

Regulation (EU) 2026/2108 establishing the Union Customs Code and the European Union Customs Authority, and repealing Regulation (EU) No 952/2013

Consultation Response – Traditional Unionist Voice

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1. Does it appear likely that the EU act would have a significant negative impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist?

Yes

Why

The new customs code will have a significant negative impact on the everyday life of communities in Northern Ireland in a way that is liable to persist because the last five years have provided an object lesson in why this is the consequence of cutting what has been a fully integrated economy for over 200 years into two by means of the imposition of an international customs border. Two critical points need to be made here:

First, it is clear that on the basis of the last five years that the reaffirmation of a customs border that has hitherto divided the UK through EU Regulation 952/2013 through EU Regulation 2026/2108 will have a significant negative impact specific to the everyday life of communities in Northern Ireland in a way that is liable to persist.

Second, that the above difficulty is compounded by new features of EU Regulation 2026/2108 that are not present in EU Regulation 952/2013.

In order to rise to the above question, it is important to consider both the above points and the relation between the two.

I. The negative effect of being subject to the closing stages of the current Customs Border will necessarily be far more limited than those flowing from long term submission to the newly proposed Customs Code

Hitherto the history of the development of markets has been concerned with their expansion. It has been about making markets bigger rather than breaking up long established markets. We see this in the extension of the GB Internal Market for Goods to cover Ireland in 1801 which was then theorised by the economist Friedrich List and applied to other countries, most famously the German states with the formation of the Zollverein through the removal of customs borders to build on existing internal markets, laying the foundation of the modern German state. There is no prior precedent for reversing the process, breaking up an established national market, let alone one that has been in place for over 200 years.

What is clear from the new experiment of seeking to break up a fully established internal market through the imposition of a customs border five years in, is that the consequences are profoundly destructive. It is now clear, for example, that the impact of the imposition of such a border is proving far more negative than the presence of a customs border along an established international border because this exercise has demonstrated that the economic flows within internal markets are of an entirely different complexion and intensity to those between internal markets. It is forcing a reconfiguration of supply chains that is both: i) costly to arrange and ii) less efficient. This is damaging for the society in question both undermining: a) its productive capacity as manufacturing inputs that previously came from within the same internal market

are subject to the costs of being placed the other side of a border, impacting wealth creation and wages and b) consumer opportunities, making it more difficult to acquire the range of consumer goods than was the case previously.

The impact of cutting a fully integrated economy in two by means of an international customs border is felt to some extent immediately, but its negative impact is, on the basis of the last five years, progressive and cumulative over time. **Quite apart from what is new about the new customs code, the negative effect of being subject to the closing stages of the current Customs Border will necessarily be far more limited than those flowing from long term submission to the newly proposed Customs Code which, if allowed to take effect, will have a far more permanent negative impact on the UK and Northern Ireland in particular.**

In seeking to understand the difficulty it is important to consider the need to act in terms of two considerations:

i) GB-NI/EU Trade Border System

Some might try to argue that the presenting difficulty is less than the above suggests because of facilitations negotiated under the Windsor Framework. Their argument would be twofold. First, while the Windsor Framework could not remove the border in the Irish Sea completely, it managed – according to this line of argument – to dramatically limit its impact. Second, the EU has committed to protecting the Windsor Framework solution under the new Customs Code. Specifically, it is argued that the Windsor Framework created an arrangement whereby the goods moving from GB to NI across a trade border were limited to 20% or less of goods, thanks to the ‘Internal Market Guarantee.’ This means that at least 80% of goods moving from GB to NI will move on the Internal Market System, thereby dramatically curtailing the impact of the Customs Code defined by EU Regulation 952/2013, a curtailment that will be protected under the new regime.

