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Just a little Brexit?: 'Alternative (customs) arrangements' and the Withdrawal Agreement

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With the five-week closure of the UK Parliament, the highly entertaining sessions of the House of Commons have been adjourned. Could this artificial breathing space provide a realistic opportunity to deliver the now infamous 'alternative customs arrangements', making the backstop unnecessary? And without the backstop, could the Withdrawal Agreement be ratified soon, opening at long last the way to genuine negotiations about the treaty on the future relations between the UK and the EU-27 (based on the Political Declaration, a kind of MoU on these negotiations)?

Why 'temporary customs arrangements'?

PM Johnson and his government assert that the border between Northern Ireland and the Republic of Ireland should remain as open and (almost) unnoticeable as it is today. On that everybody agrees: the return of a traditional, 'hard' border would likely inflame extreme elements in the region and violence might return after two decades of peace. But the temporary backstop incorporated in the Withdrawal Agreement's Protocol on Ireland/Northern Ireland[1] is not – according to fanatic Brexiters – the way to organise this. They fear that treaty negotiations with the EU – which, nearly three and a half years after the referendum, have not yet even begun – might drag on for years and, when stuck, would perpetuate the overall 'backstop regime' in the Withdrawal Agreement. The overall backstop regime consists of far more than a continuation of the EU customs union for Northern Ireland

[1] Withdrawal Agreement of 14 Nov 2018, pp. 302 and following https://ec.europa.eu/commission/publications/draft-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community-agreed-negotiators-level-14-november-2018_en

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[indeed, for the UK] as shall be illustrated below. The risk of semi-permanence of the overall backstop regime would – they hold – frustrate the UK in seizing the 'great opportunities' of concluding new trade deals and throttle 'taking back control'. However, first of all their guns are aimed at the customs union: can the "single customs territory"[2] be avoided by 'alternative customs arrangements' to keep the border open without visible checks? If accepted by the EU, these arrangements would obviate the necessity of the (temporary) customs union as a backstop during the negotiations to come.

This CEPS Policy Insight will deal with two aspects of this conundrum. One is the narrow issue of accomplishing 'frictionless trade' on the Northern Irish border with Ireland, while fully respecting EU rules and controls, yet without being in a customs union with the EU-27. Though the 'alternative customs arrangements' slogan has been around for more than two years, little progress has been made and the European Commission so remains not at all convinced by what has been discussed.[3] The other aspect is the as yet unratified Withdrawal Agreement, with its clear and complete temporary solution: a customs union which is *de jure* different from the present one with the EU-28,[4] but *de facto* the same, with the Union customs code and other relevant EU regulations as its basis. Today's UK government insists it wants to renegotiate some crucial parts of the Withdrawal Agreement before proposing ratification by the UK parliament. It is worthwhile explaining the Withdrawal Agreement as a whole, much of which is little known. For the UK government, however, the core of what would be renegotiated concerns 'alternative customs arrangements'.

What alternative customs arrangements?

As far as we know there is no fully-fledged UK proposal yet,[5] which must mean that the discussions with the EU Brexit Task Force are exploratory. Until and unless UK proposals are made and found acceptable by the EU for an 'alternative' way of organising an open (Northern) Irish border, the Withdrawal Agreement with its Protocol stands. However, a confidential document from the UK administration of 28 August 2019 – leaked to The Guardian – provides a detailed account of the state of preparation of 'alternative customs arrangements'[6] by the UK. It confirms that a negotiation position is still being prepared and, indeed, is not even close. This shows that Prime Minister Johnson's repeated statements on 'proposals' to the EU are incorrect. A number of these ideas have been migrated from previous suggestions in 2017 and

[2] Art. 6 of the Protocol.

[3] The present author has twice discussed the customs issues in former UK proposals; see The Brexit Customs vision – frictions and fictions, *CEPS Commentary* of 22 August 2017; and Shattered illusions: the new Brexit proposals on customs, 17 July 2018 https://www.ceps.eu/publications/shattered-illusions-new-brexit-proposals-customs

[4] Different because it is formally concluded between the UK customs territory (after withdrawal from the EU) and the customs union of the EU27.

[5] Apparently, according to the Mail on Sunday of 15 September, there is a plan drafted by Chief Brexit negotiator David Frost. The following shows that the details of such a 'plan' are nowhere near completion.

