

# ALTERNATIVE ARRANGEMENTS FOR THE IRISH BORDER REPORT & PROTOCOLS

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

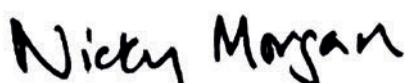
As British parliamentarians who voted to Remain in the 2016 EU referendum, who accept the referendum result, who voted for the Prime Minister's Withdrawal Agreement and who want to see Brexit implemented in an orderly way with a deal of some kind, we hope that the Report & Protocols from Prosperity UK's 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.

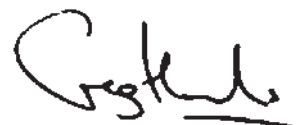
The Brady amendment to the Withdrawal Agreement, which sought to replace the Backstop with Alternative Arrangements, did pass the House of Commons with a majority of 16 in January 2019. In March 2019 the Strasbourg Instrument on the Withdrawal Agreement committed the UK and the EU to work "on a subsequent 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**

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## LIST OF ABBREVIATIONS

<b>AEO</b>	Authorised Economic Operator
<b>AFTS</b>	Advanced Freight Targeting System
<b>ANZCERTA</b>	Australia-New Zealand Closer Economic Relations Trade Agreement
<b>BA/GFA</b>	Belfast/Good Friday Agreement
<b>BIPs</b>	Border Inspection Posts
<b>CBSA</b>	Canada Border Services Agency
<b>CBVA</b>	Common Bio-Veterinary Area
<b>CDS</b>	Customs Declaration Service
<b>CFSP</b>	Customs Freight Simplified Procedure
<b>CHIEF</b>	Customs Handling of Import and Export Freight
<b>CSA</b>	Customs Self-assessment
<b>CTA</b>	Common Travel Area
<b>CTC</b>	Common Transit Convention
<b>CU</b>	Customs Union
<b>ECFA</b>	Economic Cooperation Framework Agreement
<b>EEA</b>	European Economic Area
<b>EEZ</b>	Enhanced Economic Zone
<b>EFTA</b>	European Free Trade Area
<b>EIDE</b>	Entry into the Declarant Records
<b>EORI</b>	Economic Operator Registration and Information Number
<b>EU</b>	European Union
<b>IE</b>	Ireland
<b>ISA</b>	Importers Self-assessment
<b>ISR</b>	Inward Storage Relief
<b>ITP/RA</b>	International Trade Policy/Regulatory Policy
<b>FEP</b>	Future Economic Partnership
<b>GB</b>	Great Britain
<b>GMO</b>	Genetically Modified Organism
<b>GPS</b>	Global Positioning System
<b>HMRC</b>	Her Majesty's Revenue and Customs
<b>KPI</b>	Key Performance Indicator
<b>LSP</b>	Logistic Service Provider
<b>MRA</b>	Mutual Recognition Agreement
<b>NAFTA</b>	North American Free Trade Agreement
<b>NCTS</b>	New Computerised Transit System
<b>NI</b>	Northern Ireland
<b>NSW</b>	National Single Window
<b>REACH</b>	Registration, Evaluation, Authorisation and Restriction of Chemicals
<b>RFID</b>	Radio Frequency Identification
<b>Ro-Ro</b>	Roll-on Roll-off
<b>SAFE</b>	Standard to Secure and Facilitate Global Trade
<b>SEU</b>	Single Epidemiological Unit



<b>SM</b>	Single Market
<b>SMEs</b>	Small and Medium-Sized Enterprises
<b>SPS</b>	Sanitary and Phytosanitary
<b>TBT</b>	Technical Barriers to Trade
<b>TRA</b>	Trade Remedy Authority
<b>TRACES</b>	Trade Control and Export System
<b>TSP</b>	Transitional Simplified Procedure
<b>TTP</b>	Trusted Trader Programme
<b>UCC</b>	Union Customs Code
<b>VAT</b>	Value Added Tax
<b>WA</b>	Withdrawal Agreement
<b>WCO</b>	World Customs Organization
<b>WTO</b>	World Trade Organization

# EXECUTIVE SUMMARY

## 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.





## INTRODUCTION

“In view of the unique circumstances on the Island of Ireland, flexible and imaginative solutions will be required, including with the aim of avoiding a hard border, while respecting the integrity of the Union legal order. In this context, the Union should also recognise existing bilateral agreements and arrangements between the United Kingdom and Ireland which are compatible with EU law.”

April 29th, 2017, European Council (Art 50) Guidelines for Brexit (Para 11).

### 1. Purpose of the Report – What is the Problem We Are Trying to Solve?

The Brexit negotiations have hit an impasse which is politically and economically damaging. The uncertainty around Brexit’s outcome is putting the Belfast/Good Friday Agreement under stress. It is in the best interests of the UK, the Island of Ireland and the EU that the Withdrawal Agreement process is concluded, thus avoiding a ‘no deal’ scenario, and that the UK and EU can get on with negotiating their Future Economic Partnership (FEP). In order to achieve this, it will be necessary to conclude the Withdrawal Agreement process. Attempts to pass a meaningful vote on the Withdrawal Agreement concluded by the UK and EU governments, as it currently stands, have failed. The only substantive indication that has passed Parliament by a majority is the Brady amendment, which passed the Withdrawal Agreement and provided that Alternative Arrangements would replace the Irish backstop. Our work builds on this, and also on the Withdrawal Agreement’s own reference to Alternative Arrangements and the interpretation given by Attorney General Geoffrey Cox, which also referred to Alternative Arrangements, specifically technical solutions, existing administrative techniques and technology.

Our aim is to provide a solution that enables no physical infrastructure at the border and no related customs procedures or physical controls at the border, which is what the Joint Report issued in December 2017 called for.<sup>1</sup> The Government’s position has been that the language of Paragraph 43 of the December 2017 Joint Report means that there must be no customs procedures in NI at all. We see no basis for this in the text, which states “The United Kingdom also recalls its commitment to the avoidance of a hard border, including any physical infrastructure or related checks and controls.”. As well as avoiding a hard border, Paragraph 49 of the Joint Report also undertakes that “In the absence of agreed solutions, the UK will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South

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<sup>1</sup>Joint Report from the negotiators of the European Union and the UK Government on progress during phase 1 of negotiations under Article 50 TEU on the UK’s orderly withdrawal from the European Union (8th December 2017) available via the following link:

[https://ec.europa.eu/commission/sites/beta-political/files/joint\\_report.pdf](https://ec.europa.eu/commission/sites/beta-political/files/joint_report.pdf)

cooperation, the all-island economy and the protection of the 1998 Agreement". Our proposal is for agreed solutions which ensure that the requirements for North-South cooperation set out in the Belfast/Good Friday Agreement are fully honoured.

We will be using the recommendations of this Report to draft an Alternative Arrangements Protocol which could be inserted into the Withdrawal Agreement to ensure that the UK and EU would never activate the backstop. Since the EU and UK governments have both actively stated that the backstop is merely an insurance policy and not intended to be used,<sup>2</sup> neither can object to a process where it is rendered unnecessary. At the same time, in order to get an agreement with the EU, and to ensure that the damaged relationships on the Island of Ireland and between the UK and Irish governments can be repaired, the UK side should recognise the importance to the people of Ireland and Northern Ireland of retaining such an insurance policy in the Withdrawal Agreement.

## **2. Creating a Seamless Border**

We do not seek, nor do we think the UK and EU should seek, to have no customs registration procedures in Northern Ireland at all. Firstly, because customs registration procedures do take place there now, and also because the only way to achieve such a goal is for NI to be in the EU Customs Union and Single Market which is not a solution which is politically credible in the UK.

Because the UK is leaving the EU, we believe that some change to the status quo is unavoidable. However, we believe these changes can be minimised so that they are manageable for all stakeholders, protecting the peace process and the Belfast/Good Friday Agreement.

There is no one policy proposal that will be a "silver bullet" to ensure a seamless border on the Island of Ireland. Many stakeholders we spoke to had previously assumed our solution would rely on technology alone. This is not the case. There are, instead, a series of different things which, working together, could be used to ensure a seamless border. We propose a combination of existing technical solutions and administrative techniques that already exist and/or can be relatively easily introduced. But we also advocate a more advanced trusted trader programme, built for the 21st century. We should not be limited by existing legacy systems which are not fit for purpose. All traders, whether they are small or large, can be trusted for certain activities. It will also be important, and

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<sup>2</sup> European Commission and UK Government, Instrument relating 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, 11th March 2019, Recital (3), available via the following link:

[https://ec.europa.eu/commission/sites/beta-political/files/instrument\\_0.pdf](https://ec.europa.eu/commission/sites/beta-political/files/instrument_0.pdf)

a net benefit for all business in NI and IE, to enable a trusted trader programme to be extended to SMEs, with or without the services of customs intermediaries, so that they can transition over time to progressively higher tiers of a multi-tier trusted trader system. That way, more and more SMEs can grow, and benefit from international trade and the better and higher paying jobs which international trade supports.

Our proposals are based on the profile of trade currently occurring across the border. The bulk of IE trade is with GB, and similarly the bulk of NI trade is also with GB. What crosses the border is predominantly either via large company supply chains (such as Coca-Cola, Diageo and Glanbia) with multiple repeat transactions, or very high-frequency low-value trade from SMEs and micro-businesses. Any solution to the Irish border must recognise and be predicated on that reality.

Our proposals are agnostic as to the Future Economic Partnership (FEP) but assume that this future partnership will not involve the UK remaining in the EU Customs Union and the EU Single Market. In all other FEP scenarios, including a partial customs union (with or without dynamic regulatory alignment), membership of the European Free Trade Area, the European Economic Area via EEA the Agreement, a comprehensive free trade agreement or even in the event that the UK and EU do not agree a deal prior to the UK leaving the EU, some form of Alternative Arrangements will be needed if we are to ensure continuance of the seamless border on the Island of Ireland.

Each of the chapters starts off with a set of questions and concepts that highlight the concerns that stakeholders we have talked to on both sides of the border have shared with us on a number of fact-finding missions. The object of each chapter is to address these concerns.

### 3. What are the Constraints on Solutions?

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 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. While there will be changes associated with the UK leaving the EU, these must be minimised. Any disruptions should be counterbalanced by meaningful and sustained efforts 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. As such, 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 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 make those 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 is then 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 Exemption. 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.

#### **4. What is the Structure of Our Proposed Set of Solutions?**

There is no one solution to resolving the issue of the Irish border while satisfying the constraints which we have set forth above. Instead we should focus on the many potential solutions that are created when a border is in operation or the de facto existence of a border (as there is currently a border for currency, tax and excise duties now) emerges as a result of changes to the political economic structure. These solutions may also apply to other regions or countries where a border emerges for some geopolitical reason.

Our approach is to tackle each of the obstacles to trade faced, from a practical, commercial and legal perspective, by economic operators wanting to do, or continue, business on the other side of the border. We offer a range of solutions to deal with these issues for all traders on the Island of Ireland, large or small, then taking into account the sectors in which they operate that might raise their own unique obstacles, one obvious example being the agricultural sector and the application of the SPS regimes.

Unquestionably, the Irish border issue presents certain unique challenges because of the history of NI and IE and these are discussed in Chapter 2 and 3. Our overall approach is to examine the problems that arise as a result of some form of border emerging as a result of the UK leaving the EU for people and firms and to see if a set of structures - some stand alone, some interconnected - can alleviate each of these problems. For all these structures and within them, the key objective is to give firms choices so they can make their own decisions about how best to trade across the border and more widely into the EU. In doing this, we are conscious that solutions must be found for both dimensions of North-South and East-West trade.

In Chapter 2, we look at the respective economies of NI and IE. This is crucial to understand the nature and scope of the problem we are dealing with, and the type of solutions which will be needed. An analysis of the two economies in the Island of Ireland demonstrates that, in order to satisfy the constraint analysis above, we must systematically remove or mitigate the problems for the relatively small group of large traders, and the very different but much more numerous group of micro and small traders. It is also necessary to recognise that because so much trade from IE to the EU flows through the UK land bridge, there is a significant vested interest in IE for the Dover-Calais connection to continue to work in as frictionless a way as possible.

In Chapter 3, we look specifically at the ways in which the BA/GFA is impacted by Brexit, and how we can safeguard it, understanding that it is an agreement between two communities, and any solutions we find must be satisfactory for both communities. In doing so, in the words of one of our stakeholder participants, due regard must be paid to community, consent and context.

In Chapter 4, we look at the ways in which we can ensure that the Common Travel Area (CTA) can continue under a new, non-EU-based framework. It is critical that the people of IE and NI can continue to travel freely in the Island of Ireland and GB for work, study and visits, as they have done for a prolonged period. It is equally critical that the UK and Irish governments are candid about these issues with the relevant communities in both NI and IE. Many border communities are very dependent on the flow of people from IE, for work and for their retail businesses, and it is not sufficient for only the UK Government to advise the NI people about the CTA; it is important that the Irish Government also informs its citizens. This will help minimise mistrust.

From Chapter 5, we look at the specific case of goods where there are significant issues in order to maintain the current seamless border. Chapters 5 through 11 follow the logic set out below in terms of potential solutions.

### **Solution Set 1 (discussed in Chapters 5 and 6)**

In Solution Set 1, after seeking lessons from other similar borders in the world in Chapter 5, we look in Chapter 6 at the potential for special zones of various kinds to be created to minimise customs procedures that may need to be undertaken. We consider a number of different potential zones at both the customs and regulatory levels. These various zone ideas limit customs procedures in different ways, and constrain future UK policy choices in certain ways. Zones of various kinds can also take advantage of the fact that we are dealing with two islands, the Island of Ireland and the island of Great Britain, and that customs procedures can be moved to the ports and harbours of these islands to maximise the ability to register products for customs purposes and to ensure that the invisible border for goods on the Island of Ireland is maintained.

### **Solution Set 2 (discussed in Chapter 7)**

Solution Set 2 examines the comprehensive use of trusted trader mechanisms to create a ladder in which all firms can ascend to progressively higher and higher levels of trust. It is understood that Solution Set 2 alone cannot solve all the problems but will enable the problems for larger companies who have extensive supply chains across the border to be handled. Many trusted trader schemes exist around the world, and our goal is to identify the best in class and build a multi-tiered trusted trader scheme built up on them.

**Solution Set 3 (discussed in Chapters 8 to 11)**

While many mid-tier companies could benefit from a trusted trader or an AEO-type scheme, there will be firms that cannot benefit from such programmes, and solutions must also be found for them. Here we use the existing flexibilities of the Union Customs Code, and existing customs procedures, such as Transit, which underpin our solutions. We seek to minimise the burdens for these firms that arise from having to prove origin, or undergo SPS or TBT checking on goods, as much as is possible.

**Solution Set 4 (discussed in Chapter 12)**

Special solutions must be found for small traders. While we do include some trusted trader schemes that are specifically designed for smaller traders (such as the ISR programme), we also recognise that temporary importation and flexibilities could be used which are supported by WTO flexibility (such as the Frontier Traffic Exemption and National Security Exemption), as well as exemptions for the smallest of the small traders who are below even the VAT threshold. We also consider how small traders can access other steps on the ladder towards trusted trader schemes without imposing excessive bureaucracy and financial burdens on them.

**Operationalising the recommendations (discussed in Chapters 13 and 14)**

We conclude by discussing how these recommendations can be operationalised in real terms in Chapter 13, before turning in Chapter 14 to look at how technology can support our recommendations in a general sense. Indeed, throughout this Report, we look at how technology can support specific issues created by a particular recommendation.





## THE ECONOMY OF NI AND IE; CREATING A BRIDGE FROM PEACE TO PROSPERITY

Today's young people in NI and IE are the first generation to have known peace, and, in addition to preserving that peace, it is vital that we work hard to generate economic opportunities on the Island of Ireland. This is a task that all of the people of the Island of Ireland should be engaged in, and one in which both IE and UK Governments play a critical role. Wherever possible, all economic opportunities that are available to improve the prosperity of the Island of Ireland should be pursued.

### 1. The All-Island Economy – Historical Background

One of the goals of the Belfast/Good Friday Agreement (BA/GFA) was to protect the all-island economy. In order to understand what the all-island economy is, and what must be protected, it is necessary first to understand the history of the economies of NI and IE, and their direction of travel. At the same time, the genius of the BA/GFA was that it dealt with three strands - North-South, East-West and the local community economies.

#### (a) NI – Historical Economic Context

In the nineteenth and twentieth centuries there were two economies on the Island of Ireland; the North East was heavily industrialised, and the South and West was predominantly agricultural. In 1913, for example, *The North American Review*,<sup>3</sup> stated that the gap between North and South is “the gap of the entire industrial revolution”. In 1914 the Financial Times special supplement on Ulster called Belfast “the premier ship building centre of the entire world”. In the early 1920s only 13% of the Irish Free State labour force worked in industry, as against 53% per cent in agriculture.

In the 1920s and 1930s, the industrial strength of the North East began to weaken, and de-industrialisation accelerated from the 1970s, as it did in all of the former manufacturing heartlands across the UK. The effect on living standards was cushioned by UK Government decisions from the mid-1920s onward to preserve the equality of social standards throughout the UK including NI.

The support which NI received from London was enhanced by the arrival of the Welfare State in the UK after World War II, and especially from the period of the Labour Government. The faster growth of the population in NI compared with GB meant that the sedately growing economy of the UK was insufficient to employ all of a rapidly expanding labour force, especially in areas with a predominantly Catholic population. The rapid growth

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<sup>3</sup> Sydney Brooks, *The Problem of Ulster*. *North American Review* Vol 88 no 5 Nov 1913 p.617; and Richard Dunphy, *Fianna Fail and the Working Class 1926-38* In Fintan Lane et al. eds. *Politics and the Irish Working-Class* London 2005 p. 249

of public spending in the early years of the Troubles under Labour, in particular, had the effect of raising family incomes as female employment burgeoned, but also created jobs which allowed more people to remain at home and avoid the need to move to GB.

The result has been a larger population than could be sustained by NI's private sector despite the fact that this has performed surprisingly well, including through much of the period of the Troubles. However, a consequence has been a continuing need for support from GB that currently runs close to £10 billion per annum.

The NI economy remains highly integrated into the UK economic union through its common currency, interest rates, commercial law, and social security system. This is comparatively more important than its membership of the EU Single Market and Customs Union where there are common tariffs and a common regulatory system but a different fiscal and monetary system. EU customs tariffs affect only the 8.7% of NI's output of goods and services that are exported to the EU, whereas 85% of its goods and services are sold in either NI or GB. One result of the integration of NI into the UK economy is that economic cycles in NI are relatively more correlated with those in GB than those of IE or the rest of the EU.

As a result of its integration with the UK, NI shares the strengths and weaknesses of the British economy. Employment growth has been strong with an even faster increase than in GB (i.e. a 25% increase in NI, over 20 years) and unemployment is low (lower than in GB at 3.6% of the labour force). Low wage costs allied with good educational attainment and a grant support regime have maintained a good flow of foreign companies into NI, mainly in services, including legal services and IT. Growth in productivity and real wages have been weak since the banking crisis as in the rest of the UK. Compared with the UK average NI is, and always has been, a low productivity and low wage economy. Along with Wales and the North East of England it is one the three poorest UK regions. However, because of UK support, and lower prices especially for housing, living standards are above the average for GB outside the South East, and only 7% below London.

The structure of the NI economy mirrors that of the UK with a little more of its employment in agriculture (4%) compared with GB and a little more in manufacturing (at 10% in NI). Manufacturing has shrunk in NI as it has elsewhere in the UK over recent decades, but lower wages and grants have meant that the decline has been less in NI than in GB. The main lacuna in NI's economy is in financial and professional services and in this respect is similar to much of GB outside the South East. This gap is compensated for in NI by a relatively high employment in public services, which employ 31% of those at work and at wage levels close to the national average.

**Table 1: Sales & Exports of NI Goods and Services by Broad Destinations (2017)**

Destination of Sales (in £m)	Total Sales (%)	Goods (%)	Services (%)
Total Turnover	100.0	100.0	100.0
NI Sales	67.9	65.8	72.4
GB Sales	17.0	16.6	17.9
IE Sales	5.8	6.5	4.3
Rest of EU Sales	2.9	3.5	1.7
RoW Sales	6.4	7.6	3.8

Source: NI Statistics and Research Agency Broad Economy Sales & Export Data 2017

As outlined above, NI's pattern of trade is strongly oriented towards the UK (including NI itself). Less than 9% of all sales are to the EU, including 5.8% to IE. Sales to IE also includes some reprocessing of commodities which return to NI or go on into GB, especially in the dairy industry. Exports of live animals are about £55 million (see table below). A proportion of this small amount will cross the Irish border, and it is possible that some live animal sales bound for GB (which do not count as exports) also cross the Irish border to save time en-route to southern England or Wales. As noted elsewhere in this Report, live animal sales are covered by the common veterinary area, and are inspected, at the moment, in the harbours of the Irish Sea (for live animals, Larne).

The majority of exports from NI are goods from NI manufacturers, of which around 15% consists of processed food products (£93 million). Around half of these food exports goes to IE, two thirds in the form of meat and dairy products. Over one fifth of goods exports are attributed in the NI data to sales from the wholesale and retail distribution sector. Most of this is likely to be wholesalers in NI distributing goods to IE and other non-UK export destinations, and activities of manufacturers with wholesale subsidiaries or departments which factor 'bought-in goods for selling on.

**Table 2: Exports & Sales of Goods and Services from NI (2017) (£m)**

Sector	Great Britain	Ireland	Total Exports	Total Sales
<b>Farming<sup>a</sup></b>	<b>40</b>	<b>290</b>	<b>306</b>	<b>1,633</b>
<i>Live Animals</i>	40	55	71	970
<i>Unprocessed Milk</i>		235	235	663
<b>Manufactured Goods<sup>b</sup></b>	<b>7,581</b>	<b>2,987</b>	<b>8,078</b>	<b>45,780</b>
<i>Production &amp; Other</i>				
<i>Agricultural Industries</i>	5,311	1,568	6,004	17,465
<i>(of which agri-food)<sup>c</sup></i>	2,193	646	1,108	4,362
<i>Construction Industries</i>	344	63	69	2,076
<i>Distribution Industries</i>	1,696	1,206	1,738	23,444
<i>Service Industries</i>	231	150	267	2,796
<b>Services</b>	<b>3,731</b>	<b>1,040</b>	<b>2,485</b>	<b>24,493</b>
<i>Non-Financial Services<sup>d</sup></i>	3,723	895	2,028	20,822
<i>Pens, Ins &amp; Financial Services<sup>e</sup></i>	8	145	457	3,671
<b>Tourism<sup>f</sup></b>	<b>319</b>	<b>90</b>	<b>338</b>	<b>926</b>
<b>Goods Sales and Exports</b>	<b>7,621</b>	<b>3,277</b>	<b>8,384</b>	<b>47,413</b>
<b>Total Sales and Exports</b>	<b>11,671</b>	<b>4,407</b>	<b>11,207</b>	<b>72,832</b>

Sources:

(a) DAERA Statistical Review of Northern Ireland Agriculture: DAERA, 2018

(b) NISRA Broad Economy Sales and Export Statistics (BESES), 2019 - Goods and Services Results

(c) DAERA Statistical Review of Northern Ireland Agriculture: DAERA, 2018 - estimates of agri-food.

(d) NISRA Broad Economy Sales and Export Statistics (BESES), 2019 - Goods and Services Results

(e) NISRA Supply and Use Tables 2014 & 2015

(f) NISRA Northern Ireland Tourism Statistics 2019: Rest of Europe's 'mainland Europe'.

NI Statistics and Research Agency Broad Economy Sales & Exports Data 2017

There are around £225 million of sales of meat and fish to Ireland (plus meat sales passing through Ireland). Several hundred million pounds per annum of dairy products may also require customs registration procedures. Other food exports to Ireland (bakery products, eggs and fruit and vegetables) amount to £150 million. Seventy-six per cent of NI external sales are to GB and other economies rather than to IE. Forty-three per cent of all production in NI goes to GB, mainly in the areas of food, drink and tobacco.

**(b). Northern Irish SMEs and Micro-Businesses**

The Northern Ireland economy is often described as a small business economy and Table 3 below shows that this is indeed the case. Micro-businesses with fewer than ten or fewer employees accounted for 88% of all firms with medium-sized firms (10-49 employees) accounting for another 9%. However, this is true of the UK as a whole and it is the small number of large businesses which generate most of the output and employment.

**Table 3: Proportion of businesses operating in NI by employment size band (2018)**

Size	Band	Business Count%
Micro	65,510	88%
Small	6,940	9%
Medium / Large	1,615	2%
<b>Total</b>	<b>74,060</b>	<b>100%</b>

Source: NI Statistics and Research Agency (NIRA).<sup>4</sup>

What is important for border arrangements are the number of businesses trading across the land border. Since border customs procedures involve goods rather than services, we also need to particularly focus on cross-border trade in goods. One important issue is also whether micro-businesses will be able to cope with new requirements to declare cross-border trade and submit to registration procedures for food safety, etc. In the case of trade declarations, it is relevant to know how many small businesses involved in cross-border trade are registered for VAT and hence already submit details on their cross-border transactions.

Evidence on these issues is mixed and to some extent inconsistent. The Northern Ireland Statistics and Research Organisation (NISRA) collects evidence on trade as part of its Annual Business Inquiry (ABI – a UK-wide survey but with extra features in NI). The ABI collects data from all manufacturing firms with more than five employees and all other businesses with more than 50 employees, and samples the rest. In all, the survey samples around 20% of all NI businesses each year.<sup>5</sup> For most micro-businesses the information on trade thus comes from a sample. We have not yet been able to obtain the sample fractions from NISRA.

<sup>4</sup> Businesses registered in NI for VAT or PAYE given at:

<https://www.nisra.gov.uk/system/files/statistics/IDBR-Publication-2018.pdf>.

<sup>5</sup> [https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/Overview-of-N-trade-slide-pack-March-2019\\_1.pdf](https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/Overview-of-N-trade-slide-pack-March-2019_1.pdf)

This NISRA source estimates that there were 2034 businesses exporting goods to Ireland in 2017, of which 755 were micro-businesses and 1,042 were other SMEs<sup>6</sup>. Numbers of businesses importing from Ireland were slightly larger than this in each size group. NISRA has provided figures for all firms exporting good and services to IE in 2017. These include 8689 firms in total of which 5681 are micro firms employing less than 10 employees<sup>7</sup>. The average annual value of exports for the micro firms was £132,000.

The Office for National Statistics (ONS) provides alternative estimates of numbers of businesses involved in cross-border trade.<sup>8</sup> The data in this case is obtained through linking the UK main business database, the Inter-Departmental Business Register (IDBR) with HMRC trade data. The latter includes only businesses registered for VAT and hence with an annual turnover in excess of £85,000.

Table 4 below shows the number of VAT-registered firms in NI which were trading in goods with IE in 2016. There were 1241 firms in this category of which 325<sup>9</sup> were classified as micro-businesses (i.e. with fewer than 10 employees). A third of these micro-firms had no employees at all.<sup>10</sup> These micro-businesses accounted for 16% of NI's exports to the Ireland and close to 1% of total turnover of goods in NI. A few hundred micro-businesses also export to the rest of the world, but this data implies that the vast majority of NI's 66,000 micro-businesses trade only within the UK.

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<sup>6</sup> Source: Broad Economy Sales and Exports Statistics (BESES), NISRA

<sup>7</sup> <https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/Overview-of-NI-trade.pdf>

<sup>8</sup> [www.ons.gov.uk/releases/patternsofnorthernirelandtradebydestinationproductandfirmcharacteristi2012to2016](http://www.ons.gov.uk/releases/patternsofnorthernirelandtradebydestinationproductandfirmcharacteristi2012to2016)

<sup>9</sup> This figure of 325 micro-businesses may be an underestimation because EU rules establishes exemption thresholds for different Member States below which traders are exempted from providing Intrastat information. The UK, for example, applies a threshold of UKP 1,5 million for intra-EU imports and UKP 250, 000 for intra-EU exports; See European Commission, National Requirements for the Intrastat System (2018 edition), Table 2, available via the following link: <https://ec.europa.eu/eurostat/documents/3859598/8512202/KS-07-17-102-EN-N.pdf/736c4a50-c240-4144-b087-4fa6aece8ee0>

<sup>10</sup> See for additional data Annex 2, Exports by Northern Irish businesses by destination and size 2016.

**Table 4: Number of VAT-Registered Businesses in NI Trading With IE**

Size	Band	Business Count%
Micro	65,510	88%
Small	6,940	9%
Medium / Large	1,615	2%

Source: ONS<sup>11</sup>

This ONS data is likely to underestimate the number of small traders since EU Intrastat rules exempt firms with less than £250,000 of intra-EU trade from submitting trade data. The average annual value recorded by ONS for export to IE by NI micro-businesses is close to £900,000 and it seems likely that many smaller firms trading with IE are not included in this data. In addition, the ONS data omits some businesses engaged in trade in goods which are not registered for VAT. Since the threshold for registration is currently £85,000 these businesses are likely to be sole traders and self-employed people. Even allowing for these differences in measurement and definition the discrepancy in numbers of traders in goods between the two data sources is so large that further research is merited to establish which gives the more realistic figure. This should include information on the sample sizes used to estimate the numbers of small traders. It should also provide an estimate of the number of micro businesses trading with IE which are not registered for VAT and hence unused to this type of form-filling.

NISRA'S figure of 8,689 businesses for 2017 for firms in all sectors (i.e. including services) exporting to IE implies that around 3,500 firms in construction and services were exporting to IE, in addition to the 5,000 or so businesses trading in goods. Of these some 2,700 micro-businesses in construction and services exported to IE.

Many of these micro-businesses are likely to consist of self-employed sole traders. NI's statistics on the self-employed come from the Labour Force Survey and the small size of the sample makes the figures somewhat unreliable especially if any disaggregation is required.

<sup>11</sup> ONS Report available via the following link:

<https://www.ons.gov.uk/businessindustryandtrade/internationaltrade/articles/patternsofnorthernirelandtradebydestinationproductandbusinesscharacteristics/2012to2016>

The NI Government's figures are significantly different which illustrates the difficulties in obtaining reliable statistics. In 2016, the NIG estimates a figure of 7,600 SMEs who trade across the border increasing in 2017 to almost 8,600. The ONS Report is based on HMRC data (excludes the services sector) and the ONS Report contains the caveat that 'These figures should be interpreted with caution given that a significant number of exporters to Ireland and the EU may have been omitted from our sample given Intrastat threshold rules.' The NIG data for 2017 (which includes services), reports 5,681 micro-businesses selling £754m to IE, an average £133k for 2017 which is well below the Intrastat threshold. The NISRA presentation on the latest BESES results is published and can also be found at:

[www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/Overview-of-N-trade-slide-pack-March-2019\\_1.pdf](http://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/Overview-of-N-trade-slide-pack-March-2019_1.pdf)

The survey records 125,000 self-employed in NI but we do not have reliable figures on their breakdown by sector. Around half of them may be directors of VAT-registered businesses leaving around 60,000 working as unregistered sole traders/ self-employed. Although reliable figures do not exist by sector for NI, the UK national disaggregation by sector will be a good guide. For the UK as a whole less than 5% of the self-employed are in manufacturing and around 20% in construction. The UK figure of 4% for the self-employed in UK agriculture is likely to be perhaps twice as high (i.e. 8% in NI where farming is more important than in GB). Even so, the great majority are in services sectors.

This means that there may be around 6,000 self-employed people in NI working in manufacturing trades of which half may be directors of registered firms. The NISRA figure of 5,581 micro-businesses exporting to IE thus looks high and more clarity from NISRA will help understanding on the nature of these firms.

It is difficult to get data on very small firm trade across the border. BESES data from the Northern Ireland Executive suggests that there were 7,600 firms trading across the border in 2016, rising to 8,600 in 2017. In addition, there are many micro firms trading below the Intrastat threshold and hence will not be picked up.

In any event, whatever the precise numbers, it is clear that solutions do need to be found for these micro-traders and we set these out in the chapter on small traders.

### **(c) Ireland**

In Ireland (IE) a largely unsuccessful attempt at industrial autarchy was abandoned in the late 1950s and 1960s when Ireland adopted a policy of export promotion supported by low profits taxes on exports. Both Ireland and the UK joined the EU in 1973. But at this point no one, especially government officials in Dublin, doubted that there were two distinct economies on the Island of Ireland and that of the North was heavily integrated, both in the economic and social sense, in the UK.

The development of the Irish economy has diverged greatly from that of the UK, and indeed from most other EU economies since the 1960s. The low export promotion taxes changed under EU pressure to a general low rate of corporation tax initially covering all manufacturing output but from the early years of the present century also covering the service sector.

At only 12.5%, Ireland's rate of corporation tax is among the lowest in the world. It has been an important driving force of rapid economic growth in Ireland for many decades, but its importance has risen as tax reduction strategies have become widespread among multinational companies. An initial tendency to charge low corporation tax on goods and services produced in Ireland has developed much further into much wider tax concessions on



profits not earned in Ireland. In this sense Ireland's tax status has distorted its trade and national accounts statistics and rendered them quite difficult to use in international comparisons.

The low corporation tax policy has been hugely important in attracting foreign direct investment into Ireland and latterly other profits flows (on which some tax can be charged in Ireland). In some years in the past a significant part of all FDI moving into the EU went to Ireland (which has less than 1% of EU population).

Low taxation in Ireland has been highly controversial within the EU but since most taxation including profits taxes was not, and is still not, an EU area of exclusive competence there was little the EU could do to attack it, especially with the UK as a strong opponent of any extension of EU competences on taxation.<sup>12</sup>

This may now change as, in late 2018, the European Commission undertook a consultation exercise on removing national vetoes on tax reforms. The tax arrangements of some multinationals located in Ireland have also been attacked through the enforcement of EU competition law. This and the pressure from the European Council to harmonise tax regimes in the EU Member States will have an impact on Ireland's tax strategy and its economic goals.

The degree of distortion to the economy can be seen in the fact that exports are 120% of GDP in Ireland compared with 30% in the UK and 21% in NI.<sup>13</sup> Per capita GDP in Ireland is currently measured at 74% higher than the UK. Even allowing for net profit outflows using per capita GNP, the figure is 40% higher than the UK. Using the latter (GNP per head) measure, IE ostensibly overtook the UK at the turn of this century and has subsequently grown twice as fast as the UK or NI. Yet average living standards (measured as personal consumer spending per head plus per capita government current spending on goods and services) in IE remain well below the UK or even NI.<sup>14</sup>

Extremely high levels of exports relative to GDP usually indicate a flow of trade through a country to adjacent destinations. This is the case for the Netherlands for instance, where many imports into Germany, Austria, Switzerland and other European countries (even

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<sup>12</sup> For many years, politicians, civil servants and academics in Ireland denied that low corporation tax was a major influence on Ireland's economic success. However, during the banking crisis of 2008 when France and Germany put strong pressure on the Irish Government to reform its tax concessions in return for a financial bail-out, the Irish Government asserted that low corporation tax was 'the cornerstone of its industrial strategy' and could not be changed.

<sup>13</sup> CSO Ireland Expenditure on Gross national product at current market prices, Table 5.

<sup>14</sup> Professor John Fitzgerald of Trinity College Dublin and Edgar Morgenroth of University College Dublin estimated that living standards in NI were 20% above those in IE in 2012 (The NI Economy. Dublin Economics Workshop, September 14th, 2018). Any comparison of living standards depends on which exchange rates are used. The large depreciation of sterling against the Euro in June 2016 means that using current exchange rates leads to a smaller measured difference in living standards.

including the UK) enter Europe through Rotterdam. The case of Ireland is more unusual. Obviously, IE cannot export more goods and services than it actually produces. What is happening appears to be that the value of goods and services are inflated by companies to take advantage of the preferential tax rates in IE. Some multinational companies are able to route all of their global sales through Ireland to avoid higher taxes elsewhere.

In other cases, so-called transfer pricing leads to the value of production in IE (and hence exports from IE) being inflated. The value of pharmaceuticals produced in IE is largely profit rather than costs of labour or materials, etc. This reflects the cost of R&D which is mostly undertaken outside IE but accredited to IE plants for tax reasons. Only 15% of the value of IE exports are recorded to the UK (including 1.5% to NI) but this is 15% of a hugely inflated total value of Irish exports. A quarter of IE exports to the UK are food products, but these are tied to more employment inside IE than is the case with most non-food exports, where inflated values mean less real connection with the IE economy.

**Table 5: Destination of Exports of Goods from IE (2017)**

Destination	%
EU-26	36.1
USA	18.3
UK	15.1
Switzerland	3.5
RoW	27.0
<b>Total</b>	<b>100%</b>

Source: CSO Ireland<sup>15</sup>

## 2. Impact of Brexit and Cross-Border Trade in Ireland

Brexit is likely to have very different impacts on the two different economies on the island. In order to understand the impacts on the customs border of the UK's decision to leave the EU we need to better understand the volume of trade across the border and its make-up.

### (a). Volume of Trade Across the Border in Ireland

The EU and the IE Government have focused on a frictionless Irish border as a means of protecting their economies but in an economic context this is of limited importance for the obvious reason that only a relatively small part of IE trade crosses the Irish land border. As indicated above, according to the most recent data furnished by the NI Statistics and Research Agency (NISRA), exports to IE are 5.8% of all sales of goods and services made by NI firms. For IE exports to NI the figure is 1% of Irish GDP or 0.8% Of Irish exports. This

<sup>15</sup> CSO Ireland Report available via the following link: <https://www.cso.ie/en/statistics/externaltrade/>

involves goods exports from NI in 2017 valued at close to £3 billion plus a further £0.9 billion in services, and imports of goods and services from IE to NI at £2.6 billion.<sup>16</sup>

### **(b). Volume of Trade Across the UK Land Bridge**

Forty-eight per cent of Irish trade into the EU goes via the UK land bridge. Most of this makes its way to the EU market via the Ro-Ro ports of Dover-Calais and the Eurotunnel infrastructure. It is therefore enormously in the interests of IE to ensure that there is sufficient discussion between UK customs and French customs in advance, so that the trade can continue. At the moment no parties can have this discussion because of the perception that the EU is in charge of the negotiations for the Member States. However, while we fully understand and appreciate the need for EU unity on negotiating points, there must surely come a point where IE starts to advocate to ensure its core interests are not damaged.

### **(c). IE Firms**

A report by InterTradeIreland<sup>17</sup> describes Irish cross-border trade using data from IE's CSO. This report has details on 270 IE firms which export to NI and 456 which import from NI, plus 156 which trade in both directions. These 882 firms have an average of 100 employees each and hence are quite large. There is no information of how many IE micro-businesses are involved in cross-border trade.

While solutions are needed for firms that trade across the border above and below the VAT threshold, it would appear that the firms that trade below the VAT threshold are smaller in number. Obviously, it is very hard to compute these numbers since no VAT registrations are made. Solutions will also need to be found for those that trade above the VAT threshold.

There is also a distinct group of businesses which are small service providers that trade across the border (plumbers, mechanics and the like). These people can cross the border because of the CTA but must have their licences recognised by the other party (NI or IE), and their tools and equipment must not attract custom registration procedures or other government interference in order to preserve their livelihoods.

## **3. Trade routes IE to GB and EU via Port of Dublin Ro-Ro**

Freight traffic crossing the Irish Sea is concentrated on two corridors, the central and southern, serving Dublin and Rosslare respectively, providing links to ports of Holyhead, Liverpool, and Heysham. The Port of Dublin handles approximately 42% of all Irish

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<sup>16</sup> NISRA annual trade data is given at:

<https://www.nisra.gov.uk/statistics/business-statistics/broad-economy-sales-and-exports-statistics>

<sup>17</sup> InterTradeIreland Report, Cross-Border Trade & Supply Chain Linkages (23rd March 2018) available via the following link:

<https://intertradeireland.com/insights/publications/cross-border-trade-supply-chain-linkages/>

trade with the EU (by total weight). Of the Ro-Ro freight crossing the Irish sea to GB, it is estimated 50% will continue through GB to the EU26 Countries via the Channel crossing ports such as Dover and Eurotunnel. This route is often referred to as the 'UK land bridge', with approximately 500,000 road freight vehicles using it annually to Transit goods to the EU 26.<sup>18</sup>

The three-hour Dublin to Holyhead crossing provides the most economic route for freight vehicles from the Island of Ireland, handling over 400,000 freight vehicles per year.

**Figure 1: Ferry Links Between the UK and the Island of Ireland**



Source: BBC

While the UK remains part of the EU, freight vehicles flow through RoRo ports without the requirement for customs processes, with only a small percentage subject to physical checks and inspections. It is critical for the continuity of IE trade to GB, and via the UK land bridge to the EU 26, to maintain this smooth flow of vehicles through Ro-Ro ports following the UK's exit from the EU.

UK Brexit preparations for the port of Holyhead have focused on providing parking space in the vicinity of the port in the event of congestion caused by the EU imposing customs checks on vehicles. At its peak, 400 to 500 vehicles flow through the port from two ferries arriving within 25 minutes of each other. Introducing physical customs checks will result in severe delays and congestion at peak times.

<sup>18</sup> <https://www.cso.ie/en/releasesandpublications/er/spt/statisticsofporttraffic2017/>

The Port of Dover, and Eurotunnel, face the same challenges as the Port of Holyhead, but with larger freight traffic volumes. Dover is the UK's busiest Ro-Ro port, processing 2.5 million goods vehicles per year. Handling over 78% of the UK's trade with the EU, totalling £120bn per annum, Dover is the main artery for trade between the UK and the EU.

Of the 10,000 vehicles per day arriving at the port of Dover, approximately 5% are subject to customs clearance checks, as a result of carrying controlled goods or goods originating outside the EU. This process requires the drivers to voluntarily drive to the West Port of Dover, exit their vehicles and present paper documentation to clear their cargo through customs. A time-consuming process which takes in the order of 40 minutes in total to complete and cannot be undertaken on all vehicles in the future without creating major traffic congestion and delays in the supply chain.

The major UK Ro-Ro ports must be supported with revised customs processes and technology solutions to ensure goods vehicles continue to progress rapidly through these ports and avoid delays. Technology solutions based on the principle of electronic pre-notification prior to arrival will enable vehicles to be pre-cleared, reducing or removing the need for physical checks at these ports if their documentation is in order. Infrastructure already present in ports, in the form ANPR (Automatic Number Plate Recognition) cameras for example, can be used to recognise the arrival of these vehicles and automate their clearance through customs, reducing the risk of delays.

#### 4. Conclusions

The economic data supports a number of conclusions.

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

**Second**, regarding trade across the border, a small number of large companies with well understood supply chains across the border undertake much of total cross-border trade. These lend themselves to specific, tailored solutions.

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

**Fourth**, IE trade with the EU-26 is very dependent on the UK land bridge and the Dover-Calais route. The IE Government therefore has important equities 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.



## PROTECTING THE BELFAST/GOOD FRIDAY AGREEMENT AND PEACE PROCESS

### 1. Brexit and the Belfast/Good Friday Agreement

During multiple visits to Belfast, Dublin, Derry (Londonderry) and Newry, the importance of protecting the gains of the peace process and the BA/GFA has been impressed upon us. We understand the critical need to protect the principle of consent that is a foundational principle of the BA/GFA and forms its wider context. The importance of community and identity was also stressed, and the role that identity has played in the Troubles. It is crucial therefore that our solutions build on, and do not take away from, the various communities' sense of identity, as Irish, as British, and as belonging to the particular locality. It is this that motivates some of our special arrangement recommendations such as those that pertain to the wider Derry (Londonderry)-Donegal area, and the Newry-Dundalk corridor, as well as the use of WTO Frontier Traffic and National Security Exemptions. Our goal is to ensure that where possible, and of course with the consent of all of the people of NI, things can be made better, the economy can be improved, and people's sense of identity enlarged rather than diminished.

