An Offer the EU and UK Cannot Refuse

A Proposal on How to Avoid a No-Deal Brexit

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The EU reasonably expects a guarantee that Brexit will not compromise the integrity of its customs and regulatory territory. Hence its insistence on the Backstop. The UK reasonably expects a guarantee that it will not be locked into a permanent Customs (and regulatory) Union with the EU. Hence its rejection of the Backstop. The resulting deadlock is hurling both parties into a No Deal Brexit.

This proposal, which includes features which have never been discussed, will guarantee the integrity and autonomy of the EU's and UK's respective customs and regulatory territories, and will require neither a Customs Union between the two unless that is the wish of both, nor a hard border between Northern Ireland and the Republic.

The proposal designed to resolve the Backstop roadblock to an orderly Brexit, may also offer a baseline arrangement for all trade between the UK and the EU should they wish to retain customs and regulatory autonomy in their future trade relations.

It may come into force by a minor tweaking of the Political Declaration and/or a one sentence modification to the Withdrawal Agreement.

The Problem in Brief

1. The Backstop conundrum is the result of two apparently incompatible political and legal exigencies. Once the UK leaves the EU, in principle all goods, whether originating in the UK or imported into the UK from third countries, moving from the UK to the European Union will require EU customs clearance and *vice versa*. This usually takes place at a point-of-entry hard border. Origin and value are determined, pre-payment of customs duties is verified or assessed and collected and occasionally compliance with regulatory standards is ascertained.

2. However, in the spirit of the Good Friday Agreement and the easing of relations between Ireland and UK as a result of their decades of common membership of the EU, the elimination of a physical border between Northern Ireland, part of the UK, and Ireland, a Member State of the EU was seen by all sides as crucial from the outset. If this borderless reality is to be maintained after Brexit, what would prevent British goods, as well as imports from other non-EU ("third") countries, from entering the EU via Northern Ireland without being customs cleared by the Union and thus circumventing the EU's Common External Tariff, or goods from the Union entering the UK circumventing the UK Tariff schedule? And how can one assure that goods so entering will comply with the regulatory regime applicable to goods in place in the EU and the UK?

3. Other than introducing a hard customs frontier between mainland UK and Ireland (including Northern Ireland), the only solution perceived by the drafters of the Backstop is for the UK as a whole to remain part of the EU Customs Union applying the Common External Tariff. This Customs Union is accompanied by a form of Regulatory Union to guarantee not only the integrity of the EU customs territory but also the regulatory integrity of its single market.

4. The Common External Tariff would have been applied to goods from third countries and appropriate duties collected upon entry into the UK, thus entering into free circulation within the entire EU territory.

5. A Customs Union of this nature comes with a price – notably the inability of the UK to conclude independent Trade agreements and to establish its own independent tariff schedule with third countries, as well as potentially an appreciable loss of regulatory autonomy as regards products. The UK would have to

enact an array of regulations as they are adopted in Brussels without having participated in their making and would not be able to adopt its own regulations if these were incompatible with the EU regime. This is a price not all Brexiteers are willing to accept, at least not as a permanent arrangement.

6. The current Backstop is presented as a temporary solution pending entry into force of a substantive trade agreement between the EU and the UK. The issue on which most comment has focused was to set a time limit so that these final status talks do not drag on forever. But there seems to be a consensus that once final status talks are terminated, the Backstop could, indeed, disappear.

7. This, inadvertently obscures one very uncomfortable "catch 22" truth. The need for the Backstop will disappear if, and only if, the final status talks result in the UK remaining, one way or another, *de jure* or *de facto*, tied to the EU Customs Union and to some form of regulatory union. If the final status talks were to result, say, in a mere Free Trade Area in goods, even of a profound and capacious character, goods from third countries would still enter the UK under UK customs clearance rules and subject to UK customs duties. What is to stop them from entering the EU through Northern Ireland??

8. Back to square one, back to Backstop with the politically unacceptable limitation on the UK having its own tariff schedule (since the premise of the Backstop is that the envisaged Customs Union would apply EU tariffs, not UK tariffs) as well as denying it the freedom to negotiate independent trade agreements with third countries.

