Practical proposals for the United Kingdom's border with the European Union with particular emphasis on Northern Ireland

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Executive Summary

The issue of the border between Northern Ireland and the Republic of Ireland has been allowed to frame the Brexit negotiations. Both the UK and the European Union have committed to introduce no new physical infrastructure. There is, at present, a border between the two countries for tax, VAT, currency, excise and security; these are managed using technologies without infrastructure at the physical border.

The key obstacle in the negotiations is the EU's concern that goods could enter into the Single Market area through the Irish border without being compliant with EU standards or tariffs. The question for the EU is whether this risk to the integrity of the Single Market is so serious that it could block a Free Trade Agreement with the UK.

It is in the interest of all parties to ensure that this is resolved as easily as possible and that the current border arrangements are modified to deal with the necessary extra checks. Both the CEO of HMRC and the Head of Irish Revenue have confirmed that there will be no need for new customs facilities on the border to make this happen.

The checks that are required post-Brexit to retain the integrity of the EU Single Market and Customs Union include customs declarations, declarations of origin, sanitary and phytosanitary checks and checks on product compliance.

Cross-border trade on the island of Ireland is mostly comprised of regular shipments of the same goods. This repetitive trade is well suited to established technical solutions and simplified customs procedures already available in the Union Customs Code.

Larger companies may take advantage of trusted trader-type schemes. This status provides assurance of a high degree of compliance and hence entitles the bearer to simplified procedures.

For all companies, the requirements for additional declarations can be incorporated into the existing system used for VAT returns. Licensed customs brokers can be engaged to support businesses in dealing with rules of origin and customs arrangements.

For agricultural products, the Government should agree equivalence of UK and EU regulations and conformity assessment. Since UK and EU standards are identical and will remain identical at the point of departure, determining equivalence after Brexit should be straightforward. The current smooth movement of agricultural products across the Irish border, without the need for border inspection posts, can be continued by maintaining the island of Ireland as a Common Biosecurity Zone.

The proposals set out below can be realised within the existing legal and operational frameworks of the EU and the UK, based on the mutual trust on which regular trade depends. Any risk of fraud or smuggling can be addressed by effective co-operation by authorities on both sides of the border, as already occurs with smuggling of drugs, cigarettes, fuel and alcohol.

Such measures can ensure that the trade across the Irish border is maintained. They do nothing to alter the constitutional position of Northern Ireland, and do not violate the Principle of Consent enshrined in the Belfast Agreement. The integrity of the EU Single Market is safeguarded. The UK and the EU would be free to conclude a far-reaching Free Trade Agreement.

Harnessing the latest developments in international best practice can deliver continued co-operation and prosperity in the best interests of the United Kingdom and the Republic of Ireland.

1. The Northern Ireland issue in the negotiations

A "hard" border after Brexit between Northern Ireland and the Republic of Ireland is totally undesirable, which is why no one is arguing for new infrastructure at the border; not the UK, nor the EU, nor the Republic of Ireland.

Despite this, predictions of a future of manned checkpoints causing delays and becoming a target for terrorists have framed the debate. Such predictions ignore the fact that a very real border already exists between the two countries – for tax, VAT, currency, excise duties and security – but that it causes no discernible disruption.

Nonetheless, the UK Government failed to challenge the position taken by the EU, so it has been a decisive factor in the Brexit negotiations. The UK Government failed to pursue Donald Tusk's proposal for a SuperCanada/CETA+++ Free Trade Agreement on the basis that it provided no solution to the border issue. The Government has employed the Northern Ireland issue as the principal justification for the Chequers proposals.

The border is regarded as the thorniest unresolved item in the negotiations over the Withdrawal Agreement. There is no case for this, given that:

- No one wants a "hard" border – and rightly so. No one wants to disrupt the lives of those living near the border nor upset the Belfast Agreement, let alone to create a target for violence.
- The UK has guaranteed that it will not introduce border posts and checks. HMRC says it will not need physical infrastructure at the border *"in any circumstances."*[1] Administrative procedures and existing technology will enable any customs formalities to be carried out electronically and any physical checks (of which few would be needed) can be carried out elsewhere.
- Previous Irish administrations were discussing with the EU similar ways to *"obviate the need for customs posts."*[2]
- A report for the EU Parliament by the former head of the World Customs Organisation concluded that: *"In developing a solution for the Irish border, there is an opportunity to develop a friction free border building on international standards and best practices, technology and insights from other jurisdictions."*[3]

[1] J. Thompson, Chief Executive and Permanent Secretary HMRC, Exiting the European Union Committee evidence session, 29th November 2017

[2] RTE: *Taoiseach says work under way to minimize customs checks post-Brexit* 19/01/17 (accessed via: https://www.rte.ie/news/2017/0119/846135-enda-kenny-davos/

[3] L. Karlsson, *Smart Border 2.0: Avoiding a hard border on the island of Ireland for Customs control and the free movement of persons*, European Parliament Committee on Constitutional Affairs, November 2017

2. The EU Withdrawal Agreement and Northern Ireland

The Prime Minister's Article 50 letter in March 2017 stated that she wished *"…to avoid a return to a hard border between our two countries, to be able to maintain the Common Travel Area between us, and to make sure that the UK's withdrawal from the EU does not harm the Republic of Ireland."*[4] However, the Government's position appears to have been driven by the EU.