There is a deep concern in both IE and NI that any change to the current settled arrangements post-1998 will trigger a return to violence. Infrastructure at or near the border might become a target for terrorist activities. As a result, the successes of the BA/GFA and the peace process generally will be undermined. The emergence of infrastructure on the border between IE and NI would be a visible sign of a return to former times, as would, of course, Border Inspection Posts (BIPs) and customs and security procedures for both people and goods.

Moreover, Brexit presents an inherent problem to the continuation of the BA/GFA because it will strip away the EU citizenship dimension, which was a perceived part of the nationalist community's rationale in accepting the BA/GFA. Since then a number of moves have been made in mitigation. The UK Government has made a commitment to a soft border.

A new and strengthened Common Travel Area (CTA) plus special migration arrangements will give Irish citizens superior rights in the UK over other EU citizens. Irish citizens in NI will continue to have rights in the EU. One of the backstop's effects is to placate Northern nationalist sentiment.

Similarly, the Withdrawal Agreement (WA) will undermine a good part of the Unionist community's rationale for the acceptance of the GFA:

- Firstly, it gives Brussels rather than London control over large parts of commercial life in NI by creating an entity UK(NI) that could diverge from the rest of the UK.
- Secondly the backstop replaces the "bottom-up" consensual approach to cross-border cooperation with a commitment to top-down imposition of decisions in certain key areas.

It is important to recognise that the BA/GFA cannot be removed from its historical context. It mandates local power-sharing between the two communities. It mandates North-South cooperation in various defined areas – agricultural and animal health are at the top of the list. This cooperation requires the explicit endorsement of the NI Assembly. At the time of the negotiation, both the British and Irish governments accepted that there were two economies on the Island of Ireland. Significantly the BA/GFA makes no provision for an all-Island of Ireland economy, though the WA tends to imply otherwise. The latest election results in NI show a probable strengthening of support for the Agreement. But both communities still contain significant volatile elements and our solution should aim for a balance that protects the peace process.

## **2. The Role of Borders and Border Procedures**

In order to achieve our objectives, we need to understand what we mean by a "border"; how "border procedures" are undertaken nowadays compared with the past; and how these are changing radically with the development of new and emerging technology. Clearly most people associate a "border check" with a physical encounter with a customs officer, an immigration officer, a police officer or a Border Force officer. In Ireland, at the height of the Troubles, it meant a military checkpoint.

This encounter may involve an inspection of documents, an interrogation and, in some cases, even a search of person and belongings. This conjures up extremely painful memories for the communities in Ireland, which cannot be overstated. Many people we spoke to in the border region said that it was not simply a matter of "checks" or "no checks" at the border – the very perception of a border in itself was provoking fear. One Newry retailer told us that he had been told by a long-standing customer from south of the border that he wouldn't see her again, because she didn't have a passport.

It is important therefore that we do not simply address the question of border regulation; but also the perception of border procedures and how these are changing. Many countries are moving towards "invisible borders" and customs registration procedures away from the border. Traditional control points are being dismantled in favour of



compliance by consent, using not just technology but also national and international agreements. The Schengen zone in the EU is a case in point; the CTA is another. In some respects, the Irish border is an example of an invisible border, to which other border agencies in other countries aspire. Of course, border agencies need sufficient powers and opportunities to disrupt harm, criminality and non-compliance; but these can be delivered in alternative ways which do not disrupt border crossings or indeed life in the communities on either side of them. It is vital that the IE and UK Governments communicate and engage effectively with the communities in Ireland about this; and also, about the potential benefits rather than disadvantages that might accrue.

This is particularly important because, in our engagement with stakeholders, it was evident that the modern concept of a seamless border is not well understood, and a surprisingly large number of people, including some business people, think of the border very much as it was in the past.

**(a). The erosion of the traditional concepts of borders and border procedures.**

Traditionally, countries maintain Border Inspection Posts (BIPs) and similar infrastructure to control the crossing of both people and goods across their borders.

As part of this infrastructure, traffic in people and goods needs to be regulated by officials from border agencies for many reasons. The imposition and collection of import duties and taxes on goods is the most obvious reason, but others include immigration controls, security and the enforcement of public policy objectives such as the protection of the health and safety of consumers, animals and plants from risks contained in goods coming from other countries.

In Europe, these borders and the corresponding BIPs are increasingly less visible and customs procedures less intrusive. The creation of the EU Single Market among the current EU-28 Member States is one obvious example. As the free movement of goods, people and services is permitted inside the territory of the EU, and the need for border procedures has been greatly reduced, especially since customs duties and equivalent changes cannot be imposed on goods in free circulation inside the Single Market.

Similarly, people arriving at ports of entry at the external border of the Schengen zone are subject to passport and immigration controls, but once admitted they may move freely across the zone without further controls. A similar reduction in the need for border control infrastructure and customs procedures is also occurring in trade between the EU and those neighbouring countries with which it has a free trade agreement or a similar understanding, Switzerland being the most obvious example.

In recent years, the traditional model of physical inspections at a frontier crossing point has already been significantly disrupted worldwide by a new concept of border management, known as the "Multiple Borders Strategy". This means that border control can no longer be seen simply as a physical intervention by an officer at a port of entry or border crossing point; but more as a series of transactions where data are collected and verified electronically at the point of origin; far away from the physical frontier and well in advance of arrival. The greater the capacity to conduct customs registration procedures in this way, the lesser the need for physical inspection on arrival. People and goods can be identified, and risk assessed at the commencement of their journey. Then, using new and emerging technology, they can be tracked from point of origin to point of destination without requiring examination at the physical frontier. Furthermore, where a physical examination is deemed necessary either for goods or persons, it need not take place at the physical frontier, but can be conducted at suitable points along the travel continuum either before or after passage. This eases border traffic congestion and decreases the visibility of BIPs, as well as reducing the physical infrastructure needed to regulate cross-border activities.

#### **(b). International Integrated Border Management**

Physical border controls are also being challenged by the principle of International Integrated Border Management (IIBM). IIBM exists where countries come together through a series of bilateral or multilateral agreements to facilitate passage across their mutual borders, without undermining the security or sovereignty of the countries concerned. Law enforcement agencies work together internationally across borders to mitigate risk by sharing information and intelligence to disrupt international terrorism, human trafficking, smuggling and international organised crime.

HMRC has identified at least 26 different Departments and Agencies with an interest in border crossings. In IE similar constraints exist, including separate functioning agencies at the border for immigration and customs registration procedures (which have been merged at the UK border into a single UK Border Force). It is important that the frameworks established under the GFA and the CTA between the UK and IE are preserved and strengthened to maximise the capabilities of all the enforcement agencies in both countries to protect their respective communities in this way, whilst simultaneously working together to promote the free and legitimate movement of people and goods between them for the greater economic benefit of both.

In summary, in order to maximise the efficiency of border control it is vital that proper governance structures are in place so that Departments and Agencies can share information and intelligence, to facilitate the free flow of the very large majority of people and goods crossing their border whilst at the same time identifying and disrupting non-compliance and harm.

### 3. Border Procedures at the Irish Border

It is important to note that some border controls are already in place on routes between IE and the UK, within the UK itself (for example on air and sea routes between NI and the UK) and on routes between IE and the rest of the EU. These have evolved in response to events, including the accession of both countries to the EEC in 1973; the decision by both countries to “opt out” of the Schengen Agreement in 1985; and – most importantly – the conclusion of the BA/GFA.

There are border controls carried out by the UK or IE Government respectively in their territories but none at the border itself. Under Security Council Resolution 1373 (2001),<sup>19</sup> passed in the wake of 9/11, both the British and Irish governments (IE Government was then a temporary member of the UN Security Council) committed themselves to a programme of work directed against organised terrorism and crime.<sup>20</sup> The resolution explicitly deals with the transnational struggle taking place along international borders. Para.2G explicitly endorses the use of “effective border controls”. Any other position would effectively suspend the law of the land and a refusal to uphold it would put both countries in an invidious position with regard to their international obligations. This resolution has been supported by the EU. At any rate it is clear that the Resolution and its key concept – effective border control – has been compatible for many years with the avoidance of a hard border in Ireland.

The UK has always acted on this principle, exemplified in the recent Counter-Terrorism and Border Security Act 2019. On the Parliamentary website this legislation’s fundamental purpose is well described: “To make provision enabling persons at ports and borders to be questioned for national security and other related purposes; and for connected purposes.”<sup>21</sup> In IE, it was correctly noted that “connected” and “related” are essentially euphemisms for smuggling, which is sometimes related to raising money for terrorist purposes. As is well-known, smuggling does occur along the border now, as it is a border for both excise tax and VAT, and Brexit will not alter that reality.

Nor is smuggling limited to the Irish border. Equally, all of the EU’s external borders are exposed to some level of smuggling. The Global Illicit Trade Environment Index from TRACIT is a measure of the extent to which economies enable (or inhibit) illicit trade through their policies and initiatives to combat illicit trade. The World Customs Organization (WCO) released in November 2018, the 2017 Illicit Trade Report,

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<sup>19</sup> UN Security Council Resolution 1373 (2001) adopted by the Security Council at its 4385th meeting, on 28 September 2001, available via the following link:

[https://www.unodc.org/pdf/crime/terrorism/res\\_1373\\_english.pdf](https://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf)

<sup>20</sup> Security Council Resolution 1373, Recital (7).

<sup>21</sup> Counter-Terrorism and Border Security Act 2019, Preamble, available via the following link:

<http://www.legislation.gov.uk/ukpga/2019/3/contents/enacted/data.htm>

an annual publication in which the Organization tries to quantify and map the situation concerning illicit markets in the following six key areas: Cultural Heritage; Drugs; Environment; IPR, Health and Safety; Revenue; and Security. In addition, the WCO has produced a specific report on the Illicit Financial Flows via Trade Mis-invoicing.

The WCO statistics show that most reporting European Union countries have increasing numbers of illegal instances over their external borders. As an example, the number of drug trafficking instances in the Netherlands increased significantly, from 3,663 in 2016 to 5,205 in 2017. In the latest available statistics, the instances of IPR medical products trafficking reported by Germany was 1,359 (a large increase from the year before) and the number of weapon seizures increased globally by 5.3 %, with some of the largest seizures reported in EU countries.

Further details on EU smuggling can be found in Chapter 13.

Swedish Customs publishes its statistics on seizures which show that there is an increasing number of seizures on the external borders, even though there are differences between different areas and types of seized products. However, it also shows that a large proportion of seizures occur on the inner EU border between Sweden and Denmark.

TRACIT, an independent, business-led initiative to mitigate the economic and social damage of illicit trade, writes in their latest report, "illicit trade is unlikely to ever be eliminated. Illicit trade follows its licit counterpart, and as long as there is the latter, there will be the former".

This is an important contextual point because it relates to the constraint to ensure the protection of the EU Single Market and Customs Union. Any attempt by the EU to assert that Alternative Arrangements do not protect the EU Single Market and Customs Union are severely undercut by what occurs at the EU's external borders. In addition, if some of the zonal suggestions we make are undertaken, we can use the fact that customs, security and other customs procedures can be put into the ports and harbours of the British and Irish Isles, and we can better secure the EU Single Market and Customs Union than can be done at the EU's other external borders.

International cross-border crime and smuggling is today combatted with intelligence, surveillance, advanced analytics, profiling and targeting, operational task forces, international cooperation, pattern recognition and artificial intelligence. Access to and collection of supply chain data and exchange of advanced information, from national and international sources, are key elements of modern control strategies.

The national enforcement agencies are still the central players in the fight against transnational organised crime. Even though international operations have proven to be a successful instrument that is likely to be used more frequently in the future, implementation of the most important norms is largely the work of national government organisations. Laws must be constantly amended, supervisory bodies must be set up and coordinated, information must be exchanged nationally but also with international partners and neighbouring countries, investigations must be harmonised. In addition it is acknowledged in the international community that on a local, national and global level, the fight against transnational organised crime must not be left to government bodies. For example, the United Nations is stimulating the involvement of civil society and the private sector in fighting crime and reducing the negative consequences.

The best way to combat border-related crime is through advanced cooperation in different dimensions through the entire supply chain. In this perspective the UK and EU will, due to new post-Brexit border procedures, have access to more relevant and accurate trade data than before. It is also important to note that none of the customs registration procedures in this report require any physical infrastructure on the land border between IE and the UK; nor do they threaten the sovereignty of either IE or the UK. Nor do they prevent significant levels of free movement across these borders.

Because both the UK and IE are currently members of the EU, they are jointly committed to the four fundamental freedoms of the Single Market – the free movement of people, goods, services and capital across their borders. This will change when the UK departs the EU and IE does not. However, it does not follow that any additional controls on people and goods crossing the border need to take place at the border itself.

### **Free Movement Zones**

Firstly, the principle of free movement zones such as the Common Travel Area (CTA) and the Schengen zone, is most effective to avoid physical interventions at land borders. By controlling people when they arrive at the external border to the zone, control agencies can dispense with the need for passport controls at BIPs at land borders; and for surveillance patrols along the border areas between the BIPs.

This is a situation that lends itself well to the Irish land border. A further analysis of the CTA and the controls conducted within it is explored in Chapter 4 below; but in general terms this provides the framework for eliminating the need for any form of passport control infrastructure for people crossing the Irish land border. This is something that was not widely understood by many people living in the Irish border communities that we spoke to during our visits.

## **Pre-Entry Controls**

Secondly, border controls on air and sea routes are generally exercised by the receipt and analysis of advanced passenger information (API) submitted by the inbound carrier prior to arrival. This includes the full biodata of the traveller; and it enables border agencies to conduct electronic investigation against watch lists – and to develop intelligence profiles - prior to arrival. This means that the vast majority of inbound traffic can be risk assessed and cleared in advance of arrival in the CTA. A further identity or validation check may take place at the port or airport of arrival; but once admitted people can move freely within the zone without further inspection. Subject to suitable collaboration between the UKBF and INIS (as set out in Chapter 4 below) this enables control agencies to control people before they land at a port or airport either in IE or the UK, rather than at the physical border itself.

Similarly, pre-entry customs registration procedures can be conducted on goods. Customs declarations are submitted electronically in advance of arrival, thus enabling the UKBF and Irish Customs to conduct electronic risk assessments prior to arrival. Where intelligence suggests that a closer look may be required, the goods may be diverted to an appropriate location for physical inspection and held there until customs clearance is granted. Therefore, the vast majority of goods entering the UK are “checked” and cleared electronically for passage, without the need for any physical intervention.

## **On Entry Controls**

One of the primary constraints set out at the beginning of this report is that no physical infrastructure or related customs registration procedures at the Irish land border are needed.

We have visited various sections of the Irish land border and noted that roads meander across the border at regular intervals. The only visible sign that the border has been crossed is the change in road surface materials. There are some former customs buildings at or near the border where documents were once checked, but otherwise it is impossible to tell where the precise border line is, or when it has been crossed. Only the people who live there and know the history can tell.

We have already established that the CTA obviates the need for any form of passport control at the Irish border. Depending upon the ultimate model chosen, there may be a need to track goods and SPS products crossing the physical border. Some people raised concerns that this would involve the insertion of new forms of surveillance systems such as ANPR and video monitoring, which would offend the principle of identity and local consent established under the GFA.

We explore in Chapter 14 and Annex 5 how technology might be used so that those goods and SPS products that need to demonstrate a record of the point of crossing may do so using GPS technology. Customs processes already exist for tracking the movement of goods across the supply chain and subject to specific derogations - such as a bar code check these can be conducted without the need to install new infrastructure at the border crossing point. Work is underway at various borders around the world to further develop the theme of “invisible borders”.

The application of the WTO Frontier Traffic and National Security Exemptions for populated areas and the perimeter strategy for specific customs procedures within a free movement zone would enable the invisible border to remain in place; and for all such procedures to be conducted either before or after crossing it without the need to install any additional surveillance infrastructure at the physical border.

### **After-Entry Procedures**

After-entry procedures may take place some way away from the physical border itself, to determine compliance. For example, there is already a comprehensive scheme for compliance inspections away from the border in several areas of government control including compliance with health, tax and food standards. These are usually underpinned by a framework of compliance where assessments are made online and verified for compliance before any physical intervention is required.

We heard several concerns during our visit that by moving customs procedures away from the border to an inland location would simply exacerbate the situation, in that any form of enforcement visit by government agents would be seen as intrusive by the community. We were told of examples where significant police support would be needed to ensure the safety and security of any inspectors conducting after-entry procedures.

Although the CTA does not extend to customs registration procedures on goods and SPS products, we put forward a range of options and examples whereby necessary physical verifications may be conducted “inland” by approved inspectors. We discuss in Chapter 13 how and where these might take place operationally and by whom.

It is important to distinguish those actions that might take place at company premises or in warehouses with the consent of the community, from those that might require an unannounced enforcement element. In a compliant environment, customs and SPS procedures would be conducted with consent as part of a wider compliance framework, in the same way as inspections on other licenced products take place now.

New and emerging technology now enables reviews to be done remotely using digital and mobile technology to verify that specific processes have been followed at points of loading or unloading away from the border. These actions can be conducted either by government inspectors, by private contractors or even by companies themselves – thus, reducing the need for compliance inspections altogether.

For inland customs registration procedures we envisage a series of risk assessments and appropriate codes of practice for the various inland inspections proposed. For example, where an inspection by an approved veterinarian is to take place at an inland BIP, we envisage a system of implied consent with the owner or occupier of the premises or the importer or exporter of the goods to ensure compliance. This would be a low-risk scenario. At the other end of the spectrum, where intelligence suggests that a crime has been committed and the owner or occupier of the premises or the suspect is likely to be a threat to the investigating officers, then a police assessment would be undertaken to determine the level of support required.

It is important to note that multi-agency investigations into border-related offences already take place across Northern Ireland; and the concept of risk assessment and codes of practice already exist. We do not propose any major change to this system but recognise that this can only operate with the consent of the community and appropriate independent audit and oversight in accordance with the principles of the BA/GFA.

This principle of free movement zones such as the Common Travel Area (CTA) and Schengen is most effective at land borders, in that it obviates the need for passport controls at BIPs at land borders; and for surveillance patrols along the border areas between the BIPs. This is a situation that lends itself well to the Irish land border. A further analysis of the CTA and the controls conducted within it is explored in Chapter 4 below; but in general terms this provides the framework for eliminating the need for any form of passport inspection infrastructure for people crossing the Irish land border. The movement of goods is more problematic. There is no comparable CTA for the movement of goods between the UK and Ireland; nor is there any “Schengen zone” equivalent for the movement of goods in mainland Europe. To avoid the need for any physical customs procedures being applied to goods moving between the UK and IE, both countries need to embrace the concepts of multiple borders and integrated border management between them, without disrupting the ability of IE to respect the requirements of free movement with EU countries under the terms of the Single Market.



#### 4. Policing the Border

Enhancing police cooperation between Ireland and the UK has been a major policy goal for both countries since the 1980s.

Articles 8 and 9 of the Anglo-Irish Agreement 1985<sup>22</sup> established enhanced structures for the exchange of information on suspects between the then Royal Ulster Constabulary and the Garda Síochána. The BA/GFA<sup>23</sup> decommissioned all security installations that had been installed at the Irish border during the Troubles; and established the joint British/Irish Intergovernmental Council (BIIC) to facilitate cooperation on security matters.

The Fresh Start Stormont Implementation Agreement 2015<sup>24</sup> announced the establishment of a joint agency task force to tackle cross-border crime, consisting of officers from the Police Service of NI (PSNI), the Garda Síochána, the Revenue Commissioners and Her Majesty's Revenue and Customs (HMRC).

Although the structures for North/South collaboration established under the BA/GFA and the Fresh Start Agreement will be preserved post-Brexit, those areas of collaboration between the UK and Ireland that are underpinned by the EU framework will inevitably be affected. Under present arrangements both countries are members of Europol and Eurojust, which facilitates cross-border investigation of crime and cooperation in investigations and prosecutions between Member States. However, an alternative bilateral agreement or understanding between the UK and NI to allow a similar exchange of information, albeit on a smaller scale, between the two countries would alleviate the need for physical infrastructure to be established along the border to deal with crime and continue cooperation.

EU membership also permits access to specific data and information systems including the Europol Information System (EIS), the European Criminal Records Information System (ECRIS), the PRUM arrangements for transfer of vehicle data and biometric data between Member States, the Schengen Information System (SIS II) relating to law enforcement operations within the EU, and the EURODAC system for identifying duplicate asylum claimants within the EU. Under the WA as it currently stands, there

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<sup>22</sup> Anglo-Irish Agreement 1985, available via the following link: <https://www.dfa.ie/media/dfa/alldfawebstimedia/ourrolesandpolicies/northernireland/Anglo-Irish-Agreement-1985-1.pdf>

<sup>23</sup> Belfast/Good Friday Agreement, available via the following link: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/136652/agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf)

<sup>24</sup> Belfast/Good Friday Agreement, available via the following link: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/136652/agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf)

is a risk that the UK will become disconnected from some or all of the EU databases<sup>25</sup> whereas IE will not (although IE is not part of the Schengen zone, and may still be limited to some components of SIS II).

This raises questions about the capability of enforcement agencies on both sides of the Irish border to share intelligence and information post-Brexit, particularly where one party has access to EU databases and the other does not. The obvious solution to this potential rupture of communications is for the UK and the EU to agree to continued access to these systems either in a WA (on a temporary basis) and/or under a final departure settlement (on a longer-lasting basis).

## **5. The Withdrawal Agreement and the Belfast/Good Friday Agreement**

The Joint Report on Progress of Negotiations during Phase 1 of December 2017<sup>26</sup> makes it abundantly clear that the UK committed to protecting North-South cooperation and gave a guarantee of avoiding a hard border. The UK's intention was to achieve these objectives through the final arrangements to settle the EU-UK future relationship. Should this not be possible, the UK undertook to propose specific solutions to address the unique circumstances of the Island of Ireland including full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement.

This proposition found its final expression in the WA in the Preamble to the Protocol which is based on the "scenario of maintaining full alignment with those rules of the Union's internal market and the customs union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement, to apply unless and until an alternative arrangement implementing another scenario is agreed."

The backstop as currently conceived, while popular in many quarters of NI and IE, does change the constitutional character of NI without the consent of the people of NI. It does this by creating a new entity, UK (NI) which is in the EU Customs Union, while GB is not. It provides that UK (NI) adopts much of the EU acquis in goods and agri-food which gives it different domestic settings from the rest of the UK. Alternative Arrangements should build from the bottom up, drawing from the consent of the people of Northern Ireland.

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<sup>25</sup> Draft Agreement on the withdrawal of the UK of Great Britain and NI from the European Union and the European Atomic Energy Community (14 November 2018), Article 8, available via the following link: [https://ec.europa.eu/commission/sites/beta-political/files/draft\\_withdrawal\\_agreement\\_0.pdf](https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement_0.pdf)

<sup>26</sup> Joint Report from the Negotiators of the European Union and the UK Government on Progress during Phase 1, supra note 1, Para [49].

## 6. Supporting Cross-Border Co-operation and Protecting the 1998 Agreement

The Irish Protocol is described in the WA as being based on the principle of “maintaining full alignment with those rules of the Union’s Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all-island economy and the protection of the 1998 Agreement”. North-South cooperation and protecting the GFA are listed separately in this statement but appear to be the same thing. The GFA itself does not contain the word ‘border’ and makes little reference to the EU.

The BA/GFA did in fact set up important new cross-border institutions including six “implementation bodies” as well as identifying additional areas for cross-border cooperation.<sup>27</sup> Over subsequent years a panoply of cooperative cross-border activities have been established, mostly although not wholly under the aegis of the North-South Ministerial Committee (NSMC) established by the BA/GFA. Other examples of cooperation pre-date the BA/GFA. The WA’s aim of supporting cross-border cooperation and supporting the BA/GFA appear to refer solely to the maintenance of these cross-border activities.

The Protocol spells out why Brexit threatens cross-border cooperation in its Preamble, where the following statements appear:

**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 European Union legal and policy framework,

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

**RECALLING** that the UK 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.

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<sup>27</sup> The North-South implementation bodies are: The Foyle, Carlingford and Irish Lights Commission (The Loughs Agency), Waterways Ireland, the Special EU Programmes Body, The Food Safety Promotion Board (safeFood), the Trade and Business Development Body (InterTradeIreland), and The North-South Language Body (The Ulster Scots Agency and Foras na Gaeilge). The six areas of cooperation agreed by the NSMC, are currently: agriculture, environment, transport, health, tourism, and education. Common policies and approaches in these areas are agreed in the NSMC, but implemented separately in each jurisdiction, in line with Strand Two of the Agreement. Each of these areas has a number of sub-categories that significantly contribute to the total area of cooperation. Broader cooperation outside the confines of the NSMC takes place in the areas of energy; telecommunications and broadcasting; justice and security; higher and further education; arts, culture and sport; and inland fisheries.

Indeed, the Protocol goes one step further to protect possible future cooperation:

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

These statements imply the need for a mapping exercise document which “shows that North-South cooperation relies to a significant extent on a common EU legal and policy framework”. A DEXEU report conducting a mapping exercise is in the public domain, but this document only touches on the 156 areas of cooperation which depend on an EU legal and policy framework.<sup>28</sup> There is for instance no categorisation of which areas cooperation depends wholly, partly or not at all, on EU legal and policy frameworks. We understand that there are policy papers that look at these areas, but the government has not shared these with us.

The DEXEU paper lists 156 areas of cross-border cooperation including cooperation in policing and security which flowed from reviews of policing and justice agreed in the GFA. This cooperation includes:

*cross-border policing strategy, justice cooperation on public protection, support for victims, youth justice and criminal justice.*

It goes on to state that:

*Much of this cooperation currently benefits from a common EU environment and with EU measures underpinning much of the operational police cooperation, including in terms of combating the threats posed by terrorist groups, organised crime gangs, and cross-border illicit activity. Close and effective operational cooperation between PSNI and An Garda Síochána has been critical to tackling shared challenges and threats, and the relationship has led to excellent disruptive and criminal justice outcomes in both jurisdictions.*

The mapping exercise list reflects the range of formal and informal cooperation that currently occurs between NI and Ireland, and in some cases cooperation pre-dates the Agreement.<sup>29</sup> The exercise highlighted that there were varying different levels of legal and policy links between North-South cooperation and EU policy and legal frameworks.

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<sup>28</sup> DEXEU, A technical explanatory note on the North-South cooperation mapping exercise, including a list of areas of current North-South cooperation both formal and informal, available via the following link: [https:// www.gov.uk/government/publications/technical-explanatory-note-North-South-cooperation-mapping-exercise](https://www.gov.uk/government/publications/technical-explanatory-note-North-South-cooperation-mapping-exercise).

<sup>29</sup> The areas of cross-border cooperation from the mapping exercise are listed in summary form in Annex 2.

Broadly speaking, cooperation falls into:

- areas not at all underpinned by EU policy and legal frameworks (for example, the all-island free travel scheme for senior citizens);
- areas partially underpinned by EU legal and policy frameworks (for example, the All Ireland Congenital Heart Disease Network, where although the Network is underpinned by a local Service Level Agreement, it relies on the continued supply of medicines and medical devices across the border and mutual recognition of qualifications); and
- areas directly underpinned by EU legal and policy frameworks (for example, the Enterprise rail service from Belfast to Dublin).

The intention is that the Joint Committee established under the Withdrawal Agreement shall keep under constant review the extent to which the necessary conditions for North-South cooperation are maintained. However, the DEXEU document notes that 'It is important to note that there are no commitments in Article 13 of the Protocol to align with EU law in relation to North-South cooperation'.

Finally, the DEXEU document adds:

*There were a number of cross-cutting areas identified by the mapping exercise that impact North-South cooperation and will be affected by the UK's exit from the EU. These include, but are not restricted to: data protection, including personal data, and information sharing; public procurement; state aid rules; health and safety and employment frameworks in relation to personnel issues in the Implementation Bodies; access to EU funding; the provision of and access to services; the mutual recognition of professional qualifications; and the Common Travel Area.*

While undoubtedly important, we should note that these cases of cooperation have little to do with a customs union or single market. Instead they come under the heading of security cooperation which remains an issue for future negotiation although an outline of what might be intended to be included in the Political Declaration which accompanies the Withdrawal Agreement.

On the other hand, there are some areas which would appear to implicate trade, and provide a framework for the regulatory arrangements between the NI (UK) and IE (EU). The mapping exercise on areas where there is a connection to trade includes the following:

1. Agriculture – SPS; dairy international trade working group; cooperation on products of animal origin; informal cooperation on agri-food policy; cooperation on safety of the animal feed chain;

2. Medicines and medical devices (to support all-Island congenital heart disease network); mutual recognition of prescriptions; clinical trials;
3. Environment; wildlife trade including CITES; waste management;
4. Transport; road and rail safety; road haulage operators standards; driver registration recognition;
5. Energy; single electricity market;
6. Telecoms; subsea cables; spectrum; mobile roaming;
7. Sports governance;
8. Fish health and aquaculture; and
9. All-island public procurement

As can be seen by the 156 areas covered in the mapping exercise, many of the areas do not implicate trade flows. In areas where they do, such as agriculture and food safety, what is called for is regulatory cooperation. In any event, regulatory cooperation will be a feature of the FEP. Even in the case of a comprehensive FTA between the EU and UK, concepts such as regulatory cooperation, agreed Good Regulatory Practice, deemed equivalence, adequacy and regulatory recognition will be key features and will be necessary in order to protect the BA/GFA and the key mapping exercise elements. Indeed, the UK Government should, in its negotiations with the EU, cite the mapping exercise as an additional reason to come to agreements in the regulatory areas.

It will also be important that some of the North-South groups set up by Strand 2 of the BA/GFA are utilised to monitor trade across the border, as opposed to setting up new bodies not contemplated under the BA/GFA itself.

## **7. Permitted WTO National Security and Frontier Traffic Exemptions**

Ensuring that the hard-won gains of the peace process and the BA/GFA are protected is not just empty rhetoric. The risk of violence is very real if the issue of the Irish border is not handled properly and with appropriate sensitivity. There are special provisions in international law to allow ordinary trade measures to be adopted and implemented to accommodate this reality.

For example, all proposed solutions and recommendations in this Report are compatible with the obligations of the parties involved under the World Trade Organisation (WTO) Agreement and more specifically, the fundamental cornerstones set out in the GATT 1994 which forms an integral part of the constitution of that international organisation.

In that context, it is recognised that Article I of the GATT 1994 sets out the General Most Favoured Nation (MFN) principle (Treatment) and that this provision is not restricted only to the MFN application of tariffs and/or duties. It applies more broadly to

(i) customs duties and charges of any kind imposed on or in connection with importation or exportation; (ii) the method of levying such duties and charges; and (iii) all rules and formalities in connection with importation and exportation. The current UK government proposal (as of April 2019) that, in the event of a no deal situation, the UK would waive the application of tariffs for all goods crossing from IE to NI would likely infringe the MFN principle because of the discriminatory application of tariffs. However, the proposals in this Report on customs registration procedures “away from the border” and/or other similar proposals, do not discriminate on the method of levying and/or rules and formalities on an MFN Basis because they would apply to all goods coming into the UK from IE (i.e. both originating and non-originating products) and, potentially vice versa. In addition, where customs formalities and procedures at particular importation points are more “flexible” in terms of import procedures, a WTO Panel has found that “[i]nherently, an advantage arises for an importer that can choose how to operate his business in order to enhance his profitability and competitiveness, among other concerns”, and so not an infringement of Article I; *Panel Report, Colombia – Ports of Entry, Para. 7.352*.

Our proposals also do not entail any infringements of Article III:2 of the GATT 1994 which prohibits the application, directly or indirectly, of internal taxes or other internal charges on imported goods in excess of those applied, directly or indirectly, to like domestic products. Our proposals are “country neutral” in terms of the taxation of IE merchandise versus like products crossing the border but made outside IE or the UK for that matter (i.e. in the USA, China, etc.). The same is true for Article III:4 of the GATT 1994 (National Treatment) preventing discriminatory treatment between imported and domestic goods in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use. Our proposals do not confer any preferential treatment for IE/UK goods versus non-IE/UK goods that could involve any such potential infringement.

We have also declined to accept the current UK government position that, to protect human, animal, and plant health, animals and animal products from countries originating outside the EU would need to enter NI via a specially designated BIP or Point of Entry as a direct third country import. That is likely an infringement of the WTO SPS Agreement to the extent that it gives a preferential treatment to EU SPS goods and proposals to this effect are not within our recommendations.

Other solutions, such as the UK government electing not to charge traders for customs declarations, would not implicate any WTO violation because that would be a measure of general application and not challengeable in a CVD case against the UK for lack of specificity under the WTO Anti-Subsidy Agreement. Even if we made this proposal for a specific sector (i.e. SPS goods), the potential anti-subsidy assessment would be de minimis, and therefore not actionable under the WTO system.

More importantly, it is a complete defence to an allegation of a WTO violation for countries to cite the National Security Exemption of Article XXI of the GATT 1994.

Article XXI (b) (iii) provides that nothing in the GATT 1994 prevents a party from taking any measure which it considers necessary for the protection of its essential security interests, taken in time of war or other international emergency. Essential security interests are deliberately narrowly defined for fear of it being used as a loophole to avoid WTO compliance. When Portugal acceded to the GATT in 1961, Ghana successfully justified its boycott of Portuguese products on the grounds of national security under Article XXI (b)(iii). There has been some debate about whether such measures must be notified and justified, or whether it is simply up to a WTO member to determine whether something implicates its essential security interests. This was challenged in the recent Russia-Ukraine case. In this case, the panel found that the WTO did have the power to review a country's claims that a particular action was covered under Article XXI(b)(iii), and applied an objective test, as opposed to relying on a WTO member's subjective view. Essential security interests meant those that were related to quintessential functions of the state. However the bar remains quite low. Members merely have to show that they are acting in good faith, and that their proposed actions under the national security chapeau are not implausible. We find that in the case of the Irish border, reliance on the national security exemption would be wholly justified, and in any event it is hard to imagine any WTO member seriously claiming otherwise.

Under Article XXI(c) of the GATT 1994, "nothing in this treaty prevents any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the Maintenance of International Peace and Security". The UK would be adopting different rules, facilitations or relaxations of strict WTO compliance on the Irish border in order to protect the Belfast/Good Friday Agreement, and the peace process.

There is now enough evidence that a hard border on the Island of Ireland could lead to violence and this would be a very strong defence in the event that any WTO member were to bring a case. However, it must equally be pointed out that it is extremely unlikely that any WTO member would bring a case if the EU and UK agreed processes to maintain an invisible border on the Island of Ireland in order to ensure that peace was maintained.

The BA/GFA is a treaty lodged with the United Nations<sup>30</sup> and hence any actions taken by the EU and UK to protect the BA/GFA in the area of ensuring the absence of border procedures are covered by Article XXI(c).

In addition, significant reliance can be placed on the frontier traffic exception contained in Article XXIV(3) of the GATT 1994 which allows WTO Members to grant advantages

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<sup>30</sup> UN Reference available via the following link: <https://peacemaker.un.org/uk-ireland-good-friday98>



to adjacent countries in order to facilitate frontier traffic even if they are not wholly compatible with the other obligations contained in that Agreement. This issue is dealt with in more detail in Chapter 12.

## 8. Conclusions

However, we must also recognise that a number of NI-IE all-island arrangements such as the CTA 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 a UK-IE agreement could also encompass other meaningful cooperation 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 which 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. We also recognise that moving monitoring traditionally conducted at borders to inland locations raises questions as to how, where and by whom such procedures might take place. These are discussed in more detail in 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 communities.



## MOVEMENT OF PEOPLE BETWEEN THE UK AND IE

### 1. Introduction

Our various stakeholder meetings in NI revealed that there are many people on both sides of the border who remain deeply concerned that their daily lives will be interrupted by the re-emergence of a border for people. For example, we were told in Newry of shoppers in IE who visit retail facilities in Newry who think they will need passports to enter NI and therefore will not shop in NI in the future. We have therefore elected to include an early treatment of how people movements across the border will continue without interruption in the future.

Given the lack of knowledge, we strongly recommend to both the UK and IE governments to undertake an immediate series of open, town hall style meetings along the border to embark on a serious campaign to explain what is likely to happen in the future. In the minds of many stakeholders in NI and IE, the issues of people, goods, and services are all confused, and it is critical that people are reassured separately on all of these different points. As we launch this report, three years after the Referendum of 24th June 2016, it is deeply troubling that these fears still persist, and the governments on both sides of the border have not done a better job of explaining the issue to people.

### 2. The Common Travel Area

The Common Travel Area (CTA) is a long-standing arrangement which enables all travellers (regardless of their citizenship or nationality) to travel freely between Great Britain and NI, IE, the Channel Islands and the Isle of Man without passing through immigration control. A brief history of the CTA is set out in Annex 3.

**Figure 2: Geographical Scope of the Coverage of the CTA**



In negotiations between the UK Government and the EU, both sides have committed to the preservation of the CTA. Therefore, people arriving in the UK from Ireland will continue to enjoy free movement across the CTA border (including the Irish land border).

Travellers crossing the Irish land border are not subject to passport or immigration controls, so there is no requirement for any UK Border Control there. Leave to enter one country automatically confers leave to enter the other, at least for limited periods.

It is important to note that the CTA applies specifically to the movement of people travelling within it; and not to the movement of goods, where separate considerations apply. That said, the CTA is an interesting case study for alternative forms of control in that: (a) it represents a mixture of those procedures that are underpinned by direct UK-Irish agreements; and (b) those procedures are underpinned by the fact that both countries are members of the European Union.

In recognition that the CTA was not sufficiently comprehensive to cover all eventualities post-Brexit, the NI Human Rights Commission (NIHRC) and the Irish Human Rights and Equality Commission (IHREC) commissioned a research paper from the Universities

of Birmingham, Newcastle and Durham which was published in November 2018.<sup>31</sup> This study recommended as a “gold standard” that the UK and Irish governments should conclude a “Common Travel Area Treaty” encompassing common immigration rules, travel rights, residency rights, and related rights to education, social security, work, healthcare, social security and justice.

Although no legally binding treaty has been signed, a new Memorandum of Understanding was signed by both parties at the British-Irish Intergovernmental Conference (BIIC) on 8 May 2019.<sup>32</sup> This commits both the UK and IE to the long-term preservation of the CTA in all circumstances; and to allowing British and Irish citizens to travel freely and reside in either jurisdiction with reciprocal rights to healthcare, education and social security. The MOU is silent, however, upon the residual rights of EEA citizens and third-country nationals entering and residing in the CTA territory post-Brexit (see below).

### 3. Impact of Brexit on the CTA

In December 2018 the UK Government published its White Paper on the UK’s future skills-based immigration system.<sup>33</sup> The White Paper is clear that the CTA will continue to prevail; and 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.

Although the policy is not yet clear, it seems likely that after immigration controls are imposed upon EU/EEA travellers, those who enter the UK via IE will benefit from the provisions of the Immigration (Control of Entry through IE) Order 1972; and will be granted “deemed” leave to enter for a limited period, in the same way as third-country nationals are now. Those wishing to reside in the UK for more than 6 months will be required to register to do so.

Therefore – in general terms - there will be no requirement for travellers arriving in the UK from Ireland to seek leave to enter, regardless of their citizenship or nationality; and consequently, there will be no requirement for UK border controls on these routes (including on the land border between the UK and Ireland). Any concerns that passports will need to be checked at border crossing points between the UK and IE should therefore be allayed.

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<sup>31</sup> The “Discussion Paper on the Common Travel Area”, produced by Sylvia de Mars and Colin Murray of Newcastle University, Aoife O’ Donoghue of Durham University and Ben Warwick of the University of Birmingham is available via the following link:

<https://www.ihrec.ie/app/uploads/2018/11/Common-Travel-Area-Paper-13112018-1.pdf>

<sup>32</sup> <https://www.dfa.ie/media/dfa/eu/brexit/brexitandyou/Memorandum-of-Understanding-Ire-version.pdf>

<sup>33</sup> UK Policy Paper, The UK’s future skills-based immigration system, 19th December 2018, available via the following link:

<https://www.gov.uk/government/publications/the-uks-future-skills-based-immigration-system>

That said, there remains work to be done. Upon departing the EU, the UK will be at liberty to end the free movement of EEA nationals into its territory. Likewise, the EU may impose immigration controls upon British citizens travelling to EU Member States. The border between the UK and IE will become an “external border” of the EU; and EEA nationals living on the Island of Ireland will enjoy different rights of access to services and employment in IE to those living in NI. Any new arrangements for the control of third-country nationals (including EEA nationals moving between IE and the UK) must be delivered without any passport controls at the Irish border.

#### **4. EU Considerations**

The departure of the UK from the EU – with Ireland remaining a non-Schengen EU Member State – raises significant questions about how British citizens will be admitted into IE post-Brexit. Presently people entering IE on arrival from the UK benefit from the provisions of the CTA; although identity verifications are routinely undertaken at airports and seaports by the Irish Naturalisation and Immigration Service (INIS). People travelling across the border North/South may be subject to selective identity screening particularly on bus and train routes. So, although British passport holders will be able to travel and reside freely within IE post-Brexit, they may not necessarily be allowed do so in other EU countries. In many respects, the CTA agreement between the UK and IE bears many similarities to the Schengen Agreement between mainland EU countries. For example:

- Both were designed primarily to manage mass movement of people across land borders without the need for passport controls at internal borders within the zone;
- Both relate to the movement of people, not the movement of goods (customs);
- Both rely upon a “perimeter strategy” with one check upon entry into the territory from outside it, and another upon exit from the territory to an outside country; and
- Both allow for some interventions at their internal borders for specific purposes (e.g. security).

The primary distinction between the two systems is that the Schengen zone is governed by an EU Convention which is administered and regulated by a cross cutting executive (the EU Commission). Whereas the CTA is based upon an informal agreement between the parties, with no cross-cutting oversight and regulation managed bilaterally through the British Irish Intergovernmental Conference (BIIC).

Although IE has opted out of the Schengen Agreement, it remains a full member of the EU and will therefore retain access to EU systems monitoring the movement of persons.

Depending upon the nature of the final Withdrawal Agreement, if any, these may not be available to the UK.

For the CTA to operate effectively in future, there will need to be agreements about how to manage the entry and stay of third country nationals residing within it. Where possible, these should replicate those arrangements in place for third country nationals residing in the Schengen zone.

The EU Commission is committed to delivering an entry – exit system (EES) and an electronic travel information and authorisation system (ETIAS) for all third country nationals entering the EU by 2022. We do not know at this time whether British citizens will require ETIAS to travel to the EU post Brexit. But if so it will be important to ensure that neither the EES nor the ETIAS systems interfere with the CTA and the free movement of persons travelling within it.

## 5. Conclusions

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 IE 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/ exit system (EES) will apply only to the external Schengen border, and not to the 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 and 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 Belfast/Good Friday Agreement prevail - there will be no requirement for passport screening on the Island of Ireland post-Brexit.

Existing security controls at other UK ports within NI and Great Britain will be preserved. All persons (regardless of nationality and citizenship) travelling within the CTA will still be subject to selective security examination by accredited officers where they are believed to be involved in hostile acts. These should 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 BIIC 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.

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.



