

MAX FAC WORKS

THE TECHNOLOGICAL SOLUTION TO THE IRISH BORDER CUSTOMS ISSUE

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Foreword

Rt Hon Owen Paterson MP,
former Secretary of State for Northern Ireland

I have been visiting Northern Ireland and the Republic of Ireland very regularly for many years, doing business before I was an MP, then every week for three years as Shadow Secretary of State and two years as Secretary of State. I continue to visit privately. Over that time, I have seen at first-hand the ways in which businesses deal with the very real border which already exists between the two countries – in currency, VAT, excise duties and security. In all my many conversations with businesspeople and politicians on both sides of the border, not one has ever said that the current arrangements present any problems to them as they are all handled seamlessly with modern technology. These differences and their solutions will continue regardless of the UK's membership of the EU.



I recognise, also, that a hard post-Brexit border is completely unworkable and a practical impossibility. That is why no one is arguing in favour of one. Yet doom-laden predictions of a future of chaotic checkpoints and unmanageable delays have continued to dominate the headlines.

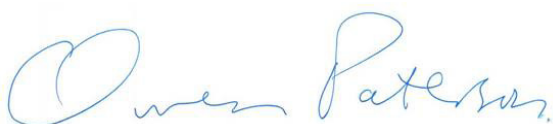
As this report ably demonstrates, those alarmist claims are unfounded. The UK Government's ambition to avoid "a hard border...to maintain the Common Travel Area between us, and to make sure that the UK's withdrawal from the EU does not harm the Republic of Ireland" is perfectly achievable with new technology and the goodwill which exists on both sides of the border.

Trade across the border is characterised by regular crossings of goods, often on the same routes and in the same trucks. Around a third of Northern Ireland's milk heads south of the border for processing into butter, cheese and infant formula. Some 13,000 border crossings are made each year purely for the production of Guinness. As this report sets out, an expanded Authorised Economic Operator scheme can allow this daily trade to continue seamlessly. Paperwork can be submitted electronically ahead of travel, with number-plate recognition systems allowing trucks to cross the border without so much as changing gear. Small traders can be afforded special exemptions, with light-touch regulation and the requirement to pay any duties only once or twice each year to minimise disruption. The Chief Executive of HMRC, John Thompson, echoed these sentiments in his helpful, level-headed comments to the House of Commons' Brexit Committee in November last year.

Indeed, the European Commission itself, in its Smart Border 2.0 paper written by former Director of the World Customs Organisation Lars Karlsson, conceded that Brexit “could be seen as an opportunity to re-design the border concept and to operationally test a new model on the NI-Ireland border...potentially as a best practice for other EU external borders.” Sadly, this practical approach seems to have been lost in recent months, with Michel Barnier even suggesting that “the territory of Northern Ireland...shall be considered to be part of the customs territory of the Union.” This, of course, is completely at odds with what 17.4 million people in June 2016 and 85 per cent voted for in last year’s General Election: for the United Kingdom to leave the Single Market, the Customs Union, and the jurisdiction of the European Court of Justice.

Barnier’s proposal serves neither the interests of the Republic of Ireland nor Northern Ireland. 85 per cent of Northern Ireland’s sales are within the UK. Just 5 per cent of its sales are with the Republic and a mere 3 per cent with the rest of the EU. It would be absurd for Northern Ireland to be cut off from the UK Single Market for the sake of that 8 per cent. It would be equally ridiculous for the Republic to jeopardise the 13.4 per cent of exports and almost a quarter of imports sent to and received from the UK, only a small fraction of which run between the Republic and Northern Ireland.

This vital trade can continue with the approach outlined in John Longworth’s and David Campbell Bannerman’s thorough, rational and pragmatic report. It stands squarely against the politically-motivated hyperbole which has thus far, regrettably, characterised discussion of the border; some have even irresponsibly suggested that Brexit may threaten the Belfast Agreement and peace in Northern Ireland. There is no risk of that. The Agreement’s courageous architect, Lord Trimble, rightly dismissed such claims as “rubbish”. As this report shows, a sensible technological solution can ensure continued cross-border co-operation and prosperity in the best interests of the whole British Isles.

