate small businesses and small transactions that do not interfere with the integrity or effective functioning of the EU single market. If these facilitations would be retained, and even extended, the burdens imposed for cross border trade by small companies and traders would already be significantly reduced.

A general exemption from customs procedures and reporting for economic operators trading at levels below the VAT reporting threshold, currently set at UKP 85,000 per annum, would also relieve smaller traders in NI and IE of the need to comply with such formalities. This would also significantly reduce the need for customs controls for trade in goods at the border given the low risk arising from small cross-border transactions.

Such an approach would benefit all micro businesses in NI and IE which we estimate to be around 65,500 business in NI alone.

This exemption could be justified under WTO law by the national security exception contained in Article XXI(b) of the GATT 1994 which allows WTO Members (so both the UK and IE) to depart from the WTO's general rules of Most-Favoured-Nation (MFN) and National Treatment of Internal Taxation and Regulation when action is required of the protection of their essential security interest. A recent WTO ruling interpreting these provisions indicate that the WTO Dispute Settlement Body (DSB) gives wide discretion for its Members to unilaterally determine what actions fall within this justification.

The history of violence that preceded the BA/GFA provides a strong justification for the use of this provision as does the possible future threat of further violence should a hard border be erected between NI and IE. With a high degree of certainty, BIPs placed on that border would be the obvious target for attack. To prevent this from happening, we take the view that the WTO national security protections provide a legal basis for this exemption. It is also difficult to see what WTO Member would have a sufficient legal interest in challenging such a measure in the WTO DSB.

Indeed, on the same basis, there are sound reasons why the current VAT registration annual threshold should be increased upwards which would provide more relief to an even greater number of NI and IE small traders.

As our research indicates, there are approximately 7,000 firms in this group in NI although only a much smaller number report being engaged in cross-border trade. Most of these will be registered for VAT purposes and so already making tax declarations for their cross-border trading in goods activities. Because they are already registered for VAT and tax purposes, their import/export sales should be declared. Checks on the accuracy of these returns can be made at their premises by the customs authorities in both countries which, if properly reported, would enable the authorities to verify this information without the need to control and verify transactions at the border through physical inspection of the documentation.

Traders in this category should also be encouraged to use newer programmes in development (such as the ISR proposal) and other such customs facilitations and indeed the same is equally true for micro-business as well.

For firms engaged in cross-border trade in services such as, for example technicians, veterinarians, doctors, plumbers, etc., and who require tools and/or special equipment to provide those services, the WTO frontier traffic exemption set out in Article XXIV:3(a) of the GATT 1994 allows the UK and IE to extend advantages to each other in order to facilitate frontier traffic. A general dispensation for these service providers from having to declare their tools and equipment each and every time they cross the border to supply their services to customers on the other side seems to us fully justified under this provision.

Requiring these service providers to declare their equipment on a regular basis is clearly disproportionate to the need to control risk of smuggling or fraud during importation and exportation since in almost all likely scenarios these goods will be personally-owned equipment not intended for resale. Such equipment could likely only be sold in the second-hand market further reducing the risk of resale.

Obviously the wider the zone created using the frontier traffic exemption, the more effective this relief would be for small traders and cross-border service providers. In our view, a reasonable zone would be in the region of 30 miles on each side of the border given that longer journeys become increasingly difficult to carry out on a daily basis and return back to the home side of the border.

Finally, we also recommend that a transitional assistance fund is established jointly by the UK and IE governments to provide the necessary IT support and education to small traders to allow them to opt for the right choice when evaluating the available reliefs that are best suited to their own individual situations. Financial compensations could be made available to cover a part of the extra costs of the new obligations.

Individual advice and financial support for small businesses can help them to implement the new obligations with minimal adjustment of present procedures and costs.

Each individual trader can be helped by a customs coach with an analysis of how best to implement and use the legal simplification facilities and operationalise them. The coach can help apply for permissions and simplifications at customs and tax authorities. Training can be provided if the company wants to be self-sufficient in fulfilling its obligations.

If the range of reliefs proposed in this Chapter for small traders, then the last remaining justifications for the need for cross-border infrastructure and customs controls can be eliminated.

CHAPTER 13 – Operationalising the Recommendations

The various bodies created under the BA/GFA process have not been fully and properly utilised. First, operationalising the Northern Ireland assembly (strand one of the BA/ GFA) is a critical point, partly in order to rebuild trust on the Island of Ireland, and create the vehicle for many of the decisions we have referred to in this document to be made. We have had the opportunity to meet with most of the political parties in NI (see list in Annex).

The GFA bodies need to also be revived in such a way that they, and not the institutions created by the UK-EU Withdrawal Agreement are doing the heavy lifting on ensuring cooperation and coordination as required in the BA/GFA. There are a number of bodies, such as the North-South Ministerial Council, the British-Irish Council, and the Special EU Programmes Body which could be more active in the prosecution of the goals of the BA/GFA, and should have a significant role in the implementation of these Alternative Arrangements.

One of the problems associated with the Backstop is that it replaces the work of these bodies with the work of the Joint Committee to some extent and this would seem to usurp the functions of the BA/GFA bodies. The various bodies could be involved in monitoring the arrangements, for example ensuring that smuggling was not increasing to unacceptable levels (understanding that customs interventions do not stop smuggling – ultimately market surveillance and strong laws on conformity - with significant penalties – are required).

If no deal and all it implies for the Island of Ireland is to be avoided, conversations need to occur between the nationalist community of IE, the nationalist community in NI and the unionist community in NI.

The Report contains a set of operationalising action steps which needs to be undertaken by the UK, Irish and other countries' governments. In order for these operationalising recommendations to work, it is also crucial that there is collaboration and coordination between the Irish government, UK government and, in view of the critical Dover-Calais element to Irish trade into the EU, the French government.

We recognise that many businesses are anxious to know of the costs of these proposals. Costs are difficult to project with certainty as many of our proposals are cost neutral (common regulatory areas) or can lead to savings (the Trusted Trader Programmes). However, we do give a rough estimate of the costs of filing customs declarations, and an indication of the scale of the transitional adjustment fund we would need to put in place.

We acknowledge the concerns expressed regarding the potential for VAT fraud and smuggling. We suggest that the incentives for VAT fraud are not as high as some have suggested as long as the VAT rates are broadly aligned, and provided the parties both have postponed accounting for VAT. We note the larger problem is carousel VAT fraud which will not occur when the UK leaves as it is an intra-member state problem. We also recommend a renewed focus in the UK government on intelligence led targeting efforts which include a new Targeting Centre with a focus on the potential for NI/IE smuggling and VAT fraud.

CHAPTER 14 – Technology

While our proposals and recommendations do not rest on technology, it would be wrong to suggest that technology plays no role at all. Technology exists all over the world and is deployed in ways that the UK and Irish governments need to embrace. The technology projects required to support establishing an Alternative Arrangements model during the transition period needs to be focused on the critical requirements only, prioritising those which will be required to help minimise any disruption to trade. These solutions can then be expanded beyond the transition period to provide a vast range of border management and control capabilities.

The technology priorities for the Alternative Arrangements programme must focus on supporting its core policy strategies to maintain trade in the region. These include;

- Maintaining access to a range of EU systems to provide Traceability, maintaining health and safety standards and securing market surveillance capabilities;
- The development of automated processing of border crossing of goods vehicles under the Transit process; and
- Mobile solutions to support inspections of general and SPS goods away from the border.

A focused and clearly scoped approach to deliver these core technology solutions will ensure they can be achieved in the proposed transition period.

Appendix 1 – Parliamentary Commissioners

Bim Afolami MP	Marcus Fysh MP	Rt Hon Esther McVey MP
Steve Baker MP	Mark Garnier MP	Rt Hon Nicky Morgan MP
Lord Bew	Rt Hon Dame Cheryl Gillan MP	Neil O’Brien MP
Sir Graham Brady MP	Lord Glasman	Rt Hon Owen Paterson MP
Suella Braverman MP	Luke Graham MP	Chris Philp MP
Sir Geoffrey Clifton-Brown MP	Rt Hon Damian Green MP	Rt Hon Dominic Raab MP
Rt Hon Stephen Crabb MP	Rt Hon Greg Hands MP	Jacob Rees-Mogg MP
Rt Hon David Davis MP	Kate Hoey MP	Lee Rowley MP
Rt Hon Nigel Dodds MP	Lord Hogan-Howe QPM	Rt Hon Lord Trimble
Rt Hon Iain Duncan Smith	Lord Lamont of Lerwick	Shailesh Vara MP
MP Rt Hon Philip Dunne MP	Lord Lilley	Rt Hon Theresa Villiers MP
George Eustice MP	Emma Little-Pengelly MP	Charles Walker MP
Rt Hon Sir Michael Fallon MP	Alan Mak MP	Lord Wolfson of Aspley Guise
Baroness Finn	Kit Malthouse MP	
Rt Hon Arlene Foster MLA	Lord Marland	

Appendix 2 – Technical Panel

1. Peter Allgeier, President, Nauset Global LLC
2. Christer Andersson, Independent International Customs Expert
3. Lord Bew, Professor of Irish Politics, Queen’s University, Belfast
4. Rickie Cole, Business Development Manager - Governments & Institutions, SGS Ltd
5. Frank Dunsmuir, Industry Lead for Customs and Borders, Fujitsu
6. Dr Graham Gudgin
7. Des Hiscock, KGH Customs and ACITA
8. Lord Hogan-Howe QPM
9. Lars Karlsson, Independent International Customs Expert
10. Iain Liddell, Group Managing Director, Founder and Owner, Uniserve Group
11. Dr Robert MacLean, Independent International Customs Lawyer
12. Hans Maessen, Independent Customs Advisor
13. Alan Oxley, Principal, ITS Global
14. Eduardo Perez-Motta, Advisory Board Member, American Antitrust Institute
15. Jennifer Powers, Associate, Competere
16. Bertrand Rager, Managing Director, CUSTAX & LEGAL
17. Dr Srinivasa Rangan, School of Strategy and Global Studies, Babson College, US
18. Razeen Sally, Associate Professor, Lee Kuan Yew School of Public Policy, University of Singapore
19. Shanker Singham, CEO, Competere
20. Sir Lockwood Smith, Former High Commissioner to the UK, Government of New Zealand
21. Tony Smith CBE, Global Expert, Border Management and Security
22. Dinesh Unadkat, Director - Customs & Excise Compliance, J D Consultants
23. John Weekes, Senior Business Adviser, Bennett Jones

Appendix 3

We would like to thank the following businesses, representative organisations, NGOs, policy-makers, local authorities and political parties which have engaged with the Commission's work by meeting with and/or providing advice to members of the Commission in Belfast, Berlin, Brussels, Derry-Londonderry, Dublin, Newry, London and The Hague:

ABM Data	European Chemical Industry Council (Cefic)
Alliance Party	Fleming Agri
Almac	Foremost Freight
American Chamber of Commerce in the EU	Foyle Port
Airporter	Freight Transport Association NI
Antwerp Chamber of Commerce & Port Association (Alfaport)	Federation of European Private Port Companies & Terminal Operators (Feport)
Beagans Limited	Federation of Small Business
Belgian Association for Freight Forwarding (Forward Belgium)	Federation of Small Business NI
Brexit Institute, Dublin City University	French Transport and Logistics Association (TLF)
British Chambers of Commerce	Gen-sys
British Embassy, Berlin	Greenfields Ireland
British Embassy, Dublin	Herbert Smith Freehills
British Embassy, The Hague	Her Majesty's Revenue & Customs
British - Irish Chamber of Commerce	Houston Solutions
British Retail Consortium	Institute of Directors
Business Europe	Interfrigo
Confederation of British Industry	Irish Cattle and Sheep Association
City Centre Initiative Derry - Londonderry	Irish International Freight Association
Clarksons Port Services	Irish SME Association
Coca-Cola HBC	Jack Murphy Jewellers
Dairy UK	JN Wine
Democratic Unionist Party	Lakeland Dairies
Department for Exiting the European Union, UK	Londonderry Chamber of Commerce
Department for the Economy, NI	Manifests Ireland
Derry City and Strabane District Council	Manufacturing NI
Diageo	Members of the Dutch Parliament
Duddy Group	Members of the German Parliament
European Association for Forwarding, Transport, Logistics and Customs Services (Clecat)	Members of the Irish Parliament
	Members of the UK Parliament
	MJM Construction

MJM Construction	Open Europe
National Farmers Union	Ráth Mór Creggan Enterprises
Newry and Mourne Enterprise Agency	Social Democratic and Labour Party
Newry Business Improvement District	The Executive Office, Northern Ireland
Newry Chamber of Commerce	The Quays, Newry
NI Food and Drink Federation	UK Representation to the EU
NI Grain Trade Association	Ulster Farmers Union
NI Mineral Products Association	Ulster Unionist Party
NI Retail Consortium	Ulster University
Norbrook	Vodafone
Northern Ireland Affairs Committee, UK Parliament	Warrenpoint Port
NSF International	Wells Cargo Logistics
NuPrint	Wisetech Global
O'Neills International Sportswear	World Customs Organisation
	World Shipping Council

Consultation process

We published our Interim Report on 24th June in London and ran a consultation process until July 8th. During this period members of the Commission presented our Interim Recommendations to stakeholders in the UK, Ireland, Germany, Netherlands and Brussels.

