

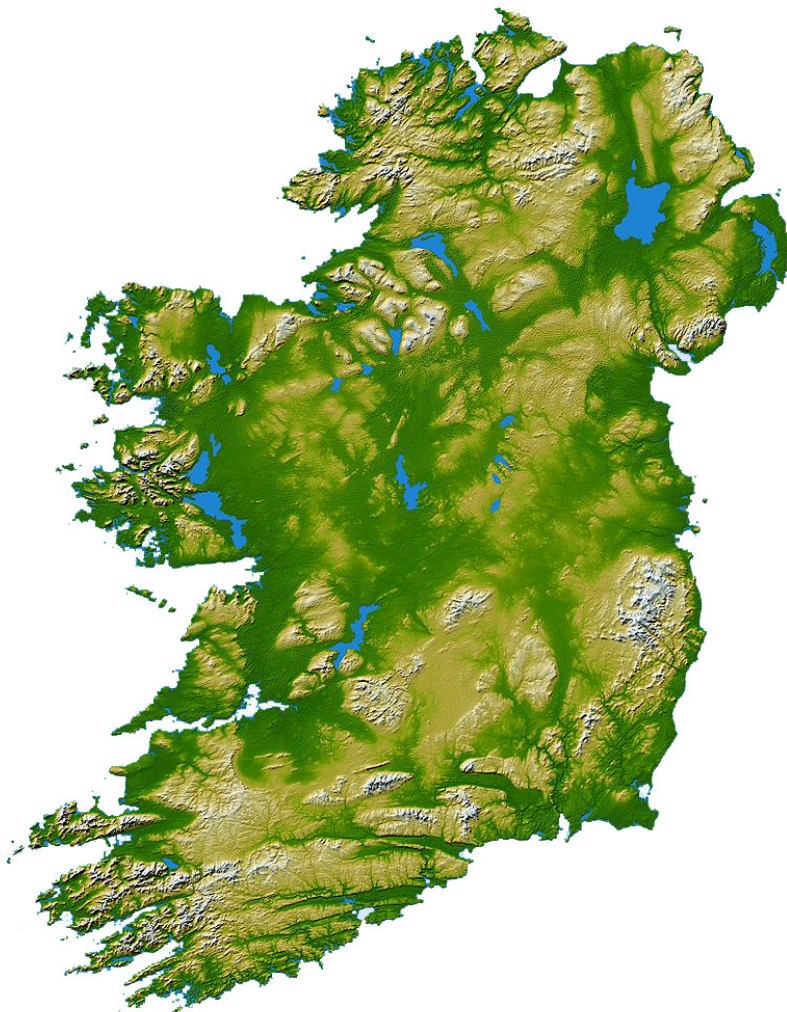
Getting Over the Line



Solutions to the Irish border: Why the UK (including Northern Ireland) can leave the Customs Union, avoid a hard border – and preserve the Good Friday agreement

Graham Gudgin and Ray Bassett

Foreword by Rt Hon Lord Trimble of Lisnagarvey,
Nobel Peace Prize Winner



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Foreword

20 years ago the communities of Northern Ireland made an historic decision to end violence and pursue a democratic, peaceful future. Economic progress has followed and a generation has grown-up without the daily companions of bomb threats, guns and beatings.

There are still political hiccoughs – we are currently in a period of suspension at Stormont – but support for the Good Friday Agreement is stronger now than when first inaugurated. The DUP and Sinn Fein, both of which were sceptical of the Agreement, are now more supportive. After centuries of bloody conflict, peace and democracy are the norms.

This achievement was delivered through a will to see things change, through confronting our own prejudices – and through tireless efforts of imagination. It is in this context that I have been so dismayed at the attempts by some to use the issue of the Northern Irish border as a tool by those seeking to influence the Brexit negotiations.

In recent months, senior politicians – some of whom were partners in the Peace Process – have sought to spread fear about a return to violence. They have warned about a breakdown in community relations and talked-up threats to the Good Friday Agreement.

Yet, as this paper shows, those seeking to alter the position of the democratically-elected UK Government in delivering the result of the Brexit referendum with such scare-tactics, cannot appreciate the strength of peace – nor the facts of how a modern border can operate.

The reality is that even Sinn Fein's Gerry Adams and the moderate nationalist SDLP have said that Brexit will not result in a return to violence.

What is more, fears over a 'hard border' are only as strong as the refusal of those who do not engage with a workable technological solution. As highlighted by Policy Exchange, studies have shown how technology, pre-customs clearing and mutual standards recognition can be deployed to avoid physical barriers at the border. It is sad, then, that some have sought to disregard the facts for the sake of temporary political advantage in what should be a mature negotiation.

Anyone interested in the welfare of the people of Northern Ireland, and indeed the welfare of those in the Republic and EU, should be urging Brussels to seek a free trade agreement with the UK and develop a smart border process.

The Irish Premier Leo Varadkar is endangering more than three decades of goodwill built up between London and Dublin. Such a relationship has value, not least actual – witness the direct loan to the Republic during the financial crisis when Brussels was reticent. While if anyone is threatening the return of a hard border, it is the reckless intransigence of Michel Barnier.

20 years ago, we found that where there was a will to succeed, and build something better, all obstacles could be overcome. As the heart-felt disappointment of some to the Brexit result dissipates, I hope that true friends of Northern Ireland – including the partners in peace all those years ago – will cease the scaremongering and work for a practical, prosperous future.

Lord Trimble

Former First Minister of Northern Ireland and winner of the Nobel Peace Prize

Executive Summary

The Brexit talks have reached an impasse. The Irish Government, fully backed by Brussels, is threatening to veto any further progress towards an implementation period or trade talks until they have what they see as a satisfactory solution to the Irish border issue. Both the EU proposal that Northern Ireland remain within the EU Customs Union, and the UK proposal of a Customs Partnership have been rejected by the other side. Press reports suggest that the UK Government intends to proceed with its Customs Partnership proposal despite objections from its own Cabinet Committee as well as by the EU. Pro-Brexit Ministers are warned that the only alternative to the Customs Partnership idea will be full membership of the EU Customs Union. This would meet the aims of the Irish Government and the EU to keep the UK within the Customs Union and therefore neuter the threat of the UK becoming a potential competitor with its own tariff and regulatory policies.

This report, based on a series of Policy Exchange articles, outlines how the UK got itself into this difficult position, including the wording of last December's Joint Progress Report when the UK conceded too much on the Northern Ireland Issue in its anxiety to move onto trade talks. The lesson of that mistake is that hurried concessions will most likely be punished at a later date, as UK flexibility comes up against a hard-line EU negotiating position.

The main argument of the report is that an Irish border without physical infrastructure is fully attainable, and therefore that the overly complex proposals for a Customs Partnership are unnecessary. Arrangements based on the UK's proposals for an expanded trusted trader scheme and exemptions for small traders will suffice to operate a border without infrastructure. The additional idea of a 'cordon sanitaire' around the whole island for animal health may have additional merit as long as it carries no constitutional implications that unionists would reject. All of this would be greatly facilitated by the Free Trade Agreement that the UK wishes to negotiate and which the EU is delaying and frustrating.

Modern technology means that physical customs posts, or even cameras, are no longer essential at borders. This has been pointed out by Lars Karlsson, a customs expert commissioned by the EU to look into this subject, who envisages the use of mobile phone and GPS technology to track HGVs, together with the computer-based customs clearing (the norm across much of the world). Computerised customs clearing consists of declarations of tariff duties payable, including on import content, and also the necessary certification of regulatory

approval. Inspection of animal health and food standards can occur at producers' premises, is common in current practice. Customs clearance occurs at the exporter's premises and the sealed consignments can then cross the Irish border while being tracked electronically by customs authorities. Few additional incentives for smuggling will be in place if there is an FTA, but smuggling can be further deterred if legislation mandates that all HGVs operating in Ireland carry tracking technology.