The difficulty, however, is that under this arrangement the goods movements used to validate the Internal Market Guarantee are movements under what has been called the UK Internal Market System. While internal markets are defined by the absence of customs borders within the territory of the internal market, what we discover on closer inspection is that, contrary to the misleading language of the ‘Internal Market Guarantee’, and the ‘UK Internal Market System’, no goods can move from GB to NI under the UK Internal Market System without an export number and subject to, at least the customs procedures defined by EU Regulation 2023/1128. Some might say that the customs form requirements under EU Regulation 2023/1128 are shorter than would otherwise be the case but the relevant point is that the imposition of a customs border down the Irish Sea for all goods means that the UK Internal Market for Goods has been replaced by a GB Internal Market for Goods, on the one hand, and what is effectively a Republic of Ireland Internal Market for goods expanded to cover Northern Ireland, on the other, with a customs border in between. It would not be necessary to have an export number or any customs paperwork if dealing with an Internal Market movement, as was the case for movements of goods between England, Wales, Scotland and Northern Ireland until the end of 2020 because we then had a UK Internal Market for Goods. Similarly, today it is not necessary to have an export number or to comply with customs legislation in order to move goods between England, Wales, Scotland in what is now the GB Internal Market for Goods.

Moreover, the presence of the Customs Code border is underlined by the fact that the reduction in border frictions arising from the shortening of customs forms is offset by having to embrace

other frictions including: i) joining and maintaining membership of a trusted trader scheme and ii) having to promise that the goods will not enter the Republic of Ireland such that the company becomes legally liable if they do. Trusted trader schemes testify not to the absence of a customs border but to their presence and the need to find a means of negotiating them. Moreover, the risk for a small company of becoming legally liable if any unit of a product they sell from GB to NI ends up in ROI is such that many smaller companies have decided that the new facilitations are far too risky. In this context they either elect for a conventional border experience or, much more likely decide to stop selling to NI.

Thus far from creating a situation in which the customs border has been removed for at least 80% of goods moving from GB to NI, such that those goods can be regarded as UK Internal Market movements, the facilitations, instead of creating a UK Internal Market System, create an alternative GB-NI/EU Trade Border System. Given the real worry of legal liability following use of the alternative trade border system, this has resulted in many smaller GB companies ceasing to trade with NI. The FSB survey published in June 2025 shows that 34% of small business in GB that traded with NI until 2020 have now chosen to stop doing so.¹

In this context the presence of an alternative GB-NI-EU Trade Border system masquerading as a UK Internal Market System should not be allowed to in any way dim the destructive impact of the Customs border as it has operated under EU Regulation 952/2013 any more than should the promise of its continued presence under EU Regulation 2026/2108. One aspect of current dysfunction arising from trying to apply a border across what has been a fully integrated economy is the huge number of unresolved supplementary declarations, information about which the Government is currently withholding.

ii) Trade Diversion

The obligation to confront the long-term negative impact of EU Regulation 2026/2108 is greatly compounded by the fact that the particular negative impact it is bound to have, given the impact of EU Regulation 952/2014, has already been highlighted by the Windsor Framework as a potential problem that should be avoided.

The sense in which the drafters of the Windsor Framework recognised that it breaks new ground in relation to which the possible range of outcomes was/is uncertain, is underlined by the provision of four safeguards within its design. Specifically, in imposing a customs border across an integrated economy rather than between integrated economies, the parties were entering uncharted territory. In this the design of the Windsor Framework with Safeguards – unknown in other EU agreements, demonstrated: i) that no one could be completely sure about what would happen and ii) that if any of the four lines set out by Article 16 of the Framework were crossed, the Windsor Framework would start to operate outside the parameters that the parties agreed the Windsor Framework had been designed to function within, to the extent it was designed to operate without causing harm.

It is very clear that trade diversion is now under way thanks to EU Regulation 952/2013. Despite Northern Ireland's overall goods movements rising 4.6% in 2024 (the latest years for which we have data), those coming from Great Britain fell 6.7%. Sales of goods to GB rose 0.8%, significantly underperforming 22% growth in sales to the Republic of Ireland². In four years of the Irish Sea border (2020-24) both purchases from and sales to ROI have increased at around

¹ https://issuu.com/federationofsmallbusinesses/docs/_windsor_framework_realities_?fr=xKAE9_zMzMw

² <https://www.nisra.gov.uk/publications/current-publication-broad-economy-sales-exports-statistics>

two and a half times the rate of any trade with GB.³ Moreover, the facilitations, rather than removing the border and recreating the UK Internal Market for Goods have merely provided some border choice in the form of the alternative GB-NI/EU Border System. That they are concerned with an alternative presentation of the border rather than its removal is underlined by the fact that the threat of legal liability if goods enter ROI has served as a real driver for the withdrawal of small businesses in GB from the NI market.