We also encouraged stakeholders to submit written advice via a dedicated page on our website. We are grateful to those individuals and organisations who made valuable submissions in this way.

LONDON

June 24th
2019



BERLIN

June 27th
2019



THE HAGUE

June 28th
2019



BELFAST

July 3rd
2019



DUBLIN

July 4th
2019



BRUSSELS

July 11th
2019





**ALTERNATIVE
ARRANGEMENTS
FOR THE IRISH
BORDER REPORT
PROTOCOLS**

FOREWORD

The **first of the two draft legal texts** has been prepared in order to demonstrate how the solutions proposed in Prosperity UK's Report on Alternative Arrangements for the Irish Border can be translated into a form that can be easily inserted into the Withdrawal Agreement by means of a technical amendment. The Withdrawal Agreement has already been the subject of a technical amendment and another will in any event undoubtedly be necessary if only to adjust the duration of the transition period.

The approach that has been taken is to draft an alternative to the existing protocol on Ireland/Northern Ireland that can come into force if the agreed pre-conditions are fulfilled and will then replace the existing protocol. It completes the Withdrawal Agreement by inserting the alternative arrangements that were, ever since the Joint Report of December 2017, envisaged as potentially rendering extensive regulatory alignment unnecessary.

The alternative protocol (that we call "Protocol A") follows the existing protocol (that becomes "Protocol B") as closely as possible. In doing so, we use to the full the hard work that has gone into designing Protocol B in order to preserve the 1998 Agreement and the cooperation that has resulted from it. The changes are kept to a minimum and chiefly comprise replacing the technique of avoiding border controls through customs and regulatory alignment with one that recognises that controls will become necessary on commercial trade across the Border but moves those controls away from the Border.

Many techniques of Protocol B are used in Protocol A and should therefore be readily acceptable. They include listing details and legislative acts in annexes and providing powers to a range of institutions to manage the Protocol (the institutions of the 1998 Agreement, the Specialised Committee, the Joint Consultative Working Group and the Joint Committee of the Withdrawal Agreement). Of course, this is just a draft framework and the provisions as well as the detailed content of the annexes are open for negotiation.

The **second draft legal text** (that we call "Protocol C") is a revised version of the alternative Protocol A described above that can be part of contingency planning and may be used to mitigate problems on the Irish Border if the Withdrawal Agreement should not be concluded for some reason and alternative arrangements need to be adopted at short notice. It could also be used in any agreement that the UK and EU do ultimately conclude to deal with this issue.

The content is the same as Protocol A except that the conditions for its entry into force are translated in obligations to be fulfilled as soon as possible and the references to obligations and institutions in the Withdrawal Agreement are replaced by self-standing provisions.

Eric White

Consultant

Herbert Smith Freehills LLP

PROTOCOLS AB

PROTOCOLS AB

TECHNICAL AMENDMENTS TO THE WITHDRAWAL AGREEMENT TO ALLOW FOR ALTERNATIVE PROTOCOLS ON IRELAND AND NORTHERN IRELAND

1. TECHNICAL AMENDMENT TO ARTICLE 182 (PROTOCOLS AND ANNEXES)

The words “The Protocol on Ireland / Northern Ireland” in Article 182 are replaced by the words “Alternative Protocols A and B on Ireland / Northern Ireland”.

2. TECHNICAL AMENDMENT TO ARTICLE 185 (ENTRY INTO FORCE AND APPLICATION)

The fifth paragraph of Article 185 is replaced by the following two paragraphs:

“The Joint Committee shall adopt a decision before 31 December 2020 on whether or not the conditions for the application of Protocol A on Ireland/Northern Ireland set out in its Article 6(2) have been fulfilled or whether Protocol B on Ireland/Northern Ireland will need to apply as from the end of the transition period. In event of a failure of the Joint Committee to adopt such a decision before [1 July 2020], the matter shall be referred to arbitration pursuant to Title III of Part Six. The arbitrators shall render their decision as to the fulfilment of the conditions for the application of Protocol A before [1 December 2020] and this decision shall be binding on the Parties in the same way as the decision of the Joint Committee. If the transition period is extended pursuant to Article 132, these dates shall be postponed by a period equal to the prolongation of the transition period.

The following provisions shall apply as from the entry into force of this Agreement:

- a) With respect to Protocol A [provisions of Protocol A providing for preparatory action]:
 - Articles 1, 2 and 3;
 - Article 6(2), subparagraph (a) of Article 6(3), Article 6(6) and Article 6(7);
 - Article 14(2);
 - Article 16;
 - Article 17(1) to (4) and (6);
 - Article 21.

- b) With respect to Protocol B [text unchanged]:
 - Articles 1, 2 and 3;
 - the last sentence of the third subparagraph, the fourth subparagraph, the last sentence of the fifth subparagraph, and the sixth subparagraph of Article 6(1);
 - the second sentence of the first subparagraph of Article 6(2);
 - the last sentence of Article 12(2);
 - Article 14(3);
 - Article 16;

- Article 17(1) to (4) and (6);
- Article 21;
- the third sentence of Article 4(3) and Article 5(2) of Annex 2;
- the second sentence of Article 4(1), Article 8(1) and the first sentence of the second paragraph of Article 13 of Annex 3;
- Articles 1(4) and 2(3), the last sentence of Article 7(2) and the first paragraph of Article 8 of Annex 4; and
- the first paragraph of Annex 9.”

3. TECHNICAL AMENDMENT TO PROTOCOLS

3.1 The following text is inserted as a first protocol to the Agreement:
“PROTOCOL A ON IRELAND/NORTHERN IRELAND

The Union and the United Kingdom,

HAVING REGARD to the historic ties and enduring nature of the bilateral relationship between Ireland and the United Kingdom,

RECALLING that the United Kingdom’s withdrawal from the Union presents a significant and unique challenge to the Island of Ireland, and reaffirming that the achievements, benefits and commitments of the peace process will remain of paramount importance to peace, stability and reconciliation there,

RECOGNISING that it is necessary to address the unique circumstances on the Island of Ireland through a unique solution in order to ensure the orderly withdrawal of the United Kingdom from the Union,

RECALLING that the Withdrawal Agreement, which is based on Article 50 TEU, does not aim at establishing a permanent future relationship between the Union and the United Kingdom,

HAVING REGARD to the Union and to the United Kingdom’s common objective of a close future relationship, in full respect of their respective legal orders,

AFFIRMING that the Good Friday or Belfast Agreement of 10 April 1998 between the Government of the United Kingdom, the Government of Ireland and the other participants in the multi-party negotiations (the “1998 Agreement”), which is annexed to the British-Irish Agreement of the same date (the “British-Irish Agreement”), including its subsequent implementation agreements and arrangements, should be recognised by both Parties as a peace treaty and protected in all its parts,

RECOGNISING that cooperation between Northern Ireland and Ireland is a central part of the 1998 Agreement and is essential for achieving reconciliation and the normalisation of relationships on the Island of Ireland, and recalling the roles, functions and safeguards of the Northern Ireland Executive, the Northern Ireland Assembly, and the North-South Ministerial Council (including cross-community provisions), as set out in the 1998 Agreement,

NOTING that Union law has provided a supporting framework to the provisions on Rights, Safeguards and Equality of Opportunity of the 1998 Agreement,

RECOGNISING that Irish citizens in Northern Ireland, by virtue of their Union citizenship, will continue to enjoy, exercise and have access to rights, opportunities and benefits, and that this Protocol should respect and be without prejudice to the rights, opportunities and identity that come with citizenship of the Union for the people of Northern Ireland who choose to assert their right to Irish citizenship as defined in Annex 2 of the British-Irish Agreement “Declaration on the Provisions of Paragraph (vi) of Article 1 in Relation to Citizenship”,

RECALLING the commitment of the United Kingdom to protect North-South cooperation and its guarantee of avoiding a hard border, including any physical infrastructure or related checks and controls at the border between Ireland and Northern Ireland (“the Border”), and bearing in mind that any future arrangements must be compatible with these overarching requirements,

NOTING that nothing in this Protocol prevents the United Kingdom from ensuring unfettered market access for goods moving from Northern Ireland to the rest of the United Kingdom’s internal market,

UNDERLINING the Parties’ shared aim of reducing, to the extent possible in accordance with applicable legislation and taking into account their respective regulatory regimes as well as their implementation, controls at the ports and airports of Northern Ireland,

RECALLING that the Joint Report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union of 8 December 2017 outlines three different scenarios for protecting North-South cooperation and avoiding a hard border, but that this Protocol is based on the second scenario and seeks to avoid the application of Protocol B to the Withdrawal Agreement, which is based on the third scenario,

NOTING that, in accordance with Article 132 of the Withdrawal Agreement, the transition period may be extended by mutual consent,

RECALLING that the two Parties have carried out a mapping exercise, which shows that North-South cooperation relies to a significant extent on a common Union legal and policy framework,

NOTING that therefore the United Kingdom's departure from the Union gives rise to substantial challenges to the maintenance and development of North-South cooperation,

RECALLING that the United Kingdom remains committed to protecting and supporting continued North-South and East-West cooperation across the full range of political, economic, security, societal and agricultural contexts and frameworks of cooperation, including the continued operation of the North-South implementation bodies,

ACKNOWLEDGING the need for this Protocol to be implemented so as to maintain the necessary conditions for continued North-South cooperation, including for possible new arrangements in accordance with the 1998 Agreement,

RECALLING the Union and the United Kingdom's commitments to the North South PEACE and INTERREG funding programmes under the current multi-annual financial framework and to the maintaining of the current funding proportions for the future programme,

AFFIRMING the commitment of the United Kingdom to facilitate the efficient and timely transit through its territory of goods moving from Ireland to another Member State or another third country, or vice versa,

DETERMINED that the application of this Protocol should impact as little as possible on the everyday life of communities both in Ireland and Northern Ireland,

MINDFUL that the rights and obligations of Ireland under the rules of the Union's internal market and customs union and the United Kingdom's need to maintain an independent trade and regulatory policy must be fully respected,

HAVE AGREED UPON the following provisions, which shall be annexed to 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 ("Withdrawal Agreement"):

ARTICLE 1

Objectives and relationship to Protocol B

1. The Parties recognise the 1998 Agreement as a peace treaty and agree to protect it in all its dimensions including with respect to the constitutional status of Northern Ireland and the principle of consent, which provides that any change in that status can only be made with the consent of a majority of its people.
2. This Protocol respects the essential State functions and territorial integrity of the United Kingdom.
3. This Protocol sets out arrangements necessary to address the unique circumstances on the Island of Ireland, maintain the necessary conditions for continued North-South cooperation, avoid a hard border and protect the 1998 Agreement in all its dimensions.
4. Once this Protocol is rendered applicable in accordance with Article 185 of the Withdrawal Agreement, Protocol B shall not apply and subparagraph b) of the sixth paragraph of Article 185 of the Withdrawal Agreement and any acts adopted solely on the basis of the provisions of Protocol B referred to in that subparagraph shall cease to apply.

