



Ray Bassett

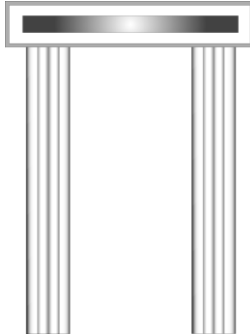
**The Irish Border, Brexit
& the EU**

The Route to Frictionless Trade

Series Editor: Sheila Lawlor

New Direction &
POLITEIA

A FORUM FOR SOCIAL AND ECONOMIC THINKING



POLITEIA

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The Route to Frictionless Trade

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I

Introduction

Brexit and Ireland's Interests

In Ireland, the 2016 Brexit referendum result in the UK was a huge shock. Despite the rhetoric at the time, there was little or no real preparation, either psychologically or materially, for a pro-Brexit outcome.

Ireland had nailed its colours to the EU mast, right from the outset, with no plan B. This led it to making a disastrous decision during the Cameron renegotiation with the EU, not to assist the UK to get any meaningful concessions. Such concessions might have made it easier for the Remain side to win. It was a gamble and one which backfired badly. This followed the earlier decision not to support David Cameron when he tried unsuccessfully to block the appointment of Federalist Jean Claude Juncker as President of the EU Commission in 2014. Cameron had argued that this appointment would make it more difficult to keep the UK in the EU.

The Irish public service, both politicians and officials, in both cases got it horribly wrong. This cohort, through constant meetings and connections with the EU, is considerably more pro-Brussels orientated than the general Irish population. It was only too willing to believe the over optimistic briefings that both Brussels and the British establishment had given them in private.

A similar pattern of excessive pro-EU sentiment could also be seen in the British public service in the run up to the referendum. Hence, the confusion in Dublin in the immediate aftermath of the result. In addition, the Nationalist community in Northern Ireland did not engage heavily in the referendum, the lowest turnout of any constituency in the United Kingdom was West Belfast, where fewer than 50 per cent voted. The overall result was greeted with dismay and surprise in Nationalist circles in the North.

Brexit is very serious business for Ireland. There is no other EU member state which is as economically, culturally, linguistically and geographically intertwined with the UK, as Ireland. According to the Department of Foreign Affairs and Trade in Dublin, there are over 500,000 Irish born citizens resident in GB, compared to just over 17,000 in Spain, the country in the EU with the second highest number of Irish born. It is estimated that there are under 10,000

Irish born living permanently in France. In many respects, Ireland and the UK form a single labour market, a shared cultural space and a long history of interactions and migration between our two islands. Almost every home in the Republic of Ireland has access to British TV stations and radio, which have large audiences there. British newspapers circulate widely. Culturally the country is heavily within the Anglophone sphere.

Ireland enjoys the full benefits of the Common Travel Area (CTA) with Britain. Its people are not treated as foreigners in UK immigration law, a position which has historically been true since the creation of the Irish Free State in 1923. It is overwhelmingly the net beneficiary of bilateral arrangements with its neighbouring island. By adopting an aggressively antagonistic position on British proposals in the Brexit discussions, Ireland is placing that relationship in danger. There is scarcely a family on the island of Ireland who does not have kinship ties with GB. No one on the island of Ireland will thank its political leaders if the result of their efforts is a restriction on the rights our people have enjoyed for centuries in Britain. In future economic crises in Ireland, where will young people move for employment if the CTA is ever terminated? The tiny numbers of Irish living in mainland Europe, in comparison to the Anglophone world, demonstrate clearly that there is no real popular identification with Europe.

Economically, the UK is vital for Irish interests. With close to 50 per cent of Ireland's beef exports going to the UK, around 280,000 tons, representing 70 per cent of all the UK's imports of beef and veal; and the UK taking between 40-50 per cent of exports from Irish owned SMEs. Much of these exports originate away from Ireland's affluent east coast, in places where alternative employment would be difficult to access. In addition, the UK is Ireland's trade portal for the rest of the world.

While the growth of US multinational firms in the Republic has assisted in greatly lessening Ireland's traditional dependence on the UK market (now around 14 per cent of the total), the bulk of Irish exports, especially in volume terms, use the UK transport system to reach markets worldwide. It is simply fanciful to imagine that Ireland could reorganise its trading patterns to avoid

sending the bulk of its goods through the land bridge in Britain to world markets.

Hence, it is overwhelmingly in Ireland's interest that the UK and the EU agree to friction-free arrangements across a wide range of areas. Rationally, Ireland should be the UK's strongest ally inside the EU, pressing for the best possible terms and a successful Brexit. There are numerous other examples of the importance of British links to Ireland economically.