Supporters of UK membership of the EU Customs Union assert that no border exists anywhere in the world without some physical infrastructure. This is true in principle but not relevant to the case in hand. Mr Karlsson says that arrangements without physical infrastructure have been successfully trialled on the Norway-Sweden border. The only reason that they have not been adopted for general use on this border is that the existing border arrangements are satisfactory and hence the cost of new electronic systems is not justified.

Our conclusion is that the UK can deliver the promise of "no hard border" in Ireland without remaining in the EU Customs Union, or inventing new and complex schemes involving the tracking of individual consignments to their final destination. Since very few consignments are actually checked at existing EU borders, and those checks are usually based on intelligence received, such checks can easily be made away from borders.

Nor do we believe that the Good Friday Agreement is particularly affected by Brexit. The reason for avoiding a hard border is rather to avoid endangering officials charged with erecting, maintaining or operating border infrastructure. If anything, the danger of dissident paramilitaries attacking infrastructure or the associated officials has been heightened by the over-reaction of opponents of Brexit but precautions are now necessary.

The Irish Government is playing a calculated but risky game by demanding that Northern Ireland remains within the EU Customs Union and by threatening to use its veto in the negotiations. Ireland more than any EU economy needs free trade with the UK but has made no efforts to promote such an agreement in Brussels. Indeed, its main effort has been to frustrate moves in this direction.

The priority now should be for the British and Irish sides to return to the co-operative approach last seen under Leo Varadkar's predecessor, Enda Kenny. A new spirit of cooperation can infuse Anglo-Irish relations once again, but responsibility for its deterioration cannot be laid at the door of London alone. There is still much room for common ground. Mutually acceptable border

arrangements can be devised in the context of the free-trade agreement that Ireland badly needs.

Key Recommendations

- 1) The negotiations should aim to achieve three things – all of which can be delivered:
 - a. Respect the UK's referendum result, including its departure from the Single Market and Customs Union
 - b. Preserve a frictionless border between Northern Ireland and the Republic
 - c. Maintain the free flow of trade between the UK, EU, including Northern Ireland and the Republic
- 2) These outcomes can be achieved through a UK/EU free trade agreement and technical solutions to border crossings – the so-called Max-Fac option.
- 3) These solutions are being shunned by Brussels and Dublin for political reasons. The UK should persist in advancing the sensible 'max-fac' solution.
- 4) The UK Government should now return to its earlier position of insisting that full settlement of the Irish border issue should await the wider agreement on trade arrangements.
- 5) Ultimately, the Republic of Ireland stands to lose most from a failure to reach an agreement, followed by the EU. The Irish Government should co-operate with the UK in devising a border without physical infrastructure.
- 6) Peace in Northern Ireland, including the Good Friday Agreement, is more secure now than it was 30 years ago when the treaty was published. Those seeking to undermine Britain's withdrawal from the EU by scaremongering over the future of the GFA are wrong and should desist.

Introduction

The Irish Border issue has disproportionately dominated discussion over the United Kingdom's withdrawal from the EU. It has been used as a tool for negotiating advantage by Brussels and political advantage by Dublin. In London, arch-Remainers have used it to scaremonger about the threat to the Good Friday Agreement and peace in Northern Ireland. This paper shows that these concerns are not supported by evidence. A solution that respects the Brexit referendum and maintains a light-touch border is achievable. A recognition of the economic and political reality, and a little good faith, can help achieve a solution that promotes prosperity for all sides – and preserves peace.

Soon after his election last year the new Irish Taoiseach, Leo Varadkar, told an RTE TV (the Irish national broadcaster) show that he was unlikely to use a veto in the Brexit negotiations, because he was not that sort of politician¹. He has since backtracked several times² on this undertaking and last week both he and his foreign minister Simon Coveney, threatened to veto any progress towards agreeing a transition period or talks on trade unless a satisfactory pact was reached on the Irish border³.

The UK-EU Brexit talks could thus grind to a halt on what should be a manageable issue. Ireland has the full backing of Brussels, and the Irish border is being used as a weapon by Brussels to influence the Brexit negotiations to its advantage.

By 'satisfactory' both the Irish Government and the EU mean that either the entire UK, or at least Northern Ireland, should remain within the EU Customs Union. The UK Prime Minister has ruled out both of these options, stating in the case of the latter option, that this was not something any UK prime minister could agree. Certainly, it is not something that she could deliver, particularly given the outright opposition of the DUP to a semi-detached status for Northern Ireland within the UK.

What is the Case for Remaining in the EU Customs Union?

Remaining within the EU Customs Union would give the UK tariff-free access to the EU without any border controls. Unlike a free trade area, in the Customs Union the UK would be bound by the common external tariff and would maintain border controls for goods coming from non-EU countries. The UK would also need to align its commercial and labour regulations with the EU. The common external tariff means that the UK would have no power to arrange its own trade agreements with non-EU countries such as the USA or China.

Moreover, there would be a potential asymmetry in trade with third countries with which the EU has existing FTAs (including Canada and South Korea). The UK, as a non-EU member, might have no tariff-free access to these countries, but those countries would have automatic tariff-free access to UK markets as part of the EU Customs Union. Turkey is one example of a country outside the Single Market which is within the customs union. Turkey's membership is partial, applying to industrial goods, but not agricultural goods or services.

Many companies and trade associations advocate remaining within the Customs Union in order to have frictionless access across the EU boundary, but it should be noted that the long customs delays at Turkey's borders with the EU demonstrate that a customs union does not per se do away with such delays.

Freedom from tariffs is not the main issue for most sectors other than food production, since tariffs for many industrial goods are under five per cent. More important is the inconvenience of border controls and administration, especially for sectors like cars with complex just-in-time production chains. Major importers like John Mills Ltd (JML) on the other hand take the view that the difficulties are minor. If major companies had trusted trader status delays should be avoided whatever the customs arrangements.

It is easy to lose track of what the case is for remaining in the EU Customs Union which involves handing over responsibility for UK trade policy post-Brexit to an external authority. The *Financial Times*, which opposes Brexit, provides one source of illumination. In its April 23rd 2018 editorial, the *FT* summarised the reasons for remaining within something close to the EU Customs Union. It stated:

*"Both to fulfil its promises to keep the Irish border open, and to maintain Britain's sophisticated just-in-time supply chains with the continent, the UK should seek a new customs union with the EU that in essence replicates current arrangements. On top of this, it should seek to maintain those regulations, particularly in food and agriculture, needed to reduce the need for hygiene inspections as well as checks for customs tariffs and rules of origin"*⁴.

It is unclear what exactly the *FT*'s proposed customs union would be. It is certainly not the Government's Customs Partnership, which it says is rejected by UK business. It clearly applies only to goods (and thus does not involve membership of the Single Market). In essence, it is as close to the actual EU Customs Union as it is possible to be. This, the *FT* admits, would remove UK freedom to negotiate new FTAs, but the *FT* regards this as involving little loss to

trade, especially if remaining in a customs union preserved most existing trade links with the EU.