In the December 2017 Joint Progress Report, for instance, we saw the Government agreeing the following:

"*The United Kingdom remains committed to…its guarantee of avoiding a hard border… through the overall EU-UK relationship. Should this not be possible, the United Kingdom will propose specific solutions to address the unique circumstances of the island of Ireland. In the absence of agreed solutions, the United Kingdom 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."* [5]

This paragraph and the wide-ranging interpretation of it has been allowed to take hold. It has given the EU an effective veto over a possible Free Trade Agreement such as SuperCanada. The so-called *"backstop"* of *"full alignment"* would automatically apply *"in the absence of agreed solutions"*, i.e. in the event of the EU disagreeing on the overall relationship.

The EU's Draft Withdrawal Agreement, which would become binding if the UK and EU agree and ratify it, proposes a *"solution"* to the border question: that *"the territory of Northern Ireland…shall be considered to be part of the customs territory of the Union."*[6] The Prime Minister has already made clear that no UK government could accept this, because it would threaten the constitutional status of Northern Ireland as part of the United Kingdom. The idea of any kind of border between Northern Ireland and the rest of the UK was ruled out by paragraph 50 of the Joint Report *"in all circumstances*".

[4] Prime Minister's letter to Donald Tusk triggering Article 50, 29th March 2017

[5] Joint report from the negotiators of the European Union and the United Kingdom Government, Para 49, 8th December 2017

[6] European Commission Draft Withdrawal Agreement, 28th February 2018

3. The Northern Ireland border and trade

The Withdrawal Agreement proposal does not make economic sense. Table 1 provides the latest available figures from the Northern Ireland Statistics and Research Agency detailing the destination of Northern Ireland sales in goods and services.

Destination of sales	**£ millions**	**% of total**
Northern Ireland	44,747	65.0
Great Britain	14,008	20.3
Republic of Ireland	3,401	4.9
Rest of EU sales	2,334	3.4
Rest of World sales	4,391	6.4
Total outside Northern Ireland	24,134	35.0
Total outside UK	10,126	14.7
Total	68,881	100

Table 1: Destination of sales by companies in Northern Ireland in goods and services[7]

Just 4.9% of Northern Ireland sales are with the Republic (accounting for less than 0.2% of UK GDP) compared to 20.3% with Great Britain. The vast majority of sales are internal to Northern Ireland and, when combined with sales to Great Britain, Northern Ireland sales within the United Kingdom make up 85.3% of its economy. Northern Ireland's sales outside the UK are increasing (up 7.3% on the previous year's figures) but still account for under 15% of the total picture.[8] It would not make sense for Northern Ireland to introduce frictions with the UK internal market for the sake of avoiding such friction with that small percentage.

The Prime Minister was right to rule out separating Northern Ireland from the rest of the UK as the EU proposes. However, the Chequers White Paper in July does not challenge the EU, but accepts that the entire United Kingdom would remain as if in a *"combined customs territory"* with the EU alongside a commitment to *"ongoing harmonisation"* and a *"common rulebook"* for trade in goods, including agri-foods.[9]

Under the Chequers proposals, the UK would collect tariffs on behalf of the EU and remain bound to European rules on all goods, including food and agricultural products. The *"common"* in *"common rulebook"* is a misnomer, since only the EU will make the rules. The UK will lose its right to take part or to vote in the EU legislative process once outside the EU. The Chequers paper accepts this (in paragraph 22), but states that the UK *"should be consulted"* as EU rules are changed. A sovereign state merely being *"consulted"* on the rules imposed upon it is not taking back control.

The proposals in the draft Withdrawal Agreement are also damaging in terms of their impact on the Irish economy. The UK receives 13.4% of Ireland's exports and provides almost a quarter of its imports.[10] The UK and the Republic of Ireland are key trading partners, but only

[7] *Northern Ireland Broad Economy Sales and Exports Statistics*, Northern Ireland Statistics and Research Agency, 22nd March 2018

[8] *Ibid.*

[9] HM Government, *The Future Relationship between the United Kingdom and the European Union*, July 2018

[10] Figures for 2017, Irish Central Statistics Office, available at https://www.cso.ie/en/statistics/externaltrade/

1.6% both of Irish imports and exports pass between the Republic and Northern Ireland; the overwhelming share of trade is between the Republic and Great Britain.[11] 50% of Ireland's beef exports (250,000 tons) go to the UK, as do between 40% and 50% of exports from Irish-owned SMEs.[12] The Republic's trade with Northern Ireland is only a very small part of the much more significant trade with the whole of the UK.