A handwritten signature in blue ink that reads "Owen Paterson". The signature is written in a cursive, flowing style.

Background

The supposed “problem” of the post-Brexit border between the UK and Ireland 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, as sometimes claimed, 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 and even a return to terrorism.

This paper explains why these assumptions are not only unfounded, but grossly exaggerated. 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 frictionless border.

Introduction

It is not possible to know precisely what customs arrangements are required until after a free trade arrangement has been agreed.

It is not possible to know what Irish border “problem” you have until you know what the final deal is.

For example, if there is a “No Deal” outcome – that is reverting to World Trade Organisation (WTO) rules – then import/export will obviously involve greater documentation, tariff compliance etc. than that associated with an FTA which allows mutual access on similar terms to the pre-Brexit situation.

Demanding a “solution” to the Irish border “problem” as a pre-condition for the negotiation of a trade arrangement is highly likely to prejudice the outcome of the deal negotiations, and is designed to entrap the UK in a customs union and/or a regulatory straightjacket to restrict the UK’s ability to become the close ‘super competitive’ country the EU is ‘terrified’ of, according to the BBC’s Europe Editor Katya Adler.¹

Delays and tailbacks only happen at borders if one of the two sides chooses to cause them. Customs borders exist for governments to collect taxes in the form of duties and to check standards (see below), such as animal welfare standards. If governments are pragmatic about the nature of these tasks, so too are the borders.

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 online. 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.

Terms such as ‘documentation’ and ‘certificate forms’ are in some respects misleading – as these forms are, for the most part, now digital. Over the last decade, there has been a digitalisation of nearly all documentation, save for a small number of countries that only allow paper forms.

These documents are provided in a competitive marketplace, overseen by government departments (HMRC, DIT), as well the British Chambers of Commerce, and UK businesses have a range of documentation providers they can choose from. The current arrangements are considered ‘best-in-class’ around the world and help guarantee the reputation of UK business in export markets, where the importer can rely on the UK supplier providing documentation that ensures swift customs clearance when entering their country.

1 Source: BBC Radio 5 Live Brexitcast, <https://www.bbc.co.uk/programmes/p05299n1>

According to the World Bank Logistics Performance Index², an annual survey of how difficult it is to trade with countries around the world, 95-99 per cent of goods traded between developed countries avoid any form of physical inspection. Ireland conducts the lowest level of physical inspection in the world (1 per cent).³ So why would they suddenly change the way they handle imports and exports between the UK and Northern Ireland after Brexit? The reintroduction of a customs border is actually more likely to reduce border smuggling than the situation now.

The WCO operates a 'SAFE' Framework of Standards to Secure and Facilitate Global Trade. 169 countries are currently covered by the scheme, including the EU28.⁴ It is based on four principles:

1. Harmonised advance electronic cargo information requirements;
2. Consistent risk management approaches by governments towards security threats;
3. The exporting nation performs outbound inspections of high risk cargo and/or transport, using non-intrusive detection equipment (i.e. do not hold up the goods on arrival); and
4. Fast-track benefits for businesses which meet supply chain security standards and best practices, i.e. like the EU's own Authorised Economic Operators (AEO).

A trend with recent trade agreements is to build in systems that depend on organisations reaching AEO status. This status significantly helps reduce customs-based controls, although the process for obtaining it is more easily achieved by large businesses than SMEs. However SMEs can be facilitated by other means.

If Brexit were to cause massive tailbacks at the Irish 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's own 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 per cent reduction in the fee for deferring duty/VAT.⁵

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.

So, the EU's own active AEO system provides a template for facilitating UK/Irish border transactions post-Brexit.

2 Source: <https://lpi.worldbank.org/>

3 Joint first-ranking with Estonia, The Gambia, Japan, Norway, the Slovak Republic, Switzerland and Thailand.

4 Source: WCO website, <http://www.wcoomd.org>

5 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.

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 tariff-free and quota-free UK/EU trade deal. At present there are already cross-border payment obligations because of VAT and UK/Irish excise. So there is already an Irish border for VAT, excise duties – and currency.