Although the safeguards do not require that trade diversion is liable to persist in order for it to be engaged, the trade diversion that we are engaging with is liable to persist and indeed get worse as we have seen over the course of the last five years. Indeed, given that this data only takes us up until the end of 2024, it is inevitable that the current trade diversion figures will be even worse, not least because of the arrival of the Irish Sea parcels border in May 2025 and ban on the sale of retail vet medicines from GB over the border. Moreover, and quite apart from anything in the context of there being no assurance that the Government will continue to pay for TSS, EU Regulation 2026/2013 will inevitably deliver even worse trade diversion.

There is, of course, no requirement that either party takes action if the protections of the safeguards are breached, but that does not change the fact that the Windsor Framework has been designed with these safeguards and if its operation continues regardless of them, the WF will be operating outside the parameters within which it was designed to operate. This cannot be ignored in asking the harm question and in recognising that if, further to the repeal of EU Regulation 952/2013, the border defined by EU 2026/2108 was not applied to NI, it would greatly benefit Northern Ireland.

II. New Division

Going forward there are a number of innovations in the new Customs Code that will make the problems present in the continuation of the customs border, now through EU Regulation 2026/2108, worse and liable to persist.

1) Third Country

In the first instance, the alienating impact of the new code is compounded by the way it 'others' Northern Ireland from the rest of its own country. Whereas EU regulation 952/2013 defines that Great Britain is now a third country, that is a foreign country in relation to Northern Ireland, the term only appears once. By contrast, EU Regulations 2026/2108 drives home this demeaning, othering strategy much more intensely, containing as it does 33 references to the term 'third country', 40 references to the term 'third countries' and one to 'third territories'. In this the new code is far more definite in institutionalising and underlining our alienation from the rest of our country.

³ Specifically, the rate of NI purchase growth in relation to goods in the Republic (44.63%) outpaced the rate of NI purchase growth in relation to goods in GB (19.47%) by a factor of 2.29, representing a 25.16 percentage point difference. (NI purchases from GB were 10839.10022 in 2020, rising to 12949.53466 in 2024. That is a percentage increase of 19.47%. By contrast NI Purchases from IE were 2188.826352 in 2020, rising to 3165.613197 in 2024. That is a percentage increase of 44.63%). Meanwhile, the rate of NI sales growth to IE (145.98%) outpaced NI sales growth to GB (57.32%) by a factor of 2.55, representing an 88.66 percentage point difference." (NI sales to GB were 6921.94027 in 2020 rising to 10889.39772 in 2024. That is a percentage increase of 57.32%. By contrast NI sales to ROI were 3152.906129 in 2020, rising to 7755.559985 in 2024.)

2) The EU Customs Authority

In the second instance, while para 18 of the Explanatory Memorandum states: ‘... *The EU reform proposal stated: “The revision of customs legislation set out in this Regulation will not affect the level of the facilitations referred to in Joint Committee Decision No 1/2023”*, even if the EM is correct this provides no undertaking whatsoever in relation to trade movements from GB to NI that are not subject to the said trade facilitations. Lest anyone should say, well that does not matter because they are the goods going to the Republic that should be subject to the border, that is incorrect.

First, the facilitations are not denied to goods that will go to the Republic, they are denied to goods that are ‘at risk’ of going to the Republic. Any good moving from GB to NI deemed at risk of entering ROI is not definitely going to enter ROI and is to that extent also at risk of staying in the UK. Indeed, to the extent that it must go to NI and only ‘may’ go to ROI, while its association with NI is certain, it is its association with ROI that is uncertain and may never happen.

Second, businesses that have a turnover of more than £2 million are ineligible for the facilitations in any event.⁴

This is important because it means that all the goods moved from GB to NI outside of the facilitations will be subject to the standard treatment afforded by Regulation 2026/2108, one of the central provisions of which is moving customs governance from member states authorities, and in the UK for NI, to the EU, with a new Customs Authority based in Lille in France. This necessarily takes Northern Ireland further from the UK for governance purposes and thus further increases the sense in which the customs border will divide the UK. While residents of an EU member state other than France might feel that their customs government is remote, at least it will be accountable to the EU in which they, unlike NI, will have representation. For NI rather than being a remote arrangement it will be a demeaning, colonial arrangement that will undermine our democratic way of life.