The benefits to Ireland of a frictionless border with Great Britain are much more significant. More than 80% by value (or 90% by volume) of Irish exports use the UK transport system to reach their external markets.[13] It is overwhelmingly in Ireland's interest to ensure that trade with Great Britain remains as free as possible. As former Irish diplomat Ray Bassett puts it: *"Rationally, Ireland should be the UK's strongest ally inside the EU, pressing for the best possible terms and a successful Brexit."*[14]

4. The Belfast Agreement

The Government's position on the Irish border has led to the concessions of the Chequers proposal. Former Special Adviser to Lord Trimble as Northern Ireland First Minister Dr Graham Gudgin writes that Chequers *"contrives to constrain future UK competitiveness."*[15] This might, perhaps, have been understandable if it were the only available solution, but it is not. As Dr Gudgin and Ray Bassett put it, *"fears over a 'hard border' are only as strong as the refusal of those who do not engage with a workable technological solution."*[16]

That refusal, however, has been strong in Dublin, Brussels and Whitehall, with some suggesting that Brexit might even threaten peace in Northern Ireland. This is in contrast to the previous co-operative and practical approach of Enda Kenny, who initiated studies into technical border solutions after the Brexit vote.[17] Lord Trimble – one of the courageous architects of the Belfast Agreement – said in May, the current Taoiseach *"is endangering more than three decades of goodwill built up between London and Dublin"*, seeking to *"disregard the facts for the sake of temporary political advantage in what should be a mature negotiation."*[18]

It is now accepted that the European Commission has made a major error in taking advice on matters relating to the island of Ireland almost solely from Dublin. It must seek to learn more from respected voices in Northern Ireland. As a result of this error, Lord Trimble goes on to say that *"if anyone is threatening the return of a hard border it is the reckless intransigence of Michel Barnier."* The Withdrawal Agreement proposals are a clear breach of the Principle of Consent enshrined in the Belfast Agreement, designed to respect the border and leave the choice about its future solely, democratically and peacefully in the hands of the people of Northern Ireland.

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[11] *Ibid.*
[12] R. Bassett, *Brexit and the Border: Where Ireland's true interests lie*, Politeia, May 2018
[13] *Ibid.*
[14] *Ibid.*
[15] G. Gudgin, *What does Chequers mean for Northern Ireland?,* Policy Exchange, 16th July 2018
[16] G. Gudgin and R. Bassett, *Getting Over the Line: Solutions to the Irish border*, Policy Exchange, 9th May 2018
[17] *The EU already has the technology to enforce an electronic border*, *The Times*, 20th August 2017
[18] Lord Trimble, *True friends of Northern Ireland must end the scaremongering*, *The Times*, 9th May 2018

5. The pre-existing border and current technologies

There is already a border between Northern Ireland and the Republic of Ireland for currency, excise duties, tax, VAT and, importantly, for security. In the debate over solutions to the Northern Ireland border issue, a proper sense of scale, perspective or proportionality has been lost. The EU's objections are political not practical. The government has failed to set out what can be done to provide for customs compliance without physical checks or infrastructure on the Northern Ireland border.

The Chief Executive of HMRC has made clear: *"We do not believe we require any infrastructure at the border between Northern Ireland and Ireland under any circumstances."*[19] The Head of the Irish Revenue has similarly said that he is *"practically 100% certain*" that there will be no need for new customs facilities along the border.[20]

The EU suggested solutions itself in the *Smart Border 2.0* paper which the European Parliament commissioned in 2017, written by the former Director of the World Customs Organisation, Lars Karlsson. He saw the discussions on the Irish border as *"an opportunity to develop a friction free border building on international standards and best practices."*[21]

Karlsson's argument does not rest on untried technologies or inventions yet to be discovered, but on proven existing techniques to *"reduce or even eliminate the need to stop or undergo checks"*. Crucially, Karlsson also demonstrated that his solution could be implemented *"regardless of the legal framework for the UK's exit from the EU"* including on WTO terms.[22]

According to Karlsson, physical customs posts and even cameras are not essential at borders, and computer-based customs clearing is now the norm across much of the world. Arrangements without new infrastructure have been successfully tested on the Norwegian-Swedish border and have only been held back, according to Gudgin and Bassett, because the adequacy of the current systems does not yet merit the cost of new measures.[23]

But such methods need not be costly. A 2013 report by the Swiss Government found that its customs procedures cost only 0.084% of the total value of its imports and exports – or 0.12% of its imports and 0.054% of its exports.[24] The report noted that these costs could be driven down further in future with more efficient automated and digital systems.