Let us examine why the *FT* thinks it worthwhile to hand over UK trade policy to Brussels post-Brexit (albeit potentially with observer status in EU trade talks). The two reasons given make no mention of tariffs. Instead the reasons appear to reflect a need to avoid time-consuming hold-ups at UK borders, and in the Northern Ireland case perhaps the maintenance of peace or at least avoidance of any border infrastructure that could be vandalised or attract violence. In the latter case the Government has indicated that its promise of no hard border in Ireland means no physical infrastructure (e.g. Philip Hammond on ITV's *Peston on Sunday*, March 11th). No infrastructure in turn means no hold-ups. If it is possible to operate with zero infrastructure in Ireland is this possible at all UK borders? If this is possible, then will this do away with any need for queues at ports. Everything thus comes down to the question of whether it is possible to operate a modern border with no queues and in the Irish case no infrastructure. We examine this possibility below, but first let us consider why the UK Government promised an Irish border without infrastructure.

Why Avoid a Hard Border in Ireland?

The intention to avoid a hard border in Ireland was first set out in the UK position paper of August 2017. This was cemented into an apparent promise in the Joint Progress Report of December 2017 and has been interpreted in the EU's draft Withdrawal Agreement of March 2018 as meaning that Northern Ireland would remain in the EU Customs Union unless other means can be found to completely avoid a border. The EU is clearly sceptical that such means exist – or is unwilling to engage seriously for political reasons.

What is a 'hard' border?

Different people have different interpretations of this – one of the reasons why the UK has struggled to articulate a response. A hard border can involve fences, barbed wire and checkpoint – indeed an image of Cold War Berlin's 'Checkpoint Charlie' is one that Dublin, Brussels and the arch-Remainers in London seem keen to put into the public consciousness.

Yet a 'hard' border might involve little more than traffic cameras – of the type seen by anyone crossing the congestion zone in London. Such 'infrastructure' is still seen as vulnerable and the UK Government has put forward proposals to avoid even this measure.

For many commentators the idea that Brexit may bring a return of the 'Troubles' has dominated their thinking. Several of those with a legacy to protect on the Good Friday Agreement, including Tony Blair, John Major and George Mitchell have warned of dangers to the peace process. It is rarely clear which process is being referred to, but the impression given is that peace itself is in danger. The weak arguments that Brexit somehow endangers peace or undermines the Good Friday agreement have been allowed to take hold. Neither argument bears much examination, but importantly they have received minimal examination – and have been repeated unthinkingly in the British media. Sinn Fein's Gerry Adams and Colm Eastwood, leader of the nationalist SDLP, have both stated that no general breakdown in peace is likely⁵. Adams instead stresses the dangers to human rights from Brexit although few lawyers appear to agree with him.

The real danger is not any general return to the Troubles but rather that border infrastructure can be attacked, and officials attempting to protect or replace it may be put at risk. It is this risk which motivates the UK Government to promise a border with no infrastructure at all. Of course, the huge attention drawn to the border issue in the media makes it almost inevitable that dissident republicans would attempt some attack. This may however be a short-term danger. Once Brexit is complete, with no-one stopped at the border and with no visible infrastructure, any danger is likely to subside. The Northern Ireland journalist, Suzanne Breen, with good republican contacts, says that dissident republicans are expanding their numbers but none of this this is connected with Brexit⁶.

The Need for Free Trade

A 'backstop' border in the Irish Sea between the islands of Ireland and Britain is certainly not in Ireland's interests, nor is the prominence given by Remainers to Ireland in the long-term interests of Ireland. Whatever the political importance of avoiding a hardening of the land border on the island of Ireland, east/west connections across the Irish Sea are much more important economically to both jurisdictions than intra-island trade.

It is estimated that only 1.6% of the Republic's exports are to Northern Ireland, while 10 times that amount is exported to Great Britain. In addition, 80% of the Irish State's total exports use the UK transport system to access world markets. It would be sheer folly for the Dublin Government to insist on the Backstop, as in the final analysis no British Government could agree to a Backstop and survive. To push this option to its most intransigent conclusion risks scuppering the wider EU/UK deal, with consequent serious impairment of the Irish economy.

The Northern Ireland economy is less likely to suffer from Brexit in any form. A recent detailed report from InterTradeIreland⁷ argues that no deal on trade would lead to an 11 per cent direct fall in Northern Ireland exports to the Republic of Ireland, very largely in the form of dairy products. However, Northern Ireland's exports to the Republic of Ireland comprise only 5% of its total sales. The Republic's dairy industry would experience larger losses of markets in Britain in the event of no deal, and this would open up major opportunities in GB markets for Northern Ireland's dairy producers. These indirect gains are not considered in the report but are potentially large enough to offset the direct losses. Of course, an FTA would greatly improve matters, and the EU's refusal to begin discussions is hardly helping. Its insistence that the border issue be solved before trade discussions begin is bizarre. Rather weakly, the UK Government appears to have accepted this order of negotiations, but should now return to its earlier position of insisting that full settlement of the Irish border issue should await the wider agreement on trade arrangements.

The best policy option, and by far the most logical, would be for Ireland to work on the EU side to agree to a Free Trade Agreement (FTA) between Brussels and the UK, with no tariffs and the minimum of red tape. Ireland should also be lobbying for an arrangement to allow for a mutual recognition regime between the custom services of the UK and the EU. This approach already has the support of the British Government. Now is the time to get Brussels to sign up fully.

The imposition of a border in the Irish Sea could also bring about greater Unionist alienation and would raise questions about the sincerity of the Irish Government's oft-proclaimed interest in their welfare. If the Good Friday (Belfast) Agreement, based on the principle of consent, and the commitment to parity of esteem for both traditions in Northern Ireland is to mean anything, then the Irish Government should abandon its aggressive championing of an option, which would have the effect of isolating Unionists from their fellow British citizens in Great Britain. Northern Ireland's main external market is in Great Britain which is nearly four times more important than the Republic's. Putting custom and regulatory barriers between Northern Ireland and its primary trading partner seems completely against the interest of the people living there.

Where Have the Negotiations Got to?

The Brexit talks are thus close to an impasse. Two years after the referendum no trade talks have begun or seem close to beginning. Almost six months after what seemed to be a breakthrough agreement in last December's Joint Progress report, there is still no imminent prospect of proceeding to a transition period or to trade talks. All UK proposals on the Irish border have been rejected by the EU, often with the rough language of 'magical thinking' or 'delusional' proposals.

The Joint Progress Report

It is on the fraught issues of the Irish border and regulation that the potential difficulties begin to multiply. This is in large part due to the language used in the Progress Report and the ambiguities contained in that language. It is important to note that the DUP did not agree the revised wording of the final document they had earlier decisively rejected. Instead they bowed to Theresa May's need to meet a timetable imposed by the EU. They certainly got some clarificatory words, but the Irish also took the opportunity to harden their position on some aspects of the paper. The result is a stand-off, with all still to be resolved. UK Brexiters, including the DUP may have hoped that an eventual EU:UK free trade agreement on goods, including measures on regulatory equivalence, would allow them to avoid a hard border without much damage to freedom of action in either Northern Ireland or GB. The EU moved quickly to try to enforce their own hard-line interpretation in their Draft Withdrawal Agreement.

The UK offered a triple lock to honour its guarantee of no hard border, given in writing as the Irish demanded. The first lock is an FTA. If this is not realised, then the UK will propose specific solutions for the island of Ireland. These would require the agreement of the Irish. Since the UK Government already proposed a range of such 'solutions' in its position paper of last August, only to have these summarily dismissed by the EU and Ireland, it is not obvious what these might be. The third lock is *'in the absence of agreed solutions, the UK will maintain full alignment with those rules of the Internal Market or Customs Union which, now or in the future, support North-South co-operation, the all-island economy and the protection of the 1998 agreement'*. The mention of the all island economy in paragraph 49 of the Agreement (the number has become well known) implies that this statement applies to all trade between Northern Ireland and the Republic of Ireland, and not just to transport, agriculture and energy as in the earlier draft. However, Irish sources confirm that alignment refers to the areas of co-operation in the Good Friday Agreement, although these cover a wide swathe of the economy. The word 'full' in reference to regulatory alignment,

appears to have been inserted in the revised version of the Agreement. On the other hand, the references to the Good Friday Agreement give Northern Ireland a reasonable handle on restraining Dublin's ambitions. Patrick Smyth, the experienced Irish Times European editor writes that the unionists have a veto. Quite simply it is not possible to protect the GFA by over-riding the unionist position which lies at the heart of it.