This is a particular concern because so far, the Independent Monitoring Panel which is supposed to monitor freight movements from GB to NI to ensure that: i) at least 80% move on the basis of the alternative trade border system (under the misnamed UK Internal Market Scheme), and thus ii) that no more than 20% of goods move on the basis of standard trade border experience, has not discharged its responsibilities. In the first instance, it has not provided a report on movements since 30 June 2025. In the second instance, it has admitted that its only report to date, rather than demonstrating that no more than 20% of goods by volume moving from GB to NI did so outside the facilitations, measured movements by value on the basis of whether they paid duties. This was never an issue because under the TCA goods can, subject to rules of origin, move duty free between the UK and EU. In this context there is inevitably a growing concern that there is a concerted effort to try to obscure from public view the amount of freight moving from GB to NI by means of the standard international trade border. This will obscure the full extent to which movements of goods from one part of the UK to another will be subject to the EU Customs Authority under the new Code

3) Penalties

⁴ <https://www.gov.uk/guidance/apply-for-authorisation-for-the-uk-internal-market-scheme-if-you-bring-goods-into-northern-ireland>

In the third instance, the people of Northern Ireland will have the persistent negative experience of being subject to higher penalties than at present. There are two dimensions to this difficulty:

First, the immediate challenges that flow from being subject to significantly greater penalties.

Second, the fact that the greatly increased penalties have been set by a legislature in which Northern Ireland is not represented. It is bad enough to be subject to laws imposed by an unelected lawgiver. To also be subject to an additional significant increase in penalties set by a foreign Parliament and applied by an agency of a foreign government based in a foreign country, further negatively impacts everyday life in Northern Ireland, undermining our democracy and way of life. No doubt if it makes wrong decisions in relation to customs with respect to NI, we could contact a UK Government department and ask them to raise the matter at the next meeting of the Joint Committee, but this is not the same as being able to directly contact one's own elected government asking them to change an unjust decision made by an agency that is directly accountable to them. This new arrangement treats us like pawns rather than citizens.

In the third instance, the new Customs Code will compound the problems with the border by means of redistributing the burden of the border on purchasing where Northern Ireland is exposed, rather than on sales, where it has some protection. Under the Windsor Framework there has been an attempt to moderate the divisiveness of the customs border, dividing Northern Ireland from GB, by means of saying that while NI purchasing from GB of both inputs and finished goods must be subject to the customs border, NI sales to GB, when pertaining to NI Qualifying Goods, can move freely, subject to exceptions listed in Section 45B of the Internal Market Act. In a context where rather than spreading the burden of the border equally on the importer and exporter, the burden will now fall principally on the importer, NI will become increasingly exposed.

2. Does it appear likely that NOT APPLYING the EU act would have a significant negative impact specific to everyday life of communities in Northern Ireland in a way that is liable to persist?

No.

In responding to this question, we will: i) first engage with the principal argument that the Government has sought to deploy to suggest that not applying EU Regulation 2026/2108 will have a significant negative impact specific to everyday life, by means of depriving NI of Dual Market Access and then ii) consider some more detailed points regarding the nature of EU 2026/2108.

I. Dual Market Access

The principal argument that has been made that not applying the EU Act would result in a negative impact that is liable to persist is that if Northern Ireland was not subject to EU Regulation 2026/2108 we would lose access to the unique advantages of Dual Market Access.

This is problematic on two bases:

First, Dual Market Access does not exist in the way the term suggests.

Second, when this is understood, while what is called 'Dual Market Access' might have some benefits to a limited number of businesses, it does not exist by itself but in the context of arrangements the overall effect of which is a net negative for Northern Ireland.

In this context the benefit of what is obtained by losing so-called dual market access far exceeds any cost, such that the net effect of not applying the EU Act will have a significant net positive effect on Northern Ireland.

In this situation the opportunity for Stormont to reject EU 2026/2108 should be taken.