ARTICLE 2

Subsequent agreement on the future relationship between the Union and the United Kingdom

1. The Union and the United Kingdom shall use their best endeavours to conclude, by 31 December 2020, an agreement on their future relationship which supersedes this Protocol in whole or in part.
2. The objective of the Withdrawal Agreement is not to establish a permanent relationship between the Union and the United Kingdom. The provisions of this Protocol are therefore intended to apply only temporarily, taking into account the commitments of the Parties set out in Article 2(1). The provisions of this Protocol shall apply unless and until they are superseded, in whole or in part, by an agreement on the future relationship between the Union and the United Kingdom.
3. Any subsequent agreement between the Union and the United Kingdom shall indicate the parts of this Protocol which it supersedes. Once a subsequent agreement between the Union and the United Kingdom becomes applicable after the entry into force of the Withdrawal Agreement, this Protocol shall then, from the date of application of such subsequent agreement and in accordance with the provisions of that agreement setting out the effect of that agreement on this Protocol, not apply or shall cease to apply, as the case may be, in whole or in part.

ARTICLE 3

Extension of the transition period

The United Kingdom, having had regard to progress made towards conclusion of the agreement referred to in Article 2(1) of this Protocol, may at any time before 1 July 2020 request the extension of the transition period referred to in Article 126 of the Withdrawal Agreement. If the United Kingdom makes such a request, the transition period may be extended in accordance with Article 132 of the Withdrawal Agreement.

ARTICLE 4

Rights of individuals

1. The United Kingdom shall ensure that no diminution of rights, safeguards and equality of opportunity as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.
2. The United Kingdom shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards.

ARTICLE 5

Common Travel Area

1. The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (the "Common Travel Area"), while fully respecting the rights of natural persons conferred by Union law.
2. The United Kingdom shall ensure that the Common Travel Area and the associated rights and privileges can continue to apply without affecting the obligations of Ireland under Union law, in particular with respect to free movement to, from and within Ireland for Union citizens and their family members, irrespective of their nationality.

ARTICLE 6

Avoidance of physical infrastructure for inspection of goods or for the accomplishment of other formalities at the Border

1. In order to protect the 1998 Agreement, the Parties agree that no physical infrastructure for the inspection of goods or for the accomplishment of other export and import formalities shall be installed on or near the Border and that

all non-exempted import and export transactions shall take place under the transit procedures provided for in the Common Transit Convention ("CTC") as amended and complemented by rules to be laid down by decision of the Joint Committee or Annex 3.

2. In order to allow the application of this Protocol, the following conditions, within the meaning of Article 185 of the Withdrawal Agreement, shall be required to be satisfied:
 - a) The United Kingdom shall accede to the CTC and the Convention on the Simplification of Formalities in the Trade of Goods.
 - b) The United Kingdom shall develop and implement authorised economic operator ("AEO") and trusted trader ("TT") programmes as described in Part 1 of Annex 2 so as to ensure the conduct of export and import formalities on non-exempted transactions involving goods before and after crossing the Border while minimising the risk of fraudulent transactions.
 - c) The United Kingdom shall develop the automated transit tracking technology described in Part 2 of Annex 2 and demonstrate its viability.
 - d) The United Kingdom shall define the categories of transactions that are exempted from the obligation of declaration prior to or subsequent to crossing the Border in accordance with the criteria in Part 3 of Annex 2.
 - e) The United Kingdom shall propose to the Joint Committee the detailed rules for the conduct of trade in goods across the Border without physical infrastructure on the Border amending and complementing those contained in Annex 3.

3. In order to achieve the objectives set out in paragraph 1, the Parties shall:
 - a) cooperate to ensure the fulfilment of the conditions set out in paragraph 2 and the adoption of detailed rules by the Joint Committee
 - b) allow goods to be transported across the Border under the transit procedures provided for in the CTC as amended and complemented by rules to be laid down by decision of the Joint Committee or, in the absence of such a decision, in Annex 3
 - c) maintain AEO and TT programmes that comply with the criteria set out in Part 1 of Annex 2
 - d) implement the automated transit tracking technology described in Part 2 of Annex 2
 - e) promote the use of their AEO and TT programmes and provide financial assistance and training for this purpose
 - f) exempt from export and import formalities transactions that comply with the criteria set out in Part 3 of Annex 2
 - g) mutually recognise decisions taken under their respective AEO and TT programmes where these comply with the criteria laid down in Part 1 of Annex 2 and their respective exemption regulations where these comply with the criteria laid down in Part 3 of Annex 2.

4. The United Kingdom shall also establish a Small Trader Transitional Adjustment Fund to provide assistance to eligible small businesses on both sides of the Border to adapt to the changes brought about by the withdrawal of the United Kingdom from the Union and to compensate for costs and losses that this engenders. The United Kingdom shall establish a Capacity Building Fund to promote collaboration between customs authorities and finance the building and training of customs capacity both in the United Kingdom and Ireland.
5. The Parties shall cooperate in the application and enforcement of their transit arrangements and their AEO and TT programmes as well as the conditions applying to exempted transactions so as to allow all inspections and other export and import formalities to be conducted away from the Border.
6. The Joint Committee shall adopt before the end of the transition period the detailed rules for the conduct of trade in goods across the Border without the need for physical infrastructure on the Border. In the absence of such a decision adopted before the end of the transition period, Annex 3 shall apply.
7. The Joint Committee may adopt decisions amending Annexes 2 and 3 to this Protocol, where such amendments are necessary for the proper functioning of this Protocol. Such decisions may not amend the essential elements of this Protocol or the Withdrawal Agreement. The Joint Committee may also address recommendations to the Parties concerning any changes to the CTC that it considers necessary or desirable in order to allow or facilitate such trade.

ARTICLE 7

Protection of the UK internal market

Nothing in this Protocol shall prevent the United Kingdom from ensuring unfettered market access for goods moving from Northern Ireland to the rest of the United Kingdom's internal market.

ARTICLE 8

Technical regulations, assessments, registrations, certificates, approvals and authorisations

1. The Parties agree not to introduce any obstacle to goods crossing the Border for reasons related to the need for compliance with technical regulations or requirements for assessments, registrations, certificates, approvals or authorisations. All necessary controls shall be conducted prior to or after crossing the border, preferably at the point of dispatch or arrival.
2. The Joint Committee may adopt provisions necessary to ensure compliance with technical regulations or requirements for assessments, registrations, certificates, approvals or authorisations to take account of the absence of controls

conducted at the Border. It may issue recommendations to the Parties to introduce additional controls, including allowing the use of private sector firms to provide market surveillance and product conformity assessment, and stricter penalties for the placing on the market of non-conforming goods where this is necessary to constitute an effective and proportionate deterrent.

ARTICLE 9

VAT and Excise Duties

1. The Parties agree to cooperate to prevent fraud relating to VAT and excise duties so as to avoid the need for controls on the Border. Each party shall ensure that details of all transactions subject to value added tax ("VAT") and excise duties which take place in Northern Ireland and Ireland are made available to the other on request for the purposes of ensuring that VAT and excise duties that become due are collected. For this purpose, the Union shall continue to allow the United Kingdom to participate in the VAT Information Exchange System ("VIES").
2. The United Kingdom shall introduce and maintain VAT collection on the basis of the postponed accounting principle and ensure that on import declarations, the identity of the company that is engaged in the shipment and its value are clear.
3. The Parties will not allow refund of VAT on export in the case of exempted transactions as defined in legislation implementing Part 3 of Annex 2 and will not charge VAT on the corresponding import.
4. The United Kingdom shall ensure that specific provisions on VAT cooperation and on continuing current cooperation in respect of excise duties (such as the dying of petrol) will be respected.
5. The Parties shall continue to apply provisions for the protection of VAT and excise duty receipts based on those contained in the provisions of Union law listed in parts 1 and 2 of Annex 5 respectively.
6. The Joint Committee shall regularly discuss the implementation of this Article, and where appropriate, adopt the necessary measures for its proper application including amendments to Annex 5.

ARTICLE 10

Agriculture

1. The Parties agree to treat the whole of the Island of Ireland as a Single Epidemiological Unit and that for that purpose:
 - a) the Union disease control measures listed in Part 1 of Annex 6 shall apply, under the conditions set out therein, to and in the United Kingdom in respect of NI.

- b) the sanitary and phytosanitary (“SPS”) measures identified in Part 2 of Annex 6 shall apply, under the conditions set out therein, to and in the United Kingdom in respect of Northern Ireland to animal feed and other products intended for animal consumption.
2. The Parties agree to seek to preserve a Common SPS Area for the British and Irish Isles and for that purpose the measures listed in Part 3 of Annex 6 shall apply, under the condition set out therein, to and in the United Kingdom subject to paragraph 3.
3. The United Kingdom shall remain free to adopt SPS legislation that diverges from that of the Union in respect of the territory of the United Kingdom outside of Northern Ireland. If a material divergence between the SPS legislation of the United Kingdom outside of Northern Ireland and that listed in Part 3 of Annex 6 arises, the Joint Committee may, on the basis of a request from the Northern Ireland Executive following a recommendation from the Northern Ireland Assembly and after consulting the British-Irish Council, decide to delete the corresponding measures from Part 3 of Annex 6. The Joint Committee may also adopt any or all of the following measures in order to avoid the need for controls at the Border:
- a) Measures to allow inspections of animal and plant products to take place away from the Border and preferably at the places of dispatch or arrival or at inspection points established at least [50 miles] away from the Border;
 - b) Measures to authorise Irish veterinary teams to visit the premises of agricultural producers in Northern Ireland for the purpose of performing inspections;
 - c) Measures to establish [distributed Border Inspection Post (“BIP”) structure for trade in agricultural producers across the Border which would allow documentary and verification inspections to take place at remote sites or at approved inland locations, for example in a cold storage facility where a container is unloaded];
 - d) [Measures maintaining BIP for trade in livestock between the United Kingdom mainland and the Island of Ireland to allowing the carrying out of any customs registration procedures to be confined to the ports and harbours of the Irish Sea.]
 - e) [Introduction of technology to ensure that the transit of SPS goods to designated inspection points can be monitored by Smart Border technology solutions]
 - f) [other necessary measures].
4. The United Kingdom shall continue to have access to the Union IT platform known as the TRAdE Control and Expert System (“TRACES”) that facilitates the tracking and trading of all goods requiring veterinary and SPS controls between registered traders within the Union and between the Union and third countries.

5. The environmental measures listed in Part 4 of Annex 6 shall apply, under the conditions set out therein, to and in the United Kingdom in respect of Northern Ireland.
6. The Joint Committee shall regularly discuss the implementation of this Article and, where appropriate, adopt amendments to Annex 6.

ARTICLE 11

Single electricity market

The Parties agree that the wholesale electricity markets on the Island of Ireland shall continue to be governed as they have been prior to the end of the transition period. The Joint Committee shall adopt a decision prior to the end of the transition period laying down the necessary provisions for the continuation of the wholesale electricity markets based on the provisions listed in Annex 7 to this Protocol.

ARTICLE 12

Establishment of Enhanced Economic Zones

1. In order to mitigate the impact of the withdrawal of the United Kingdom from the Union on the economy of highly integrated areas on both sides of the Border, the Parties agree to establish Enhanced Economic Zones spanning the Border in the districts listed in Part 1 of Annex 8.
2. Within these Enhanced Economic Zones the specific derogations from otherwise applicable regulations may apply as listed in Part 2 of Annex 8.
3. Special Economic Zones and Free Trade Zones as well as other customs facilitations that may be necessary to facilitate trade may be set up in the Enhanced Economic Zones consistent with the conditions and requirements set out in Annex 8 and the WTO Agreement taking into account Article XXIV.3(a) of GATT 1994. Trade between Special Economic Zones and Free Trade Zones and other territories shall be subject to the special regimes specified in Part 3 of Annex 8.
4. The Joint Committee shall keep under constant review the operation of the Enhanced Economic Zones. The Joint Committee may make appropriate recommendations to the United Kingdom and Ireland in this respect, including on recommendation from the Specialised Committee.

