

The Irish Border as a Customs Frontier after Brexit

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When the United Kingdom leaves the European Union, the status of its land border with the Republic of Ireland will inevitably change. The steady growth of trade and networks across this contested border over the past two decades have been largely attributable to their common EU membership and the peace process they have supported in Northern Ireland. Even aside from political sensitivities, any disruption to this integration will have an economic effect that Northern Ireland and the Irish border region can ill afford. As such, the European Council, European Commission and the UK government have repeatedly expressed a desire to avoid the return of a 'hard border' across the island of Ireland. Yet the practicalities of retaining such an open border after Brexit are highly complex, particularly as it looks set to become a customs border once again.

Current conditions for the movement of goods across the Irish border

The vote in the House of Commons on 26 June 2017 to approve the UK government's plan to leave the EU's Single Market and Customs Union means that the Irish border will become a customs border. If the UK leaves both the Customs Union and the Single Market, and if Northern Ireland is not to have controls on the movement of goods to and from Great Britain, it will be part of a third country. This will utterly change the conditions for the movement of goods across the Irish border, which are currently very straightforward because both the Republic of Ireland and the United Kingdom are in the European Union. The vast majority of goods currently crossing the Irish border thus currently fall under one of two broad categories: goods in free circulation or goods in 'duty suspension' (a temporary exclusion from paying excise duties). To have the status of being in 'free circulation' means that they

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are treated as domestic products of the Single Market and there is no need for customs checks because there are no import duties to be collected, no commercial policy measures to be applied (e.g. quotas) and no other formalities to follow (e.g. animal health certificates). In many ways, the common directives, standards and regulations arising from EU membership have ensured an efficient cross-border single market in several sectors, especially in agri-food, which constitutes 55% of cross-border trade on the island.

EU goods in duty suspension that cross the border are typically goods that are subject to excise controls and duties, such as fuel, alcohol and tobacco. Under EU legislation, excise duties are paid at the final point of consumption so, while in transit to this destination, there are strict rules governing the movement of such goods. At the moment, both the UK and Ireland must use the EU-wide electronic system, the Excise Movement Control System (EMCS), to monitor the movement of these goods in real time at every stage of transit through an electronic Administrative Document (eAD). This system has the advantage of being EU-wide, and thus designed to ensure coordination between economic operators and conformity between national excise applications in different states. Yet the system is far from unassailable, and such goods remain a lucrative target of criminal activity for evasion of duty.

Essential controls around a customs border

Clearly, if the Irish border became a customs border this would increase the economic attractiveness of smuggling, because many more goods would be subject to customs controls.. Customs controls serve to protect citizens' safety and security and are also a means of revenue for the treasury. Controls for the collection of duties protect legitimate trade by ensuring a level playing field for all economic operators; active customs enforcement in this area may concentrate on the misclassification or under-declaration of goods, by quantity and/or value, and the correct application of the rules of origin. Secondly, customs controls enable the detection of illicit drugs, weapons, and counterfeit goods and the exclusion of dangerous and substandard goods (e.g. fake pharmaceuticals). For a customs regime to be effective, therefore, the customs control system has to efficiently facilitate legitimate trade whilst also retaining the capacity to identify and inspect high-risk goods. What are the main challenges in implementing effective customs controls for trade across the Irish border after Brexit?

All goods crossing the border will have to follow some procedure for customs declaration and clearance. For a start, each consignment must be covered by a pre-departure declaration, thus making it subject to the appropriate customs supervision and formalities (including confirmation of status for VAT-free export). Such pre-departure declarations will require easy access to the necessary customs software systems. As well as being user-friendly and quick to complete, these systems will need to be able to link in seamlessly with the customs system across the border. It is of no small concern that the anticipated release date of 2019 for the

UK's new Customs Declaration System (replacing its outdated CHIEF system) has been flagged as being in grave doubt. This is quite apart from considering the increased capacity and efficiency that will be required of it following Brexit.

Tools of customs management

It is normal practice for entry to another customs territory to occur through a designated 'place of clearance'. This would usually be the first point at which the goods enter the destination customs territory, e.g. a sea port or 'approved' land border road. It is possible to register a border crossing through electronic means (e.g. e-tag or Automatic Number Plate Recognition [ANPR] cameras), but such reliance on technology is fraught with risks and places a huge degree of responsibility on the trader/carrier. One alternative to checkpoints at a border crossing is the use of Inland Clearance Depots, at which the necessary information can be submitted for recording and risk analysis purposes. The potential use of such 'trade facilitation centres' after Brexit has already been referred to by some in the Irish Revenue Commissioners. In order to reduce complexity and enhance efficiency, such depots may operate as 'single window' points where inspectors for multiple agencies (e.g. revenue collection, veterinary health, trade standards) can perform any necessary checks. One of the most effective types of inland depots can be those that effectively operate as juxtaposed controls, in which collaboration between customs operators on both sides of a border can perform the entry/exit procedures for both regimes at the same time. The introduction of inland controls, i.e. away from the line of the border, would still require means to control the movement of goods between the actual border and such control points. As such, solutions that may facilitate relatively 'frictionless' customs procedures cannot be entirely 'invisible'.

Invisible border management and security risk

The quest for an 'invisible' Irish border after Brexit arises from two main factors of complication in this case: i) the nature of cross-border trade on the island, and ii) the security situation in Northern Ireland and the wider Irish border region. In the first instance, most cross-border trade is conducted by SMEs with very thin profit margins, which could neither afford the costs of compliance with customs declaration procedures (IT resources, administrative burden, personnel time) nor the costs of registration for simplified customs procedures as a trusted trader (unless this is significantly pared back for smaller businesses).

Secondly, the issue of security makes it very difficult to use obvious means of facilitating effective customs management of traffic, e.g. ANPR cameras or multiple-lane approved roads (to choose between red channel, green channel and 'pre-declared' channels). The security situation also means that the proceeds of smuggling activity are likely to only strengthen the capacity and power of paramilitary organisations (not just republican ones – loyalist paramilitary groups also benefit from such crime).

Conclusions

The European Council's guiding principles on the Brexit negotiations state that

In view of the unique circumstances on the island of Ireland, flexible and imaginative solutions will be required, including with the aim of avoiding a hard border, while respecting the integrity of the Union legal order.

If the UK government is aiming for a singular, UK customs regime (which would be the most obvious approach), it looks as though the flexibility and imagination regarding the EU's external customs boundary will have to be found in the execution as well as the design of the system itself.

The mechanisms that will be used to manage the Irish customs border must benefit from the application of cutting-edge technologies, applied in support of risk-assessed, intelligence-led schemes of control. These will not, however, negate the need for some measure of physical control and examination if the integrity of both the UK market and the Single Market is to be protected. At this early stage, the smooth facilitation of legitimate cross-border trade on the island should be a priority. It is vital that businesses that currently rely on movement across the Irish border have the capacity to manage this transition and to achieve compliance with the rules in both regimes. This will require the provision of clear information, advice and support tailored to their needs. The current uncertainty that pervades the business community on both sides of the Irish border raises the risk of deep economic harm in this area, long before any formal change to the status of the Irish border takes place.