A key point to recognise from these studies is that, across the world, a very small proportion of shipments are actually inspected physically. In the UK, 4% of imports are currently subject to physical inspection, the same proportion as in Italy. In France and Germany, the figure is

[19] J. Thompson, Chief Executive and Permanent Secretary HMRC, Exiting the European Union Committee evidence session, 29th November 2017
[20] *BBC News*, *'No new customs posts' post-Brexit, says Irish tax chief*, 25th May 2017
[21] L. Karlsson, *Smart Border 2.0: Avoiding a hard border on the island of Ireland for Customs control and the free movement of persons*, European Parliament Committee on Constitutional Affairs, November 2017
[22] *Ibid.*
[23] G. Gudgin and R. Bassett, *Op. cit.*
[24] Bericht über die Regulierungskosten, Swiss Federal Council, December 2013

3%; in Belgium and the Netherlands it is 2%.[25] The Republic of Ireland physically inspects only 1% of imports.[26] Filing of notification and declarations are completed electronically except in the most exceptional circumstances. The Customs Freight Simplified Procedures, for example, allow for freight movements to be pre-notified electronically, enabling customs control to take place at the premises of the importer.

This is not merely an EU phenomenon. The United States physically inspects 4% of its imports, and Australia 3%. In Norway and Japan, only 1% of shipments are inspected.[27] Where inspections are carried out, they are chiefly intelligence-led and particularly aimed at countering smuggling activities.

6. Movement of people

Another common misapprehension is that questions about the border are linked to controlling immigration. In fact, immigration into the UK from non-EU countries for work or settlement is not and will not be controlled at the border but at the workplace. Further control is provided by restricting access to the benefits system and to housing, as well as making it difficult to obtain bank accounts. As the Government acknowledged in their position paper on Northern Ireland published in August 2017, *"Immigration controls are not, and never have been, solely about the ability to prevent and control entry at the UK's physical border. Along with many other Member States, controlling access to the labour market and social security have long formed an integral part of the UK's immigration system."*[28]

Non-EU citizens wishing to work or to claim benefits legally in the UK must have a National Insurance Number, which is only obtainable for those with a permit to work or settle in the UK.

After Brexit, that system can be extended to EU citizens, but with the exception of citizens of the Republic of Ireland. There has been a Common Travel Area between the UK and the Republic of Ireland since 1923, meaning Irish citizens are free to travel, live and work in the UK and vice versa. As neither the UK nor the Republic are members of Schengen, there is no reason that this arrangement, which continues to be of immense importance to the economic, social and cultural wellbeing of both jurisdictions, should not continue.

Irish and UK border officials already co-operate to control the entry into the Common Travel Area from Schengen countries as well as non-EU countries of suspected terrorists, criminals, or undocumented passengers arriving at ports in either country. A joint Memorandum of Understanding commits both governments to data sharing systems to *"support ongoing*

[25] S. A. Singham and V. Hewson, *Brexit, Movement of Goods and the Supply Chain*, Legatum Institute, February 2017
[26] J.-F. Arvis *et al.*, *Connecting to Compete: Trade Logistics in the Global Economy*, The World Bank, 2016
[27] *Ibid.*
[28] HM Government, *Northern Ireland and Ireland: position paper*, August 2017

action to identify and combat abuses of the CTA."[29] In practice, many airlines and ferries also require passports for travel between Great Britain and Ireland for identification purposes.[30][31]

More broadly, citizens of 56 countries and territories have visa-free access to the UK and that is likely to continue to be the case for citizens of EU countries after Brexit. Millions of others come to the UK on tourist, business or other visas. Indeed, some 90 million people enter and leave the UK each year. It would be quite pointless for anyone to enter the UK by the back door via Republic of Ireland, since they can enter just as easily by the front door.

7. Movement of goods

So the Irish border "problem", raised by the EU, is solely about the movement of goods. In particular, the key blockage in the negotiations is the EU's apparent concern about the risk that non-compliant goods or food could enter the single market through the Irish border.

The Government has guaranteed that it will not introduce a hard border involving infrastructure or checks "*under any circumstances".* Instead it has proposed a pragmatic approach involving *"trusted trader"* schemes for larger traders, and exemptions for smaller and micro traders to *"recognise the unique economic, social and cultural context of the land border and the fact that many of the movements of goods across it by smaller traders cannot be properly categorised and treated as economically significant international trade."*[32]

However, the EU has said that this approach would not be compatible with the Union Customs Code and would threaten the integrity of the EU Internal Market.

It is entirely reasonable for the EU to want to maintain the integrity of its market, including its safety standards and its customs revenues. The UK has no interest in undermining them. Nor can the UK reasonably expect the EU to make wholesale changes in its legal framework. So the right approach is to find ways, within current EU laws, which would enable the EU to maintain the integrity of its market, its health and food safety standards and its customs revenues without needing to install border posts or carry out checks at the Irish border. This has been discussed extensively with experts involved in customs, logistics and trade. There are entirely practical measures which conform to EU law for achieving the EU's legitimate objectives efficiently and effectively without them needing to impose a "hard" border.