The question has to be asked as to why it was not the case that Ireland was following its national interest. Ireland and its political leaders, Leo Varadkar, the Taoiseach, and the Tánaiste (Deputy PM), Simon Coveney, have adopted a confrontational, and at times unhelpful line, (notwithstanding the belated bilateral discussions between Taoiseach Leo Varadkar and Prime Minister Boris Johnson in Cheshire). This risks repeating the same mistake as was made in the Cameron renegotiation, with similarly adverse consequences for Ireland. The answer lies partly in the historical legacy of the division of Ireland into two states, together with a large misplaced dose of Europhilia.

The aggressive pursuit of the Backstop by the Irish Government helped end the Premiership of Theresa May and discredited the pro-EU section of the Conservative Party. In the final stages of the recent leadership contest, neither candidate, Boris Johnson nor Jeremy Hunt, were prepared to accept the Backstop, not even with changes. This represented a considerable hardening in the British position.

The election of Boris Johnson as the British Prime Minister should now help to concentrate minds. The outcome of this year's local and European elections ensured that come 31 October, and there was no EU/UK agreement, the new PM was clearly prepared to have the UK exit from the EU, without a deal, despite the restrictions imposed by the Benn Act. Any other course of action would have spelt electoral disaster for his Conservative Party. The threat of a No Deal outcome greatly encouraged the Irish Taoiseach to change radically his previous opposition to direct discussions with the UK and to drop the disastrous Backstop (see Politeia Blog 17 October 2019, *Leo Varadkar changes Gear, A Brexit Victory for Ireland's Polls*). That development greatly assisted in securing the EU/UK deal of 17 October in Brussels.

The EU and UK positions, before that breakthrough, seemed impossible to reconcile. The EU would not agree to any fundamental changes to the Withdrawal Agreement, including the Backstop, while the new PM had been elected leader of the Conservative Party on the basis of his determination to achieve Brexit by 31 October and the scrapping of the Withdrawal Agreement. Major movement in the position of either party, or possibly both, appeared unlikely and a No Deal outcome loomed large on the horizon. The dramatic breakthrough on 17 October changed the situation.

Before that a deep frost had entered Irish/British relations and the initial perfunctory phone contact between the two Prime Ministers merely served to confirm that their relative positions on Brexit were irreconcilable. The situation has somewhat improved lately but the dreaded No Deal is still a possible outcome, an outcome that no one really desires, and which would be very damaging for Ireland.

The Irish Central Bank has predicted that a No Deal outcome would mean 34,000 fewer jobs by the end of 2020 in the Republic of Ireland and 110,000 over the next decade, with economic growth dropping from a very healthy 4.1 per cent per annum to an anaemic 0.7 per cent. Northern Ireland would proportionately be affected even more. The threat of a No Deal began to have an effect on the public in Ireland, with public support for Varadkar's hard line stance beginning to waiver. The Sunday Independent newspaper reported that only 41 per cent of those polled believed that Varadkar was doing a good job on Brexit. This was way down from previous polls. The slide in the Taoiseach's popularity was suddenly reversed after his Cheshire meeting with the Prime Minister, but this change will, almost certainly, be temporary unless the EU/UK deal can be passed intact by the House of Commons. However, this is simply the first step in a long process of regularising EU/UK relations post Brexit.

The common objective of both Governments is to maintain the present arrangements, as much as possible. This would be best facilitated by a comprehensive free trade agreement. This could mean a huge change in the mindset in Dublin but is clearly in the country's national interest. It could

alleviate Unionist concerns by removing much of the need for a border in the Irish Sea.

To date, Ireland has largely jettisoned its commitments under the Good Friday Agreement and thrown its lot completely in with the EU in Brussels. This has not been in Ireland's interests. Dublin, because of its close relationship with Britain, should have acted as a bridge between London and Brussels, seeking a smooth and successful Brexit. The leadership in Ireland chose to play up traditional Anglophobia and pander to the Eurocrats in Brussels. The tactic worked for a period but backfired badly once Boris Johnson was elected Prime Minister. It is now time to change tack and enter enthusiastically into drawing up a new Pact between the UK and EU, based on a Canada style free trade deal. That, with assurances all round on the Irish border would be overwhelmingly in Ireland's national interest.

This analysis explores constructive arrangements for cross border trade between the UK and Ireland. It explains why it is strongly in Ireland and the UK's interests to maintain frictionless trade and a soft border on the island of Ireland and considers various options proposed for the border, including Britain's proposals for a technological solution and trusted trader schemes. Such arrangements would build on existing practice.