[6] 'The aim … is to ultimately establish an alternative arrangements negotiation position as part of the renegotiation of the Withdrawal Agreement. [..] … the top HMG priority'. (p.2)

2018,[7] such as that of the trusted trader (or AEOs) – an existing scheme in the EU, which might be extended, under conditions – and IT-facilitated roll-on-roll-off of trucks (where more details on the IT aspects and secured seals of containers are provided). In total, some 16 'facilitations' are specified in their Annex 1. Of course, facilitations lower the costs for officials and business but are, by definition, insufficient to allow an open frontier. The technology-based options overlap to a considerable extent with each other which renders comprehensive understanding difficult.[8] No wonder the paper says that "[T]he complexity of combining them into something more systematic and as part of one package is a key missing factor at present"(p.4).

Alternative regulatory options

However, the paper also suggests four regulatory options. Since they are 'alternative', they differ from the regulatory solutions in the Protocol, be it in different degrees. One is the 'border code', a common set of rules and industry procedures that apply to all parties who have a contractual right of access to the border.[9] There is no elaboration in the paper about the treatment of those not having a 'contractual right of access'. How the border code differs from e.g. the 'trusted trader' is also unclear. Another is the intricate proposal by Declan Billington,[10] focused largely on animal products and SPS issues (where physical inspection is mandatory in the EU). Although his premise is not to have a single customs territory with the EU, unlike the Protocol, he opts for (i) UK-wide alignment and dynamic harmonisation with EU SPS legislation and tariff codes for products of animal origin, (ii) for all other products, Northern Ireland alignment with the EU Customs Code and relevant regulation [11], yet (iii) no single customs territory because the UK sets its own tariffs[12] and (iv) competent Northern Ireland authorities undertake 'in-market SPS checks'. Items (i) and (ii) are no different from the Protocol or indeed (for all practical purposes) EU membership. Item (iii) might express a desire to have much lower agri-tariffs (and possibly tariff quotas that are larger) than the EU but it should probably be read as implying a zero-tariff zone between the EU27 and the UK. This raises the query whether such a set-up can be organised in the short run, under a revised Withdrawal Agreement, as it signifies a non-trivial departure from the Protocol (with a fully-fledged customs union).

Two other regulatory options are – presumably – controversial. One consists of a common SPS zone between Northern Ireland and Ireland, based on EU SPS regulation. Which, of course,

[7] See footnote 3

[8] A number of the ideas rely on IT, data and technologies which partially overlap. For instance, the option of 'AI and machine learning' (to better target inspections, a form of smart risking), automatic number plate reading, Internet-of-things programmed to support real-time analysis of consignments and the option of 'smart risking' clearly overlap ; in addition, three other options might well overlap with these as well : secure supply chain visibility (added is a mobile application to facilitate RoRo traffic), secure technologies (on smart locks and basic seals) and vehicle telemetry (on-board of a truck).

[9] There is no further explanation. The border is 'owned and operated by Border Force'. Access to the border suggests a physical border, or equivalent, the one thing everybody wants to avoid.

[10] CEO of Northern Ireland Food & Drink Association and member of the AA group of the UK governement.

[11] Annex 5 legislation as in the Protocol, i.e. on EU technical regulation and conformity assessment.

[12] Except for products of animal origin.

exists today. However, the UK (without Northern Ireland) would be able to diverge. It is recognised that this would require customs declarations and intense checks on SPS goods (between Northern Ireland and the rest of the UK), the inevitable price to pay. The other proposal is pretty amazing: Irish alignment with the UK on SPS issues.[13] How Ireland and the EU at large could ever accept this, as it would not be identical to EU law one suspects, is not even touched upon. Unless it all remains harmonised with the EU, in which case it is pointless and it would be better to follow the Protocol.