The proposed technical and administrative solutions are consistent with Michel Barnier's recent comments. Under his unacceptable proposals, there would be extensive controls between Northern Ireland and Great Britain. He makes clear that checks do not need to be at the point of entry. This principle can surely be applied to the border between Northern Ireland and the Republic of Ireland. He told the Brexit Select Committee:

[29] Joint Statement by Mr Damian Green and Mr Alan Shatter regarding co-operation on measures to secure the external Common Travel Area border, 20th December 2011

[30] See, for example, Travel Documentation requirements, https://www.ryanair.com/gb/en/useful-info/help-centre/faq-overview/Travel-documentation#0-3

[31] See, for example, Frequently Asked Questions, Irish Ferries http://www.irishferries.com/uk-en/frequently-asked-questions/top-10-faqs/passports-identification

[32] HM Government, *Northern Ireland and Ireland: position paper*, August 2017

"I am convinced that it is possible to carry out the kind of checks we need without creating a physical frontier within your country and in respect of the constitutional order of the United Kingdom. We are talking about checks on goods, after all. Many of these checks are already carried out today between Northern Ireland and Great Britain… We are ready to simplify these checks, to have them carried out at a number of different places and have checks, thanks to technical means, which could take different forms. But that effort to de-dramatise the situation should be made by both sides." [33]

7.1 Border procedures

It is important to consider the tasks which must be routinely undertaken when moving goods across a customs border – as the Irish/UK border will become once the UK leaves the Customs Union, whether or not there is a Free Trade Agreement with the EU. These are summarised in Table 2.

Procedures which are currently required within the EU	• Accounting for VAT. Even when crossing borders between member states within the EU Customs Union, exports are zero rated. Importers pay local VAT when they subsequently sell the goods. • Large traders have to report detailed statistical data about their trade with other member states
Procedures which will be necessary after Brexit even if there is a UK/EU Free Trade Agreement:	• Customs declaration • Declaration of origin • Product compliance • Sanitary and phytosanitary checks on animals, plants and food
Procedures necessary only if there is no UK/EU Free Trade Agreement	• Assessment and collection of customs duties

Table 2: Summary of the tasks routinely undertaken at the border

VAT: The key point to note is that companies already have to report trade across the Irish border. Every VAT registered company trading across the Irish border has to record in its VAT return every transaction that crosses that border. The company must be able to show, if challenged by HMRC, that goods they claim to have exported did in fact go abroad. This is because exports to other member states, like those to third countries, are zero rated. Exporters not only pay no VAT on the goods they export, but can claim back VAT they paid on inputs used in making them.

[33] M. Barnier, Exiting the European Union Committee oral evidence session, HC 372, 3rd September 2018

Nonetheless, HMRC and other EU customs agencies achieve a high level of compliance with VAT. Moreover, this is achieved without physical infrastructure or checks at the border. Companies complete their VAT returns electronically. There are no physical border inspections for VAT.

VAT demonstrates that even across this sensitive border and where there is a fiscal incentive to cheat, laws can be applied effectively without border posts and checks or provoking political antagonism. Moreover, as explained below, the VAT system provides a framework for streamlining customs controls without undermining their integrity.

Customs declarations: These require similar information to VAT and many companies will complete VAT and customs declarations in parallel. They can likewise be completed online. At existing third country borders, virtually all customs declarations are submitted online. They are risk assessed electronically and not at the border.

Declaration of origin: If there is a UK/EU Free Trade Agreement, there will be no tariffs on UK or EU goods crossing the Irish border.

The system available globally to declare origin – the Registered Exporter ("REX") scheme – has simplified the process for declaring origin. Under REX, an exporter can state the origin of his goods on a sales invoice. As the importer is well aware of the origin of what he is buying, he can base his import declaration with confidence in the REX statement on the invoice.[34]

There is little third-country traffic in Northern Ireland, as it is not a logical route to transport goods from outside the EU. In addition, there are few goods which were originally produced outside the UK sold from Northern Ireland to the Republic of Ireland and vice versa. This implies that the overwhelming majority of goods will be of EU or UK origin, so Declarations of Origin should not be a major issue on the border. In most cases, the origin will be correctly declared by the REX statement on the invoice of the seller.

The UK may make agreements with some countries to admit goods at lower tariff rates than the EU. Some have raised the prospect of these goods entering Northern Ireland being shipped illegally across the border, through the Republic of Ireland, then from their ports to the continent. Given that the average EU external tariff is 4% (2.5% on manufactured goods) the costs of transport alone would in most cases far exceed the tariff avoided.

In any case, Northern Ireland has only five commercial ports (Belfast – which handles 67% of port freight[35] – Coleraine, Larne, Londonderry and Warrenpoint)[36] with a small volume of freight handled by the two Belfast airports. If trade in some extremely highly protected good were to emerge on any scale, it would be easy to detect at points of entry and continued co-operation between HMRC and Irish customs could speedily identify it.