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

Solution: push as much traffic as possible through an online 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-checks⁶;

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 well away from the actual border. CCTV and ANPR devices would be used, but only on feeder roads and well back from the actual border itself.

The goal of this 'Inland Clearance' would be to decrease the administrative burden, both on the exporter and on customs controls, whilst recognising that there is likely to be some minor increase in physical inspections. Customs duties could be accounted for in a manner similar to VAT, whereby return and payments are made in arrears.

¹ 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.

Of particular relevance for the border on the island of Ireland is the consideration that those vehicles that belong to transport companies that have been accredited to the Transports Internationaux Routiers (TIR) system can avail of the harmonised international convention that allows goods to travel through multiple countries without losing time with lengthy customs procedures. At the outset of a journey, the cargo is sealed in a container, or approved load compartment, displaying the TIR plaque and is protected with a customs seal. Customs officials then only need to check the customs seals, and the external conditions of the load compartment and the accompanying TIR Carnet. Paperwork is more easily managed as all transit declaration information is contained in a single document, the TIR Carnet, as well as electronically, in advance, with TIR-EPD (Electronic Pre-Declaration).

In addition, Brexit will allow new Export Processing Zones (also known as Free Trade Zones and free ports) to be established. These can play a long term dynamic role in the UK's trading process and in developing local areas near key port facilities – if they are appropriately set-up, well managed, WTO compatible in their incentives, and used as an integrated part of national reform. Configured appropriately at UK ports and airports, they would allow cargo to be reconfigured or processed and then shipped onwards outside of the UK without the need for UK customs clearance – or alternatively brought into the UK for customs clearance at a later stage, once processing has been completed.

How technology and infrastructure will remove friction at borders

Under the guidance of the WCO, countries are already engaged in a programme to simplify customs procedures to avoid friction at borders.

Even within the EU and its wider customs union/single market partners, physical borders remain: these include with Turkey, which is in “a” customs union with the EU, and between Sweden and Norway, which are both inside a single market.

Compared to the border between the USA’s 326 million population⁷ and 35 million Canadians,⁸ for example, the Irish border only serves 6.6 million people on the island of Ireland.⁹ Only 15 per cent of sales from Northern Ireland outside its geographical borders go to the Republic, whilst 55 per cent go elsewhere within the United Kingdom¹⁰, so ironically a “solution” to the Irish Border “problem” which placed a customs border metaphorically in the Irish Sea would potentially create more difficulties for Northern Irish business than it would solve.

41 per cent of the cross-border goods trade is accounted for by food, drink and tobacco (and this category represents a majority by value of the goods exported from North to South), with the second-largest category of trade being general manufactures, accounting for around 8 per cent (this category is more biased towards South-to-North movement, as a greater proportion of North-to-South exports are made up of basic metals).¹¹ To place these traffic flows in context, in an average month 177,000 lorries and 208,000 vans cross the Irish border¹², which sounds impressive but it is dwarfed by the equivalent commercial traffic using the M25 around London, which is twice as high over an equivalent period of time.¹³

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 fully 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’*¹⁴, Lars Karlsson, former Director of the WCO and Deputy Director General of Swedish Customs, confirms that existing technology and best practice worldwide is more than capable of permitting a friction-free border, whether involving the movement of goods or persons.

7 US Census Bureau estimates for 2016

8 2016 Canadian census

9 4.8 million citizens of the Republic of Ireland (2016 Census Preliminary Report) plus 1.8 million residents in Northern Ireland (UK Census 2011).

10 Source: <https://fullfact.org/europe/irish-border-trade/>, using figures for 2016

11 Source: http://www.intertradeireland.com/researchandpublications/trade-statistics/sectoral_cross-border_trade/, using figures for 2015.

12 Source: <https://www.theguardian.com/uk-news/2017/apr/23/northern-ireland-brexit-border-old-wounds-troubles>

13 Source: <https://www.dft.gov.uk/traffic-counts/download.php>

14 Source: [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)

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 per cent 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 online 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 in question, and ensure it remained secure against unauthorised outside access.¹⁵ ANPR devices would become a focus for sabotage, but that is a threat inherent in the Irish border, and exists already.