ARTICLE 13

Other areas of North-South cooperation

1. Consistent with the arrangements set out elsewhere in this Protocol, and in full respect of Union law, this Protocol shall be implemented and applied so as to maintain the necessary conditions for continued North-South cooperation,

including in the areas of environment, health, agriculture, transport, education and tourism, as well as in the areas of energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport. In full respect of Union law, the United Kingdom and Ireland may continue to make new arrangements that build on the provisions of the 1998 Agreement in other areas of North-South cooperation on the Island of Ireland. A [non-exhaustive] list of the areas of cooperation is contained in Annex 9.

2. The Joint Committee shall keep under constant review the extent to which the implementation and application of this Protocol maintains the necessary conditions for North-South cooperation. The Joint Committee may make appropriate recommendations to the Union and the United Kingdom in this respect, including on recommendation from the Specialised Committee.

ARTICLE 14

Implementation, application, supervision and enforcement

1. The authorities of the United Kingdom shall be responsible for implementing and applying the provisions of Union law made applicable by this Protocol to and in the United Kingdom in respect of Northern Ireland.
2. The Parties shall closely cooperate in the implementation, application, supervision and enforcement of this Protocol. Title III of Part Six of the Withdrawal Agreement shall apply to any disputes that may arise.

ARTICLE 15

Common provisions

1. Titles I and III of Part Three, as well as Part Six of the Withdrawal Agreement shall apply without prejudice to the provisions of this Protocol.
2. Notwithstanding Article 6(1) of the Withdrawal Agreement, and unless otherwise provided, where this Protocol makes reference to a Union act, the reference to that act shall be read as referring to it as amended or replaced.
3. Where the Union adopts a new act that falls within the scope of this Protocol, but neither amends nor replaces a Union act listed in the Annexes to this Protocol, the Union shall inform the United Kingdom of this adoption in the Joint Committee. Upon request of the Union or the United Kingdom, the Joint Committee shall hold an exchange of views on the implications of the newly adopted act for the proper functioning of this Protocol within 6 weeks after the request.

As soon as reasonably practical after the Union has informed the United Kingdom in the Joint Committee, the Joint Committee shall either:

- a) adopt a decision adding the newly adopted act to the relevant Annex of this Protocol; or
- b) where an agreement on adding the newly adopted act to the relevant Annex to this Protocol cannot be reached, examine all further possibilities to maintain the good functioning of this Protocol and take any decision necessary to this effect.

ARTICLE 16

Specialised Committee

The Committee on issues related to the implementation of the Protocol on Ireland/Northern Ireland established by Article 165 of the Withdrawal Agreement (“Specialised Committee”) shall:

- a) facilitate the implementation and application of this Protocol;
- b) examine proposals concerning the implementation and application of this Protocol from the North-South Ministerial Council and North-South Implementation bodies set up under the 1998 Agreement;
- c) consider any matter of relevance to Article 4 of this Protocol brought to its attention by the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland;
- d) discuss any point raised by the Union or the United Kingdom that is of relevance to this Protocol and gives rise to a difficulty; and
- e) make recommendations to the Joint Committee as regards the functioning of this Protocol.

ARTICLE 17

Joint consultative working group

1. A joint consultative working group on the implementation of the Protocol is hereby established. It shall serve as a forum for the exchange of information and mutual consultation and shall consider any matter referred to it by the North-South Ministerial Council.
2. The working group shall be composed of representatives of the Union and the United Kingdom and shall carry out its functions under the supervision of the Specialised Committee, to which it shall report. The working group shall have no power to take binding decisions other than that referred to in paragraph 6.

3. Within the working group:
 - a) the Union and the United Kingdom shall, in a timely manner, exchange information about planned, ongoing and final relevant implementation measures in relation to the Union acts listed in the Annexes to this Protocol;
 - b) the Union shall inform the United Kingdom about planned Union acts within the scope of this Protocol;
 - c) the Union shall provide to the United Kingdom all information the Union considers relevant to allow the United Kingdom to fully comply with its obligations under the Protocol; and
 - d) the United Kingdom shall provide to the Union all information that Member States provide to one another or the Union institutions, bodies, offices or agencies pursuant to the Union acts listed in the Annexes to this Protocol.
4. The working group shall be co-chaired by the Union and the United Kingdom.
5. The working group shall meet at least once a month, unless otherwise decided by the Union and the United Kingdom by mutual consent. Where necessary, information referred to in points (c) and (d) of paragraph 3 can be exchanged between meetings.
6. The working group shall adopt its own rules of procedure by mutual consent.
7. The Union shall ensure that all views expressed and information (including technical and scientific data) provided by the United Kingdom in the working group are communicated to the relevant Union institutions, bodies, offices and agencies without undue delay.

ARTICLE 18

Safeguards

1. If the application of this Protocol leads to serious economic, societal or environmental difficulties liable to persist, or to diversion of trade, the Union or the United Kingdom may unilaterally take appropriate measures. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Protocol.
2. If a safeguard measure taken by the Union or the United Kingdom, as the case may be, in accordance with paragraph 1 creates an imbalance between the rights and obligations under this Protocol, the Union or the United Kingdom, as the case may be, may take such proportionate rebalancing measures as are strictly necessary to remedy the imbalance. Priority shall be given to such measures as will least disturb the functioning of this Protocol.

3. Safeguard and rebalancing measures taken in accordance with paragraphs 1 and 2 shall be governed by the procedures set out in Annex 10 to this Protocol.

ARTICLE 19

Protection of financial interests

The Union and the United Kingdom shall counter fraud and any other illegal activities affecting the financial interests of the Union or of the United Kingdom. For this purpose, the United Kingdom shall cooperate with the European Anti-Fraud Office (“OLAF”).

ARTICLE 20

Annexes

Annexes 1 to 10 shall form an integral part of this Protocol.

ANNEX 1

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 4(1)

[This list should in principle be identical to that in Annex 1 to Protocol B.]

ANNEX 2

PART 1: PRINCIPLES APPLICABLE TO AUTHORISED ECONOMIC OPERATOR AND TRUSTED TRADER PROGRAMMES

All non-exempted export and import transactions involving the movement of goods over the Border are to be conducted under the transit regime provided for in the CTC subject to the provisions of this Protocol and measures adopted to implement it.

Accordingly, exporters and importers will need to qualify as Authorised Consignor and Authorised Consignee respectively under the CTC.

Authorised Consignor and Authorised Consignee status will be granted automatically to all exporters and importers that have qualified under an applicable AEO or TT programme.

Various tiers of TT shall be recognised based on the [WCO SAFE Framework standard] corresponding to different conditions and giving rise to different rights.

The top-tier TT status shall be destined for established reliable operators with a high volume of trade. The formal conditions for access will include:

- 3 years of customs-compliant international trade
- record-keeping systems covering management and transport which are consistent with specified generally-accepted standards

- compliance with minimum financial solvency requirements
- specified professional qualifications
- compliance with specified safety and security standards

The top tier TT status will allow the maximum level of customs facilitation and should allow self-assessment of liability subject to specified controls.

The second level TT status shall be destined for operators that do not yet qualify for the top tier but can demonstrate knowledge and experience. They will typically be involved in regular cross-border trade but at a lower volume than the top tier. The formal conditions for access will include:

- a record of customs-compliant trade (international or with Union countries prior to Brexit)
- record-keeping systems covering management and transport which are consistent with specified generally-accepted standards
- compliance with minimum financial solvency requirements

The second level TT status will be subject to a specific monitoring programme that will become less intensive over time. It will provide a lesser degree of customs facilitation than the top tier but include reduced bond requirements.

The first or entry-level TT status will be designed for operators not yet qualifying for the second and top tier TT status such as SMEs above the VAT threshold. The formal conditions for access will include:

- a record of VAT compliance
- compliance with minimum financial solvency requirements
- demonstration of experience in trade with non-Union countries or with Union countries prior to Brexit

The first or entry-level TT status will be subject to a detailed monitoring programme, including entry into records, designed to allow progression to the higher tiers. It will provide a lesser degree of customs facilitation than the top or second tier. It may in particular include inward storage relief.

The management of the TT programme shall be simplified, automatised and managed on-line to the greatest extent possible in order to lower the cost of entry for all participating businesses.

Non-compliance with the applicable conditions in any tier will lead to removal of status and proportionate, effective and dissuasive penalties

PART 2: TECHNOLOGY

Electronic tracking of the vehicle transporting goods, or of the movement of goods via hand-held devices, so as to allow confirmation that the consignment under transit has indeed crossed the border.

Conversion of the current physical Transit document, complete with Barcode, to a 'digital' format available on a hand-held device.

PART 3: EXEMPTED TRANSACTIONS

The following categories of transactions over the Border shall be exempted from export and import formalities:

- Transactions by private persons for personal use and not for commercial purposes and up to an annual threshold [of at least €1000]. Above this limit declaration shall be required and set in monetary terms.
- Export and import of tools and equipment belonging to a service provider, where these are used in the conduct of his or her profession.
- Movements of livestock, equipment, seeds and fertiliser within the boundaries of a single farm.
- [Exemptions for farmers with an agricultural flat rate scheme similar those the current Union VAT Directive that facilitates an agricultural flat rate VAT scheme making possible for farmers to charge a flat rate of VAT in the United Kingdom on their products, while at the same time not deducting the VAT being charged to them - to be clarified].
- Enforcement and penalties to be proportionate but dissuasive.

ANNEX 3

DETAILED ARRANGEMENTS FOR THE IMPLEMENTATION OF ARTICLE 6 OF THE PROTOCOL

ARTICLE 1

Application of Customs Codes

Without prejudice to the provisions set out in the Protocol, the Union Customs Code and any other measures and controls which are applicable in the customs territory of the Union, and the United Kingdom Taxation (Cross-border Trade) Act 2018 and its implementing provisions, as well as other relevant legislation, which are applicable in the customs territory of the United Kingdom, shall apply in trade in goods across the Border.

ARTICLE 2

CTC Transit procedures to apply

Trade in goods across the Border shall, unless exempted, be conducted under the procedures set out in the CTC. For this purpose, the customs office of departure within the meaning of paragraph (g) of Article 3 of Appendix I shall act also as a customs office of transit within the meaning of paragraph (h) of that provision.

ARTICLE 3

Administrative cooperation

1. The customs authorities of the Member States of the Union and of United Kingdom shall provide each other, through the European Commission, with specimen impressions of stamps used in their customs offices for the issue of transit documentation and with the addresses of the customs authorities responsible for verifying those documents.
2. In order to ensure the proper application of this Protocol, the Union and United Kingdom shall assist each other, through the competent customs administrations, in checking the authenticity of transit documentation and the correctness of the information given in them.

ARTICLE 4

Verification documentation

1. Subsequent verifications of transit documentation shall be carried out at random or whenever the customs authorities on the importing side of the Border have reasonable doubts as to the authenticity of the documentation, the status of the products concerned or the fulfilment of the other requirements of the Protocol and of its Annexes, providing such verification is sought no later than 3 years after the issuing of the documentation by the customs authorities in the exporting side of the Border.
2. For the purposes of implementing the provisions of paragraph 1, the customs authorities on the importing side of the Border shall send the documentation to the customs authorities on the exporting side of the Border, and the invoice, if it has been submitted, or a copy thereof, giving, where appropriate, the reasons for the enquiry. Any documentation and information obtained suggesting that the information given on the transit documentation is incorrect shall be forwarded in support of the request for verification.
3. The verification shall be carried out by the customs on the exporting side of the Border. For this purpose, they shall have the right to call for any reasonable evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate.

4. The customs authorities on the importing side of the Border shall offer, while awaiting the results of the verification, release of the products to the importer subject to any precautionary measures judged necessary.
5. The customs authorities requesting the verification shall be informed of the results of this verification within a maximum of 10 months. These results must indicate clearly whether the documents are authentic and whether the products concerned corresponded to the description given and fulfil the other requirements of the Protocol and its Annexes.