Regulatory Standards

9. Regulatory standards on goods, in pursuance of protection of the consumer and the environment and the like also pose a challenge. If there is to be an open border between the North and the Republic, and assuming the UK, outside the Union, may at some point wish to introduce different regulatory standards, what is to prevent the importation into the Union of goods which do not comply with their standards (say, no beef hormones) and *vice versa*? Normally, in international trade, the regulatory standards of the importing State are 'none of the business' of the exporting country. It is up to individual exporters to ensure that their goods destined to foreign markets comply with the standards of those markets and it is the responsibility of the importing State to ensure such compliance, hence the perceived need for frontier controls. A frontier control in this case is excluded because of the Good Friday Agreement.

10. The solution adopted in the current Backstop is to ensure that the Customs Union (either limited to the North, or covering the whole of the UK) would incorporate the Regulatory regime of the Union for goods – in effect a Regulatory Union too.

11. If, under this logic, the regulatory regime of the Union is the law in the North, the border can indeed remain open since presumptively the goods entering will be EU compliant.

12. What is critical here is that the Union will be relying on the power of UK law, coupled with a strict system of implementation, application and enforcement, including the possibility of Union representatives being present in the performance of controls in the UK to ensure the integrity of its customs and regulatory territory. The combination of the deterrent effect of UK law, the consequent assumption that the law would be followed, and the additional compliance mechanisms required by the Union offer that confidence. Since no legal system is foolproof, that is why spot checks and the legal regime of the importing State which forbids putting into the stream of commerce goods which do not comply with local standards, completes the compliance regime. *As will be seen, in our alternative solution we will be replicating, and even strengthening these very mechanisms which seem to satisfy the Union under the current Backstop.*

13. The limitations of this solution are also evident: It imposes on the North, or on the whole UK, the regulatory standards of the Union. There is a glaring symbolic asymmetry whereby the UK has to adapt to the regulatory policies and sensibilities of the Union and not *vice versa* (and as we sadly know, symbolism is a potent political potion in this drama) but beyond that it has the effect of denying the UK regulatory

autonomy in the area of goods. Since the correct interpretation of regulations is often a matter of dispute, under the Backstop, the Court of Justice of the European Union would be the final arbitrator adding, so to speak, 'insult to symbolic injury'.

14. Following the debates in the House of Commons it is clear that these limitations of the current Backstop, with no guarantee of a termination date, played an important role in the rejection of the Withdrawal Agreement.

An Alternative Solution

15. We would like to suggest an alternative solution which would achieve the same objectives of the Backstop whilst eliminating these limitations. Our proposal comprises arrangements to deal with regulatory standards and customs duties.

Regulatory Standards – A Regime of Dual Autonomy

16. The Backstop as currently drafted can work because the UK has been a Member of the Union for the past forty-six years which has created a foundation of trust in the UK legal system. Thus, it suffices for the drafters of the Backstop, and rightly so, that the regulatory regime of the Union will be the 'law of the land' in the North (or the rest of the UK) even if the UK is no longer a Member of the Union, to trust that goods coming in will be EU-compliant (coupled with the possibility of spot checks away from the border and the law within the Union concerning goods which do not comply with local standards). Furthermore, the current Backstop introduces a strict system of implementation, application and enforcement, including the possibility of EU representatives being present in the performance of controls in the UK. This control system, with strict and close supervision and presence of Union authorities in Northern Ireland/UK, is also part of the current proposal with, naturally, reciprocal arrangements for UK similar controls within the Republic.

17. The variation to the Backstop we are proposing is as follows. The UK and the EU will each retain their regulatory autonomy. In practice we expect, even failing a formal agreement on such, a large convergence between the two regulatory regimes. There might, however, with time emerge different standards in the EU and the UK. Under this proposal it will be a violation of *UK Law* backed up by severe penalties (including if so wished criminal liability) knowingly to export, through the frontier between the North and the Republic, goods which do not comply with the regulatory standards of the EU. Compliance certification would be completed ahead of time as is already common (see para 22 below) and transporting companies and agents would be required to request such prior to shipment. In effect, UK public law would be backing not only the regulatory standards for goods on the UK market, but also goods destined for export to the EU through the frontier with the Republic.

18. In normal circumstances a double regulatory regime already exists though of a self-regulating character, with the responsibility placed on exporters but quite easily open to abuse. Giving it the backing of UK law and the enforcement mechanisms behind such, will drastically reduce the abuse potential to a *de minimis* level.

19. Naturally, under this proposal, the Republic would adopt a similar regime. Irish law would make it an offence knowingly to transfer goods into the UK through the North which are not UK compliant.