An ingenious new proposal

Altogether, there seems to be no silver bullet yet[14] and 31 October 2019 is only weeks away. Ratification of the Withdrawal Agreement, including the Protocol, is also not in sight. However, somewhat unexpectedly, a radically different proposal for 'alternative customs arrangements' has emerged from three prominent lawyers. Faull, Weiler & Sarmiento[15] hold that a new regime of 'dual autonomy' would be the way to solve this border conundrum and fend off a costly no-deal. They claim that no joint customs territory would be required and that the new regulatory autonomy of the UK, post-Brexit, would be upheld. In other words, it would address the two objections of the Brexiters about the temporary backstop, and – in doing so – any time-limit of the backstop would become irrelevant as well. Although this already sounds too good to be true, the authors also claim that their proposal delivers 'symmetry' between the EU27 and the UK in terms of respect for one another's laws. The authors start from the premise that 46 years of UK's EU membership have created a profound foundation of trust. Given that the current backstop essentially maintains EU law for goods in the UK and incorporates a strict system of implementation, application and enforcement (with EU officials joining controls on a random basis), the EU would rely heavily on the UK regime and authorities to uphold EU law under the backstop (if it were ratified). There is nothing strange about this for EU member states, but in this case it would mean a similar arrangement with a third country, be it a former member state with decades of EU experience. The point that the EU under the backstop relies on UK law and strict enforcement, is critical for their reasoning. In their own proposal the EU would do the same.

Faull et al. propose that knowingly exporting goods that do not comply with EU rules and standards through the frontier from Northern Ireland to the Republic would be a violation of UK (!) law, besides, of course, a violation of EU law, and – mutatis mutandis – it will be a

[13] Indeed, 'creating a new common rulebook shared across the British Isles'. However, the island of Northern Ireland and Ireland is a single epidemiological area under EU law, not the British Isles together.

[14] Even when a silver bullet in these 'alternative arrangements' would be found, the various technological approaches would have to be agreed and carefully tested to the satisfaction of both Parties. Such processes are bound to take time and cannot be politicised. Therefore, either the Protocol begins to work as envisaged in the present text, and might later possibly be amended with 'alternative' options, whilst the treaty negotiations would be conducted. Or, stubborn insistence on (as yet immature) 'alternative arrangements' would lead to the awkward choice between cancelling Brexit (by withdrawing the Art 50 letter) or a no-deal crashing out.

[15] In: An offer the EU and UK cannot refuse, a proposal on how to avoid a no-deal Brexit, *Verfassungsblog,*22 August 2019, see https://verfassungsblog.de/an-offer-the-eu--and-uk-cannot-refuse

violation of Irish (!) law for exports of goods in the other direction when not compliant with UK law. Severe penalties, possibly criminal liability, are implied. The authors do count on some of the facilitations[16] discussed earlier, which amount to the avoidance of a visible border while also maintaining random spot checks. EU officials would be able to participate in random spot checks under the backstop and they could do the same in their proposal. Could a truck with non-compliant goods drive through the border? The authors are confident that the proposed regime, if properly enforced as foreseen, would not be less compliant. After all, *both* Ireland and the UK have to enforce. The Protocol would be replaced by a new agreement incorporating the above elements, with the relevant changes in UK and Irish law as a corollary. They also propose a few variants of how to arrive at a legally binding commitment, either at the European Council or via amendment of the Withdrawal Agreement.

Surely, the proposal is unique and original. But is it effective and does it not have significant drawbacks? Its effectiveness is asserted but in fact would require extensive facilities with detailed automated IT procedures, and these have to be agreed and tested, which takes time. It is true that this can be a variant of the 'trusted traders' set-up but whether all SMEs in the region would be able to do this on relatively short notice, and at low cost, is not at all sure.[17] And the proposed EU Trade or Standards Centres would have to be organised and/or built quickly. Another objection, from comments online, consists of the lack of direct interest in strictly enforcing the laws of the other Party.[18] A third drawback is the diminished reputation of UK customs in 'Brussels' after two major failures to act harshly and swiftly on major frauds.[19] This point is sometimes combined with the fact that a leaving country is not the same as a member state, as well as with the observation that some fanatical Brexiters openly tout with non-compliance.

Joseph Weiler has responded (alone) to the 'we cannot trust the Brits' excuse,[20] for which he finds no rational grounds (thereby ignoring some recent evidence), pointing out (correctly) that in terms of enforcement (etc.) the 'outsourcing' to the Brits *also* occurs under the backstop and is actually less in their proposal (as in their proposal UK law itself is at stake). Weiler notes that if the excuse were correct, the backstop is also doomed to fail. Legalistically, one can agree but in terms of incentives – a fully-fledged customs union based on EU law and the regulatory aspects of the Withdrawal Agreement (see below) – this risk seems far smaller. Faull, Weiler &

[16] Such as what they call EU Trade Centres and EU Standards Centres for certification of compliance *before* the actual shipping of the goods across the border or even the payment of any duties. 'Once cleared and certified, the need for processing at the frontiers is obviated and the Irish border can remain open as it is today' (p.3).