[34] R. Cole and H. Maessen, *A hard Brexit and frictionless border can be combined also in Ireland*, SGS, 4th July 2018

[35] HM Government, *Additional Data Paper: Northern Ireland Trade Data and Statistics*, August 2017

[36] https://www.infrastructure-ni.gov.uk/articles/gateways-sea-ports

Product compliance: At present all goods produced within or imported into the UK have to conform with EU safety, environmental and other standards and are then free to move throughout the internal market without checks. When the UK leaves the EU, it will initially retain all the EU product rules and regulations in UK law so its goods will in fact be compliant.

This might be recognised as 'equivalent' under the free trade agreement. If not, the EU can require confirmation that any goods imported from the UK conform to EU standards. There is seldom a problem with non-compliance in general trade from outside the EU. Thousands of containers with all kinds of goods enter the EU on a daily basis with few problems regarding product compliance.

Compliance with sanitary and phytosanitary rules: EU law is strict in respect of food, animals and plants, with specific procedures as well as standards for SPS compliance. Although sometimes these rules may be partly designed to protect EU farmers, the UK must respect the EU's legitimate desire to protect consumers.

Compliance with WTO obligations: The WTO Trade Facilitation Agreement,[37] drawn up *"with a view to further expediting the movement, release and clearance of goods, including goods in transit"* commits signatory states including the EU to making border processing activities as streamlined as possible.

There is no mandatory WTO requirement for border checks and, where physical inspections are necessary, the Agreement requires that they be intelligence-led. Article 4 requires members to adopt *"risk management"* strategies for customs control, *"in a manner as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade."* Article 7 covers the facility to lodge documents electronically before arrival, as well as to pay any relevant charges electronically. The Kyoto Convention of the World Customs Organisation supports this, calling for "*risk analysis*", "*audit-based controls*" and requiring members to "*use information technology and electronic commerce to the greatest possible extent to enhance Customs control*."[38]

The approaches outlined below obviate the need for border delays and do not require the UK to accept the EU rulebook as in the Chequers proposals. They are fully consistent with the terms of the WTO.

7.2 The nature of cross-border trade

Cross-border trader on the island of Ireland is characterised by many regular crossings of goods, often from the same points of origin, on the same routes, to the same destination, in the same lorries. The agri-food sector is particularly important in this respect; just under half of cross-border manufacturing trade is accounted for by food, beverages and tobacco.[39]

[37] WTO Trade Facilitation Agreement available at https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm#II

[38] Text of the Revised Kyoto Convention available at http://www.wcoomd.org/Topics/Facilitation/Instrument%20and%20Tools/Conventions/pf_revised_kyoto_conv/Kyoto_New

[39] InterTradeIreland Statistics, available at https://intertradeireland.com/insights/trade-statistics/

Around a third of Northern Ireland's milk heads south of the border for processing,[40] amounting to 1 billion litres of milk worth between €200 – 300 million.[41] Similarly, some 13,000 border crossings are made annually purely for the production of Guinness, and over 18,000 for Baileys Irish Cream.[42]

For large companies, additional declarations are unlikely to prove burdensome, particularly as they will be currently making regular VAT returns in relation to their exports. Additional customs information can be provided in parallel.

But small businesses form a significant proportion of cross-border traders. It has been estimated that there are only 53 businesses in Northern Ireland exporting goods to the Republic of Ireland which employ more than 250 people. 92% of cross-border businesses employ fewer than 50 people.

We address the specific demands of agricultural products in Section 7.4, but first focus on the fact that, across the Irish border, a company's export declarations tend to be very repetitive. For these repetitive transactions, simplified customs procedures are available already within the Union Customs Code.[43]

One solution for technical handling of VAT declaration information is for the UK to negotiate continued access to the existing VAT Information Exchange System. An alternative would be to grant permission to exporters and importers on the basis of the facility incorporated in the Union Customs Code called "Entry in the Declarant's Records".[44] Both systems can lead to the outcome that there are no border formalities at the border of any kind, resulting in so called *"drive through borders"*.[45] To make this simplification available to all companies, including SMEs, licensed customs brokers could be facilitated to acquire such a permission on behalf of their clients.

It is important to emphasise that such approaches do not represent some radical alternative to standard international customs procedures. Indeed, the Union Customs Code is already equipped to handle inland clearance (i.e. carrying out any inspections away from the point of entry to a customs territory). Also, the required data can be standardised so that the information required for an export declaration can be reused for an import declaration.

Large- and medium-sized companies may be able to seek "Trusted Trader" status for their particular trade. This status provides assurance of a high degree of compliance and hence entitles the bearer to simplified procedures. The largest may seek Authorised Economic Operator status, though this takes time to acquire, is designed for companies with wide international networks and is not necessarily suited for those just involved in trade across the Irish border.