In what follows this submission will explain why this is so.

The first problem is that the language of the 'dual market access', conveys the sense of being able to equally access the benefits of being in two markets, at the same time. This is, however, misleading. There are two dimensions to unfettered access. On the one hand, the unfettered ability to buy in inputs and finished products without encountering a customs border. On the other, the unfettered ability to sell inputs or finished products without encountering a customs border. Under the Windsor Framework, Northern Ireland has had to give up one entire dimension of unfettered access to its home economy, the ability purchase inputs and finished goods from the rest of the UK.

In response to this some might say that while the terminology is misleading in failing to convey the asymmetrical nature of the benefit, and the sense in which unfettered access it still withheld, this arrangement still amounts to a net benefit. Under normal circumstances you just have unfettered purchasing and sales access within one economy. Under the Windsor Framework Northern Ireland enjoys that access in relation to one economy, the Republic of Ireland, and then unfettered sales access to another, Great Britain. Moreover, membership of the same Internal Market for Goods as the Republic also means membership of the EU Single Market and nearly 450 million consumers. Surely that is a net benefit?

In order to understand why this 'net-benefit argument' is misplaced we must turn to the second area of difficulty. The truth is that Northern Ireland is not an economy in its own right, looking to increase its sales access to the wider world, wondering if it can add unfettered sales access in the Republic of Ireland to unfettered sale access to Great Britain. It is a small fully integrated (certainly until 2020) part of the UK economy and has been for over 200 years – although the Irish Sea border now threatens that. As such the ability of Northern Ireland to produce goods was not and is not as a separate Northern Ireland economy but as an integral part of the UK economy. This has very practical consequences.

In the first instance, none of the raw materials for NI manufacturing companies came or come from within Northern Ireland or the Republic of Ireland. They came and come from other parts of the economy in which Northern Ireland has been located, the UK, supplemented by some imports from the Rest of the World. The removal of the foundational provisions upon which one's whole business model has been based, the ability to produce to competitive prices on account of developing a supply chain that does not have to negotiate a customs border, is profoundly disruptive and potentially destructive. In this context businesses that would have otherwise sought to grow are now limiting their operations and considering relocation.

In the second instance, the economy in which Northern Ireland has been located is the sixth biggest in the world and as such Northern Ireland businesses have benefited from being part of the supply chain economies of scale of an economy of nearly 70 rather than 7 million people which keep prices down. This has been the principal driver behind the phenomenon whereby citizens of the Republic have crossed into Northern Ireland to do their shopping in significant numbers because the prices of many goods are notably lower. In the context of the restructuring

of economic life in NI following its relocation into what is effectively the ROI Internal Market for Goods, the NI/ROI price differential will become progressively smaller over time.

But what about membership of the wider EU Single Market? Does this not mean that the Republic of Ireland benefits from the supply chain economies of scale of being part of the EU Single Market of 450 million consumers, the option of buying inputs from 27 states without having to negotiate customs and SPS borders, as well as the option of selling finished products to 450 million people.

In the context of talk about economic globalisation a belief has emerged that the underlying economic reality is a global, undifferentiated interconnectedness that is only challenged by the negative impact of customs and international SPS borders. In truth, however, the maximisation of economic interdependence across a larger number of people, creating new opportunities to sell goods and access supply chain economies of scale is not just negative in depending on an absence, the absence of borders. It also depends on a positive market presence.

We are confronted by the most immediate and profound demonstration of the above in the fact that notwithstanding NI and ROI being physically joined and located in the same Internal Market of Goods, courtesy of the membership of the EU Single Market from 1993 until 2020, Northern Ireland operated as a fully integrated part of the UK economy, separate from that of the Republic of Ireland. The level of trade between the two was limited.⁵

In a context where ROI was unable to access the supply chain economies of scale of the UK, notwithstanding the fact that it was physically joined to it and in the same Internal Market for Goods from 1993 until 2020, how much less so will it benefit from being part of the supply chain economies of scale of France or Germany.