An example from the Svinesund crossing of the Norway-Sweden border, although much maligned by those who wish to rule out solutions, is usefully illustrative as to how this can materialise.

¹⁵ 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/>

At the Norwegian end of the border, cameras equipped with ANPR technology tracks vehicles going across the crossing point. If it looks as though a vehicle is crossing illegally, or there are other reasons to arouse suspicion, a mobile customs unit is dispatched to chase it down and perform the necessary checks.

The Norwegian government has developed a range of smart solutions to cut red tape and delays, all of which are being discussed in Whitehall as useful precedents for a deal on the Irish border. Norway and Sweden have a special agreement that allows customs officers from each country to perform checks on the other's behalf, so vehicles need only stop once. Officers emphasise that they are led by intelligence; so they only start inspecting the contents of a vehicle if they have reason to be suspicious.

Timber companies, for instance, have a special licence to cross the border at unmanned crossings, and totally avoid contact with uniformed officers and physical barriers.

A proposed solution based on 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 three categories of risk/reliability and to treat each one appropriately. These are:

1. 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 on participants to verify compliance.¹⁶

Under FAST, participants declare their cargoes in advance online, 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: upon 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 compliant with the WCO.

2. Silver Standard treatment: Special Authorised Economic Operators (SpAEO)

Model: the AEO system already operated by the EU.

Aimed at: 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.

¹⁶ 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.

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 online and participants would have their own account in the system which could be monitored.

Practical implementation: any UK/Irish business could register for SpAEO status. Applications could be lodged before Brexit occurs, so that businesses can be ready from day one. 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”¹⁷ 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 one, 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.

3. Bronze Standard treatment: Pre-Arrival Customs Clearance (PACC)

Model: best practice in pre-clearance systems worldwide.

Aimed at: 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 period, above which a business would have to register for the SpAEO scheme, but these could be tracked through the online account. The objective should be to ensure the process is no more onerous or time-consuming than making an online application for a credit card.

Practical implementation: small-scale exporters operating under PACC would still have to establish an online 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 (and to which the EU is de facto already committed when the new EU Customs Code comes into full operation¹⁸). 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 online Supplemental Declaration.

From April 2018, Switzerland has been operating an online system for customs clearance for individuals called QuickZoll, which can be downloaded to a smartphone¹⁹ and companies can submit all their documentation electronically.

17 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).

18 The UCC Delegated Act (Commission Delegated Regulation EU 2015/2446), Article 108 (implementing the Union Customs Code, Regulation 952/2013, Article 127) provides that entry summary declarations for the import of goods by road transport need be submitted at the latest only one hour before the arrival of the goods at the first competent customs office. This copies the requirements of the WCO SAFE Framework of Standards, Section III, 2.1.2 (ix), June 2015 edition.

19 Source: <https://www.ezv.admin.ch/ezv/en/home/news/news/medienmitteilungen.msg-id-70217.html>

The EU Customs Code already provides for the Simplified/Supplemental declaration procedures for businesses which have registered for it. Additional benefits and solutions flow from this also.

Delivery date: It is estimated that such schemes could be ready to be put in place by December 2020, the end of the proposed transition period.

This is because AEO schemes already exist, covering two of the main categories mentioned (MAEO/SpAEO) whilst the London congestion charge scheme (despite the fears even of Ken Livingstone that its introduction would lead to an initial period of chaos²⁰) was delivered in two years and without significant disruption. Also, a new customs HMRC IT system, the Customs Declaration Service (CDS) is due to be phased in from August 2018²¹, replacing the 'CHIEF' customs system and allowing greater operability and flexibility. (The decision to introduce CDS predates the EU referendum result, and is part of an overhaul of the EU Customs Code, to move to 100 per cent online administration in order to comply with WCO standards.)

Most importantly it should be noted that the head of HMRC has stated in evidence to numerous Parliamentary Committees in evidence giving that the new system will be ready in advance of Brexit day. However, it is understood that clients will need some additional time to connect to the new system.

It has also been stated that the existing system is being upgraded to cope with the increased volumes following our leaving the EU. This upgrade will be complete well in advance of Brexit day and clients are already connected. It is thus the case that there will be a fully working system in March 2019 whether or not there is a transition period for the movement of goods across the UK border.

