ALTERNATIVE ARRANGEMENTS FOR THE IRISH BORDER

INTERIM REPORT

24th June 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.

The aim of Prosperity UK is to generate ideas and solutions to inspire policy makers to make the best decisions for our country. By far the greatest obstacle to leaving the EU have been concerns surrounding the Irish Border and its future post Brexit. This Commission is a comprehensive attempt to remedy this situation by identifying potential “Alternative Arrangements” to ensure the absence of a physical frontier and to ensure that the Belfast Good Friday Agreement is upheld.

At the beginning of 2019, Prosperity UK began developing a border framework to address the highly sensitive nature of the UK-Irish border. We decided that this study must be objective, expert-led and involve a wide-ranging process of consultation with individuals and organisations in Ireland and Northern Ireland. This engagement is ongoing and we welcome the opportunity to hear your feedback so that we can refine our recommendations.

Our Commission intentionally does not address the UK’s future relationship with the EU or other nations, although it does seek to ensure that the UK can 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 three years.

The interim report represents the result of our work so far. We are 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 and trade experts who have contributed their expertise, time and networks. I hope that you will agree that it is mindful of the need to protect the Belfast Good Friday Agreement, rich in detail and rooted in pragmatism. It is now up to politicians and their advisers in the UK, Ireland and the EU to develop these recommendations and forge a consensus. In the coming weeks Greg, Nicky and members of the Commission will be visiting Ireland, Northern Ireland and major EU capitals in order to present our proposals and listen to feedback. Following these visits and further consultation, Prosperity UK will publish a Final Report including a draft Alternative Arrangements Protocol which will explain what needs to happen to render the backstop obsolete.

Our hope is that this process 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, allows politicians across Europe to move on to other pressing challenges, not least restoring business confidence.

Anthony Clake
Board Member, Prosperity UK
As two 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, we hope that this Interim Report 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.

These interim recommendations also reflect the Commission’s commitment to find solutions compatible with any of the potential Brexit outcomes, including working within the boundaries of the Withdrawal Agreement and related instruments. Our 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 interim Report 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. It is the Commission’s intention to draft a Protocol which could be submitted for consideration by the EU, to be added to the Withdrawal Agreement.

The Brady amendment to the Withdrawal Agreement which sought to replace the Backstop with Alternative Arrangements, passed in 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.”

We urge colleagues from all sides of Parliament to read our interim recommendations carefully, and in a spirit of pragmatism. We encourage them to engage with our ongoing work and share their feedback with us before we publish our final report in July. Despite the volatility in British politics, we believe there is now a clear route open to a negotiated Brexit, which is firmly in the interests of all sides.

Rt Hon Nicky Morgan MP                                      Rt Hon Greg Hands MP
Co-Chairs, Prosperity UK Alternative Arrangements Commission
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<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>AEO</td>
<td>Authorised Economic Operator</td>
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<td>AFTS</td>
<td>Advanced Freight Targeting System</td>
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<td>ANZCERTA</td>
<td>Australian – New Zealand Closer Economic Relations Trade Agreement</td>
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<td>BA/GFA</td>
<td>Belfast/Good Friday Agreement</td>
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<td>BIPs</td>
<td>Border Inspection Posts</td>
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<td>CBSA</td>
<td>Canada Border Service Agency</td>
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<td>CBVA</td>
<td>Common Bio Veterinary Area</td>
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<td>CDS</td>
<td>Customs Declaration Service</td>
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<td>CFSP</td>
<td>Customs Freight Simplified Procedure</td>
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<td>CHIEF</td>
<td>Customs Handling of Import and Export Freight</td>
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<td>CSA</td>
<td>Customs Self Assessment</td>
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<td>CTA</td>
<td>Common Travel Area</td>
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<td>CTC</td>
<td>Common Transit Convention</td>
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<td>CU</td>
<td>Customs Union</td>
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<td>ECFA</td>
<td>Economic Cooperation Framework Agreement</td>
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<td>EEA</td>
<td>European Economic Area</td>
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<td>EEZ</td>
<td>Enhanced Economic Zone</td>
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<td>EFTA</td>
<td>European Free Trade Area</td>
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<td>EIDE</td>
<td>Entry Into the Declarant Records</td>
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<td>EORI</td>
<td>Economic Operator Registration and Information Number</td>
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<td>EU</td>
<td>European Union</td>
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<td>IE</td>
<td>Ireland</td>
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<td>ISA</td>
<td>Importers Self Assessment</td>
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<td>ISR</td>
<td>Inward Storage Relief</td>
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<td>ITP/RA</td>
<td>International Trade Policy / Regulatory Policy</td>
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<td>FEP</td>
<td>Future Economic Partnership</td>
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<td>GB</td>
<td>Great Britain</td>
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<td>GMO</td>
<td>Genetically Modified Organism</td>
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<td>GPS</td>
<td>Global Positioning System</td>
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<td>HMRC</td>
<td>Her Majesty Revenue and Customs</td>
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<td>KPI</td>
<td>Key Performance Indicator</td>
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<td>LSP</td>
<td>Logistic Service Provider</td>
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<td>MRA</td>
<td>Mutual Recognition Agreement</td>
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<td>NAFTA</td>
<td>North American Free Trade Agreement</td>
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<td>NCTS</td>
<td>New Computerised Transit System</td>
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<td>NI</td>
<td>Northern Ireland</td>
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<td>NSW</td>
<td>National Single Window</td>
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<tr>
<td>REACH</td>
<td>Registration, Evaluation, Authorisation and Restriction of Chemicals</td>
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<td>RFID</td>
<td>Radio Frequency Identification</td>
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<td>RoRo</td>
<td>Roll-on Roll-off</td>
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<td>SAFE</td>
<td>Standard to Secure and Facilitate Global Trade</td>
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<td>SEU</td>
<td>Single Epidemiological Unit</td>
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<td>SM</td>
<td>Single Market</td>
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<td>SMEs</td>
<td>Small and Medium Sized Enterprises</td>
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<td>SPS</td>
<td>Sanitary and Phytosanitary</td>
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<td>TBT</td>
<td>Technical Barriers to Trade</td>
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<td>TRA</td>
<td>Trade Remedy Authority</td>
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<td>TRACES</td>
<td>Trade Control and Export System</td>
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<td>TSP</td>
<td>Transitional Simplified Procedure</td>
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<td>TTP</td>
<td>Trusted Trader Programme</td>
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<td>UCC</td>
<td>Union Customs Code</td>
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<td>VAT</td>
<td>Value Added Tax</td>
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<td>WA</td>
<td>Withdrawal Agreement</td>
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<td>WCO</td>
<td>World Customs Organisation</td>
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<td>WTO</td>
<td>World Trade Organisation</td>
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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 procedures and 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. Special 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. An Alternative Arrangements Protocol 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

Key Findings

1. Any proposed alternative arrangements must satisfy some specific constraints, 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; and
   - the need to ensure that East-West trade flows as easily as possible
   - the need to ensure that all proposals are achievable in 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 procedures 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 are a series of potential arrangements they could take advantage of.

4. Economics of the Border. While both dimensions of trade, East-West and North-South are important, the trade across the border is much less in 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 around 6,000, 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 seventy per cent) of trade into the EU-26 flows across the UK land-bridge. The vast majority of this trade ultimately enters the continent via the Dover-Calais routes (either RoRo or via the Eurotunnel). The Irish government therefore has important equities in making sure the land bridge works (Dover-Calais).
5. Protection of the Belfast/Good Friday Agreement and the Peace Process. 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 it 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 important to understand 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 in 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 and these will be needed through a UK-IE agreement, especially since there are still perceptions in border communities and beyond that Brexit will mean the end of free movement across IE and the 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 rectified. Continued security cooperation will 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 both sides will not be found by trying to transplant these other borders to NI/IE, but rather about learning specific lessons from these borders which can be applied. 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 operate there.

9. Common all-island regimes that exist now should be continued and where possible built upon. Special arrangements such as special economic zones, 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 (similar to the Australia-NZ Food Safety Area), which would allow IE to break the common area if the UK diverged beyond the level of EU tolerance, and also allowed the people of NI to adopt a common SPS area within the island of Ireland, if they chose to do so. In this case the decision to put inspections into the harbours and ports of the Irish Sea would be a decision of the Northern Irish people, but would only 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 the WTO National Security Exemption could also support larger Special 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 joint activity by both councils on either side of the border, such that for economic purposes only, other governments could interface with a single entity focused on developing economic growth for the local region as a whole.

11. As the first level of a cascading 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 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 exists now and is heavily used on the Swiss-EU borders and the Sweden-Norway border. 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 self-assessment (Entry into Declarants’ Records (“EIDR”))).
13. The most challenging issue is the area of regulation of agri-food where SPS measures and the requirements for veterinary inspections 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 verification where possible.

14. For other technical actions related to standards, and Technical Barriers to Trade ("TBT") procedures, we advocate greater reliance on the private sector to conduct product conformity assessment and increased use of in market surveillance, together with stronger penalties for non-conformity. In principle, the EU should want to see increased market surveillance in IE and our soundings in IE suggest that this will not be controversial there.

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 is small traders. We therefore recommend a general exemption for traders who are below the VAT threshold. For traders above the VAT threshold, some verifications 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 procedures 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 customs intervention 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 marked 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 in communication is at variance with the spirit of the BA/GFA and cross-border coordination and cooperation.

18. We believe that the recommendations contained within this report can be achieved, provided there is goodwill on all sides, quite quickly. Some recommendations such as the transit piece would be deliverable in months, as they are being used now – the time delay being only the time taken to negotiate the minor derogations for Island of Ireland trade. Some recommendations, such as the trusted trader programme recommendations have been achieved in other countries from much worse situations than the UK is in to an advanced state of the art programme in 2-3 years. We believe the Trusted Trader recommendations in this 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. Technology plays a role in ensuring that the existing technical solutions and administrative techniques work well, and we recommend short, medium and long term technological solutions. At the same time, the role of technology in border management around the world should not be understated. 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

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 the parliament by a majority is the Brady amendment, which passed the Withdrawal Agreement, provided alternative arrangements replace the Irish backstop. Our work builds on this, and also 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. The Government’s position has been that the language of Paragraph 49 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 refers to “no physical infrastructure at the border and no related checks and controls”. As well as avoiding a hard border Paragraph 49 of the Joint Report also undertakes “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 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

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1 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.
both actively stated that the backstop is merely an insurance policy and not intended to be used, 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 (NI) 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 and we protect 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, and that 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 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 the local identity must be preserved. Perceptions often become reality and there will need to be significant investments by both the UK and Irish governments to ensure that the underpinnings of this identity such as the Common Travel Area are preserved, and understood to be preserved. 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.

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3 Details of missions and meetings conducted in order to prepare this Report are provided in Annex 1.
Second, given both the importance and high volume of trade between NI and GB, there must be no disruption of trade between NI and GB, acknowledging that some all-island regimes such as the Single Epidemiological Unit (SEU) do exist, and so there are some customs procedures at the harbours of the Irish sea now, livestock inspections at the port of Larne being an obvious example.

Third, there cannot be physical infrastructure to apply 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 exception. Second, there are flexibilities in the WTO’s general defences to protect human, animal or plant life or health. Third, there are protections for frontier trade that can be relied upon. The UK and EU could seek a waiver under WTO rules, or they could simply assume that WTO exemptions give them a full defence and seek to rely upon it in the event that any WTO member brings a case. In any event, we consider it extremely unlikely that any WTO member would challenge an attempt by the UK, Irish and European governments to preserve peace on the Island of Ireland.

