'A Firm Solution to the Hard Border'

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Background

The "problem" of the border between the UK and Ireland after Brexit has become a much-debated topic. It is alleged that, unless the UK (or at least Northern Ireland) remains within the EU Customs Union (or, sometimes, inside the Single Market), the resulting bureaucracy will lead to massive tailbacks at the UK/Irish border while paperwork is checked, and that this will lead to a breakdown of the better community relations of recent years.

This note explains why these allegations are unfounded. It explains the issues involved, sets out some practical measures which have the endorsement of leading authorities in the field and outlines a proposal for how UK/Irish trade could be conducted after Brexit to achieve a friction-free border.

Introduction: what are the basic issues?

You do not know what Irish border "problem" you have until you know what the final Deal is

For example, if there is No Deal then import/export will obviously involve greater documentation, tariff compliance etc. than an FTA which allows mutual access on similar terms to pre-Brexit.

Demanding a "solution" to the Irish Border "problem" as a pre-condition arguably prejudices the outcome of the Deal negotiations.

Delays and tailbacks only happen at borders if one of the two sides chooses to cause them

Most countries now permit traders to submit their customs documentation electronically in advance of the goods arriving at the border, following principles devised by the World Customs Organisation (WCO). Virtually all submissions of the EU's own Single Administrative Document (SAD), for declaring imports and exports, are now made on-line. This means that most trade, which arrives from countries which are members of neither the Single Market nor the EU Customs Union, suffers little or no hold up at the border when entering the EU. There is no reason for this to change after Brexit.

According to the World Bank Logistics Performance Index[1], an annual survey of how difficult it is to trade with countries around the world, 95-99% of goods traded between developed countries avoid any form of physical inspection. **Ireland conducts the lowest level of physical inspection in the world (1%)**.[2] So why would they suddenly change the way they handle imports and exports?

The WCO operates a SAFE Framework of Standards to Secure and Facilitate Global Trade. 169 countries are currently covered by the scheme, including the EU-28.[3] It is based on four principles:

    (a) Harmonised advance electronic cargo information requirements;

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[1] Source: https://lpi.worldbank.org/
[2] Joint first-ranking with Estonia, The Gambia, Japan, Norway, the Slovak Republic, Switzerland and Thailand.
[3] Source: WCO website, http://www.wcoomd.org.

(b) Consistent risk management approaches by governments towards security threats;

(c) The exporting nation performs outbound inspections of high-risk cargo and/or transport, using non-intrusive detection equipment (i.e. don't hold up the goods on arrival); and

(d) Fast-track benefits for businesses which meet supply chain security standards and best practices, i.e. Authorised Economic Operators (AEO)

If Brexit causes massive tailbacks at the border it would be a breach by the EU/UK of their international commitments as WCO members. The WCO Standards are now incorporated into the EU Union Customs Code. EU-recognised AEOs enjoy reduced paperwork; fewer document controls; prior notification of inspections and favourable priority treatment; reduced delays and inspections; permission to hold goods in temporary storage in transit; and a 70% reduction in the fee for deferring duty/VAT.[4] EU-recognised AEOs use a special logo to designate their goods and transporters when they arrive at a border, and they may also use it for marketing purposes.

The EU's own AEO system provides a template for facilitating UK/Irish border transactions.

Why do you need to stop traders at the border anyway?

There are four possible reasons why a customs officer might stop goods when they arrive at the border – but the reasons for doing so can be satisfied more easily by other means.

(a) The importer has to settle customs duties

SOLUTION: use schemes for payment-on-account or deferral (*which EU countries already offer*) – and the issue only arises in the event there is no UK/EU Deal. At present there are already cross-border payment obligations because of VAT and UK/Irish excise. There is already an Irish border.

(b) The importer's paperwork is not in order

SOLUTION: push as much traffic as possible through an on-line pre-declaration route so that the goods can receive advance clearance (*which is what already happens*).

(c) Officers need to conduct a secondary inspection for non-customs purposes, e.g. to ensure compliance with local food and health standards.

BUT: when Brexit occurs the UK and Ireland will have more or less the same regulatory regimes (and to the extent there is any difference, it is a problem at the border already and Brexit makes no difference). This issue can be addressed if and when any divergence emerges after Brexit.

(d) Officers wish to conduct a physical examination, e.g. for intelligence reasons; random spot-checks.[5]

SOLUTION: Separate out as early as possible traffic where there is no need to conduct an inspection. Congestion at the border could be reduced by arranging for the relevant consignment to pass through but to be flagged down later at a more convenient location.