As for the movement of people, the fact that we are not in the Schengen zone means that passport checks are already conducted in respect of persons from EU member states and thus there will be no change upon leaving the EU, unless visas are required on day one.

20 Source: [https://en.wikipedia.org/wiki/London_congestion_charge#Introduction_\(February_2003\)](https://en.wikipedia.org/wiki/London_congestion_charge#Introduction_(February_2003))

21 Source: <https://www.gov.uk/government/news/getting-ready-for-the-customs-declaration-service>

Simplified/supplemental declaration procedures

Authorised Economic Operators (AEOs) – large businesses:

Some form of self-assessment (this introduces notification and payment of customs duty on a periodic basis. Businesses to calculate customs duties and other import charges themselves and retain the customs declaration data within their commercial records), ‘pre-clearance’ (before goods are given documented permission to leave the country) and ‘post-reconciliation’ (after the necessary forms have been filled in by the trader), would be needed to support the virtual border concept, so as to shorten the current customs declaration process set out above.

Some elements of a faster customs clearance process (both in and outside the UK) are available to Authorised Economic Operators (AEO). This status has useful benefits, particularly for multinational companies with long supply chains, but as mentioned previously, the accreditation system for AEO is difficult and onerous – particularly for SMEs.

‘Trusted Trader’ regime - SMEs:

HMRC are currently reluctant to provide faster pre-clearance and post-reconciliation facilitations to traders that do not have AEO status, citing risk issues and risk appetite. It is possible that a trusted third party – such as Chambers of Commerce – could oversee a new ‘Trusted Trader’ accreditation process, which would assist more traders – particularly SMEs – to achieve an accredited status that gives them permission to avail of these customs facilitations. Adjusting to the new level of custom checks with the EU will impose a significant strain on businesses – and all efforts must be made to facilitate seamless yet reliable checks for traded goods.

Shipment-based, preference documentation:

Preference documentation helps exporting firms benefit from the terms of a Free Trade Agreement (FTA) or prove origin for countries that require such information under ‘Rules of Origin’ procedures. The widespread and long-standing use of these documents ensures certainty in international supplier/customer relationships, as well as a fast turnaround when it comes to issuing the documentation and passing the customs controls.

Chambers of Commerce stand ready to assist government in designing an independent, UK preference documentation system that serves businesses with overseas customs clearance. Preference documentation should be an option under any grandfathered FTAs, any new EU FTA, or any new FTAs conducted with third countries.

In any event, the UK Government has indicated a willingness to assist SMEs (which account for about 80 per cent of cross-border trade) with special exemptions such as tax-free status to help smooth trade.²²

²² See for example the comments of Rt Hon David Davis MP reported at: Daily Telegraph, 12 April 2018: <https://www.telegraph.co.uk/politics/2018/04/12/tiny-firms-irish-border-could-have-tax-free-status-brex-it-says/>

A new UK Customs Code to enshrine and encapsulate all the above:

Systems need to be in place before the moment of our formal exit from the EU, or at the end of any negotiated transition period for customs arrangements, to ensure that trade can continue without undue obstacles.

Industry must be consulted and forewarned of any changes to trading arrangements as far in advance as possible, to enable businesses to make relevant changes without incurring heavy costs or the challenges of sharp adjustments. But the two and half year period from now until the formal end of the transition should be sufficient.

In addition to the above, the UK's process of exiting the European Union raises the need to create a UK Customs Code. Whilst it is sensible to base the future UK Code on the Union Customs Code (UCC) - to which all EU businesses are now adapting - this shift also presents an opportunity to change several elements of the Code at the margin that would significantly simplify cross-border business for UK firms in future.

Taking the opportunity to reduce costs, increase efficiency and increase revenue take

The current situation provides a perfect opportunity to revisit these themes and ensure the future system lowers costs, reduces regulatory burdens, provides support for businesses, and increase revenue take through reduced smuggling. For example:

The reintroduction of 'earlier' sale

This would allow importers to value goods based on the previous sale in a supply chain before import. This will simplify the valuation of goods at the border for tariff purposes generally resulting in lower duties being paid. Under the new rules, it is the first sale after import that sets the value leading to excessive duty being paid.