20. The problem of interpretation would remain, but under this proposal the Court of Justice of the European Union would be the final arbiter on the EU standards (including a preliminary reference to Luxembourg) and the British Courts would be the final arbiter for the UK standards with a similar procedure to be put in place before Irish courts.

21. This scheme reflects how two autonomous legal orders interact in a cooperative way, keeping full regulatory autonomy, but in reciprocal and constructive terms to reach a common goal: compliance with the Good Friday Agreement and a continuum in the flow of trade in goods between the North and the South. The proposal puts two legal orders in interaction but preserving their autonomy, with a premise of mutual trust and sincere cooperation that can only be attained between two countries that have been part of a common internal market for almost five decades. Therefore, the arrangement cannot be replicated with

other third countries that have not been part of the of the EU internal market.

22. As regards traffic in goods in both directions, there could be non-frontier spot checks. EU Standard Centres within the UK mainland and the North, and UK Standard Centres within the Republic would be available to certify and mark compliance, not a novel practice in the world of international trade. Furthermore, the current Backstop introduces a strict system of implementation, application and enforcement, including the possibility of Union representatives being present in the performance of controls in the UK. This control system, with strict and close supervision and presence of Union authorities in Northern Ireland/UK, could be replicated under the alternative proposal to ensure compliance of EU regulatory standards by UK producers/exporters that decide to operate within the Irish/EU market with reciprocal arrangements within the Republic.

23. The advantages of this variation to the Backstop are evident. It guarantees the regulatory integrity of both territories whilst allowing them regulatory autonomy. In practice, as mentioned above since it is likely, even without a final agreement, that there will be an overwhelming commonality of regulatory standards for goods, one would be dealing with a limited amount of products. It also ensures reciprocity and symmetry taking care of the symbolic sovereignty issue.

Customs Duties

24. The reality of most cross-frontier trade in goods is that custom duties are not in most cases actually collected at the frontier but paid in advance when obtaining an import license, and frontier checks consist of collecting the corresponding certification accompanied by occasional spot checks to verify that the physical goods correspond to those certified.

25. Imagine several EU Centres in Great Britain (both mainland and N. Ireland – the North is very sensitive to being treated differently from the Mainland) and within the Republic where all goods destined for the EU or the UK respectively via Northern Ireland would be processed, including payment of duties and the like, before they actually left British or Irish territory. Once cleared and certified, the need for processing at the frontiers is obviated and the Irish border can remain open as it is today. This would, naturally, apply to imported goods from third countries.

26. What of goods imported from third countries, moving from Great Britain to Northern Ireland and then integrated into products produced there or *vice versa*? If such goods are, say, appreciably cheaper in the UK because of lower customs duties with the rest of the world, compared to the Common External Tariff of the EU, they would affect the competitiveness of the end product *vis à vis* competing goods produced in the Union. This Rules of Origin issue is a staple of Free Trade Areas for which there are established solutions. The only difference will be, that these goods would be processed and certified at the same Trade Centres.

27. We should emphasize here that it is widely expected that any future arrangement between the Union and the UK would include at a minimum a tariff-free Trade Agreement, so that in fact there would be no tariffs in trade between the UK and the rest of the Union, including of course the Republic. This proposal is entirely compatible with that desirable situation, whilst not forcing a Customs Union on the parties.

28. The immediate objection that comes to mind is that if there is no physical control between Belfast and Dublin which could physically collect such certification, the temptation would be huge to drive a lorry through without having been processed and cleared in a Trade Centre, or change the cargo cleared to uncleared cargo.

29. The solution is the same as proposed above for dealing with regulations. Ensuring that proper duties are paid on goods crossing the Frontiers in either direction would not be the responsibility solely of the importing State but of both States. UK public law and Irish public law would make it an offence to *export* goods without paying the required duties of the importing territory backed with a regime of severe penalties (including criminal liability if so desired) and backed up by non-frontier spot checks by the public authorities on both sides of the frontier. Thus, if knowingly transporting or even possessing goods exported from the UK into Ireland without prior clearance were

made a serious criminal offence with correspondingly serious penalties (the way we deal with trafficking in stolen goods), enforced by spot checks anywhere within the territory of the UK and Ireland, compliance would be high and, critically, evasion would not be an order of magnitude different from the levels seen under normal border procedures (which even a hard frontier in the topography of Ireland will not eliminate).