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 Ireland 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 follows 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, in Chapter 6 we look 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 degrees of level 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 through 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 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 that 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 and East-West and the local community economies.

(a) NI – Historical Economic Context
In the nineteenth and twentieth century 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 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 population in NI compared with GB meant that the sedately growing economy of the UK was insufficient to employ all of a rapidly

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expanding labour force, especially in areas with a predominantly Catholic population. The rapid growth 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 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 and 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 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 is similar to much of GB outside the South East. This gap is compensated for in NI by 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)

<table>
<thead>
<tr>
<th>Destination of Sales (in £m)</th>
<th>Total Sales (%)</th>
<th>Goods (%)</th>
<th>Services (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Turnover</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>NI Sales</td>
<td>67.9</td>
<td>65.8</td>
<td>72.4</td>
</tr>
<tr>
<td>GB Sales</td>
<td>17.0</td>
<td>16.6</td>
<td>17.9</td>
</tr>
<tr>
<td>IE Sales</td>
<td>5.8</td>
<td>6.5</td>
<td>4.3</td>
</tr>
<tr>
<td>Rest of EU Sales</td>
<td>2.9</td>
<td>3.5</td>
<td>1.7</td>
</tr>
<tr>
<td>RoW Sales</td>
<td>6.4</td>
<td>7.6</td>
<td>3.8</td>
</tr>
</tbody>
</table>

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 £28 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 (£900 million). Around half of these food exports go 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. Some of this will be wholesalers in NI distributing goods to IE and other non-UK export destinations, but much of it is likely to take the form of cross-border shopping plus sales to non-UK tourists.
Table 2: Exports of Goods and Services from NI by Industry Sector (2017) (£m)

<table>
<thead>
<tr>
<th>Sector</th>
<th>Total Exports</th>
<th>Export of Goods</th>
<th>Export of Services</th>
<th>% of total output exported</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, Forestry and Fishing</td>
<td>28</td>
<td>28</td>
<td>0</td>
<td>18.8</td>
</tr>
<tr>
<td>Mining and Quarrying</td>
<td>34</td>
<td>27</td>
<td>7</td>
<td>9.1</td>
</tr>
<tr>
<td>Industrial Manufacturing</td>
<td>6,032</td>
<td>5,803</td>
<td>229</td>
<td>38.7</td>
</tr>
<tr>
<td>Electricity, Gas Steam and Air Conditioning Supply</td>
<td>25</td>
<td>15</td>
<td>10</td>
<td>1.2</td>
</tr>
<tr>
<td>Water Supply, Sewerage, Waste Management and Remediation Activities</td>
<td>127</td>
<td>123</td>
<td>4</td>
<td>14.2</td>
</tr>
<tr>
<td>Construction</td>
<td>317</td>
<td>69</td>
<td>248</td>
<td>4.2</td>
</tr>
<tr>
<td>Wholesale and Retail Trade, Repair of Motor Vehicles and Motorcycles</td>
<td>1,787</td>
<td>1,738</td>
<td>49</td>
<td>7.3</td>
</tr>
<tr>
<td>Transportation and Storage</td>
<td>376</td>
<td>15</td>
<td>361</td>
<td>12.1</td>
</tr>
<tr>
<td>Accommodation and Food Service Activities</td>
<td>9</td>
<td>0</td>
<td>9</td>
<td>0.5</td>
</tr>
<tr>
<td>Information and Communication</td>
<td>580</td>
<td>48</td>
<td>532</td>
<td>30.2</td>
</tr>
<tr>
<td>Real Estate Activities</td>
<td>6</td>
<td>0</td>
<td>6</td>
<td>0.6</td>
</tr>
<tr>
<td>Professional, Scientific and Technical Activities</td>
<td>395</td>
<td>78</td>
<td>318</td>
<td>16.0</td>
</tr>
<tr>
<td>Administrative and Support Service Activities</td>
<td>328</td>
<td>110</td>
<td>218</td>
<td>14.5</td>
</tr>
<tr>
<td>Others</td>
<td>51</td>
<td>15</td>
<td>36</td>
<td>1.8</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>10,106</strong></td>
<td><strong>8,078</strong></td>
<td><strong>2,028</strong></td>
<td><strong>15.2</strong></td>
</tr>
</tbody>
</table>

Source: 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). Sales of dairy products at £120 million per annum 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 exports are to GB and other economies. 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)

<table>
<thead>
<tr>
<th>Size</th>
<th>Band</th>
<th>Business Count</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Micro</td>
<td>65,510</td>
<td>88%</td>
<td></td>
</tr>
<tr>
<td>Small</td>
<td>6,940</td>
<td>9%</td>
<td></td>
</tr>
<tr>
<td>Medium / Large</td>
<td>1,615</td>
<td>2%</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>74,060</strong></td>
<td><strong>100%</strong></td>
<td></td>
</tr>
</tbody>
</table>

Source: NI Statistics and Research Agency (NIRA).

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. For most micro-businesses the information on trade thus comes from a sample.

This NISRA source estimates that there were 5,136 businesses exporting goods to Ireland in 2016, of which 2,833 were micro-businesses and 1,938 were other.

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SME’s. Numbers of businesses importing from Ireland were slightly larger than this in each size-group.

The Office for National Statistics (ONS) provide alternative estimates of numbers of businesses involved in cross-border trade. 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 were classified as micro businesses (i.e. with less than 10 employees). A third of these micro-firms had no employees at all. 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.

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

<table>
<thead>
<tr>
<th>Country</th>
<th>Business size</th>
<th>No. of businesses</th>
</tr>
</thead>
<tbody>
<tr>
<td>IE</td>
<td>Micro</td>
<td>325</td>
</tr>
<tr>
<td></td>
<td>Small</td>
<td>456</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>273</td>
</tr>
<tr>
<td></td>
<td>Large</td>
<td>187</td>
</tr>
</tbody>
</table>

Source: ONS

This ONS data is likely to under-estimate 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 some 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 will 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.

NISRA also give a figure for firms in all sectors (i.e. including services) exporting for to IE. This figure of 8,689 businesses for 2017 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. This total included 5,581 micro-businesses, meaning that 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. 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 62,000 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 very high and we propose to undertake further research with NISRA to assess the reliability of these various estimates.

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 in 2016 who traded across the border, 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, it is clear that solutions do not 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 1960's. 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 multi-national companies. An initial tendency to charge low corporation tax on goods and services produced in Ireland has developed much further into a 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 were not, and are still not, an EU area of exclusive competence there was little the EU could do to attack it especially with the UK and the UK (to a lesser extent Germany). 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).

This may now change as, in late 2018, the European Commission undertook a consultation exercise on removing national vetoes on tax reforms. The multinationals that are 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's compared with 30% in the UK and 21% in NI. 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 15% below those in the UK or NI.

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 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 labour costs 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 go to the UK (including 1.5% to NI). 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.

11 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.

12 CSO Ireland Expenditure on Gross national product at current market prices, table 5.

13 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 as we have done leads to a smaller measured difference in living standards.
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 of the customs border that 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 focussed 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 (NIRA), exports to the IE are 5.8% of all sales of goods and services made by NI firms. This involves goods exports from NI valued at close to £3 billion plus a further £0.9 billion in services.

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

Seventy 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 RoRo 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.

3. Trade routes IE to GB and EU via Port of Dublin RoRo

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 majority of Ro-Ro freight crossing the Irish sea to GB remains in GB, while it is estimated 10% 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 50,000 road freight vehicles using it annually to Transit goods to the EU-26.

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

(c). IE Firms

A report by InterTradeIreland 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 licenses 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.

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

<table>
<thead>
<tr>
<th>Destination</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU-26</td>
<td>36.1</td>
</tr>
<tr>
<td>USA</td>
<td>18.3</td>
</tr>
<tr>
<td>UK</td>
<td>15.1</td>
</tr>
<tr>
<td>Switzerland</td>
<td>3.5</td>
</tr>
<tr>
<td>RoW</td>
<td>27.0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Source: CSO Ireland

14 CSO Ireland Report available via the following link: https://www.cso.ie/en/statistics/externaltrade/


16 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/)

UK Brexit preparations for Holyhead have so far focused on providing parking space in the vicinity of the port in the event of congestion caused by any customs procedures that may be imposed by the EU. In the event freight vehicles are required to present customs documentation at the port (both import from IE and export to IE), a manual checking process will result in severe delays and congestion at peak times.

Approximately 38% container-based traffic exports are shipped to continental EU via the UK landbridge to the EU mainland. These journeys will require a form of transit approval to journey across the UK, exempting them from VAT and Duty payments if they are not to be sold or reside in the UK.

The Port of Dover, and Eurotunnel, faces the same challenges as the Port of Holyhead to ensure the continuity of flow of freight vehicles in the event customs registration procedures are imposed. Dover is the UK's busiest roll-on roll-off (RoRo) port in the UK, handling a significant 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, approximately 5% are subject to customs clearance procedures, 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.

The consistently high volume of traffic, together with the constrained space of the port, make any manual customs procedures on all vehicles an impossible task to attempt without creating significant ongoing traffic congestion.

The key UK RoRo ports such as Holyhead and Dover must investigate automated customs processing solutions to prepare for an EU exit and enable the continued flow of trade through the ports. Automation should be based on the principle of enabling traders to pre-notify customs of their vehicles arrival, together with presenting their goods manifest and customs documentation in an electronic format. Infrastructure already in the port, in the form for example of Automatic Number Plate Recognition (ANPR) cameras, can be used to recognise the arrival of these vehicles and automate their clearance through customs, reducing the potential for 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 to each other.

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

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

Fourth, IE trade with the EU-26 is 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.

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CHAPTER 3

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, both as Irish, as British, and as 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 on 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 affects is to placate Northern nationalist sentiment.
Similarly, the Withdrawal Agreement (WA) will undermine a good part of the Unionist’s community’s rationale for the acceptance of the GFA:

- First, 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.
- Second, 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” and 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 checks” as a physical encounter with a customs officer, an immigration officer, a police officer or a Border Force Officer. In Ireland this has, at the height of the Troubles, involved 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 spoke to in the border region said that it was not simply a matter of “checks” or “no checks” at the border – it was the very perception of a border in itself that is provoking fear. One Newry retailer told us that he had been told by a long standing customer from Ireland 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 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 maintained 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 needed 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, 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, the free movement of goods, people and services is permitted inside the territory of the EU, 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 being 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 is 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 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 security or the 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 within it for the greater economic benefit of both.

In summary, in order to maximise 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 by the UK or IE government respectively in their territories but none at the border itself. Under Security Council Resolution 1373 (2001)\(^\text{19}\), 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 \(^\text{20}\). The resolution explicitly deals with the trans-national 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 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.’\(^\text{21}\) 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


\(^{20}\) Security Council Resolution 1373, Recital (7).

Organization (WCO) released in November 2018, the 2017 Illicit Trade Report, 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 WCO has produced a specific report on the Illicit Financial Flows via Trade Mis-invoicing.

The WCO statistics shows that most reporting European Union countries have increasing numbers of illegal instances over its 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 (the latest available statistics, the number 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 with 5.3 % with some of the largest seizures reported in EU countries.