## LESSONS FROM OTHER BORDERS

### 1. Introduction

Before we move to trade in goods in Chapter 6 onwards, it is important to draw as many lessons as possible from other borders in the world where there is a particular need for seamless operations. We have looked at the Swedish-Norwegian border, the Swiss border with the EU, the US-Canada border, the Australia-New Zealand border, and even the Chinese/Taiwanese cross-straits border. In all these cases, the circumstances of each border are unique, and we are not suggesting that just because the border works in a certain way for a certain pair of countries, this can be directly transplanted for the Irish border. However, there are certainly important lessons that can be learned from these other borders.

### 2. Lessons from the Norway/Sweden Border Experience

Norway, Sweden and the EU have, through trade policies and agreements, created a specific environment allowing Norway to be connected to the EU through the EEA Treaty and as a Schengen member.

The interesting lesson about the Norway/Sweden border is the technical management of the border and the models used to manage the border, especially from a government perspective. The border model has been operational for a long time and the models used are proven in reality. In addition, this border has for a long time been considered the fastest, safest and most secure border in the world.

For migration and travel, Norway and Sweden have a bilateral customs agreement and operate a similar system (The Nordic Passport Union with Sweden, Norway, Denmark, Finland and Iceland) to the CTA. There is also a specific Norway/Sweden cooperation mechanism with working groups and expert panels to solve border issues as well as a cross-border service, which provides information and advice on what to consider when working or doing business in either country.

Norway and Sweden both have advanced operational National Single Windows (NSW) to manage the requested information in a secure, paperless and cost-efficient way. For cross-border trade in goods, the NSW is effectively a portal for information management between the private sector and the government, where the company sends one set of standardised information and receives one coordinated reply back from the government.

In addition, Norway and Sweden both operate integrated border management models with customs being the responsible executive agency at the border, representing all other involved border agencies on delegation, with first line risk management-based interaction

in a front-back office Coordinated Border Management model. A Swedish Customs officer at a Swedish border facility carries out EU exports and Norwegian imports and vice versa, while the next station on the border is Norwegian. Here, a Norwegian Customs officer handles both imports and exports for both countries and the entire EU.

Mobile inspection teams patrol border roads and can also intervene inland. Both countries can also intervene through the agreement for a specified number of kilometres into the other country's territory, which is a unique form of cooperation in many ways and perhaps not politically possible to the same extent in other environments.

Data compiled by the European Commission shows that trade on the Swedish-Norwegian border also makes intensive use of Transit.

**Table 6: Transit declarations in EU departing and arriving in member states in 12-month period prior to 12th June 2019**

Departing	Arrival -->											Total
	B	F	D	IE	IT	NL	N	SE	UK	CH	Rest	
B	X	119.820	180.127	2.873	16.600	220.979	38.785	8.749	15.102	144.027	122.750	<b>869.812</b>
F	25.935	X	20.102	61	41.179	16.812	15.495	971	7.741	256.621	74.209	<b>459.126</b>
D	65.719	51.331	X	2.024	137.592	87.211	45.702	18.292	26.785	411.300	661.800	<b>1.507.756</b>
IE	373	5	14	X	30	559	2.906	0	4.843	5.995	179	<b>14.904</b>
IT	18.467	85.698	160.616	58	X	9.298	71.025	507	8.732	1.099.405	161.346	<b>1.615.152</b>
NL	173.683	58.721	412.112	5.467	37.828	X	96.425	14.967	27.337	235.581	155.974	<b>1.218.095</b>
N	5.600	3.941	33.957	321	3.440	17.499	X	26.553	2.944	2.901	56.985	<b>154.141</b>
SE	4.938	1.735	3.757	14	732	2.836	171.215	X	1.943	4.836	34.700	<b>226.706</b>
UK	6.424	3.722	5.069	13.534	1.697	7.480	4.907	710	X	38.732	8.494	<b>90.769</b>
CH	103.794	137.378	364.545	2.256	175.912	81.537	8.005	8.794	25.468	X	291.143	<b>1.198.832</b>
Rest	77.483	146.879	596.228	1.461	162.685	123.660	107.712	43.118	57.953	250.401	1.567.580	<b>3.135.160</b>
<b>Total</b>	<b>482.416</b>	<b>609.230</b>	<b>1.776.527</b>	<b>28.069</b>	<b>577.695</b>	<b>567.871</b>	<b>562.177</b>	<b>122.661</b>	<b>178.848</b>	<b>2.449.799</b>	<b>3.135.160</b>	10.490.453

Source: European Commission<sup>34</sup>

On a yearly basis, Swedish exporters make up 226,706 Transit declarations of which 76% are used for exports to Norway. Norwegian exporters use Transit 154,141 times each year for their exports of which 17% are used for trade with Sweden. By using Transit, customs declarations can be made inland instead of at the border itself.

Between 2004 and 2007 Sweden and Norway tested a Gateway Sweden-Green Corridor for companies that were Authorised Economic Operators (AEOs) or Trusted Traders on both sides of the border, using the WCO SAFE standard AEO Mutual Recognition Agreement as a platform. This system makes it possible for AEOs or Trusted Traders to send goods from one country to the other using any of the border crossings including non-dedicated customs roads (meaning roads without any infrastructure at all).

<sup>34</sup> [https://ec.europa.eu/taxation\\_customs/dds2/tra/transit\\_emap.jsp](https://ec.europa.eu/taxation_customs/dds2/tra/transit_emap.jsp).

The AEO or Trusted Traders would begin the process on one side of the border by pre-sending the electronic export/import declaration to customs where the declarations would be handled by the risk management system. The declarations would then trigger the GPS function in the smart phone of a pre-dedicated driver (Trusted Transporter). Customs on both sides of the border and all stakeholders in the Trusted Trade Lane would then follow the transport in real time with a track and trace service through a website and a mobile app. When the transport crossed the border, the electronic information would then be updated with a time stamp and sent to all stakeholders. If an intervention was needed mobile units could control these anywhere on route away from the border. This model was tested under the supervision of EU institutions.

All of the above shows that extensive legal cooperation, practical customs cooperation, common working methods, exchange of intelligence information, problem solving mechanisms on different levels and mutual trust are key features of successful cross-border efficiency and mobility. This could be applied in other parts of Europe on the EU border and also on the Island of Ireland.

### **3. Lessons from the EU/Swiss Border Experience**

Switzerland also has a land border with the EU with numerous border crossings and so provides a similar scenario to that of the border on the Island of Ireland. There is significant cross-border trade, for large as well as small companies, in the border region. Switzerland is a member of Schengen, so there are no passport controls which is similar to Ireland and the UK under the CTA.

The most frequent option when trading with Switzerland is to make customs declarations at the border itself. For example, when goods are exported from Germany to Switzerland, a German export declaration and a Swiss import declaration can be made at the border in one process. In fact, the Swiss prefer to have their customs procedures fulfilled at an inland location to prevent congestion at the border.

The Swiss are the most significant users of Transit in Europe. The frequency of Transit declarations departing and arriving in a 12-month period prior to 12th June 2019 is set out in Table 6 above. Almost 25% of the 10 million or so Transit declarations are made by the Swiss and about 12% of all Transit declarations have Switzerland as the arrival country. Most Transit declarations to and from Switzerland are made by neighbouring countries. About 1.1 million Transit declarations originate in Italy, 410,000 in Germany and 256,000 in France. These numbers reflect the usefulness of the Transit system to avoid congestion at the borders.

EU and Swiss customs legislation offer relatively easy access to the use of Transit. The titular of a Transit declaration takes responsibility that all procedures are fulfilled and that the

goods reach their destination. If this is not the case, the titular will be held responsible and liable by customs. For this purpose, customs require a bank guarantee from the titular.

Every national declaration gets a risk assessment. Trade between the EU and Switzerland is, generally speaking, not considered to be high-risk, resulting in few interventions for physical inspections. However, customs have the authority to carry out administrative investigations up to three years after the transaction. These investigations prove to be very effective in fighting fraudulent declarations.

Indeed, as the Transit procedure is used so often in EU/Swiss cross-border trade, it has become a commodity service added to transport. Supply chains rely on the system because of its reliability and trade is not hindered as it is cheap and broadly available.

It is certainly true that the EU/Swiss border operates with such ease partially due to Switzerland's voluntary alignment with EU regulations, meaning that fewer technical inspections are needed. However, even if the UK has a different FEP with the EU, some of the border management lessons, and the manner in which Transit is used are valuable for the Irish border.

#### **4. Lessons from the US/Canada Border Experience**

The border between Canada and the USA is subject to the North American Free Trade Agreement (NAFTA) but the two countries are not in a customs union so a full customs border is in operation.<sup>35</sup> The products imported and exported cross the full spectrum of goods from live animals and fresh and processed foods to natural resources, semi-processed goods and the full range of intermediate and final manufactured products. Motor vehicles and their parts alone account for about 20% of this two-way trade, with trade in parts, many of which cross the border more than once during their production before being installed into a vehicle, accounting for about one-third of this trade.

The responsibility for customs clearance and related trade facilitation programmes in Canada falls to the Canada Border Services Agency (CBSA). The mandate of the CBSA is to provide "integrated border services that support national security and public safety priorities and facilitate the free flow of persons and goods, including animals and plants, that meet all requirements under the programme legislation".<sup>36</sup> The CBSA is responsible for the administration of over 90 acts, regulations and international agreements relating to entry and exit of people, goods, animals and plants on behalf

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<sup>35</sup> See generally, Shanker Singham and Victoria Hewson, "Brexit, Movement of Goods and the Supply Chain", (Legatum Institute, Special Trade Commission, February 2017), pp.29-30 and Annex 3.

<sup>36</sup> Canada Border Services Agency, What We Do: <http://www.cbsa-asfc.gc.ca/agency-agence/what-quoi-eng.html> last accessed 9th June 2018

of the federal government and the provincial and territorial governments in Canada. It employs approximately 14,000 people, and operates at 117 land border crossings, 13 international airports, 27 rail sites and three international mail processing centres, as well as providing services at 39 locations abroad.<sup>37</sup>

The challenge for the CBSA in managing the customs clearance of imported goods is to balance expediting and facilitating trade to support economic prosperity on the one hand and protecting the safety and security of its citizens and the country on the other. Fulfilling this dual mandate requires managing effectively and efficiently both the flow of goods across the border and the flow of information related to the goods, traders and associated service providers (e.g., carriers, customs brokers, freight forwarders).

Accordingly, the CBSA has developed and continues to update and modernise a wide range of tools and programmes designed to fulfil its dual mandate. Five overarching themes characterise the deployment of these tools and programmes in processing and managing the high volume of imports crossing into Canada each day:

- a. The separation of the flow of information and payment of duties and taxes from the movement of the goods themselves so as to allow goods to be released on minimum documentation at the border, with further documentation and payments of duties and taxes provided after the goods have departed the border.
- b. The intensive use of advance screening and risk assessment, not only for goods but also for importers, carriers and other service providers, falls under the CBSA's "push out the border" strategy.<sup>38</sup> This enables the CBSA to target and focus on high-risk import shipments while allowing low-risk shipments to be processed efficiently, thereby minimising delays at the border for such goods.
- c. An ever-increasing use of electronic information technologies in the CBSA's customs clearance programmes and processes, including risk assessment programmes, such as the Tactical Information Targeting Analysis and Notification System (TITAN).

These electronic systems enable importers, carriers and others to send information to the CBSA before goods reach the border and are also used by the CBSA to inform importers when their goods are released from the border, and by importers (or their customs brokers) to send the required post-entry information and pay duties and taxes.

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<sup>37</sup> Ibid. Sixty-one of the land border crossings and ten of the airport sites operate 24 hours a day, seven days a week.

<sup>38</sup> As stated in the CBSA's 2015-2016 Departmental Performance Report: "The Risk Assessment programme "pushes the border out" by seeking to identify high-risk people, goods and conveyances as early as possible in the travel and trade continuum to prevent inadmissible people and goods from entering Canada."

- d. A continuous need to update and modernise programmes and processes to address the ever-changing trade and security environment, and enable the CBSA to reduce the time and costs of import clearance for low-risk traders and carriers of low- risk goods and to focus its resources and attention on identifying and addressing high- risk imports.
- e. Close cooperation with other countries, in particular the United States. Reflecting the importance of their bilateral trade, Canada and the United States are working together closely on many customs and related matters, through their joint Beyond the Border Action Plan.

Under the Beyond the Border Action Plan, Canada and the USA have also developed a common framework for Trusted Trader Programmes for economic operators involving the alignment of their customs procedures and requirements to allow fast-track customs clearance for members of the programme. This has meant the alignment of Canada's Customs Self-Assessment (CSA) and the United States' Importer Self-Assessment (ISA) programmes to facilitate trade.

This has allowed Canada to rollout a CSA-Platinum programme which is an added benefit offered to CSA importers who demonstrate that their business systems, internal procedures and self-testing processes are effective and reliable at ensuring compliance with the CBSA's trade programmes, including tariff classification, preferential tariff treatment, trade incentives programme, value for duty and anti-dumping and countervailing. To be eligible for CSA-Platinum, a participant (importer) must first obtain and maintain their membership in good standing in the CSA programme. According to the Canada Border Services Agency (CBSA),<sup>39</sup> the CSA-Platinum programme creates several trade facilitation advantages including:

- Assistance to traders to help attain the highest rate of compliance with trade programmes.
- Less exposure to CBSA trade verifications, meaning once a participant is successfully enrolled in the programme, it will conduct its own self-testing of trade programme compliance and reporting on an annual basis.
- Decreased exposure to trade-related penalties. In cases of non-compliance with CBSA trade programme requirements, the CBSA may opt not to rely, as a first response, on the assessment of penalties.
- The participant has access to their CSA officer who will continue to act as their first point of contact, for CSA and CSA-Platinum related concerns (i.e. compliance assistance, risk assessments, internal procedures, CBSA audit trails, data analysis support, etc.).

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<sup>39</sup> Explained on the CBSA CSA-Platinum programme summary available via the following link: <https://www.cbsa-asfc.gc.ca/prog/csa-pad/about-apropos-eng.html>

- Greater control over trade compliance activities since the participant takes direct responsibility for the verification and testing of their trade compliance.

As a result, CSA-Platinum members are subject to reduced customs procedures, inspections and verifications. However, the CBSA reserves the right to perform or have the participant perform verifications for high-risk or sensitive issues, including Verification Priorities.

Some of the programmes and processes are broadly in place in the UK and EU Member States' customs processes. Others represent solutions that could be explored for implementation between the UK and EU as trusted trading partners analogous to Canada and the USA.

### **5. Lessons from the Australia/New Zealand Border Experience**

Customs clearance between Australia and New Zealand (which do have a free trade agreement but are not members of a customs union) is covered in the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA).<sup>40</sup> The advantages of the ANZCERTA model are that it is not narrowly structured and has been able to evolve as the relationship between Australia and New Zealand has evolved. ANZCERTA started out as a bilateral commitment to eliminate tariffs, import licensing and quantitative restrictions but over time has also facilitated free trade in services and underpinned a range of cooperative and institutional arrangements, including mutual recognition and coordination of policy and administration. This latter aspect is particularly applicable to customs and border management and administration.

From a customs perspective, ANZCERTA does not insist on harmonised customs legislation between Australia and New Zealand, nor does it require that both countries administer their customs legislation in the same way. Each customs agency makes its own risk assessments and conducts its own day-to-day customs administration within the different contexts pertaining to each country.

There are also differences between Australia's and New Zealand's customs legal framework and systems in a number of areas including reporting, revenue and payment requirements, customs clearance, approaches to low-value consignments, and customs processing systems. On the other hand, what ANZCERTA does is provide an effective and mutually accepted framework for ongoing cooperation between the respective customs administrations with the objective of improving border management at the same time as endeavouring as far as possible to reduce compliance costs for businesses.

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<sup>40</sup> See generally, Shanker Singham and Victoria Hewson, "Brexit, Movement of Goods and the Supply Chain", pp.27-28.

As far back as 1988 there was a “Joint Understanding on the Harmonisation of Customs Policies and Procedures” entered into by the respective governments. There are formal annual meetings between customs ministers and between agency heads. A High-Level Steering Group to address border issues was formed in 2005 and a joint time release study was conducted in 2010 to help identify and simplify trans-Tasman import/export procedures. There are intelligence sharing arrangements between the respective customs/border agencies which include tactical/operational level intelligence, the exchange of risk and threat analyses, and exchange of commercial shipping risk assessments. In July 2016 the Australian Department of Immigration and Border Protection and New Zealand Customs Service signed a Mutual Recognition Agreement under the auspices of ANZCERTA to recognise the supply chain security programmes of both countries.

The shared goal of both Australian and New Zealand governments under the current ANZCERTA is now “a seamless business environment”, with the primary objective to “further reduce compliance costs for businesses operating in both economies, through eliminating duplicate or conflicting regulation”. The current work programme is focused on four themes:

- a. reducing the impact of borders;
- b. regulatory coordination;
- c. improving regulatory effectiveness; and
- d. supporting business opportunities.

ANZCERTA could be used quite effectively as a model for customs cooperation and perhaps mutual recognition of specific approaches to customs/border issues between the UK and EU post-Brexit, but at least part of its effectiveness has been the underlying comity between Australia and New Zealand; and the fact that it is implemented between countries that to an extent, share a common regulatory approach to a range of issues. Since it is envisaged that product requirements will be transposed into UK law, the regulatory approach between the UK and EU will be identical at the Exit Date. However, as the UK and EU may diverge after this, the framework should reflect the fact that with respect to standards and technical regulations, the ultimate end-state for the UK-EU relationship could be a free trade agreement where standards and technical regulations should not be used as disguised barriers to trade.

Its effectiveness as a model for customs cooperation is stronger with respect to alignment of customs procedures and border risk management than with respect to the actual legislation that must be put in place to underpin those procedures. ANZCERTA provides an effective mechanism for mutual recognition, in particular given that the UK will already be consistent with the UCC and cooperating with EU Member State authorities.



## 6. Lessons from the China/Taiwan Cross Straits Border Experience

In 2010, Taiwan and China signed an Economic Cooperation Framework Agreement (ECFA). This seeks to provide a framework for Taiwan and China to gradually reduce tariffs on goods, remove non-tariff trade barriers, open up service sectors, lift investment restrictions, and promote closer cross-strait economic cooperation and interaction between the two countries. The ECFA, which is essentially a free trade agreement between the two countries, came into effect on September 12, 2010.

Both parties reached a further agreement on Aug 10, 2012 to enhance the cooperation in customs envisaged by the ECFA involving the following additional customs cooperation features:

- Customs of both parties should focus on identifying high-risk enterprises and goods, and should implement a certified operator (now referred to as an AEO) certification system to facilitate customs clearance.
- Keep relevant customs regulations informed through mutually and timely exchanges of customs valuations that relate to ECFA trade including, commodity, certificates or other relevant information required.
- Conduct cooperation and engage in technical exchanges on the investigation and handling of smuggling, with the aims of eradicating the illicit trade of goods, maintaining tax revenues, and safeguarding border security.
- Ensure timely communications and necessary measures so that problems can be solved during the customs clearance process.
- Exchange and cooperate on the application of Radio Frequency Identification (RFID) technology in respective customs supervision.
- Establish a customs electronic information exchange system related to ECFA trade.
- Process statistical data in customs trade and regularly exchange these statistics, and develop technical ideas such as for trade systems, policy, and data analysis, etc.

These steps are designed to increase mutual trust and confidence in the respective customs authorities of the parties and to provide some limited advantages for AEO certified traders which currently remain relatively rudimentary.

## **7. Conclusions**

The aim post-Brexit is, to create a Northern Irish land border without infrastructure being erected at the border itself. The cases described in this chapter, especially the borders between Norway/Sweden and the EU/Swiss border, provide important lessons for a Northern Irish border with no infra-structure for general cargo. For general cargo, the risk assessment of the declarations can identify high risks goods that can be inspected at the points 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, although few in number, can essentially not have to deal with customs at all. Customs declarations by Trusted Traders can result in even lower risk profiles and can further considerably lower the need for inspections.

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

## USE OF SPECIAL ZONES AND REGULATORY AREAS

### 1. Introduction

We have heard many proposals related to the use of Special or Enhanced Economic Zones and Special Regulatory Areas to build on the common regulatory areas that already exist on the Island of Ireland.<sup>41</sup> We have met with the Federation of Small Businesses in NI (FSBNI), who have taken a commendable approach to searching out opportunities presented by Brexit and do not view this as merely an exercise in damage limitation.<sup>42</sup>

The FSBNI proposal is that all of NI should become an Enhanced Economic Zone (EEZ) with customs registration procedures only being carried out at the final destination. In addition, the FSBNI have promoted a number of proposals which we consider to be particularly interesting such as:

1. Devolution and reduction of corporation tax;
2. Reduction in VAT in the tourism sector;
3. Abolition of short-haul Air Passenger Duty;
4. A fully functional NI Assembly; and
5. Faster and clearer EU departure negotiations in the interests of business certainty.

While many businesses want formalities to remain as simple as possible, all have suggested that they would be able to cope with minor increased customs procedures. Most also admitted that they would use logistics and freight companies to cover any arising complexities. Contrary to some assertions, many SMEs felt that technology was a natural way forward and wanted to see it deployed. SMEs also highlighted the dangers of an exemption based on size (as this would create an incentive for everyone to game the system). In subsequent conversations with the FSBNI, they have highlighted to us the potential for new technologies which can support market surveillance and conformity assessment which form the basis of any set of solutions. They were also interested in conducting trials as a priority for some of their proposals.

Importantly, on SPS, participants in the forum were quite comfortable with dual sets of regulations. They also noted that any separation from GB would be catastrophic. It was noteworthy that all participants recognised that there is a border now. The dairy industry

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<sup>41</sup> See generally Shanker Singham, "How to fix the Irish border problem" (19th March 2018), published in CAPX, available via the following link: <https://capx.co/how-to-fix-the-irish-border-problem/>; Austen Morgan, Shanker Singham, Victoria Hewson and Alice Brooks Technical Note, "Mutual Interest – How the UK and EU can Resolve the Irish Border for Brexit", (Legatum Institute) available via the following link: [https://www.w33bedfordrow.co.uk/upload/files/\\_Legatum\\_Institute\\_Foundation\\_-\\_Technical\\_Paper\\_.pdf](https://www.w33bedfordrow.co.uk/upload/files/_Legatum_Institute_Foundation_-_Technical_Paper_.pdf)

<sup>42</sup> See note of AA Technical Panel meeting with Federation of Small Business, Belfast, May 22, 2019 – Annex 5.

enquired about whether there could be special solutions. There may be an opportunity to create a more competitive dairy industry using all of Ireland's supply chains.

There were still some concerns expressed about people movement and the retention of the CTA, which we address in Chapters 8 and 12. Fifty-three per cent of small businesses want the regulatory burden lifted, which could be accomplished as part of the UK's independent trade and regulatory policy, so this should be part of the consideration of solutions to the Irish border.

In any kind of zone, the following aspects would have to be clarified through customs declarations:

**VAT:** When goods are traded in or out of a customs territory, a declaration for Value Added Tax will be needed. The export declaration gives certainty to the exporter that they can claim 0% sales VAT on the transaction. The import declaration ensures that import VAT is paid to the importing tax authorities.

**Livestock:** To prevent animal diseases from being transmitted into a customs territory, there are special health inspections of live animals. They have to be visually inspected or could be held in quarantine before entering the customs territory.

**Veterinary goods:** Those goods which are for human use need extra careful inspections of papers and, when needed, physical verification to safeguard the food supply chain. To ensure they do not enter the food supply chain accidentally, inspections have to take place when the goods enter the customs territory.

**SPS goods:** These goods should be in conformity with the standards of the customs territory. These procedures can be done at the time the import declaration is made, so this can be after they have physically entered the customs territory, at an inland location. If the goods do not comply, they may not enter and will have to be sent back or be destroyed.

**Technical Barriers to Trade:** These aspects are mostly monitored by market surveillance, but can also be noticed when the import declaration is filed. The importer will be held liable for the goods not to be made available to the internal market.

The issue is where these procedures would have to take place. The zone or regulatory area approach can help ensure that the regulatory procedures might take place in ports and harbours as opposed to on land. However, some of the zone/regulatory area ideas fail to satisfy one or more of the key constraints within which we are working.

## 2. Configuration of Special Zones and Regulatory Areas

There are a number of special zones and areas that can be used to mitigate the harm that a new emerging border can do to trade in the British and Irish Isles. In all of these cases, trade-offs would have to be made. Some special zones may negatively impact the ability of the UK to execute a genuine independent trade policy with its major partners such as the US, Australia and New Zealand or may impose some customs registration procedures between GB and NI.

If the UK remains part of the Single Market, then the UK would not diverge from EU regulations on subjects such as agricultural regulations, Sanitary and Phytosanitary (SPS) rules and Technical Barriers to Trade (TBT). Thus, verifications to ensure compliance with these regulations would not be necessary. However, such an arrangement would make a credible independent trade and regulatory policy largely impossible. It is important to note that this arrangement would satisfy those who do not want to see divergence between NI and GB, and would minimise SPS and TBT verifications which come from the rules of the Single Market. This is an example of satisfying one constraint and failing to satisfy another.

If the UK is part of the EEA (as Norway is for example), then verifications can be much less onerous, just as they are on the Sweden-Norway border (see discussion in Chapter 5), but EEA membership would severely restrict the UK's independent trade and regulatory policy.

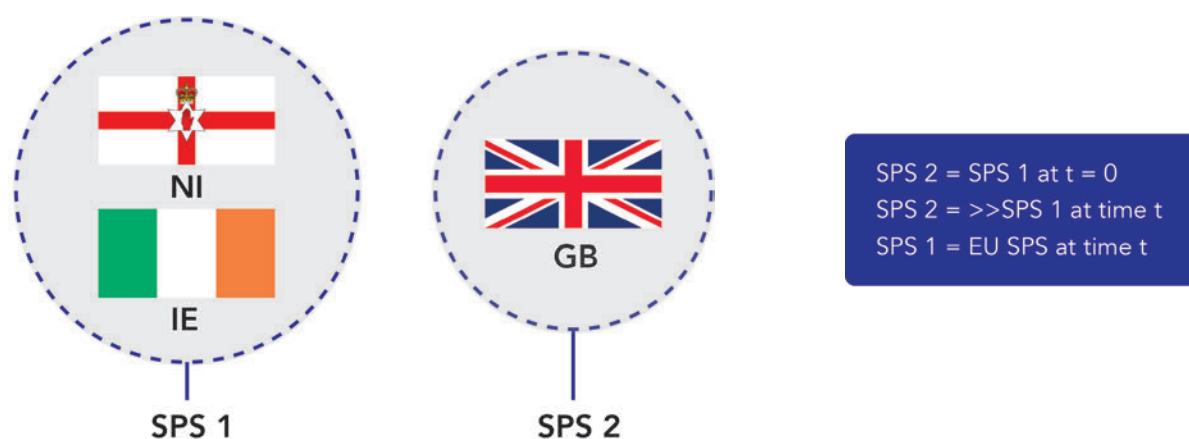
If the UK is not in the Single Market or EEA, then other solutions need to be found. These options, and their comparative advantages, are set out in the diagrams below.

In all cases, at time  $t=0$  the regulatory arrangements of the UK and EU are identical. Problems with respect to technical inspections only arise as the UK diverges from EU regulations, although even where the UK voluntarily aligns there would still be the need for verifications, but these can be heavily reduced so that random physical inspections occur extremely sparingly. Therefore, one solution would be to allow the NI Assembly to determine if NI wished to remain part of the EU's SPS area (in other words, allowing the NI Assembly to choose to effectively create a common SPS area). This would enable the NI Assembly to make the choice as to whether there should be a border between GB and NI.

### Option 1: Common SPS Regime

The parties could agree a common SPS area where the regulations in the SPS area of IE and NI are the same. It would be possible in this construct for GB's SPS regulatory regime to diverge from the common SPS area necessitating some customs registration procedures between GB and NI. This is what occurs now in livestock trade as there is a Single Epidemiological Unit for the Island of Ireland, and livestock is subject to 100% physical inspections (albeit intelligence-led) at the port of Larne.

**Figure 1: Island of Ireland Common SPS Regime**



This solution, as far as customs union aspects are concerned, is that the NI/GB customs union for trade in goods is preserved as well as the IE/EU Customs Union.

As far as regulation is concerned, in the event of a common framework for NI/IESPS customs procedures, only measures in the ports and airports of the Irish Sea will be required. The GB SPS zone would be negotiated with the EU and separately with other trading partners such as the US. This would, in turn, mean that NI would be denied any benefit of UK International Trade Policy and Regulatory Policy (ITP/RP) in the regulatory space. Goods would have to be declared between NI and GB to identify SPS goods. These SPS goods would then need to prove their compliance with the regulations in that customs territory. Such an arrangement would not have an impact on the execution of UK independent trade and regulatory policy.

The advantage of this option is that it solves the otherwise very difficult SPS area problem. Only in the SPS area under EU law would physical infrastructure be needed at or near the border in Border Inspection Posts under the BIP regulation.<sup>43</sup> However,

<sup>43</sup> Commission Decision of 28 September 2009 drawing up a list of approved Border Inspection Posts, laying down certain rules on the inspections carried out by Commission veterinary experts and laying down the veterinary units in Traces, OJ L296/1 (12.11.2009), as amended, consolidated version available via the following link:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02009D0821-20180516>.

it is equally clear that any such verifications would then be pushed between NI and GB. Such a concept builds on the existing all-Ireland regimes such as the Single Epidemiological Unit (SEU) for livestock, which involves all livestock coming into NI from GB to be checked at the port of Larne.

In our view, the impact on UK trade policy would be minimal, as from the perspective of major agricultural exporters the territory of NI is not economically significant. As long as GB retains the right to diverge in the SPS area, then the UK's trading partners would have a basis from which to start their trade negotiations with key trading partners, most of whom will seek some sort of SPS divergence.

The difficulty of this would be that the veterinary and SPS inspections that would have to be put in place between GB and NI could be considerably more intensive than the current SEU. The SEU deals in the main with vet inspections for diseases as opposed to SPS issues like ensuring compliance with rules on hormone treatments or genetically modified organisms. Differences in SPS rules could mean that the people of NI could have supermarket shelves stocked with products that are different from those in GB. Such a solution has proved problematic for the DUP and other unionist voices in the UK.

A more minor build on the SEU might not prove so problematic for unionist voices. This zone would be built on the current SEU and additionally include all agri-products that are consumed by animals. The grain trade and animal feed producers would benefit from this. There would still be some SPS inspections for agri-food for human consumption, but we would seek to minimise these costs as discussed in the SPS chapter below.

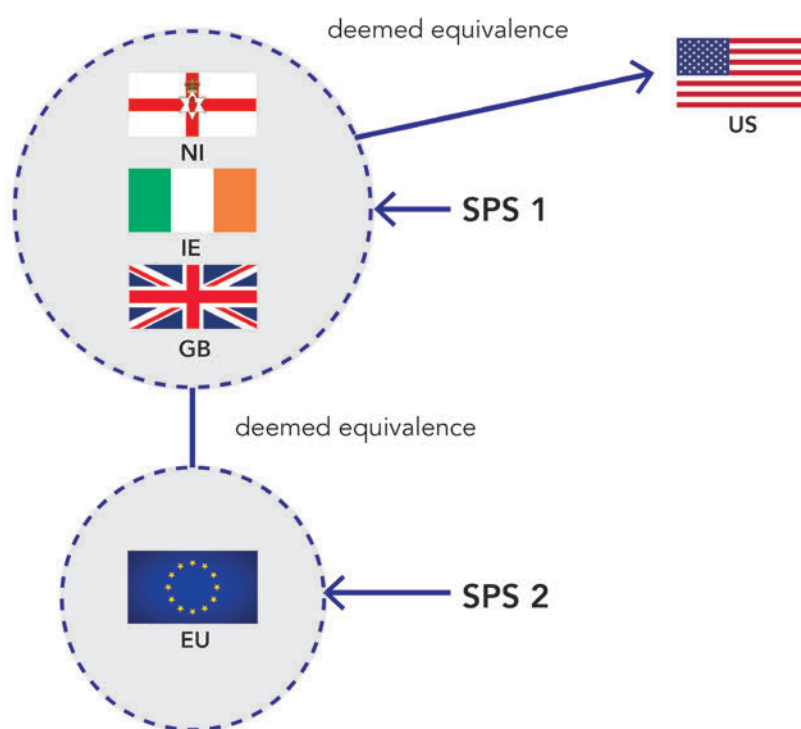
### **Option 2: British and Irish Isles Common SPS Zone**

Another way of tackling the SPS issues would be to envisage a common SPS area, but one that covers not only the Island of Ireland, but the island of Britain as well. Such a common area would ensure no customs registration procedures within the islands as is the case for the Common Travel Area for people but would mean customs procedures being introduced between IE and the EU-26 (as is the case for people now) if the whole area diverged from the EU SPS rules in ways that were unacceptable to the EU. At that point, IE could break the common area and the Northern Irish Assembly could determine if NI remained within an all-Island common SPS area or stayed within the diverging UK SPS area. There are important reasons why we believe such a mechanism should be investigated further. Firstly, it takes advantage of the fact that there are two islands, and hence putting as many customs registration procedures into the ports and harbours will ensure minimum disruption of trade, as these are places where verification is much easier. Secondly, it also allows the decision about food standards to be taken by traders, farmers

and consumers in NI for themselves. Thirdly, it is likely that as checks are placed in the harbours and ports of the islands, they can be made progressively less intrusive and more data and intelligence led over time. Fourth, it allows time to build up infrastructure in the event that NI chooses to remain part of a diverging UK SPS regime.

This arrangement is summarised in Figure 2 below. The attractiveness of this structure is that SPS Regions 1 and 2 could diverge in the future but we would advocate a high level of equivalence. If that is not granted, then IE would simply break from the SPS 1 area.

**Figure 2: IE/UK Common SPS Zone**



SPS 1 is a common rulebook which = SPS 2 at  $t = 0$   
 SPS 1  $\gg$  SPS at  $t \neq t$  but seeks a high level of equivalence (especially of outcomes) with SPS 2  
 [Advantage = all checks in harbour/port]

In terms of the creation and or interaction of SPS regulatory zones, such a structure would require: (a) a Common Rule Book for SPS Regulation Zone 1 for NI + GB + IE; and (b) the countries in SPS Regulatory Zone 1 could seek to negotiate deemed equivalence with the EU, US and others, only if IE chose not to remain part of the EU's SPS regime. If the UK diverged from EU regulation on SPS then it would need to negotiate a deemed equivalence relationship with the EU in any event. This would also create a need to maximisedeemed equivalent regulations for UK/EU, based on



alignment of regulatory goals and objective achievement of those goals. Upon the suggestion of any UK divergence, it would be open to IE to remain within the EU SPS area and break the zone arrangements, and for the NI Assembly to follow suit.<sup>44</sup>

SPS Regional Zone 1 would be identical to the EU Regulatory Zone initially because the UK currently has adopted and complies with EU SPS regulations (and will carry over all EU regulation under the European Union (Withdrawal Act) 2018).<sup>45</sup> Going forward, deemed equivalence with the EU SPS rules could be achieved for the UK. For example, deemed equivalence currently exists with New Zealand and the EU on SPS measures applicable to trade in live animals and animal products (but not to plants, etc).<sup>46</sup> In the case of trade in meat products, physical inspections carried out under this agreement at EU BIPs are minimised (in some cases to levels as low as 2%), but there remains almost comprehensive documentary registration. Given the role of the UK land-bridge in Irish trade with the EU, and that there would be checks at Calais for Irish land-bridge trade that is being carried outside of transit, some level of checks may be required anyway.

In the unlikely event that UK divergence was attractive to IE, then this mechanism would at least allow the possibility for IE to continue to influence the regulatory choices of its major market, and together seek deemed equivalence with the EU. This mechanism therefore attempts to preserve both the North-South and East-West dimensions of trade in SPS goods, consistent with the BA/GFA.

The EU could react to this arrangement in two ways. First, based on the deemed equivalence arrangements it has already agreed with Canada and New Zealand, it could agree deemed equivalence arrangements with the zone, at the point of divergence. This would place a collar around EU SPS regulation around which the SPS Regulation Zone 1 could theoretically travel without losing equivalence. This would impact potential FTAs with countries who have a high level of SPS asks, such as the US, Australia et al. But the fact that NZ has already deemed recognition from the EU is a positive precedent for expanding the collar. In addition, the US, Australia, and NZ

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<sup>44</sup> The alternative would be to focus on the facilitation of production according to foreign standards for export. Production processes, also of agricultural goods, can be aimed and modelled to a certain market, for example halal food products. These products can be certified for export, or (agricultural) production processes can be certified, just as biological food is now certified. In the NI situation, farmers could produce according to EU standards for the EU market. The products can be checked with Product Conformity Assessment or the production process can be certified. There is always a need for a customs declaration, but if a shipment can be accompanied by the right documents and certificates, this should not be a significant barrier to trade. This is how many countries satisfy different regulatory requirements as between the EU and other less restricted markets

<sup>45</sup> Sections 2 to 7.

<sup>46</sup> See Agreement between the European Community and New Zealand on Sanitary Measures Applicable to Trade in Live Animals and Animal Products, as amended, OJ. L57/5 (26.02.1997), available via the following link: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A21997A0226%2802%29>

will all be negotiating with the EU at this time. They will all be seeking some sort of arrangement with the EU's regulatory system and will seek to implement Good Regulatory Practice, for all sides. Failing that, they will be seeking the maximum level of recognition possible so that physical inspections can be minimised.

Even if the UK is unsuccessful in securing this level of deemed equivalence, product conformity assessments and market surveillance can be used to ensure facilitations for products being exported into IE from NI. Second, the EU could reject any form of divergence, in which case it would be open for IE to break the arrangements, retain the EU SPS regime and for the NI Assembly to follow suit. At this point, a common SPS area on the Island of Ireland would emerge.

While IE will not want a border between itself and the EU-26, its trade with the EU flows primarily through the Dover-Calais channel where it will be subject to controls anyway. There is little capacity at IE ports for expansion so it is unlikely that this use of the UK land bridge will change much. It is also likely that more extensive infrastructure could be provided between Holyhead and Dover (through rail links). This arrangement would also give IE an opportunity to have some say in the SPS regulations of its major trading partner, GB.

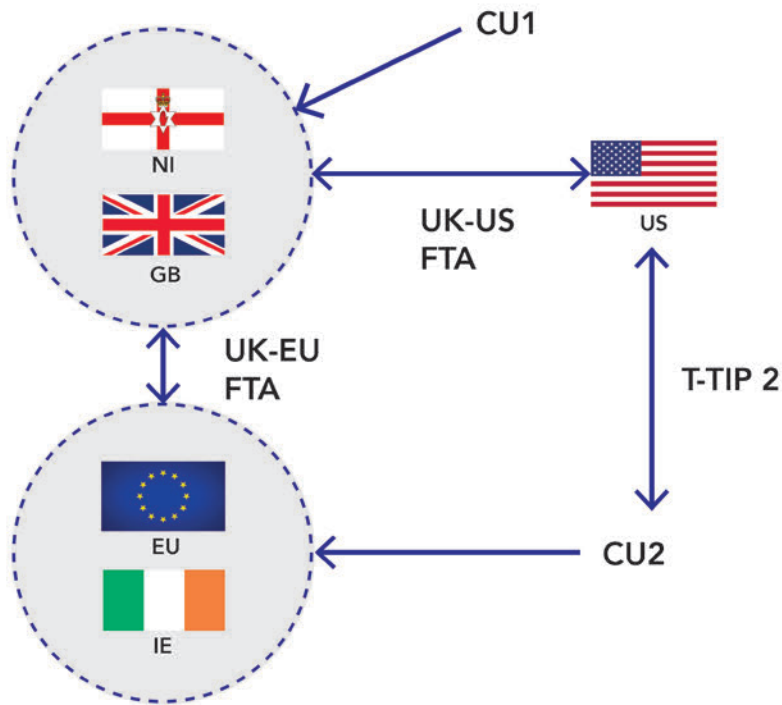
For UK farmers, such an area might be an undue restriction on their ability to benefit from a better set of SPS rules for their internal market, while at the same time fulfilling the requirements for access to the EU market. For example, if there was no common SPS area, UK farmers and producers of SPS goods could maintain dual production, as is done in Australia, New Zealand and elsewhere where for EU exports they satisfy any closed-loop requirements to prove SPS compliance through certification in the export process and for internal consumption or for sales to other unrestricted markets to which they do not have access. The key issue here will be traceability, which could be alleviated to some extent at least by technological solutions, as discussed in Chapter 14 and elsewhere.

Such a mechanism puts the choice of regulatory framework firmly into the hands of the people on the Island of Ireland. We believe solutions generated in Ireland and Northern Ireland have the greatest chance of success.

**Option 3: Customs Union Arrangements**

The simplest customs arrangement is that there will be two operative customs unions, namely a CU of the UK and the CU of the EU. These would negotiate with other customs unions in the normal way.

**Figure 3: Customs Union Options**

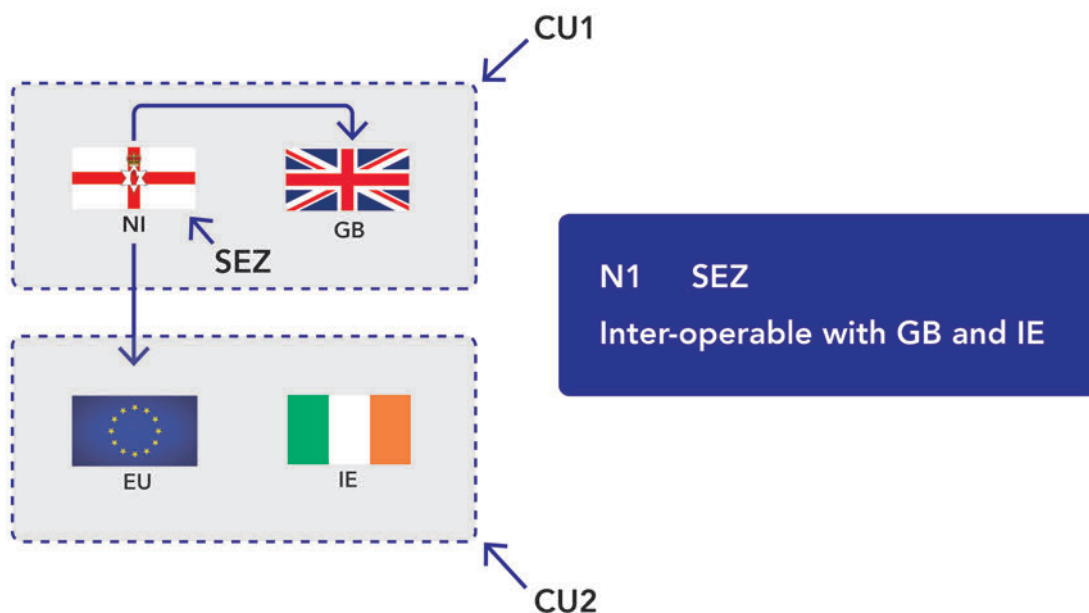


Such a structure would allow the UK (including NI) to enter into a free trade agreement with non-EU countries such as the US while allowing the EU to negotiate its own free trade arrangements with such third countries.

#### Option 4: Enhanced Economic Zone for all of NI

The FSBNI has recommended an “Enhanced Economic Zone” for NI. This, or variants of it, have been recommended in the past, for example in Plan A Plus,<sup>47</sup> or pursuant to the recommendations of Prof Febbrini of the Dublin City University Brexit Unit.<sup>48</sup> In addition, this could require enhanced NI/IE rail infrastructure or more freight ferries between NI and IE.