The first two locks appear to be in the gift of the EU and Ireland. Hence the UK could be forced to use the third lock, of maintaining full regulatory alignment for the UK as a whole, albeit in reference to Irish cross-border activities. The UK does not need such alignment in order to export to the EU as long as individual firms meet EU standards in their sales into Europe. Alignment does make it easier for EU firms to export into the UK, and in this sense, is more important for the EU than for the UK. Some Irish border alignment could be managed with or without an FTA or UK-wide regulatory alignment. Northern Ireland's food producers need to meet EU regulatory standards to export into the EU, and currently do so. They would no doubt plan to continue to meet these in future. The problem arises with firms in GB that could use an open north-south border in Ireland to route non-compliant goods through Northern Ireland and into the EU. As far as live animals and fresh meat are concerned checks at NI ports might be unexceptional, despite DUP wishes to avoid a border between NI and GB. The problem comes for everything else.

The EU could hardly tolerate such an obvious loophole in its commercial border defences, and pressure would come on Northern Ireland to agree the necessary checks at its border with GB if regulatory alignment is not UK-wide. The Progress Report says in paragraph 50 that border controls between NI and GB must be agreed by the NI Assembly and Executive (which currently do not exist). This gives the DUP an important measure of control, but the EU may propose sanctions to enforce compliance. The DUP did gain some protection from the addition of the statement that the UK '*will continue to ensure the same unfettered access for Northern Ireland businesses to the whole of the UK internal market*', but this creates a potential breach in the UK's customs defences if there are no controls at the border between Northern Ireland and the Republic. Again both an FTA and UK-wide regulatory alignment would be needed to avoid this.

The possibility of achieving a free trade agreement is a calculated risk for the UK. Without an FTA, and hence tariff-free trade in goods across Northern Ireland and other UK borders, a frictionless frontier can only be achieved with co-operation from Ireland and the EU. Without co-operation on such things as electronic customs clearing and automatic number plate recognition, both

Ireland and the EU might insist on *full* unilateral regulatory alignment in Northern Ireland on the grounds that this is what the December 8th Agreement promised. This in turn appears to imply *full* unilateral regulatory alignment for the UK as whole. This outcome would mean that that the UK as a whole is locked into equivalence with EU regulations just to meet Irish demands for an open border that could have been achieved by the means described in the UK position paper last August. It is just as easy to interpret paragraph 49 as referring solely to Northern Ireland. This would leave contradictions on the proposals which still need to be resolved. The Progress report stated that nothing is agreed until everything is agreed, but the EU has tried to push beyond this in its Draft Withdrawal Agreement to tie down the UK to arrangements on the Irish border well in advance of any trade agreement.

It may be less important that the Progress Report conceded a (tenuous) link between peace and the maintenance of the Good the Friday Agreement, including 'subsequent implementation agreements and arrangements'. Like the 'necessary nonsense ' (an NIO term, originating earlier with Brian Faulkner) inserted into the Good Friday Agreement, this may not mean much, but here it is on paper to be wheeled out by the Irish whenever needed in future. The wording is odd, with the UK 'recalling' commitments rather than providing commitments in this agreement. These links play an important role in the Irish rationale for a borderless island, and their inclusion in the document marks a step towards realisation of the Irish goal.

Until Leo Varadkar became Taoiseach last June, the Irish Government appeared to go along with the British interpretation of the border issue as a practical matter of minimising disruption to personal and commercial cross-border movements. Varadkar swept this away, removing all of the practical initiatives of his predecessor. Northern nationalists have tried to make the issue one of Irish identity, and the DUP have responded by defending their British identity. Any semblance of a border emphasises the Britishness of Northern Ireland and became unacceptable to many nationalists. Meeting an emotional issue of identity, rather than practical needs of cross-border travel, ratcheted the problem up several notches, and the failure of the UK Government or the DUP to counter the identity argument earlier, meant that negotiators were unprepared and fell back on a troublesome ambiguity.

All in all, the Progress Document was something of a canine's breakfast with the Irish border tail wagging the UK dog. The Irish Government were satisfied that they received the border guarantees they wanted, and the EU has consolidated this in the Withdrawal Agreement. The DUP may be entering the post-Brexit

world on the back foot but are reassured that they are protected by the revised wording of the Agreement. The Irish expended huge political capital on what, in reality, is a secondary issue. Could it have been better from a UK point of view? Probably not, once the end game was reached, but Irish preparation was stronger between June and December and the British paid a price for taking their eye off the ball. That price was the ambiguous language, a week of adverse headlines for the British Government, and most importantly the Withdrawal Agreement that the EU still hope to push the British into signing.

For the future, the British now wish to proceed to try to negotiate a Canadian style FTA but are being bogged down over Ireland. The Canadian CETA excluded agriculture and financial services and hence Theresa May talks about 'Canada-Plus'. One approach might be for the UK to propose to leave agriculture out of the FTA. Food exports are much more important for the EU27 than for the UK and can be used as a bargaining chip. The Irish can hardly object to the UK giving full primacy to its own national interests at the cost of causing pain for Irish food exports.

The EU Draft Withdrawal Agreement

The EU have continually put forward proposals on the Irish border that they know are unacceptable to London. Their draft Withdrawal Agreement of February 28th was widely seen as an attempt to annex Northern Ireland into the EU's Customs Union. As the 'coloured in' version of this draft Agreement on March 19th showed, much was agreed but important areas of disagreement remain, the most intractable of which was the Irish border.

The Irish border thus remains the key battleground in the war of attrition that is the UK-EU Brexit talks. Negotiations continue in Brussels with a hope that progress can be made before the EU Council of Ministers' meeting on 28th June, but reports suggest that few meetings have actually taken place. Meanwhile, EU Council President Donald Tusk affirmed in his Dublin speech of April 10th that the border issue remains at the centre of his attention over Brexit, an issue which still makes him 'very angry'.

The two sides remain far apart. The EU draft demands that Northern Ireland remains within the EU customs union. Although the Draft Withdrawal Agreement does not say so, this implies that there would be a customs border between Northern Ireland and the rest of the UK, something that was explicitly ruled out in the Joint EU-UK progress Report of December 2017 on which the Withdrawal Agreement is supposed to be based. Without unionist agreement this proposal is also unlikely to succeed. Theresa May rejected this demand

within hours of it being issued, saying that no UK Prime Minister could agree to such a proposal.

The UK have instead submitted two proposals on the border, both harking back to the UK position paper of August 2017. At the time, EU Commission President Jean-Claude Juncker, dismissed the UK proposals as 'magical thinking', but they are now back on the table.

The EU's draft Withdrawal Agreement was meant to turn the Joint Progress Report into a more formal legal document. What it did in practice was to interpret the words of the Progress Report to mean that Northern Ireland would remain in the EU Customs Union and hence in a semi-detached position within the UK. This escalation of what had been agreed in December 2017 was spelt out in stark detail on page 100 of the Withdrawal Agreement:

- *A common regulatory area comprising the Union and Northern Ireland is hereby established. The common regulatory area shall constitute an area without internal borders in which the free movement of goods is ensured.*

The territory of Northern Ireland, shall be considered to be part of the customs territory of the Union.