30. This proposal doesn't need to rely on technological solutions. It is unnecessary because the UK will be enforcing the entirety of EU law through its domestic legal system, including its criminal system, reinforced by strict controls, including EU official presence and participation in control sites. Technological solutions are necessary in a trade context in which there is regulatory asymmetry between two countries and no integration in reciprocal controls. In our proposal, which ensures full enforcement under EU standards in Northern Ireland and integrated checks and controls in production and export through permanent and spot checks outside the perimeter of the frontier, technological solutions are not needed.

31. A particular issue is frontier shopping: People (mostly in the border area) crossing to do their shopping on the other side of the border. This is not a new problem and the Union already has a regulation on movement and taxation of excise goods by individual shoppers. This provides a sensible approach which is to exempt personal shopping (below commercial quantities) from duties altogether in the expectation that it will be a fiscal washout and that, if necessary, certain goods (tobacco, alcohol etc.) could be quantitatively limited within the exemption. Furthermore, instruments under EU law currently allow Member States to enter into bilateral agreements with third countries to facilitate small border crossing. These instruments could be extended and adjusted to the frontier between Northern Ireland and the Republic.

32. Finally, it should be added that the proposal does not "outsource" the customs union in favor of a third country any more than the Backstop does. On the contrary, an arrangement based on reciprocal enforcement, joint inspections and close cooperation is far from being considered an "outsourcing" in a third state. The current Backstop would rely on the UK and UK officials to collect the Common External Tariff of the projected Customs Union and to ensure that UK manufactured goods comply with the EU regulatory standards to give but two examples. In some cases as part of the Backstop the Union has insisted on on-site inspection and supervision by Union officials. That is included in our Proposal too, albeit on a reciprocal basis. In effect our proposal introduces all the cooperation procedures introduced in the Backstop, but it adds further instruments, as well as domestic remedies, including criminal penalties, to ensure effective enforcement. Furthermore, the proposal incorporates a dispute settlement mechanism based on the withdrawal agreement's enforcement mechanisms. Overall, then, this can hardly be considered to be any more "outsourcing" of the customs union as the Backstop envisages – in fact it is less.

Enforcement

33. International agreements are based on mutual trust, but also on an expectation that, in case of infringement, effective mechanisms will ensure that all parties return to a fully-compliant practice. If the UK or the EU breached the terms of the agreement on which our proposal is articulated, specific provisions on enforcement and dispute settlement arrangements would be triggered, including interim measures to ensure immediate compliance.

34. These provisions should find inspiration in the current enforcements mechanisms provided in the Backstop and the Withdrawal Agreement, which are based on preliminary consultations within a Joint Committee and, ultimately, direct actions before an arbitration panel that shall rule on the legality of the party's conduct. This mechanism is provided in Articles 167 to 181 of the Withdrawal Agreement, which could be applicable to ensure the compliance of the Irish arrangement (as they do now for most of the provisions of the current Backstop).

35. It is therefore wrong to argue that the proposal is exclusively based on a principle of trust. Although trust is an important ingredient in all international agreements, in our proposal it is reinforced, as we

suggest, through an exhaustive array of remedies that the EU and the UK can use in case one of the parties' implementation of the agreement is not in line with its terms. Furthermore, the combination of criminal penalties, together with a robust enforcement mechanism between the two parties to the agreement, ensures strict compliance by all stakeholders in a way that goes beyond the current Backstop. Finally, the fact that this Proposal ensures parity of rights and obligations on both parties removes an incentive to sabotage the agreement and creates a mutual incentive to see it succeed.

Putting this Proposal into Effect

36. A final sticking point would be to ensure that this proposal would have the force of law.

37. One approach would be a legally binding commitment taken by the EU's Heads of State or Government (HOSG). The HOSG can take decisions which do not amend EU treaties or legislation, but set out political commitments and understandings about what rules mean in practice and how they should be interpreted. Critically, HOSG decisions can be understood and relied upon as legally binding international agreements. The most recent relevant example is the February 2016 decision recording the agreement reached with David Cameron's Government, entitled "A new settlement for the United Kingdom within the European Union", the result of the "renegotiation" preceding the referendum. The UK even registered that HOSG decision as an international agreement in the UN's depositary of treaties in New York. It has the advantage of binding the national leaders, not just an EU institution, and of adding a gloss to an agreement (in this case the Withdrawal Agreement) without reopening and amending it.