ARTICLE 5

Disputes relating to the verification procedure

1. Where disputes arise in relation to the verification procedures of Article 4 which cannot be settled between the customs authorities requesting a verification and the customs authorities responsible for carrying out this verification, or where they raise a question as to the interpretation of this Annex, they shall be submitted to the Joint Committee.
2. At the request of the Union or the United Kingdom, consultations shall be held in the Joint Committee within a period of 90 days from the date of submission referred to in paragraph 1, with a view to resolving those differences. The period for consultation may be extended on a case by case basis by mutual written agreement. After this period the customs authority of the importing side of the Border can make its decision on the status of the goods concerned.
3. In all cases, disputes between the importer and the customs authorities of the importing country shall be settled under the legislation of the said country.

ARTICLE 6

Penalties

Penalties shall be imposed on any person who draws up, or causes to be drawn up, a document which contains incorrect information in relation to trade across the Border. Such penalties shall be effective, proportionate and dissuasive.

[There is no Annex 4 to preserve parallelism in numbering with Protocol B]

ANNEX 5

VAT AND EXCISE DUTIES REFERRED TO IN ARTICLE 9(5)

[List laws and regulations whose principles are to be continued (such as the dying of petrol).]

ANNEX 6

AGRICULTURE

PART 1: MEASURES REFERRED TO IN ARTICLE 10(1)(A)

[Lists 36, 37, 41 and 43 of Annex 5 to Protocol B.]

PART 2: MEASURES REFERRED TO IN ARTICLE 10(1)(B)

[List 34 of Annex 5 to Protocol B.]

PART 3: MEASURES NECESSARY FOR THE PRESERVATION OF THE COMMON SPS AREA REFERRED TO IN ARTICLE 10(2)

[Lists 38, 39 and 44 of Annex 5 to Protocol B.]

PART 4: ENVIRONMENTAL REGULATIONS: PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 10(7)

- Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species;
- Council Regulation (EC) No 708/2007 of 11 June 2007 concerning use of alien and locally absent species in aquaculture.

ANNEX 7

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 11

[This list should be based on that in Annex 7 to Protocol B.]

ANNEX 8

ENHANCED ECONOMIC ZONES

PART 1

The following areas may be designated Enhanced Economic Zones:

The area within 30 miles of each side of the Border and 20 miles of each side of the Border between the counties of Derry/Donegal and the Newry Dundalk corridor.

PART 2

[Derogations from otherwise applicable regulations for Enhanced Economic Zones.]

PART 3

[Special regime applicable to trade between Special Economic Zones and Free Trade Zones and other territories.]

ANNEX 9

OTHER AREAS OF COOPERATION

[Based on the list established during the mapping exercise.]

ANNEX 10

PROCEDURES REFERRED TO IN ARTICLE 18(3)

[These should in principle be identical to the procedures set out in Annex 10 to Protocol B.]

3.2 Replace the words "PROTOCOL ON IRELAND/NORTHERN IRELAND" with "PROTOCOL B ON IRELAND/NORTHERN IRELAND"

PROTOCOL C

PROTOCOL C

PROTOCOL ON IRELAND AND NORTHERN IRELAND

The Union and the United Kingdom,

HAVING REGARD to the historic ties and enduring nature of the bilateral relationship between Ireland and the United Kingdom,

RECALLING that the United Kingdom's withdrawal from the Union presents a significant and unique challenge to the island of Ireland, and reaffirming that the achievements, benefits and commitments of the peace process will remain of paramount importance to peace, stability and reconciliation there,

REGRETTING the failure to conclude a withdrawal agreement under Article 50(2) TEU prior to the end of the period provided for in Article under Article 50(3) TEU,

RECOGNISING that it is necessary to address the unique circumstances on the island of Ireland through a unique solution,

HAVING REGARD to the Union and to the United Kingdom's common objective of a close future relationship, in full respect of their respective legal orders,

AFFIRMING that the Good Friday or Belfast Agreement of 10 April 1998 between the Government of the United Kingdom, the Government of Ireland and the other participants in the multi-party negotiations (the "1998 Agreement"), which is annexed to the British-Irish Agreement of the same date (the "British-Irish Agreement"), including its subsequent implementation agreements and arrangements, should be recognised by both Parties as a peace treaty and protected in all its parts,

RECOGNISING that cooperation between Northern Ireland and Ireland is a central part of the 1998 Agreement and is essential for achieving reconciliation and the normalisation of relationships on the island of Ireland, and recalling the roles, functions and safeguards of the Northern Ireland Executive, the Northern Ireland Assembly, and the North-South Ministerial Council (including cross-community provisions), as set out in the 1998 Agreement,

NOTING that Union law has provided a supporting framework to the provisions on Rights, Safeguards and Equality of Opportunity of the 1998 Agreement,

RECOGNISING that Irish citizens in Northern Ireland, by virtue of their Union citizenship, will continue to enjoy, exercise and have access to rights, opportunities and benefits, and that this Protocol should respect and be without prejudice to the rights, opportunities and identity that come with citizenship of the Union for the people of Northern Ireland who choose to assert their right to Irish citizenship as defined in Annex 2 of the British-Irish Agreement "Declaration on the Provisions of Paragraph (vi) of Article 1 in Relation to Citizenship",

RECALLING the commitment of the United Kingdom to protect North-South cooperation and its guarantee of avoiding a hard border, including any physical infrastructure or related checks and controls at the border between Ireland and Northern Ireland (“the Border”), and bearing in mind that any future arrangements must be compatible with these overarching requirements,

NOTING that nothing in this Protocol prevents the United Kingdom from ensuring unfettered market access for goods moving from Northern Ireland to the rest of the United Kingdom’s internal market,

UNDERLINING the Parties’ shared aim of reducing, to the extent possible in accordance with applicable legislation and taking into account their respective regulatory regimes as well as their implementation, controls at the ports and airports of Northern Ireland,

RECALLING that the Joint Report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union of 8 December 2017 outlines three different scenarios for protecting North-South cooperation and avoiding a hard border, but that this Protocol is based on the second scenario,

RECALLING that the two Parties have carried out a mapping exercise, which shows that North-South cooperation relies to a significant extent on a common Union legal and policy framework,

NOTING that therefore the United Kingdom’s departure from the Union gives rise to substantial challenges to the maintenance and development of North-South cooperation,

RECALLING that the United Kingdom remains committed to protecting and supporting continued North-South and East-West cooperation across the full range of political, economic, security, societal and agricultural contexts and frameworks of cooperation, including the continued operation of the North-South implementation bodies,

ACKNOWLEDGING the need for this Protocol to be implemented so as to maintain the necessary conditions for continued North-South cooperation, including for possible new arrangements in accordance with the 1998 Agreement,

RECALLING the Union and the United Kingdom’s commitments to the North South PEACE and INTERREG funding programmes under the current multi-annual financial framework and to the maintaining of the current funding proportions for the future programme,

AFFIRMING the commitment of the United Kingdom to facilitate the efficient and timely transit through its territory of goods moving from Ireland to another Member State or another third country, or vice versa,

DETERMINED that the application of this Protocol should impact as little as possible on the everyday life of communities both in Ireland and Northern Ireland,

MINDFUL that the rights and obligations of Ireland under the rules of the Union's internal market and customs union and the United Kingdom's need to maintain an independent trade and regulatory policy must be fully respected,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Objectives

1. The Parties recognise the 1998 Agreement as a peace treaty and agree to protect it in all its dimensions including with respect to the constitutional status of Northern Ireland and the principle of consent, which provides that any change in that status can only be made with the consent of a majority of its people.
2. This Protocol respects the essential State functions and territorial integrity of the United Kingdom.
3. This Protocol sets out arrangements necessary to address the unique circumstances on the island of Ireland, maintain the necessary conditions for continued North-South cooperation, avoid a hard border and protect the 1998 Agreement in all its dimensions.

ARTICLE 2

Subsequent agreement on the future relationship between the Union and the United Kingdom

1. The Union and the United Kingdom shall use their best endeavours to conclude, by 31 December 2020, an agreement on their future relationship which supersedes this Protocol in whole or in part.
2. The provisions of this Protocol are intended to apply only temporarily, taking into account the commitments of the Parties set out in Article 2(1). The provisions of this Protocol shall apply unless and until they are superseded, in whole or in part, by an agreement on the future relationship between the Union and the United Kingdom.

3. Any subsequent agreement between the Union and the United Kingdom shall indicate the parts of this Protocol which it supersedes. Once a subsequent agreement between the Union and the United Kingdom becomes applicable, this Protocol shall then, from the date of application of such subsequent agreement and in accordance with the provisions of that agreement setting out the effect of that agreement on this Protocol, not apply or shall cease to apply, as the case may be, in whole or in part.

ARTICLE 3

Joint Committee

1. A Joint Committee, comprising representatives of the Union and of the United Kingdom, is hereby established. The Joint Committee shall be co-chaired by the Union and the United Kingdom.
2. The Joint Committee shall meet at the request of the Union or the United Kingdom, and in any event shall meet at least once a year. The Joint Committee shall set its meeting schedule and its agenda by mutual consent. The work of the Joint Committee shall be governed by the rules of procedure set out in Annex 4.
3. The Joint Committee shall be responsible for the implementation and application of this Protocol. The Union and the United Kingdom may each refer to the Joint Committee any issue relating to the implementation, application and interpretation of this Protocol.
4. The Joint Committee shall:
 - (a) supervise and facilitate the implementation and application of this Protocol;
 - (b) decide on the tasks of the specialised committee and supervise its work;
 - (c) seek appropriate ways and methods of preventing problems that might arise in areas covered by this Protocol or of resolving disputes that may arise regarding the interpretation and application of this Protocol;
 - (d) consider any matter of interest relating to an area covered by this Protocol;
 - (e) make recommendations and adopt decisions where provided for in the Protocol;
 - (f) adopt amendments to this Protocol in the cases provided for in this Protocol.
5. The Joint Committee may:
 - (a) delegate responsibilities to the specialised committee, except those responsibilities referred to in points (b), (e) and (f) of paragraph 4;
 - (b) change the tasks assigned to the specialised committee;

- (c) adopt decisions amending this Protocol, provided that such amendments are necessary to correct errors, to address omissions or other deficiencies, or to address situations unforeseen when this Protocol was signed, and provided that such decisions may not amend the essential elements of this Protocol.
- (d) adopt amendments to the rules of procedure set out in Annex 4; and
- (e) take such other actions in the exercise of its functions as decided by the Union and the United Kingdom.

6. The Joint Committee shall issue an annual report on the functioning of this Protocol.

ARTICLE 4

Rights of individuals

1. The United Kingdom shall ensure that no diminution of rights, safeguards and equality of opportunity as set out in that part of the 1998 Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the Union, including in the area of protection against discrimination as enshrined in the provisions of Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms.
2. The United Kingdom shall continue to facilitate the related work of the institutions and bodies set up pursuant to the 1998 Agreement, including the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland, in upholding human rights and equality standards.

ARTICLE 5

Common Travel Area

1. The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories (the "Common Travel Area"), while fully respecting the rights of natural persons conferred by Union law.
2. The United Kingdom shall ensure that the Common Travel Area and the associated rights and privileges can continue to apply without affecting the obligations of Ireland under Union law, in particular with respect to free movement to, from and within Ireland for Union citizens and their family members, irrespective of their nationality.