[17] Precisely this fear is also a problem underlined by the leaked AA taskforce paper of the UK government.

[18] Actually, one can go further, there will also be a complication. Remember the original 2004 proposal of the Services directive by the Commission (esp. Bolkestein) with the country-of-origin-principle. The upshot would have been that judges in member state A would have to pass rulings on the basis of laws in member state B or C. Many lawyers, understandably, felt rather uncomfortable with such a set-up. That the CJEU would eventually perhaps settle a difference of interpretation, helps, but cannot be expected for each and every case.

[19] One of these was about no less than € 2.7 bn fraud by Chinese companies.

[20] See https://verfassungsblog.de/backstop-alternatives-examining-the-we-cannot-trust-the-brits-excuse

Sarmiento in their proposal hold that two legal orders interact but preserve their autonomy, with a premise of 'mutual trust and sincere cooperation'. However, such a presentation is a little removed from the reality on the ground. Take the long experience of 'mutual recognition' in the EU. Outside the food and drink sector, where it helped transform food regulation, this great principle did not work in actual practice for several decades[21] and business in Europe became disillusioned. The mutual trust and sincere cooperation between the member states, with strong encouragement by the EU's highest judges plus guidelines from the Commission, was largely lacking. Mutual recognition turned out to be more like a 'phantom in the courtroom'. It took a procedural EU regulation[22] in 2008 for the situation to improve. Even so, an independent evaluation in 2015[23] found a series of lingering barriers, due in part to lack of mutual trust between member states and to less-than-sincere cooperation when companies, having products already lawfully produced and marketed in another member state, failed to convince authorities in some other EU countries; also the dialogue between member states' authorities was found to be slow and incomplete on many occasions. The upshot was a new, stricter mutual recognition regulation in 2019.[24] By analogy, the acceptance by the EU, Ireland and the UK – and all three are required – of such a 'dual autonomy' approach cannot therefore be taken for granted.

Moreover, there might be legal objections, even if trust were openly expressed at the highest level and sincere cooperation is intended.[25] One legal objection is about 'trust' itself. The CJEU has recently ruled[26] that the principle of 'mutual trust' in the case of enforcement can only apply between EU member states, which implies that – after Brexit – it cannot apply to the UK. In other words, the Faull et al. option might well end up in Luxembourg and, despite the good intentions, might be ruled out by the CJEU. Another legal objection might emerge from how the Faull et al. option would be turned into law. It would be indispensable for the Withdrawal Agreement to be amended first, and ratified, because an Ireland/UK agreement itself cannot change the Withdrawal Agreement. But it also matters for EU law: the CJEU would never accept that the enforcement of EU law was regulated in an UK/Ireland agreement.

However, there are other arguments that may help to assess the Faull et al. approach. Their basis is straightforward, yet not explicitly mentioned, let alone emphasised. Rather than, as the three authors do, starting from trust and sincere cooperation as the foundation (although clearly one needs some of this), the backstop or its alternative starts with perfectly identical laws on both sides. Most of these EU laws have been around for a while and have gone through

[21] For extensive analysis, see J. Pelkmans, Mutual recognition in goods, on promises and disillusions, *Journal of European Public Policy*, Vol. 14/5, August 2007.

[22] Reg, 764/2008, OJEU L 218 of 13 August 2008, pp. 21 -29.

[23] Technopolis, EY, VVA & Danish Tech Institute (2015), Evaluation of the application of the mutual recognition principle in the field of goods, June, for the European Commission, http://ec.europa.eu/growth/single-market/goods/free-movement-sectors/mutual-recognition/index_en.htm

[24] Reg. 2019/515 in OJEU L 91 of 29 March 2019.

[25] The following was brought to my attention by my colleague Guillaume van der Loo and I am indebted to him and my colleague Steven Blockmans.