- *Customs duties on imports and exports, and any charges having equivalent effect, shall be prohibited between the Union and Northern Ireland.*
- *The provisions of Union law on value added tax.....and excise duties..... concerning goods shall apply to and in the United Kingdom in respect of Northern Ireland.*
- *The provisions of Union law on sanitary and phytosanitary rules.... on the production and marketing of agricultural and fisheries productsshall apply to and in the United Kingdom in respect of Northern Ireland.*
- *The provisions of Union law governing wholesale electricity markets ...shall apply to and in the United Kingdom in respect of Northern Ireland.*
- *The provisions of Union law on state aids shall apply in Northern Ireland for aid affecting trade with the EU.*

It was hardly an exaggeration when sections of the British media described this as an EU proposal to annex Northern Ireland. It was certainly an attempt to ease Northern Ireland into a semi-detached status within the UK. Of course, all of this was anathema to the UK government and its DUP allies, leading to its swift rejection. This raises the question of why a Withdrawal Agreement should have

been published by the EU when it must have known that this be precisely the UK reaction. These proposals were what US Forces term DOA, or dead on arrival, but the EU and the Irish government continue to insist that they were only a legally clear interpretation of what had been agreed in December's Progress report.

Despite EU and Irish protestations, it is safe to regard these proposals as an over-reach. There is no prospect of Northern Ireland remaining in the EU Customs Union while the rest of the UK follows UK Government policy and leaves. The prospect of the EU border for all goods moving to the Irish Sea between Northern Ireland and GB, as these proposals clearly imply, is a clear and direct contradiction of the undertaking made in paragraph 50 of last December's Joint Progress Report.

We are now in a situation of irresistible forces and immovable objects. To avoid one side having to back down, a degree of finesse will be needed with both sides giving ground especially where fundamental principles are not involved. The UK is moving the discussion back to its proposals based on the use of technology to avoid a hard border and claims that EU negotiators are at least willing to discuss these. The UK proposals in the ongoing talks on the Withdrawal Agreement are twofold:

The UK's Customs Partnership Proposal

Theresa May's preferred option of a 'Customs Partnership' is an attempt to mimic the functionality of the EU Customs Union without actually being part of it. (The Common Travel Area for people is already agreed and means no individuals need be stopped, although we should note that buses are currently stopped when intelligence indicates illegal immigrants or unlawful activity). The Customs Partnership involves applying EU tariffs to all goods imports, tracking all consignments to their destination and rebating duties where appropriate for goods going to UK destinations. Crucially it is an attempt to avoid the need for a customs border in Ireland while allowing the UK the freedom to negotiate its own trade deals with non-EU countries. Unfortunately, this scheme, which was devised by HMRC following a government request to be 'innovative', is hugely complicated. The complex tracking procedures are untested, and the scheme has been rejected by the EU on grounds of complexity. Since the scheme involves the UK collecting customs duties as though it were within the EU and remitting these to Brussels for UK imports travelling through to the EU, the idea has also been rejected because the EU does not permit 'third countries' to collect its duties.

The additional (narrow) rejection of the Customs Partnership proposals at the Wednesday 2 May meeting of the Cabinet Brexit sub-committee should have been enough to drop the whole idea, but press reports suggest that the PM will try to keep the proposal alive in some revised form. This is a mistake since the scheme's overly complex format is not necessary to avoid a hard border in Ireland. Nor is it obvious that it could avoid a high degree of regulatory alignment to EU standards and hence cramp the UK's freedom in negotiating trade agreements with the USA and elsewhere.

The Maximum Facilitation (MAX FAC) Proposal

A much better proposal is the so-called 'Max Fac' (maximum facilitation) scheme. This uses electronic customs clearing to avoid any new hardware on the Irish border (or any other UK border) without any need to stay close to the EU Customs Union. The EU has also rejected this proposal, reflecting an apparent intention to keep the UK within its Customs Union, but the scheme can be shown to meet most of the needs of Ireland and of UK companies without compromising UK freedom to determine its own trade policy.

The proposal was described by Jon Thompson, Head of HMRC, in his evidence to the House of Commons Exiting the EU Committee on November 29 2017. Mr Thompson said that the scheme was described in the UK's 'Future Arrangements' and 'Northern Ireland and Ireland' paper which need to be read together. The scheme assumes a negotiated settlement with the EU with highly streamlined customs arrangements, which includes good features such as the common transit convention with mutual recognition of the Authorised economic Operator (trusted trader) scheme.

Because of the unique situation of Northern Ireland three additional things are needed.

1. A wider adoption of the trusted trader scheme
2. Derogation for small traders (eg tradesmen crossing the border with their tools and equipment).
3. A system of self-assessment (which is set out in the EU Customs Code and which is the direction of travel for EU trade with third countries).

With these things in place Mr Thompson believes that the vast majority of north-south trade would be covered, and importantly that **"if there were any checks they would be risk and intelligence-based, and would take place well away from the legal border"**.

How Electronics Can Remove the Need for Border Infrastructure

Belief in the feasibility of electronic border arrangements has been strengthened by a report on the use of electronic customs clearing and border checks commissioned by the Constitutional Affairs Committee (AFCO) of the European Parliament and undertaken by the EU Commission's Directorate General for Internal Policies.⁸ This report has not been adopted as an official policy paper of the EU but it is authoritative because the report's author, Lars Karlsson, is former Director of World Customs Organization, and Deputy Director General of Swedish Customs and because it offers advice to the EU Parliament from within the EU itself.⁹ The report is entitled '*Smart Border 2.0 Avoiding a hard border on the island of Ireland for Customs control and the free movement of persons*'.

The UK Government has asserted all along that a virtually frictionless border can be attained with modern technology. Since around 98% of all customs clearances are electronic in advanced economies this is a reasonable proposition. In practice, containers are opened only when intelligence indicates illegal activity. For instance, in the port of Bristol only a handful of containers have been opened in each of the last two years. Karlsson's view is that new technology can go beyond anything currently in use at existing borders, to avoid the need for border infrastructure, and could provide a guide to best practice throughout the EU.

The Smart Border 2.0 Report states:

Standards and best practices such as domestic and cross-border coordinated border management as well as trusted trader and trusted traveller programs can significantly reduce compliance requirements and make borders almost friction free. Customs and other border control practices that keep the border open, such as release before clearance, deferred duty payments and clearance away from the border, also help keep the border free of traffic and speed up or even remove the need for processing.

Technologies such as automatic number plate recognition, enhanced driver's licenses, barcode scanning and the use of smartphone apps can also have a significant impact by reducing paperwork and allowing pre- or on-arrival release, which can reduce or even eliminate the need to stop or undergo checks.

These proposals are either completely ignored (by the EU negotiators) or rejected without any further discussion by Remainers. Comments by Lord (Chris) Patton in the Lords debate on the withdrawal Bill (March 14 2018) are typical:

"I read it [The EU's Karlsson Report], and the first thing he says is that he does not know very much about Ireland. You can say that again. He goes on to point out that the report does not cover agri-food or things such as as phytosanitary standards, and says that while he talks about how you can speed up customs arrangements, he does not remotely suggest that you do without a border or customs arrangements".

This dismissal of the report is wrong. The report does not reveal ignorance about Ireland - indeed it is full of facts and figures about Ireland. Nor does it obviously exclude agri-food or phytosanitary standards as Patton suggests.