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[4] When a liability to duty/VAT arises you either pay it immediately or join the duty deferment scheme, but to join the scheme you have to post security or give a guarantee, so a 70% reduction is very worthwhile.
[5] Please note any customs 'spot-checks' would not be conducted on the Northern Ireland / Ireland land border, rather at one of the major seaports and airports on the island. Including (but not limited to) the following seaports: Belfast; Larne; Warrenpoint; Dublin; Rosslare; Cork; Dundalk; Galway; Bantry Bay, and including (but not limited to) the following airports: Belfast International; Belfast City; Dublin International; Cork; Shannon.

How technology and infrastructure will remove friction at the border

Under the guidance of the WCO, countries are already engaged in a programme to simplify customs procedures to avoid friction at borders. A wide-range of mechanisms and devices exist to facilitate the movement of goods. If the EU and UK allowed time-consuming delays to emerge at the Irish border it would contradict the trend of world trade, and programmes to which they are already committed.

In a November 2017 report for the European Parliament's Committee on Constitutional Affairs, *Smart Border 2.0: Avoiding a hard border on the island of Ireland for Customs control and the free movement of persons*,[6] Lars Karlsson, former Director of the WCO and Deputy Director General of Swedish Customs, confirms that **existing technology and best practice world-wide is more than capable of permitting a friction-free border**, whether involving the movement of goods or persons.

To achieve a smart border, Karlsson recommends:

- A bilateral EU-UK agreement regulating advanced customs cooperation – both sides should commit themselves to work together to avoid hold-ups at the border;

- Mutual recognition of Authorised Economic Operators (AEO) from both sides;

- A technical agreement between the UK/EU Customs on the exchange of risk data;

- Pre-registration of Operators (AEO) and People (Trusted Commercial Travellers/Certified Taxable Person for identifying low risk individuals for security and tax purposes) – so that regular traders are not delayed by repeating the same checks every time;

- Identification by the border, i.e. to separate known low-risk traffic from the unknown, e.g. through Radio Frequency Identification devices and enhanced passports/drivers' licences, or "Green Corridors" for special fast-track passage

- A single point-of-contact for the private sector providing one-stop service;

- A Unique Consignment reference number (UCR) for all goods being traded;

- Simplified Customs declarations (100% electronic) with re-use of export data for imports;

- The use of Mobile Control and Inspection Units, i.e. conduct policing in a sensitive manner away from the physical border;

- Surveillance of the border using technology (CCTV, ANPR, drones, etc.) rather than by employing officials sitting in checkpoints.

The objective is to make the "border" less of a physical location, and more of a digital record, by routing all import/export transactions through an on-line portal. This would also collect excise duty/VAT – and, in the event of there being no UK/EU Trade Deal, also import tariffs in either direction. Data would be shared with the EU, so they could make their own challenges, to be investigated on their behalf by the relevant national authority.

Digitisation of cargo information using blockchain would record the complete journey of the goods

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[6] http://www.europarl.europa.eu/RegData/etudes/STUD/2017/596828/IPOL_STU(2017)596828_EN.pdf

in question, and ensure it remained secure against unauthorised outside access.[7] ANPR devices would become a focus for sabotage, but that is a threat inherent in the Irish border and exists already.

Proposal: trusted trader authorisations

The technical measures which Lars Karlsson recommends could be further supplemented by a special administrative process which recognises the unique nature of the Irish border.

The solution is to separate traffic into categories of risk/reliability and to treat each one appropriately.

Gold Standard treatment: Major Authorised Economic Operators (MAEO)

Model: the US Free and Safe Trade (FAST) process for Canadian and Mexican exporters under NAFTA.

Aimed at: major commercial operations carrying high volume, low risk traffic. The FAST system (the US version of AEO) involves detailed eligibility criteria for the business, every link in the supply chain, from manufacturer to carrier to driver to importer, being certified under the Customs-Trade Partnership Against Terrorism (C-TPAT) programme. There are background checks and interviews of the enrolled drivers. There are subsequent spot checks[8] on participants to verify compliance.

Under FAST, participants declare their cargoes in advance on-line, and entry is permitted through designated lanes at participating entry points by the driver displaying his membership card. The drivers have to carry their paperwork with them but there is no checking at the border. Participating businesses also have to post bonds to guarantee payment of customs duties. The US application procedure is quite onerous, but the benefits are attractive for major players – not least, they can use their qualification in the scheme for marketing purposes to their own customers.

Practical implementation: On Brexit, any business already registered in the EU as an AEO, wherever located, would be automatically enrolled as an MAEO. After Brexit, any business anywhere could apply to become an MAEO.

In the UK/Irish context each driver would have a personal windscreen sticker and would probably use designated ports or road lanes. If a business already has AEO status, it would not be affected by the "queues at the border" risk anyway. The EU can hardly refuse to recognise a trading status granted under their own pre-Brexit system.

