



## MANUFACTURING NORTHERN IRELAND

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### *Alternative Arrangements for the Irish Border Interim Report Response*

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#### Summary

1. Leaving the EU in October without a deal will have a catastrophic impact on the UK and Irish economies with Northern Ireland most sharply impacted. So, it is welcome that there are groups working to try to avoid the UK leaving the EU in October without a deal.
2. We are very grateful for the open and committed way in which the Chair and some of the Technical Panel have taken time to engage and try to understand both the technical, practical and community complications introduced by the UK's decision to leave the EU. Understanding this community, the context (geographic, political, historical and economic) and the risk of not achieving consent is critically important if any 'alternative arrangements' are to be adopted, accepted and operated.
3. Some of the suggestions in the report are useful in helping give confidence to UK Parliamentarians and EU negotiators as they work to demonstrate and give effect to their joint commitment to avoid (in whole or in part) or exit the Backstop should the future relationship negotiations not result in ensuring the conditions for trade and the community in Northern Ireland remain as they are on exit day.
4. However, the proposals in the Interim Report at this point would offer much less protection to NI not just with its trade with the EU but also with the rest of the UK and **lump costs and complexities onto a business community with neither the capacity, experience nor capital required to delivery untested solutions**. This would kill firms, damage consumers and inflict a level of surveillance on to Border communities which doesn't have their consent.
5. During our engagement, there was much which the AAC valued in the Withdrawal Agreement and backstop provisions. It would be useful to pull those out in the final report and make it clear what you think is helpful and could remain.
6. It continues to be our view that the unique political, geographic, historic and economic environment guides the way in which your work should proceed. Northern Ireland being the *Bridge rather than the Border* between the UK and the EU post-Brexit would be workable and pragmatic.

7. Fundamental questions have been unanswered or raised:
  - a. There are inadequate or no solutions offered for VAT, State Aid nor providing market access.
  - b. Many of the proposals would require not only exemption or derogations, but changes to EU Law and Treaties which would require approval in the EU27 including through referenda.
  - c. The proposals would ask businesses and individuals to trust in the delivery of a mass, complex mixture of derogations, simplifications and the rest, when there already exists a solution which delivers frictionless trade on the island of Ireland which is supported by the overwhelming by business, farmers and civic society.
  - d. It is not clear that border communities in particular would give their consent to an increased level of enforcement, greater intrusion of HMRC and others, when it has been committed until now that there will be none.
  - e. And, some suggested solution could create Border requirement for goods travelling from Northern Ireland to Great Britain (and indeed within Northern Ireland) when the risk of this was negotiated away in the Draft Withdrawal Agreement.

## Purpose?

8. Despite verbal assurances, there is confusion throughout the report about the purpose of this work which requires clarity. For instance, it says that the aim is to identify alternative arrangements which could take the place of the the Backstop provisions in a new Alternative Arrangement Protocol in a new Withdrawal Agreement or inserted into the existing Withdrawal Agreement. It then says the proposals are *“agnostic as the Future Economic Partnership but assume that this future partnership will not involve the UK remaining in the EU Customs Union and the EU Single Market”*. However, a list of possible future relationships then includes a partial customs union, EFTA membership, EEA membership, a comprehensive FTA *“or even in the event that the UK and EU do not agree a deal prior to the UK leaving the EU”*.
9. The Backstop is often poorly described as an ‘insurance policy’. Business in (and the people of) Northern Ireland instead understand it to be the solid floor which we cannot go below and acts as a solid foundation to press up from. It is valued and appreciated and gives effect to the commitments from both the UK and the EU to firms, farmers and families in Northern Ireland.
10. Under the existing Withdrawal Agreement the Backstop is triggered automatically at the end of the Implementation Period unless the Implementation Period is extended or the backstop is superseded in whole or in part.
11. **Clarity on this fundamental point needs to be provided. Is this work about maintaining, removing, replacing or making obsolete the requirement for the Backstop and if remaining, how will it be triggered or removed?**