[26] In the Achmea case

many revisions. In other words, there are no obvious reasons for immediate changes in the short or even medium run. A lot of EU technical regulation is moreover linked to European harmonised standards and the UK has been very clear that it desires to remain a part of this system (and BSI of CEN/CENELEC). In the Withdrawal Agreement (see below), there are also provisions on maintaining a level playing field in six areas of EU goods regulation between the EU27 and the UK. Even if the Faull et al. approach needed to be applied for as long as four or five years, how much of a problem would there be in that period? Very little indeed. The formal 'regulatory autonomy' for goods of the two legal systems – supposedly an advantage in this approach – does not amount to much in the period foreseen. That also goes for the objections to their approach: trading over the Northern Irish frontier without clearing certificates, etc., must have a reason and with identical laws, there is no new reason to do so. One should also not forget that UK business is adamant about the 'common rule book' because trade with the EU and especially value-chains are so important for them. If and only if negotiations on a new treaty became stuck for many years (despite all the powerful incentives to overcome that, which would be most unlikely) would that approach possibly have distinct benefits. In that case, its credibility critically depends on permanent and tight enforcement and full acceptance of the CJEU in difficult cases.

In all this, it is assumed that no tariffs would be levied between the EU27 and the UK. Faull et al. discern no difference if there would be tariffs, as they hold that tariffs can be handled in EU Trade Centres just as well. Yes, in principle. But the incentives for smuggling are obviously greater, which must mean that the enforcement regime has to be harsher too. In fact, much of the enforcement will have to be a 'dual enforcement' (by Ireland and the UK) in order to protect a 'dual autonomy'.

A 'regulatory union' for goods in the Withdrawal Agreement

Beyond the 'alternative customs arrangements' which would 'liberate' the UK from the constraints of the EU commercial policy and enable an 'independent' UK trade policy with 'great opportunities', there is the wider question of the Withdrawal Agreement. In the 10 months since the conclusion of the Withdrawal Agreement, there has been little if any discussion on its substance. However, its substance is very interesting and goes much beyond the three core issues for an orderly withdrawal. Those three issues are: citizen rights, separation provisions and financial provisions.[27] However, the Protocol on Ireland/Northern Ireland – functioning as a 'backstop'– that follows after these typical 'withdrawal issues' is completely different. In tumultuous debates on Brexit, the Protocol is often regarded as a constraint on future UK trade policy. Nevertheless, closer study shows that its nature is much more regulatory than a typical customs union chapter, be it regulatory solely on goods. The 18 pages of the Protocol itself are followed by 10 annexes (a total of 155 pages), the bulk of which is on regulatory obligations. Annex 5 on technical regulation and conformity assessment (etc.) essentially prevents the UK

[27] Other 'Parts' include the Pre-amble, Common provisions, Transition and Institutional and Final provisions (incl. dispute settlement).

from taking 'back control' (if it wanted to) in this massive domain of goods regulation, for the purpose of the Protocol and for the period of its validity. This Annex lists 290 EU technical directives and regulations. In addition, Annex 6 on VAT & excise lists another 21 EU laws, Annex 7 on electricity another 7 and Annex 8 on state aid another 51 (plus the relevant articles of the treaty specified). Even more interesting is Annex 4 linked to Art. 6(2) of the Protocol on a 'level playing field' (LPF), on which the EU27 is very keen.[28] Annex 4 has specifications on taxation, environmental protection, labour and social standards, state aid, competition and state-owned enterprises. The LPF provisions are unique and might be interpreted as a basic pre-condition for the negotiations of a later treaty on the (economic) relations between the EU27 and the UK. Annex 4 may well foreshadow the details and complications of such an LPF regime[29] if the new treaty is going to be 'deep and comprehensive'.

The interesting question is whether this 'regulatory' part of the Protocol would remain in place even when 'alternative customs arrangements' would somehow be agreed by the EU and the UK. This is not impossible because a common rulebook for goods was proposed in the 2018 Chequers proposal of the May government. The UK proviso that the common rulebook would only go so far as would be necessary for frontier controls has meanwhile been addressed with an agreement on LPF in Annex 4 of the Protocol, hence the EU would wish to migrate these provisions to the future EU27/UK treaty.

Conclusions

The current rather reckless brinkmanship of the UK government would seem to be based on attitudinal or emotional politics, rather than on a workable and technically sound plan for 'alternative customs arrangements'. A one-month breathing space is unlikely to be sufficient to forge a coherent, technically sound and watertight package in a proposal to the EU27. Not to speak of technical testing by both parties and eventual acceptance in a redraft of the Protocol on Ireland/Northern Ireland of the Withdrawal Agreement by the EU legislator. Given that most of the technical suggestions have been around for a while without a full solution emerging, or do not get beyond mere 'facilitation' (i.e. lowering costs), the 31 October 2019 deadline cannot possibly have a useful function in this respect. Even an extension of the Brexit deadline to late January 2020 is not useful, if its purpose were to acquire full confidence in 'alternative customs arrangements' with all their technicalities. That would take more time even with the most cooperative spirit.