It is true however that the Report makes no reference to para-militarism in Ireland or the dangers that physical infrastructure at the border might invite attack and be unsustainable. This also perhaps why the Report does not mention drones, which are in use on the Canadian and Swiss and perhaps other borders. The recommendations in the report are presented as a set of options and one of these is particularly relevant to the issue of paramilitary threats:

There are several different options from a technical perspective for how identification at the border can be undertaken. One way is to use a Gateway solution ...The Gateway solution is a solution using existing infrastructure, such as mobile networks, for customs and government related information messages to and from businesses involved in import and/or export. It was first tested by Swedish Customs for Authorized Economic Operators at the Sweden-Norway border in 2003 2005. It can also be used to track vehicles in real time through GPS positioning. (p42)

Mr Karlsson has explained elsewhere that this 'Gateway' approach which avoids the need for border infrastructure, although successfully tested on the Norway-Sweden border, has not been implemented because the additional cost is not justified in a situation where existing border arrangements using older technology are judged to be successful and appropriate.

Although number plate recognition cameras at the border could be vulnerable to dissident paramilitary attack, alternative technologies could include GPS and mobile phones within trucks. The placing of border controls inside vehicles seems a good solution for the particular circumstances of the Irish border. There are only around 5-6,000 border crossings per day by HGVs and half of these are on a single road. Many of the crossings are in vehicles belonging to major

companies like Guinness or Coca Cola bottlers and involve repeat crossings. There is little obvious need to stop or check such vehicles. The problem is greater for small companies and vans, but here the UK has proposed an exemption from checks (with intelligence-led oversight) and it is up to the EU to reciprocate.

Mobile phone tracking technology would be used in conjunction with standard customs clearing by computer. This covers rules of origin and regulations such as those for animal health and other product regulations but may leave some regulatory loopholes concerning imports which we discuss below.

Regulatory Alignment

Bizarrely, the Joint Progress Report and the Draft Withdrawal Agreement make no explicit mention of FTAs or tariffs. The absence of tariffs is an important component of a friction-free border, since without new tariffs there is no additional incentive for smuggling. Of course, there is smuggling at present, since excise duties differ between Northern Ireland and the Republic of Ireland. Since the existing smuggling has not necessitated customs infrastructure, a future with free-trade would also not need to do so.

Economic reality suggests an FTA will be agreed between the EU and UK, and EU demands for a friction-free Irish border put the onus on them to ensure an FTA is signed. It can also be noted that the EU country with most to gain from an FTA is the Republic of Ireland. In a rational world the advantages of an FTA for the Irish border might occupy centre stage, but the EU has preferred to keep trade off the agenda until the last possible moment for political advantage. Ireland does only a tiny amount of its trade with Northern Ireland (1.6%) but 15% of its exports go to GB and 23% of its imports come from GB. The independent Copenhagen Economics forecasting group, commissioned by the Irish Department of Business, Enterprise and Industry and published last February, predicted a loss of 7.7% of GDP in the event of no agreement on trade between the UK and EU¹⁰.

The EU and the Irish Government have instead focused heavily on the post-Brexit alignment of commercial regulations. Even though all regulations are currently fully aligned (since the UK is an EU member), the EU fears future drift towards differing regulatory regimes. The EU's biggest fear is 'a Hong Kong in the North Sea' with the UK becoming super-competitive with a low level of business or labour regulations. UK Government ministers have made it clear that this will not happen – it does not enjoy the support of the majority of Conservative MPs.

Importantly animal health standards are fully aligned north and south in Ireland with rigorous testing regimes in both jurisdictions. The same goes for food safety. The EU has agreed mutual recognition of sanitary measures with Canada and New Zealand and there is little logical reason why both the EU would not grant equivalence to the sanitary and phytosanitary (SPS) regime in Northern Ireland with reciprocation by the UK. There is however a case for continued alignment of animal health and food safety standards between Northern Ireland and the Republic. It is unlikely in any case that standards will diverge substantially in future and hence that the EU can regard UK standards as 'equivalent' to their own.

A problem may arise if standards do diverge in future. A UK trade agreement with the USA might conceivably lead to the import of hormone treated beef or GM foodstuffs into the UK. Foodstuffs often require import licences granted only to reputable traders and this practice could be extended to ensure that such items do not reach the EU. Complications might arise where bread or flour confectionary uses GM wheat or animals are fed on GM feed. The potential consequences of future trade agreements could be assessed as they arise and dealt with accordingly. One possibility would be to keep the UK aligned with EU food regulations as at present. As long as regulations are broadly mutually acceptable there should be little problem. Even now standards differ on some products, for example in furniture, without controls on trade or inspections. In the case of animals, trade restrictions are imposed in special cases like animal disease outbreaks.

A compromise acceptable to all?

As a fallback it may not be unreasonable to regard the whole island as a single regulatory SPS regime, implying checks on animals and fresh produce at the Irish sea coming into Northern Ireland. The same could apply to some other sensitive products.

A paper written by two senior and hugely experienced northern Ireland civil servants, Andrew McCormick and David Sterling,¹¹ outlines a possible scheme for Irish sea controls into and out of northern Ireland. This uses the advantage that HGVs have natural waiting times on cross-channel ferries and in the lorry parks awaiting loading. There is thus an opportunity to conduct checks without any loss of time. A system of green and red channels would allow most intra-UK traffic to transit unhindered. Only traffic travelling to or from the Irish Republic or carrying restricted items into Northern Ireland need be checked.

Ulster unionists are rightly concerned at any attempt to drive wedges between Northern Ireland and GB, or to convert Northern Ireland into a semi-detached part of the UK, but in this case there are few important constitutional issues. Checks have been applied in the past during animal health epidemics and could occasionally be used in future. They are already in place for animal diseases like rabies. During one such outbreak even the late Ian Paisley defended controls saying that “our people may be British but our cows are Irish”.^{12'}

Why the Good Friday Agreement is in relatively good health

The threat to peace in Ireland is at present smoke generated to cloud Brexit and put pressure on the British Government – as Gerry Adams has admitted, Brexit will not endanger peace. As the dangers to the Good Friday Agreement (used as a proxy for peace) have already done their work in putting the UK Government on the back foot. The GFA makes little mention of the EU and the word ‘border’ does not appear. Nor did the GFA introduce any new protections for Irish identity within Northern Ireland, and certainly none that are affected by Brexit, even if UK Governments raised nationalist expectations on other occasions (see below). It is true that many moderate northern nationalists are angry at Brexit although they have difficulty in pointing to specific examples of how Brexit will undermine their identity or rights. Their concern may instead be motivated by the reminder that they live in the UK, and where the UK goes on Brexit they must also go. This reminder of national sovereignty undermines their feeling that the GFA had created a sort of seamless Ireland, at least in spirit.

Without the EU proposals the GFA is relatively healthy, despite the lack of an operating Northern Ireland Assembly. In many ways, support for the Good Friday Agreement is stronger now than when it was first brokered. The DUP – who opposed the Agreement in 1998 – have now accepted it. Sinn Fein, meanwhile, who reserved their judgement at the time, now support it.

Secondly, the Agreement was put front and centre of the agreement last December between the UK and EU on the next phase of the Brexit negotiations. Both sides recognised that Brexit could not be allowed to jeopardise peace in Northern Ireland. Another reason to be optimistic is that there are signs that the DUP and Sinn Fein are preparing for another major push to break the deadlock with a compromise to restore the power-sharing executive at Stormont. Such a breakthrough would show that the province – and the Agreement – are stronger than any challenge presented by Brexit.

The signs are that the Border issue can be resolved. Talk about guns and beatings returning with a hard border have greatly reduced. Concern over the loss of ‘Peace money’ which came as a result of the Good Friday Agreement – it represents 1% of the funds which flow directly from the UK to Northern Ireland – would seem to be of little real impact.