38. Alternatively, this proposal could be introduced as a new scheme in the Political Declaration on the future trade agreement. In order to bind both parties, the Withdrawal Agreement would be amended introducing one paragraph only, in which the parties commit to comply with the provisions of the scheme included in the Political Declaration. The provision could be worded as follows:

> *"The provisions on Ireland/Northern Ireland provided in Part V, section IV of the Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom shall have the same legal value as this Agreement and shall be amended by the procedures for the revision of this Agreement."*

39. A political agreement on this new proposal would entail the replacement of the Protocol on Ireland/Northern Ireland, but through the means of a new and acceptable arrangement for both parties.

Conclusions

40. It is of course hoped by all that in the ensuing negotiations following Brexit solutions will be found which will obviate the necessity of arrangements to avoid a hard border in Northern Ireland. This proposal is to serve only as an insurance in case of failure of such negotiations.

41. What is proposed here is designed to permit an arrangement which would guarantee the integrity of the respective customs and regulatory territories of the parties, permit tariff free trade between the UK and the Union (Ireland included) but without forcing the UK into a permanent Customs Union should it not desire such, and eliminating some of the other features which impeded approval by the House of Commons.

42. But this proposal could also serve as the basis for a future trade agreement. The proposal's rationale could be extended to all the trading scenarios in goods for the entirety of the UK with the EU. If the proposal works as a temporary arrangement, only to be triggered in the meantime prior to a free trade agreement between the UK and the EU, it would also incentivize both parties to comply and make a success of it (particularly the UK), in the hope of transforming it, as soon as possible, into a permanent and stable trade arrangement that could work for all the UK, and not only Northern Ireland. In other words, this proposal could be a genuinely transitory solution, a passage between the transitory period and the future trade relation, but also a test case to prove the robustness of the arrange-

ment at a smaller scale that would facilitate access to a future and stable trade relationship in the interest of both parties.

43. It is simply not credible to imagine that three powerful public authorities, the UK, Ireland and the Union itself could not jointly make this approach work and thus remove one huge road block for future EU UK relations.

44. And a No-Deal Brexit, apart from all other woes would compel either the reintroduction of a hard border between North and the Republic or a customs frontier between the Republic and the Union – both far worse options.

FAQ

Does the proposal create a customs union between the UK and the EU?

No, in contrast with the current Backstop, this proposal does not introduce a customs union between the UK and the EU. The proposal avoids the introduction of a physical border in Northern Ireland, in line with the spirit of the Good Friday Agreement, while it allows the UK to pursue its own trade policy with other countries and to have its own external tariff scheme.

Does the proposal apply to Northern Ireland only, or to the whole UK?

The proposal applies only to traffic in goods entering/exiting the Republic of Ireland through the border with Northern Ireland whatever their origin in the UK. It does not apply to trade between the Republic of Ireland or any other Member State with the rest of the UK. However, the proposal could work as a template for future trade relations between the UK and the EU.

Under this proposal, will goods be subject to customs duties?

Yes, goods crossing the Northern Ireland border would be subject to duties in accordance with UK and EU laws, but without the need to introduce customs controls at the border.

Where would customs controls take place?

Customs controls and payment of duties, would take place at Standard Centres located away from the border in both Northern Ireland and the Republic of Ireland. In addition, spot checks, as envisioned too in the current Backstop and joint inspections (by Irish/EU and UK officials) would take place for specific regulatory matters (eg veterinary controls, food safety) as they do already today.

Is this, as some voices from some EU have argued, just another 'trust me' approach?

No. Obviously trust is important and needs to be rebuilt. Under the Backstop as currently proposed, the EU would have to rely on the integrity of the UK legal system, backed up by EU verification procedures.

This new proposal incorporates and builds on the very same procedures. No solution will work without a modicum of trust between the two parties. The British Government objects to the backstop because it is asymmetrical and of indefinite duration, obliging the UK to follow EU rules.

Our proposal is based on *symmetrical* arrangements between the two sides creating a mutual incentive for ensuring its success.

How would customs and regulatory standards be enforced in the absence of a physical border?

The UK will incorporate EU law on goods as a matter of UK law for this purpose. It will be an offence under UK law to export through Northern Ireland goods which do not comply with EU regulatory standards. In certain cases criminal liability might attach. In the same way, it will be an offence under Irish law to export through Northern Ireland goods not complying with UK regulatory standards. In addition, all the verification procedures required by the EU under the current Backstop will all be incorporated on a reciprocal basis.

Does this mean that someone from the North taking a Christmas present to relatives in, say, Dublin will be subject to criminal sanctions?