A new approach as proposed by Faull, Weiler & Sermiento might perhaps be a way out but in any event not on such short notice. Their basic idea is disarmingly simple. Their 'dual autonomy'

[28] It is asserted that Barnier once said that 'hell would break loose' among EU voters and in business circles if the UK after Brexit attempted to engage in weakening regulatory objectives with a view to gain competitiveness artificially.

[29] See the detailed and careful analysis of the LPF issues and specifications in the Protocol in a new book published by EPC and co-authored by David Baldock, Larissa Brunner, Pablo Ibanez Colombo, Emily Lydgate, Marley Morris, Martin Nesbit, Jacques Pelkmans, Vincent Verouden and Fabian Zuleeg: Ensuring a post-Brexit level playing field, May 2019, www.epc.eu/documents/uploads/pub_9223_brexit_lpf?doc_id=2171

proposal seems attractive for Brexiters as it responds to the symbolism of UK autonomy and symmetry and would not require a great deal of legal change. It would require an amendment of the Protocol and changes about enforcement and penalties (and possibly criminal liability) in UK and Irish law, following from that. Presumably, random spot checks might have to be done by Ireland and the UK together. In addition, it would also require some of the technological 'arrangements' (with the investment and testing needed) which implies that it cannot be delivered and operational in less than a year, if not longer. The drawbacks discussed above appear problematic on first sight but might well be trivial in the short-to-medium run as the relevant technical and SPS regulation on both sides is well tested and identical on both sides to begin with. Only if the later UK/EU treaty negotiations would become stuck for a long time, despite the powerful economic incentives to agree, the 'mutual trust and sincere cooperation' underlying the Faull et al. proposal would be severely tested. This is not the right place and moment to speculate on the negotiations to come but it is worth noting that neither the Political Declaration nor the one-liner in the Withdrawal Agreement are easy to interpret in terms of feasibility.[30] Faull et al. suggest that their option might also be useful for the later trade relationship and this, in turn, might tally with articles 19 and 27 of the Political Declaration where 'alternative arrangements' are advocated for ensuring the permanent absence of a hard border on the island of Ireland. For a permanent solution, the burden of very strict enforcement by the two countries together – also in order to protect the integrity of the EU's single market – the Faull et al. proposal would seem to be less adequate, if not unsuitable, and perhaps even illegal as it would no longer be part of the Withdrawal Agreement. Regulatory convergence might weaken over time, in sharp contrast to the temporary arrangement. It remains to be seen whether the UK, Ireland and the EU would be willing – and indeed legally capable - to switch to the 'dual autonomy' approach - apparently, inside the Commission there are strong hesitations.[31]

The Withdrawal Agreement's Protocol on Ireland/Northern Ireland, however, is mostly about common regulation for goods trade rather than customs. In addition, it comprises a fairly detailed set of provisions on a level playing field in six areas of regulatory policies. All of this for the period of future negotiations and possibly beyond this for the future trade agreement. The Agreement would therefore greatly facilitate value-chain based trade in goods. Combined with the possible solution of the customs approach, the enormous fuss about a 'new deal' is difficult to comprehend. Unless the anxiety emerges from the inference that there is only "just a little Brexit" in goods markets.

[3030] Art. 184 of the Withdrawal Agreement is rather cautious : "The Union and the United Kingdom shall use their best endeavours, in good faith and in full respect of their respective legal orders, to take the necessary steps to negotiate expeditiously the agreements governing their future relationship referred to in the political declaration […] and to conduct the relevant procedures for the ratification or conclusion of those agreements, with a view to ensuring that those agreements apply, to the extent possible, as from the end of the transition period". The Political Declaration seeks a switch from the erstwhile joint customs union to a permanent free trade area, combining deep regulatory and customs cooperation and a level playing field (art. 22) with a single customs territory (art 23), a unique combination

[31] See als Weiler's note of 30 August 2019 (cf. footnote 18, above)

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