Yet despite these reasons for optimism, there are certain issues that must be addressed to secure the long-term health of the Agreement. Undeniably, the

Brexit vote has raised tensions between the Protestant and Roman Catholic communities in Northern Ireland. Support for Irish nationalism from Catholics has risen – as the latter fear Brexit marks the return of an aggressive English/British nationalism.

To ensure the Good Friday Agreement is maintained over the long term it is important that Northern Ireland returns to the stability of two years ago. To this end, it is important that Stormont and other institutions are restored quickly. The quicker things get back to normal, the faster tensions will begin to ease.

Evidence of economic progress and calm at the border will also be important in assuring people that the Good Friday Agreement is in robust health. This will boost confidence in the future – and help to ensure we mark the 30th anniversary of peace in Northern Ireland.

Why Ireland should avoid this exercise in economic self harm – the Irish view

EU negotiator Michel Barnier was crystal clear in his address to the conference on Brexit in Dundalk: “The backstop is needed in order to respect the integrity of the single market and the EU’s customs union.”

Some of Irish politicians had thought the so-called ‘backstop’ was there to simply preserve the gains of the Good Friday Agreement. However, the EU has been entirely consistent on this matter. From the offset, it demanded that any procedures on the island of Ireland, post-Brexit, must “maintain the integrity of the union’s [EU] legal order”. All else is secondary, including Ireland’s national interest.

The sole purpose of Barnier’s two-day visit to Ireland was to put pressure on the British to accept EU control, through staying in the customs union. Barnier and the Irish government know that no British government could accept the backstop in its starkest form: namely the detaching of the North from Britain economically. Hence, they are playing a high-stakes game of bluff and Ireland is at the centre of it.

The only way to avoid a hard border in Ireland, according to the EU, is for the North to remain in the Customs Union. Given the position of the DUP in Westminster, and the undertaking that there will be no regulatory divergence from the rest of the UK, London has a simple choice: the UK in its entirety must stay in the Customs Union or there will be no deal. It is a classic example of crash, or crash through.

The EU’s strongest leverage on Britain to keep it within its orbit is the backstop. Essentially the legitimate and laudable aim to avoid a hard border is being cynically used by Brussels for its own purposes. Hence, the frequency of high-level EU visits to Ireland, including those of Tusk and Barnier. This places Ireland in a very uncomfortable position.

Therefore, all British proposals seeking a solution to the border issue have been brusquely brushed aside by the EU, with Ireland as its echo chamber. This is making a ‘no deal’ outcome much more possible. Staying in the customs union would essentially be a symbolic Brexit, without much substance. It would mean control of a whole range of areas by Brussels, without any real local British input. Given the tough line that Barnier and company have been adopting in the

discussions, there would be little appetite in London for a continuing role for Brussels in their economy.

The British Labour Party's recent conversion to the idea of the customs union is essentially tactical. It offers them the best chance to unseat the Tory administration, by attracting some disgruntled Conservative backbenchers to the cause.

There must be serious doubts about the commitment of the Labour leadership to it. Do people really believe that Jeremy Corbyn, and his chief lieutenant John McDonnell, are going to accept the EU Commission and the European Court of Justice vetting and overseeing their radical plans for nationalisation and state participation in British industry? Also, the British Labour party will see an increasing number of pro-Corbyn MPs after the next election, as the EU-friendly Blair faction sees its influence wane.

We need to decouple the border issue from the wider power struggle between Britain and the EU and accept that any arrangement for Ireland post-Brexit will require novel solutions: maintaining the strict red lines of the EU simply will not work. Any solution is unlikely to satisfy everybody, but hopefully there will be a parity of pain and satisfaction.

First, we must accept that there is already a border in Ireland, no matter how invisible it is to the naked eye. There are significant differences between North and South in areas like VAT, income tax, excise duty, etc, which are managed sensibly, without the need for border checks. Also, there are already differences, in areas like animal and plant health, between the North and Britain. The objective of any post-Brexit arrangements is to ensure that neither "border" is hardened unduly.

This can only be achieved by mutual compromise. Several possibilities have been put forward by the British, and have been dismissed out of hand by Brussels. But these solutions, which are based on technology and relaxing the EU's rigidity, offer the only real chance of an agreement, given the position of both sides.

Most of the solutions proposed are imperfect and, in some cases, unproven, but unless they are used as a basis for further discussion and refinement, we are heading for an impasse. The perfect can sometimes be the enemy of the good. There is no merit in rejecting every idea, short of staying in the customs union, and failing to put forward any realistic proposal by the Irish. No wonder Barnier has raised the distinct possibility of 'no deal'.

During the lead up to the Good Friday Agreement, various international agreements and conflict resolution models were studied for possible application to Northern Ireland. Although much was learned, none, in the end, were suitable. It needed a new more radical model. That was achieved by the British side accepting that the Irish government had a major and legitimate role in the North and the Irish government accepting the need for constitutional change.

There are few similar examples around the world, where the two governments were prepared to slaughter their sacred cows. If we had accepted the conventional wisdom and the red lines on sovereignty, there would have been no Good Friday Agreement. In the same way, we need to move away from “maintaining the integrity of the union’s legal order” so we can reach a workable solution.

For us in Ireland, who never wanted Brexit in the first place, Britain staying in the customs union would, in theory, be a good outcome. However, that would require regime change in London and would cause huge bitterness and instability. It would require an abject surrender by the British. If this does not happen – and at this stage it does not seem likely – then we will have forfeited a lot of goodwill in our most important bilateral relationship, soured community relations in the North, made future North/South cooperation more problematic, and committed ourselves to the European project, which is going in the opposite direction to our own interests.

Our net contribution to the EU will be close to €1 billion per annum within the next two years, without taking into account the adjustments that ending the British contribution will entail.

The EU is playing hardball with Britain. So far, Britain has conceded to a raft of unpalatable temporary measures so that it can achieve its ultimate ambition: exit from the EU in March 2019 and the transition period two years later. However, the backstop solution is in an entirely different category as it represents a much more permanent rearrangement of the constitutional position in the United Kingdom. If this manoeuvre does not come off, and there is no deal, the EU and Britain will be harmed but nothing like to the same extent as Ireland. I just hope that Taoiseach Leo Varadkar has a plan B. If he does not, we could see another spectacular crash of the real economy, especially our food industry and SMEs, in Ireland.

The Taoiseach should also listen to the advice of former taoiseach Bertie Ahern, who counselled against leaving a solution to the border issue to the last minute

in October. In highly charged negotiation sessions at European Council, the small nations standing in the way of an agreement can get steamrolled.

It is depressing that the bulk of media in Ireland, along with countless seminars and conferences on Brexit, keep so closely to the establishment narrative and that there is so little questioning of fundamentals. It has all the hallmarks of the official Irish attitude prior to the bank and property crash.

Those close to the Government in Dublin say that it this tough negotiating stance is simply a device to get the British to “come to their senses” and accept that they should stay in the Customs Union and the Single Market. However, in any game of bluff, there has to be a reasonable possibility of having one’s bluff called. Anybody looking at the situation cannot help but conclude that Ireland would not bring the house down in a single-minded pursuit of a political goal, if this was to do huge detriment to the economy. Any hard border in the Irish Sea and North/South would hurt Ireland a lot more than it would Britain.

Would any Irish member of the Dáil (Irish Parliament) for a border constituency stand over a decision by an Irish Government to implement custom controls and regulatory checks as part of a hard border on the orders of Brussels? Could Fianna Fáil, the Republican Party of Eamon De Valera, the main Opposition Party, support a new border? I do not believe they would and neither would any serious outside observer.