Figure 4: Enhanced Economic Zone



This option would establish an enhanced economic zone (EEZ) for all of NI. There would still need to be regulatory border procedures between the EEZ and IE/GB but these could be minimised. There are rule of origin implications of GB/EEZ/IE interaction, unless there is a tariff collection by the UK on behalf of IE (similar to the Facilitated Customs Arrangement). No tariffs are payable for anything that enters the EEZ until the point of import into the destination market. Some of these procedures could be minimised by taking advantage of the latitude conferred by the WTO frontier traffic exemption.<sup>49</sup>

Our understanding of the SEZ as proposed by the FSBNI is as follows. Goods can enter the SEZ of NI. There are no specific regulations that apply. A new governmental body

<sup>47</sup> Shanker A. Singham and Radomir Tylecote, “Plan A+: Creating a Prosperous Post-Brexit U.K.”, available via the following link: [https://img1.wsimg.com/blobby/go/bf4d316c-4c0b-4e87-8edb-350f819ee031/downloads/1cthslet4\\_991124.pdf](https://img1.wsimg.com/blobby/go/bf4d316c-4c0b-4e87-8edb-350f819ee031/downloads/1cthslet4_991124.pdf)

<sup>48</sup> This has been discussed in the Institutional Consequences of a Hard Brexit, Professor Fabbrini, Dublin City University, Brexit Unit, available via the following link:

<http://dcubrexitinstitute.eu/2018/05/the-institutional-consequences-of-a-hard-brexit-key-findings/>

<sup>49</sup> See Chapter 12, Section 3.

will determine what goods comply with all relevant regulations either of GB or of the EU. This compliance is officially declared. On that basis, goods can be traded between GB and the EU. This would require customs registration procedures for all goods, but since the non-fiscal aspects are clear and certified, these customs declarations can be simplified. This kind of special zone is interesting if there are production facilities in NI that can add value to the product, and benefit from the deferrals available.

This arrangement minimises initial tariff liability and would certainly help NI as a manufacturing zone, although tariffs would ultimately be liable at the point of import of the finished goods in the final destination. Such an arrangement would not materially damage the UK's overall independent trade and regulatory policy and arguably might even help it as NI would be a zone in the UK that could be a transshipment point for trade into the EU or into GB. Any inspections needed could be pushed away from the border.

The term Special Economic Zone is a term of art that includes the concept of Free Trade Zones or Foreign Trade Zones which have a special meaning in customs or trade law. An Enhanced Economic Zone can include a Special Economic Zone and indeed other customs facilitations, but it can also enable other non-trade benefits to be applied, such as special tax reliefs for small businesses or lower tax rates to promote growth, much like an Enterprise Zone. An Enhanced Economic Zone is intended primarily to generate economic growth and development, and jobs – it has an ancillary benefit in that it can soften the border. If it spans the border it also satisfies the BA/GFA requirements for greater cooperation North-South under strand two.

However, that is not to say that FTZs play no role in diminishing perceptions of a border. In the past three decades Free Trade Zones (FTZ) have been established at a record rate to attract new business and foreign investment with the aim is to facilitate trade and economic growth. Ireland has more experience of Free Zones than most countries as Shannon Free Zone established in the 1950s is one of the oldest free zones in the world, prior to its suspension in the early 2000s. At the time, products exiting the zone would attract tariffs and checks on exit, but at the point the final product enters the market, be that in IE or elsewhere.

The instrument, covering a range of different models (i.e. Free Zones, Export Processing Zones, Special Economic Zones), plays today a central role in trade for many countries. It has been noted by WCO, OECD and the European Union that this trend also brings additional risks for illegal activities to be conducted within the boundaries of these zones since traditionally FTZs have been operating without some of the control mechanisms of the international supply chain. Concerns have been raised about the attraction of illegal smuggling into the zone. However FTZs are being improved in this respect.

The OECD, through its Task Force on Countering Illicit Trade, and High Level Risk Forum, has developed draft guidance on measures to enhance the transparency of FTZs, which would promote clean and fair trade, through a voluntary Code of Conduct. The World Free Zones Organization (World FZO) has developed Safe Zone, a compliance management standard aligned with the World Customs Organization's (WCO) SAFE Framework and with the World Trade Organization (WTO) Trade Facilitation Agreement.

The Safe Zone program offers a unique opportunity to integrate FTZs of the world into the existing framework for management and monitoring of international supply chains under a customized global standard and using the OECD Code of Conduct as a fundamental integrated key part of the model. These measures will take the FTZ instrument to a new level meeting the high requirements of OECD countries and making it an even more valuable option for Governments all around the world, including as a part of Alternative Arrangements for Brexit.

An Enhanced Economic Zone therefore can include a number of different activities. It can include a region of low taxes, incentives for small businesses and entrepreneurs, as well as a free trade zone with exemptions for tariffs and taxes, thus promoting a manufacturing centre for export to other countries and regions (where the tariffs are ultimately applied). It can also include bonded warehouses and other customs facilitations. Such a zone can generate significant economic growth, jobs and new opportunities for the people of the region. This would be potentially suitable for the two areas where there is clearly a single economic unit, such as the Derry-Downal area and the Newry-Dundalk corridor.

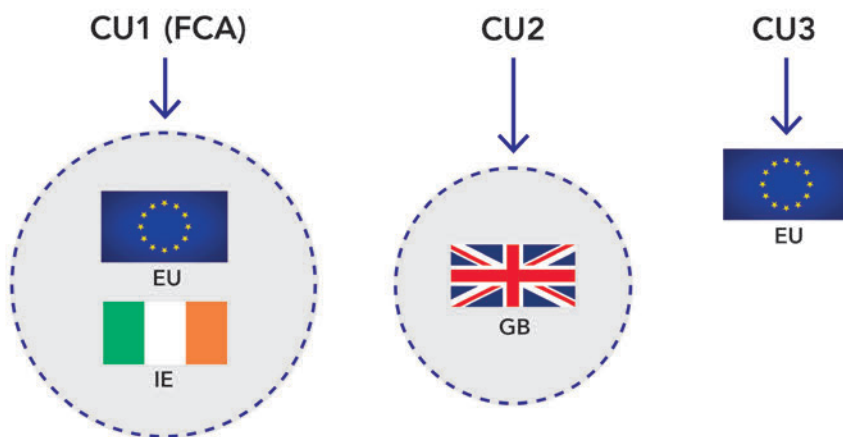
Concerns have been raised about how these proposals are consistent with the EU's state aid rules. However, it should be pointed out that the EU's state aid rules contain exemptions for regions which are less developed. For example these derogations have been used for many regions in Europe, including with respect to the reunification of Germany. For example, Article 107(2)(c) TFEU deems aid granted in Germany to regions affected by the division of Germany to be compatible with the internal market. Article 107(3)(a) TFEU allows the Commission to declare aid compatible where it is to disadvantaged regions. Article 107(3)(e) TFEU allows the Council to declare categories of aid compatible with the single market. There is also a specific derogation for Germany from transport policy in Article 98, TFEU.

We believe that a specific derogation from state aid rules, if applicable in this context at all on the Irish side of the zones would be warranted because the division of the Island of Ireland is as damaging as the division of Germany was.

### Option 5: Facilitated Customs Arrangement

Another option to minimise rule of origin verification would be to apply the Facilitated Customs Arrangement to NI/IE so that the UK Government would be collecting tariffs for any product that enters the FCA area and passes them on to the EU/IE. Tariffs would be collected normally for goods entering the GB Customs Union. If any goods enter NI, the UK Government would collect the full Common External Tariff if they were coming from outside the EU-26 and would pay that to the IE Government if they entered the IE market. This would require tracking of all goods.

**Figure 5: Facilitated Customs Arrangement**



**FCA applies only to NI and IE  
[UK Government collects tariff at NI on behalf of EU]**

In other words, the UK would collect tariffs on behalf of IE for a product that was imported into NI for final export into IE. This would mean that the EU would effectively negotiate with the UK-wide customs union but for products moving from outside of NI into IE, there would be no need for origin verifications. Products coming into the UK would have tariffs collected by HMRC in the usual way. In the case of NI to IE product flow, HMRC would collect the tariff on behalf of the EU and pay it to the EU.

This customs arrangement would be independent of any regulatory arrangements which could be built on top of it. Any other agreements that the UK has would cover NI from a tariff perspective, but products imported into the harbours of the Irish Sea would be subject to rule of origin verifications.

Since this would be a NI/IE only customs arrangement, it would have no meaningful impact on the UK independent trade and regulatory policy since it would only threaten the ability of exporters from other markets to benefit from any UK-wide tariff reductions

in NI itself. However, this idea would suffer from the same concerns the EU expressed about the FCA concept for all of the UK. It would require much greater trust than currently exists between the EU and UK customs bodies. It is the least likely of the special arrangements to be workable or negotiable with the EU.

### **3. Conclusions and Recommendations**

Of the different zones set out above, a Single Epidemiological Unit Plus to include animal feed and any SPS products intended for animal consumption should be negotiable among all parties.

While the SPS Zone for the British and Irish Isles would be difficult to negotiate, and does depend on a deemed equivalence arrangement with the EU to be a long-term solution, it is worthy of further study because it takes advantage of the fact that customs registration procedures can be pushed into the ports and harbours of the islands, and any external procedures, for example at Calais, would be required anyway. It also aligns the need to find solutions for Calais with the need for a solution to be found at the Irish border. In any event, such a solution could be temporary, and at the moment the UK seeks to diverge in the SPS area, IE could simply remain in the EU regulatory area and then NI could revert at the request of the NI Assembly, informed by the North-South Ministerial Council to ensure appropriate cooperation in the area of food safety to an all-Island SPS zone, or not if it chooses not to.

While a common SPS area for the Island of Ireland (within the EU's SPS regime) solves many issues, this also would be very difficult to negotiate now with all parties at this time, although giving the NI Assembly the choice might be negotiable once the NI Assembly is once again constituted and running. In that context, it is important to note that the UK would not be diverging from EU SPS rules for some time, if at all, and that this would depend on future choices in the context of FTAs with others and its own regulatory choices.

We should additionally 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.

Some of these special areas also run alongside the more specific recommendations below with regard to the SPS measures laid out in Chapter 9.

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 and WTO National Security Exemption should be used to ground an enhanced economic zone which encompasses the entire region, so that much needed economic activity can be spurred, and customs registration and technical text avoided.

The region has many advantages that have been untapped hitherto for historic reasons. It has a very important relationship with the City of London Corporation, which could act as a supporter, promoter and lobbyist for the SEZ. It also has historical ties to the US that could 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 that 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. Such a Zone could include an FTZ, as well as opportunities for bonded warehouses and a generalised low tax regime with benefits for small businesses.

There are, in addition, other border areas such as the Newry-Dundalk region which could also qualify for this type of enhanced economic zone treatment. 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 FSBNI's call for all NI to be a special zone could be carried out on a smaller scale. We would suggest that 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 if the backstop was activated.



## TRUSTED TRADER PROGRAMMES

### 1. Introduction

As mentioned in Chapter 2, what crosses the Irish land border is predominantly either via large company supply chains with multiple repeat transactions, or very high-frequency, low-volume trade from SMEs and micro-businesses. To facilitate trade for the first group of traders, we envisage the development and implementation of Trusted Trader Programmes (TTPs), operational on a cross-border level. The introduction of such a multi-tier, mutually recognised programme would already eliminate significant customs burdens on the customs authorities on both sides of the border, therefore reducing the need for physical infrastructure, inspections and procedures.

A respectable number of economic operators may qualify for such status due to the repetitive nature of their transactions and the resources available to them to reduce errors in customs declarations, etc. which would allow them to be assessed as low-risk operators. The benefits to them would be preferential treatment of shipments for customs clearance purposes over borders, reduced customs inspections and procedures as well as a reduction in administrative costs.

Such a status, at any of these tiers, would, of course, provide the highest level of cross-border facilitation to qualifying economic operators on the Island of Ireland. In order to incentivise use of such programmes, the conditionality for obtaining such a status should not be unduly burdensome, expensive or involve excessive administration or bureaucracy.

Effectively, achieving trusted trader level, at various tiers of the programme, would be at the top of the ladder of trade facilitations for economic operators. However, there must also be a ladder for smaller, less well-resourced traders to climb, meaning that the Trusted Trader Programme should be seen in the context of our other proposals to ensure that smaller traders can also benefit from “mini” trusted trader-type programmes and other trade facilitations tailored to their specific needs.

Trusted Trader Programmes should therefore be viewed in the context of a holistic customs facilitation scheme for all traders in the Island of Ireland, the only main differentiating feature of these ones being that they are best suited to the needs of larger economic operators.

## 2. The Global Development of Trusted Trader Programmes

TTPs are digital compliance management models that support risk-based customs management and assessment platforms for the import and export of goods from one country to another.<sup>50</sup> The basic idea is that, if an economic operator meets the required conditions, its import and export activities can be deemed low-risk by customs authorities and given preferential customs treatment. If the operator is safe and low-risk, then the risks related to goods and procedures have less impact on the total risk evaluation.

The first TTPs were developed in the late 1990s and early 2000s in Sweden, the Netherlands and Canada. Initially these programmes used Authorised Economic Operator (AEO) status combined with the negotiation and application of Mutual Recognition Agreements (MRA) with other countries. Over time, the AEO system has been replaced by Trusted Trader Programmes. These new programmes differ significantly from old-style AEO programmes while still meeting the same international standards and using common criteria to qualify.

A new modern TTP provides a risk managed environment based on international customs law for a large population of companies involved in external trade. The TTPs replace transaction procedures with system-based analysis and are voluntary programmes that use company self-assessment in combination with government and third-party validation/certification and monitoring to minimise risks. This allows border formalities and non-tariff barriers to be moved away from the border and to be undertaken either before goods reach the border or after goods have passed the border.

Today modern fully electronic TTPs are designed to handle large volumes of trade and traders. Several countries already process 70-80% of trade under these programmes. Practical experience and evidence-based studies have shown that compliance management using self-assessment is an efficient win-win approach for all stakeholders. The benefits for governments include revenue collection, restrictions, security/safety and trade facilitation/export promotion, while the private sector receives predictability, speed, simplified and facilitated processes and lower cost. It is also cost-efficient to implement a new TTP with studies showing that the process can be managed with 25% of the resource normally required for 'standard' customs management.

The TTP MRA mechanism is based on the WCO SAFE Framework standard and allows for the TTP status of a company in one country to be recognised by a second country,

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<sup>50</sup> See Lars Karlsson, "Back to the future of Customs: A new AEO paradigm will transform the global supply chain for the better, World Customs Journal, Volume 11(1), p.23, available via the following link: [http://worldcustomsjournal.org/Archives/Volume%2011%2C%20Number%201%20\(Mar%202017\)/1827%2001%20WCJ%20v11n1%20Karlsson.pdf](http://worldcustomsjournal.org/Archives/Volume%2011%2C%20Number%201%20(Mar%202017)/1827%2001%20WCJ%20v11n1%20Karlsson.pdf)

ensuring that formalities are not duplicated. These agreements have a significant trade facilitation benefit with increased speed and predictability throughout the supply chain and when entering an important export market. Recent MRAs between countries with modern TTPs have included considerably better conditions with greater benefits for the private sector. This is because new TTPs offer larger and more significant benefits than those available under legacy AEO programmes.

Over the last five years, a new paradigm has emerged, and the latest programmes are holistic, meaning that they manage all areas of customs operations and manage all areas of risk and compliance in one single programme. Most of the progress towards modernised programmes has occurred outside of the EU and encompasses all border agencies in their TTP status to cover both Compliance and Security.

In fact, the existing EU AEO programme is a dated legacy concept and excellent examples of new programmes are in place in the US, Canada, Australia, Brazil, Saudi Arabia, the UAE and Uruguay. They are multi-tiered to provide access to all traders and include all existing trade facilitation simplifications but add a wide range of new benefits to both trusted traders and the regulatory authorities. In Brazil, for example, the country has gone from being notoriously difficult to do business in with a large amount of red tape to having a modern TTP in 3 years.<sup>51</sup>

### **3. Trusted Trader Programmes – the UK Experience of AEO-Qualified Traders**

The UK has had a low uptake of the present EU AEO programme because of the perceived limited benefit package, and the UK has traditionally offered far greater benefits for all companies based on its standard customs procedures. It is not enough to update or upgrade the present programme to reach a higher uptake as the mechanisms of the programme (both AEO C and AEO S) are outdated in relation to modern programmes today both from a Government as well as a private sector perspective.

Looking at the NI situation, there are a meaningful number of large companies that are already AEO certified. The benefits for medium-size companies depends on their kind of trade and the costs of becoming AEO-approved, which are frequently viewed as outweighing the benefits for most of them. For small companies, AEO-certification is not worthwhile unless the intensity of their international trading activities makes it useful.

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<sup>51</sup> An independent study released by the National Confederation of Industries in Brazil indicates that the benefits provided to certified AEO companies have already enabled them to save 1.5 billion US dollars, and that these economies will grow even more in the coming years, reaching 17 billion US dollars by 2030; available via the following link: [https://mag.wcoomd.org/uploads/2019/02/WCONews88\\_UK.pdf](https://mag.wcoomd.org/uploads/2019/02/WCONews88_UK.pdf)

However, the present AEO concept could be re-designed and serve as the framework for a top-level tier in a new TPP. Those companies already having AEO status can be transferred into the new programme, mirroring the process in several other countries. If correctly designed and drawing on the latest international experience, the new programme can offer both a wider range of benefits for traders and greater control to the regulatory authorities. In the UK/Ireland context, the challenge of such programmes is therefore to make them accessible to large numbers of traders by giving them real benefits in the customs procedural process and supply chain management when previously the EU AEO concept had proven to be unattractive.

#### **4. Conclusions and Recommendations**

The new TPP for deployment 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.

It should also be a multi-tier programme with international TPP standards as the top tier and a low threshold SME tier at the bottom. The top-level TPP 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 Lactalis. These companies could have this 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 procedures 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.

Another possibility is to split the very top tier 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 TTP level;
- Additional middle levels based on risk and identified business segments;
- An SME lower threshold level; and
- 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 online to lower the cost of entry for all participating businesses. 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, the modernised Trusted Trader programmes will be useful and necessary. 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 a 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 by granting a status that replaces other costly application processes and simplifying 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 Northern Ireland) 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 Ireland) has been granted the status of authorised consignee, the consignment does not need to pass to 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 records" and the use of company "self-assessment" to replace customs procedures and inspections. These examples of simplifications can be offered under the international standards but also according to the conditions established in the EU UCC.

Our proposals for a new TTP are ambitious and would require considerable financial resources and some time investment. However, the benefit justifies the cost 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 incentives for small traders (such as the Inward Storage Relief (ISR) programme that we propose (see Annex 4)) 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 that it will assist NI and IE businesses scale up for the benefits of international trade.

By demonstrating compliance and reaching certification as reliable economic operators, a partnership between customs and trade could be created and potentially even include the regulatory agencies involved in cross-border trade regulation. Different levels of compliance could bring correspondingly reduced need for risk assessment with greater facilitation and simplification in customs procedures. This could considerably alleviate the need for infrastructure being erected on the Irish land border.



## THE GENERAL CASE WITHOUT TRUSTED TRADER PROGRAMMES OR SPECIAL ARRANGEMENTS

### 1. Introduction

Chapter 7 discussed the role that could be played by Trusted Trader Programmes of various kinds to minimise customs formalities and preserve the seamless border for goods. In this chapter, we look at those cases of firms who for whatever reason cannot immediately or quickly avail themselves of TTPs and need other solutions and time to start to climb the ladder onto such programmes. This would typically be mid-tier firms and could also be some of the micro firms whose turnover is higher than the VAT threshold, but smaller than the firms who might be eligible for trusted trader status.

### 2. Customs Issues

The specific situation in both the UK and IE means that they have both traditionally focused their customs activities on the airports and seaports where goods enter the territory. In principle, goods have to be declared, are inspected and therefore controlled when they enter through the ports. However, the UCC also makes it possible to transfer these procedures to an inland location, such as the premises of an importing company, or a customs warehouse where goods are stored under customs control. In the past, these procedures were more frequently used for cross-border trade on the continent as there most EU Member States are landlocked and goods enter the country through another Member State.

The UCC was, by and large, copied by the UK in the Taxation (Cross-border Trade) Act 2018. Under this law, it is possible to make customs declarations on the premises of the trading company, and the goods do not have to be brought to a customs office to be presented to customs. For this advantage to work, customs permission has to be issued to both registered consignor and consignee.

#### (a). The EU Transit System

The Transit system is widely used as we have seen in Chapter 5 and makes it possible to transport goods under customs control within the EU or to bring goods under customs control in or out of the EU. The procedure is based on the Convention on a Common Transit Procedure 1987<sup>52</sup> and applies to all EU Member States, the EFTA countries (Iceland, Norway, Liechtenstein and Switzerland), as well Turkey (since 1st December 2012), the Republic of North Macedonia (since 1st July 2015) and Serbia (since 1st February 2016). The EU rules on Union Transit are effectively identical. When the UK becomes a third country, the Transit system could be used to bring customs goods

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<sup>52</sup> See Convention on a Common Transit Procedure available via the following link:

[https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:01987A0813\(01\)-20171205](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:01987A0813(01)-20171205)

across the EU-UK border without formalities, thus enabling a border in NI without customs infrastructure needing to be erected at the actual border.<sup>53</sup>

Transit is also used for short-haul trade within the EU involving so-called truck flights. These are consignments in trucks that are transported from airport to airport. They are carried in trucks by land because the containers are too large for the holds of smaller, short-haul planes. A significant amount of trade between IE and NI and the EU is transported this way, and there are choke-points at Holyhead and Dover/Calais which are very relevant to ensuring trade continues to flow into and out of IE and NI post-Brexit. In addition, if NI becomes part of a third country, then it is possible that truck flights will not be allowed under airway bills anymore, so solutions must be found for this area, given how much trade is carried this way.

When a Transit declaration is made, the declarant has to state how much duties and taxes would be due if the whole shipment does not arrive at its destination and all taxes would have to be collected under the corresponding guarantee. This amount is registered in the Transit system. The continuous guarantee, which is provided by the titular to customs, covers multiple declarations as they are opened and closed. The digital Transit declaration can be printed on simple A4 paper and will have a barcode on top which contains the number of the declaration. This print-out should accompany the goods. At the border, the present regulations require that the barcode to simply be scanned to register the passage of the shipment.

The purpose of the barcode and the scan is to register that the goods have left one customs territory and entered another. If a Transit declaration is not finalised properly, the titular, who made the declaration, will be held responsible and liable by customs authorities. The barcode scan serves to determine which customs authority is eligible to hold the titular liable. The assumption is that the taxes should be collected by the tax authorities where the goods have been brought illegally onto the market. To determine if the goods 'fell off the truck', it may be required to inspect the goods when they pass the border. If taxes have to be paid, it is the titular who is held responsible by the country where the transit was issued.

The actual barcode scan plays no role since one can only be used to determine if the goods have left or entered a customs territory. Of course, for Transit to work across the Irish border, the requirement for a bar code to be read at the border will require a derogation. However, given that the bar code is not really used except to indicate

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<sup>53</sup> The continued operation of the common transit procedure with the UK is ensured as the UK has deposited its instrument of accession on 30 January 2019 with the Secretariat of the Council of the EU. It has already been agreed that the Transit system will be available after Brexit in the UK.

where the goods are, it is reasonable that the governments of IE, UK and the EU could obtain from the CTC countries such a derogation for Island of Ireland transit.

The Transit system is also an element in providing a way to declare goods inland in general in the EU and the UK, but also inland in NI and IE, and for this to work, mobile inspection teams by customs must be organised. The UCC and the UK equivalent legislation already allow inland inspections of traded goods. This should not involve a dramatic increase in frequency or visibility of inspection, as inspection of compliance with VAT, excise and market regulations is already a feature of life in border areas between EU Member States, especially between IE and NI.

It is also important to differentiate between document inspections and physical controls. Physical controls will be comparatively rare (perhaps 1% of goods) and a risk assessment would be made prior to undertaking them in any event. It should also be noted that in the band along the border which is provided for by the WTO Frontier Traffic Exemption and WTO National Security Exemption, it would not be necessary to conduct any controls at all.

To retain an infrastructure-free border between NI and IE while operating a Transit procedure to manage the movement of goods, the current 'physical' barcode scanning of transit documents at the border will need to be replaced with an electronic automated version. The simplest approach to addressing this requirement will be to offer a mobile app version of the Transit Barcode document which is able to automatically register a border crossing by virtue of GPS location tracking of the mobile phone. This will avoid the need for vehicles to stop at a border crossing to enable manual scanning of a barcode. More elegant solutions can be developed to adopt the use of vehicle tracking devices, which are fitted to modern heavy goods vehicles to provide a more reliable border crossing message.

Transit is available and in operation in the EU and the UK and will remain so after Brexit. The Swiss example shows that it can be used easily to move customs declarations from the border to the inland. The system is robust and sets clear responsibilities for those who use it. At the moment, it is not widely used in the UK and Ireland. However, after Brexit, Ireland will become an intensive user of Transit to transport goods across the UK land bridge to the EU. Transit can also be used by the UK to alleviate congestion in the harbours as trucks do not need to perform any formalities when the ferry is disembarked.

This applies both on the EU side as well as on the UK side. So Transit can be universally used both on general EU-UK trade as well as on the NI land border.

## **(b). Customs Freight Simplified Procedures**

The UK traditionally operates a customs system where most export and import declarations are made where the goods leave or enter the customs territory in (air)ports under the Customs Freight Simplified Procedure (CFSP). At the time of import, a Customs Simplified Frontier Declaration (CSFD) has to be made containing only a limited dataset describing the transaction. On the basis of this information, Border Force perform a possible inspection of the papers or the goods. The CSFD has to be followed up by a monthly Supplementary Declaration in which all details about the transactions of that period are listed so that duties and other taxes can be calculated.

In preparations for a 'no deal' scenario, HMRC has proposed a new simplified import procedure with the aim of preventing congestion at the (air)ports where goods would come in from the EU, limiting the administrative obligations for companies that are faced with customs obligations after Brexit. HMRC has chosen this Transitional Simplified Procedure (TSP) under a policy that sets flow above compliance. TSP reduces the amount of information needed for an import declaration when the goods are crossing the border from the EU. The first part of the declaration for non-controlled goods is recorded directly into the trader's commercial records. The Supplementary Declaration, full risk assessment and tax collection can be postponed for up to six months.

## **CHIEF to CDS**

HMRC at the moment uses the CHIEF IT system (Customs Handling of Import and Export Freight) to handle all import and export declarations and other customs procedures. CHIEF is a legacy system, which is currently being replaced by CDS (Customs Declaration Service). The implementation of the CDS system is foreseen from April 2019 and it will take some years before it is fully operational both at the government and at the business level. However, the implementation has been delayed. CDS will give HMRC and Border Force the opportunity to make full use of risk assessment of customs declarations and will enhance the needed capacity for the expected 500% increase of customs declarations because of Brexit. If the IT system is not available or not working as envisioned, that is going to hinder trade considerably and that applies equally to trade across the Irish border.

## **HMRC and Border Force**

The UK has an integrated border enforcement agency to control the outside border of its territory. Border Force has to implement all legislation which is applicable at the border, both for people and for goods. Border Force is led by the Home Office.

The emphasis in recent years has been on people, mainly caused by limited resources and prioritising legitimate movement of individuals.

The actual control of the outside UK border of goods is relatively weak and will not improve following the Temporary Simplified Procedure for importing goods and the delay in implementation of the CDS system. It will be necessary to improve operations at the (air)ports and inland enforcement in GB and in NI to handle the increase in customs declarations.

### **(c). Entry in Declarants Records (EIDR)**

The UCC introduced a concept known as Entry in the Declarants Records (EIDR) that could provide an opportunity to significantly devolve and remove customs entries at the border. EIDR is a highly devolved tool for customs administration whereby authorised parties can make use of highly simplified procedures at the border. Authorised parties submit (by email or other electronic means) certain key pieces of information regarding the shipment (“a notification of presentation”) via their own systems of record and are required to submit a Supplementary Declaration remotely one calendar month on from the date of arrival.

EIDR is a very useful tool, but mainly for processes with a large number of declarations. For normal import declarations, EIDR is not as helpful as it requires complete openness of information in real time and online. Only when any logistic delay has to be excluded, and individual declaration costs are high, is an investment in EIDR economical, which is the case for larger businesses.

### **(d). Simplified Inward Processing Relief (IPR)**

Inward and outward processing relief (IPR) makes it possible to process goods under customs control without paying duties if the finished product is re-exported again. This can be applicable, for example, in the car industry, but also in NI where food products like milk and cheese are processed across the border.<sup>54</sup>

The UCC makes IPR available, but under strict supervision. Currently the UK has been resistant in terms of the scope and application of Simplified Inward Processing Relief. The UK self-imposes two conditions on the use of simplified procedures for IPR, which go beyond the requirements set out in the Union Customs Code:

- A maximum number of imports of three times per year; and
- The shipment value must not exceed GBP 500,000

The Union Customs Code provides the possibility to use IPR almost without limits as long as it does not interfere and compete with other inland production. Other EU Member States are far more liberal in the application and use of simplified IP with many allowing its unlimited use and no financial limit.

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<sup>54</sup> For more details on how this programme would work see Annex 4.

Inward Storage Relief is an example of the potential tiered nature of trusted trader programmes, where small traders are able to climb the ladder of trust and thereby establish a track record with customs so they can gradually ascend through the tiers of the trusted trader programmes outlined in Chapters 7 and 12. We include it to illustrate that there is thinking in the private sector and in the customs community about potential ways of simplifying the customs process for smaller traders and the creation of entry-level programmes based on existing reliefs.

### **3. VAT and Tax Issues**

The UK is currently part of the European VAT system, which is registered administratively on transactions between companies in different EU Member States. After Brexit, the UK will leave the system and import VAT will be levied on import declarations. The standard approach is that the declarant, mostly a customs broker on behalf of the importer, or the importing company itself, has to pay the import VAT on a monthly basis to HMRC. This VAT can be deducted a month later, creating a liquidity disadvantage for the importer since it has to finance the VAT for a month.

There is an alternative to this system of collecting VAT upon import called postponed accounting. On the import declaration, it is clear what company is importing the shipment and for what value. Thus, customs authorities know exactly how much VAT the importer should pay them. The importer, however, also has the right to deduct this import VAT on his monthly VAT declaration. Combining this implies that there is no money to be paid upon import by the importer on his monthly declaration. The postponed accounting system works very well in a number of other EU Member States, such as the Netherlands.

HMRC has already decided to introduce postponed accounting when Brexit takes place so that this liquidity and collection issue will be much less relevant. However, HMRC does need to grant permission to each individual importer to apply postponed accounting. An importer will only get permission to use postponed accounting if he has a good track record in paying his taxes. Such a permission could be an entry-level benefit to Trusted Traders.

VAT is a complex area of taxation, where different Member States have different rates. We need to ensure that some small companies are not put at a disadvantage because of cash-flow issues related to when VAT is collected. A condition for zero-rating intra-EC supplies of goods is that the supplier holds a valid VAT registration number for their customer in another Member State. A valid VAT registration number in another Member State can also be taken as evidence that the recipient of a supply of services is in business for the purposes of applying the place of supply rules.

Since January 2010, VIES has enhanced the system to provide name and address details for valid UK VRNs. Additionally, if the business making the VRN enquiry identifies itself by entering its own VRN, they would be able to print out a validation record of the date and time that the VRN enquiry was made and confirmed. If it later turns out that the customer's VRN was invalid, e.g. the VRN database was not up to date, they will be able to rely on the validation record as one element to demonstrate their good faith as a compliant trader and, in the UK, to justify why they should not be held jointly and severally liable for any VAT fraud and revenue losses which occur.

This can be accomplished if both IE and UK adopt postponed accounting for VAT, and if NI retains the ability to stay on the VIES system, although continued access post-Brexit to that system would involve a concession on the part of the EU to permit continued access to that IT platform.

#### **4. Measures to Combat Illegal Trade**

With each simplification of customs formalities, reduction in levels of customs registration procedures and facilitation reliefs comes the increased risk of illegal trade across the Irish land border. Illegal imports can take place when there are differences in taxation on both sides of the border. Under a customs union or a free trade agreement that the UK and EU would agree, there would be no differences in duties between the two customs territories so that risk is essentially manageable. Furthermore, in a 'no deal' situation, where the UK is proposing to unilaterally abolish 87% of its import duties, it becomes less attractive to smuggle goods into the UK.

As the UK and the EU diverge and the UK implements its own independent trade policy, including negotiating a free trade agreement with countries such as the US, the benefits of a more liberal trade policy could materialise in the form of cheaper prices in the UK for food, consumer goods and industrial raw materials. This will also increase the incentive for duty and tax evasion if the differential in prices between the UK and IE becomes significant and outweighs transportation costs between the two countries.

The NI land border lays on the fringe of the European Union. If goods are to be smuggled across this land border from outside the EU, via the UK and Ireland into the mainland EU, using the Island of Ireland would not be economic in the general sense. Any gains from smuggling would have to offset against increased transportation and logistical costs. However, if the tax differences are high enough, it may occur. Take the example of electronic bikes. The EU has high anti-dumping duties on bikes produced by certain factories in China. If, for example, these high-duty goods flow into the UK without proper identification by customs authorities, because of simplified and delayed customs declarations, they could be transported unnoticed across the NI border into the EU, thus evading the anti-dumping duty.

This risk will also intensify because of two factors. First, the UK has announced its intention to drop anti-dumping duties on a large range of products where the EU currently imposes such duties and which apply to the UK at the moment. Second, after the UK's departure from the UK, an independent Trade Remedy Authority (TRA) is envisaged, which will have two future implications. On the one hand, after carrying out a UK-only review, the UK could decide to eliminate even more products from the scope of the anti-dumping duties currently applied at the EU level. On the other hand, the UK will likely adopt its own anti-dumping measures on imports which may not be subject to such duties at the EU level.

These scenarios present the opportunity for unscrupulous traders to try to circumvent the application of these measures by transshipping these products through the country or bloc which does not apply such measures into the one that does.

While this risk is undoubtedly real, the EU has many tools to investigate and prevent such activities occurring through third countries. The EU's Basic Anti-Dumping and Anti-Subsidy Regulations contain effective powers to investigate transshipment and attempted circumvention to avoid such duties including the ability to extend such duties to countries found to be engaging in such activities even when exporters in these countries refuse to cooperate in the investigation. The European Commission's Anti-Fraud Office (OLAF) also regularly investigates the evasion of anti-dumping liabilities through circumvention, which can lead to EU importers being prosecuted for fraudulent duty evasion activities.

We should also make the general point which we make elsewhere that the goal is not to have no smuggling at the Irish border. Smuggling is a fact of life at all borders (especially land borders). The EU's external borders have significant smuggling as we have discussed. The issue here is to ensure that the current levels of smuggling do not increase to unacceptable levels.

Concerns have been raised to us about the possibility of circumvention of trade remedies and that Alternative Arrangements would not prevent an increased level of illicit trade. Anti-dumping and countervailing duties are imposed on imports at the time the customs registration procedures are completed. This process generates three types of liabilities in the same duty assessment form: (i) normal customs duty liabilities; (ii) the payments due for AD and AS measures; and (iii) as things currently stand an assessment for VAT.

There is therefore no reason why AD and AS duties would not be assessed on customs declarations made in the way we are proposing for normal customs duties and therefore the risk of avoidance is already limited.



In the cases where we are advocating small trader exemptions, again much of this exposure will be managed by the tax declaration processes we are suggesting. It would not be possible to recover VAT of imports, for example, without declaring what the imported goods are which, in turn, triggers a declaration for trade remedy assessments.

If the UK imposes its own AD and/or AS measures, merchandise crossing over the Irish land border liable to these charges would be traceable to the UK importer in much the same way as any other UK importer registered on the mainland, i.e. through their customs declarations.

We refer in Chapter 13 to the specific counter-smuggling measures we have suggested in order to deliver this.

For trade between NI and IE for merchandise subject to EU duties, this risk is limited and manageable. Around 80% of EU trade remedy measures are applied to industrial products, often semi-finished and chemical intermediaries, which are not used by IE industries. So this leaves only consumer goods such as, for example, electric bicycles and ceramics. The shipment of these products out of IE to the continental EU would therefore have to be done by air freight and/or shipment from an IE port directly to the EU continent. These “bottlenecks” would allow much easier verification of the origin of the products being shipped and an assessment of any AD and/or AS duties. Since the list of products subject to EU AD and AS measures is relatively short, this would be a fairly light administrative burden.

Finally the EU has its own laws to allow the extension of AD and AS measures to third countries to avoid the evasion of these duties and those mechanisms could be used to cover exports of liable merchandise from the UK to the EU should the applicable conditions exist.

## **5. Customs Under the Withdrawal Agreement**

Although it is said that the Withdrawal Agreement (WA) does ensure an invisible border, it does impose substantial customs obligations for every commercial transaction between the UK and the EU and vice versa. Moreover, Annex 2 and 3 of the WA suggest a new customs procedure that is introduced outside the present UCC.

The WA describes a single customs union with two separate customs territories: the EU and the UK. This is the same approach as the customs union between the EU and Turkey. At the EU–Turkish border, there are hard customs formalities that govern the trade between the two parts of the single customs union. The WA introduces a system in which the outcome is the same as with Turkey but without a border with hard customs formalities.

The situation described in the WA is intended to be put into practice in the event of the backstop being activated. We understand from our discussions that both parties under the WA aim to replace the procedures they agreed on with “Alternative Arrangements’. However, the WA procedures as described are what is in the legally binding treaty and will, absent clarification on “Alternative Arrangements,” be the fall-back position, and will also be used by the EU for leverage in any subsequent negotiations.

## **6. Conclusions and Recommendations**

Given that the UK has unilaterally decided to adopt many of the EU’s UCC provisions in its own legislation when the UK leaves the European Union, and a legally compliant procedure already exists in both EU and UK law, the burdens of customs formalities for traders both in NI and IE can be alleviated by simple application of existing reliefs and facilitations.

The Transit system makes it possible to make export declarations in other locations than a customs office. In principle, barcode scanning or similar measures could be abolished. 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 the means of transport (geo-tracking);
- Using administrative track and trace proof of transport; and
- Using an app on a mobile phone of the trucker transporting 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 in the Island of Ireland without setting up border and customs infrastructure.

If customs wish to inspect the goods, it can send a mobile team 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 inspections would need to be made at all in the areas covered by the WTO Frontier Traffic Exemption and WTO National Security Exemption. Physical controls would be very rare in other areas, and would be intelligence-led.

Smuggling, fraud and illegal cross-border trade is more likely to increase in a ‘no deal’ situation than in a customs union or an FTA. While the EU has an entirely legitimate

concern to protect the integrity of its internal market from such duty avoidance behaviour, this has to be considered in light of the powers at its disposal to combat them. The existence and frequent exercise of these powers strongly militates against such behaviour becoming undetectable and ultimately sanctioned, with the retroactive recovery of such duties a likely solution.

It remains the case that in the future the UK and IE retain full capacity to legitimately act against fraud and criminality as they do now, and equally the current levels of smuggling are likely to continue. These levels do not significantly exceed those on the EU's other external borders, and this would not be a sufficient reason for the EU to claim that there was a threat to the Single Market and Customs Union. Further implementation and enforcement action is also called for.

Firstly, 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.

Secondly, 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 working IT systems, trade can be frustrated.

Thirdly, the capacity and enforcement capability of HMRC has to be strengthened. HMRC will have to intensify administrative procedures, and also will have to provide operational capacity to perform inland inspections.

Fourthly, we would 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.

Fifthly, and finally, the Strand 2 North-South cooperation bodies could be used to monitor developments on the border to ensure that there was no significant increase in smuggling.



## MOVEMENT OF AGRICULTURAL AND SPS GOODS – THE GENERAL CASE

### 1. Introduction

Under EU law, there are multiple regulations requiring inspections of animals, animal products, food and plants (“Veterinary and SPS goods”) at the EU’s external borders. Sanitary and Phytosanitary (SPS) rules apply to all agri-food, processed foods and plants which cross the border. For example, under EU law, imports of plants and plant products must comply with phytosanitary measures that require the goods to:

- be accompanied by a phytosanitary certificate, issued by the authorities of the exporting country;
- undergo customs inspections at the BIP at the point of entry into the EU;
- potentially be notified to the relevant EU customs office before arrival at the point of entry.

The EU can, and occasionally does, take temporary emergency measures to suspend imports if plants or plant products from third countries pose an actual or potential risk inside the EU territory.

Trade in live animals and veterinary products of animal origin are also covered by a set of measures and inspection requirements under EU law. For example, animals and products of animal origin entering the EU must comply with a number of rules, which include the following:

- The exporting country must be on a positive list of eligible and authorised exporting countries for the concerned category of products or animals.
- Products of animal origin can only be imported into the EU if they come from approved processing establishments in the exporting third country.
- Health certificates signed by an official veterinarian of the competent authority of the exporting third country must accompany imports of animals and animal products.
- Each consignment is subject to health controls at the designated EU Member State BIP.

## 2. Single Epidemiological Unit

Within the Island of Ireland, trade in live animals is treated as a Single Epidemiological Unit (SEU).<sup>55</sup> Between the UK and the Island of Ireland, the EU rules apply which explains why high levels of livestock are traded between IE and NI combined, and GB and the RoW, and must be inspected as live animals are brought in and out of the SEU.

## 3. EU Level IT Systems for the Control and Application of Veterinary and SPS Measures

The EU has in place an IT platform called Trade Control and Expert System (TRACES), which facilitates the tracking and trading of all Veterinary and SPS goods:

- between registered traders within the EU; and
- between EU importers and exporters located outside the Single Market.

It is a management tool for all sanitary requirements on intra-EU trade and importation of animals, semen and embryos, food, feed and plants. It facilitates the management of official customs procedures and route planning online when such consignments are exported to the EU or traded within the EU Single Market. For example, the movement of processed food from one destination in the UK to another EU Member State must be logged in TRACES.

In addition to all the EU Member States, more than 55 other countries and their exporters are eligible to use the TRACES system for trading SPS covered products and its user interface is able to handle input in 36 different languages. Some of these non-EU countries include Australia, New Zealand, South Africa, Mexico, Indonesia, Israel, Philippines, Taiwan, Turkey, Vietnam, Thailand, Bangladesh and Singapore. Notable exceptions include the US, India, Brazil and China.

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<sup>55</sup> Under the Good Friday Agreement, the North/South Ministerial Council was established to make decisions on common policies and approaches in specific areas including agriculture. From this, an all-island animal health and welfare strategy was established. See here for all-island welfare strategy: <https://www.agriculture.gov.ie/media/migration/animalhealthwelfare/allislandanimalhealthandwelfarestrategy/All%20Island%20Animal%20Health%20and%20Welfare%20Strategy%20Final.pdf>.

See here for website of the North/South Council:

<https://www.northsouthministerialcouncil.org/areas-of-cooperation/agriculture>.

The UK Government's position paper on NI and Ireland, page 19 (para 55), states that 'It is important to note that North-South cooperation on agriculture has enabled the Island of Ireland to be treated in policy and operational terms as a single epidemiological unit for the purposes of animal health and welfare.';

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/638135/6.3703\\_DEXEU\\_Northern\\_Ireland\\_and\\_Ireland\\_INTERACTIVE.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/638135/6.3703_DEXEU_Northern_Ireland_and_Ireland_INTERACTIVE.pdf).

Therefore, the island is already considered on a practical and policy level to be one unit. In addition, the common policy between North and South is to ensure close cooperation, and to have in place similar measures and approaches where SPS and other measures are concerned.