The removal of compulsory guarantees

Prior to the introduction of the UCC, HMRC could waive the requirement for businesses to guarantee duty that might become liable. The introduction of compulsory guarantees has had serious cash flow implications for traders.

The reduction of the 120 days allowed to issue a Customs Guarantee

The current statutory timescale which allows HMRC 120 days to issue a guarantee is a significant issue for businesses which require HMRC to make dynamic decisions. As such, it is important that this statutory timescale is reduced to a more business-friendly level.

The reintroduction of Inward Processing (IP) drawback

IP drawback allowed traders to import goods into the IP procedure, pay duty at import, and reclaim the duty when the goods are exported. IP drawback allowed traders a greater degree of flexibility than IP suspension, and meant as the duty was already paid at import, this provided minimal fiscal risk to the customs authority.

The reintroduction of VAT deferment accounts

Previously, when goods were imported into the UK, the VAT due could be deferred then offset against a business' VAT return. This had significant cash flow advantages for business.

The development of a UK Market Access Database

The EU offers its importers and exporters access to the Market Access Database: a tool that is used by importers and exporters to understand what requirements they must comply with to ensure that they can trade. The UK should set up its own comprehensive Market Access Database, provided by a trusted third party.

In summary, additional options available under the current regime include:

- Establishing Inland Clearance procedures for imports, which would limit time delays on physical borders;
- Creating a 'Trusted Trader' system that would allow a greater number of companies to benefit from the faster customs clearance process than that which AEO firms currently enjoy;
- Maintaining the tried and tested preference documentation system that allows for seamless clearance when UK goods enter countries with which the UK has FTAs;
- Using the forthcoming Customs Bill to address aspects of the Union Customs Code that currently impacts detrimentally on companies' cash-flow provisions.
- Measures to reduce smuggling that reduce revenue take

One of the 'upsides' for both the UK and Irish Exchequers of a new more formalised customs border, albeit not in any physical or high profile form, is that abuses of the current system can be reduced. Inspections could be triggered where trusted trader authorisations or police intelligence and tip-offs justify greater focus on less reputable companies or organisations.

Common questions and answers relating to the proposals in this paper

Q: What will stop people lying on their online 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.

Q: 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 EU27, there would be no financial advantage from re-routing sales. If there is no UK/EU deal, the tariffs would be collected via the online portal. There would be no point in an EU27 country exporting to the UK in order to re-export to Ireland, when they could already export to Ireland tariff-free anyway.

Q: 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 so-called “queues” anyway.

Footnote on the free movement of people in Ireland

Whilst this paper is focused on the 'goods' aspect of borders, there has been considerable controversy surrounding the 'people' aspect; that is the free movement of people across the Republic of Ireland (RoI)/Northern Irish (NI) border.

The arrangements currently pertaining to the UK, including NI, and the RoI - the 'Common Travel Area' - have been in existence, by treaty, for almost 100 years giving free movement of people across the common border.

Neither the UK nor the RoI are in the EU Schengen Zone and, as a consequence, people are currently checked at the borders of the RoI/EU and the UK/EU whether they are travelling within the EU or entering the EU from the rest of the world. This extends to the Channel Islands and Isle of Man. They are not currently checked when travelling between the RoI and the UK, including NI.

As long as this persists and there is an effective border with respect to the movement of people between the British Isles and the rest of the EU/world, there is no reason why post-Brexit, there should not be a continuation of free movement within the British Isles, as there is now - including within the island of Ireland across the common border.

This regime would in no way challenge the border integrity of the EU given that the British Isles would be encapsulated within a border for the purposes of the free movement of people, as it is now. The only impediment to this approach is the intransigence of the EU and the RoI.

Notes

This paper is developed from an earlier paper entitled '*A Firm Solution to a Hard Border*' by David Campbell Bannerman MEP of 2nd March 2018 and presented as evidence to the Committee on Exiting the EU.

The development is based on the direct and high level expertise and experience of John Longworth, former Director General of the British Chambers of Commerce.