Ireland needs to remove its rose-tinted cataracts when it comes to EU institutions

For that reason, the Irish attitude to Brussels needs fundamental re-evaluation. There is no doubt, but that EU membership has been good for Ireland – not just economically but also psychologically. However, things have changed. The country is more affluent and confident than it was at the time of accession to the then EEC.

After many years of assistance from Brussels, Ireland is a net contributor to the EU budget this year of €800m (or around the same level per capita as the United Kingdom). After the country’s treatment at the hands of the EU during the infamous Bailout, with tough terms enforced by Brussels and Frankfurt to help stabilise mainly continental banks, the country should not be timid about putting its own national interest first. EU law was turned on its head. Instead of no bail out, suddenly no bank could not be bailed out, whatever the cost to the local taxpayer whose interests were being sacrificed. Meanwhile, it was the UK

Government, under no obligation as a non-Eurozone member, which came to Dublin's aid and helped bail out the Irish banks.

Europe's Franco-German federal agenda

Once the UK leaves the EU, it will be a much colder house for Ireland. The Macron-Merkel axis will undoubtedly continue to pursue their further centralisation plans and assault on member States' fiscal and taxation autonomy. Even the use of the English language will be threatened by Macron's aggressive attempts at pushing French in the EU institutions. Ireland as an Anglophone country will scarcely share Macron's vision of a European-wide En Marche movement.

Ireland needs look to its own interests and think again about the UK relationship

It is not in Ireland's interests that the Irish border issue be used as a weapon by Brussels in its attempts to ensure that Brexit is messy and unachievable. This means that Ireland should reverse its refusal to accept Prime Minister Theresa May's invitation to direct talks, involving the UK, Ireland and the EU, to solve the border issue. Even the Remainder-dominated House of Lords EU Committee argued strongly for a compromise.

These discussions could look anew at the British Position Paper of last August which offered the possibility of a combination of exempting local traffic and agriculture (together 80% of the total) and relying on enhanced technology for the remaining 20%.

Conclusions

The give-away in the debate over the Irish border is how little interest the EU, Irish Government and UK Remainers have in exploring the Smart Border or FTA options. A constructive approach would be to explore the options in a co-operative fashion and to decide what can or cannot reasonably be adopted. This is never suggested, and we must conclude that the blanket dismissal of technological options is being used for wider political purposes. What these purposes are is open to conjecture, but they most obviously include attempts to keep the UK within the Customs Union or a desire to move Northern Ireland partly in the direction of the united Ireland that senior Irish politicians have recently advocated.¹³

A more co-operative approach could have been adopted. Indeed, co-operation was much more in evidence under the premiership of the previous Irish Taoiseach (Prime Minister) Enda Kenny up to mid-2017. Under the current Taoiseach, Leo Varadkar, much co-operation has ceased. Work by Irish civil servants on an electronic border was cancelled, and meetings between civil servants in Ireland and Northern Ireland were stopped. Kenny's regular briefings for Northern Ireland First Minister Arlene Foster also ceased, even though the two knew each other well. This hard stance by the Irish Government has soured UK-Irish relations and it is time to return to practical collaboration.

In the House of Lords the debate on the Withdrawal Bill is in its Committee stage, while the Government begins to consider its response to the amendments tabled. There has been a lively debate on the effect of Brexit on Ireland, with a number of well-intentioned interventions by those in the Remain camp. Various amendments have been tabled which would have the effect of reining in the British Government's freedom of action even further, with the professed intention of avoiding a hard border. For some, indeed, the ructions over Irish border are seen as the Achilles heel of Brexit, with the potential to sink the entire Project.

It is time for political game-playing over the Irish border to be brought to a close. What Ireland needs now, along with trading companies in both Britain and Ireland, is some certainty. The European Union, and in particular the Commission in Brussels, will not seriously engage in any compromise while the possibility remains on the table of either overturning Brexit or getting the next best thing – keeping the UK in the Customs Union and Single Market (a Brexit in name only). The stronger the opposition in the House of Lords is to the UK Government, the

less likely the EU side will be willing to relax its rigid red lines and offer a fair deal for the UK in the rest of the discussions.

The veto threat can be met with soft words to Ireland and a repeated desire for genuine co-operation on achieving a largely invisible border. Beyond this there is something to offer, although Varadkar's apparent plan to force the UK, or at least Northern Ireland, to remain within the Single Market and Customs Union looks, to coin a phrase, like 'magical thinking'. The UK has already been generous in gold-plating the rights of Irish citizens in Britain, not to mention the huge financial help offered to Ireland during the banking crisis. All of this seems to have counted for little, but even so the UK proposal of a fully electronic border with no physical infrastructure could be backed up with an offer of a 'cordon sanitaire' around Ireland for animal health.

The new Irish hard line provides an opportunity to reassess the UK's wider approach to the Brexit talks. A tough stance from Brussels on money, now exacerbated by the Irish threat, requires a counter threat from the UK side. A key point is that the economic disadvantage of no deal on trade is much smaller than has been portrayed. The Treasury is as far at sea on its long-term predictions on the economic impact of Brexit as it has been on the immediate impact, and pressures can be brought through the WTO to facilitate satisfactory administrative arrangements on all UK borders. Together, these mean that 'no deal' on trade is a conceivable, even if not preferable, option for the UK. A threat to pull out of the Brexit talks altogether, combined with overtures to Ireland, could provide a necessary reset. The Brexit negotiations would then be more balanced and could move away from the current tango in which the UK makes concessions and the EU digs in for more.

Endnotes

¹ <https://www.joe.ie/news/ireland-unlikely-to-use-brexit-veto-according-to-leo-varadkar-608385>

² For example on Sky News 24 November 2017

³ <https://www.express.co.uk/news/politics/952128/brexit-news-ireland-irish-border-leo-varadkar-theresa-may>

⁴ <https://www.ft.com/content/b589b0c4-46f2-11e8-8ee8-cae73aab7ccb>.

⁵ <https://www.theguardian.com/uk-news/2017/jan/21/northern-irelands-eu-exit-will-destroy-peace-deal-says-gerry-adams>

⁶ Suzanne Breen <https://www.belfasttelegraph.co.uk/opinion/news-analysis/suzanne-breen-brexit-scaremongering-chorus-grows-36849681.html>

⁷ <https://www.esri.ie/publications/potential-impact-of-wto-tariffs-on-cross-border-trade/>

⁸

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

⁹ Policy departments provide independent expertise, both in-house and externally, to support European Parliament committees and other parliamentary bodies in shaping legislation and exercising democratic scrutiny over EU external and internal policies.

¹⁰ <https://www.rte.ie/news/brexit/2018/0213/940514-copenhagen/>

¹¹ <https://www.theguardian.com/uk-news/2018/may/04/irish-border-backup-plan-suggests-checks-ports-airports-brexit>

¹² Jonathan Powell *The New Machiavelli*

¹³ <https://www.irishnews.com/news/republicofirelandnews/2018/01/02/news/varadkar-i-aspire-to-unification-and-hume-s-agreed-ireland--1223143/>

<https://www.irishtimes.com/opinion/stephen-collins-varadkar-and-coveney-wasting-time-on-talk-of-irish-unity-1.3458249>

<https://www.irishnews.com/news/2017/11/24/news/simon-coveney-seeking-united-ireland-in-his-political-lifetime--1195785/>

Former Irish Attorney General Michael McDowell has argued that affirming support for Irish unity is what Irish politicians have to do in Ireland and means little, This may be so, but it leaves aside the political culture in Ireland which continually demands such statements.