It is important to point out that participation in the TRACES system does not alleviate a trader from complying with the relevant regulations that have been adopted for Veterinary and SPS goods. For example, the requirement for imported consignments of animals, food products and plants to be accompanied by the relevant SPS certificates and/or other mandatory import documents continues to independently apply.

Nor does it eliminate border control inspection where required under EU law. So, for example, when veterinary and SPS goods are imported from outside the Single Market, the accompanying certificates and supporting documents are checked almost 100% of the time. Based on a risk assessment of the specific shipment and any agreements in place with the country of origin of the goods, additional physical customs procedures or inspections can take place.

Currently TRACES is an independent IT platform but the European Commission is currently examining how it can be integrated with other similar IT platforms such as the Rapid Alert System for Food and Feed (RASFF). The intention is to create a single window for the control of all products covered by the various IT platforms which currently operate independently. Given the complex nature of this task and the extensive work it entails, a phased approach to the creation of the SW has been adopted for its implementation. This work is currently focused on customs formalities.

#### **4. Cross-Border Inspection for Veterinary and SPS Goods**

##### **(a). SPS Goods (Border Inspection Posts)**

As a general rule, veterinary inspections must be conducted at BIPs, which should be located in the immediate vicinity of the point of entry for the importation of animals, and veterinarians must be present to carry out such inspections. SPS goods may also be inspected at an approved inland location, for example in a cold storage facility where a container is unloaded.

However, EU law contains an exception that, where necessitated by geographical constraints (such as an unloading wharf or a pass), a border inspection post at a certain distance from the point of introduction may be tolerated if approved by the EU through the applicable procedures and, in the case of rail transport, at the first station stop designated by a Member State.<sup>56</sup> For example, in Rotterdam the BIP is located 40km inland from the container terminal in the harbour.

The transit of SPS goods to designated inspection points can be monitored by Smart Border technology solutions. These are described in Chapter 14 and Annex 5 in more detail. Essentially Trusted Traders will have the ability to register vehicles and goods in

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<sup>56</sup> For more details on how this programme would work see Annex 5.

transit on a Smart Border system which will provide traceability of the vehicle journey from source to the designated BIP. Full visibility of the journey will provide assurance of uninterrupted journeys, equivalent to the principle of authorised roads.

The EU has also recently suggested that, to promote the efficiency of official procedures at BIPs, a degree of flexibility should be provided by permitting, under certain conditions, the use of storage facilities of commercial undertakings and the storage in the means of transport in which the consignment was brought to a BIP. To facilitate the efficient organisation and performance of official procedures and other official activities, it is also considered appropriate to allow that BIPs are split into one or more inspection centres, where the categories of animals and goods for which the Border Control Post has been designated are to be controlled.<sup>57</sup> This suggests that the direction of travel of the EU is that the current Border Control Post regulation will shortly be modified to allow some SPS goods inspections outside of traditional BIPs and away from borders. The EU could agree to multiple inspection centres, but these must be within a reasonable distance from the central BIP office, and must be approved by local customs as a customs-controlled premise.

#### **(b). The Nature of Procedures for SPS Goods**

For veterinary and SPS goods, EU law requires a very high level of physical controls and inspections because of the threat to human health of improperly produced agri-food items. However, even if 100% documentary verifications were required, this does not always mean that 100% physical inspections would also be required. This depends on a number of factors to identify risk in the consignments.

Furthermore, EU legislation points towards a reduction of physical inspections at BIPs. Factors that can be taken into consideration in reducing BIP inspections include: (a) the experiences in the Member States and the danger to public and animal health in the EU; (b) for certain third countries with which the EU has reached agreements on equivalency, a reduction in the physical inspections on certain products can be applied, taking into account, inter alia, the application of the regionalisation principle in the case of an animal disease and of other EU veterinary principles. These reductions should be carried out in such a way that it is not possible for an importer to predict whether any particular consignment will be subject to a physical check.<sup>58</sup>

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<sup>57</sup> Draft Commission Implementing Regulation to lay down detailed rules on minimum requirements for border control posts, including inspection centres, and for the format, categories and abbreviations to use for listing border control posts and control points, Ref. Ares(2019)1306670 - 26/02/2019, available via the following link: [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1213884\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-1213884_en).

<sup>58</sup> Commission Decision of 20 May 1994 on the reduced frequency of physical checks of consignments of certain products to be implemented from third countries, under Council Directive 90/675/EEC (94/360/EC), OJ L158/41 (25/06/1994).



Equivalence agreements have been reached between the EU and third countries such as Canada, Chile, NZ, Switzerland and the US. In the case of the NZ-EU veterinary agreement, identity and physical inspections are merged, and physical action is only required in 2% of cases for processed food products. In the case of Switzerland, consignment of animal products are treated as if they are intra-EU trade because the Swiss voluntarily sign up to the EU's SPS regime.<sup>59</sup> If there was a common SPS regime in place, SPS goods in NI would cross the border as if they were intra-EU trade.

## 5. Possible SPS Scenarios

The UK may establish a number of different relationships with the EU in the SPS area that all have an impact on the controls that might be necessary.

### Scenario 1

If the UK remains part of the EEA, it will be bound by the EU acquis. In this case, customs declarations will have to be fulfilled for the purposes of other VAT and origin regulations. The UK will have the same SPS rules as all the other EEA members and trade in SPS products will have a low risk assessment, which will lead to a low inspection frequency, but inspections will be required. This will also hamper the UK's independent trade and regulatory policy.

### Scenario 2

If the UK chooses to voluntarily align to EEA rules, like the Swiss, then there will still be the need for SPS inspections. However, like the Swiss (see Chapter 5), the UK could be part of the security zone, which would minimise the need for such inspections. Like the Swiss, it might be possible to agree with the EU that there should be no controls in this case. However, such voluntary alignment does have implications for the UK's independent trade policy as most of the UK's trade partners will want to see SPS flexibility from the UK.

### Scenario 3

If the UK has some form of FTA relationship with the EU with SPS provisions, then the UK should seek deemed equivalence with the EU in the SPS (as well as other areas). Either in the dynamic alignment model, or the FTA model, the EU will need to check SPS goods administratively, but will not necessarily have to physically inspect all goods depending on the agreements between the parties. But the UK will not be in the security zone, hence the risk of inspections is much greater.

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<sup>59</sup> (2008/979/EC)

In the FTA model, the UK will seek deemed equivalence of a raft of regulations along the lines of the NZ-EU Sanitary Measures Agreement.<sup>60</sup> While deemed equivalence does not change the requirement for 100% documentary verifications, it does mean that the number of physical inspections can be reduced based on the trust between the parties. Initially the UK's SPS regime and the EU's will be identical. A deemed equivalence regime for SPS will also contain a mechanism to manage divergence, and this may entail the need for verifications.

However, even in the general case where there is no special zone, SPS inspections may be carried out away from the border, as discussed below.

#### **Scenario 4 - Use of Common SPS Zones**

There are a number of precedents on the Island of Ireland for a common all-island regime, the most obvious one being the Common Travel Area. There is also Single Epidemiological Unit (SEU) as discussed above. This has led to some discussion of a common SPS zone for the Island of Ireland. Such a zone, as in the Swiss case, could mean that SPS trade would be conducted as if intra-EU trade and not require intervention from a customs perspective. However, this has met with political opposition notably from the DUP on the basis that it would require different regulations between GB and NI. For example, a common SPS zone could mean food destined for NI would be different from food for GB in the event that the UK diverged from EU SPS regulation, and NI would not be able to benefit from any UK divergence on SPS issues with the EU.

An intermediary and more politically feasible step could be to build on the Single Epidemiological Unit, which applies to livestock by adding an element to include all SPS goods intended for animal as opposed to human consumption. This would mean that animal feed, grain and so forth would not require SPS controls on the Island of Ireland. However, SPS products that were intended for human consumption would attract ordinary SPS verifications (which would be minimised in the manner described above).

Another option would be to have a common SPS area for not only the Island of Ireland, but the whole of the UK plus IE. This would mean a common rule book for the UK and IE, but one that was capable theoretically of diverging from the rules of the EU Single Market. If that occurred, verifications would then be required in the Irish harbours and ports, and in Calais and other EU ports. But both the Island of Ireland and the island of Britain would benefit from the lack of land borders for security and integrity reasons. Both islands would then inter-operate with the EU on the basis of deemed equivalence of very similar regulatory environments (which would be identical on Day One).

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<sup>60</sup> Agreement Between the European Community and New Zealand on Sanitary Measures Applicable to Trade in Live Animals and Animal Products, as amended in 2015, OJ L57/5 (26.02.1997).

If the UK sought to diverge in a manner that was unacceptable to the EU, then this could trigger the loss of deemed equivalence with the EU, and the introduction of procedures between the Zone and the EU. In such a case, it would be open for IE to break the common area and continue to be harmonised to EU rules. Since this would also trigger some procedures between NI and IE, the people of NI, through the Northern Irish Assembly, could request that NI be part of a common SPS area as the Island of Ireland would retain the EU regulatory environment for SPS. Part of the consideration of the NI Assembly at that time would be that such a common SPS area would lead to procedures between GB and NI which could take place in the harbours of the Irish Sea, and in UK ports and airports, where smoother analysis can be more easily applied, ensuring smoother East-West trade than could be achieved between North-South without the common area. Crucially the decision as to whether NI remains in the UK's SPS regime or IE's is a decision that must be made by the people of NI, which builds on the fundamental principle of consent – a foundational principle of the BA/GFA.

### Summary

It is likely that in the SPS area, different approaches could be adopted for different sectors. For example, based on the SEU, as noted in Chapter 6, a common SPS area could be established to include livestock as well as agri-food products intended solely for consumption by animals. Such a Single Epidemiological Unit Plus area should be politically acceptable to all parties because it is based on the Single Epidemiological Unit which exists now. This would eliminate the need for regulatory customs procedures to be applied against these products at the land border. Any customs registration procedures would be in the ports and harbours of the Irish Sea. We have heard evidence from the grain trade illustrating the particular difficulties associated with the all-island feed market, and these would be resolved by this arrangement.

With respect to dairy and meat products, the need for SPS verifications is limited by a common SPS area for either the British Isles or the Island of Ireland, but would be required in other circumstances.

For other SPS goods, there have been political objections to a common SPS area as outlined in Chapter 6 for the Island of Ireland. However, the DUP would not have objections to a common British and Irish Isles SPS area. As noted in Chapter 6, a common SPS area for the British and Irish Isles would be politically acceptable to most parties in NI.

In all of these scenarios, GB will have to maintain a very open perimeter on SPS goods. In reality, it is unlikely that EU regulation in the SPS area would ever be more restrictive than the UK SPS regulation. Hence, the UK could minimise its own customs entry procedures on SPS goods entering its perimeter, thus ensuring fewer barriers to East-West trade.

It should also be noted that as in Australia and other countries that supply products to both SPS restricted markets such as the EU and also non-restricted markets, the UK could produce for both markets. In this way, farmers and other agri-food producers could, if it was deemed more profitable, produce according to the closed-loop SPS system for EU exports, and produce a different line for internal consumption and other markets. Track and trace technology (see Chapter 14) could be used to verify the supply chain, but this should not be unduly difficult as other producers do the same.

## **6. Conclusions and Recommendations**

We advise the adoption of at least a Single Epidemiological Unit Plus, which covers livestock and all products intended for livestock for the Island of Ireland. We also recommend further investigation of a common SPS area for the British and Irish Isles initially, which could be broken if IE requires it, and the NI Assembly votes to remain with the EU SPS regime.

This is consistent with the Good Friday Agreement since the consent of the people of NI will determine whether NI diverges from the rest of the UK in this area. 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 some considerable time into the future. The UK would seek deemed equivalence to ensure that minimal customs procedures were applied between the EU and the common area. These processes can be further minimised by placing them in natural break points such as the ports and harbours of the two islands. But if the EU refused, IE could break the Common Area if it so chose, and the NI Assembly could then choose to align with the IE SPS area.

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<sup>61</sup>) that allow the BIPs to be away from the border, and for a number of procedures 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 actions 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 controls are to be differentiated from veterinary inspections as SPS actions may be carried out inland away from the border in any event.

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<sup>61</sup> Commission Decision of 28 September 2009 drawing up a list of approved Border Inspection Posts, laying down certain rules on the inspections carried out by Commission veterinary experts and laying down the veterinary units in TRACES, OJ L296/1 (12.11.2009), as amended.

Considering the specific situation in Calais with the ferry terminals and the Channel Tunnel, 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 Channel Tunnel cannot stop for inspections of specific containers with veterinary goods. Trucks with veterinary goods cannot be inspected at the ferry terminal as there is no parking space and no facility for a BIP.

In addition to taking advantage of the geographical flexibilities of the BIP regulation itself and the direction of travel of EU regulation towards the concept of a single window environment for customs,<sup>62</sup> the WTO Frontier Traffic Exemption and WTO National Security 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 inspections taking place at a remote site. 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. If there are concerns about a particular shipment, it could alternatively in the last resort be checked at the existing BIP in Dublin.

To accommodate the unique geographical requirements of the border between NI and IE, 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.

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<sup>62</sup> A summary of the EU CVED Single Window for customs is available via the following link: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/eu-single-window-environment-customs.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/eu-single-window-environment-customs.pdf).



## CROSS-BORDER TRADE IN GOODS, TECHNICAL REGULATION AND CONFORMITY ASSESSMENT

### 1. Introduction

The UK's departure from the European Union will have consequences for cross-border trade in manufactured goods. The types of products that are considered manufactured goods range from the level of sophistication of a motor vehicle, on the one hand, to children's toys on the other.

Currently, the UK applies the relevant EU legislation to the 'placing on the market' of such products. These measures are designed to protect consumer health and safety, as well as pursuing more general policy goals, such as environmental objectives (e.g. energy reduction and recycling), and harmonisation, to allow goods made in one EU Member State to be marketed and sold in another. This situation will change if the UK leaves the EU without a legal mechanism to ensure UK and EU standards and technical measures remain harmonised. Since the UK will become a non-EU Member, but IE will remain inside that organisation, this parting of ways could have significant ramifications for cross-border trade in manufactured goods on the Island of Ireland.

There are many reasons why the UK may decide to adopt different standards following departure from the EU. One reason could be the pursuit of an approach that is intended to alleviate UK manufacturers from the burdens of compliance with these standards, many of which are viewed by UK industry as excessive, burdensome and expensive in terms of compliance costs. Another reason could be if the UK decides to enter into free trade agreements (FTAs) with other non-EU countries (e.g. the USA), and a different set of standards and regulations are agreed that conflict with the relevant EU ones.

At this point in time, the UK and EU's technical standard regulations are fully aligned. The formal departure of the UK from the EU, with or without an FTA or similar arrangement will, therefore, not involve an immediate change to the legal regime applying technical standards for manufactured goods traded between them until such time as the UK decides differently.

In the longer term, there is no guarantee that the UK will tie itself to continuing to abide by the relevant EU regulations following departure, either with or without a new relationship between the UK and the EU being settled. For cross-border trade between the UK and IE (and indeed any other EU-27 country), it is highly conceivable that manufactured goods made in the UK will no longer precisely satisfy the applicable EU regulations. The question then becomes, what can be done to ensure the level of divergence can be managed to allow as near as possible frictionless trade between the UK (including NI) and the rest of the EU, including IE?

## 2. Placing on the Market Requirements and Cross-Border Trade Post-Brexit

Under EU law, a significant number of manufactured products is subject to technical standards and legal requirements that must be satisfied for those products to be lawfully placed on the EU Single Market, which, post-Brexit, will include the territory of IE. Some of these requirements include the following:

- a. Product-specific measures that require products to be approved by a notified body before being placed on the market (e.g. certificates of conformity for motor vehicles validating manufacturing in conformity with EU type-approval, conformity assessments for construction products, elevators, medical devices, pressure vessels, measuring instruments, gas appliances, etc.)
- b. Product safety measures (e.g. children's toys, pyrotechnics, etc.)
- c. General product safety standards and labelling requirements
- d. Environmental protection measures (e.g. restricts hazardous substances in electrical and electronic equipment, recycling requirements, machinery noise emissions, eco-design and energy labelling, etc.)<sup>63</sup>

The enforcement of these technical requirements is carried out by market surveillance authorities (MSAs) in each EU Member State and, within each country, different agencies and governmental departments, both national and regional, are tasked with ensuring their application and enforcement.<sup>64</sup> In addition to these surveillance agencies, the customs authorities in the Member States (in the case of the UK, Her Majesty's Revenue & Customs [HMRC], and in IE, the Revenue Commissioners) have the general authority to carry out inspections and investigations at the point of importation of covered goods into the national market.<sup>65</sup> These powers include conducting processes for risk assessment, suspension or refusal to release non-compliant goods for free circulation, refusal to allow placing them on the market and orders compelling seizure of them.

Market surveillance is not necessarily about checking every single product that enters the market, but working efficiently and using intelligence to monitor a wide range of products and using appropriate actions for control and identifying effective follow-up measures in the event of non-compliance.

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<sup>63</sup> We estimate that there are at least 70 EU legal instruments, mainly regulations and directives, covering technical standards, approvals and labelling for certain manufactured products.

<sup>64</sup> A list of the UK MSAs by regulatory area and policy department is provided in the UK Government report entitled UK National Market Surveillance Programme 2018-2019, Annex 1, accessible via the following link: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/767289/uk-market-surveillance-report-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767289/uk-market-surveillance-report-2018.pdf).

<sup>65</sup> In the UK, HMRC and the Border Force are not specifically designated as MSAs but, instead, play a significant role in market surveillance at import points because of the data and documentation they have relating to imports from third countries. The information contained within customs declarations and the supporting documents can be profiled to target products and economic operators that are likely to present the greatest risk to users.



Article 18(4) of regulation (EC) 765/2008 requires EU Member States to ensure that market surveillance activities are used proportionally. Market surveillance activities must not exceed what is necessary for achieving the desired result and, in all cases, the level of non-compliance and possible impact must be considered when deciding appropriate corrective actions.

Cross-border cooperation between MSAs in different Member States is essential for effective market surveillance, and a timely exchange of information on draft inspection is required under Art. 18(5) of regulation EC 765/2008, which should result in efficient coordination. Article 24 of this regulation requires MSAs to assist each other and exchange relevant information and documentation. Article 23 establishes a common database to share market surveillance information. MSAs are required also to follow up on restrictive measures adopted by other MSAs to aid effective enforcement across the EU's Single Market. Furthermore, MSAs must actively participate in administrative cooperation groups (AdCos) meetings, common projects and joint market surveillance actions.

To maximise the effectiveness of market surveillance in the EU, MSAs should always request corrective actions from the economic operator (either the manufacturer or importer of the goods) responsible for placing the non-compliant product on the EU/EEA market. The request must be made either prior to or at the same time as addressing the national distributor (this could be any person within the supply chain other than the manufacturer or importer that makes the product available on the market). Addressing the manufacturer or importer should ensure that corrective actions are taken at EU/EEA level.

To continue to ensure that compliant goods are traded across the Irish border, it would be advisable for UK MSAs to retain access to the common database, and to continue to actively participate in AdCos, common projects and joint market surveillance actions post-Brexit. Such actions would ensure that there is continued compliance for cross-border trade in Ireland; however, as standards begin to diverge, this will present challenges in ensuring compliance in conflicting regulatory environments, potentially highlighting the need for a third party to bridge the gap in compliance between EU and non-EU Member States. Private sector companies with experience in product conformity assessment procedures could bridge this gap, as there is a very clear overlap in capability and experience, although participation in AdCos and access to the common database would also be advisable.

The EU has a number of systems to facilitate the exchange of information among the various MSAs to enhance regulatory compliance for manufactured products with the

appropriate standards.<sup>66</sup> One of the main IT platforms used for this purpose is RAPEX (Rapid Alert System – Non-Food), allowing the various MSAs in different EU Member States to communicate with each other about products that pose serious risks to consumers. Through this system, information is exchanged and published on measures taken to prevent or restrict the marketing or use of manufactured products that are considered non-compliant. Strengthening and enhancing market surveillance has been suggested as a way to handle and improve the confidence level the EU has in the UK's arrangements to ensure that the EU Single Market and Customs Union is fully protected.

A recent EU-commissioned evaluation report concludes that despite the many communication mechanisms and tools for information exchange among the MSAs and with third countries, these do not work efficiently nor effectively.<sup>67</sup>

### **3. Current EU Market Surveillance Process**

For all sectors, an MSA must determine which products and/or Economic Operator (EO) will be targeted to achieve the greatest impact. The MSA must then apply this strategy in the field and, when relevant, take samples. The MSA must assess compliance by requesting more information from the EO, such as quality, test or technical documentation. At the end of this process, the MSA is able to draw informed conclusions regarding the compliance of the product. Before making a definitive decision, the MSA needs to engage with the EO, with all the information gathered in this process being considered valuable for informing future market surveillance activities.

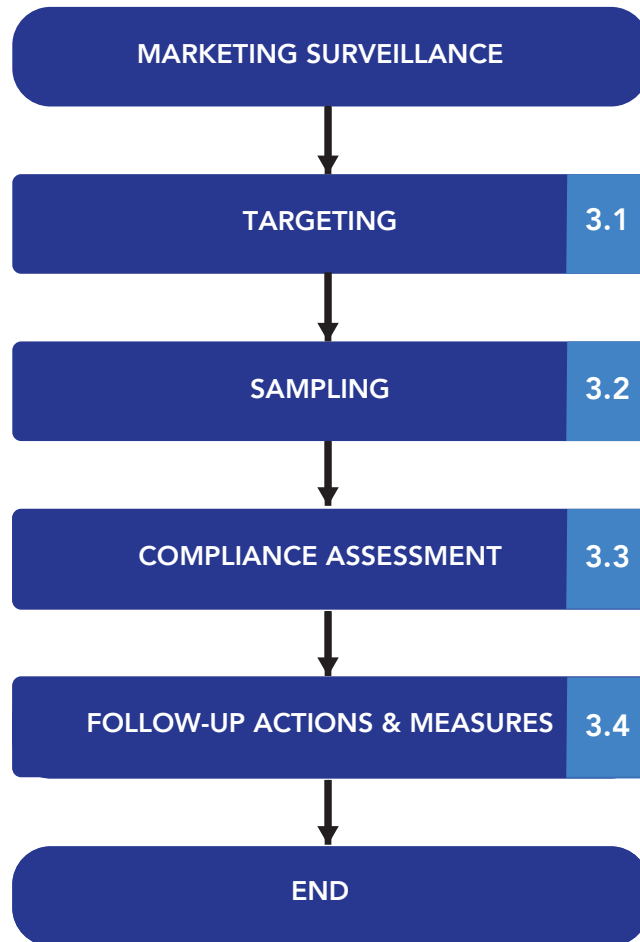
An abbreviated flow chart of the market surveillance process is set out, below.

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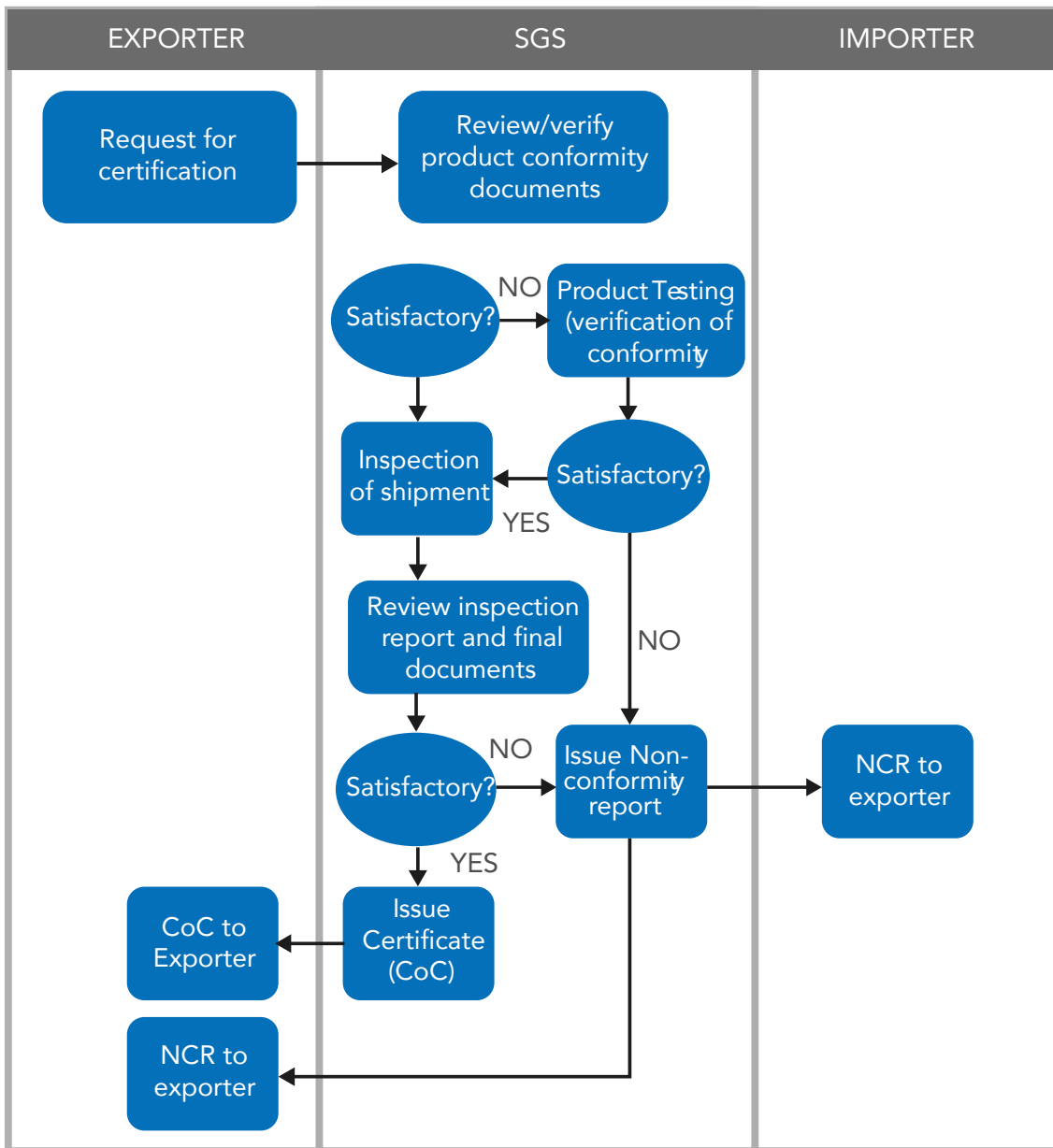
<sup>66</sup> See, specifically, Regulation (EC) No. 765/2008 of the European Parliament and the Council, setting out the Requirements for Accreditation and Market Surveillance Relating to the Marketing of Products, OJ L218/30 (13.08.2008), applicable since 1 January 2010.

<sup>67</sup> European Commission, ex-post evaluation of the application of the market surveillance provisions of Regulation (EC) No 765/2008 – Final Report, available via the following link: <https://ec.europa.eu/docs-room/documents/26963>. Deficiencies identified include the fact that MSAs rarely restrict the marketing of a product following the exchange of information on measures taken by other MSAs and via RAPEX, and, for products manufactured outside their national territory, MSAs find it difficult to contact the EO, even if it is based in another EU Member State.

Figure 6: Flow Chart of Market Surveillance Procedures



**Figure 7: Product Conformity Assessment Process**



**4. Conformity Assessment Procedures for UK/EU Borders Post-Brexit**

Within the UK, manufacturers and traders may already be familiar with conformity assessment requirements when exporting goods to third countries such as Saudi Arabia, Kenya, Egypt, Nigeria, Iraq and Kurdistan. Therefore, such businesses understand the procedures for verifying the compliance of goods to differing standards to satisfy the requirements for customs clearance within these countries. This process is, often, not without challenges, as local standards can sometimes contain out-of-date codex references or request testing that manufacturing processes have long since made redundant in more developed countries. For example, the use of IQS (Iraqi Quality Standards) in Iraq made the export of food products particularly difficult, in some cases prohibiting export/import completely.

More recently, there has been a shift to the use of more localised standards for the assessment of goods being exported to Saudi Arabia, which has proved problematic from an operational perspective on the part of the third parties mandated to perform conformity assessments. Nevertheless, on the whole, exporters and manufacturers have not had to make many adjustments to their existing compliance procedures.

In the case of regulatory divergence, non-conforming goods will likely be prohibited from export to the EU; thus, a mechanism for the identification of non-conformance will be required. The majority of UK manufacturing is expected to align with international standards, which, in the majority of cases, should continue to satisfy EU requirements. Testing will become much more important in the manufacturing process to support conformity assessment. Most manufacturers will already include testing as part of their process; however, it is the smaller traders and manufacturers with less robust, or a distinct lack of manufacturing, sourcing and testing processes, that will prove the biggest challenge, as is already the case for conformity assessment for exports to third countries.

Conformity assessment services for exports to third countries are currently managed by the private sector, which is mandated by governments in the country of import. These services are extremely well developed and benefit from years of operational experience. The process for the verification of compliance is robust, effective and can be used to identify non-conformities and prevent the import of sub-standard, harmful or counterfeit goods. The fees applied for conformity assessment services are usually a percentage of the FOB value of a shipment, with a minimum, and sometimes maximum, fee value applied.

To verify compliance, an application for a conformity certificate is made and submitted, in addition to a copy of the invoice and supporting quality information relating to the goods, these are then assessed and verified by competent quality teams that work to a list of applicable standards for goods identified by HS code (the applicable standards are defined by the importing government). When the conformity of goods is verified, a pre-shipment inspection takes place at the premises of the exporter. This can either be a physical inspection or it can be done remotely using smart phones. The inspection is completed when labelling requirements are confirmed as satisfactory and serial numbers etc. are logged.

When complete, a Certificate of Conformity (CoC) is issued for the shipment, which is usually used as a customs clearance document when the goods arrive at destination. As a process, this is very robust, but additional options can be explored, such as the witnessing of container loading and sealing to prevent additional goods being added

to the container. Tracking devices can also be applied to the container, which can then be used in conjunction with geo-fencing to determine whether a truck or container has deviated from a pre-determined route and/or identify any unplanned stops.

## **5. A Proactive approach to compliance in Ireland through market surveillance and Product Conformity Assessment**

Knowledge of the market is key, and it is advised that market screening exercises be performed on both sides of the border to identify the most active EOs in each market sector, the products that are available and where they are available (e.g. in store or online). Cooperation with industry will be required to identify supply chains and market share, and to conduct market research among end users. Third-party information could be used also, as long as it can be established as reliable. By undertaking market screening, we could have an intelligence-led overview of the size of the national market, the names and market share of EOs supplying given products, the types of EOs and the main channels of sales. This information would enable MSAs and third parties to decide which EOs and products should be targeted to ensure continued compliance in cross-border trade. Priority should be given to those that are most likely to break the rules, do not follow rules, or have a history of non-compliance, rather than targeting EOs based on random selection.

While market surveillance would be effective at ensuring compliance among the larger EOs or Trusted Traders, we need to consider the use of traditional product conformity assessment procedures for small- to medium-sized traders that would need to apply for a conformity certificate for each movement of goods and provide quality, test and technical information. For more frequent traders, we could offer them the ability to register goods to avoid the need for quality information to be provided each time they trade across the border – an application for a CoC would still need to be made but could be done using a registration certificate in place of quality documentation. The registration certificate would need to be kept up to date and would require an annual renewal. This is already an accepted practice for product conformity assessment and, as such, there are robust procedures and methods already in place.

## **6. Conclusions and Recommendations**

As it currently stands, the Political Declaration foresees that 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 the cooperation of UK authorities with EU agencies operating in this field is envisaged. Of particular importance to future cross-border trade on the Island of Ireland is that regulatory cooperation, including the alignment of rules, could be considered in the application of related procedures, which is 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 one 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 significantly contribute to reducing the need for customs procedures along the Irish border.

Going forward, a mechanism could be agreed to manage possible divergence by the UK from the EU's technical requirements and standards. This would require a mechanism to allow the accreditation of new UK regulations and standards comparable to 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 is equivalent to that of the other party, a procedure is in place to allow the other party to recognise those technical regulations as equivalent.<sup>68</sup>

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 MRAs 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 the results of conformity assessment procedures conducted in the territory of the other.
- g. Permitting and/or facilitating manufacturers' or suppliers' declarations of conformity.<sup>69</sup>

These mechanisms would have to be consistent with the World Trade Organisation (WTO) rules on pre-shipment inspection (PSI). PSI is the practice of employing

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<sup>68</sup> EU-Japan Economic Partnership Agreement, Article 7.5.2.

<sup>69</sup> Examples drawn from EU-Japan Economic Partnership Agreement, Article 7.8.3.

specialised private companies to check shipment details — essentially price, quantity, and quality — of goods ordered overseas. The obligations of exporting countries towards PSI users include non-discrimination in the application of domestic laws and regulations, the prompt publication of such laws and regulations, and the provision of technical assistance when requested. However, this is essentially a question of designing the system in a manner that is compatible with WTO requirements, and would not be an obstacle to the introduction and use of such mechanisms.

For trade in industrial goods across the Irish border, we suggest verifications 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 competent authorities. Not only would this approach eliminate the need for customs procedures at the border for compliance, it would also allow the competent authorities to confirm products against the documentary product approvals that are normally held at the manufacturer's premises.

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 Ireland land border. This would mean that products placed in the respective markets of the UK and Ireland could be analysed and investigated in the marketplace. Indeed, this type of surveillance already takes place in the markets of both countries, with non-compliant merchandise being withdrawn from the market under powers conferred by domestic law upon inspectors. This form of surveillance could be designed also 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 EU 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 these processes must 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 great extent, these inspections are restricted to import inspections at ports where non-EU goods arrive. The UK and IE are free to choose not to carry out such inspections and procedures at the border and, instead, focus more on investigations in the marketplace. From our stakeholder engagements in IE, we do not believe this will be controversial; indeed, the EU will require a greater level of market surveillance in IE to provide them with confidence that the Customs Union and Single Market are being protected.

Enhanced UK and IE legislation could be introduced to discourage the placing on the market of non-conforming products, so that there is a more significant disincentive for



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 Ireland, 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 deem desirable, as long as these are not disproportionate to the offence involved.

The combination of customs registration procedures 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 regarding the imports of industrial products made in the UK.

Finally, market surveillance cooperation 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 the overall system of control over manufactured products being exchanged across 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.



## MINIMISING THE IMPACT OF RULES OF ORIGIN

### 1. Introduction

There is a number of different types of preferential trading relationships, ranging from bilateral FTAs and customs unions to the unilateral granting of preferences, for example, the EU and US Generalised System of Preferences (GPS). Countries enter into preferential arrangements because they want to stimulate and boost trade between them, or because they want to encourage economic development in certain countries. In both instances, the need arises to ensure that products from third countries not covered by such arrangements are excluded from obtaining reduced rates of import duty, special quotas, etc. Rules of origin play an orchestrating role in ensuring that such exclusions are effective.

### 2. Basic Rules for Establishing Origin

The baseline rule for establishing origin is that goods that are 'wholly obtained' in a particular country are deemed to originate in it. So, vegetables and fruit originate in the country in which they were harvested. Minerals originate in the country where they were first extracted. Animals are deemed to originate in the country where they are born and reared. More complex products can still originate in a specific country if all their ingredients, raw materials, parts, components, etc. came from the same country and were processed there into a finished product.

For products made from materials that do not originate in the same country, to offer a benefit but also prevent the purposes and/or objectives of the preferential arrangements being circumvented, there are rules for calculating origin. These rules are designed to ensure that real value is added to the product in the country that confers the preference. The basic principle applied is that the goods in question must have been 'sufficiently transformed' or 'sufficiently worked' for them to be deemed originating. There are many different ways to establish whether this is so. Some common methods include:

- Origin is conferred in the country where the last substantial economic process was applied to generate the finished product.
- A certain value is added in the course of the manufacturing process taking place in the country in question.
- The finished goods are manufactured from materials of any customs heading used for customs classification purposes, except those into which the finished goods fall.
- A negative rule such as the finished product cannot be manufactured from materials that are already in an almost finished condition.

Anti-circumvention rules exist to prevent origin being conferred when minimal operations have been carried out. This is to protect against conferring origin on activities that amount to simple actions that are merely applied in an attempt to obtain the benefits of lower duty treatment. For example, simple packaging of finished merchandise in a country other than where they were made can never have origin conferred. The same applies to the dilution of products by simply adding water or another solvent that can be later easily extracted.

In the context of supply chains, in which products are being manufactured, processed and/or assembled, using raw materials, parts and/or components from a variety of countries, the manufacturer of the finished product for which a preferential claim is being made must maintain sufficient records to prove eligibility.

The burden of calculating origin can be high. Some production IT platforms, such as SAP, have software to track and trace the origin of each component, thereby supporting automatic electronic origin calculation. However, less-sophisticated tracking processes involve the reporting of the origin of materials and parts on the Bills of Materials (BOMs) used to manufacture the finished product in a more manual way.

In all cases in which preferential origin is being claimed, a form or declaration must be made to the customs authorities in the importing country to assert entitlement to the advantages being requested for the imported merchandise. In the absence of such a declaration, the relevant customs authorities will apply the standard duty rate.

### **3. Implications for the Irish Land Border**

Looking at the specific situation at the NI land border, it is obvious that most goods crossing the border are currently either of Irish or UK origin. Following the UK's departure from the EU, it makes no commercial sense to import goods either into the EU or the UK via this border, as it lies on the fringe of the EU. However, it cannot be completely excluded that it is possible to import third-country goods across this border post-Brexit. Nor should we underestimate the EU's fear of the border being used as a 'back door' to circumvent EU regulations and preferential trade agreements with third countries.

Hence, the issue of proving origin is a key determinant to facilitate trade across the Irish land border. Below is a number of possibilities for simplification drawn from current EU regulations that the EU should consider seriously.

#### **(a). Certificate of Origin**

We understand the FSBNI has canvassed its members on the need to file origin certifications through the Chamber of Commerce, and they have indicated that they are

broadly willing to accept the burden, although of course they would prefer for it to be minimised.<sup>70</sup>

**(b). Invoice declaration statement**

The EU-Japan EPA illustrates how this modern approach works. Invoice declarations replace specific proofs of origin (for example EUR certificates) and allows both exporters and importers to make the relevant declarations.<sup>71</sup> Approved exporters in the EU and in Japan can self-certify that their product is originating by making a statement on origin on an invoice or on any commercial document using the appropriate wording. EU-Japan statements on origin remain valid for 12 months and may apply to multiple shipments of identical products

**(c). A UK Free Movement Certificate**

The Withdrawal Agreement prescribes a customs procedure in case the Backstop Arrangement should become operational. In this situation, the EU and the UK would form a temporary customs union.

Articles 1 and 2 of Annex 2 of the Withdrawal Agreement explain that there would be two customs territories, the EU and the UK. Together, they would form one single customs union. Annex 3 describes the procedures and documents applicable to all EU-UK trade, including those occurring at the Northern Irish border. The A.UK Free Movement Certificate will be needed to prove that the goods are UK- or EU-produced or are in free circulation.

**(d). Registered Exporter System**

The Registered Exporter System (REX system) is the system of certification of origin of goods that the EU is progressively introducing for the purpose of its preferential trade arrangements. This approach is based on the principle of self-certification by EOs, who will themselves make invoice declaration statements on origin. To be entitled to submit a statement on origin, an EO will have to be registered in the REX database by the competent authorities.

Currently, the REX system applies mainly to beneficiary countries of the EU's GSP programme. Progressively, the REX system is being applied in the context of bilateral trade agreements between the EU and the partner countries, for example, CETA and Japan. In the event that a preferential arrangement of some type is agreed, the UK and EU should use this self-certification method for proving origin.

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<sup>70</sup> Examples drawn from EU-Japan Economic Partnership Agreement, Article 7.8.3.

<sup>71</sup> Chapter 3, Section B of the EU-JP EPA sets out the origin procedures related to self-certification of origin and verification by customs authorities.

Projecting the REX system onto the NI border has the advantage of no additional formalities, except that exporters should register, and that they must add a standard clause in their export invoices. If the system can be applied with Canada under the FTA, then there is no reason why it cannot also be applied to trade between the EU and the UK in a similar situation.

#### **(e). Importers knowledge**

In the recent EPA between the EU and Japan, a system of claiming origin based on 'importers' knowledge' was introduced. This agreement states that the origin of a product can be based on 'importer's knowledge that a product is originating in the exporting party'. This knowledge 'shall be based on information demonstrating that the product is originating and satisfies the requirements provided for in this' agreement. Importers' knowledge requires no registration and no formalities to claim the preferential treatment of import duties based on a proof the origin.

As the importer is making a claim using her/his own knowledge, no statement on origin is used, and no exporter or producer needs to be identified or take any action relating to the preferential origin of goods in the exporting party. At the moment of claiming preferential tariff treatment, only a reference to the statement on origin or importer's knowledge is needed in the import declaration. The preference can simply be claimed in the import declaration.

This system relies on the importer having an effective verification and document request system, and is based on a risk assessment process. Additional information is required if the claim is selected for verification and, therefore, the importer should document the basis for her/his statement.

This could be a useful method for the NI border should an FTA between the UK and the EU be ultimately negotiated and finalised.

#### **4. Conclusions and Recommendations**

From a purely procedural perspective, recently introduced IT systems such as REX and importers' knowledge could be used to claim and prove the origin of traded goods with minimal formalities. Since the EU is currently in the process of extending the availability of the REX system to traders in countries with which it has entered into an FTA or similar arrangement, this would not require significant investment from the EU side and merely a modest concession especially towards traders on the Island of Ireland.

Access to these systems would also help small businesses on the Island of Ireland by not requiring new or unduly burdensome formalities to demonstrate origin to be

introduced for their cross-border trade. Such a concession can be justified by the low risk of fraud presented by such trade, supported by post-importation verifications as required based on volume of trade analysis and participation in trusted trader programmes as proposed in this Report for eligible EOs.

As far as the actual content of the rules of origin themselves are concerned, modifications and facilitations could be introduced to lessen the impact of the local content and/or degree of working elements drawn from the most recent FTAs negotiated by the EU and its existing unilateral preference programmes.

First, products made using materials sourced on the Island of Ireland as a whole could be treated as fully originating in IE or the UK for the purpose of both the EU and the UK's future rules of origin. Models for such accommodations already exist. Such an illustration is the EU's current rules of origin in its GSP and GSP+ programmes which permit significant latitude for the regional cumulation of raw materials between beneficiary countries for the purposes of determining origin for preferential treatment. This allows, for example, tuna fish caught in Indonesia to be processed into canned tuna preparations in the Philippines and exported to the EU with the full benefit of the GSP+ preferential duty rate (0%) available to the Philippines while a much higher GSP only duty rate (24%) would apply if the finished product was treated as exclusively originating in Indonesia.

This facilitation would be especially useful for trade in live animals, meat products and other SPS-covered goods crossing the Irish border. In the case of trade in live animals, such a derogation could be justified on the basis of the existing SEU which current allows the Island of Ireland to be treated as a single area for the purposes of animal health and veterinarian inspections.

Second, tolerance or *de minimis* rules allow manufacturers to use non-originating materials as long as their value does not exceed a specified percentage, for example, no more than 10% of the ex-works price of the product. Higher tolerance thresholds could be introduced to take greater advantage of this rule based on the economic reality that products made on the Island of Ireland would only exceptionally include the inclusion of materials originating outside the EU/UK. Similarly, exclusions preventing the general tolerance rule being applied when certain types of input material (i.e. semi-finished textile materials) could be reduced thereby facilitating origin acquisition to UK- and EU-manufactured products.