## Interpretation of the December 2017 Joint Report

12. The Interim Report further insists that the commitment of the UK and EU to “no infrastructure or related checks and controls” is not valid. This commitment has been given effect in the Withdrawal Agreement (through the Backstop) and in written form by the current PM.
13. Additionally, aside from the Brady Amendment often referenced, one of the few things which Parliament has approved in the European Union (Withdrawal) Act 2018 where in Section 10(2)(b) Parliament has committed to not “create or facilitate border arrangements between Northern Ireland and the Republic of Ireland after exit day which feature physical infrastructure, including border posts, or checks and controls, that did not exist before exit day and are not in accordance with an agreement between the United Kingdom and the EU”.
- 14. The report does not say why businesses and residents in Northern Ireland should accept this new interpretation; how the UK plans to gain the consent for this new interpretation from not only the EU but from the people and businesses in NI; or, how it plans to change the view of Parliament to its wishes already made law in the EU (Withdrawal) Act 2018.**

## The SPS Zone

15. This proposals would require Ireland to become a partial member of the EU’s Single Market but does not say how or why it can be negotiated let alone how the required treaty change (including the potential for referenda in Ireland and other parts of the EU) could be agreed across the EU.
16. There is no description of how NI could choose to consent to one particular set of rules or the other nor indeed how we could have influence over those rules nor is there is clarity on under whose jurisdiction this proposal would run i.e. is it to be the ECJ?
17. If Ireland chose to remain aligned with EU rules, then a Border is required on the island of Ireland. If the UK diverged, then NI would be required to make a choice between a SPS border with Ireland or one with GB. Neither is a choice which has a useful, positive outcome for businesses, farmers or consumers in Northern Ireland.
18. The examples offered reduce rather than remove the need for physical checks.
19. Much of the suggestions made on SPS stretch the rules (exemptions, derogations etc.) a significant distance beyond what is provided for in EU law. For instance, the suggestions that inspections could take place at locations which are not Border Inspection Posts (BIPs) but there does not appear to be provision for this in EU law.
20. Some commentators have suggested that there is a healthy level of ‘creative ambiguity’ in an effort to give assurances. However, in the next phase, this would not survive the exposure to the heat of negotiation.
- 21. SPS is not customs. So, given the impact SPS will have on creating a Border, it is perhaps advisable that the AAC Technical Panel would include a greater level of technical understanding in this area to guide its work in the next stage and before publishing its final report.**

## Mobile Border Inspection Posts

22. Leaving aside the reality that simply moving the Border is not actually what has been committed to by HMG nor the EU, we understand there are some flexibilities in the Union Customs Code but none of those removes the need for checks. Regulations on Border Inspections Posts are not covered by the UCC. So, again, there would be a requirement for significant Treaty amendment and approval from the EU27.

## Special economic zones for Derry/Donegal and Newry/Dundalk

23. Whilst the UK can decide to do what it wishes, Ireland would have to maintain compliance with the Union Custom Code which makes it clear that ‘free zones’ must be enclosed and goods entering and exiting subject to checks. **This proposal therefore has the potential to encircle Derry/Donegal and Newry/Dundalk behind a hard border in Ireland and in Northern Ireland.**

## Trusted traders

24. There is no clear sight of what this regime would mean for traders in Northern Ireland and no estimate of costs (for government nor businesses).
25. It appears complex and costly particularly for firms without the scale or the capital to be able to secure, operate or fund this complexity. NI has very few large firms and less than 20 of those have AEO status as it is.
26. Without the system and costs being made clear, it is impossible to judge its impact on firms. The final report could usefully demonstrate the model and offer a realistic estimate (including staff costs) of securing and operating such a model.
27. It appears that changes to EU law (and ratification) would be required in addition to mutual recognitions agreements. There is no clarity on who would oversee this.
28. Transit is suggested for some other firms, but this requires a barcode scan at the Border. Removing this need would require a change of EU law this time also agreed by Common Transit Convention members (which includes Turkey).
29. The exemption for smaller firms (less than the VAT threshold) would also require EU law change. In addition, we understand that it may breach WTO MFN rules.
30. Not mentioned is the likelihood of disruption to normal economic life as some would see the opportunity (on both sides of the Border!?) to ‘game’ this exemption and avoid checks, tariffs and other costs.
31. It is not clear what is proposed for traders who do not meet any of the above profiles – i.e. a large firm who is not an AEO or Trusted Trader but above the VAT threshold.