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[40] M. Johnston, Northern Ireland Director of Dairy UK, NI Affairs Select Committee evidence session, 11th January 2017

[41] P. Quinn, GAA President, quoted on brexitborder.com, 23rd February 2017

[42] Figures from Diageo plc, quoted in *The Irish Times*, 7th April 2017

[43] For example, Article 166 of the UCC, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0952-20161224&from=EN

[44] Article 182 of the UCC

[45] H. Maessen, *Drive Through Borders: A comprehensive UK and EU customs strategy for Brexit*, SGS, July 2018

The Union Customs Code allows an alternative to customs clearance at the border. The exporter makes a customs declaration at the exporter's premises; this is followed by a transit declaration, which gives the possibility to transport the goods to their destination without fulfilling any formalities at the border. Finally, the transit declaration is followed up by an import declaration when the goods arrive at the premises of the importer on the other side of the border. If customs want to inspect the goods, mobile teams can do so when the goods are declared as they are loaded or unloaded.

Thus, transactions with goods of UK and EU origin and which are regulatorily aligned, can be handled by simplified procedures. Goods to which this does not apply may be declared by traditional customs declarations but inland on the premises of the exporter and importer. This results in free-flowing borders for all goods traded not only on the Northern Ireland/Republic of Ireland border, but also on any other UK/EU border. These simplifications are available in the Union Customs Code and only need to be implemented in practice.

Proof of compliance with EU and UK product conformity regulation could be provided by licensed inspection companies in the country of sale, thus removing the need for inspections when goods are being imported. This kind of proof of conformity is advocated by the WTO to streamline international trade and can be introduced on a much wider scale than has been done so far. Especially with regard to agricultural and veterinary products, this can make international trade much more efficient.

Some cross-border trade across the Irish border is by small companies and often very local. They may not amount in aggregate to a huge economic value, but such transactions are most important in human terms.

Optimally, these small operators, if below current VAT thresholds in the UK and the Republic of Ireland, should enjoy exemptions as the Government suggested in its position paper in August 2017. If not, small traders can voluntarily register for VAT as a means of making electronic declarations of their shipments. Many small traders take advantage of this voluntary registration at present in order to claim back VAT.

7.3 Regulatory compliance and safety checks

The EU should not see a border without new infrastructure as damaging the integrity of the Single Market. Much has been made of the prospect of non-EU compliant goods being brought into Northern Ireland and subsequently crossing the border for sale in the Republic of Ireland. This, however, can be addressed as follows:

- At the point of the UK's departure from the EU, there will be full regulatory alignment, so goods unacceptable for sale in the Republic of Ireland would be equally unacceptable in Northern Ireland.
- If and when regulations on either side of the border diverge, data-sharing and co-operation between authorities can raise suspected non-compliance or infringement speedily.

- Much in the way that immigration is controlled in the workplace and not at the border, pro-active inspections by trading standards at the point of sale and by sectoral regulators across supply chains provide an effective means of guarding against non-compliant goods.
- As set out in Section 8 below, smuggling is a feature of any border. It already takes place on the Irish border, for example, in relation to drugs, fuel, alcohol and cigarettes. But any risk of EU non-compliant products entering the Single Market through the Irish border can be minimised through co-operation between the police and customs authorities on the two sides of the border, working together to track down and prosecute any criminal activity.

7.4 Movement of agricultural goods

Agricultural products, and in particular animal and animal derived products, present specific issues to address. This is because, at present, on entering the EU territory they are required to go through specific entry points with border inspection posts (BIPs) where veterinary checks can be undertaken by accredited handlers and vets. European Directive 97/78/EC requires that these inspection posts must *"be located in the immediate vicinity of the point of entry."*[46]

This operates within the framework envisaged by the WTO's Agreement on the Application of Sanitary and Phytosanitary (SPS) measures, which allows – but does not mandate – border checks to ensure the safety of imported food. The SPS Agreement stipulates that such checks should not be used as a surreptitious means of inhibiting cross-border trade.[47] Checks must not, according to the Agreement, *"arbitrarily or unjustifiably discriminate between [WTO] members where identical or similar conditions prevail…SPS measures shall not be applied in a manner which would constitute a disguised restriction on international trade."*

In practice, however, the EU allows inspection posts – operated by both government agencies and the logistics industry – to be placed considerable distances from the physical point of entry. In Rotterdam, for instance, inspection posts are located in the wider region around the harbour up to 20 km from the docks themselves. Transport of the goods to these points is accounted for in their transit declarations, so there is assurance that they cannot be imported without veterinary approval whilst avoiding delays at the border. To avoid congestion at the docks, goods are transported to these points under transit declarations and only released into the internal market once they have been given veterinary approval at the BIP.

The only reason that the current arrangements could not continue would be if the EU did not agree to equivalence of UK regulations and conformity assessment. Recognition of such equivalence is required by Article 4 of the WTO SPS Agreement, which provides that: *"Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the*

[46] Council Directive 97/78/EC of 18th December 1997

[47] WTO Agreement on the Application of Sanitary and Phytosanitary measures, available at https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm

importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures."