Third, rules could be agreed to determine minimum levels of processing/operations to be carried out in the UK or the EU for the purposes of conferring origin in the UK and

the EU respectively, accompanied by liberal rules concerning cumulation as mentioned above. These rules would, of course, have to go beyond conferring origin through simple reversible operations such as mere package or diluting. However, processing activities such as industrial techniques involved in the preparation of food preparations could be included to confer origin. Such an arrangement would greatly assist cross-border trade on the Ireland of Ireland for the food retail sector.

Fourth, both parties should consider not only full bilateral, but also diagonal, cumulation with all other countries with which the EU, and subsequently the UK, have FTAs or similar understandings, to materially assist manufacturers in NI and IE, as well as the GB/NI/IE supply chains. This would mean, for example, that Canadian beef and dairy products would be included in the calculation of origin under CETA.

Of course, each of these solutions depends on the extent that the UK and the EU are able to agree an understanding to facilitate the mutual recognition of the volume of non-originating materials for the purposes of applying their respective rules of origin. This process would, of course, be more feasible in the event that both parties are able to agree on a free trade agreement or similar arrangement as opposed to a no deal scenario.

Fifth, remove the 'direct transport' rule from the future UK-EU FTA, thereby enabling a product 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).



## SMALL TRADERS

### 1. Introduction

For large firms able to register as Trusted Traders, cross-border trade is unlikely to be hindered, especially for merchandise not requiring SPS inspections. Other firms registered for VAT are already filling in tax declarations on cross-border goods and services, and additional customs declarations should not be particularly problematic. By default, this leaves the situation of SMEs and micro-businesses to be addressed.

### 2. The Profile of Economic Operators Considered to be Small Traders

#### (a). Self-employed Farmers

Self-employed farmers may be involved in exports to Ireland. Most agricultural goods are sold initially to large local processors (creameries, abattoirs and meat processors, grain mills, etc.), but some live animals and crops may be exported directly. We know, for instance, that the value of exports in live animals from NI in 2017 was only £28 million. These exports benefit from the SEU, so veterinary inspections are not needed for this cross-border trade.

#### (b). The Construction Sector

ONS data tell us that under 2% of construction businesses in NI declare any export trade. One in five self-employed people (25,000) are in construction, but it seems likely that few of these conduct cross-border activity, although some will do so, especially from border towns and villages. For these tradespeople, the post-Brexit issues are likely to be mutual recognition of qualifications, rather than tariffs or customs issues.

#### (c). Wholesale and Retail Distribution Sector

The largest NI service sector involved in export activity is wholesale and retail distribution. ONS data state that 12% of businesses declared some export activity in 2016. Retail goods carried across the border by individuals may not involve customs procedures, but routine and repetitive cases may be investigated.

#### (d). Others

The number of firms involved in cross-border trade in goods is not unmanageably large, at around 6,000 firms each in NI and in IE. Most of these firms will be registered for VAT and, hence, are already making tax declarations on cross-border trade. We have distinguished between micro-businesses registered for VAT and the unregistered businesses of the self-employed. Only 325 NI VAT-registered micro-businesses currently make trade declarations for cross-border trade in goods. There may be a similar number of self-employed people in NI involved in cross-border exports, as well as a number of farmers selling live animals.

In addition, there are larger numbers of tradespeople, shop-keepers and other service providers, such as plumbers, who may be involved in cross-border activity, but the issue here will be to ensure mutual recognition of qualifications between both parties, and to ensure that their equipment does not involve a customs check.

### **3. General WTO Frontier Traffic Exemption**

The Frontier Traffic Exemption of GATT Article XXIV:3(a) is designed to facilitate clearance at frontiers, especially where the frontier runs through metropolitan areas or when there are other special circumstances. The Exemption was designed for the frontier between the free city of Trieste and Italy. The working group that considered the Trieste/Italy border issue noted that while this Exemption has been interpreted to allow exemptions within 15km of the border, this should be adjudicated on a case-by-case basis, and 'frontier traffic' should not be defined too narrowly as it varies in each instance. The Exemption is relevant also to the relationships between Italy and the Vatican City and San Marino.

The issue was also raised when the Federal Republic of Germany acceded to the GATT in 1951. The Working Party on German Accession said that it 'understands that traffic in zones designated in treaties between adjacent countries designed solely to facilitate clearance at the frontier would normally be covered by the phrase "frontier traffic".' The Frontier Traffic Exemption does provide that different rules could be applied to the Irish border.<sup>72</sup>

Article 128 of Council Directive 1186/2009 on customs exemptions goes even further, stating: 'Nothing in this regulation shall prevent the Member States from granting special relief introduced under agreements concluded with adjacent third countries, justified by the nature of the frontier-zone trade with countries in question. 'This article opens the possibility to make special arrangements for the NI land border within the EU legal framework. These arrangements can be focused on small businesses and small transactions of both agricultural and non-agricultural goods.

The Frontier Traffic Exemption should underpin a contiguous zone on either side of the border, where no customs formalities will be required. The distance from the current border will depend on the patterns of people who regularly cross the border. Such a zone could potentially extend as much as 40 kilometres from the border itself. There are also special cases (as we discuss in Chapter 6), such as the greater Derry (Londonderry)/Donegal area, where the Frontier Traffic Exemption could underpin a larger special

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<sup>72</sup>This has been discussed in the Institutional Consequences of a Hard Brexit, Professor Fabbrini, Dublin City University, Brexit Unit, supra note (55).

economic zone for that North Western Area or the Newry-Dundalk Corridor. Combining the benefits of the Frontier Traffic Exemption and National Security Exemptions with the benefits of a special zone for these regions could generate significant economic growth in a hitherto depressed region, and more widely for the people of IE and NI.

#### **4. Operational Customs Facilitations**

##### **(a). The Ladder to Trusted Trader Programmes**

It is possible for very small repeat traders to gain access to the Trusted Trader systems to allow them to register the tools they carry prior to the UK's departure from the EU. These traders could further be eligible, as other small traders would be, for a temporary transition programme, which would have some funds to allow them to make the transition from one system to another.

##### **(b). Tracing and Tracking Cross-Border Transaction Through VAT Declarations and other Activities**

In the present situation there are already obligations connected to trade across the border.

- There is a border for VAT. Exports/movement of goods between UK and IE are zero-rated for VAT provided both parties are VAT-registered, while imports are eligible to reclaim VAT paid at importation. All VAT-registered businesses, whether below or above the threshold,<sup>73</sup> must complete two boxes (8 and 9) on their VAT Return, declaring the total value of any goods supplied to VAT-registered customers in other EU Member States (known as dispatches) and the total value of any goods acquired from VAT-registered suppliers in other EU Member States (known as arrivals).
- In addition to the above, larger VAT-registered businesses must supply further information each month on their trade in goods with other EU Member States as their statistical obligations. All large businesses that dispatch goods to other EU Member States or receive goods from other Member States with a value exceeding a legally set threshold (currently, arrivals is £1.5 million, and dispatches is £250,000) must submit the additional information by completing a form known as an Intrastat Supplementary Declaration (SD), which they need to submit electronically. These are relatively high thresholds, and data, in most cases, can be generated from accounting systems.
- There are excise duties when goods are traded between Member States. However, excise goods are mostly traded between highly specialised companies that know the formalities and liabilities involved in trading in excise goods.
- Agricultural goods are subject to additional requirements to be able to monitor health aspects and safeguard the food supply chain. Farmers and agricultural

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<sup>73</sup> European Commission Report on VAT Thresholds for EU Member States (April 2018), available via the following link: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/vat/traders/vat\\_community/vat\\_in\\_ec\\_annexi.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/vat/traders/vat_community/vat_in_ec_annexi.pdf)

traders apply these obligations on a regular basis. Since most of these transactions are repetitive, they can be done efficiently.

**(c). Small transaction facilitations**

In the UCC, all goods that enter the EU must be declared. However, Art. 158.2 allows traders to declare goods by other means. Article 141 of Delegated Regulation 2015/2446 provides the opportunity to declare goods by any act deemed to be a customs declaration. The intention of this article can be extended to small traders across the border (and outside the Frontier Traffic Exemption) who want to be compliant. They could be facilitated to a simple act to fulfil the formal obligations of a customs declaration.

**(d). Personal Allowances**

Private persons crossing the border now also have obligations, even though they may only bring limited amounts of consumer goods across the border as part of traveller's luggage. Excise duties on alcohol, tobacco and fuels can differ considerably between Member States. Thus, there are formal restrictions regarding the amount that can legally be bought by consumers in other Member States.

**(e). Exemptions for Farmers with an Agricultural Flat Rate Scheme**

The EU VAT Directive 2006/112 facilitates an agricultural flat rate VAT scheme in Arts. 295 to 305, and makes it possible for farmers to charge a flat rate of 4% in the UK on their products, while at the same time not deducting the VAT being charged to them. This system considerably simplifies VAT administration for farmers. Farmers located in NI, near the border, will buy goods across the border to operate their business. If these transactions were domestic, then the Irish VAT could be charged by the seller, although it is an export transaction. Since the buyer cannot deduct the VAT, it is irrelevant whether it concerns UK or IE VAT, which should greatly simplify trade for farmers. To prevent misuse or distortion of revenue, a maximum value per transaction could be set.

**(f). Exemptions for community farmers for products obtained on properties in a third country**

EU Council Declaration 1186/2009 on customs exemptions makes it possible, in Art 35, for farmers who have fields and cattle on properties located across the border to import their produce from these fields without import duties. The farmer may also export seeds and fertiliser to his adjacent fields across the border.

The regulation does not offer an exemption to a related customs declaration, but it seems logical that this is the case, since it would make no sense to make an export and import declaration of one transaction on behalf of the same farmer. Thus, the EU has already foreseen that there may be small border traffic that is irrelevant to the integrity of the Common Market, and provides facilities for simplification of the process.

### **(g). Dispensations for Customs Territories**

Historically, the EU has provisions for its VAT and customs laws for territories that differ, for example, in VAT regulation, but belong to the customs territory of the EU; examples of which are the Canary Islands, French Overseas departments and the Isle of Man. Although NI does not currently qualify for such a status, these special arrangements indicate that there are facilitations within European law for deviation on a historical or geographical basis.

## **5. Conclusions and Recommendations**

EU law already offers 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 are retained, or even extended, the burdens imposed on cross-border trade by small companies and traders would already be significantly reduced.

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

Furthermore, 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 MFN and National Treatment of Internal Taxation and Regulation when action is required regarding the protection of their essential security interests. A recent WTO ruling interpreting these provisions indicates that the WTO Dispute Settlement Body (DSB) offers wide discretion for its members to unilaterally determine what actions fall within this justification.<sup>74</sup> The history of violence that preceded the GFA provides 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 believe that the WTO national security protections provide a legal basis for this exemption. It is difficult to envisage that any WTO member would have sufficient legal interest in challenging such a measure in the WTO DSB.

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<sup>74</sup> WT/DS512/R, Russia – Measures Concerning Traffic in Transit (Complaint by Ukraine), WTO Panel Report issued 5th April 2019, available via the following link: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds512\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds512_e.htm)

On the same basis, there are sound reasons why the current VAT registration annual threshold should be increased, 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 traders will be registered for VAT purposes, and so already make tax declarations for their cross-border trading in goods activities. Since they are already registered for VAT and tax purposes, their import/export sales should be declared. Action to confirm 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 via physical inspection of the documentation.

Traders in this category should be encouraged to use newer programmes in development (such as the ISR proposal) and other such customs facilitations. The same is equally true for micro-businesses. For traders that are significantly larger, they could be allowed to rely on Simplified Customs Procedures, such as those that are already being considered in the event of a 'no deal'.

For firms engaged in cross-border trade in services, such as 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 Art. XXIV:3(a) of the GATT 1994 allows the UK and IE to extend advantages to each other to facilitate frontier traffic. A general dispensation of these service providers, from having to declare their tools and equipment each and every time they cross the border to supplying their services to customers on the other side, seems to us to be 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 the 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 then return to the home side of the border.

Finally, we 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 compensation 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 are provided for, then the last remaining justifications for the need for cross-border infrastructure and customs procedures can be eliminated.





## OPERATIONALISING THE RECOMMENDATIONS

### 1. Introduction

It has become obvious to us in the course of our work that the lack of dialogue between HMRC, Irish Revenue and ministers on both sides of the Irish Sea, as well as the non-functioning of the Stormont Assembly and lack of dialogue between the NI political parties and those in IE have contributed to the stasis. There is an overwhelming interest in IE and NI that a solution along the lines proposed is found. In the event of 'no deal', there is a significant risk of serious border congestion, not just between the UK and EU, but also between IE and the EU.

Since 70% of IE goods destined for the EU use the UK land bridge, this could have a catastrophic impact on the IE economy. A combination of this factor and the inevitable effect of 'no deal' on IE agriculture could be catastrophic, because 'no deal' would mean increased competition for IE agricultural producers from other parts of the world. Since these producers are more competitive, the economic consequences of no deal would be amplified in IE, considerably beyond the concerns of other Member States and the UK (although it is clear that 'no deal' would have negative consequences for all parties). Therefore, it is crucial that dialogues are rapidly initiated. In addition, a dialogue between French customs and UK customs to accommodate the Dover-

Calais roll-on roll-off ferry (Ro-Ro) port is also of great importance to IE trade, which benefits from the UK land bridge. Since IE economic interests are profoundly impacted by the Dover-Calais crossing, it is very important that IE, UK and French customs immediately discuss how to ensure the route functions once the UK leaves the EU. This discussion should be at both an operational and policy level.

The UK 'no deal' planning indicates that government policy has been focused on flow rather than compliance. The UK Government wants to prevent congestion at ports; thus, it relaxes administrative obligations that take time to fulfil and possibly cause delay. 'No deal' preparations were found to be more advanced in the EU than they were in the UK. New facilities, such as inspection points, have been created (for example in Calais), and IT systems have been adjusted to manage new formalities in ferry ports. Meanwhile, HMRC has relied, instead, on further simplifying existing border, they will not be sufficient to prevent significant delays on the EU side, whereby people and goods arriving from the UK (and from IE via the land bridge) may become subject to EU third-country rules.

Although funding has been released to recruit an additional 1,000 Border Force officers, there is still no clear operational strategy that we can find that sets out what additional processes will be conducted at the UK border on intra-EU traffic, nor how and where this will be done.

Both the Border Delivery Group and the UK Border Force have recognised that the lack of space and infrastructure at UK ports – notably Dover – demands that any additional physical checks required on goods as a result of Brexit must take place at alternative locations away from the Border itself. Work is already underway on Alternative Arrangements for checking goods at approved stations inland in Great Britain; not just in Northern Ireland. Any such checks will be intelligence led and selective, based on data analytics.

## **2. UK Operationalisation Planning**

HMRC has identified over 26 UK departments and agencies that will be affected by changes to the management of the UK border post-Brexit.

Impacts upon each will vary depending upon the eventual outcome of negotiations; therefore, it is difficult to be precise about operational requirements without knowing what additional procedures will be required, where they will be conducted and by whom.

Whitehall departments are already engaged in ‘no deal’ planning; and we know that the Government has set aside £1.5 billion for this in 2018-19, and a further £2 billion for 2019-20. Most of this funding is earmarked for the Home Office, HMRC and the Department for the Environment, Food and Rural Affairs (DEFRA), the three departments most affected by the changes.<sup>75</sup>

Other departments and agencies will be affected; however, at this stage, we can only advise on those that are most likely to be affected in NI under any Alternative Arrangements agreement to the backstop.

In this chapter, we assess the effect upon the main border agencies and departments operating in NI, and the extent to which operations might change if the Alternative Arrangements proposal is accepted.

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<sup>75</sup> <https://fullfact.org/europe/whats-cost-preparing-brexit/>.

### Home Office

The Home Office and its agencies have primary responsibility for operations at the UK border. Unlike IE, the UK has merged immigration and customs functions into a single UK Border Force (UKBF). The UKBF has primary responsibility for checking both people and goods entering and leaving the UK, including at ports and airports in NI.

It is important to note that not all customs powers – particularly relating to the inspection and control of goods away from the border – may be exercisable by a Border Force officer. Customs powers are designated to Border Force officers under Section 3 of the Borders, Citizenship and Immigration Act 2009.<sup>76</sup> Matters relating to revenue evasion and tax requiring inland investigation (including in NI) are exercised by HMRC enforcement officers and not by UKBF (see HMRC, below).

Immigration controls (including visas, permits, passports and enforcement) are managed by UK Visas & Immigration (UKVI), Her Majesty's Passport Office (HMPO) and IE. Immigration Enforcement officers are responsible for ensuring compliance with UK immigration laws, including the identification and removal of persons found unlawfully in the territory (including NI).

The Police Service for NI (PSNI) is responsible for maintaining security and law and order in NI, including at ports and seaports. The PSNI forms part of the National Counter Terrorism Command Network (NCTCN), which is the national co-ordinating centre for the prevention, deterrence and investigation of terrorism in the UK. The National Crime Agency (NCA) is the primary national law enforcement agency in the UK. It is the UK's lead agency against organised crime; human, weapon and drug trafficking; cyber-crime; and economic crime, and extends across regional and international borders, but it can be tasked to investigate any crime.

### Immigration and Passport Controls

Given that the UK and IE share a Common Travel Area (CTA), there are no immigration controls on people travelling on routes between the UK, IE and the Channel Islands, including the Irish land border. Passengers from outside the CTA arriving at UK ports and airports (including those in NI) are subject to immigration control and are required to present passports (or, for EU citizens, national identity cards) on arrival.

Third-country (non-EU) nationals require leave to enter.

UK Border Force officers (BFOs) are posted to ports and airports in NI to perform this function. The UKBF does not conduct routine exit controls at the UK border; airlines,

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<sup>76</sup> <https://www.legislation.gov.uk/ukpga/2009/11/section/3>.

shipping companies and rail companies transporting passengers from UK ports and airports on routes outside the CTA are required to submit advanced passenger information (API) electronically to the UKBF at the point of departure.

As part of a Home Office restructure, the UKBF was separated from the rest of the UK Border Agency (UKBA) in 2011. The UKBA was further dismantled in 2013, and a separate Immigration Enforcement Directorate (IED) was established to enforce UK immigration laws. The IED has several regional offices around the UK, including one in Belfast. Immigration Enforcement officers are responsible for conducting intelligence-led operations against illegal workers and overstayers. Furthermore, the IED conducts intelligence-led processes on flights from NI airports to UK airports, and on ferries operating from Larne and Belfast to Scotland (Operation Gull).

The UK Government has committed to maintaining the CTA and allowing the free movement of British and Irish citizens across the UK border post-Brexit. Those EU citizens currently residing in the UK may register online to remain permanently. There is a commitment in the Immigration White Paper to require all passengers (other than British and Irish citizens) to obtain 'digital permission' to enter the UK in future. Assuming this will apply to EU citizens, there will be additional requirements to grant permissions to a larger cohort of passengers at NI ports than has hitherto been the case.

Furthermore, the UK Government has indicated that it intends to introduce a 'digital register' for all citizens (other than British and Irish citizens) residing in the UK post-Brexit. This may place additional requirements upon immigration officers currently based in NI.

The Government has already authorised the recruitment of an additional 1,000 BFOs for Brexit, and the considerations described above are not unique to the UK/IE border, but apply more broadly across the country.

There will be a resource requirement for the UKBF at NI ports and airports to monitor the movement of intra-EU goods post-Brexit, and, in due course, to examine EU citizens arriving in the UK from outside the CTA. There will also be a requirement for IED to exercise any additional IED operations against EU citizens remaining in NI unlawfully. However, these impacts apply equally to the rest of the UK border, and are not exclusive to NI.

Under the Alternative Arrangements Proposal there will be no controls on people crossing the Irish land border (see Chapter 4); and any controls on goods will be conducted away from the Border at inland locations. This shift in emphasis to inland

checks from border checks is not exclusive to the Irish Border, and applies equally in Kent and in other parts of the UK.

New technology enables true authentication at load point using a multi factor authentication seal, combined with an enterprise software platform. The system can record all content, house data, and seal the load. Data can be instantly transmitted to Border Agencies to enable them to track and trace goods globally for proof of provenance via road, air, train or sea. All supporting paperwork can also be immediately submitted at load point to governments, and attached to the seal. More information about technology is at chapter 14 and Annex 5.

The ability to mark and track goods and vehicles from point of loading to point of destination provides both UKBF and HMRC with a range of alternatives in determining when, where and how to conduct an examination. Most importantly, it provides an alternative solution to implementing any form of physical check or infrastructure at the border crossing point itself.

This transformation in Border and Customs Controls will require a further evaluation of the operational structures required to implement the new system. In particular an enhanced capacity for both data analytics and operational response mechanisms. These are discussed below, in the context of the various agencies involved.

Work will be needed to identify how PSNI will work with UKBF and HMRC under Alternative Arrangements. As additional data accrues, consideration should be given to multi-agency units such as joint intelligence units (JIU's) and Integrated Border Enforcement Teams (IBETs). This will enable the enforcement agencies to enhance integrated border management systems and develop a joint response capability for new and emerging threats.

### **Police and Security Controls**

The PSNI is the third largest police service in the UK, with approximately 9,000 staff (including civilians). The PSNI has its own Counter Terrorism Intelligence Unit (CTIU) and is responsible for policing ports and airports in NI. The PSNI structure should remain largely the same post-Brexit; although, any loss of data or collaboration with the Garda Siochana established under the BIIIC would be significant, especially in terms of countering cross-border crime. It will be important to consolidate joint structures in this area to maintain peace and stability on the Island of Ireland.

The PSNI may conduct controls on people entering and leaving ports in NI in accordance with Schedule 3 of the Counter Terrorism and Border Security Act 2019.

These actions should be intelligence-led and selective to identify persons who may be engaged in hostile acts.

Subject to the implementation of codes of practice for interventions under Schedule 3 (which are currently out for consultation), police and security controls at NI ports – and in the vicinity of the Irish border – should remain largely unchanged.

There are broader issues relating to access to EU systems and intelligence that will impact UK law enforcement agencies across the board, but these are not unique to the Alternative Arrangements proposal.

### **Her Majesty's Revenue & Customs (HMRC)**

HMRC is the primary tax, payments and customs authority in the UK. It leads on customs policy and collections, including revenue collection at the border and excise control. It is responsible for safeguarding the flow of money to the Exchequer through its collection, compliance and enforcement activities. It also facilitates legitimate international trade, protects the UK's fiscal, economic, social and physical security before and at the border, and collects UK trade statistics. HMRC enforcement officers may be deployed to collect unpaid duties, enter premises and seize goods. Given that the UK is part of the EU Single Market, there is no current requirement for traders to submit customs declarations for goods entering and leaving the UK from EU destinations. Therefore, customs procedures in NI are only required on goods being imported from (or exported to) countries outside the EU.

Customs declarations are submitted electronically and assessed by the UKBF through its CHIEF system, which is currently being replaced by the new Customs Declaration System (CDS), which will determine when to make an intervention. The UKBF operates advanced freight targeting capability (AFTC) to analyse data on goods entering and leaving UK ports. The UKBF Freight Engagement and Data Acquisition Team (FEDAT) works with industry to capture relevant data on imports and exports to support this function. Specialist UKBF targeting units are in place at various locations on the UK border to support this function. BFOs are posted to ports in NI to support this function, although physical interventions are rare.

Again, the problem with data collection and industry engagement on the movement of intra-EU goods is not unique to the Irish border and applies to a much greater volume of traffic moving across the English Channel. HMRC and the UKBF will require additional resources across the board to cope with the additional demand.

That said, there is very little UKBF resource available in NI to undertake customs procedures on goods. The introduction of customs verifications on goods moving between IE and the UK will require additional capabilities in terms of technology, data acquisition, industry engagement, analysis, compliance and intervention. There will need to be engagement with industry to determine how goods moving across the border will be identified and tracked; what data will be supplied, and to whom; and what interventions will be required, and by whom.

The need to capture and analyse data on goods crossing the Irish Border – and to undertake inland inspections at approved locations – will require a significant investment in UKBF targeting analysts and Customs Enforcement Teams (CETs). There will also need to be revised governance arrangements and operational structures between UKBF and HMRC to determine agency leads and joint strategic and tactical tasking and co-ordination units (TTCGs) between themselves and associated agencies such as PSNI, NCA and DEFRA.

#### **Department for the Environment, Food and Rural Affairs (DEFRA)**

DEFRA is the government department responsible for environmental protection, food production and standards, agriculture, fisheries and rural communities in Great Britain and NI.

Under current arrangements, the Island of Ireland is treated as a single unit for the purposes of animal inspection and disease prevention. NI has two Border Inspection

Points (BIPs) for the import of certain types of animal products (Belfast Harbour and Belfast International Airport), and Larne port is the only approved port of entry for livestock into NI. Inspections are conducted by veterinary inspectors, and throughput is relatively low.

Operational structures for the control of agriculture, livestock and products of animal origin (POAO) on the Island of Ireland are based entirely upon the fact that the whole area is treated as a single unit, with BIPs in the North and the south working in tandem on a perimeter strategy. If this is to be dismantled, then there will need to be an increase in the number of BIPs in NI (away from the border) to control such items moving from south to North (and vice versa) as well as those moving west to east (and vice versa). It is difficult to imagine how this can be implemented without some form of exemption.

Any additional measures are likely to cause significant disruption to the supply chain and will require an investment in people and infrastructure away from the border (but within reach of it) to ensure compliance.

## **General Operational Considerations**

Assuming that Alternative Arrangements to the backstop is implemented, and there is to be no physical infrastructure at the land border on the Island of Ireland, the above UK departments and agencies will need to build sufficient capacity between them to enable the proper implementation of new policies and practices arising from the UK's departure from the EU. These policies and practices should be in line with best practice in modern day border operations, namely:

- (a) Checks and risk assessments should be conducted prior to the movement of people, goods and livestock across the border, which means establishing mechanisms for the efficient and timely transmission and analysis of data to the relevant agencies at the earliest possible point in the journey.
- (b) Border management should be integrated so that all those agencies with an interest in people, goods and livestock crossing the border are fully engaged and have an opportunity to intervene.
- (c) An effective governance structure is established between those departments and agencies most affected by the change, and with their neighbours in IE and in the EU to identify and mitigate potential common threats.

## **Operational Policy**

Once the final policy is determined, an operational policy unit comprising representatives from all the above agencies – and any other relevant partner departments and agencies – should be established to develop a control strategy.

This unit should be accountable to ministers and should be tasked with the duty of implementing any new arrangements for the movement of people, goods and livestock between the UK and IE. Terms of reference should include:

- (a) Developing a system to operationalise the Memorandum of Understanding between the UK and the IE on the CTA, including mutual recognition of the rights and credentials of persons living within it to access services.
- (b) Exploring opportunities for the alignment of passenger data, visa and entry/exit systems for people travelling between the British Isles and mainland Europe, so as to facilitate genuine travel while minimising the risk of harm and non-compliance.
- (c) Building upon the UK FEDAT system to work with industry to capture and refine relevant data on freight moving between the UK and IE to facilitate genuine trade while minimising the risk of non-compliance on both sides
- (d) To identify and enhance distributed BIPs for animal inspection and disease prevention on the Island of Ireland and within the British Isles, in tandem with IE.
- (e) Identify new structures and policies for customs inspections away from the border, including resource requirements.



- (f) Revise operational structures between the UKBF, IE, the PSNI, HMRC and DEFRA to maximise operational efficiency and effectiveness.

### **Timing**

It is important not make any immediate conclusions regarding timing at this stage. Delivery will be contingent upon several factors, including political will, collective leadership, a common vision and purpose, and resourcing and capacity.

### **Border Transformation**

The implementation of Alternative Arrangements should be regarded as a major border transformation programme. Governance arrangements between this and the broader transformation programmes relating to Brexit (such as the Future Border and Immigration System and the HMRC Border Delivery Group) need to be determined.

It will be important to establish a proper structure to deliver this programme and to identify the series of projects that will run in tandem to deliver the desired outcome. This programme should build upon the work already undertaken by the Border Delivery Group in HMRC.

Depending upon the level of change required, some projects will deliver more quickly than others. A central Alternative Arrangements Border Transformation Programme Team should be established under the governance of a Senior Responsible Owner (SRO), with individual project leads and workstreams identified to deliver the various components. A risks-and-issues register should be compiled, with appropriate ownership allocated to relevant departments for action.

The SRO should be accountable to ministers for the overall delivery of the programme, including regular reporting.

### **3. Managing Cost of Disruption**

Many of the proposals and suggestions that we have made will increase the costs for traders trading goods across the border. Examples of increased costs are as follows:

- a) Bonds that need to be posted for transit
- b) Fees for Testing and Conformity Assessment
- c) Fees for customs forms

The issue of what the increased costs would be is itself a complex one, because in some cases our recommendations would also save money in the long term (such as the trusted traders programme). Furthermore, some of our recommendations do not

require any cost imposition. For example, if a common SPS area were to be developed, traders would see no cost change. Similarly, the government of UK and IE could waive the costs of customs declarations, so the only costs would be third party logistics provider costs. This would not be a violation of the anti-subsidy rules of the WTO (in particular the Agreement on Subsidies and Countervailing Measures ("ASCM")) as it would be general and apply to all traders and not be specific enough to be countervailable. Moreover, since this advantage would be open to all exporters/importers regardless of their geographical location world-wide, no element of discrimination would be involved and therefore no WTO member would have sufficient standing to challenge such a concession through the WTO Dispute Settlement procedures.

However, legitimate concerns have been raised about the costs of these procedures. First, it should be pointed out that all traders who are above the VAT threshold are filling in VAT registration forms now. Second, all traders in SPS goods are likely registered with TRACES now. These registrations entail costs in staff time or the hiring of third party intermediaries to perform these processes. So the process is not costless now. In order to better understand the costs involved, there are two methodologies that can be used. First, one can look at companies that do already engage in these processes globally and get a sense of what their costs are, as a percentage of their overall operating budget, or as a percentage of the value of the goods. The second way is to look at the cost per declaration. As an example, Tate and Lyle do all their worldwide customs for 0.041% of the value of the product or for £110,000 (total annual cost of customs formalities.). There are other estimates from the industry that are closer to £30,000 per trader per year.

However, not all of the proposals here entail additional costs. Some, like the proposal on trusted traders can lead to significant cost savings. For example, as we note in the Report the savings from the AEO programme in Brazil which was fully adopted in three years has been estimated to be of the order of US\$1.5bn per year.

Costs per declaration depend heavily per specific trader on the number of declarations per year and thus the extent to which they can be automated. Companies with integrated supply chains and thousands of declarations each year, have all the data easily available to produce and process declarations. This can lead to costs as low as £1 per transaction. Midrange companies with multiple declarations each day, can process declarations in a semi-automatic way, resulting in costs of £5 to £15 per transaction. This could be further reduced if the UK government also waives the costs involved in filing customs declarations.

They may consider investing in specialised personal and software to lower the costs. Often declarations are outsourced to Logistic Service Providers and/or customs brokers, especially by smaller and less frequent traders. They do not have to invest in knowledge or procedures and make use of the facilities these service providers offer. Most specialists are AEO-certified and can make use of simplifications such as authorised consignee and consignor, a waiver for guarantees and simplified procedures making these services accessible and available to their customers. Their costs may vary from £20 to £50 depending on the type of declaration.

HMRC provided an estimate of the impact of customs processes in a letter dated 4th June 2018 from Jon Thompson to Nicky Morgan MP. This letter documents a calculated impact of £13.5Bn per year, an average cost of £31 per declaration; <https://www.parliament.uk/documents/commons-committees/treasury/Correspondence/2017-19/hmrc-customs-costs-040618.pdf>

We think this grossly overstates the likely cost in NI and IE as the governments can waive these costs for small traders. Furthermore, the HMRC figure suggests a completely third party relationship without facilitations or simplifications of any kind. In fact, transaction costs for traders will be considerably lower than in the case of unconnected third parties because of the simplifications which we set out.

However, a number of recommendations set out in this report will reduce the overall impact and costs in NI and IE. The introduction of waivers for small traders, together with facilitations and simplifications such as; tiered trusted trader scheme, common SPS zones and simplified procedures. We, therefore, suggest a Small Traders Transitional Fund (STTF) for eligible small traders and firms in both IE and NI that need support. We recommend the UK government make £100m for the first year of operations available for eligible small traders from both NI and IE when they apply for the EORI number.

We also suggest a UK-IE Capacity Building Fund (CBF) for the UK to establish customs collaboration and capacity building across the border and in IE.

#### **4. VAT Fraud and Smuggling**

Concern has been expressed to us about the possibility of a rapid increase in smuggling or VAT fraud as a result of the fact that the incentives are changing.

International cross-border crime and smuggling is today combatted with a range of tools including electronic data capture, intelligence, surveillance, advanced analytics, profiling and targeting, operational task forces, international cooperation and exchange of data, pattern recognition and AI.

Access to and collection of supply chain data and exchange of advanced information from national and international sources are key elements of any modern control strategy.

National enforcement agencies are still the central players in the fight against transnational organised crime. Although international operations have proven to be a successful instrument that are likely to be used more frequently in the future, implementation of the most important norms is largely the work of national government organisations. Laws must be constantly amended, supervisory bodies must be set up and coordinated, information must be exchanged nationally and also with international partners and supply chain stakeholders, and analysis and investigations must be harmonized. The international community also agree that the fight against transnational organised crime must not be left to Government bodies alone, but must also involve civil society and the private sector.

Experience from the international law enforcement community shows that the most efficient way to combat border related crime is through advanced cooperation and exchange of data through the supply chain. In this perspective both the UK and the EU will in future require access to more relevant and accurate trade data than has been the case thus far if they are to pursue the fight against transnational organised crime and smuggling effectively.

Smuggling exists on all borders, regardless of border design or application. This is demonstrated in available statistics from organizations such as the European Union, the World Customs Organization and the United Nations. TRACIT, an independent, business-led initiative to mitigate the economic and social damages of illicit trade, state in their latest report, "...illicit trade is unlikely to ever be eliminated. Illicit trade follows it's licit counterpart, and as long as there is the latter, there will be the former".

To give some examples from the EU and its external borders, according to official figures, agencies in the Netherlands in 2017 reported seizures of 36K kilos of drugs, 24 727 weapons, 265K kilos of cigarettes and 1 929 071 of IPR products. Also during 2017, France reported seizures of 97K kilos of drugs, 214K Kilos of cigarettes and 4 265 443 IPR products; while Germany reported 12K kilos of drugs, 26K kilos of cigarettes and 2 959 079 IPR products. In addition, a country like Sweden has in several different reports stated that more than 90% of its drug seizures take place at the EU internal borders.

As mentioned above, modern strategies to fight international cross-border crime are today based on data capture, information management, intelligence exchange, data convergence and advanced analytics. All of these elements need to be included in a

holistic and coordinated way including information from all involved agencies - as well as the private sector and the various stakeholders in the international supply chain. To be able to do this in a strategic and structured operational manner, many countries have successfully implemented national intelligence centres involving advanced data analytics, pattern recognition, profiling, targeting and risk based controls/inspections.

UK Border Force has already implemented a National Border Targeting Centre (NBTC) for people movements; and has various targeting centres for modes of goods control. The UK Border Force is rightly proud of its customs capabilities in areas such as rummage and detection, where it offers training to other control agencies around the world. We propose to build on this experience in order to implement an integrated National Intelligence Centre (NIC) for the UK Border. The NIC should have a national mandate, coordinating all activities related to people and goods movements across UK borders. NIC should also, through technical international agreements, seek access to relevant supply chain data with a priority to establish operational cooperation with agencies and supply chain stakeholders in other countries. NIC should have relevant resources and access to state-of-the-art technical solutions based on international best practices, making it possible to take a leading role in the development of intelligence based controls at international level. The NIC should also cater for new procedures under Alternative Arrangements in Northern Ireland. To address any consequential risks of smuggling and organised crime across the Irish border. The NIC should comprise of analysts from UKBF, NCA, PSNI, UK police services, and HMRC as well as secondees from IE and EU enforcement agencies.

### **Smuggling**

Where significant variances exist in the tax rates (duties, excise and VAT) applied to goods being imported or exported between customs regions, illegitimate trade in the form of smuggling may develop to exploit these differences. For example; the EU currently impose an import duty on beef products which adds circa 40% in total to the import price. If, after leaving the EU, in the future the UK negotiated a free trade deal which removed import duty on beef products, some degree of illegitimate trade would be incentivised. Beef products imported into Northern Ireland at zero duty rates which are then illegally transported across the border without paying import duties into IE would undercut local EU market prices.

In the absence of physical infrastructure and border posts it is not possible to stop, check and search any goods vehicles suspected of carrying illegitimate trade at the land border. Techniques to prevent illegitimate trade will instead continue to focus on counter surveillance strategies supported by market intelligence capabilities which can

be further improved over time. Such physical checks will therefore be performed away from the border at distribution centres or other appropriate locations. These techniques are used today by border agencies all over the world as their core strategy in their fight against illegal trade.

The use of market intelligence can be illustrated by reference to beef products. Imported beef products enter the UK through its main seaports or airports and will have followed strict import processes including the completion of required customs import declarations. These ports of entry have the ability to physically check documentation and the imported beef products. These checks are performed in the main seaports to ensure health and safety standards are met. The detailed documentation required for such imports provides an extensive audit trail of information including; the volumes, pricing, destination, consignee (purchaser) and indeed the haulier who transports the product. Physical inspections and audits of meat producers receiving imported beef products can therefore be planned and undertaken to minimise the risk of these products being illegally moved across the border.

Many retailers are campaigning for improved traceability in the supply chain, for example M&S<sup>77</sup>, to provide consumers with greater confidence in the quality and integrity of their products; e.g. assurance of sourcing from farms with animal welfare schemes and certainty of the content of prepared meals such as pies. This type of improved traceability in the supply chain will complement market intelligence techniques and improve targeting of physical inspection at traders premises to help address this type of illegal trade.

### **Retail Export Scheme - VAT Refunds**

Ireland currently charges 23% VAT while the standard UK VAT rate is 20% with some products such as unprepared food and children's clothes are at 0%. There is therefore very little incentive today for consumers to shop across the border to take advantage of a difference in VAT. Other factors such as variations in the Euro to Pound exchange rates are likely to have a larger effect on this type of shopping pattern.

However, concern has been raised in a number of areas about the potential for an increase in VAT fraud associated with the Retail Export Scheme as a consequence of the UK's exit from the EU. VAT associated with the purchase of all personal goods is today collected at the point of purchase, goods cannot be sold 'VAT free' by a retailer.

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<sup>77</sup> [https://www.marksandspencer.com/c/food-to-order/beef?intid=AIFJune\\_BeefTraceability\\_Read-MoreAboutOurBee](https://www.marksandspencer.com/c/food-to-order/beef?intid=AIFJune_BeefTraceability_Read-MoreAboutOurBee)

After the UK has left the EU, consumers will potentially be eligible for VAT refunds on goods purchased across the border. Such refunds are provided to international visitors to the EU today. The traveller must apply for the VAT refund at their last point of exit from the EU, which requires them to present a refund request form, the original purchase receipt and show the purchased goods to the customs or border officer. The customs officer will provide a 'wet' stamp on the refund request confirming the refund claim. This stamp is mandatory on all EU refund claims.

Any VAT refunded on purchased goods will subsequently be subject to a local VAT payment when the consumer returns to their home country. Therefore, today's differential in VAT rates of 3% between the UK and IE would not encourage cross border shopping any more than exists today. This incentive would of course change if at some point in the future either the UK or IE changes their VAT rates to create a significant differential.

An example of differential tax (excise) rates exists today on petrol and diesel purchases. NI drivers local to the border will travel into IE to purchase slightly cheaper fuel due to differences in excise rates of approx. 13% for petrol and 30% diesel. This pattern is localised to the near border community, longer journeys of course offset savings with the additional journey fuel consumption.

Although air and sea ports within the EU typically have the required customs presence and infrastructure to provide a VAT refund service, some travellers may also of course leave the EU via train and road. International visitors leaving the EU by train, however, are not always able to claim VAT refunds as not all train stations at the EU's external border provide such a service (the last exit point must be where the refund request is made). Or, if the station does provide the refund service, travellers are not always able to disembark from the train at the last station prior to leaving the EU to receive the required stamp and approval.

In the absence of infrastructure on the Northern Ireland border, the current EU, and UK, VAT refund process cannot be completed at the border for either train or car travellers. There would in effect be no customs official to review the purchases, provide the necessary stamp of approval and witness their exit at the border. The exception may be passengers on flights between Dublin and Belfast, which by their nature will restrict the quantity of goods to those which can be carried onto the plane.

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<sup>80</sup> <https://www.nao.org.uk/wp-content/uploads/2018/10/The-UK-border-preparedness-for-EU-exit.pdf>

There are also a number of qualification criteria and constraints on the VAT refund process which can be found on the UK Gov website<sup>78</sup> which will also naturally limit the extent of any cross-border VAT refund shopping. For example, mail order goods and new and used cars are exempt from this policy.

We conclude the risk of VAT fraud for personal shopping will remain low while VAT rates are aligned, and of course the absence of any infrastructure at the border to provide customs officials to process refund requests. A local policy for the management of VAT refunds between the UK and IE needs to be determined given the 'no infrastructure at the border' constraint. This needs to consider if such a scheme should be continued for the cross border personal shopping purchases.

### **Carousel VAT Fraud**

There is a significant amount of VAT fraud in the EU at the moment. The EU estimates the annual economic impact of total VAT fraud to be in the region of 150bn euros<sup>79</sup>. The biggest type of VAT fraud is known as MTIC (Missing Trader Intra-Community) Carousel fraud which amounts to an average of 50bn euros per annum. For example, an EU trader A acquires goods from Trader B in another member state. Intra-community sales are zero VAT rated and therefore no VAT is payable on this acquisition. These goods are then sold by trader A to trader C in the same member state. This transaction is subject to local VAT charges, e.g. 20% in the UK, which must be paid by trader A to the government tax authority. However, trader A disappears without paying the tax due. Trader C may then continue to sell the goods for ever increasing prices to other traders in that member state. The tax bill grows with every re-sale, but is never paid. The last trader in this conspiracy chain then sells the goods back to trader B in the original member state. It is also able to legitimately claim the total amount of VAT back from its local government tax authority as it has delivered the goods to another member state. The same goods can be traded in loop, carousel fashion, continuously generating huge sums of fraudulent payments.

The EU uses a system called VIES (VAT Information Exchange System) to record and monitor the delivery and acquisition of all intra-community goods and reconcile VAT liabilities between member states. It is currently in the process fundamentally changing the VAT system for intra community sales. The new system will limit the advantage of VAT free delivery and acquisition on intra EU transactions to Certified Taxable Persons. In addition a clearing system will be introduced through which the remaining transactions will be processed so that every member state receives the VAT it is eligible for. This will significantly reduce the present fraud.

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<sup>78</sup> <https://www.gov.uk/tax-on-shopping/taxfree-shopping>

<sup>79</sup> <http://www.europarl.europa.eu/cmsdata/156408/VAT%20Fraud%20Study%20publication.pdf>



## 5. Roadmap for Future Engagement with Stakeholders and the BA/GFA Bodies

It is very important for any Alternative Arrangements to be engaged with by the business community. In terms of readiness, business readiness is required.

The various bodies created under the BA/GFA process have not been fully and properly realised. 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 (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. We recommend that these are facilitated – the non-functioning of the Stormont assembly means that these conversations are not happening now.



## TECHNOLOGY

### 1. Introduction

The Alternative Arrangements discussed in this report will benefit from technology solutions to support the adoption and management of trading policies, procedures and operational practices.