Then if we look at the option of NI businesses buying inputs from the EU rather than the rest of the UK, we are confronted with the fact, first, that ROI does not sell the inputs required by NI manufacturing and where inputs for other purposes are available, they are more expensive than in GB. If we look beyond ROI then we start to engage with the costs of moving inputs over longer distances and across cultures where previously they could be obtained within one's own immediate country. It is far more challenging for NI companies to have to look across the whole EU and (allowing for currency fluctuations and language differences) find what they want at the same price they could get it in GB without the Sea Border.

Finally, in turning to sales we discover that access to a market of 450 million people is to some very significant degree hypothetical in that many of the goods that NI produces are the kinds of goods that, for example, Eastern Europeans can produce more cheaply for sale in the Eastern part of the EU than can those in ROI because of the transport costs that apply when shipping from ROI. The truth is that for much of what Northern Ireland produces, membership and access to the geographically and culturally proximate market of 70 million that is the UK, is far

⁵ 'Given their close proximity, cultural affinities including a common language and the general lack of any tariff or non-tariff barriers, the amount of trade between NI and the Republic of Ireland is small. Only 5-6% of all sales of goods and services produced in NI are exported to the South. Moreover, a third of even these sales comes from the wholesale and retail sectors in NI. Much of this is fuel and vehicles, including second-hand vehicles, not produced in NI.³⁶ This means that under 4% of goods and services actually produced in NI go to the South. In sharp contrast, close to 85% of sales are to customers in the UK, mostly within NI itself.' Dr Graham Gudgin, *The Island of Ireland: Two Distinct Economies*, p. 42. <https://policyexchange.org.uk/wp-content/uploads/2022/07/The-Island-of-Ireland.pdf>

more useful than membership of the geographically and culturally less proximate EU market of 450 million both in terms of supply chain economies of scale and sales.

The truth is that if one suddenly sets Northern Ireland adrift from the UK, so that it can no longer function as an integral part of the UK as a productive unit such that it is denied unfettered access to inputs from within its own economy, the consequences are hugely destructive. The idea of increasing the scope for selling one's goods and growing one's economy by increasing one's net unfettered sales access is only a benefit if Northern Ireland is still able to produce the goods at competitive prices for sale in that enlarged unfettered sales market. There is no benefit to be had by increasing market reach for sales if this is secured by sacrificing the means of producing competitive goods in that increased market.

In this the claim that Northern Ireland has unfettered access to Great Britain because Northern Ireland Qualifying Goods can move freely to Great Britain, such that the UK Internal Market continues to exist, really takes us into the realms of the absurd. Access has to be a two-way street. Trying to assert that Northern Ireland has unfettered access to Great Britain and remains part of a UK Internal Market for Goods while denying both unfettered access to GB inputs and GB finished goods, because NI inputs and goods can move relatively freely to GB is like telling someone you are actively sustaining their ability to live even as you deny their right to breathe in, because you protect their right to breathe out. The ability to buy and sell are as foundational to basic economic function, as the ability to breathe in and out are to biological function. You can't meaningfully enjoy one without the other.

Of course, it has always been possible to find businesses that will speak in favour of shifting unfettered access from the rest of the UK into NI, to unfettered access from ROI into NI. This is clearly in the interest of any company in NI that buys and sells principally from the Republic, rather than GB, just as it is against the interests of any NI company that primarily buys and sells to GB. However, while companies in the former category might use the language of dual market access to help the UK Government justify the current approach, what they are really saying is not that they are benefiting from dual market access but single market access where the unfettered access is to ROI rather than the UK. Furthermore, and critically, while there are some companies in NI that are more oriented to the Republic, the majority of NI businesses are oriented to GB, reflecting the fact that NI has been a fully integrated part of the UK economy for over 200 years.

II. Wider Considerations

Not applying the EU Act would be positive even if the old Customs Code continued to apply to NI because of the way in which the new Customs Code compounds difficulties associated with the existing customs code, see answer to question 1 (see, 1) Third Country, 2) EU Customs Authority, 3) Penalties and 4) Uncertainty). However, EU Regulation 2026/2108 repeals EU Regulation 952/2013 and repealed legislation is without effect. Moreover, in considering EU 2026/2108, different considerations apply than do in relation to other replacement acts for two reasons:

First, unlike other pieces of EU legislation to which NI has been subjected, EU Regulation 952/2013 and EU Regulation 2026/2108 are qualitatively different because rather than creating different legislation for NI that may result in divergence in a narrow and specific area, they define the most basic expression of division by defining the border that protects the integrity of the market defined by the divergence.