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

TRACIT, an independent, business-led initiative to mitigate the economic and social damages of illicit trade, writes in their latest report, “illicit trade is unlikely to ever be eliminated. Illicit trade follows is 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, 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 forces 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 harmonized. 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 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 post-Brexit, due to new 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 have they prevented 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 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 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 is 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 7 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 and 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 on-line 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 exists. 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 co-operation 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 established enhanced structures for the exchange of information on suspects between the then Royal Ulster Constabulary and the Garda Siochana. The BA/GFA 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 co-operation on security matters, including the facilitation of co-operation on security matters.

The “Fresh Start” Stormont Implementation Agreement 2015 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 Siochana, 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 co-operation of 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 is a risk that the UK will become disconnected from some or all of the EU databases,
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 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’.

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.


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 co-operation 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 co-operation. Over subsequent years a panoply of co-operative 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 co-operation pre-date the BA/GFA. The WA’s aim of supporting cross-border co-operation 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 co-operation 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,

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, which 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 subcategories that significantly contribute to the total areas of cooperation. Broader co-operation 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.

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26 Joint Report from the Negotiators of the European Union and the UK Government on Progress during Phase 1, supra note 1, Para [49].
Indeed, the Protocol goes one step further to protect possible future co-operation:

**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.

These statements imply the need for a mapping exercise document which ‘shows that North-South co-operation 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 co-operation which depend on an EU legal and policy framework. There is for instance no categorization of which areas co-operation depend 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 co-operation including co-operation in policing and security which flow from reviews of policing and justice agreed in the GFA.

This co-operation 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. The exercise highlighted that there were varying different levels of legal and policy links between North-South cooperation and EU policy and legal frameworks.

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 Island 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 co-operation have little to do with a customs union or single market. Instead they come under the heading of security co-operation 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 include 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 animal feed chain;
2. Medicines and medical devices (to support all-Island congenital heart disease network); mutual recognition of prescriptions; clinical trials;
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 Exemption

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 sensitivity. There are special provisions in international law to allow ordinary trade measures to be set aside to accommodate this reality. For example, 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 Treaty 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 is 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 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).

8. Conclusions

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

30 UN Reference available via the following link: https://peacemaker.un.org/uk-ireland-good-friday/98.
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 an UK-IE Agreement could also encompass other meaningful co-operation consistent with the BA/GFA such as in the areas of customs cooperation.

A more ambitious version could also incorporate the continuation of the single electricity market and the Single Epidemiological Unit (SEU) on the Island of Ireland, including the Single Epidemiological Unit Plus 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.

### 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.\(^{31}\)

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\(^{31}\) A brief history of the CTA is set out in Annex 4.
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. 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, and 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. This commits both the UK and IE to the long term preservation of the CTA in all circumstances; and to allow British and Irish citizens to travel freely and reside in either jurisdiction with reciprocal rights to healthcare, education and social security. The MOU is however silent 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. 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.

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33 https://www.dfa.ie/media/dfa/eu/brexit/brexitandyou/Memorandum-of-Understanding-Ire-version.pdf

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 therefore, 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.

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 state countries. 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/entry system (EES) will apply only to the external Schengen border, and not to the external EU land border between IE and the UK;
(i) That any UK electronic travel authorisation system (ETA) would only apply to passengers arriving by sea or air routes, and not via the Irish land border; and
(j) That the UK Home Office the Irish Department for Justice and Equality would work together on a joint strategy for identifying third country nationals entering or remaining unlawfully within the CTA.

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

Notwithstanding the above challenges – and assuming that the principles of the CTA and the 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 shall 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 have both 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 standardized information and receives one coordinated reply back from the Government.

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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 kilometers 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

<table>
<thead>
<tr>
<th>Departing</th>
<th>Arriving</th>
<th>B</th>
<th>F</th>
<th>D</th>
<th>IE</th>
<th>IT</th>
<th>NL</th>
<th>N</th>
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<th>UK</th>
<th>CH</th>
<th>Rest</th>
<th>Total</th>
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<tr>
<td>B</td>
<td>X</td>
<td>119 820</td>
<td>180 127</td>
<td>2.873</td>
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<td>38 785</td>
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<td>15 102</td>
<td>184 027</td>
<td>122 750</td>
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<tr>
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<td>X</td>
<td>20 102</td>
<td>61</td>
<td>41 179</td>
<td>16 812</td>
<td>15 495</td>
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<td>7 741</td>
<td>256 611</td>
<td>74 209</td>
<td>459 126</td>
<td></td>
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<tr>
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<td>X</td>
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<td>43 118</td>
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<td>250 401</td>
<td>1 567 582</td>
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<td>482 416</td>
<td>609 230</td>
<td>1 776 517</td>
<td>28 068</td>
<td>571 898</td>
<td>567 871</td>
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<td>179 848</td>
<td>2 449 799</td>
<td>3 135 160</td>
<td>10 490 453</td>
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</tr>
</tbody>
</table>

Source: European Commission

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 to 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).

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 were 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 requires 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 voluntarily 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. 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”.

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 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 3 international mail processing centres, as well as providing services at 39 locations abroad.

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

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38 Ibid. Sixty-one of the land-border crossings and ten of the airport sites operate 24 hours a day, seven days a week.
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. 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.

(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), 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 to not 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.).
- 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.

39 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.”

40 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.
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”)\(^{41}\). 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 their 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.

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 includes 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 interoperating with EU member state authorities.

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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 co-operation features:

- Customs of both parties should focus on identifying high-risk enterprises and goods, and 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 an aim to eradicate the illicit trade of goods, maintain tax revenues, and safeguard border security.
- Ensure timely communications and necessary measures to ensure 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 that 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 Economic Zones and Special Regulatory Areas to build on the common regulatory areas that already exist on the Island of Ireland. We have met with the Federation of Small Business in NI (FSBNI), who have taken a commendable approach to search out opportunities presented by Brexit and do not view this as merely an exercise in damage limitation.

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. 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 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 there was a border now. The dairy industry

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 he 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 on live animals. They have to be visually inspected or could be held in quarantine before entering the customs territory. Veterinary goods: These goods for human consumption need extra careful inspections of papers and when needed physical verifications to safeguard the food supply chain. To ensure they don’t 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 don’t 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 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 regulation, 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 EUs 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 USA. 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. However, 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 the all-Ireland common SPS area or stayed within the diverging UK SPS area. While this might at first seem impossible to negotiate, there are important reasons why we believe it should be investigated further. In particular 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.

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 can break from the SPS 1 area.

![Diagram of IE/UK Common SPS Zone](image)

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

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; (b) the countries in SPS Regulatory Zone 1 would be required to negotiate deemed equivalence with the EU, US and others. This would also create a need to maximise deemed equivalent regulations for IE/EU, based on alignment of regulatory goals and objective achievement of those goals. If these deemed equivalence arrangements were not available or could not be negotiated, it would always be possible for IE to break the zone arrangements, and for the NI assembly to follow suit.\(^{45}\)

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\(^{46}\)). Going forwards, deemed equivalence with the EU SPS rules could be achieved. 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)\(^{47}\). 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.

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. This would place a collar around EU SPS regulation around which the SPS Regulation Zone 1 can travel. 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 already has deemed recognition from the EU is a positive precedent for expanding the collar. In addition, the US, Australia, and NZ 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.

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\(^{45}\) 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.

\(^{46}\) Sections 2 to 7.

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 and for the Northern Irish 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 which would be an opportunity for the Irish government.

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 that they do not have access. The key issue here will be traceability which could be alleviated to some extent at least by technological solutions discussed in Chapter 14 and elsewhere.

**Option 3: Customs Union Arrangements**

The most simple 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 USA while allowing the EU to negotiate its own free trade arrangements with such third countries.
Option 4: Special 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\(^48\), or pursuant to the recommendations of Prof Febrin, of the Dublin City University Brexit Unit\(^49\). In addition, this could require enhanced NI/IE rail infrastructure or more freight ferries between NI and IE.

This option would establish a Special Economic Zone (SEZ) for all of NI. There would still need to be regulatory border procedures between SEZ and IE/GB but these could be minimised. There are rule of origin implications of GB/SEZ/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 SEZ 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\(^50\).

![Figure 4: Special Economic Zone](image)

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 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 certainly would 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 transhipment point for trade into the EU or into GB. Any inspections needed could be pushed away from the border.

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 IE government if they entered IE market. This would require tracking of all goods.

\(^{48}\) 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-4e87-8ed8-350f819ee031/downloads/1c803e4_991124.pdf

\(^{49}\) 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/.

\(^{50}\) See Chapter 12, Section 3.
ALTERNATIVE ARRANGEMENTS FOR THE IRISH BORDER

Figure 5: Facilitated Customs Arrangement

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 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 product 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. 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. Such a solution could be temporary, and at the moment the UK seeks to diverge in the SPS area, IE could revert to the EU regulatory area and then NI could revert at the request of the NI assembly to an all-Island SPS zone, or not if it chooses not to.

While a common SPS area for the Island of Ireland solves many issues, we do not believe it would be negotiable 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 this would depend on future choices in the context of FTAs with others and its own regulatory choices.

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

Some of these special areas also run alongside the more specific recommendations below with regard to 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 a special 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 has historical ties to the US that could also be exploited. To this end, we recommend that a UK official be designated with responsibility for working with the combined Derry-Donegal legal entity, the NI Executive and the Irish government to ensure appropriate funds are raised for initial investment, and appropriate marketing efforts are made to ensure that the advantages of a border zone that faces both the EU regulatory system and the UK’s regulatory system post Brexit can be realised.

There are, in addition other border areas such as the Newry-Dundalk region which could also qualify for this type of special 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 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 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 indeed 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 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. 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 minimize 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 processes 70-80% of trade under these programmes. Practical experience and evidence-based studies have shown, compliance management using self-assessment is an efficient win-win approach for all stakeholders. 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 ensuring 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 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 encompass 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 US, Canada, Australia, Brazil, Saudi Arabia, 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 and having a modern TTP in 3 years.

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, since 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

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52 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
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.

However, the present AEO concept could be re-designed and serve as the framework for a top level tier in a new TTP. 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 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 has proven to be unattractive.

4. Conclusions and Recommendations

The new TTP 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 TTP standards as the top tier and a low threshold SME tier at the bottom. The top level TTP 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 on-line 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 being a status granting and replacing other cost demanding application processes and simplifications for several of the other procedures presented in this document. As an example the TTP could confer “Authorised Consignor/Consignee” status when using the transit procedure. If the company starting the transit procedure (e.g. in 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 6) 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 fulfill the purpose of creating a ladder for businesses to climb and attain enhanced trusted trader status as they become more and more familiar with customs processes. The advantage of this is it will assist NI and IE businesses scale up for the benefits of international trade.

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

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**CHAPTER 8**

**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 focussed their customs activities on the airports and sea ports 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 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 and applies to all EU member states, the EFTA countries (Iceland, Norway, Liechtenstein and Switzerland), as well Turkey (since 1st December 2018).

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

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 be simply 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 the goal to determine what 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 on 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 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 organized. 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 don’t need to perform any formalities when the ferry is disembarked.

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55 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.
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 for 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 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 it 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 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.