The appropriate use of technology assists traders to efficiently comply with cross-border trade processes, and supports government agencies in monitoring and audit compliance, and the ability to effectively perform quality controls. The Alternative Arrangements presented in this report infer a number of core processes and operational requirements where technology can play a key enabling role, specifically;

- Traceability solutions to register and manage records of origin and health and safety compliance, in particular for animals, animal products, SPS and controlled goods;
- Automated processing of Transit documents, replacing today's physical scanning of documents at border transit offices with digital border crossing technology which require no border infrastructure, (part of the Smart Border concept);
- Smart border technology to automate the flow of goods vehicles through critical roll-on roll-off (RoRo) ports of entry such as Holyhead, Dover and Eurotunnel to avoid congestion in supply chain routes from the Island of Ireland to the EU mainland;
- Simplified easy to use and accessible systems enabling traders to register and maintain records for membership to the proposed multi-tiered Trusted Trader schemes;
- Mobile inspection units with associated technology to manage and perform inspections of goods and customs documentation at locations away from the border; and,
- Supporting a strategic move away from physical 'border controls' to the concept of intelligence led market surveillance through the use of advanced analytics to enable inspection at locations away from the border.

The technology associated with these areas are described in detail in much further detail in Annex 7.

## 2. Continuity Through Access to Today's IT Systems

Today's border operations already benefit from a wealth of existing technology solutions that will continue to play an important role in a future Alternative Arrangements model. UK Government border agencies are in the process of reviewing and updating existing IT systems in preparation for the UK's exit from the EU. This report does not cover the status of these exit-readiness programmes; instead, it focuses on the technology and IT solutions required to specifically support Alternative Arrangement models.

There are, however, a number of technology requirements for the Alternative Arrangements models that overlap with the EU exit-readiness programmes of UK Government border agencies. In particular, these overlaps are in the areas of the management of animal and animal products, and ensuring the continuity of flow of goods vehicles through borders and ports of entry.

A significant proportion of NI trade is based on the production and processing of agri-food products, which are subject to stringent trading regulations and border procedures and inspections. Continued access to the EU IT systems supports the ability of NI traders to demonstrate adherence to these regulations, thereby ensuring continuity of trade with the EU will be required.

A recent NAO report published in September 2018 identified 55 active readiness programmes within Defra<sup>79</sup> to support the movement of agri-food products. These programmes are summarised into four focus areas: the import and export of animals and animal products; the regulation of chemicals; marine control; and enforcement. The report identifies two priority systems for DEFRA that ensure the continuity of the health and safety responsibilities of border agencies. These systems are the EU tracing and quality control systems known as;

- TRACES (Trade Control & Export System) – the import control system to notify the BIPs that carry out inspections on animal and animal products being imported to the UK, to record the outcome of biosecurity and food safety procedures on imported commodities, and to communicate electronically with the HMRC customs system.
- REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) – to support the registration of new chemicals.

Continued access to these traceability systems is required to support the continuity of trade during the recommended Alternative Arrangements transition period. A more

comprehensive review of priority EU IT systems that also require continued access by the UK should be undertaken as part of Alternative Arrangements detail planning. For example, applications such as EMCS, NCTS, ICS, ECS, REX and VIES will be required to support transit, rules of origin, excise and VAT processes.

### 3. Maintaining Border Crossing Flows

There are two particularly important border crossing challenges highlighted in the NAO's report on the UK's readiness for EU exit in October 2018<sup>80</sup> that any Alternative Arrangements models need to consider:

- Ensuring that any arrangement respects the BA/GFA, meets UK commitments to avoid a hard border and implements arrangements set out in the Withdrawal Agreement.
- Ensuring that 'just in time' supply chains are not disrupted through delays at Ro-Ro ports in the event of 'no deal'.

New technology solutions will be required to ensure border crossings for goods vehicles in these two areas are not disrupted. Automation needs to be introduced to remove the need for physical document inspections at these border crossing points. The technology required to automate the border crossing processes is described in more detail in the form of the Smart Border concept in Annex 5.

### 4. Small Businesses and Technology

The NI Federation of Small Businesses has highlighted its concerns regarding how introducing customs processes will impact small- and micro-businesses that currently trade with IE, GB and the rest of the EU using a reduced version of such processes. There are two main areas of concern for small businesses: the cost burden of introducing customs procedures, such as declarations and health and safety compliance, and time delays in their supply chains resulting from the need to provide advanced notification of the intent to move certain goods across the border.

Technology in isolation will not provide solutions to the key challenges for small businesses. The priority of Alternative Arrangements is to seek and agree appropriate processes and levels of compliance for these businesses that reflect the nature of their trade and associated risk with the EU market. Technology solutions should then be considered once these trade policies have been agreed. Any such technology solutions will need to minimise cost and process overheads for these businesses.

## 5. Governance of Technology Programmes

The design and development of policies, processes and technology to support Alternative Arrangements must commence as soon as possible. This will maximise the opportunity to establish priority UK trade-management functions in what will be a relatively short transition period.

Trade and customs processes are complex, often requiring bilateral agreement, which implies preparation activities need to happen in parallel. Delivering workable minimum viable technology solutions needs to be the primary focus of any transition period. Such solutions created in the transition period can then be developed to greater degrees of complexity, providing wider services and benefits over a more extended period. This latter activity should be managed and governed through established continual improvement and best practice models.

The technology work streams associated with supporting Alternative Arrangement models need effective governance to minimise the risk of not delivering workable solutions within an agreed transition period. The following governance and guiding principles should be adopted to manage technology work streams:

- Appoint a government sponsor to oversee all technology projects required for the Alternative Arrangements models, with authority to coordinate across all relevant government border agencies.
- Engage with EU border agencies, in particular IE and the French, which directly face the UK borders, to coordinate IT strategies.
- Ensure short-term continuity of the use of existing EU IT systems, at least for the transition period, or until any required UK equivalent systems are in place.
- Keep initial solutions simple, deliver capabilities early and develop any required complexity over time, avoiding scope creep early in the programme.
- Engage immediately and collaboratively with technology providers and industry to seek best practice solutions in the key areas of traceability, data analytics and Smart Border technologies.
- Invite technology organisations to demonstrate new and emerging technologies, for example, advances in traceability in the food supply chain.

## 6. Approach

Timescale estimates for the development and implementation of technology solutions depend on a range of factors. In particular, the scope and complexity of the required services and the size of the intended user base will be key factors affecting estimates. A recommended approach is, therefore, to focus on defining the scope of technology work streams in such a way that they can be delivered in the negotiated transition period, with the objective of putting in place 'minimum' viable working products. A simplified scope for each of the core technology areas required for Alternative Arrangements includes:

- Continued use of existing EU traceability systems for the transition period, while developing new UK equivalents cloned from EU systems.
- Continued use of existing market surveillance systems such as AFTS (Advanced Freight Targeting System) to identify items for inspection while advanced surveillance platforms are designed and developed.
- Creation of a mobile app to host electronic versions of the transit document as a pre-cursor of the Smart Border concept. Procurement of mobile inspection vehicles capable of performing required veterinary inspections in-situ on farms and food producer locations.
- Development of the technology required to support the proposed new tiered Trusted Trader regime, which can commence with a simple registration and data gathering system while the detail policy is developed in parallel.

## 7. Conclusions

The technology projects required to support establishing an Alternative Arrangements model during the transition period need to focus on critical requirements only, prioritising those 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, including:

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

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





The first five case studies were worked through in the meetings of the Malthouse Compromise group with the Cabinet Office in February 2019. The others are new and are presented here for completeness. These case studies assume no special arrangements or zones but contemplate the availability of AEO. Otherwise, they are confined to the general case. It has been suggested to us that we include additional case studies which do include the special cases we have noted, and we acknowledge that this could be a very worthwhile exercise which we will develop in the coming weeks.

**1.** A large dairy farm in NI exports daily milk to an IE processing plant. The daily delivery of fresh milk across the border is a new phenomenon in the EU. Therefore, regulations had to be updated to make this kind of legitimate trade possible.

The dairy sector is heavily regulated within the EU legal framework. After Brexit, the UK has maintained the same strict standards. The dairy farm delivers all its milk to an IE processing plant. The IE plant has complete control over its processes and procedures for every incoming truck holding milk in a way that is certified by EU veterinary authorities. The milk from NI dairy farms is mixed with milk from other comparable farms in NI with the same standards and methods. This is necessary to collect full tank loads of milk in NI to be processed in IE.

Milk is checked for hormones and other forbidden content, according to EU agricultural regulations. NI farmers have adjusted their operations and means of procurement to meet these EU standards.

The IE processing plant is certified as an Authorised Economic Operator and has permission from customs and from agricultural authorities to declare quantities of imported milk by entering the daily delivery in its records. Thus, it can make a monthly customs declaration for fiscal purposes.

Based on the daily quality tests of the milk, the agricultural authorities have given a permission to accept the milk for daily production. This permission requires that authorities must be informed about any irregularity in the supplied milk and that milk that does not meet the standards, cannot be taken into production. Since this is a far-reaching permission, every quarter, without prior notice, an inspector visits the plant to see if all these conditions are being met.

Based on the quality tests of the incoming milk, a deemed compliance with EU regulations is granted. An additional waiver is granted to the NI dairy farms for providing health certificates for each shipment. But this waiver has a time limit of one year. Every year a new inspection report must be made available. These inspection

reports must be executed by UK veterinary authorities. An agreement between the EU and the UK makes it possible for EU authorities to perform inspections on farms

that want to make use of these kind of waivers. Periodically, the EU makes use of this competence and performs such inspections.

For statistical reasons and to have a secondary registration system available, all deliveries are registered in TRACES, both by farmers and by the processing plant. Since the new import of fresh milk into the EU from NI or elsewhere does not have an impact on the internal market of this product, no duties are levied on this trade. The Transit Convention does not grant a possibility to waive the declaration that is required to bring goods across the border. However, the dairy farms and processing plant participate in a pilot programme to replace Transit with a digital transport document that has recently been developed. These tests work well, and it is expected that future formalities for shipments can be limited to such a digital transport document enhanced with the entries in the administrations of the dairy farms and the processing plant.

**2.** A small farmer in NI sells three cows to a colleague in IE, outside of the zone covered by the Frontier Traffic Exemption, say, 100km away. The trade of cows over the NI land border falls under the SEU for the entire Island of Ireland. This agreement already exists and is upheld after Brexit.

The cows are registered according to the existing obligations, which are aligned in NI and IE regulations. Although the trading farmers are medium-size and registered for VAT, this is not a regular transaction for them. They ask for the help of a cooperative organisation for cross-border agricultural transactions which is specialised in dealing with the formalities of such a transaction, to take care of the paperwork.

Since the transport is planned in three days, a specialised trucking company is hired, and the cooperative can prepare the paperwork. The registration documents for the cows are made available to the cooperative. From their central office, the cooperative uploads the transaction in TRACES, and makes an export and Transit declaration on the day of the transport. The customs IT system algorithm considers the transaction low-risk and thus approves it immediately.

The cooperative sends an SMS to the trucker who uploads the Movement Reference Number of the Transit declaration in the Transit app of his mobile phone. The app registers the passage of the border of the truck, so he does not have to stop there, and he can use any border crossing he likes.

The IE counterpart in the cooperative has prepared the customs procedures on behalf of the farmer who bought the cows. IE authorities have already been informed one day ahead of the transport. The accompanying papers are analysed by a central unit of veterinary authorities in Dublin. They see no need for further action, because of the alignment of the regulations on the Island of Ireland. The trucker registers his arrival in the app and the IE cooperative informs him that no inspection will take place. Because of a free trade agreement between the EU and the UK on livestock, no duties are to be paid.

**3.** A meat processing plant in NI sells processed meat to a wholesaler in IE. It is three years since Brexit and the UK has made a trade deal with the USA. The UK has changed its SPS rules, and hormone-treated beef is acceptable for production and consumption in the UK, as it is in the USA. The EU still does not allow beef with hormones in its market.

Farmers in NI have either specialised for production in the UK/USA market or for export to the EU market, mainly through IE. The NI meat processing plant satisfies all UK standards and has full transparency in its production processes. It is essential for the farmers focused on the EU market that products are not mixed up.

Both exporter and importer are registered in TRACES and have regular export and import transactions. Professional trucking companies are used to transport the goods under temperature-controlled conditions. The exporter's customs department files an export declaration by downloading data from the production process directly into the customs system.

Because of holidays, a non-trained colleague must make the TRACES declaration. TRACES is a European system which monitors all agricultural trade entering the EU. The colleague calls the government helpdesk to guide him through the TRACES programme. Before Brexit, these TRACES declarations were needed as well, since internal trade of agricultural goods is also registered in TRACES to monitor the supply chain of goods for human consumption.

A copy of the invoice is sent to the trucking company. The trucking company files the Transit declaration that is needed to accompany and monitor the goods as they are brought across the border. The trucking company is eligible to file Transit declarations, since it has provided a bank guarantee to customs authorities. The trucking company will be held responsible and liable by customs authorities if the goods do not arrive properly at the designated importer in the EU.

The UK customs IT system algorithm does not give this transaction a high-risk profile and thus approves the export and Transit declaration.

The Irish wholesaler is an active trader both in import and export. Although he meets all standards for trade, he has failed to qualify as an Authorised Economic Operator. Thus, his risk profile is considered high.

EU veterinary regulations require that the import of veterinary goods are to be filed one day before arrival, to give authorities sufficient time to process the declaration. But since the time needed to transport the goods from NI to IE is short, the wholesaler has asked for a permission to file declarations ahead of arrival. This permission is available within the EU customs legislation.

A day before the goods will be transported, the Irish declarant files the import declaration and makes available all veterinary certificates that will accompany the shipment. Veterinary authorities in the central office in Dublin have 24 hours to assess the paperwork. Considering the risk profile, they send over a veterinarian to the premises of the importing wholesaler to perform a check. The veterinarian first looks to see if the labels on the boxes are consistent with the paperwork. He then takes a sample of the products with him in the temperature-controlled van to his central laboratory location. The next day the goods are inspected in Dublin. Special attention is given to the possible presence of hormone in the meat. The goods are kept under customs control until the results of the physical inspection are available. No traces of hormone are found. The goods are released late in the afternoon by approving the import customs declaration that incorporates both the fiscal and non-fiscal aspects of this transaction.

There is an EU duty on the import of beef which has to be paid on the monthly customs declaration by the Irish importer.

**4.** A wholesaler in IE sells a dishwasher to a restaurant in NI and installs it. We assume that both parties are outside the scope of the Frontier Traffic Exemption. The wholesaler is registered for VAT and wants to invoice the dishwasher with zero VAT. To be eligible for this, he has to make an export declaration and provide it to tax authorities as proof of the export. He has similar sales to NI about once a month and thus has made a deal with a customs broker to handle the paperwork.

The customs broker is certified as an Authorised Economic Operator, which makes him a trustworthy partner for Irish customs and which gives him a low risk profile that he can pass on to his customers.

The wholesaler is registered in REX, the Registered Exporter System in which exporters in the EU and other countries can digitally register so that they can declare the origin of their exported goods on their invoices.

The wholesaler sends the export invoice to the broker. On the invoice, he added a clause that refers to his REX registration and that the dishwasher is of German (EU) origin. The customs broker files the export declaration, which is considered low-risk by IE customs authorities so that no paper or physical inspections are needed with this export transaction. The broker also files a Transit declaration to bring the goods across the border. He sends the Movement Reference Number (MRN) of the Transit declaration by SMS to the wholesaler. The mechanic who transports the dishwasher fills in the MRN in the Transit app on his mobile phone.

The customs broker informs his colleague in NI to prepare the import declaration for the transport that is about to arrive. The restaurant has specifically requested that an import declaration be made, because it wants to deduct the import VAT on the dishwasher.

As the mechanic arrives at the restaurant, he activates the app and the import declaration is automatically activated. Within one minute there is an answer in the app that the declaration has been approved and that he can go ahead installing the dishwasher.

To take his toolbox across the border, the mechanic can use “Temporary admission” (TA). This is useful if the trader temporarily imports goods such as samples, professional equipment or items for auction, exhibition or demonstration into the UK/EU. As long as they do not alter the goods while they are within the EU, using temporary admission should mean the trader will not have to pay duty or import VAT. Eligibility for temporary admission relief is based on the type of goods concerned and their use before they are re-exported. Conditions on ownership may also apply. For the trader who is operating within the Frontier Traffic Exemption, no formalities of any kind would be required.

The IE wholesaler files the transaction on his quarterly VAT declaration as an export. The IE IT system matches the VAT that is filed as an export, with the export declarations that were filed in the customs IT system. Since they both match, the VAT declaration is accepted.

After Brexit, the UK has introduced the system of ‘Postponed Accounting’ for VAT. This implies that the restaurant does need to pay VAT on the import declaration, but only has to satisfy the required formalities. Since the goods are of EU origin and there is a free trade agreement between the EU and the UK, no duties have to be paid on the transaction.

5. A micro-business in NI producing wood souvenir products has an order to sell products for € 1,000 to an IE tourist shop. Neither seller nor buyer are registered for VAT, since their turnover is below the VAT threshold of £ 85,000. This means that they are not allowed to charge VAT, are not allowed to deduct VAT and do not have to fulfil VAT obligations.

The souvenirs are not agricultural products. The EU and the UK have agreed that these small non-agricultural transactions between traders who have a turnover below the VAT threshold do not have to be declared as goods traded across the border. Such trades do not interfere with the integrity of the internal markets of the EU and the UK, so the transaction can take place as it did before Brexit.

1. A French citizen decides to bring his family on a tour of the UK and Ireland after Brexit. As an EU citizen he does not require permission to enter IE; but he does require permission to enter the UK. He takes the car ferry from Calais to Dover, where a UK Border Force Officer admits him to the UK for a limited period as a visitor. After visiting England, he drives to Holyhead and takes the car ferry to Dun Laoghaire in IE.

As an EU citizen, he does not require permission to enter Ireland, although he may be subject to a security check on arrival in IE. He then drives to NI across the land border and does not pass through any form of border control. He is deemed to be given permission to enter the UK for a limited period without any further passport inspection by a UK Border Force Officer. He then takes the car ferry from Larne in NI to Cairnryan in Scotland. Again, he may be subject to a security check by police, but he does not go through any passport control. He drives back to Dover and presents his passport to the ferry company, which captures the data and advises the Border Force that he has left the UK.

2. A British citizen travels regularly between NI and IE and has homes on both sides of the border. He benefits from the freedom of movement provisions of the CTA and may stay on either side of the border without limitation on duration or purpose of stay, without any passport check. He then takes the ferry from Dublin to Cherbourg. On arrival in France he presents his passport for inspection and he is given permission to enter France for a limited period. He then drives to Belgium and the Netherlands and back, without any further passport check (under the Schengen code). Upon his return to Cherbourg, his exit from the Schengen zone is recorded by the Police Aliances Frontières. Upon arrival in Dublin, he is admitted unconditionally into Ireland upon production of his British passport. He then travels back to NI, without any further passport check.

3. A US citizen arrives at Shannon airport and is admitted to IE for a limited period as a visitor. He hires a car and drives across the land border. There is no passport check and he is deemed to have been given leave to enter the UK for a limited period as a visitor. He takes a flight from Belfast to Heathrow whereupon he may be subject to a security check by police, but no passport check or permission to enter is required. He takes another flight back to the USA from Heathrow, where his exit is recorded by the airline and forwarded to UK Border Force to complete the record.

## Annex 1: Export by Northern Irish businesses by destination and size, 2016

Country	Business size	No. of businesses	Average no. of products	Average no. of destinations	Total exports (£, thousands)	Average exports (£, thousands)
IE	Micro	325	12	1	302,855	932
	Small	456	17	1	448,369	983
	Medium	273	17	1	637,374	2,335
	Large	187	86	1	511,409	2,735
Rest of EU	Micro	107	3	4	35,199	329
	Small	181	5	5	120,787	667
	Medium	153	9		343,823	2,247
	Large	152	59	14	1,135,876	7,473
USA	Micro	136	3	1	37,622	277
	Small	148	3	1	31,602	214
	Medium	112	6	1	98,553	880
	Large	138	24	1	1,560,923	11,311
Rest of the world	Micro	305	3	3	69,348	227
	Small	276	4	4	97,137	352
	Medium	192	9	8	227,806	1,168
	Large	215	38	17	1,382,814	6,432

Source: Office for National Statistics, ONS estimates using HMRC data Notes: 1. Product is defined by the CN8-level customs classification.

2. The breakdowns of businesses by size used throughout this article have been compiled according to the international standard definitions devised by the European Commission.

We use the employment levels of each enterprise group to classify the size band that its reporting units belong to. Size bands are defined as:

- Micro businesses: with fewer than 10 employment
- Small businesses: with 10 to 49 employment
- Medium-sized businesses: with 50 to 249 employment
- Large businesses: with 250 or more employment



**Annex 2: List of North-South Co-operation Covered in the Mapping Exercise**

	<b>Implementation bodies</b>
1	Special EU Programmes Body
2	Foyle, Carlingford and Irish Lights Commission (Loughs Agency)
3	Food Safety Promotion Board (SafeFood)
4	Waterways Ireland
5	North-South Language Body (The Ulster Scots Agency and Foras na Gaeilge)
6	Trade and Business Development Body (InterTradeIreland)
7	North South Implementation Bodies - Cross cutting operational Issues
	<b>Agriculture</b>
8	Discussion on CAP issues
9	Safe use and disposal of animal by-products/ TSE management/rendering capacity
10	Cooperation on disease eradication programmes e.g. Tuberculosis (TB), Aujeszky's disease
11	Animal Health including Epizootic diseases
12	Equines
13	Plant Health and quarantine pests
14	Forest management and development
15	Rural development
16	Dairy international trade working group
17	Invasive Alien Species
18	Farm Safety
19	Agricultural Education
20	Movement of companion and farm animals
21	Cooperation on Products of animal origin
22	Exchange of Information on veterinary medicines
23	Pesticides
24	Timber
25	Veterinary public health and trade meetings
26	Informal cooperation on agri-food policy issues
27	Cooperation on the safety of the animal feed chain

	<b>Environment</b>
28	Environmental protection reporting and research
29	Water quality management in a cross-border context
30	Waste management in a cross-border context
31	Work Programme agreed by Ministers in September 2016: sustainable development; waste/water management; cooperation and exchange of information on marine/bathing/shellfish waters and water sewage services; circular economy; and tackling environmental crime
32	Nature/biodiversity, including habitats and birds
33	All-island pollinator plan
34	All-island marsh fritillary group
35	Flood risk management
36	Lough Erne water level agreement
37	Strategic environmental assessments; environmental impact assessments; appropriate assessments
38	NI Water/ Irish Water knowledge sharing
39	Mapping data
40	Geodetic network
41	Radiation
42	Wildfire initiatives
43	All-island fracking
44	All-island air quality research: Residential Solid Fuel and Air Pollution
45	River basin management
46	Wildlife trade including CITES
47	Fluorinated gases
	<b>Transport</b>
48	Strategic Transport Planning: national road network
49	Strategic Transport Planning: rail network
50	Cross-border bus services
51	Sustainable transport
52	Alternative fuels infrastructure, including electric vehicle charge point network
53	Coordination of transport aspects of EU cross-border programmes, including those funded through INTERREG and/or TEN-T
54	Strategic Transport Planning: cross-border projects
55	Road and rail safety
56	Road and rail safety reporting and information systems, including mutual recognition of driving disqualifications, penalty points

57	Rail standards, certification and licensing
58	Road and rail safety: Cooperation between the railway inspectorates North and South
59	Road haulage operator, licensing and qualifications
60	Operation of cross-border taxis
61	All Ireland free travel scheme for senior citizens
62	Recognition of driving licences and disqualifications
63	Motor insurance
64	Vehicle registration
65	Ferries
66	Blue badges
	Health
67	Cross-border service provision, including hospital services such as primary percutaneous coronary intervention services in Altnagelvin, Derry
68	North West Cancer Centre
69	All-island congenital heart disease network
70	Cooperation and Working Together (CAWT)
71	Workstreams on child protection
72	Health protection and promotion (including addressing alcohol misuse, tobacco control, ECDC, and public health alerts)
73	Major emergencies and emergency services cooperation, including Cross Border Emergency Management Group
74	Organs for transplantation
75	Blood
76	Tissues and cells
77	The Institute of Public Health in Ireland
78	Controlled drugs licensing group
79	All Ireland Institute of Hospice and Palliative Care (AIHPC)
80	Human Milk Bank
81	Cross-border GP out of hours service
82	Mutual recognition of prescriptions
83	Continuity of supply of medicines (including radiopharmaceuticals) and devices
84	Serious cross border threats to health (health security)
85	Disease surveillance and ERNs pertaining to the diagnosis and management of rare diseases
86	ENT Cooperation

87	Clinical trials and Joint Health research
88	Disability Services (aids, appliances, training, cross-border residential placements)
	<b>Tourism</b>
89	Tourism Ireland Limited
90	Hosting major cross-border events
	<b>Education</b>
91	Education for children with special needs, including Middletown Centre for Autism
92	Educational underachievement
93	School, youth, and teaching exchanges
94	Cross-border movement and cooperation for pupils and school staff
95	Cooperation between the Inspectorates
96	Psychological services
97	North-South Teacher Qualifications working group (NSTQWG)
98	School planning and development
99	North-South Education and Training Standards Committee for Youth Work (NSETS)
100	North-South youth exchanges, including the Causeway programme
101	Recognition of school-based/state-accredited examinations
	<b>Energy</b>
102	Wholesale Electricity Market (Single Electricity Market)
103	Gas security of supply
104	Oil resilience planning
	<b>Higher and further education</b>
105	Cross-border provision of apprenticeships
106	Cross-border movement of students
107	Staff mobility
108	Skills provision and FE/HE link to the local economy
109	Cross-border partnerships between Higher and Further Education Institutions, including SFI investigators programme and SFI partnerships
110	Research and development, including through Horizon 2020
111	Higher and further education in agriculture, equine, and horticulture disciplines

<b>Telecommunications and broadcasting</b>	
112	Irish language broadcasting
113	Mobile roaming
114	Spectrum
115	Subsea cables
<b>Sport, art, and culture</b>	
116	Sport governance
117	Major events
118	Horse racing
119	Greyhound and pigeon racing
120	Motorsport road safety promotion
121	Health promotion
122	National museums
123	Libraries
124	Development and promotion of the Arts (in NI, Ireland and abroad)
125	NI Screen
<b>Justice and security</b>	
126	Intergovernmental agreement on criminal justice cooperation, including public protection project advisory group; victims and survivors services project advisory group; forensic science project advisory group; youth justice project advisory group; and criminal justice and social diversity project advisory group
127	Mutual legal assistance in criminal matters
128	Intergovernmental agreement on police cooperation, including protocols for police cooperation and cross-border secondments and eligibility for posts in policing
129	NI Related Terrorism threat
130	Multi-agency cooperation on fuel fraud
131	Multi-agency cooperation on organised crime and drugs
132	Extradition/Surrender, including the European Arrest Warrant
133	Access to shared law enforcement information systems
134	Criminal asset seizure
135	Transfer of prisoners
136	Civil judicial cooperation
137	Other aspects of criminal justice cooperation
138	Joint investigation teams

	<b>Inland Fisheries</b>
139	Fisheries liaison group
140	Salmon stocks
141	Eel stocks on the Erne
142	Fish health and aquaculture
143	Voisinage Agreement
	<b>Other areas</b>
144	EURES Cross Border Partnership
145	Benefit fraud cross-border cooperation
146	Spatial Planning
147	Enterprise Ireland, InterTradeIreland, INI and other enterprise development agencies cooperation to promote enterprise development and job creation through enhanced innovation, competitiveness and trade
148	National Traveller Accommodation Consultative Committee
149	Public Service Reform
150	All Island Public Procurement Steering Group
151	Obstacles to Cross Border Mobility (Border People Project)
152	All-Island Local Authority Forum
153	Local authority led cross-border engagement

### **Annex 3: Common Travel Area History**

- **1922.** Prior to the creation of the Irish Free State in 1922, British Immigration law (as enacted in the Aliens Order 1905) applied to both the UK and Ireland. Due primarily to the reluctance on both sides to introduce immigration controls between the two countries, an agreement was reached in 1923 to enable UK immigration laws to apply in Ireland. As such there were no immigration control points on the 300-mile land border between NI and IE; nor at the ferry ports between Ireland and the UK. This meant – in effect – that immigration controls imposed on third country nationals in Ireland would be respected in the UK; and vice versa.

Similarly, immigration controls were only conducted by the Jersey and Guernsey authorities in respect of flights and vessels arriving from outside the CTA. A similar policy was adopted in the Isle of Man – and given that there are no extra CTA services operating there, immigration and customs controls remain non-existent.

- **1939.** At the outbreak of World War 2, the CTA was suspended and travel restrictions were imposed upon people moving between the islands of Great Britain and Ireland, including Northern Ireland. These remained in place until 1952, much to the consternation of Northern Ireland’s Unionist population.
- **1952.** Following the agreement of a “similar immigration policy” border controls were lifted on /CTA routes, and powers were conferred so as to allow the UK authorities to refuse entry to any “foreigner” en route to Ireland, and vice versa.
- **1973.** Following the introduction of the UK Immigration Act 1971, the UK “Immigration (Control of Entry through IE” Order 1972) was enacted<sup>81</sup>. This enabled British and Irish citizens to continue to move freely within the CTA; and citizens from other (third) countries entering the UK from Ireland to be granted “deemed” leave to enter from their date of entry to the UK. This obviated the need for any passport check or UK immigration stamp for travellers arriving in the UK at the CTA borders (including the Irish land border).
- **1973.** both the UK and Ireland acceded to the European Economic Community (later to become to European Union).
- **1985.** A group of EU Countries signed the “Schengen Agreement” to commence abolition of “internal” border controls on persons travelling between them. Neither the UK nor Ireland were parties to the agreement.
- **1992.** Following the introduction of the Maastricht Treaty, citizens of EU countries were afforded “free movement” and no longer required leave to enter other EU countries (including the UK and Ireland). EU citizens could enter both the UK and Ireland simply by producing evidence of their identity and nationality; and travel freely within the CTA to work, study or settle without the need for further permission.
- **1998.** Following the signing of the Belfast/Good Friday Agreement, a North / South Ministerial Council was established to develop co-operation, consultation and action on matters of mutual concern on the Island of Ireland. This included

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<sup>81</sup> <http://www.legislation.gov.uk/ukxi/1972/1610/made/data.xht?wrap=true>

agreement on co-operation on policing and law and order and an agreement to remove UK military infrastructure along the border. (Although given that the CTA was already in place, there were no immigration or passport controls there to remove).

- **1999.** Following the introduction of the Amsterdam Treaty 1999, the Schengen Convention required the abolition of all internal border controls within the “Schengen zone”. Both the UK and Ireland retained an opt out to this. All passengers arriving at ports and airports in the UK or Ireland from outside the CTA remained subject to passport control. Citizens of EU or EEA countries would be admitted without any limitation upon duration or purpose of stay upon production of a passport or national identity card; whereas citizens of other non-EU / EEA (third) countries would require leave to enter on arrival at their port of arrival in either the UK or Ireland. Once such leave was granted the provisions of the CTA would apply; and they could travel freely across CTA borders without any further passport check.
- **2000.** Following the enactment of the Terrorism Act 2000, powers were conferred upon designated police, customs and immigration officers to examine persons arriving in the UK on any ship, aircraft or international train (whether within or outside Great Britain or NI) -and / or persons at a port or border area within NI – where the officer believes the person’s presence in the UK involves the commission, preparation or instigation of an act of terrorism. These powers are exercised selectively at specific internal CTA ports and airports; and only by officers who are suitably trained and accredited to do so in accordance with the Home Office Code of Practice 2014<sup>82</sup>.
- **2011.** The UK and Irish governments concluded a new agreement to share watch list data and to work towards a common visa policy.
- **2016.** The UK voted to leave the EU, thus potentially ending the free movement of EEA citizens between the EU and the UK.
- **2019.** The UK and Irish governments signed an MOU to respect the rights of British and Irish citizens to travel freely to work, provide and receive services, and settle in each others territory regardless of the UK’s departure from the EU.

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<sup>82</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/339197/schedule7.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/339197/schedule7.pdf) ue



## Annex 4: Inward Storage Relief (ISR) – An Entry Level Trusted Trader Programme

## DOCUMENTARY EVIDENCE FOR IMPORTS &amp; EXPORTS

**IMPORTS – Systems & Documentary Evidence**

- 1. Purchase order:** Line item, Qty, description and values
- 2. Supplier Invoice/s to state:**
  - Purchase Order Number
  - Full description of Goods as per Purchase Order
  - Qty, True values & currency in which invoiced
  - Product HS Codes (Customs Tariff Classification / Commodity Code)
  - Number of Packages, Total Net / Gross Weights
  - Marks & Numbers must include PO number
  - Terms of Delivery (i.e. FOB, CIF, etc)
- 3. Packing List/s must show:**
  - Full description of Goods / Purchase Order No
  - Package Number, Quantity, Content description of each package
  - Net / Gross weight of each package
  - Total Number of packages, Total Net and Gross weights
  - Marks & Numbers must include PO number
- 4. Bill of Lading / Airwaybill**
- 5. Preference document/s – Reduced rate of duty**
- 6. Customs Entry – SAD Plain Paper & E2 – Correct CMCD/HS**
  - Unique Consignment Ref: (B/Lading OR AWB Number)
  - Box 44 – Approval No. & Approved trader address
- 7. Goods Received Note & Proof of Delivery**
- 8. Accounting / Commercial Systems updated**
  - Qty ordered / Qty received, HS Codes against each SKU No, additional fields can be created and named to meet HMRC requirements.
- 9. Duty/VAT paid evidence**
  - Agent's invoice + (Plain paper SAD & E2) OR Deferment
  - Statements (if approved for DA) & VAT evidence C79
- 10. Import Register:**
  - UCR, Supplier Inv. & PO No, Customs Entry No, Date, Total Duty, amount, Goods received date, Total NOP.
- 11. Companies without adequate system:**
  - Create Shipment stock valuation & line stock receipt/removals
- 12. Any other supporting documents**

**EXPORTS – Documentary Evidence**

- 1. Sales order: Line item, Qty, description and values**
- 2. Pick List: Line item, Qty, description and original PO Number**
- 3. Export Invoice/s**
  - Sales Order Number
  - Full description of Goods as per Sales Order
  - Qty, True values & currency in which invoiced
  - Product HS Codes (Customs Tariff Classification / Commodity Code)
  - Number of Packages, Total Net / Gross Weights
  - Marks & Numbers must include original PO number & SO Number
  - Terms of Delivery (i.e. FOB, CIF, etc)
- 4. Packing List/s – Product & HS Nos.**
  - Full description of Goods / Sales Order No
  - Package Number, Quantity, Content description of each package
  - Net / Gross weight of each package
  - Total Number of packages, Total Net and Gross weights
  - Marks & Numbers must include original PO number & SO Number
- 5. Bill of Lading / Airwaybill (Certified Copy)**
- 6. Preference document/s: if applicable**
- 7. Export Customs Entry – Export SAD & MRN – Correct CMCD/HS**
  - Unique Consignment Ref: Sales Invoice Number
  - Box 44 – Approval No. & Approved trader address
- 8. Accounting / Commercial Systems updated**
  - Qty ordered / Qty removed, HS Codes against each SKU No, additional fields can be created and named to meet HMRC requirements.
- 9. Duty paid on exported goods for Re-Claim / Summary (see attached)**
- 10. Export Register:**
  - UCR, original PO No, Sales Inv. No, original Customs Entry No, Date, Export Entry No, AWB/B-Ldg No, Total NOP, Total Duty for re-claim.
- 11. Companies without adequate system:**
  - Shipment stock valuation & line stock Qty removals & recorded
- 12. Any other supporting documents**

## Inward Storage Relief (ISR) An idea for a new customs regime

### 1. Introduction

- A hybrid of IPR and customs warehousing
- Designed for re-export of goods in the same unaltered condition as import
- Intended for trusted traders, but could also be a facilitation for smaller businesses as a first customs regime

### 2. How it works

- Authorisation is for both the trader and site
- Firstly, goods are declared to free circulation on import
- Secondly, goods stored in the approved location, but not under strict customs control
- Thirdly, goods are exported using normal export procedures
- Finally, duty is reclaimed for the exported goods
- Certain conditions need to be met

### 3. Conditions

- The conditions for using ISR are:
- The trader must be a trusted (but not necessarily AEO)
- The goods may undergo approved allowable process under the "Usual Form of Handling" arrangements before exportation.
- Warehousing / premises location must be secure
- No limit on storage period, but goods must remain in an approved location

### 4. Claims process

- To reclaim import duty paid at import, a trader must:
  - Retain definitive evidence of import and export, including goods departure notification
  - Be able to clearly identify goods through customs records and/or commercial systems
  - Submit a reclaim within two months of export
- Repayment is made within a specified period that is acceptable to HMRC and trade

### 5. Benefit to HMRC

- The benefits of using ISR for HMRC are:
  - Less management than customs warehousing
  - Only for "trusted traders" means lower risk
  - Duty is repaid rather than suspended, meaning fiscal risk is lower
  - ISR could be a bridge to other customs authorisation that carry a greater level of risk

### 6. Benefit to trade

- The benefits of using ISR for trade include:
  - More flexible than customs warehousing
  - No customs warehousing declarations required
  - More accessible for smaller businesses, but could be very useful for large distributors
  - No throughput period limits
  - More clear than using IP for storage
  - Less burdensome to manage for businesses without customs experience/skill

### 7. Why not just use IPR?

- Businesses have used IPR to achieve the same benefits in the past
- This is however not what IPR is designed for, IPR is a processing regime, whereas ISR is instead designed specifically for storage
- IPR introduces some restrictions in the areas of
  - Commodity codes that can be used
  - Throughput period
  - Bills of discharge
- ISR is designed to be simpler to use, and reduces the paperwork required compared to IPR

### 8. ISR – Risks

- The customs authority may have less control than customs warehousing
- Increased customs resource in the management of the procedure
- Less tax-take for the exchequer
- Lack of understanding may lead to mistakes, but the impact is mitigated through drawback instead of suspension
  - However, the risk is reduced in comparison to other customs regimes as the tax is paid and then reclaimed

**Inward Storage Relief – allowable Usual form of handling:**

1. Ventilation, spreading-out, drying, removal of dust, simple cleaning operations, repair of packing, elementary repairs of damage incurred during transport or storage insofar as it concerns a simple operation, application and removal of protective coating for transport.

*To clear any moisture, spreading-out to dry and remove any dust collected whilst in storage e.g. equipment, garments, etc. In certain instances, changing of outer packaging or repair where damage is minor before delivery to customer/s.*

2. Reconstruction of goods after transport.

*Some products may be too big to handle due weight, size; may be dismantled and packed into 2-3 packages for re-assembly as and when sold for delivery to customer.*

3. Stocktaking, sampling, sorting, sifting, mechanical filtering and weighing of the goods.

*Periodical stocktakes would be required to be carried out to ensure no pilferage whilst in storage, sampling for potential sales or exhibition. Simple process of sorting of equipment by specification and in case of garments by gender, size, colour, etc for the ease identifying specific goods stored. Mechanical filtering to remove particles and waste matter from the liquids stored.*

4. Removal of damaged or contaminated components.

*Certain electronic components may get damaged whilst in transit or storage and may need replacing to restore functionality before delivery to customer.*

5. Conservation by means of pasteurisation, sterilisation, irradiation or the addition of preservatives.

*Each of the above-mentioned process could be approved depending on the nature and type of product stored e.g. pasteurisation is a process in which packaged and non-packaged foods (such as milk and fruit juice) are treated with mild heat (<100 °C) to eliminate pathogens and extend shelf-life.*

6. Treatment against parasites.

*E.g. Grains, garlic, onions, etc may require treatment against parasites to prevent being infested with worms or insects.*

7. Anti-rust treatment.

*Certain equipment may get rusted due to moisture in storage environment and may require anti-rust treatment to prevent it from getting rusted; this could be carried out pre or post storage.*

8. Treatment:

- by simple raising of the temperature, without further treatment or distillation process, or
- by simple lowering of the temperature even if this results in a different 8-digit CN code.

*This process / treatment could be applied in pharmaceutical, alcohol or food industry.*

9. Electrostatic treatment, unceasing or ironing of textiles.

*Electrostatic treatment could be successfully employed for the prevention or treatment of various seed-transmitted diseases of plants. Unceasing or ironing of textiles would be appropriate where fabric is shipped folded, packed in bales or wrapped on flat cardboard for ease of transport. The fabric would undergo industrial ironing process rolled onto tubular cardboard packaging before delivery to customer. Electrostatic treatment could also be applied to fabrics where certain fabrics could generate static over period of time in storage.*

10. Treatment consisting of:

- stemming and/or pitting of fruits, cutting up and breaking down of dried fruits or vegetables, rehydration of fruits, or
- dehydration of fruits even if this results in a different eight-digit CN code.

*First part is self-explanatory whilst second part would relate to:*

*Dehydrated of fruits and vegetables undergo the following process steps: pre-drying treatments, such as size selection, peeling, and colour preservation; drying or dehydration, using natural or artificial methods; and post dehydration treatments, such as sweating, inspection, and packaging.*

11. Desalination, cleaning and butting of hides.

*Processing of removing salt treatment applied to protect hides from cracking when packed in bales for shipping. The leather hides require cleaning, butting and applying polishing substance for manufacturing of garments from softer & lighter hides and shoes, handbags, etc from thicker and heavier hides.*

12. Addition of goods or addition or replacement of accessory components as long as this addition or replacement is relatively limited or is intended to ensure compliance with technical standards and does not change the nature or improve the performance of the original goods, even if this results in a different 8-digit CN code for the added or replacement goods.

*This process may allow trader to install basic software onto computer equipment, add peripherals to meet customer specification requirements but not necessarily improve performance of the original goods.*

13. Dilution or concentration of fluids, without further treatment or distillation process, even if this results in a different 8-digit CN code.

*This UFH would not apply as goods will lose its original status and will be outside the scope ISR.*

14. Mixing between them of the same kind of goods, with a different quality, in order to obtain a constant quality or a quality that is requested by the customer, without changing the nature of the goods.

*This UFH would not apply as goods will lose its original status and will be outside the scope ISR.*

15. Dividing or size cutting out of goods if only simple operations are involved.

*This could be applied to varied industry sectors.*

16. Packing, unpacking, change of packing, decanting and simple transfer into containers, even if this results in a different 8-digit CN code, affixing, removal and altering of marks, seals, labels, price tags or other similar distinguishing signs.

*This could be applied to varied industry sectors.*

17. Testing, adjusting, regulating and putting into working order of machines, apparatus and vehicles, in particular in order to control the compliance with technical standards, if only simple operations are involved.

*This could be applied to electrical, engineering and motor industry sectors.*

18. Dulling of pipe fittings to prepare the goods for certain markets.

*This could be applied to engineering, Oil & Gas and building industry sectors.*

19. Any usual forms of handling, other than the above, intended to improve the appearance or marketable quality of the import goods or to prepare them for distribution or resale provided that these operations do not change the nature or improve the performance of the original goods. Where costs for usual forms of handling have been incurred, such costs or the increase in value shall not be taken into account for the calculation of the import duty where satisfactory proof of these costs is provided.