ARTICLE 6

Avoidance of physical infrastructure for inspection of goods or for the accomplishment of other formalities at the Border

1. In order to protect the 1998 Agreement, the Parties agree that no physical infrastructure for the inspection of goods or for the accomplishment of other export and import formalities shall be installed on or near the Border and that all non-exempted import and export transactions shall take place under the transit procedures provided for in the Common Transit Convention ("CTC") as amended and complemented by rules to be laid down by decision of the Joint Committee or Annex 3.
2. If it has not already done so prior to the entry into force of this Protocol, the United Kingdom shall, without delay:
 - a) accede to the CTC and the Convention on the Simplification of Formalities in the Trade of Goods.
 - b) develop and implement authorised economic operator ("AEO") and trusted trader ("TT") programmes as described in Part 1 of Annex 2 so as to ensure the conduct of export and import formalities on non-exempted transactions involving goods before and after crossing the Border while minimising the risk of fraudulent transactions.
 - c) develop the automated transit tracking technology described in Part 2 of Annex 2 and demonstrate its viability.
 - d) define the categories of transactions that are exempted from the obligation of declaration prior to or subsequent to crossing the Border in accordance with the criteria in Part 3 of Annex 2.
 - e) propose to the Joint Committee the detailed rules for the conduct of trade in goods across the Border without physical infrastructure on the Border amending and complementing those contained in Annex 3.
3. In order to achieve the objectives set out in paragraph 1, the Parties shall:
 - a) cooperate to ensure the fulfilment of the conditions set out in paragraph 2 and the adoption of detailed rules by the Joint Committee
 - b) allow goods to be transported across the Border under the transit procedures provided for in the CTC as amended and complemented by rules to be laid down by decision of the Joint Committee or, in the absence of such a decision, in Annex 3
 - c) maintain AEO and TT programmes that comply with the criteria set out in Part 1 of Annex 2
 - d) implement the automated transit tracking technology described in Part 2 of Annex 2
 - e) promote the use of their AEO and TT programmes and provide financial assistance and training for this purpose

- f) exempt from export and import formalities transactions that comply with the criteria set out in Part 3 of Annex 2
 - g) mutually recognise decisions taken under their respective AEO and TT programmes where these comply with the criteria laid down in Part 1 of Annex 2 and their respective exemption regulations where these comply with the criteria laid down in Part 3 of Annex 2.
4. The United Kingdom shall establish a Small Trader Transitional Adjustment Fund to provide assistance to eligible small businesses on both sides of the Border to adapt to the changes brought about by the withdrawal of the United Kingdom from the Union and to compensate for costs and losses that this engenders. The United Kingdom shall also establish a Capacity Building Fund to promote collaboration between customs authorities and finance the building and training of customs capacity both in the United Kingdom and Ireland .
 5. The Parties shall cooperate in the application and enforcement of their transit arrangements and their AEO and TT programmes as well as the conditions applying to exempted transactions so as to allow all inspections and other export and import formalities to be conducted away from the Border.
 6. The Joint Committee shall adopt the detailed rules for the conduct of trade in goods across the Border without the need for physical infrastructure on the Border. In the absence of such a decision, Annex 3 shall apply.
 7. The Joint Committee may adopt decisions amending Annexes 2 and 3 to this Protocol, where such amendments are necessary for the proper functioning of this Protocol. Such decisions may not amend the essential elements of this Protocol or the Withdrawal Agreement. The Joint Committee may also address recommendations to the Parties concerning any changes to the CTC that it considers necessary or desirable in order to allow or facilitate such trade.

ARTICLE 7

Protection of the UK internal market

Nothing in this Protocol shall prevent the United Kingdom from ensuring unfettered market access for goods moving from Northern Ireland to the rest of the United Kingdom's internal market.

ARTICLE 8

Technical regulations, assessments, registrations, certificates, approvals and authorisations

1. The Parties agree not to introduce any obstacle to goods crossing the Border for reasons related to the need for compliance with technical regulations or requirements for assessments, registrations, certificates, approvals or authorisations.

All necessary controls shall be conducted prior to or after crossing the border, preferably at the point of dispatch or arrival.

2. The Joint Committee may adopt provisions necessary to ensure compliance with technical regulations or requirements for assessments, registrations, certificates, approvals or authorisations to take account of the absence of controls conducted at the Border. It may issue recommendations to the Parties to introduce additional controls, including allowing the use of private sector firms to provide market surveillance and product conformity assessment, and stricter penalties for the placing on the market of non-conforming goods where this is necessary to constitute an effective and proportionate deterrent.

ARTICLE 9

VAT and Excise Duties

1. The Parties agree to cooperate to prevent fraud relating to VAT and excise duties so as to avoid the need for controls on the Border. Each party shall ensure that details of all transactions subject to value added tax ("VAT") and excise duties which take place in Northern Ireland and Ireland are made available to the other on request for the purposes of ensuring that VAT and excise duties that become due are collected. For this purpose, the Union shall continue to allow the United Kingdom to participate in the VAT Information Exchange System ("VIES").
2. The United Kingdom shall introduce and maintain VAT collection on the basis of the postponed accounting principle and ensure that on import declarations, the identity of the company that is engaged in the shipment and its value are clear.
3. The Parties will not allow refund of VAT on export in the case of exempted transactions as defined in legislation implementing Part 3 of Annex 2 and will not charge VAT on the corresponding import.
4. The United Kingdom shall ensure that specific provisions on VAT cooperation and on continuing current cooperation in respect of excise duties (such as the dying of petrol) will be respected.
5. The Parties shall continue to apply provisions for the protection of VAT and excise duty receipts based on those contained in the provisions of Union law listed in parts 1 and 2 of Annex 5 respectively.
6. The Joint Committee shall regularly discuss the implementation of this Article, and where appropriate, adopt the necessary measures for its proper application including amendments to Annex 5.

ARTICLE 10

Agriculture

1. The Parties agree to treat the whole of the island of Ireland as a Single Epidemiological Unit and that for that purpose:
 - a) the Union disease control measures listed in Part 1 of Annex 6 shall apply, under the conditions set out therein, to and in the United Kingdom in respect of Northern Ireland
 - b) the sanitary and phytosanitary (“SPS”) measures identified in Part 2 of Annex 6 shall apply, under the conditions set out therein, to and in the United Kingdom in respect of Northern Ireland to animal feed and other products intended for animal consumption.
2. The Parties agree to seek to preserve a Common SPS Area for the British and Irish Isles and for that purpose the measures listed in Part 3 of Annex 6 shall apply, under the condition set out therein, to and in the United Kingdom subject to paragraph 3.
3. The United Kingdom shall remain free to adopt SPS legislation that diverges from that of the Union in respect of the territory of the United Kingdom outside of Northern Ireland. If a material divergence between the SPS legislation of the United Kingdom outside of Northern Ireland and that listed in Part 3 of Annex 6 arises, the Joint Committee may, on the basis of a request from the Northern Ireland Executive following a recommendation from the Northern Ireland Assembly and after consulting the British-Irish Council, decide to delete the corresponding measures from Part 3 of Annex 6. The Joint Committee may also adopt any or all of the following measures in order to avoid the need for controls at the Border:
 - a) Measures to allow inspections of animal and plant products to take place away from the Border and preferably at the places of dispatch or arrival or at inspection points established at least [50 miles] away from the Border;
 - b) Measures to authorise Irish veterinary teams to visit the premises of agricultural producers in Northern Ireland for the purpose of performing inspections;
 - c) Measures to establish [distributed Border Inspection Post (“BIP”) structure for trade in agricultural producers across the Border which would allow documentary and verification inspections to take place at remote sites or at approved inland locations, for example in a cold storage facility where a container is unloaded];
 - d) [Measures maintaining BIP for trade in livestock between the United Kingdom mainland and the Island of Ireland to allowing the carrying out of any customs registration procedures to be confined to the ports and harbours of the Irish Sea];
 - e) [Introduction of technology to ensure that the transit of SPS goods to designated inspection points can be monitored by Smart Border technology solutions];
 - f) [other necessary measures].

4. The United Kingdom shall continue to have access to the Union IT platform known as the TRAdE Control and Expert System ("TRACES") that facilitates the tracking and trading of all goods requiring veterinary and SPS controls between registered traders within the Union and between the Union and third countries
5. The environmental measures listed in Part 4 of Annex 6 shall apply, under the conditions set out therein, to and in the United Kingdom in respect of Northern Ireland
6. The Joint Committee shall regularly discuss the implementation of this Article and, where appropriate, adopt amendments to Annex 6.

ARTICLE 11

Single electricity market

The Parties agree that the wholesale electricity markets on the island of Ireland shall continue to be governed as they have been prior to the end of the transition period. The Joint Committee shall adopt a decision prior to the end of the transition period laying down the necessary provisions for the continuation of the wholesale electricity markets based on the provisions listed in Annex 7 to this Protocol.

ARTICLE 12

Establishment of Enhanced Economic Zones

1. In order to mitigate the impact of the withdrawal of the United Kingdom from the Union on the economy of highly integrated areas on both sides of the Border, the Parties agree to establish Enhanced Economic Zones spanning the Border in the districts listed in Part 1 of Annex 8.
2. Within these Enhanced Economic Zones the specific derogations from otherwise applicable regulations may apply as listed in Part 2 of Annex 8.
3. Special Economic Zones and Free Trade Zones as well as other customs facilitations that may be necessary to facilitate trade may be set up in the Enhanced Economic Zones consistent with the conditions and requirements set out in Annex 8 and the WTO Agreement taking into account Article XXIV.3(a) of GATT 1994. Trade between Special Economic Zones and Free Trade Zones and other territories shall be subject to the special regimes specified in Part 3 of Annex 8.
4. The Joint Committee shall keep under constant review the operation of the Enhanced Economic Zones. The Joint Committee may make appropriate recommendations to the United Kingdom and Ireland in this respect, including on recommendation from the Specialised Committee.

ARTICLE 13

Other areas of North-South cooperation

1. Consistent with the arrangements set out elsewhere in this Protocol, and in full respect of Union law, this Protocol shall be implemented and applied so as to maintain the necessary conditions for continued North-South cooperation, including in the areas of environment, health, agriculture, transport, education and tourism, as well as in the areas of energy, telecommunications, broadcasting, inland fisheries, justice and security, higher education and sport. In full respect of Union law, the United Kingdom and Ireland may continue to make new arrangements that build on the provisions of the 1998 Agreement in other areas of North-South cooperation on the island of Ireland. A [non-exhaustive] list of the areas of cooperation is contained in Annex 9.
2. The Joint Committee shall keep under constant review the extent to which the implementation and application of this Protocol maintains the necessary conditions for North-South cooperation. The Joint Committee may make appropriate recommendations to the Union and the United Kingdom in this respect, including on recommendation from the Specialised Committee.

ARTICLE 14

Implementation, application, supervision and enforcement

1. The authorities of the United Kingdom shall be responsible for implementing and applying the provisions of Union law made applicable by this Protocol to and in the United Kingdom in respect of Northern Ireland.
2. The Parties shall closely cooperate in the implementation, application, supervision and enforcement of this Protocol.
3. The Union and the United Kingdom shall at all times endeavour to agree on the interpretation and application of this Protocol, and shall make every attempt, through cooperation and consultations, to arrive at a mutually satisfactory resolution of any matter that might affect its operation.
4. For any dispute between the Union and the United Kingdom arising under this Protocol, the Union and the United Kingdom shall only have recourse to the procedures provided for in this Protocol.
5. The Union and the United Kingdom shall endeavour to resolve any dispute regarding the interpretation and application of the provisions of this Protocol by entering into consultations in the Joint Committee in good faith, with the aim of reaching a mutually agreed solution. A party wishing to commence consultations shall provide written notice to the Joint Committee. Any

communication or notification between the Union and the United Kingdom provided for in this Article shall be made within the Joint Committee.

6. If no mutually agreed solution has been reached within 3 months after a written notice has been provided to the Joint Committee in accordance with paragraph 5, the Union or the United Kingdom may request the establishment of an arbitration panel. Such request shall be made in writing to the other party and to the International Bureau of the Permanent Court of Arbitration. The request shall identify the subject matter of the dispute to be brought before the arbitration panel and a summary of the legal arguments in support of the request.
7. The Union and the United Kingdom may agree that the establishment of an arbitration panel may be requested before the expiry of the time limit laid down in paragraph 6.
8. The Joint Committee shall, no later than [date to be inserted], establish a list of 25 persons who are willing and able to serve as members of an arbitration panel. To that end, the Union and the United Kingdom shall each propose ten persons. The Union and the United Kingdom shall also jointly propose five persons to act as chairperson of the arbitration panel. The Joint Committee shall ensure that the list complies with these requirements at any moment in time.
9. The list established pursuant to paragraph 8 shall only comprise persons whose independence is beyond doubt, who possess the qualifications required for appointment to the highest judicial office in their respective countries or who are jurisconsults of recognised competence, and who possess specialised knowledge or experience of Union law and public international law. That list shall not comprise persons who are members, officials or other servants of the Union institutions, of the government of a Member State, or of the government of the United Kingdom.
10. An arbitration panel shall be composed of five members.
11. Within 15 days of the date of a request in accordance with paragraph 6, the panel shall be established in accordance with paragraphs 12 and 13.
12. The Union and the United Kingdom shall each nominate two members from among the persons on the list established under paragraph 8. The chairperson shall be selected by consensus by the members of the panel from the persons jointly nominated by the Union and the United Kingdom to serve as a chairperson. In the event that the members of the panel are unable to agree on the selection of the chairperson within the time limit laid down in paragraph 11, the Union or the United Kingdom may request the Secretary-General of the Permanent Court of Arbitration to select the chairperson by lot from among the persons jointly proposed by the Union and the United Kingdom to act as chairperson.