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 3 times per year; and
- The shipment value must not exceed GBP 500,000

For more details on how this programme would work see Annex 6.
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 USA, 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, 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 transhipping 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 transhipment 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 is to ensure that the current levels of smuggling do not increase to unacceptable levels.

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 case of the Backstop. 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, the barcode scan, or a similar measure 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 of the means of transport. (Geo tracking)
- Using administrative track and trace proof of transport.
- Using an app on a mobile phone of the trucker that transports the goods.
The UCC also allows the transfer of other customs formalities and procedures to a location not physically located on the border, such as the premises of an importing company, or a customs warehouse where goods are stored under customs control. While in the past, these procedures were more frequently used for cross-border trade on the continent, there is no reason why they cannot be adopted to facilitate cross-border trade 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 that on the EU’s other external borders, and this would not be a sufficient reason for the EU to claim 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 IT-systems working, trade gets very 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 there was not a significant increase in smuggling.
CHAPTER 9

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 agrifood, 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.
- Goods may have to be notified to the relevant EU customs office before arrival to 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 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) \(^{57}\). 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) that 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 embryo, food, feed and plants. It facilitates the management of official customs procedures and route planning on-line 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 USA, India, Brazil and China.

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). 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 the 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. 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 7 in more detail. Essential trusted traders will have the ability to register vehicles and goods in 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 authorized 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 centers, where the categories of animals and goods for which the border control post has been designated are to be controlled.

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 centers, 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 regionalization 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.

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 Swis voluntarily sign up to the EU’s SPS regime. 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 greatly minimize 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.

58 For more details on how this programme would work see Annex 6.
59 Draft Commission Implementing Regulation to lay down detailed rules on minimum requirements for border control posts, including inspection centers, 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.
61 (2008/979/EC)
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.

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. 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 which are 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 minimized 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).

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 harmonized 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 which is 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.

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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 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 minimal customs procedures being 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 Regulation63) 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.

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 customs64, 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.

63 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.

64 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.
To accommodate the unique geographical requirements of the border between NI and IE, the analysis of the paperwork could be centralised and assessed remotely both in NI and IE. Continued access to TRACES for UK traders of Veterinary and SPS goods would greatly assist in the reduction of the paper trail and indeed would provide a mutual benefit for both the UK and the EU. Currently access to TRACES is granted to non-EU exporters, but NI would need access to more levels of TRACES than are currently available to some of the third country beneficiaries of the system. Parallel to these processes, each transaction could fulfil the customs obligations of making export, Transit and import declarations. In practice these processes are very much intertwined and will support each other.

CHAPTER 10

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

1. Introduction

The UK’s departure from the European Union will have consequences for cross-border trade in manufactured goods. Kinds 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 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 across the border of the island or Ireland.

There are many reasons why the UK may decide to adopt different standards after departure from the EU. One could be the pursuit of an approach that is intended to alleviate UK manufactures 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 could be if the UK decides to enter into free trade agreements with other non-EU countries (i.e. the USA) and a different set of standards and regulations are agreed which conflict with the relevant EU ones.

At this point in time, the UK and EU’s technical standard regulations are fully aligned. Generally speaking, the formal departure of the UK from the EU, with or without a free trade agreement 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.

Over the longer term there is no guarantee that the UK will tie itself to continuing to abide by the relevant EU regulations after 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 are subject to technical standards and legal requirements that must be satisfied for them 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 of hazardous substances in electrical and electronic equipment, recycling requirements, machinery noise emissions, eco-design and energy labelling, etc.65

The enforcement of these technical requirements is carried out by Market Surveillance Authorities (MSAs) in each EU Member State and, within each, different agencies and governmental departments, both national and regional, are tasked with ensuring their application and enforcement66. In addition to these surveillance agencies, the customs authorities in the Member States (in the case of the UK, HMRC, and in IE, the Revenue Commissioners) have general authority to carry out inspections and investigations at the point of importation of covered goods into the national market67. 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.

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 co-operation between MSAs in different member states is essential to effective market surveillance and a timely exchange of information on draft inspection is required under article 18(S) of regulation EC 765/2008, which should result in efficient coordination. Article 24 of this regulation requires MSAs to provide assistance to each other and exchange relevant information and documentation, article 23 establishes a common database to share market surveillance information. MSAs are also required to follow up on restrictive measures adopted by other MSAs to aid effective enforcement across the EU’s single market. MSAs are also required to actively participate in administrative cooperation groups (AdCos) meetings, common projects and joint market surveillance actions.

In order 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 before 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.

In order 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.

65 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.


67 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.
surveillance actions post Brexit to 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 no E 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. 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 among each other about products posing 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 concluded that despite the many communication mechanisms and tools for information exchange among the MSAs and with third countries, these do not work either efficiently or effectively.

3. Current EU Market Surveillance Process

For all sectors, the MSA has to determine which products and/or Economic Operator (EO) will be targeted to achieve the best impact. The MSA must then apply this strategy in the field and when relevant, take samples. The MSA has to 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 on the compliance of the product. Before making a definitive decision the MSA will need to engage with the EO, with all information gathered in this process considered valuable to informing future market surveillance activities. An abbreviated flow-chart of the market surveillance process is set out below.

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69 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 economic operator even if it is based in another EU Member State.
More recently there has also 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 assessment, but 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 and as such 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 in order 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 who are 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 are robust, effective and can also 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 worked out as a percentage of the FOB value of a shipment with a minimum, and sometimes maximum, fee value applied.

In order to verify compliance an application for a conformity certificate is made and submitted along with a copy of the invoice and supporting quality information relating to the goods, this is then assessed and verified by competent quality teams who 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, which 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.

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**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 party countries such as Saudi Arabia, Kenya, Egypt, Nigeria, Iraq and Kurdistan and as such they understand procedures for verifying the compliance of goods to differing standards in order to satisfy the requirements for customs clearance within these countries. This 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) standards in Iraq made the export of food products particularly difficult, in some cases prohibiting export/import completely.
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 if a truck or container has deviated from a pre-determined route 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 economic operators in each market sector, the products that are available and where they are available e.g. in store or online. Cooperation with industry will also be required to identify supply chains, market share and conduct market research amongst end users. Third party information could also be used so 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 economic operators supplying given products, the types of economic operators and main channels of sales. With this information it would enable MSAs and third parties to decide which economic operators 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 economic operators based on random selection.

While market surveillance would be effective at ensuring compliance amongst the larger economic operators or trusted traders, we would need to consider the use of traditional product conformity assessment procedures for small to medium sized traders who 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 that they trade across the border – an application for a certificate of conformity would still need to be made, but could be made 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 for this available.

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 cooperation of UK authorities with Union agencies operating in this field is also envisaged. Of particular importance to future cross-border trade on the Island of Ireland, it is also mentioned that regulatory cooperation, including with regard to alignment of rules, could be taken into account in the application of related procedures, considering this as a factor in reducing risk.

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

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

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

(a) the incorporation of mutual recognition agreements for the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other party;

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70 EU-Japan Economic Partnership Agreement, Article 7.5.2.
(b) cooperative and voluntary arrangements between conformity assessment bodies located in the territories of the parties;

(c) plurilateral and multilateral recognition agreements or arrangements to which both parties are participants;

(d) the use of accreditation to qualify conformity assessment bodies;

(e) government designation of conformity assessment bodies, including conformity assessment bodies located in the other party;

(f) recognition by one side of results of conformity assessment procedures conducted in the territory of the other, and

(g) permitting and/or facilitating manufacturer’s or supplier’s declarations of conformity.  

These mechanisms would have to be consistent with the WTO rules on pre-shipment inspection. Pre-shipment inspection (PSI) is the practice of employing specialized private companies to check shipment details — essentially price, quantity, quality — of goods ordered overseas. The obligations of exporting countries towards PSI users include non-discrimination in the application of domestic laws and regulations, prompt publication of such laws and regulations and the provision of technical assistance where requested. However, this is essentially a question of designing this 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 also 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 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 which are normally held at the manufacturer’s premise.

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

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

Enhanced UK and IE legislation could also be introduced to discourage the placing on the market of non-conforming products so that there is a more significant disincentive from putting non-conforming products on these markets. EU legislation relating to the placing of products on the market does not recommend or restrict the ability of EU Member States, in this case 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 deemed 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 as far as imports of industrial products made in the UK are concerned.

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

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71 Examples drawn from EU-Japan Economic Partnership Agreement, Article 7.8.3.
MINIMISING THE IMPACT OF RULES OF ORIGIN

1. Introduction

The origin of the goods is important because every customs territory can make agreements, such as a free trade agreement, that grants specific preferences to goods originating from a partner country. So, for example, if the EU, or the UK in the future, has an FTA with Canada, then on specific goods from Canada preferential (lower) import duties are levied.

In the first part of this chapter, the policy aspects of origin regulations are described. The central question is, what exactly makes a good originating from a certain customs territory. In the second part, the central issue is, how can a trader prove the origin. What documents or information is needed to demonstrate to the importing customs authorities that goods are of a specific origin?

2. Policy Aspects of Origin Regulations

There are a number of different types of preferential trading relations ranging from bilateral FTAs and Customs Unions, on the one hand, to the unilateral granting of preferences, for example the EU and US Generalised Preferential Systems. From a policy perspective countries enter into such 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 important part in ensuring that such exclusions are effective.

Preferential rules of origin apply where goods are being traded between two trade partners who have entered into a free trade agreement or benefit from a unilateral trade preference programme such as the Generalised System of Preferences (GSP) for so-called developing countries. In most cases, qualifying imports enter at zero or significantly lower duty rates than those that normally apply. These preferential rules are designed to ensure that goods not actually originating from a beneficiary country do not get an undeserved lower duty rate benefit.

Non-preferential rules of origin, on the other hand, apply to all imports that do not benefit from such advantages. In practical terms, this is the Most-Favoured-Nation (MFN) customs duty rates that each country has agreed under the auspices of the
Assembly operations can also fall foul of such rules where the process being applied is so simple that, even if the correct rules are properly applied, the assembly operation does not confer origin. This leads to difficulties in establishing a bright line between complex assembly operations that do indeed add sufficient value from other more simple ones that do not.

In the context of supply chains where 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. There is a legal obligation that such declarations made must be in good faith, to the best of the declarant’s knowledge, honestly, and with the appropriate degree of due diligence being applied. Making fraudulent or negligent declarations constitutes a criminal offence in most EU Member States including the UK. Criminal penalties may therefore be applied in the event that the infringement is sufficiently severe.

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 and 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 where 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 that is being requested for the imported merchandise. In the absence of such a declaration, the standard duty rate will be applied by the relevant customs authorities.

3. Implications for the Irish Land Border

Looking at the specific situation at the Northern Irish land border, it is obvious that most goods crossing the border now are either of Irish or UK origin. Also, after the UK’s departure from the EU, it makes no commercial sense to import goods either into the EU or the UK on this border, as it lies on the fringe of the European Union. However, it cannot be completely excluded that it is possible to import third country goods, other than of EU or UK origin, across this border after 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 and here there are a number of possibilities for simplification drawn from current EU regulations which the EU should not be reluctant to 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.\(^{72}\)

(b). EUR-Certificate
An EUR-Certificate is used to prove the origin of goods when traded between the EU and countries that have a trade agreement with it.

(c). 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. 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-JP statements on origin remain valid for 12 months and may apply to multiple shipments of identical products.

(d). 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.