## Transit

32. The border separating NI from the ROI is very porous with almost 300 formal crossing points. Due to the infrastructure and staffing requirements for this this to operate, would cargo would have to be limited to designated roads?

## Customs

33. The proposals don't remove the need for new infrastructure, it simply moves it to other locations. It will burden businesses with huge costs including large investments in new facilities or adaptations which will put them out of business.
34. The suggestion of apps and monitoring devices would inflict a level of surveillance which would result in border communities and businesses being subject to unequal and unacceptable amount of surveillance in their daily lives, could be easily bypassed requiring an intervention by HMRC supported by the PSNI and resulting in a greater likelihood of a drift from the rule of law.

## VAT

35. Very little is discussed on this despite its role in creating Border. The Backstop provides for NI firms to continue to have access to the VIES system. The final report should be more forthright in suggesting this.

## Industrial goods

36. As with VAT, little is suggested here other than some form of mutual recognition already rejected by the EU. The Backstop provided a workaround on securing market approvals in the EU which would be accepted by the UK and, for instance, specific approval of NI Qualified Persons to provide for batch release of goods into the Single Market.
37. Without this, goods will be required to be checked at the Border.
38. CE marking and other approvals, through Notifying Bodies, is critically important. Any delay or significant cost will make businesses fail.

## Rules of Origin

39. Report suggests consideration of the complicated 'EU rules of origin'. There needs to be a liberal application of the rules of origin for goods that are either sourced in Ireland or substantially processed / transformed on the island of Ireland and which are exported to the UK and EU market. There are complex cumulation rules around rules of origin but we would need a special 'liberal cumulation' to apply for the Island of Ireland. Would this be restricted to certain products such as agri foods for example?
40. The costs of origin certification cannot be borne by cross border businesses, particularly those small and micro-businesses which operate across the Border as it is their natural economic hinterland.

## Costs

41. No cost estimates have been offered. However, the breadth of complexities suggested would appear to come at a heavy cost to a business sector of insufficient scale to be able to cope. This would lead to (1) business failure leading to significant job losses in agri-food, rural and border communities in particular (2) businesses exiting from export markets with resulting impact given the important of an external source of income for small regional economies (3) significant disruption of supply chains given that 70% of goods which cross the border are intermediate goods (4) see NI as difficult and uneconomic to supply in to (5) see a gradual disintegration of the acceptance of the rules beyond compliance with Border requirements (6) a huge rise in the lines of products where price differentials would be attractive to smugglers – legitimate businesses damaged by both costs and non-compliant competition.
42. The Organisation for Economic Co-operation and Development (OECD) says that crossing the border, documentation and other delays can increase the transaction costs of trade by up to 24 per cent of the traded goods. UK Treasury has warned that every one hour of customs delay leads to 5 per cent less trade.
43. Customs Documentation  
The Head of HMRC has estimated that it will cost £13bn per annum, recurring, for the customs formalities. This equates to somewhere between £300-£400m per annum for NI cross border traders or, some 20% of profitability of the entire NI manufacturing sector. Add in the cost of health certificates, Origin Certificate and a raft of other charges and it is beyond doubt that the sector (and the jobs which rely on it) in NI faces an existential crisis.
44. Health Certificates  
DEFRA charge £200 per health certificate to accompany goods (on top of customs, origin and other documents). Our local department, DEARA, do not have the legislative right to charge. For seafood alone in the Newry and Mourne Council area, 60,000 certificates are required.  $60,000 \times £200 = £12m$  for just seafood in just one Council area. We are potentially looking at hundreds of millions of pounds out of the NI Block Grant or hundreds of millions of pounds added to the costs of business. Neither is affordable.
45. Origin Certs  
The cost of Origin Certificates is perhaps deliberately downplayed. In reality, these are a significant additional cost which cross border business cannot bear.
46. In reality, these costs currently are (for a business within 25 miles of NI Chamber):
- Original and 3 copies = £42.50
  - Staff time preparing documents, travel = £97.00
  - Potential Letters of Credit, attested and copies = £80.00
  - Insurance letter (@ 110% of value) = £175.00
47. There is a suggestions in the report that FSB NI has canvassed its members on the need for Origin Certificates and would readily accept this burden should not be taken as approval from those who make goods and trade them across the Border. Certainly, **this suggestion does not have the support of the Northern Ireland manufacturing community** – those who we represent and who dominate the movement of goods across the Border.