13. The Secretary-General of the Permanent Court of Arbitration shall make the selection referred to in second subparagraph of paragraph 12 within 5 days of the request referred to in paragraph 12. Representatives of the Union and of the United Kingdom shall be entitled to be present at the selection.
14. The date of establishment of the arbitration panel shall be the date on which the selection procedure is completed.
15. In the event that the list referred to in paragraph 8 has not been established by expiry of the time limit laid down in paragraph 11, the Union and the United Kingdom shall within 5 days each nominate two persons to serve as members of the panel. If persons have been proposed under paragraph 8, the nominations shall be made from among those persons. The chairperson shall then be appointed in accordance with the procedure set out in paragraph 12. In the event that the Union and the United Kingdom have not, within a further 5 days, jointly proposed at least one person to serve as chairperson, the Secretary-General of the Permanent Court of Arbitration shall within five days, after consultation with the Union and the United Kingdom, propose a chairperson who fulfils the requirements of paragraph 9. Unless either the Union or the United Kingdom objects to that proposal within 5 days, the person proposed by the Secretary-General of the Permanent Court of Arbitration shall be appointed.
16. In the event of failure to establish an arbitration panel within 3 months from the date of the request made pursuant to paragraph 6, the Secretary-General of the Permanent Court of Arbitration shall, upon request by either the Union or the United Kingdom, within 15 days of such request, after consultation with the Union and the United Kingdom, appoint persons who fulfil the requirements of paragraph 9 of this Article to constitute the arbitration panel.
17. Dispute settlement procedures set out in this Article shall be governed by the rules of procedure set out in Part A of Annex 11 ("Rules of Procedure"), the Joint Committee shall keep the functioning of those dispute settlement procedures under constant review and may amend the Rules of Procedure.
18. The arbitration panel shall notify its ruling to the Union, the United Kingdom and the Joint Committee within 12 months from the date of establishment of the arbitration panel. Where the arbitration panel considers that it cannot comply with this time limit, its chairperson shall notify the Union and the United Kingdom in writing, stating the reasons for the delay and the date on which the panel intends to conclude its work.

19. Within 10 days of the establishment of the arbitration panel the Union or the United Kingdom may submit a reasoned request to the effect that the case is urgent. In that case, the arbitration panel shall give a ruling on the urgency within 15 days from the receipt of such request. If it has determined the urgency of the case, the arbitration panel shall make every effort to notify its ruling to the Union and the United Kingdom within 6 months from the date of its establishment.
20. The arbitration panel ruling shall be binding on the Union and the United Kingdom. The Union and the United Kingdom shall take any measures necessary to comply in good faith with the arbitration panel ruling and shall endeavour to agree on the period of time to comply with the ruling in accordance with the procedure in paragraphs 21 to 26.
21. No later than 30 days after the notification of the arbitration panel ruling to the Union and the United Kingdom, the respondent shall, if the panel has ruled in favour of the complainant, notify the complainant of the time it considers it will require for compliance (the "reasonable period of time").
22. If there is disagreement between the Union and the United Kingdom on the reasonable period of time to comply with the arbitration panel ruling, the complainant shall, within 40 days of the notification by the respondent under paragraph 21, request the original arbitration panel in writing to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the respondent. The arbitration panel shall notify its decision on the period for compliance to the Union and the United Kingdom within 40 days of the date of submission of the request.
23. In the event of the original arbitration panel, or some of its members, being unable to reconvene to consider a request under paragraph 22, a new arbitration panel shall be established. The time limit for notifying the decision shall be 60 days from the date of establishment of the new arbitration panel.
24. The respondent shall inform the complainant in writing of its progress in complying with the arbitration panel ruling referred to in paragraph 18 at least 1 month before the expiry of the reasonable period of time.
25. The reasonable period of time may be extended by mutual agreement of the Union and the United Kingdom.
26. The respondent shall notify the complainant before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.

27. If, at the end of the reasonable period, the complainant considers that the respondent has failed to comply with the arbitration panel ruling referred to in paragraph 18, the complainant may request the original arbitration panel in writing to rule on the matter. The arbitration panel shall notify its ruling to the Union and the United Kingdom within 90 days of the date of submission of the request.
28. In the event of the original arbitration panel, or some of its members, being unable to reconvene to consider a request under paragraph 27, a new arbitration panel shall be established as set out in paragraphs 8 to 16. The time limit for notifying the ruling shall be 60 days from the date of establishment of the new arbitration panel.
29. If the arbitration panel rules in accordance with paragraph 27 that the respondent has failed to comply with the arbitration panel ruling referred to in paragraph 18, at the request of the complainant it may impose a lump sum or penalty payment to be paid to the complainant. In determining the lump sum or penalty payment, the arbitration panel shall take into account the seriousness of the non-compliance and underlying breach of obligation, the duration of the non-compliance and underlying breach of obligation.
30. If, 1 month after the arbitration panel ruling referred to in paragraph 29, the respondent has failed to pay any lump sum or penalty payment imposed on it, or if, 6 months after the arbitration panel ruling referred to in paragraph 27, the respondent persists in not complying with the arbitration panel ruling referred to in paragraph 18, the complainant shall be entitled, upon notification to the respondent, to suspend obligations arising under this Protocol.

The notification shall specify the provisions which the complainant intends to suspend. Any suspension shall be proportionate to the breach of obligation concerned, taking into account the gravity of the breach and the rights in question and, where the suspension is based on the fact that the respondent persists in not complying with the arbitration panel ruling referred to in paragraph 18, whether a penalty payment has been imposed on the respondent and has been paid or is still being paid by the latter.

The complainant may implement the suspension at any moment but not earlier than 10 days after the date of the notification, unless the respondent has requested arbitration under paragraph 31.

31. If the respondent considers that the extent of the suspension set out in the notification referred to in paragraph 30 is not proportionate, it may request the original arbitration panel in writing to rule on the matter. Such request shall be notified to the complainant before the expiry of the 10-day period referred to in paragraph 30. The arbitration panel shall notify its ruling to the Union and the United Kingdom within 60 days of the date of submission of the request.

Obligations shall not be suspended until the arbitration panel has notified its ruling, and any suspension shall be consistent with the arbitration panel ruling.

- 32.** In the event of the original arbitration panel, or some of its members, being unable to reconvene to consider a request under paragraph 30, a new arbitration panel shall be established as set out in paragraphs 8 to 16. In such cases, the period for notifying the ruling shall be 90 days from the date of establishment of the new arbitration panel.
- 33.** The suspension of obligations shall be temporary and shall be applied only until any measure found to be inconsistent with the provisions of this Protocol has been withdrawn or amended, so as to achieve conformity with the provisions of this Protocol, or until the Union and the United Kingdom have agreed to otherwise settle the dispute.
- 34.** Where the complainant has suspended obligations in accordance with paragraph 30 or where the arbitration panel has imposed a penalty payment on the respondent in accordance with paragraph 29, the respondent shall notify the complainant of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to the suspension of obligations applied by the complainant or to the penalty payment.
- 35.** If the Union and the United Kingdom do not reach an agreement on whether the notified measure brings the respondent into conformity with the provisions of this Protocol within 45 days of the date of submission of the notification, either party may request the original arbitration panel in writing to rule on the matter. Such request shall be notified simultaneously to the other party. The arbitration panel ruling shall be notified to the Union and the United Kingdom and to the Joint Committee within 75 days of the date of submission of the request.

If the arbitration panel rules that the respondent has brought itself into conformity with this Protocol, or if the complainant does not, within 45 days of the submission of the notification referred to in paragraph 34, request that the original arbitration panel rule on the matter:

- (a) the suspension of obligations shall be terminated within 15 days of either the ruling of the arbitration panel or the end of the 45-day period;
- (b) the penalty payment shall be terminated on the day after either the ruling of the arbitration panel or the end of the 45-day period.

36. In the event of the original arbitration panel, or some of its members, being unable to reconvene to consider a request under paragraph 34, a new arbitration panel shall be established as set out in paragraphs 8 to 16. The period for notifying the ruling shall in that case be 90 days from the date of establishment of the new arbitration panel.
37. The arbitration panel shall make every effort to take decisions by consensus. Where, nevertheless, a decision cannot be arrived at by consensus, the matter at issue shall be decided by majority vote. However, in no case dissenting opinions of members of an arbitration panel shall be published.
38. Any ruling of the arbitration panel shall be binding on the Union and the United Kingdom. The ruling shall set out the findings of fact, the applicability of the relevant provisions of this Protocol, and the reasoning behind any findings and conclusions. The Union and the United Kingdom shall make the arbitration panel rulings and decisions publicly available in their entirety, subject to the protection of confidential information.
39. The members of an arbitration panel shall be independent, shall serve in their individual capacity and shall not take instructions from any organisation or government, and shall comply with the Code of Conduct set out in Part B of Annex 11. The Joint Committee may amend that Code of Conduct.
40. The members of an arbitration panel shall, as from the establishment thereof, enjoy immunity from legal proceedings in the Union and the United Kingdom with respect to acts performed by them in the exercise of their functions on that arbitration panel.

ARTICLE 15

Common provisions

1. Unless otherwise provided, where this Protocol makes reference to a Union act, the reference to that act shall be read as referring to it as amended or replaced.
2. Where the Union adopts a new act that falls within the scope of this Protocol, but neither amends nor replaces a Union act listed in the Annexes to this Protocol, the Union shall inform the United Kingdom of this adoption in the Joint Committee. Upon request of the Union or the United Kingdom, the Joint Committee shall hold an exchange of views on the implications of the newly adopted act for the proper functioning of this Protocol within 6 weeks after the request.

As soon as reasonably practical after the Union has informed the United Kingdom in the Joint Committee, the Joint Committee shall either:

- a) adopt a decision adding the newly adopted act to the relevant Annex of this Protocol; or
- b) where an agreement on adding the newly adopted act to the relevant Annex to this Protocol cannot be reached, examine all further possibilities to maintain the good functioning of this Protocol and take any decision necessary to this effect.

ARTICLE 16

Specialised Committee

A Committee on issues related to the implementation of the Protocol on Ireland/Northern Ireland is hereby established ("Specialised Committee"). It shall comprise representatives of the Union and representatives of the United Kingdom. The work of the Specialised Committee shall be governed by the rules of procedure set out in Annex 4. It shall:

- a) facilitate the implementation and application of this Protocol;
- b) examine proposals concerning the implementation and application of this Protocol from the North-South Ministerial Council and North-South Implementation bodies set up under the 1998 Agreement;
- c) consider any matter of relevance to Article 4 of this Protocol brought to its attention by the Northern Ireland Human Rights Commission, the Equality Commission for Northern Ireland, and the Joint Committee of representatives of the Human Rights Commissions of Northern Ireland and Ireland;
- d) discuss any point raised by the Union or the United Kingdom that is of relevance to this Protocol and gives rise to a difficulty; and
- e) make recommendations to the Joint Committee as regards the functioning of this Protocol.

ARTICLE 17

Joint consultative working group

1. A joint consultative working group on the implementation of the Protocol is hereby established. It shall serve as a forum for the exchange of information and mutual consultation and shall consider any matter referred to it by the North-South Ministerial Council.
2. The working group shall be composed of representatives of the Union and the United Kingdom and shall carry out its functions under the supervision of the Specialised Committee, to which it shall report. The working group shall have no power to take binding decisions other than that referred to in paragraph 6.