Second, EU Regulation 2026/2108 repeals the definition of the customs border and replaces it with a new definition.

In a context where Northern Ireland is given the opportunity to decide whether or not to accept the new definition of the border, we are faced with the question about whether, given what Article 16 tells us about the design of the Windsor Framework, and its safe and unsafe operation, it would be in any way appropriate to agree to move to adopt EU Regulation 2026/2108. In placing Article 16 on the face of the Windsor Framework, it necessarily poses safeguarding questions for legislators seeking to determine whether new legislation is likely to have a significant negative impact that is liable to persist in terms of trade diversion, which if unchecked it likely to engage serious economic and societal difficulties that are liable to persist. In answering this question we have to recognise that there is all the difference in the world between: a) signing up to an arrangement where one simply admits that there are risks that certain outcomes may materialise in relation to which it might be necessary for the parties to take safeguarding measures and b) signing up to rather than rejecting new arrangements when one knows that the risks are not theoretical, when they have materialised, and when not signing-up would provide a way out.

To agree to bow to new arrangements that violate one of more of the Safeguards would be an act of extreme recklessness wherein the negative impact would move beyond trade diversion and the problems set out in answer to question 1 and engage other safeguards.

Finally, it is important to consider harm to reputation. The UN Declaration on Principles of International Law, Friendly Relations and Co-operation among states in accordance with the Charter of the United Nations says:

‘Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.’ (Bold added)

When the customs border set out by EU Regulation 952/2013 was imposed, the Government and nation did not know exactly what the outcome would be and realised that we had protection through the Safeguards provisions in the event of difficulty. We are now in a quite different position. We know that submitting to that border has and is leading to trade diversion which is having the effect of disrupting the national unity and territorial integrity of the UK by means of undermining the UK Internal Market for Goods in favour of a new GB Internal Market for Goods and an expanded ROI/EU Internal Market for Goods. We cannot submit to such an arrangement afresh in 2026, knowing that there is no precedent for a modern nation-state whose boundaries are not those of, at least, a common Internal Market for Goods, without knowingly submitting to the harm inherent in it which greatly compounds that harm. It negatively impacts the lives of people in NI, and indeed across the UK, by knowingly facilitating an act of national self-harm that necessarily saps and undermines the national self-confidence and determination that nations need to succeed.

3. Are there any other matters regarding the EU act that you wish to draw to the Committee's attention? Please note, any information provided should be of an evidential nature rather than a commentary.

It is important to note that in one critical respect the Explanatory Memorandum is inaccurate. Para 18 states:

‘18. The Windsor Framework is clear that NI remains in the UK customs territory and protects unfettered access to GB and privileged access to the EU market. The EU reform proposal stated: “The revision of customs legislation set out in this Regulation will not affect the level of the facilitations referred to in Joint Committee Decision No 1/2023”. It is this Joint Committee Decision which gives effect to the Windsor Framework customs facilitation. This position recognises NI’s unique circumstances and preserves Windsor Framework facilitations, including the UK Carrier Scheme, which allows consumer parcels to move from GB to NI without customs declarations, duty or safety and security declarations, regardless of value.’

However, the Windsor Framework does not protect unfettered access to the GB market. If NI had unfettered access to GB as it did until 31 December 2020, it would be able to buy in, unfettered inputs and finished goods from GB. The whole point of the Windsor Framework is that rather than protecting unfettered access it dramatically curtails it such that we can no longer access inputs and finished goods from the rest of what was the greater part of our home economy. No inputs or goods can move unfettered from GB (whether on the misnamed UK Internal Market System or not, which is actually a GB-NI/EU Alternative Trade Border System) without the fettering of being required an export number and completing customs forms, subject to 100% documentary checks, as if entering a foreign country. None of this fettering applies to the movement of goods within an Internal Market, which is defined by their absence, as was the case within the UK until 31 December 2020, and none of it applies today when moving goods within the new GB Internal Market for Goods between England Wales and Scotland.