## Other observations

48. There are some assumptions made in the report about the nature of trade, how businesses operate and indeed the prospects of support from businesses to the proposals which we believe to be either untrue or inflated.
49. The numbers used in the report are not the same as available from the NI Civil Service or InterTradeIreland so need checked and/or amended. These number also rarely account for inter-company transfers – the scale of the business transacting which is subject to new controls post-Brexit is higher than reported.
50. In the report, there is a suggestion that the UK will pay the EU (Ireland) for the infrastructure which runs contrary to the commitment from both the EU and UK and the stated aim of the AAC... no new infrastructure.
51. There appears to be an ill-founded assumption that the CTA is resolved and should not alarm. However, there will be a responsibility of business (and service providers) to confirm employee rights to work which combined with NI's Section 75 legislation will mean that 'identity' is back in the workplace – i.e. someone from Donegal can work in Derry, but what about her Latvian husband?. Additionally, the current campaign in Ireland to alert UK Driving Licence Holders that their licence will be invalid in No Deal raises the need for the mutual recognition of qualifications – particularly relevant as manufacturers increasingly adopt a servitisation model.
52. Contracts including Incoterms, SLAs etc. do not feature but should. Who oversees, who is the ultimate arbitrator etc.? Not having clarity on these is a barrier to business – many buyers of NI goods will be reluctant and find another supply.
53. The next version of the Report would benefit from the insight and expertise of a raft of the Belfast/Good Friday Agreement implementation bodies such as InterTradeIreland. Others including The Centre for Cross Border Studies, Cooperation Ireland, Invest NI, SEUPB and Safefood.

## Conclusion

54. We welcome the engagement of the Alternative Arrangement Commission's Technical Panel and its report. It is particularly useful to provide some assurance to UK Parliamentarians and others. Clearly there is more work required, perhaps picked up by the Governments Alternative Arrangements Working Groups and the EU once a Withdrawal Agreement is approved by Parliament.
55. We do however believe that the costs and complexities suggested would be hugely damaging and resulting in significant economic harm; greatly diminishes the protections promised by both the UK and the EU as subsequently provided in the Withdrawal Agreement and in the Backstop. It is our view that firms, farmers and families would not be capable of meeting the suggested compliance responsibilities and as such the consent of people and businesses would not be achieved rendering the suggestions irrelevant.
56. There remain significant gaps in dealing with VAT, market access, State Aid and SPS which could benefit with additional technical expertise.
57. Finally, much of what is suggested could provide non-negotiable given the requirement for such sweeping amendment to UK, EU and WTO law which in some cases would require Treaty change and approval including through referenda.
58. From the beginning of this process, the only solution has been that for Brexit to work on the island of Ireland and between NI and GB, then Northern Ireland would have to be positioned as a *bridge rather than a border* between the UK and the EU. However, the interim report would re-establish barriers which have been removed, fundamentally disrupt the all-island economy and potentially place barriers for trading from NI in to GB and on that basis, at this point, we cannot provide our support.

### About Manufacturing NI

We represents the sector ranging from micro businesses to some of the private largest employers in Northern Ireland. Those who trade locally, across NI, cross border, within the UK and globally.

Between direct and supported jobs, 1 in 4 families rely upon a manufacturing wage. The sector is particularly important outside of Belfast where half of all jobs in Mid-Ulster and more than 40% of jobs in Armagh, Banbridge and Craigavon as well as Mid and East Antrim Council areas rely on manufacturing firms. The sector overwhelmingly dominates external sales (to GB) and exports to Ireland, the EU26 and globally. The latest NI Trade stats are available here: [NI Trade Stats](#)

We are happy for this response to be published.

8 July, 2019