Obviously not. The Law is not an ass neither is the legislator. Criminal sanctions we expect would apply to commercial traders and shipping companies who knowingly violate the law. It will be up to both parties to modulate the regime of sanctions in accordance with common sense.

Will the Court of Justice have jurisdiction to resolve disputes?

Yes, but only regarding the interpretation of EU standards, as incorporated into UK law, when applied to UK exports to the EU internal market through Northern Ireland. Also, in order to ensure symmetry between both parties, Irish courts will have jurisdiction to make preliminary references to the British courts on issues of interpretation *of UK law (not of Irish law)*, as applied by Irish exporters sending goods to the UK market through Northern Ireland.

What happens with small frontier traffic between Northern Ireland and the Republic of Ireland?

Quantitative thresholds would be introduced to waive duties on insignificant import/export of goods over the border, in the same way that excise duties are currently waived under EU law for small personal quantities of tobacco and alcohol. Consumers will be able to carry on purchasing goods on both sides of the frontier.

Would the EU be 'outsourcing' customs and regulatory compliance to a "third country" under our proposal?

This is somewhat disingenuous. Under the Backstop the UK would be part of a Customs Union with the EU. Who will be collecting the EU duties imported in Liverpool, or London port, or Hull? British customs officials. Is this "outsourcing"? And who will be inspecting and certifying goods for compliance with EU standards? British officials. Is this "outsourcing"? In some cases the EU, in the Backstop, insists on Union representatives for such certification within the UK. Our proposal replicates exactly the same procedures, including the presence of Union officials where that would be requested by the Union. And there is the added security that exporting to the EU non-compliant goods or goods which have not been customs cleared is not just for the Union to detect and deter but also the UK. On a reciprocal basis of course.

How will this work for livestock trade in Ireland?

There are already "all island" rules in place in both the Republic and Northern Ireland, reflecting the fact that their epidemiological status is the same (and different from Great Britain).

What about smuggling? Will stiff criminal penalties envisaged under your plan be a sufficient deterrent?

Smuggling exists along other EU borders. The main interest is not in small time smuggling of a few cigarette cartons or mobile phones, but in large volume trade which causes real harm. The regime envisaged under our proposal will certainly take care of that.

Smuggling occurs when there is a disparity of prices across the border. The principal reason for that is typically differentiated taxation on goods (such as VAT, excise taxes etc.) This differentiated pricing could exist also under the current Backstop and it is simply fanciful to think that simply having a customs and regulatory union with the EU can prevent smuggling.

This proposal deals more effectively with the problem than the current Backstop; making smuggling an offense in both "exporting" and "importing" country will lead to better cooperation between the law enforcement of the Republic and the UK.

Does this proposal require an amendment / repeal of the Withdrawal Agreement which the EU says it will not reopen?

No. There are several ways of enacting this proposal without altering the Withdrawal Agreement (WA) as outlined in our Proposal. Our proposal could be agreed by the Heads of State or Government of the Member States with the status of a legally binding international agreement qualifying the WA and not touching any of its material provisions. . Alternatively, the proposal could be introduced in the Political Declaration, with an agreement that the relevant provisions in the Political Declaration have the same legal status as the WA. Several leading European politicians have already indicated a willingness to modify the Political Declaration. This is the kind of thing that if the lawyers are tasked to find a solution one will be found, as our proposal illustrates.

Could other third countries request a similar treatment in their trade relations with the EU?

No, this proposal can only apply to a third country that has been a Member State of the EU for several decades. Why? Because in order to rely on domestic

remedies and joint controls between a Member State and a third country, the EU must have a high degree of trust in the legal system and the officials of that third country. That is only the case of a former Member State with a legal system having effectively enforced EU law for many years.

Is this proposal compliant with WTO obligations?

It is widely expected that, as a minimum, the EU and the UK will agree on a basic FTA in goods for their future relations. This proposal prepares for that agreement and would therefore be covered by Article XXIV GATT. Even absent that, the Proposal does not modify the current terms of trade between the Ireland/EU and the UK (customs duties, etc.) and would not trigger the Most Favoured Nation obligation to extend it to other countries. There are already differences between countries in the procedures in relation to, say, the verification of regulatory compliance of goods entering their territories and this Proposal is unlikely to trigger a credible MFN challenge. The UK and the EU, two jurisdictions whose legal systems have been intertwined for 46 years, can easily justify such differences in procedures given that the terms of trade will be the same for all partners.

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