*The customs value, nature and origin of non-community goods used in the operations shall be taken into account for the calculation of the import duties.*

*(This UFH would not apply as goods will be in free circulation and duty reclaim will only be applicable to originally imported good under the ISR arrangements)*

## Authorisation Criteria for Inward Storage Relief – ISR Based on Self-Assessment / Trusted Trader

### 1. Compliance Record

#### Compliance with customs requirements:

- a. active compliance policy by an authorised trader;
- b. preferred written operating instructions as regards responsibilities for carrying out checks on accuracy, completeness and timeliness of transactions and disclose irregularities/errors, including suspicion of criminal activity to customs authorities;
- c. procedures to investigate, report errors found, to review and improve processes;
- d. the competent/responsible person within the business should be clearly identified and arrangements for cases of holidays or other types of absences should be initiated;
- e. implementation of internal compliance measures; use of audit resources to test/assure procedures are correctly applied;
- f. internal instructions and training programmes to ensure staff are aware of customs requirements.

### 2. The applicants accounting and logistical system

#### Accounting system:

##### Computerised environment integrated accounting system:

- a. segregation of duties between functions should be examined in close correlation with the size of the applicant. For example, a micro-enterprise which is performing road transport business with a small amount of everyday operations: packing, handling, loading/unloading of goods might be assigned to the driver of the truck. The receipt of the goods, their entering in the administration system and the payment/receipt of invoices should be assigned however to another person(s);
- b. implement a warning system which identify suspicious transactions;
- c. develop interface between customs clearance and accounting software to avoid typing errors;
- d. implement an enterprise resource planning (ERP), Sage or any other reliable accounting software package;
- e. develop training and prepare instructions for the use of the software.

### 3. Audit trail

- a. consultation with the customs authorities prior to the introduction of new customs accounting systems to ensure they are compatible with customs requirements;
- b. testing and assuring the existence of the audit trail during the pre-audit phase.

#### 4. Logistic system that distinguishes community and non community goods

##### **Mix community and non-community goods:**

- a. internal control procedures
- b. data entry integrity checks

#### 5. Internal control system

##### **Internal control procedures:**

- a. appointment of a responsible person for quality in charge of procedures and internal controls of the company;
- b. make each head of department fully aware of internal controls of their own department;
- c. record the dates of internal controls or audits and correct identified weakness through corrective actions;
- d. notify the customs authorities if fraud, unauthorised or illegal activities are discovered;
- e. make the relevant internal control procedures available to the personnel concerned;
- f. create a folder/a file in which each type of goods is linked with its own related customs information (tariff code, customs duty rates, origin and customs procedure);
- g. appointment of responsible person(s) for managing and updating the customs regulations applicable (inventory of regulations): i.e. update data in the clearance or accounting software.

#### 6. Flow of goods

##### **Expected:**

- a. records of stock movements;
- b. regular stock reconciliations;
- c. arrangements for investigating stock discrepancies;
- d. being able to distinguish within the system whether goods are cleared or are still subject to duties and taxes.

##### **Incoming flow of goods:**

- a. records of incoming goods;
- b. reconciliation between purchase orders and goods received;
- c. arrangements for returning/rejecting goods, for accounting and reporting short and over shipments and for identifying and amending incorrect entries in the stock record;
- d. formalisation of procedures for import;

**Storage:**

- a. perform regular inventories;
- b. perform punctual consistency check of input / output of goods;
- c. clear assignment of storage areas;
- d. regular stock-taking procedures;
- e. secure storage areas to fight against the substitution of goods.

**Outgoing flow of goods; delivery from warehouse and shipment/s:**

- a. persons are appointed to authorise/oversee the sale/release process;
- b. formalisation of procedures for export;
- c. checks prior to release to compare the release order with the goods to be loaded;
- d. arrangements for dealing with irregularities, short shipments and variations;
- e. standard procedures for dealing with returned goods (not according to standards, contract OR faulty) – inspection and recording.

**7. Customs routines****Expected:**

- a. implement formal procedures to manage/follow each customs activity and formalise specific clients (classification of goods, origin, value, etc.). These procedures are intended to ensure the continuity of customs department in case of the absence of assigned staff;
- b. use Binding Tariff Information (BTI) that set the duties and import taxes and applicable regulations (sanitary, technical, trade policy measures, etc.);
- c. use BOI which provides the administration's advice on :
  - the origin of the product you want to import or export, especially when the various stages of production have taken place in different countries;
  - whether or not to receive preferential treatment under a convention or international agreement;
- d. setting up formal procedures for the determination and the declaration of customs value (valuation method, calculation, boxes of the declaration to fulfil and documents to produce);
- e. implement procedures for notification of any irregularities to customs authorities.

### **Representation through third parties:**

- a. routines to check third parties work (e.g. on customs declarations) and identifying irregularities or violations be representatives should be implemented. It is not sufficient to rely completely on outsourced services;
- b. verification of the competence of the representative used;
- c. if the responsibility for completing customs declarations is outsourced: Service Level Agreement (SLA) is a must;
  - specific contractual provisions to control customs data
  - a specific procedure to transmit the data which are necessary for the declarant to determine the tariff (i.e. technical specifications of goods, samples, etc.)
- d. if externalisation of the management of customs, the outsourcing can be committed to a declarant who has obtained the status of approved exporter (guarantee of good command of origin rules);
- e. implement formal procedures of internal control in order to verify the accuracy of customs data used.

### **Licences for import and/or export connected to commercial policy measures or to trade in agricultural goods (where required):**

- a. standard procedures to record licences;
- b. regular internal controls of the licences validity and registration;
- c. segregation of duties between registration and internal controls;
- d. standards for reporting irregularities;
- e. procedures to ensure the use of goods are consistent with the licence.

## **8. Procedures as regards back-up, recovery and fall-back and archival options**

Expected:

- a. information security policy;
- b. information security officer;
- c. information security assessment or identifying issues relating to IT risk;
- d. procedures for granting/withdrawing access rights to authorised persons;
- e. using encryption software where appropriate;
- f. firewalls;
- g. anti-virus protection;
- h. password protection;
- i. testing against unauthorised access;
- j. limit access to server rooms to authorised persons;



- k. perform tests intrusion at regular intervals;
- l. implement procedures for dealing with incidents;
- m. contingency plan for loss of data;
- n. back-up routines for system disruption/failure;
- o. procedures for removing access rights.

## 9. Information security – Documentation

### Expected:

- a. procedures for authorised access to documents;
- b. filing and secure storage of documents;
- c. procedures for dealing with incidents and taking remedial action;
- d. recording and back-up of documents, including scanning;
- e. contingency plan to deal with losses;
- f. possibility to use encryption software if needed;
- g. commercial agents to be aware of security measures while travelling (never consult sensitive documents in transport);
- h. set up access levels to strategic information according to different categories of personnel;
- i. handle discarded computers in a secure manner;
- j. arrangements with business partners for protecting/use of documentation.

## 10. Financial solvency

Proven solvency - Insolvency/failure to meet financial commitments:

- a. examine the balance and financial movements of the applicant to analyse the applicant's ability to pay their legal debts. In most cases the applicant's bank will be able to report on the financial solvency of the applicant;
- b. internal monitoring procedures to prevent financial threats.

## **Annex 5: A Technology Strategy for the NI – IE Border**

We have highlighted in this report how technology can be used to support the trading policies and processes as described in the Alternative Arrangements models. In this annex, we provide additional detail for each of the priority technologies: Traceability; Transit; Smart Border concept; Trusted Traders; mobile inspections; and market surveillance.

### **1. Traceability in the supply chain**

NI Food and Drink (NIFDA) underlines the importance of traceability on food imports in relation to maintaining high EU standards in animal health, food safety and quality, in order to maintain equivalence of standards with international markets. Traceability is also a key requirement for the accreditation of AEO and Trusted Trader status. A significant proportion of the NI economy is based on Agri and SPS products which will need to continue to demonstrate adherence to EU standards for exports.

The continued use of EU tracking systems such as TRACES for these products will ensure compliance with trading standards in the short term. However, traders will need to ensure that their supply chains are able to maintain separation of EU and UK compliant goods if there is any divergence of standards in the future. Many organisations operate supply chains capable of conforming to multiple markets to serve third world markets such as China whose product standards differ to those of the EU.

New and emerging technologies promise a wealth of opportunity to improve the traceability of goods through the supply chain, providing greater confidence in compliance to their export markets. For example, new platforms based on Blockchain technology, which promise robust 'provenance' and 'transparency' of records, are being tested in a range of business scenarios including banking and the global supply chain. A trial by Dutch customs is currently testing its applicability to manage Bills of Landing with a select number of shippers and products.

The potential benefits of applying Blockchain technology in the food supply chain are being heralded as the ultimate solution to provide trusted traceability of food supplies. Trials are underway in a range of scenarios. For example, a Dutch farmer is testing the use of Blockchain to provide transparency in the origin of turkey products to support trusted animal welfare ratings. Similar solutions can be deployed to other food products to increase trust in food products, including confirmation of source, welfare standards and compliance to market standards. For example, NSF International, an organisation which specialises in developing global public health standards and certification programs, are currently trialling a traceability service known as NSF Verify. The Verify platform can prove the authenticity and source of individual cattle,

demonstrate their movements across borders and provide information on ownership transfers and veterinary care, from birth to slaughter.

Using existing technologies such as RFID and GPS, the Verify platform can identify an animal via a sample of DNA taken at birth which is then associated with a unique record number on an RFID ear tag. The record number and DNA are linked via GPS and are trackable for life. These 3 elements are bonded using a secure community Blockchain that locks all the data in a secure environment and is delivered by a simple phone application using existing smartphone technology. NFS Verify has the ability to increase trust throughout the supply chain for all involved parties.

Security technologies are being developed in the form of smart locks to secure containers and trucks containing controlled goods, such as medical and food products to improve integrity of traceability data. Smart locks are connected to central systems through mobile or IoT (internet of things) technology to alert if vehicles have been opened and goods potentially tampered with in an unplanned way. An additional benefit of such security devices is added security against those attempting clandestine entry or exit at key ports such as Dover.

Initiatives which involve emerging technologies such as Blockchain, should also be subject to wider governance of UK government future border innovation programmes to ensure their adoption is appropriately managed.

## **2. Automated 'Transit' solutions**

The Transit procedure enables goods to be transported from one EU country to another without having to declare those goods to any intervening countries it may 'transit' through. Traders must register on the Transit system the goods, the transporting vehicle, the route it will take, together with border crossing timings. At each border crossing point on its journey, the driver presents a transit document with a barcode for scanning at a registered transit office to confirm that the vehicle has crossed from one country to another. This process manages fiscal liabilities for VAT and custom duties which may be due at the final destination point.

Alternative Arrangements considers the use of the Transit process to register the movement of goods vehicles from NI to IE, and indeed onwards to GB and the EU mainland. In the absence of any physical border infrastructure, it will not be possible to present a physical transit document for scanning and physical checks. An update to the Transit system will be required to automate the movement of a vehicle and its goods under Transit through a border.

This automation can be in the form of electronic tracking of the vehicle, or a driver's mobile phone, which sends a signal to the Transit application (NCTS) confirming that the consignment under Transit has indeed crossed the border.

The current physical Transit document, complete with barcode, will need to be converted into a digital format and made available on a mobile app on the driver's phone. Through the use of GPS tracking and geo-fencing technology, the phone will signal the time and location of any border crossings en route, updating the Transit record. The Transit system will require enhancements to be able to recognise and process such a signal, or a gateway service provided to transfer the update. On reaching its final destination, the tracking device or mobile app will once again update the Transit system, confirming its arrival at the designated destination and closing the Transit procedure.

Converting the Transit document into an electronic format in this manner will also make more data available to customs and border officers, providing insights into Transit journeys and precise border crossing times. Using data analytics tools, sophisticated risk management capabilities can be developed by automating the checking of data for anomalies which may require further inspection; for example, vehicles which did not cross a border as registered on the Transit system.

### **3. Smart Border concept**

An extension of the automated Transit system can be developed to create the Smart Border concept where the customs clearance of goods crossing the border is also automated.

The border crossing point also confirms liabilities due for fiscal charges associated with goods, including VAT, excise and customs duty where applicable. The automation of Transit border crossings will record the date, time and location of border crossings and further enhancements can be used to trigger liabilities for any such payments and process customs border declarations. This will require additional interfacing of the Transit data into other customs systems such as VEIS for VAT, EMCS for excise and CDS for customs declarations.

The Smart Border concept has two primary applications in the Alternative Arrangements models: to process goods vehicles at the NI-IE border without the need for infrastructure; and to automate the processing of goods vehicles through busy Ro-Ro ports, such as Dover.

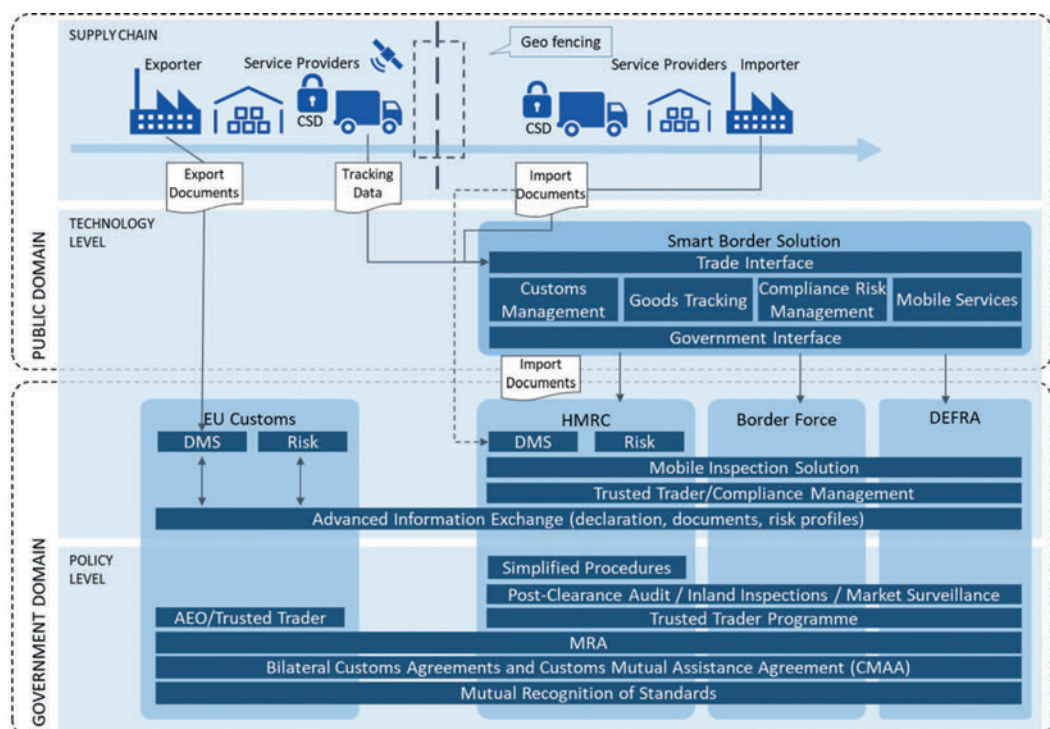
If freight vehicles entering the ports of Dover, Eurotunnel and Holyhead become subject to customs or transit checks, there will be significant congestion in and around the ports.

The majority of freight vehicles flowing through these ports today are not subject to customs processes and do not therefore pause for customs checks. Existing port infrastructure and processes will not be able to cope with processing customs checks without causing serious traffic congestion and delays in the supply chain. Smart Borders are being developed and trialled by a number of border agencies around the world, with the aim of automating the customs clearance process for freight vehicles to reduce customs processing times at border crossing points. 'Smart Borders' is also the dedicated theme for 2019, announced by WCO.

#### 4. An overview of the Smart Borders concept

The core functionality of the Smart Border concept is to provide pre-arrival notification of freight vehicles to their port, or border, of destination. Using this technology, border officers are able to pre-clear vehicles based on risk assessments of information concerning the vehicle, goods and other relevant criteria. These border officers do not have to be stationed at the border; information can be relayed to operational centres managing multiple border scenarios. Vehicles which have pre-registered and have satisfactorily provided all required customs documentation for the goods they are carrying may be automatically cleared for entry or exit. In certain ports of entry, digital signage can be used to direct such vehicles seamlessly through the port. Alternatively, the system, or an operator, may flag the vehicle for inspection on arrival at a port. In the case of the NI-IE border, any such inspections would have to be directed to a pre-determined inspection site, or acted upon by mobile inspection units. An overview of the process and associated systems associated with a Smart Border is illustrated in the diagram below:

Figure 1:  
Smart  
Border  
Conceptual  
Diagram



The Smart Border concept also lays the foundation for a future digital UK border, enabling services to be developed which will provide additional benefits to both private sector organisations and government border agencies.

The key attributes of the Smart Border concept are:

- Capture of customs documents and licences associated with the goods to be transported in the vehicle. Where possible this will be automated, but simpler manual and web-based formats can also be used if traders do not have sufficiently advanced systems;
- Capture of vehicle and driver details;
- Tracking of vehicle journey, port of entry/exit, either through a smartphone app or through integration with existing vehicle logistics tracking systems;
- Linking customs information with vehicle tracking to provide digital traceability of goods from dispatch to destination;
- Geo-fencing techniques to automatically record when a consignment goes through a pre-defined port or border;
- Automated interfacing with government systems to submit customs and other regulatory documents associated with border crossings;
- Storage of data for processing by advanced analytics tools to identify patterns associated with risk and recommend inspections or interventions; and
- Portals to provide access to information for government agencies to monitor and audit goods and vehicle journeys.

## **5. Implementing the Smart Border Concept**

The Smart Border concept is one of the more complex technology ambitions of an Alternative Arrangements model. Its development strategy needs to be carefully designed to ensure a working product is created and adopted by traders and government border agencies. The following points summarise a suitable strategy to achieve this outcome:

- Limit the scope of the first version of the platform to a small number of large traders from NI and IE who transport large volumes of goods through border crossing points;
- Begin with a simple minimum functionality scope to tracking vehicles and automating the registration of Transit documents at the point of border crossing. Simple technology components, such as driver mobile phones in the first phases, can be used to provide tracking and border crossing processing;
- Trial this initial version for 3 to 6 months with a limited number of vehicles from two or three organisations, in collaboration with Border Force and other border agencies such as HMRC and DEFRA;

- Continue to develop this initial prototype during the trial period, incorporating lessons from both industry and border agencies;
- Finalise a first release, ensuring that security, reliability and compliance criteria are met;
- Deploy to all large organisations trading into and out of NI, monitoring adoption and performance of the system; and
- Continue to develop additional features, providing releases of new versions at regular intervals.

Examples of additional functionalities include triggering VAT and Excise liabilities at border crossings, and integrating other features such as smart vehicle locks.

## **6. Digital Trusted Trader and Compliance Management**

Trusted Trader (TT) and AEO programmes traditionally involve significant amounts of manual and paper-based workloads for certification and compliance monitoring of participants. This applies to the full life cycle of AEO/TT, from application, validation, certification to compliance monitoring and management, both from the trader and government perspectives.

In order to acquire and maintain their status as AEO/TT, traders need to ensure that they have maintained full compliance with the eligibility criteria, such as financial viability, customs compliance, competence, record keeping and security. When customs officers perform validations of these criteria, a large amount of information, data and documentation is required, along with physical checks, to verify the traders ongoing TT or AEO status. However, the comprehensive adoption of a tiered AEO/TT scheme proposed in the Alternative Arrangements, catering for organisations of varying sizes, will require new simplified online systems. These systems will need to provide applications which capture and maintain required information to support certification, as well as record the results of any audit checks. The application will also need to cater for the new multi-tier AEO/TT strategy, requesting less information for small organisations compared to large higher tiered traders.

Digitising the AEO/TT schemes will enable automation of much of the administration of these schemes, reducing demand on border agency personnel time. This will also provide significantly improved capabilities for border agencies to monitor compliance and manage the audits of registered organisations.

Analytics tools will also check the data to automatically identify deviations from the usual trading, import and export patterns of each individual AEO/TT, providing customs with increased efficiency to monitor compliance and perform necessary controls.

## 7. Mobile Inspections

Many controlled goods, for example livestock and food for human consumption, including fresh meat, meat produce and milk, are subject to veterinary checks at Border Inspection Points (BIPs) before entering a customs region. General goods may be subject to document checks or physical checks for conformity to standards on entering a customs region, at the discretion of customs.

The Alternative Arrangements model considers the option of providing new inspection posts for both controlled and general goods away from the border, in addition to existing BIPs currently based in sea and air ports, to control entry into and out of the Island of Ireland. However, any such new inspection posts in the vicinity of the NI-IE land border may be interpreted as new physical border infrastructure and therefore not be readily accepted by local communities. Therefore, the concept of 'mobile inspections' has been suggested for consideration.

Mobile inspections may be a combination of mobile inspection teams in the vicinity of the NI-IE land border, and more sophisticated mobile vehicle veterinary inspection vehicles. Mobile inspection units can travel to traders' manufacturing or distribution sites, or even intervene while goods are in transit. Additionally, specialised mobile veterinary inspection units, equipped with relevant testing instruments to perform required tests on livestock, food and SPS goods, could support existing port-based inspection points if required by performing local inspections.

Specialised mobile veterinary inspection vehicles are in use around the world to provide a range of treatments to livestock in remote farms and locations. Equipped with medical testing equipment, including X-rays, and supporting specialist software, such vehicles make ideal candidates for development into mobile veterinary inspection vehicles.

Mobile workforce management technology will support mobile inspection units to undertake planned or random inspections away from the border and existing Border Inspection Posts. Border officers will have access to necessary information on the nature of goods, customs documentation and any other relevant information which can be provided by existing, and new, risk systems.

The mobile workforce solution will enable customs and other agencies to plan, schedule, dispatch inspection units to target vehicles or organisations. Inspection results will be recorded on mobile devices, which are integrated into the AEO/TT system to ensure that trader profiles are accurately updated with findings.



The use of mobile cameras and video functionality can also support the ability for field operatives to communicate with more senior qualified staff, such as vets and trade specialists, for advice and guidance in more complex situations.

A mobile solution will include the following functions:

- Workforce Administration – defining and setting up the mobile task forces, their geographic coverage and work schedule;
- Assignment Management – the tools for planning the inspections, dispatching assignments to the appropriate team and for handling the changes that may occur;
- Information Access – mobile teams need real-time information about traders, cargo and conveyances, together with information about the risks related to particular consignments;
- Reporting – recording the outcome of the inspection and checks carried out. This includes the ability to take photos and videos along with information on date, time, location and other relevant information; and
- Performance Measurement and KPIs – real-time monitoring, measurement of performance and KPIs for Service Level Agreements (SLA) monitoring.

## 8. Risk Management and Analytics

Risk management and data analytics enable customs and other border agencies to perform risk management to identify and target high-risk shipments and traders. Many customs administrations spend limited resources on inspections carried out at the border. However, the nature of border management is changing, with modern strategies seeking to use the border as a fiscal point while switching inspections to a more efficient market surveillance approach. In order to support such a strategy, borders need to adopt smart digital solutions and border agencies need to focus on the gathering of data to support robust market surveillance capabilities.

Intelligence based enforcement requires the adoption of technology to provide a number of key capabilities, including: advanced information exchange between border agencies and enforcement departments; international collaboration to share data and risk assessments with neighbouring regions; advanced risk management and targeting capabilities using pattern recognition and artificial intelligence (AI).

The internet has led to an explosion in the amount of data which can also be accessed to strengthen risk management capabilities. The term “big data” has been coined to describe the management of huge amounts of structured and unstructured data, and the use of advanced data analytics to analyse and understand this type of data.

Data analytics employs advanced mathematical and statistical analysis, together with the use of sophisticated algorithms, to discover hidden patterns in data.

There are three basic categories of analytics:

- Diagnostic analytics – the ability to analyse and understand what actually happened and why. A real-world example would be to analyse why seizures in consignments went up in January but suddenly dropped in March.
- Predictive analytics – analytics for predicting what will happen. For example, to answer which consignments are high-risk and which are low-risk.
- Prescriptive analytics – used to determine what action would be the best when a particular situation arises or to avoid it arising in the first place. As an example, where and when we should focus our resources and what types of controls would be most efficient.

Data analytics can be used for advanced risk management by analysing big data to uncover patterns in the flows of goods and travellers. Even organised crime groups have started to use these techniques to enhance their methods of avoiding detection. Analytics solutions need to have a number of important capabilities:

- Data access, filtering and manipulation: access to and the integration of data from disparate sources and types, and the ability to transform and prepare data for modelling.
- Data exploration and visualisation: Visually interact with and explore data – very important from a usability perspective.
- Predictive analytics: Advanced analytics platforms facilitate the synthesis of models that predict future behaviour.
- Forecasting: Prediction using time series or econometric methods to predict the value of a variable at a specified time — for example, sales in the next quarter or the number of calls that a call centre will receive next week.
- Optimisation: Prescriptive analytics that use a mathematical algorithm to choose the “best” alternative(s) that meet specified objectives and constraints.
- Validation testing: An evaluation of accuracy and fit of analytics for the purpose of outcomes.
- Delivery, integration and deployment: Ease and speed with which the user can move models from a development environment to a deployment environment.
- Performance and scalability: Time required loading data, to create and validate models and deploy them in a business.

## 9. Global Examples of Smart Border technology

The technologies discussed in this Annex are already in use by border agencies around the world to enhance and increase the efficiency and management of borders.

There are examples of best practices from which lessons can be learned to help guide designs and implementations for a UK Smart Border platform.

A number of examples of these best practices are highlighted in the sections below.

### Gateway Sweden

Gateway Sweden is an innovative no-stop solution for the clearance of goods in freight vehicles at the border. The project focuses on creating simplified land border crossing for trusted traders between Sweden and Norway. It enables the trader to pass the border without stopping, given that there is no risk identified.

The solution uses positioning technologies, GSM positioning in the beginning and later GPS technology and geo-fencing principles to identify when the truck is passing the border.

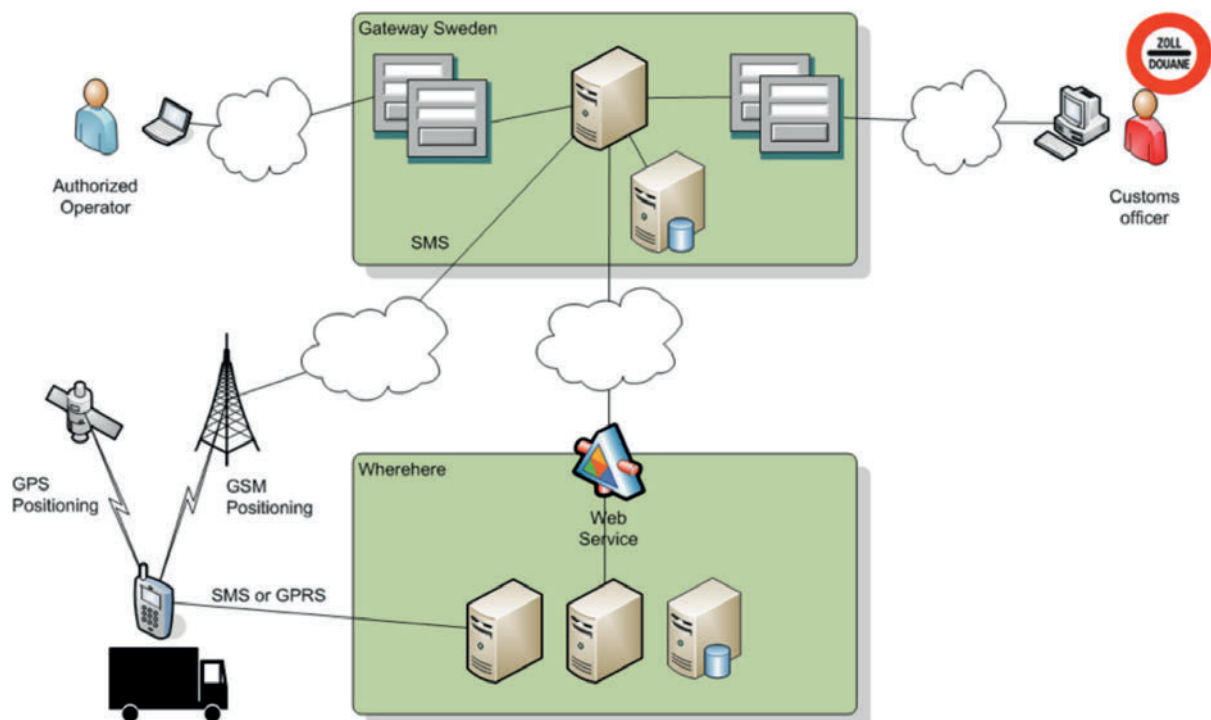


Figure 2: Gateway Sweden

The basic process is as follows:

1. The Gateway app contains a number of web forms for the accredited operators (AEO) where they record the details of the journey and the driver's mobile phone number.
2. An SMS is sent to the driver with an ID that he / she presents as a reference in any verification.
3. Gateway then adds a positioning schedule on the mobile phone. The schedule indicates that Gateway will show the vehicle's position two hours before the expected crossing of the border and then more and more frequently, down to every 15 minutes until three hours after the expected passage.
4. If there was no crossing of the border made within the time interval, the case is marked as "pending" in the system.
5. The customs official may, through web interface, view cases registered, cleared and non-cleared (pending).
6. Positioning can be done either by GPS or GSM network depending on the devices used.

Benefits from the relatively simple and low-cost solution were significant:

- No papers, stamping or other sources of errors for import or export
- Increased understanding for common processes
- 20 minutes shorter clearance time for each consignment – 2000 logistics hours saved per year
- Less administrative burden worth about £45,000 yearly
- Logistical measures such as predictability and speed improved
- One operator was able to consolidate into one single central warehouse instead of two – savings of up to £750,000 per year were achieved thanks to the solution

### **Trusted Trade Lane**

The ultimate model of a simplified and secure border crossing is the "Trusted Trade Lane" or Smart and Secure Trade Lanes (SSTL) concept. This comprises a full or partially authorised supply chain, in which all or key involved participants are Trusted Traders, or authorised participants of similar mutually recognised programmes. Its function builds upon trust and provides maximum facilitation, while government border agencies gain increased knowledge and insights about the supply chain and the involved actors. The WCO SAFE Framework of Standards (FoS) facilitates 'Customs-to-Customs' data exchange, risk management cooperation, mutual recognition of customs controls and trade partnership programmes. The concept of the Trusted Trade Lane builds on this principle.

Under the Trusted Trade Lane programme, most of the extensive controls are handled before or after the single shipment. During the actual border crossing, only a very limited set of data is exchanged and almost no physical controls are conducted. If risk indicators

are flagged for a Trusted Trade Lane shipment, controlled inspections carry out the necessary checks.

A pre-requisite for the Trusted Trade Lane (TTL) is that the TTL is established between like-minded countries with high standards and that all the traders and service providers in the TTL are authorised as Trusted Traders.

Through the Trusted Trader/AEO programmes, with extensive up-front scrutinising and pre-auditing of the participants in the supply chain, governments can ensure that the Trusted Traders will be compliant and actively engaged in the activities required to fulfil the government’s objectives. By working with Trusted Traders in a TTL, it is possible to ensure that goods that leave an exporter are declared in the correct way, are not under any form of non-noticed restrictions and are not tampered with throughout the supply chain, and that correct import duties will be paid.

The TTL is supported by a Mutual Recognition Agreement (MRA) where a Trusted Trader would be recognised as trusted in both countries.

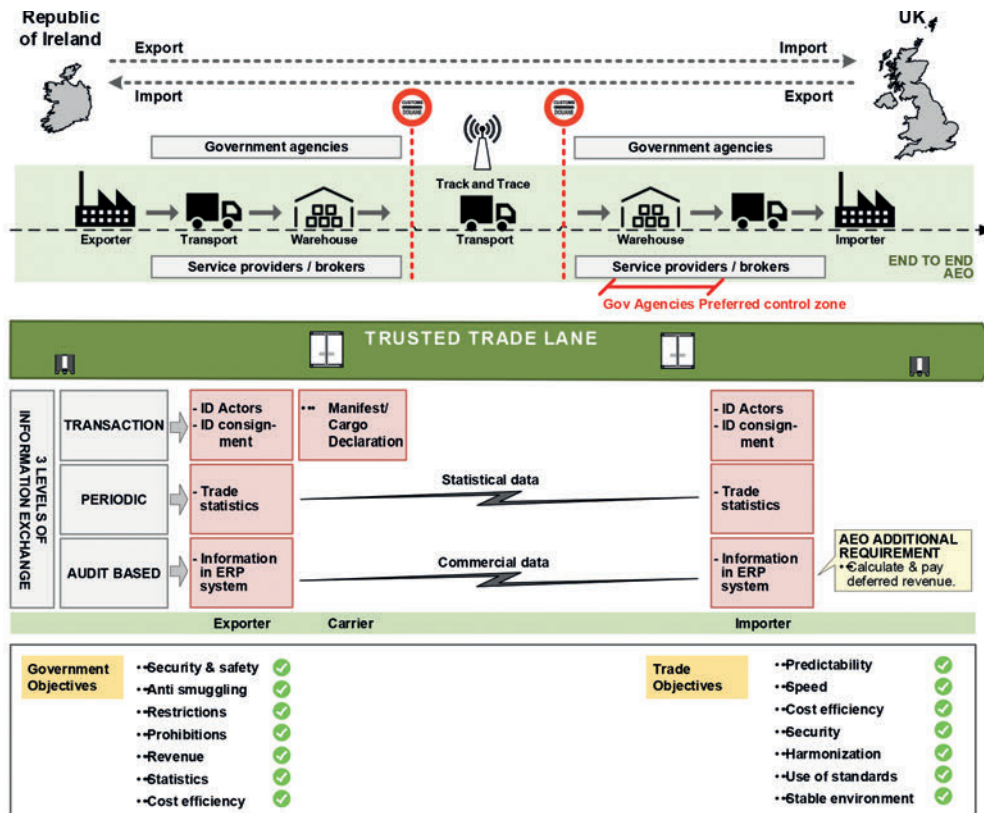


Figure 3: Trusted Trade Lane

For the Trusted Trade Lane, there are three levels of information exchange: transaction-based information, periodic information and audit-based information.

### **Transaction-based information**

The transaction-based information consists of two parts: the Simplified Declaration, which is more or less as is used today; and ID information. ID information is a set of data, firstly, to identify the different participants in the supply chain and their Trusted Trader status and, secondly, to identify the shipment (via a unique consignment reference number) and vehicle/trailer, to be able to establish a traceable audit trail throughout the supply chain and in the trader's business systems. This is combined with tracking information.

### **Periodic information**

The periodic information is more or less equivalent to trade statistics. This information could be collected from the source (the exporter), and submitted to both the exporting and the importing customs administration. This could be done either customs-to-customs, or via the importer, both scenarios are possible. The reporting periods should be adjusted to meet the reporting thresholds for the authorities involved.

### **Audit-based information**

The third level of information is the commercial information between the exporter and the importer, including details of the transaction. This data will be used by the importing Trusted Trader as a basis for calculating import duties and, within an agreed period, for payment of duties to customs in the importing country. The commercial data must have a unique consignment reference number that is the same as in the information included in the simplified declaration. The Trusted Importer must be able to ensure a full audit trail of consignments.

Potentially, the trader would be able to use self-assessment to calculate the customs duties and pay them within the agreed timeframe.

Where customs would identify any risks within the trade lane, further measures such as electronic seals could be used. The consignment could be sealed at departure, controlled and traced throughout the supply chain, and opened at arrival.

Various projects and customs administrations around the world have been developing and operating Trusted and Secure Trade Lanes concepts.

### **EU/China Smart and Secure Trade Lane (SSTL)**

The Smart and Secure Trade Lanes (SSTL) between the EU and China started as a pilot in 2006 with customs-to-customs data exchange involving sea containers operating in Rotterdam, Felixstowe and Shenzhen. After the successful pilot phase, the SSTL was expanded to more countries (including Hong Kong) and is now covering both seaports and airports in Europe and China.

Customs at exit performs risk analysis on the export declaration using joint risk rules (JRR) and submits information about the consignment along with any control results to customs at entry. Based on WCO Data Model and SAFE Framework of Standards, 23 data elements about the consignment are exchanged, including the unique consignment reference (UCR). Container security devices (CSD) such as e-Seals, SMART boxes or security bolt seals, are used extensively.

WCO CENcomm, a web-based application provided by WCO, is used for data exchange between customs authorities. The tool ensures secure communication between the parties and can be used by WCO members free of charge.

According to EU legislation regarding data protection, confidential data cannot be transferred outside EU without international agreements and adequate data protection. However, by having economic operators involved in the SSTL to give consent, data submitted to EU customs may be transferred at entry; the regulation can be derogated.

### **Australia – New Zealand Secure Trade Lane**

The Australian-New Zealand electronic Secure Trade Lane (STL) project is part of the 'Fast Trade' agreement. The objective with the STL is to enable less administration, faster clearance and more predictability in the supply chain for Trusted Traders. The Australian Government will benefit from earlier access to trade information and greater visibility of trusted trade, which will allow for focusing enforcement efforts on higher-risk cargo.

The STL is replicating the EU/China SSTL concept of AEO/TT, MRA, information sharing and joint risk rules. The project is also further exploring technologies such as Blockchain and advance analytics.

### **French Smart Border Solution**

French Customs have developed a 'Smart Border' system based on the anticipation and dematerialisation of customs formalities. This technological solution is based on early completion of customs procedures for both imports and exports, to maintain smooth

circulation of goods. It will be applicable after Brexit at all points of entry/exit to/from the Calais region and more broadly from Channel–North Sea ports.

Key features of the French border solution:

- Customs declarations must be identified with a barcode in the driver’s possession. The barcode establishes a link between the number plates of the HGV and its customs or transit declaration(s).
- All these declarations cover the contents of a HGV identified via its number plate upon arrival at the customs facility (port or Eurotunnel terminal).
- Electronic registration of the HGV number plate and customs forms (pairing) enables the HGV to be tracked as it goes through the facility, especially when it crosses the border.
- After the border has been crossed, the vehicle is not permitted to turn back.
- Upon arriving in France, the haulier will automatically be directed to the green or orange lane depending on the declaration status of the imported goods.
- Conversely, for exports, a HGV without customs formalities cannot leave EU territory.

## Annex 6: Timescales

Short-term (6 - 9 months)	Near Medium-term (12 – 15 months)	Medium-term (18 – 24 months)	Long Term (24 – 36 months)
<ul style="list-style-type: none"> <li>• Mutual Recognition Agreements for some Trusted Traders</li> <li>• Derogations from EU:               <ul style="list-style-type: none"> <li>◦ Bar code for Transit</li> <li>◦ Designated routes for SPS</li> <li>◦ Notification time period</li> <li>◦ Track and Trace for Trusted Trader</li> <li>◦ Mobile vet checks</li> </ul> </li> <li>• Prototype testing for geo-fencing replacement of Transit bar code scan</li> <li>• Testing enhanced traceability solutions for SPS goods</li> </ul>	<ul style="list-style-type: none"> <li>• Multi-tier Trusted Trader programme</li> <li>• Deployment of geo-fencing replacement for Transit bar code</li> <li>• Deployment of enhanced SPS traceability platform for livestock and associated products</li> <li>• Trials of Drive Through Border platform</li> <li>• Development of operational platforms for government border agencies</li> <li>• Development of enhanced market intelligence capabilities</li> <li>• Testing mobile veterinary checks system</li> </ul>	<ul style="list-style-type: none"> <li>• Commence deployment of Drive Through Border platform</li> <li>• Extension of Drive Through Border platform to Dover and Holyhead ports</li> <li>• Extend traceability platform to all SPS products</li> <li>• Establish initial Single Trade Window for freight</li> <li>• Advanced risk assessment</li> </ul>	<ul style="list-style-type: none"> <li>• Additional automation of customs processes;               <ul style="list-style-type: none"> <li>◦ Auto-generation of declarations</li> <li>◦ Self-assessment for trusted traders</li> </ul> </li> <li>• Smart locks for Livestock / SPS goods vehicles</li> <li>• Automated livestock transport monitoring via <a href="#">RfID</a> and IoT technology</li> </ul>



## **Annex 7: Response to Interim Report**

The Commission received a range of submissions and responses to the consultation on our Interim Report, which closed on 8th July. We would like to thank everyone who shared their views, which we have studied carefully within the time available. There were several themes which stood out.

First, there was widespread support for putting protection of the Belfast-Good Friday Agreement at the heart of Alternative Arrangements for the Irish Border and preserving an open border.

Secondly, many respondents welcomed the seriousness with which the Commission approached stakeholder engagement and the time and effort invested in meeting people across the island of Ireland.

Third, there was widespread concern about the potential burden on business, leading to rising costs and falling competitiveness, and a desire to minimise disruption as much as possible.

Illegal activity was another common theme, with many stakeholders raising concerns around VAT fraud, smuggling and potential smuggling with respect to anti-circumvention for trade remedies.

Other themes included concerns about Transit and the cost of guarantees, questions about the feasibility of an Irish Isles – British Isles SPS zone and questions raised on the precise mechanics of the creation of Enhanced Economic Zones in places like Derry (Londonderry) / Donegal.

We acknowledge the issues raised and have addressed them to the best of our ability in the report. How these issues are addressed in practice will be down to the UK government, the EU and others.

Many of the comments suggested additional work which needs to be done. We agree and recommend that further work is undertaken, not least, to determine the costs of implementing and administering Alternative Arrangements, to develop case studies of how the proposals will work together and to ensure Transit functions well for small traders.

Our ambition was to start a conversation about how to resolve Brexit, within the various constraints, and avoid the UK leaving without a deal. We hope we have at least accomplished that much. Thank you again to those who responded to the Interim Report.

## **Thank you again to those who responded to the Interim Report**

Anthony Sutcliffe  
British Retail Consortium  
British Irish Chamber of Commerce  
CBI  
Centre for Cross Border Studies, Queens University  
Federation of Small Business NI  
Freight Transport Association  
Letterkenny Chamber  
Manufacturing NI  
Manufacturing Trade Remedies Alliance  
Metanet Technology  
Mineral Products Association NI  
Myles Power  
NI Food and Drink Association  
NI Retail Consortium  
Northern Ireland Civil Service  
Peter Forrest  
Ulster Farmers Union

## PROSPERITY UK ALTERNATIVE ARRANGEMENTS COMMISSION

### **About Prosperity UK**

Prosperity UK was founded in 2017 to unite individuals across the political spectrum in identifying a positive and prosperous vision for our country as we leave the European Union. Prosperity UK is a politically independent, not-for-profit platform bringing together business leaders, academics and policy-makers to seek solutions to Brexit issues and to look constructively at a future outside the EU and how the UK can build an open, dynamic and balanced economy which maximises prosperity for all.

### **Commissioners**

The Commission, co-chaired by Rt Hon Nicky Morgan MP and Rt Hon Greg Hands MP, includes representatives from across the political spectrum.

### **Technical Panel**

The Commission has engaged a Technical Panel comprising border and customs experts, practitioners and lawyers with detailed knowledge of Ireland as well as the EU, UK and international trade regulations in order to create draft processes and procedures to fulfil these goals. In addition, the Commission will engage with established technology providers in order to develop a comprehensive set of solutions and timelines for review.

## 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	Warrenpoint Port
Parliament	Wells Cargo Logistics
NSF International	Wisetech Global
NuPrint	World Customs Organisation
O'Neills International Sportswear	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, including those who asked not to be named in this Report. A summary of these contributions and a list of the individuals, businesses and organisations willing to be publicised can be found in Annex 7 on pages 211-212.

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





An aerial photograph of a mountain range covered in snow, with a purple-to-blue gradient overlay. The text is positioned in the upper left corner within a semi-transparent purple box. The background features a series of white dashed lines forming a semi-circular arc on the right side.

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

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

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