The customs issues are set out in Annex 2 and 3 of the Withdrawal Agreement. Article 1 and 2 of Annex II explain that there would be two customs territories, the EU and the UK. Together they would form one single customs union. Annex III describes the procedures and documents applicable to all EU–UK trade, inclusive of that occurring at the Northern-Irish border, which are needed for this. Goods on which all duties are paid in either customs territory, or which are produced in one of the customs territories, can be traded without import duties. The A.UK will be needed to prove that the goods are UK or EU produced or are in free circulation.

(e). Registered Exporter System
The Registered Exporter System (REX system) is the system of certification of origin of goods that the European Union is progressively introducing for the purpose of its preferential trade arrangements. The intention is to replace the former system based on certificates of origin issued by governmental authorities with declarations made out under certain conditions by economic operators. It is based on a principle of self-certification by economic operators who will themselves make invoice declaration statements on origin. To be entitled to submit a statement on origin, an economic operator will have to be registered in the REX database by its competent authorities.

Currently, the REX system applies mainly to beneficiary countries of the EU’s GSP programme. Progressively, the REX system will also be 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 kind is agreed, the UK and EU should use this self-certification method for proving origin.

Comparing REX to the A.UK system in the Withdrawal Agreement shows that the REX system is built on trust in traders above trust in customs authorities, while the A.UK system has the opposite approach. A.UK is built on trust in customs authorities more than in trust between traders.

Projecting the REX system on the NI border shows that it has the advantage of no additional formalities, except that exporters should register and that they must add a standard clause on 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 on trade between the EU and the UK in a similar situation.

(f). Importers knowledge
In the recent Economic Partnership Arrangement between the EU and Japan, the system of claiming origin based on ‘importers knowledge’ was introduced. That 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.

\(^{72}\) Examples drawn from EU-Japan Economic Partnership Agreement, Article 7.8.3.

\(^{73}\) 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.
As the importer is making a claim using 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. Inaccurate, fraudulent or negligent.

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 importer should document the basis for its statement.

This could be a useful method on the NI border should a free trade agreement between the UK and the EU be ultimately negotiated and finalised.

4. Conclusions and Recommendations
Recently introduced systems such as REX and importers knowledge can be used to claim and prove the origin of traded goods with minimal formalities. They would also help small businesses by not requiring new formalities for their cross-border trade.

In addition, alternatives are available to lessen the impact of these formalities. Drawn especially from the most recent FTAs negotiated by the EU, the following simplifications can mitigate the impact of satisfying trans-border shipments across the Irish land border in order to move towards the goal of frictionless trade.

First, tolerance or de minimis rules allows 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 agreed in a future UK-EU settlement.

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

Third, full bilateral cumulation will allow the processing/operations carried out in UK to be counted as qualifying operations in the EU, regardless of whether the processing is sufficient to confer originating status to the materials themselves (and vice and versa).

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

Fifth, and finally, removing 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 also not be particularly problematic. By default, this leaves the situation of SMEs and micro-businesses to be tackled.

2. The Profile of Economic Operators Considered as Small Traders

(a). Self-employed farmers
Self-employed farmers may also 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 tells us that under 2% of construction business in NI declare any export trade. One in five of the self-employed (25,000 people) 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 tradesmen and women, 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 states 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 manageably large at around 6,000 firms each in NI and in Ireland. Most of these 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-business 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 and a number of farmers selling live animals.

In addition, there are larger numbers of trades-people, shop-keepers and other service providers such as plumbers who may be involved in cross-border activity but here the issue 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 where there are other special circumstances. It was designed for the frontier between the free city of Trieste and Italy. In the Working Group that looked at the Trieste/Italy border issue, the working group noted that while this 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 varied from case to case. The exemption was also relevant to the relationships between Italy and the Vatican City and San Marino respectively.

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.

Art. 128 of council directive 1186/2009 on customs exemptions goes even further. It says: ‘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 Northern Irish land border within the EU legal framework. These arrangements can be focussed on small businesses and small transactions both by agricultural and non-agricultural goods.

The Frontier Traffic Exemption should underpin a contiguous zone on either side of the border in which 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 forty 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 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 for the people of the region, and more widely the people of IE and NI.

4. Operational Customs Facilitations

(a). The Ladder to Trusted Trader Programmes

It is possible for the 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 to a temporary transition programme which would allow 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 to IE are zero rated for VAT provided both parties are VAT registered, while imports are eligible for VAT reclaim paid at importation. All VAT registered businesses whether below or above the threshold must complete 2 boxes (8 and 9) on their VAT Return showing 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 who dispatch goods to other EU member states or receive arrivals of goods from other member states with a value exceeding a legally set threshold i.e. currently, arrivals is £1.5 million and dispatches is £250,000, then they must submit the additional information by

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

completing using 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, who know the formalities and liabilities involved in trading in excise goods.
- Agricultural goods are subject to additional requirements in order to be able to monitor health aspects and safeguard the food supply chain. Farmers and agricultural 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. But Art 158.2 also allows traders to declare goods by other means. Art 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 enlarged to small traders across the border (outside of 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. 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 as to 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 art. 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 these farmers do not deduct the VAT being charged to them. This system simplifies VAT administration for farmers considerably. Agricultural goods are subject to additional requirements in order to be able to monitor health aspects and safeguard the food supply chain. Farmers and agricultural traders apply these obligations on a regular basis. Since most of these transactions are repetitive, they can be done efficiently.

(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 give 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. So, here the EU has already foreseen that there may be small border traffic, that is so irrelevant to the integrity of the common market, that it provides facilities for simplification.

(g). Dispensations for customs territories
Historically, the EU has provisions it its VAT and customs laws for territories that differ for example in VAT regulation but do belong to the customs territory of the EU. Examples are the Canary Islands, French Overseas departments and the Isle of Man. Although NI does not qualify for such a status at the moment, these special arrangements show that there are facilities within the European law for deviation on an historical or geographical basis.

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

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

This exemption could be justified under WTO law by the national security exception contained in Article XIX(b) of the GATT 1994 which allows WTO Members (so both the UK and IE) to depart from the WTO’s general rules of Most-Favoured-Nation (MFN) and National Treatment of Internal Taxation and Regulation when action is required of the protection of their essential security interests. A recent WTO ruling interpreting these provisions indicate that the WTO Dispute Settlement Body (DSB) gives wide discretion...
ALTERNATIVE ARRANGEMENTS FOR THE IRISH BORDER

CHAPTER 12

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

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

As our research indicates, there are approximately 7,000 firms in this group in NI although only a much smaller number report being engaged in cross-border trade. Most of these will be registered for VAT purposes and so already making tax declarations for their cross-border trading in goods activities. Because they are already registered for VAT and tax purposes, their import/export sales should be declared. 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 through physical inspection of the documentation.

Traders in this category should also be encouraged to use newer programmes in development (such as the ISR proposal) and other such customs facilitations and indeed the same is equally true for micro-business as well. For traders who 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, for example technicians, veterinarians, doctors, plumbers, etc., and who require tools and/or special equipment to provide those services, the WTO frontier traffic exemption set out in Article XXIV:3(a) of the GATT 1994 allows the UK and IE to extend advantages to each other in order to facilitate frontier traffic. A general dispensation for these service providers from having to declare their tools and equipment each and every time they cross the border to supply their services to customers on the other side seems to us 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 risk of smuggling or fraud during importation and exportation since in almost all likely scenarios these goods will be personally-owned equipment not intended for resale. Such equipment could likely only be sold in the second-hand market further reducing the risk of resale.

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

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

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

If the range of reliefs proposed in this Chapter for small traders 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 Northern Irish political parties and those in IE has 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 Irish goods destined for the EU use the UK land-bridge, this could have a catastrophic impact on IE economy. A combination of this and the inevitable impact of no deal on Irish agriculture could have catastrophic effects on agriculture in IE. Because no deal would mean increased competition for Irish agricultural producers from other parts of the world which 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 no deal would have negative consequences for all parties). Given this, it is crucial that these dialogues are rapidly initiated. In addition a dialogue between French customs and UK customs to accommodate the Dover-Calais RoRo port is also of great importance to IE trade which benefits from the UK landbridge. Since IE economic interests are profoundly impacted by the Dover-Calais crossing, it is very important IE, UK and French customs immediately discuss how to ensure the route functions after the UK leaves the EU. This discussion should be at both an operational and policy level.

The UK ‘no deal’ planning shows that the government policy has been focussed on flow above compliance. The UK government wants to prevent congestion at ports; and thus gives in on administrative obligations that take time to fulfil and possibly cause delay. ‘No deal’ preparations were more advanced in the EU then they were in the UK. New facilities, like inspection points were created (for example in Calais), and IT systems were adjusted to manage new formalities in ferry ports. Meanwhile HMRC has relied instead on further simplifying existing procedures. So although a sub-optimal border with minimal customs procedures on Day One may help to mitigate delays at the UK
Border they will not be enough 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 which sets out what additional processes will be conducted at the UK Border on intra EU traffic or how and where this will be done.

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 of them will vary, depending upon the eventual outcome of negotiations; so, it is hard to be precise about operational requirements without knowing what additional procedures will be required, where they will be conducted, or by whom.

Whitehall Departments are already engaged in “no deal” planning; and we know that the government has set aside £1.5 billion for no deal planning in 2018 – 2019 and a further £2 billion for 2019 – 2020. Most of this funding is earmarked for the Home Office, HMRC and DEFRA, who will be most affected by the changes 77.

There are other Departments and Agencies that will also be impacted; but 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 have tried to assess the impact 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.

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). 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 78. 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) and Her Majesty’s Passport Office (HMPO); and Immigration Enforcement (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 that goes 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 Isles, including the Irish land border. Passengers arriving at UK ports and airports from outside the CTA (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. UKBF does not conduct routine exit controls at the UK Border; airlines, 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 UKBF at the point of departure.

77 https://fullfact.org/europe/whats-cost-preparing-brexit/.

As part of a Home Office restructure, the UKBF was separated from the rest of the UK Border Agency (UKBA) in 2011. UKBA was further dismantled in 2013 and a separate Immigration Enforcement Directorate (IE) was established to enforce UK immigration laws. IE has several regional offices around the UK, including one in Belfast. Immigration Enforcement Officers are responsible for conducting intelligence led operations against illegal working and overstayers. They also conduct 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 Common Travel Area 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 a “digital permit” 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 the Northern Irish ports than has hitherto been the case.

Furthermore, the 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 1000 Border Force Officers for Brexit; and the considerations described above are not unique to the UK / Irish border but apply more broadly across the country.

There will be a resource requirement for UKBF at Northern Irish ports and airports in order 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 IE to exercise any additional immigration enforcement 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; and any additional measures on goods arriving from Ireland by land will conducted away from the Border at inland locations in NI. Assuming there is no machinery of government change, this function would fall to HMRC enforcement officers (see below) and not to UKBF officers.

Therefore, the impact of Alternative Arrangements to UKBF and IE is relatively low.

**Police and Security Controls**

The Police Service of NI (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 BIC 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, in order 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 which will impact upon UK law enforcement agencies across the board; but these are not unique to the Alternative Arrangements proposal.

Assuming the mechanisms established under the Belfast (Good Friday) Agreement are preserved, the impact of Alternative Arrangements on police and security controls is relatively low.