This equivalence provision is mirrored in Article 5.6 of the EU-Canada Comprehensive Economic and Trade Agreement (CETA),[48] with Annexes 5D and 5E detailing the precise equivalences and the mechanisms for dealing with regulatory changes by one party or the other. Since UK and EU standards are identical and will remain identical at the point of departure, determining a similar equivalence after Brexit should be a straightforward process. Any punitive measures imposed by the EU would likely qualify as a *"disguised restriction on international trade"* and the UK would be able to bring a case on a violation of the Agreement to the WTO. Similar cases have been brought in this regard before, and EU policies have been shown to be in violation.[49]

If regulations are recognised as equivalent, there may still be checks to ensure conformity with those regulations, although their frequency can be reduced. The current smooth movement of agricultural products across the border, without needing to transit through BIPs can be continued by maintaining the island of Ireland as a Common Biosecurity Zone. It has been recognised by all communities on the island of Ireland that it is sensible to capitalise on the protection afforded by the sea. By continuing to collaborate with the Republic of Ireland, the UK can capitalise on that advantage to predict, monitor and control the spread of pests and disease.

8. Current and future anti-smuggling measures

Up to now, EU officials have rejected any proposals for using administrative and technological procedures to avoid a hard border on the grounds that they will not guarantee absolute protection of the EU Internal Market. They are right to want to secure the integrity of their Market. But no border is 100% secure against smuggling. Smuggling takes place across EU borders in Eastern Europe and the Mediterranean. Moreover, it occurs at present across the border between Northern Ireland and the Republic of Ireland. Drugs, fuel, tobacco, cigarettes and other illegal goods have been smuggled across the Irish border since the 1920s but cross-border co-operation is already used to combat criminals. The PSNI, the Garda Síochána, customs authorities and law-enforcement agencies co-operate to counter this trade.

Law-enforcement agencies on both sides of the border co-operate to suppress smuggling without anyone suggesting that border posts and checks would make their efforts more effective. If they can tackle trade in drugs, fuel, tobacco and alcohol without infrastructure at the border, they can prevent non-compliant goods from the UK reaching Irish retail outlets in the same way.

[48] CETA text available via http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/

[49] e.g. WTO Case DS26: European Communities – Measures concerning meat and meat products (hormones)

9. Conclusion

The EU will be able to maintain the integrity of its internal market without erecting a hard border along its border with Northern Ireland. At the same time the United Kingdom will be able to develop a fully independent trade policy rather than remaining a rule-taker. The one element of 'alignment' necessary is the maintenance of the current Common Biosecurity Zone covering the island of Ireland, and this is not contentious.

The necessary procedures described can all be implemented within the existing legal and operational frameworks of the EU and the UK, based on the mutual trust on which regular trade depends. Rational, pragmatic approaches can ensure that the vital trade across the border is maintained. At the same time, this allows the United Kingdom to conduct an independent trade policy without threatening the integrity of the EU Single Market. A summary specific measures to carry out the necessary border tasks is included in Table 3. These approaches, based upon current technology achievable without any new infrastructure at the border.

There is nothing about such technical and administrative solutions which would weaken North-South co-operation. There is nothing which would reduce our commitment to the Belfast Agreement, or which might jeopardise peace in Northern Ireland. Harnessing the latest developments in international best practice can deliver continued co-operation and prosperity in the best interests of the United Kingdom and the Republic of Ireland.

Border task	Necessary measures
Tariffs	• Free Trade Agreement with 100% tariff-free access
VAT, customs procedures and declarations	• Existing electronic procedures allowing declarations ahead of travel and any necessary physical inspections at the exporters' or importers' premises. • Optimally, exemptions for the very smallest traders below the VAT threshold. • If not, small traders can voluntarily register for VAT as a means of making electronic declarations of their shipments. • Expansion of licensed customs and VAT brokers to support medium-sized businesses. These bear the liability for compliance and lower costs through simplified, reliable logistics. • REX system to simplify Declaration of Origin procedures • Intelligence-led checks for suspected non-compliance underpinned by co-operative data sharing.
Trading standards and safety checks	• Initial full regulatory alignment, making goods unacceptable for sale in the Republic of Ireland equally unacceptable in Northern Ireland. • Data-sharing and co-operation between authorities can raise suspected non-compliance or infringement speedily if regulations diverge. • Pro-active trading standards inspections at the point of sale provide an effective means of guarding against non-compliant goods
Sanitary and phytosanitary checks	• Maintenance of the all-island Common Biosecurity Zone. • Mutual recognition of SPS standards on either side of the border. • Pre-export Inspections on SPS and regulatory alignment can be outsourced to licensed private inspection companies. • EU precedent suggests that even where physical SPS checks are necessary, they can take place some 20 km from the border itself (as, for example, in Rotterdam). Details would be contained in a transit declaration and obviate the need for new infrastructure at the border.

Table 3: Summary of solutions to particular border tasks