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[7] See for example: Daily Telegraph, 13 February 2018:
http://www.telegraph.co.uk/politics/2018/02/13/blockchain-could-solve-post-brexit-irish-border-question/
[8] Please note any customs 'spot-checks' would not be conducted on the Northern Ireland / Ireland land border, rather at one of the major seaports and airports on the island. Including (but not limited to) the following seaports: Belfast; Larne; Warrenpoint; Dublin; Rosslare; Cork; Dundalk; Galway; Bantry Bay, and including (but not limited to) the following airports: Belfast International; Belfast City; Dublin International; Cork; Shannon.

Silver Standard treatment: Special Authorised Economic Operators (SpAEO)

<u>Model:</u> the AEO system already operated by the EU.

<u>Aimed at:</u> the majority of participants, enterprises of a scale that would not justify registering as an AEO at present or using an intermediary shipper who was registered. It would only apply to businesses located in either the UK or Ireland.

The criteria and paperwork requirements would be based on the current EU rules, but relaxed to make them affordable for SMEs. Acceptance in the scheme would be automatic for eligible businesses (those in the UK and in Ireland) subject to subsequent revocation. Everything would occur on-line and participants would have their own account in the system which could be monitored.

<u>Practical implementation:</u> Any UK/Irish business could register for SpAEO status. Applications could be lodged before Brexit occurs, so that businesses can be ready from Day 1. SpAEO applications would be granted automatically, unless later revoked by UK/Irish authorities or the EU. SpAEO merits relaxed eligibility criteria because of the "geographical, historical and socioeconomic factors"[9] involved, and the reduced scale of the exporting enterprises.

At the moment, applications are only granted after vetting by the national customs office. It takes at least 120 days for HMRC to complete the checks. Reversing the onus of proof avoids any backlog issues on Day 1, and allows official time to be deployed more effectively on a risk-based assessment – most activity could be focused on the people with the highest liabilities and greatest scope for evasion.

Bronze Standard treatment: Pre-arrival Customs Clearance (PACC)

<u>Model:</u> best practice in pre-clearance systems world-wide

<u>Aimed at:</u> occasional and low-value transactions. There would be eligibility thresholds in terms of the value of each shipment and the volume of shipments over a twelve month, above which a business would have to register for the SpAEO scheme, but these could be tracked through the on-line account. The objective should be to ensure the process is no more onerous or time-consuming than making an on-line application for a credit card.

<u>Practical implementation:</u> Small-scale exporters operating under PACC would still have to establish an on-line account when first using the system. The process would essentially amount to a form of identity/credit check. It should be possible to clear each PACC with as little as one hour advance submission – *a performance standard major countries achieve already*. PACC scheme users would only submit a Simplified Declaration Procedure at first, providing minimal information, and would then have, say, 11 days to provide the remainder in an on-line Supplemental Declaration.

The EU Customs Code already provides for the Simplified/Supplemental Declaration procedure for businesses which have registered for it.

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[9] As recognised e.g. through existing EU trade management agreements covering Monaco (since 1963); Guernsey, Isle of Man and Jersey (since 1973); Andorra (since 1990); San Marino (since 1991); Turkey (since 1963 but reaffirmed 1995); and Akrotiri and Dhekalia (since 2004).

Questions and Answers

What will stop people lying on their on-line declarations?

The same problem already arises with, e.g. VAT returns. The national authorities responsible for policing the scheme in UK/Ireland will be the same people responsible for policing their local VAT systems. They already know what to look for – and whom to look at.

What will stop third country EU businesses routing their business through UK or Ireland to exploit this new loophole?

There would be nothing to gain. If there is a UK/EU Deal for tariff-free trade between the UK and the EU-27, there would be no financial advantage from re-routing sales. If there is no UK/EU Deal, the tariffs would be collected via the on-line portal. There would be no point in an EU-27 country exporting to the UK in order to re-export to Ireland, when they could already export to Ireland tariff-free anyway.

Why should a business which can currently export across the border enter into the bureaucratic hassle of Special AEO or PACC status?

A micro-enterprise making very small exports on an ad hoc basis would face a disproportionate burden from the SpAEO system outlined in this note, and far more than it does at present. But the only way to guarantee no change to the present arrangements is for Brexit to not happen.

The proposals set out in this note recognise that there is a high administrative burden in the EU's existing AEO process. That is why it outlines a three-tier system: the current AEO for the major players; a lighter-touch status for medium-sized businesses; and then a process for one-off transactions. Undoubtedly, there will be some sporadic cross-border trade for which even SpAEO/PACC costs outweigh the inconvenience of queueing – but, if the three-tier system is implemented for larger enterprises, most of the bulk traffic will be removed from the queues anyway.