**Her Majesty’s Revenue & Customs (HMRC)**

HMRC is the primary tax, payments and customs authority in the UK. They lead on customs policy and collections, including revenue collection at the border and excise control. They are responsible for safeguarding the flow of money to the Exchequer through their collection, compliance and enforcement activities. They also facilitate legitimate international trade, protect the UK’s fiscal, economic, social and physical security before and at the border, and collect 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 UK Border Force through its CHIEF system, which is currently being replaced by the new Customs Declaration System (CDS), who will determine when to make an intervention. The UKBF also operates an 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 at 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 UKBF will need additional resources across the Board to cope with additional demand.

That said, there is very little Border Force resource available in NI to undertake customs procedures on goods. The introduction of Customs verifications on goods moving between Ireland 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.

Any additional inland inspections away from the border relating to the enforcement of tax, excise and fiscal inspection would be more appropriate for HMRC enforcement teams than UKBF teams.

The need to capture and analyse data on goods crossing the Irish Border – and to undertake verifications from the border at inland locations - will require a significant investment in UKBF targeting analysts and HMRC Customs Enforcement Officers. The impact of Alternative Arrangements for HMRC is likely to be high.

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

The Department for Environment, Food and Rural Affairs is the government department responsible for environmental protection, food production and standards, agriculture, fisheries and rural communities in the UK of 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 2 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 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 hard to imagine how this can be implemented without some forms 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.

The impact of Alternative Arrangements on DEFRA is likely to be extremely high.

**General Operational Considerations**

Assuming that alternative arrangements to the backstop are 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 should be in line with best practice in modern day border operations, namely that:

(a) Checks and risk assessments should be conducted prior to the movement of people, goods and livestock across the border. That 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 full engaged, and have an opportunity to intervene; and

(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 more widely to identify and mitigate potential common threats.
Operational Policy
Once the final policy is determined, an operational policy unit comprising of representatives from all the above agencies – and any other relevant partner departments and agencies – should be established in order 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 Common Travel Area, including mutual recognition of the rights and credentials of persons living within it to access services;
(b) Exploring opportunities for 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 whilst 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 whilst minimising the risk of non-compliance on both sides;
(d) To identify and enhance distributed Border Inspection Posts 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; and
(f) Revise operational structures between UK Border Force, Immigration Enforcement, PSNI, HMRC and DEFRA in order to maximise operational efficiency and effectiveness.

Timing
It is important not to jump to any immediate conclusions about 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 programme structure to deliver this; and to identify the series of projects which will run in tandem with one another to deliver the desired outcome. This 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; 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 who are trading goods across the border. Examples of increased costs are:
(a) Bonds which need to be posted for transit
(b) Fees for Testing and Conformity Assessment
(c) Fees for customs forms

We therefore suggest a Small Traders Transitional Fund (“STTF”) for eligible small traders, and firms who need support.

We also suggest a UK-IE Capacity Building Fund (“CBF”) for the UK to establish to enable customs collaboration and capacity building across the border and in IE.

4. Other Issues

Customs capability in IE; Use of Self-Assessment; Dublin restricted in terms of parking spaces etc; Use of independent third parties to support customs; How many veterinarians to supervise BIPs; and there will be need to be investment in UK and IE customs which the UK will have to pay for in the form of a fund. Funds will have to be found for SPS ex-BCP/BIP facilities.

5. Roadmap for Future Engagement with Business Community

It is very important for any Alternative Arrangements to be engaged with by the business community. In terms of readiness, business readiness is required.
6. Conclusions and Recommendations

There are already effective operational structures in place in NI to manage Alternative Arrangements to the backstop, although introducing additional procedures on the movement of intra EU goods (and especially livestock and POAO) raises several issues for UK government departments and agencies.

An all-Ireland approach to verifications on agri-foods with common standards imposed at ports and airports on the Island of Ireland would mitigate the need for additional BIPs inland, which would disrupt the supply chains operating North-South and East-West, and vice versa. Similarly agreed standards and exemptions for cross border trade would alleviate pressures on HMRC; and there will be a need for significant investment in supplier engagement, registration capability, tracking technology and data collection and analytics to enforce new regulations.

It is important to note that although technology is important, it is by no means the only solution to delivering the “Alternative Arrangements” proposal. New and emerging technology would be applicable in support of the programme; but the programme should not be driven by it. A good deal of technology is already available to UK Departments, with new capabilities coming on line all the time (see Chapter 14, below). Therefore we do not accept some projections that any such capability would take 10 years to deliver. We have seen no evidence of that. Interventions away from the border would require additional Customs Enforcement Officers who would be deployed on an intelligence led basis at inland locations, to ensure compliance.

A cross agency Border Transformation Programme and an operational policy unit to manage business as usual during transition should be established to deal specifically with the implementation of Alternative Arrangements. This should be led by a single SRO reporting directly to Ministers, working in tandem with the HMRC Border Delivery Group and other relevant stakeholders in NI and IE.

CHAPTER 14

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 which 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 IT existing systems in preparation for the UK’s exit of the EU. This report does not cover the status of these exit readiness programmes, instead it focuses on technology and IT solutions required to specifically support Alternative Arrangement models.

There are, however, a number of technology requirements for the Alternative Arrangements models which do 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 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 supporting the ability for 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 Defra79 to support the movement of Agri and food products. These programmes are summarised into four focus areas; import and export of animals and animal products; regulation of chemicals; marine control; and enforcement. The report identifies two priority systems for Defra which ensure continuity of the health and safety responsibilities of border agencies. These are the EU tracing and quality control systems known as;

- TRACES (Trade Control & Export System) – the import control system to notify border inspection posts 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 communicate electronically with HMRC customs system; and
- REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) - to support registration of new chemicals

Continued access to these traceability systems is required to support continuity of trade during the recommended Alternative Arrangements transition period. A more comprehensive review of priority EU IT systems which 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 also 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 UK’s readiness for EU exit in October 201880 which any alternative arrangements models will also need to consider;

- ensuring any arrangement respects the BA/GFA and meets UK commitments to avoid a hard border, and implements arrangements set out in the Withdrawal Agreement; and
- ensuring ‘just in time’ supply chains are not disrupted through delays at ‘roll-on, roll-off’ (RORO) 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 are described in more detail in the form of the Smart Border concept in Annex 7.

4. Small Businesses and Technology

The NI Federation of Small Businesses has highlighted its concerns of the impact of introducing customs processes on small and micro business who 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 of small businesses. The priority of the Alternative Arrangements is to seek and agree

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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 a 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 later 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:

- Appointment of a government sponsor to oversee all technology projects required for the Alternative Arrangements model, with authority to coordinate across all relevant government border agencies;
- Engagement with EU border agencies, in particular IE and French which face directly into 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; and,
- Invite technology organisations to demonstrate where 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, 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 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;
- Create a mobile app to host electronic versions of the Transit document as a pre-cursor of the Smart Border concept;
- Procure mobile inspection vehicles capable of performing required veterinary inspections in-situ on farms and food producers locations; and,
- Develop 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 needs to be focused on the critical requirements only, prioritising those which will be required to help minimise any disruption to trade. These solutions can then be expanded beyond the transition period to provide a vast range of border management and control capabilities.

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

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

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

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.

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, the 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. IE plant has complete control over its processes and procedures for every incoming truck with milk in a way that is certified by EU veterinary authorities. The milk from the NI dairy farm 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.

Among other aspects the milk is checked on hormones and other forbidden content within the EU agricultural regulations. The NI farmers have adjusted their operations and procurement to meet these EU standards.

IE processing plant is certified as an Authorised Economic Operator and has a customs permission from customs and from agricultural authorities, to declare the 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 doesn’t meet the standards, can’t 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 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 gives the possibility 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 does perform inspections.

For statistical reasons and to have a secondary registration system available, all deliveries are registered in Traces, both by the farmers and by the processing plant. Since the new import of fresh milk into the EU from NI or elsewhere does not have any 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 fine, 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 3 cows to a colleague in IE, outside of the zone covered by the Frontier Traffic Exemption i.e. say 100km away. The trade of cows over the NI land border falls under the SEU for the whole Island of Ireland. This agreement already exists and is upheld after Brexit.

The cows are a 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 the help of a cooperative organization for cross border agricultural transactions, which is specialized in dealing with the formalities of such a transaction to take care of the paperwork.

Since the transport is planned in three days, a specialized trucking company is hired, and the cooperative can prepare the paperwork. The registration documents of 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 of it immediately.

The cooperation sends a SMS to the trucker who uploads the Movement Reference Number of the Transit declaration in his Transit app of his mobile phone. The app registers the passage of the border of the truck, so he doesn’t have to stop there, and he can use any border crossing he likes.

IE counterpart of the cooperation has prepared the customs procedures on behalf of the farmer that bought the cows. IE authorities were informed already one day ahead of the transport. The accompanying papers are analyzed by a central unit of veterinary
EU veterinary regulations require that import of veterinary goods have to be filed one day before arrival, to give authorities the possibility 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 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 till 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 of 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 to do that he has to make an export declaration and provide that to tax authorities to proof the export. He has similar sales to IE 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 Authorized Economic Operator, which makes him a trustworthy partner for Irish customs with a low risk profile that he can pass on to his customers.

The wholesaler is registered in Rex. Rex stands for Registered Exporter and is a system in which exporters in the EU and other countries can digitally register so 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 authorities in Dublin. They see no need for further action, because of the alignment of the regulations on the Island of Ireland. The truckers register his arrival in the app and 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 3 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 on its market.

Farmers in NI have either specialized for production in the UK/USA market or for export to the EU market, mainly through IE. The NI meat processing plant meets all UK standards and has full transparency of 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 customs department of the exporter 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. He calls the government helpdesk to guide him through the Traces programme. Before Brexit, these Traces declarations were needed as well, since also internal trade of agricultural goods is 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 a 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, doesn’t 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 Authorized Economic Operator. Thus his risk profile is considered high.
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 that transports the dishwasher fills in the MRN in the Transit app on his mobile phone.

The customs broker informs his colleague in the NI about the transport that is about to arrive to prepare the import declaration. 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”. Temporary admission (TA) is useful if the trader temporarily import 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’re 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’re 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.

IE wholesaler files the transaction on his quarterly VAT declaration as an export. IE IT-system matches the VAT that is filed as 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 fulfill the formalities. Since the goods are of EU origin and there is a free trade agreement between the EU and the UK, also 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. Both seller and buyer are not registered for VAT, since their turnover is below the VAT threshold of £ 85.000. This means they are not allowed to charge VAT, and not allowed to deduct VAT and don’t have to fulfill 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 declare goods traded across the border. They don’t 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.

6. 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 he is admitted to the UK by a UK Border Force Officer 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, who capture the data and advise the Border Force that he has left the UK.

7. 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 Alliances Frontieres; and 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.