3. Within the working group:
 - a) the Union and the United Kingdom shall, in a timely manner, exchange information about planned, ongoing and final relevant implementation measures in relation to the Union acts listed in the Annexes to this Protocol;
 - b) the Union shall inform the United Kingdom about planned Union acts within the scope of this Protocol;
 - c) the Union shall provide to the United Kingdom all information the Union considers relevant to allow the United Kingdom to fully comply with its obligations under the Protocol; and
 - d) the United Kingdom shall provide to the Union all information that Member States provide to one another or the Union institutions, bodies, offices or agencies pursuant to the Union acts listed in the Annexes to this Protocol.
4. The working group shall be co-chaired by the Union and the United Kingdom.
5. The working group shall meet at least once a month, unless otherwise decided by the Union and the United Kingdom by mutual consent. Where necessary, information referred to in points (c) and (d) of paragraph 3 can be exchanged between meetings.
6. The working group shall adopt its own rules of procedure by mutual consent.
7. The Union shall ensure that all views expressed and information (including technical and scientific data) provided by the United Kingdom in the working group are communicated to the relevant Union institutions, bodies, offices and agencies without undue delay.

ARTICLE 18

Safeguards

1. If the application of this Protocol leads to serious economic, societal or environmental difficulties liable to persist, or to diversion of trade, the Union or the United Kingdom may unilaterally take appropriate measures. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Protocol.
2. If a safeguard measure taken by the Union or the United Kingdom, as the case may be, in accordance with paragraph 1 creates an imbalance between the rights and obligations under this Protocol, the Union or the United Kingdom, as the case may be, may take such proportionate rebalancing measures as are strictly necessary to remedy the imbalance. Priority shall be given to such measures as will least disturb the functioning of this Protocol.

3. Safeguard and rebalancing measures taken in accordance with paragraphs 1 and 2 shall be governed by the procedures set out in Annex 10 to this Protocol.

ARTICLE 19

Protection of financial interests

The Union and the United Kingdom shall counter fraud and any other illegal activities affecting the financial interests of the Union or of the United Kingdom. For this purpose, the United Kingdom shall cooperate with the European Anti-Fraud Office (OLAF).

ARTICLE 20

Annexes

Annexes 1 to 11 shall form an integral part of this Protocol.

ARTICLE 21

Authentic texts and depositary

This Protocol is drawn up in a single original in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, the texts in each of these languages being equally authentic.

The Secretary General of the Council shall be the depositary of this Protocol.

ARTICLE 22

Entry into force and application

This Protocol shall enter into force on the date that the depositary of this Protocol has received the written notification of the completion of the necessary internal procedures by the Union and the United Kingdom. It may apply provisionally from the date of signature.

ANNEX 1

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 4(1)

[This list should in principle be identical to that in Annex 1 to the Protocol on Ireland/Northern Ireland annexed to the draft Withdrawal Agreement.]

ANNEX 2

PART 1: PRINCIPLES APPLICABLE TO AUTHORISED ECONOMIC OPERATOR AND TRUSTED TRADER PROGRAMMES

All non-exempted export and import transactions involving the movement of goods over the Border are to be conducted under the transit regime provided for in the CTC subject to the provisions of this Protocol and measures adopted to implement it.

Accordingly, exporters and importers will need to qualify as Authorised Consignor and Authorised Consignee respectively under the CTC.

Authorised Consignor and Authorised Consignee status will be granted automatically to all exporters and importers that have qualified under an applicable AEO or TT programme.

Various tiers of TT shall be recognised based on the [WCO SAFE Framework standard] corresponding to different conditions and giving rise to different rights.

The top-tier TT status shall be destined for established reliable operators with a high volume of trade. The formal conditions for access will include:

- 3 years of customs-compliant international trade
- record-keeping systems covering management and transport which are consistent with specified generally-accepted standards
- compliance with minimum financial solvency requirements
- specified professional qualifications
- compliance with specified safety and security standards

The top tier TT status will allow the maximum level of customs facilitation and should allow self-assessment of liability subject to specified controls.

The second level TT status shall be destined for operators that do not yet qualify for the top tier but can demonstrate knowledge and experience. They will typically be involved in regular cross-border trade but at a lower volume than the top tier. The formal conditions for access will include:

- a record of customs-compliant trade (international or with Union countries prior to Brexit)
- record-keeping systems covering management and transport which are consistent with specified generally-accepted standards
- compliance with minimum financial solvency requirements

The second level TT status will be subject to a specific monitoring programme that will become less intensive over time. It will provide a lesser degree of customs facilitation than the top tier but include reduced bond requirements.

The first or entry-level TT status will be designed for operators not yet qualifying for the second and top tier TT status such as SMEs above the VAT threshold. The formal conditions for access will include:

- a record of VAT compliance
- compliance with minimum financial solvency requirements
- demonstration of experience in trade with non-Union countries or with Union countries prior to Brexit.

The first or entry-level TT status will be subject to a detailed monitoring programme, including entry into records, designed to allow progression to the higher tiers. It will provide a lesser degree of customs facilitation than the top or second tier. It may in particular include inward storage relief.

The management of the TT programme shall be simplified, automatised and managed on-line to the greatest extent possible in order to lower the cost of entry for all participating businesses.

Non-compliance with the applicable conditions in any tier will lead to removal of status and proportionate, effective and dissuasive penalties

PART 2: TECHNOLOGY

Electronic tracking of the vehicle transporting goods, or of the movement of goods via hand-held devices, so as to allow confirmation that the consignment under transit has indeed crossed the border.

Conversion of the current physical Transit document, complete with Barcode, to a 'digital' format available on a hand-held device.

PART 3: EXEMPTED TRANSACTIONS

The following categories of transactions over the Border shall be exempted from export and import formalities:

- Transactions by private persons for personal use and not for commercial purposes and up to an annual threshold [of at least €1000]. Above this limit declaration shall be required and set in monetary terms.
- Export and import of tools and equipment belonging to a service provider, where these are used in the conduct of his or her profession.
- Movements of livestock, equipment, seeds and fertiliser within the boundaries of a single farm.
- [Exemptions for farmers with an agricultural flat rate scheme similar those the current Union VAT Directive that facilitates an agricultural flat rate VAT scheme making possible for farmers to charge a flat rate of VAT in the United Kingdom on their products, while at the same time not deducting the VAT being charged to them - to be clarified].
- Enforcement and penalties to be proportionate but dissuasive.

ANNEX 3

DETAILED ARRANGEMENTS FOR THE IMPLEMENTATION OF ARTICLE 6 OF THE PROTOCOL

ARTICLE 1

Application of Customs Codes

Without prejudice to the provisions set out in the Protocol, the Union Customs Code and any other measures and controls which are applicable in the customs territory of the Union, and the United Kingdom Taxation (Cross-border Trade) Act 2018 and its implementing provisions, as well as other relevant legislation, which are applicable in the customs territory of the United Kingdom, shall apply in trade in goods across the Border.

ARTICLE 2

CTC Transit procedures to apply

Trade in goods across the Border shall, unless exempted, be conducted under the procedures set out in the CTC. For this purpose, the customs office of departure within the meaning of paragraph (g) of Article 3 of Appendix I shall act also as a customs office of transit within the meaning of paragraph (h) of that provision.

ARTICLE 3

Administrative cooperation

1. The customs authorities of the Member States of the Union and of United Kingdom shall provide each other, through the European Commission, with specimen impressions of stamps used in their customs offices for the issue of transit documentation and with the addresses of the customs authorities responsible for verifying those documents.
2. In order to ensure the proper application of this Protocol, the Union and United Kingdom shall assist each other, through the competent customs administrations, in checking the authenticity of transit documentation and the correctness of the information given in them.

ARTICLE 4

Verification documentation

1. Subsequent verifications of transit documentation shall be carried out at random or whenever the customs authorities on the importing side of the Border have reasonable doubts as to the authenticity of the documentation, the status of the products concerned or the fulfilment of the other requirements of the Protocol and of its Annexes, providing such verification is sought no later than 3 years after

the issuing of the documentation by the customs authorities in the exporting side of the Border.

2. For the purposes of implementing the provisions of paragraph 1, the customs authorities on the importing side of the Border shall send the documentation to the customs authorities on the exporting side of the Border, and the invoice, if it has been submitted, or a copy thereof, giving, where appropriate, the reasons for the enquiry. Any documentation and information obtained suggesting that the information given on the transit documentation is incorrect shall be forwarded in support of the request for verification.
3. The verification shall be carried out by the customs on the exporting side of the Border. For this purpose, they shall have the right to call for any reasonable evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate.
4. The customs authorities on the importing side of the Border shall offer, while awaiting the results of the verification, release of the products to the importer subject to any precautionary measures judged necessary.
5. The customs authorities requesting the verification shall be informed of the results of this verification within a maximum of 10 months. These results must indicate clearly whether the documents are authentic and whether the products concerned corresponded to the description given and fulfil the other requirements of the Protocol and its Annexes.

ARTICLE 5

Disputes relating to the verification procedure

1. Where disputes arise in relation to the verification procedures of Article 4 which cannot be settled between the customs authorities requesting a verification and the customs authorities responsible for carrying out this verification, or where they raise a question as to the interpretation of this Annex, they shall be submitted to the Joint Committee.
2. At the request of the Union or the United Kingdom, consultations shall be held in the Joint Committee within a period of 90 days from the date of submission referred to in paragraph 1, with a view to resolving those differences. The period for consultation may be extended on a case by case basis by mutual written agreement. After this period the customs authority of the importing side of the Border can make its decision on the status of the goods concerned.
3. In all cases, disputes between the importer and the customs authorities of the importing country shall be settled under the legislation of the said country.

ARTICLE 6

Penalties

Penalties shall be imposed on any person who draws up, or causes to be drawn up, a document which contains incorrect information in relation to trade across the Border. Such penalties shall be effective, proportionate and dissuasive.

ANNEX 4

RULES OF PROCEDURE OF THE JOINT COMMITTEE AND SPECIALISED COMMITTEE

[These should in principle be identical to those set out in Annex VIII to the draft Withdrawal Agreement.]

ANNEX 5

VAT AND EXCISE DUTIES REFERRED TO IN ARTICLE 9(5)

[List laws and regulations whose principles are to be continued (such as the dying of petrol).]

ANNEX 6

AGRICULTURE

PART 1: MEASURES REFERRED TO IN ARTICLE 10(1)(A)

[Lists 36, 37, 41 and 43 of Annex 5 to Protocol B.]

PART 2: MEASURES REFERRED TO IN ARTICLE 10(1)(B)

[List 34 of Annex 5 to Protocol B.]

PART 3: MEASURES NECESSARY FOR THE PRESERVATION OF THE COMMON SPS AREA REFERRED TO IN ARTICLE 10(2)

[Lists 38, 39 and 44 of Annex 5 to Protocol B.]

PART 4: ENVIRONMENTAL REGULATIONS: PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 10(7)

- Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species;
- Council Regulation (EC) No 708/2007 of 11 June 2007 concerning use of alien and locally absent species in aquaculture.

ANNEX 7

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 11

[This list should be based on that in Annex 7 to the Protocol on Ireland/Northern Ireland annexed to the draft Withdrawal Agreement.]

ANNEX 8

ENHANCED ECONOMIC ZONES

PART 1

The following areas may be designated Enhanced Economic Zones:

The area within 30 miles of each side of the Border and 20 miles of each side of the Border between the counties of Derry/Donegal and the Newry Dundalk corridor.

PART 2

[Derogations from otherwise applicable regulations for Enhanced Economic Zones.]

PART 3

[Special regime applicable to trade between Special Economic Zones and Free Trade Zones and other territories.]

ANNEX 9

OTHER AREAS OF COOPERATION

[Based on the list established during the mapping exercise.]

ANNEX 10

PROCEDURES REFERRED TO IN ARTICLE 18(3)

[These should in principle be identical to the procedures set out in Annex 10 to the Protocol on Ireland/Northern Ireland annexed to the draft Withdrawal Agreement.]

ANNEX 11

RULES OF PROCEDURE

[These should in principle be identical to the procedures set out in Annex IX to the draft Withdrawal Agreement.]

Further information

www.prosperity-uk.com/aacabout/

Alex Hickman, Prosperity UK

ahickman@prosperity-uk.com

or

Jennifer Powers, Technical Panel

jpowers@competere.co.uk

07903 078488

You can download this report at

www.prosperity-uk.com/aacabout/