8. 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, whereupon 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

<table>
<thead>
<tr>
<th>Country</th>
<th>Business size</th>
<th>No. of businesses</th>
<th>Average no. of products</th>
<th>Average no. of destinations</th>
<th>Total exports (£, thousands)</th>
<th>Average exports (£, thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>IE</td>
<td>Micro</td>
<td>325</td>
<td>12</td>
<td>1</td>
<td>302,855</td>
<td>932</td>
</tr>
<tr>
<td></td>
<td>Small</td>
<td>456</td>
<td>17</td>
<td>1</td>
<td>448,369</td>
<td>983</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>273</td>
<td>17</td>
<td>1</td>
<td>637,374</td>
<td>2,335</td>
</tr>
<tr>
<td></td>
<td>Large</td>
<td>187</td>
<td>86</td>
<td>1</td>
<td>511,409</td>
<td>2,735</td>
</tr>
<tr>
<td>Rest of EU</td>
<td>Micro</td>
<td>107</td>
<td>3</td>
<td>4</td>
<td>35,199</td>
<td>329</td>
</tr>
<tr>
<td></td>
<td>Small</td>
<td>181</td>
<td>5</td>
<td>5</td>
<td>120,787</td>
<td>667</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>153</td>
<td>9</td>
<td>3</td>
<td>343,823</td>
<td>2,247</td>
</tr>
<tr>
<td></td>
<td>Large</td>
<td>152</td>
<td>59</td>
<td>14</td>
<td>1,135,876</td>
<td>7,473</td>
</tr>
<tr>
<td>USA</td>
<td>Micro</td>
<td>136</td>
<td>3</td>
<td>1</td>
<td>37,622</td>
<td>277</td>
</tr>
<tr>
<td></td>
<td>Small</td>
<td>148</td>
<td>3</td>
<td>1</td>
<td>31,602</td>
<td>214</td>
</tr>
<tr>
<td></td>
<td>Medium</td>
<td>112</td>
<td>6</td>
<td>1</td>
<td>98,553</td>
<td>880</td>
</tr>
<tr>
<td></td>
<td>Large</td>
<td>138</td>
<td>24</td>
<td>1</td>
<td>1,560,923</td>
<td>11,311</td>
</tr>
<tr>
<td>Rest of the world</td>
<td>Micro</td>
<td>305</td>
<td>3</td>
<td>3</td>
<td>69,348</td>
<td>227</td>
</tr>
<tr>
<td></td>
<td>Small</td>
<td>276</td>
<td>4</td>
<td>4</td>
<td>97,137</td>
<td>352</td>
</tr>
</tbody>
</table>

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 Cooperation Covered in the Mapping Exercise

<table>
<thead>
<tr>
<th>Implementation bodies</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Special EU Programmes Body</td>
<td></td>
</tr>
<tr>
<td>2. Foyle, Carlingford and Irish Lights Commission (Loughs Agency)</td>
<td></td>
</tr>
<tr>
<td>3. Food Safety Promotion Board (SafeFood)</td>
<td></td>
</tr>
<tr>
<td>4. Waterways Ireland</td>
<td></td>
</tr>
<tr>
<td>5. North-South Language Body (The Ulster Scots Agency and Foras na Gaeilge)</td>
<td></td>
</tr>
<tr>
<td>6. Trade and Business Development Body (InterTradeIreland)</td>
<td></td>
</tr>
<tr>
<td>7. North South Implementation Bodies - Cross cutting operational issues</td>
<td></td>
</tr>
</tbody>
</table>

**Agriculture**

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
<table>
<thead>
<tr>
<th>Environment</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>Environmental protection reporting and research</td>
</tr>
<tr>
<td>29</td>
<td>Water quality management in a cross-border context</td>
</tr>
<tr>
<td>30</td>
<td>Waste management in a cross-border context</td>
</tr>
<tr>
<td>31</td>
<td>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</td>
</tr>
<tr>
<td>32</td>
<td>Nature/biodiversity, including habitats and birds</td>
</tr>
<tr>
<td>33</td>
<td>All-island pollinator plan</td>
</tr>
<tr>
<td>34</td>
<td>All-island marsh fritillary group</td>
</tr>
<tr>
<td>35</td>
<td>Flood risk management</td>
</tr>
<tr>
<td>36</td>
<td>Lough Erne water level agreement</td>
</tr>
<tr>
<td>37</td>
<td>Strategic environmental assessments; environmental impact assessments; appropriate assessments</td>
</tr>
<tr>
<td>38</td>
<td>NI Water/ Irish Water knowledge sharing</td>
</tr>
<tr>
<td>39</td>
<td>Mapping data</td>
</tr>
<tr>
<td>40</td>
<td>Geodetic network</td>
</tr>
<tr>
<td>41</td>
<td>Radiation</td>
</tr>
<tr>
<td>42</td>
<td>Wildfire initiatives</td>
</tr>
<tr>
<td>43</td>
<td>All-island fracking</td>
</tr>
<tr>
<td>44</td>
<td>All-island air quality research: Residential Solid Fuel and Air Pollution</td>
</tr>
<tr>
<td>45</td>
<td>River basin management</td>
</tr>
<tr>
<td>46</td>
<td>Wildlife trade including CITES</td>
</tr>
<tr>
<td>47</td>
<td>Fluorinated gases</td>
</tr>
<tr>
<td>48</td>
<td>Strategic Transport Planning: national road network</td>
</tr>
<tr>
<td>49</td>
<td>Strategic Transport Planning: rail network</td>
</tr>
<tr>
<td>50</td>
<td>Cross-border bus services</td>
</tr>
<tr>
<td>51</td>
<td>Sustainable transport</td>
</tr>
<tr>
<td>52</td>
<td>Alternative fuels infrastructure, including electric vehicle charge point network</td>
</tr>
<tr>
<td>53</td>
<td>Coordination of transport aspects of EU cross-border programmes, including those funded through INTERREG and/or TEN-T</td>
</tr>
<tr>
<td>54</td>
<td>Strategic Transport Planning: cross-border projects</td>
</tr>
<tr>
<td>55</td>
<td>Road and rail safety</td>
</tr>
<tr>
<td>56</td>
<td>Road and rail safety reporting and information systems, including mutual recognition of driving disqualifications, penalty points</td>
</tr>
<tr>
<td>57</td>
<td>Rail standards, certification and licensing</td>
</tr>
<tr>
<td>58</td>
<td>Road and rail safety: Cooperation between the railway inspectorates North and South</td>
</tr>
<tr>
<td>59</td>
<td>Road haulage operator, licensing and qualifications</td>
</tr>
<tr>
<td>60</td>
<td>Operation of cross-border taxis</td>
</tr>
<tr>
<td>61</td>
<td>All Ireland free travel scheme for senior citizens</td>
</tr>
<tr>
<td>62</td>
<td>Recognition of driving licences and disqualifications</td>
</tr>
<tr>
<td>63</td>
<td>Motor insurance</td>
</tr>
<tr>
<td>64</td>
<td>Vehicle registration</td>
</tr>
<tr>
<td>65</td>
<td>Ferries</td>
</tr>
<tr>
<td>66</td>
<td>Blue badges</td>
</tr>
<tr>
<td>67</td>
<td>Health</td>
</tr>
<tr>
<td>68</td>
<td>Cross-border service provision, including hospital services such as primary percutaneous coronary intervention services in Altnagelvin, Derry</td>
</tr>
<tr>
<td>69</td>
<td>North West Cancer Centre</td>
</tr>
<tr>
<td>70</td>
<td>All-island congenital heart disease network</td>
</tr>
<tr>
<td>71</td>
<td>Cooperation and Working Together (CAWT)</td>
</tr>
<tr>
<td>72</td>
<td>Workstreams on child protection</td>
</tr>
<tr>
<td>73</td>
<td>Health protection and promotion (including addressing alcohol misuse, tobacco control, ECDC, and public health alerts)</td>
</tr>
<tr>
<td>74</td>
<td>Major emergencies and emergency services cooperation, including Cross Border Emergency Management Group</td>
</tr>
<tr>
<td>75</td>
<td>Organs for transplantation</td>
</tr>
<tr>
<td>76</td>
<td>Blood</td>
</tr>
<tr>
<td>77</td>
<td>Tissues and cells</td>
</tr>
<tr>
<td>78</td>
<td>The Institute of Public Health in Ireland</td>
</tr>
<tr>
<td>79</td>
<td>Controlled drugs licensing group</td>
</tr>
<tr>
<td>80</td>
<td>All Ireland Institute of Hospice and Palliative Care (AIIHPC)</td>
</tr>
<tr>
<td>81</td>
<td>Human Milk Bank</td>
</tr>
<tr>
<td>82</td>
<td>Cross-border GP out of hours service</td>
</tr>
<tr>
<td>83</td>
<td>Mutual recognition of prescriptions</td>
</tr>
<tr>
<td>84</td>
<td>Continuity of supply of medicines (including radiopharmaceuticals) and devices</td>
</tr>
<tr>
<td>85</td>
<td>Serious cross border threats to health (health security)</td>
</tr>
<tr>
<td>86</td>
<td>ENT Cooperation</td>
</tr>
</tbody>
</table>
ALTERNATIVE ARRANGEMENTS FOR THE IRISH BORDER

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<tr>
<th>87</th>
<th>Clinical trials and Joint Health research</th>
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<tr>
<td>88</td>
<td>Disability Services (aids, appliances, training, cross-border residential placements)</td>
</tr>
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<td></td>
<td><strong>Tourism</strong></td>
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<td>89</td>
<td>Tourism Ireland Limited</td>
</tr>
<tr>
<td>90</td>
<td>Hosting major cross-border events</td>
</tr>
<tr>
<td></td>
<td><strong>Education</strong></td>
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<tr>
<td>91</td>
<td>Education for children with special needs, including Middletown Centre for Autism</td>
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<tr>
<td>92</td>
<td>Educational underachievement</td>
</tr>
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<td>93</td>
<td>School, youth, and teaching exchanges</td>
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<tr>
<td>94</td>
<td>Cross-border movement and cooperation for pupils and school staff</td>
</tr>
<tr>
<td>95</td>
<td>Cooperation between the Inspectorates</td>
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<tr>
<td>96</td>
<td>Psychological services</td>
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<td>97</td>
<td>North-South Teacher Qualifications working group (NSTQWG)</td>
</tr>
<tr>
<td>98</td>
<td>School planning and development</td>
</tr>
<tr>
<td>99</td>
<td>North-South Education and Training Standards Committee for Youth Work (NSETS)</td>
</tr>
<tr>
<td>100</td>
<td>North-South youth exchanges, including the Causeway programme</td>
</tr>
<tr>
<td>101</td>
<td>Recognition of school-based/state-accredited examinations</td>
</tr>
<tr>
<td></td>
<td><strong>Energy</strong></td>
</tr>
<tr>
<td>102</td>
<td>Wholesale Electricity Market (Single Electricity Market)</td>
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<tr>
<td>103</td>
<td>Gas security of supply</td>
</tr>
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<td>104</td>
<td>Oil resilience planning</td>
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<tr>
<td></td>
<td><strong>Higher and further education</strong></td>
</tr>
<tr>
<td>105</td>
<td>Cross-border provision of apprenticeships</td>
</tr>
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<td>106</td>
<td>Cross-border movement of students</td>
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<td>107</td>
<td>Staff mobility</td>
</tr>
<tr>
<td>108</td>
<td>Skills provision and FE/HE link to the local economy</td>
</tr>
<tr>
<td>109</td>
<td>Cross-border partnerships between Higher and Further Education Institutions, including SFI investigators programme and SFI partnerships</td>
</tr>
<tr>
<td>110</td>
<td>Research and development, including through Horizon 2020</td>
</tr>
<tr>
<td>111</td>
<td>Higher and further education in agriculture, equine, and horticulture disciplines</td>
</tr>
</tbody>
</table>

**Telecommunications and broadcasting**

| 112 | Irish language broadcasting |
|113 | Mobile roaming               |
|114 | Spectrum                     |
|115 | Subsea cables                |
|    | **Sport, art, and culture**  |
|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                    |
|    | **Justice and security**      |
|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     |
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 enacted81. 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 the 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

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 2014.82

- 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 other’s territory regardless of the UK’s departure from the EU.

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Annex 4: Inward Storage Relief (ISR) – An Entry Level Trusted Trader Programme

**DOCUMENTARY EVIDENCE FOR IMPORTS & 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, Cont – 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
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. – Statement (if approved for DA) & VAT evidence 79
9. Duty/VAT paid evidence – Agent’s invoice + (Plain paper SAD & E2) or Deferment
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, Cont – 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
8. Unique Consignment Ref: (8/Lading OR AWB Number) – Box 44 – Approval No. & Approved trader address
9. Goods Shipped Register: Line item, Qty, description and we – UCR, original PO No, Sales Inv. No, original Customs Entry No, Date, Export Entry No, AWB/Ldg No, Total NOP, Total Duty for re-claims
10. Export Register: – UCR, original PO No, Sales Inv. No, original Customs Entry No, Date, Export Entry No, AWB/Ldg No, Total NOP, Total Duty for re-claims
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 facilitator 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 processes before 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 custom 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 custom 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 stocktakings 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 material 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.

   - 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, uncoating or ironing of textiles.
   - Electrostatic treatment could be successfully employed for the prevention or treatment of various seed-transmitted diseases of plants. Uncoating 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.

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.

15. Dividing or size cutting out of goods if only simple operations are involved.

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.

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.

18. Dulling of pipe fittings to prepare the goods for certain markets.

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.

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 timelines of transactions and dis close 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 cus- toms 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 fulfill 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 demonstrate adherence to EU standards for future exports.

The continued use of EU tracking systems such as TRACES for these products will ensure continued compliance to trading standards in the short term. However, traders will need to ensure their supply chains are able to maintain separation of EU and UK compliant goods if in the future there is any divergence of standards. Many organisations operate this separation in order 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 further improve the traceability of goods through the supply chain. For example, Blockchain technology promises robust ‘provenance’ and ‘transparency’ of records, and is being tested in a range of business scenarios including banking and the global supply chain. A pilot trial by Dutch customs is currently testing its applicability to manage Bills of Laden with a select number of shippers and products.

The potential benefits of applying Blockchain technology in the food supply chain is being hyped 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 using Blockchain to provide transparency of 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.

In a simpler approach the EU has recently implemented a tobacco tracing policy which sees all cigarette packages barcoded to provide traceability from source to consumer, in an attempt to reduce significant fraud and counterfeit traffic.

Security technologies are being developed in the form of smart locks to secure containers and lorries 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 stowaways at key ports of entry and exit such as Dover.

However, such initiatives with emerging technologies should not be prioritised for the Alternative Arrangements programme, but instead managed under the governance of wider future border innovation programmes.

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 the goods, the transporting vehicle, the route it will take, together with border crossing timings, on the Transit system. 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 the vehicle has crossed from one country to another. This process manages fiscal liabilities for VAT and custom duties which may be liable at the final destination point.

The 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 an electronic tracking of the vehicle, or a driver’s mobile phone, which sends a signal to the Transit application (NCTS) confirming 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 drivers phone. Through the use of GPS tracking and geo-fencing technology the phone will signal the time and location of any border crossings on 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, 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 are also automated.

The border crossing point also confirms liabilities due for fiscal charges associated with the 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 RoRo 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 Border’s 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. 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 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 the 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 the 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 can also be used if traders do not have sufficiently advanced systems;
- Capture of vehicle and driver details;
- Tracking of the vehicle journey, port entry/exit, either through smartphone app or through integration with existing vehicle logistics tracking systems;
- Linking the customs information with vehicle tracking to provide digital traceability of goods from dispatch to destination;
- Geo fencing techniques to automatically record when the consignment crosses a pre-defined port or border;
- Automated interfacing into 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 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 in regular intervals.

Examples of additional functionality 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 are traditionally involving significant of manual and paper-based workload for certification and compliance monitoring of the AEO/TT 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 perspective.

In order to become and maintain their status as TT/AEO, traders need to ensure that they have full compliance of the eligibility criteria, such as financial viability. Customs compliance, competence, record keeping and security. When Customs officers perform validation 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. 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. This system 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.

Making the AEO/TT schemes digital will enable automation of much of the administration of these schemes, reducing demand on border agency personnel time. It will also provide significantly improved capabilities for border agencies to monitor compliance and manage 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 freshmeat, meat produce, milk, etc. are subject to veterinary checks at Border Inspection Points (BIP’s) 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 models considers the option of providing new inspection posts for both controlled and general goods away from the border, in addition to existing BIP’s currently based in sea and airports 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 readily accepted by local communities. Therefore, the concept of ‘mobile inspections’ have 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 by Vets 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, these vehicles make ideal candidates to develop 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 TT / AEO system to ensure 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 – define and setup 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 the traders, cargo and conveyances, together with information about the risks related to the particular consignment;
- 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 enables 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 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 using advanced data analytics to analyse and understand this type of data.

Data analytics is the 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 – is about predicting what will happen. For example, to answer which consignments are high risk and which are low risk.
- Prescriptive analytics – is used to determine what action would be the best when this particular situation arises or to avoid it arising in the first place. As an example, where and when should we 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 integrate data from disparate sources and types, and the ability to transform and prepare data for modelling
- Data exploration and visualization: Visually interact with and explore data - very important from a usability perspective.
- Predictive analytics: Advanced analytics platforms are facilitation of 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.
- Optimization: Prescriptive analytics that uses a mathematical algorithm to choose the “best” alternative(s) that meet specified objectives and constraints.
- Validation testing: Step in development of analytics to evaluate accuracy and fit for 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 to 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 the border. 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 focused 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. Gateway contains a number of web forms for the accredited operators (AEO) where they record 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 reference in any verification.

3. Gateway then adds a positioning schedule on the mobile phone. The schedule indicates that Gateway shall 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. In case 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 relative simple and low-cost solution was significant:

- No papers, stamping or other sources of errors for import or export
- Increased understanding for common processes
- 20 minutes shorten clearance time for each consignment – 2000 logistics hours saved per year
- Less administrative burden worth about GBP 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 up to GBP 750 000 per year was achieved thanks to the solution

**Trusted Trade Lanes**

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 of a full or partial authorised supply chain, where all or key involved participants are Trusted Traders, or authorized participants of similar mutual recognized programmes. It 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) facilitating ‘Customs-to-Customs’ data exchange, risk management cooperation, mutual recognition of customs controls and trade partnership programmes. The concept of Trusted Trade Lanes 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 authorized as Trusted Traders.

Through the Trusted Trader/AEO programmes, with extensive up-front scrutinizing 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. Working with trusted traders in a TTL, it is possible to ensure that the goods that leave the exporter which are declared in the correct way, are not under any form of non-noticed restrictions, 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 – more or less as today; and, ID information. ID-information is a set of data to firstly 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 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 bases for calculating the import duties and, within an agreed period, pay the 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 the consignments.

Potentially, the trader would be able to use self-assessment and be able 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 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. 23 data elements about the consignment, based on WCO Data Model and SAFE Framework of Standards, 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 the 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 that data submitted to EU Customs may be transferred to Customs 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 dematerialization 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 for Brexit at all points of entry/exit to/from Calais region and more broadly from Channel-North Sea.

Key features of the French border solution:
• Customs declarations must be identified with a bar code in the driver’s possession. The bar code 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.

PROSPERITY UK ALTERNATIVE ARRANGEMENTS COMMISSION
Overview
Prosperity UK has established a Commission to develop credible Alternative Arrangements for the Irish Border that can be delivered in a timely fashion and without the presence of physical infrastructure at the frontier.

The Commission is seeking solutions that are both realistic and sustainable and recognises that their formulation and implementation will require the engagement of many stakeholders in the UK, Ireland and Europe. Central to the proposals will be a commitment to protecting the Good Friday/Belfast Agreement. The Commission does not have a view on the preferred future relationship between the UK and EU. The work of the Commission will be compatible with any of the EU-UK end states currently under consideration and will ensure that the UK retains full flexibility in its future negotiations with the European Union.

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.

Workstreams
Working groups have been created covering topics including the border and the movement of people in the context of the Good Friday Agreement, Tax, Sanitary and Phytosanitary standards, Small Traders and Trusted Trader Schemes.
We would like to thank the following organisations who have kindly engaged with the work of the Commission.

- Almac
- Airporter
- Beagans Limited
- Brexit Institute, Dublin City University
- British Chambers of Commerce
- British - Irish Chamber of Commerce
- British Retail Consortium
- Confederation of British Industry
- Confederation of British Industry NI
- City Centre Initiative Derry - Londonderry
- Clarksons Port Services
- Coca-Cola HBC
- Dairy UK
- Department for the Economy, NI
- Derry City and Strabane District Council
- Diageo
- Duddy Group
- Fleming Agri
- Foremost Freight
- Foyle Port
- Freight Transport Association NI
- Federation of Small Business
- Federation of Small Business NI
- Gen-sys
- Greenfields Ireland
- Her Majesty’s Revenue & Customs
- Houston Solutions
- Institute of Directors
- Interfrigo
- Irish Cattle and Sheep Association
- Irish SME Association
- Jack Murphy Jewellers
- JN Wine
- Lakeland Dairies
- Londonderry Chamber of Commerce
- Manifests Ireland
- Manufacturing NI
- Members of the Irish Parliament
- Members of the UK Parliament
- MJM Construction
- National Farmers Union
- Newry and Mourne Enterprise Agency
- Newry Business Improvement District
- NI Food and Drink Federation
- NI Grain Trade Association
- NI Mineral Products Association
- NI Retail Consortium
- Norbrook
- NSF International
- NuPrint
- O’Neill’s International Sportswear
- Ráth Mór Creggan Enterprises
- The Executive Office, Northern Ireland
- The Quays, Newry
- Ulster Farmers Union
- Ulster University
- Vodafone
- Warrenpoint Port
- Wisetech Global

Appendix 1 – Parliamentary Commissioners

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<th>MP/Title</th>
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<td>Bim Afolami</td>
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<td>Steve Baker</td>
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<td>Sir Geoffrey Clifton-Brown</td>
<td>Rt Hon Damian Green</td>
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<td>Rt Hon Greg Hands</td>
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<td>Rt Hon David Davis</td>
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<td>Rt Hon Nigel Dodds</td>
<td>Lord Hogan-Howe QPM</td>
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<td>MP Rt Hon Philip Dunne</td>
<td>Lord Lamont of Lenwick</td>
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<td>George Eustice</td>
<td>Emma Little-Pengelly</td>
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<td>Rt Hon Sir Michael Fallon</td>
<td>Alan Mak</td>
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<td>Baroness Finn</td>
<td>Kit Malthouse</td>
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<td>Rt Hon Arlene Foster MLA</td>
<td>Lord Marland</td>
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<td>Rt Hon Esther McVey</td>
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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 Maassen, 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 Srinivasan Rangan, School of Strategy and Global Studies, Babson College, US
18.راءن 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
Further information

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You can download this report at
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