In February 1923, Winston Churchill wrote, describing the aftermath of World War 1 and the changes that the Great War had wrought on the international scene, in the following way:

The position of countries has been violently altered. The modes of thought of men, the whole outlook on affairs, the grouping of parties, all have encountered violent and tremendous change in the deluge of the world. But as the deluge subsides and the waters fall short we see the dreary steeples of Fermanagh and Tyrone emerging once again. The integrity of their quarrel is one of the few institutions that have been unaltered in the cataclysm which has swept the world.

These two Ulster counties, Tyrone and Fermanagh, had been forcibly incorporated into the new Northern Ireland State against the expressed wishes of the majority of their people. Local government administration had to be suspended at the time. The difficulty of drawing a border between the new Free State and Northern Ireland was proving hugely difficult, even at that time.

Many of those who found themselves north of the new border, including districts in Derry, South Armagh and South Down, were bitterly resentful at their exclusion from the new Irish State. Periodic outbreaks of violence, followed by periods of uneasy peace, characterised much of the history of Northern Ireland.

It was also the Free State Government of William T. Cosgrave who instigated a physical customs border in Ireland. Against the wishes of the PM of Northern Ireland, Sir James Craig; Edward Carson; the British Government and much of the Dublin business community, a new customs border was established on 1 April 1924. The thinking behind this ill-conceived initiative was that it would force the UK authorities to move the border economically into the Irish Sea. Unlike the situation today, Belfast was the main business centre in Ireland at the time and supplied much of the goods used throughout the island. When reading the State papers of the day, there is a haunting similarity to some of the false arguments being currently proposed.

There has been much recrimination, over the years, about the historical role of the Dublin Government, which was perceived among Nationalists in the North, as having abandoned them to the new State of Northern Ireland, which was very hostile to their interests. It was only with the outbreak of the ‘Troubles’ in Northern Ireland, that the Irish Government, in reality, took an active and hands on approach to the interests of its own citizens in the North. Today, all 5 of the border Westminster constituencies, Foyle, West Tyrone, Fermanagh and South Tyrone, Newry and Armagh and South Down have Sinn Féin MPs. There are no Unionist MPs for the border areas.

National Identity and the Good Friday/Belfast Agreement

After 30 years of violence and 3,500 deaths, countless injuries, both physical and psychological, as well as tens of thousands of people passing through the prison system, the Good Friday Agreement (GFA), brought unprecedented stability. It was overwhelmingly endorsed in referenda, in the North (71 per cent) and the Republic (95 per cent).¹

The beauty of the Agreement is that it allows for huge ambiguity in a conflict which was essentially about identity. Under the terms of the Agreement, Nationalists in Northern Ireland could mentally ignore the border; get their Irish passports in the local Royal Mail Post Office, play in any sport for an Irish team, engage in all Ireland cultural organisations, travel to work across the border daily, etc., and feel part of what has been described as ‘the Irish nation’. This was psychologically important and greatly ameliorated their sense of alienation from the Northern Ireland State, and to some extent, the State institutions in the Republic.

Unionists in Northern Ireland saw the GFA from a different perspective. They welcomed the end to a violent campaign to remove their home from the United Kingdom and a recognition that constitutional change could only come through the consent of a majority. They greatly welcomed the stability that the GFA brought.

¹ The Belfast (Good Friday) Agreement, signed on 10 April 1998, (<https://www.gov.uk/government/publications/the-belfast-agreement>)

Because of demographic changes in Northern Ireland, most Nationalists believed that it was only a matter of time until their 'side' would achieve the majority position. In many regards, both communities in Northern Ireland were content to park the sovereignty issue for the time being. In the meantime, Northern Ireland would be governed in a way which gave 'parity of esteem' to both aspirations and identities. This would be bolstered by what is reputed to be the toughest anti-discrimination laws in Europe.

In any case, the lines of national identity have always been blurred in Ireland, with many Irish people while regarding themselves as British, also having an Irish identity, and with most Irish people not regarding the English, Welsh and Scots as foreigners. The blurring of citizenship and identity in the GFA which allows people in Northern Ireland to identify themselves as Irish, British or both, as well as the recognition of the close and special relationship between Britain and Ireland, in effect, reflected the reality of the complex situation.

Ambiguity v Clarity: The GFA and the EU

It should be conceded that the departure of the UK from the EU has potential adverse implications for the continuation of the present beneficial arrangements at the border. However, these potential difficulties can be overcome if all sides are determined to be practical and not let politics get in the way of possible solutions. The creation of a new EU/third country boundary between the Republic and Northern Ireland will bring with it a whole series of new challenges, in the longer run, which will require some novel solutions.

While ambiguity is a corner stone of the GFA, the European Union's approach is in the opposite direction. Its published bottom line is that any arrangements, post Brexit, agreed on the island of Ireland must 'respect the integrity of the Union's Legal Order'. This restriction, if pursued to its logical conclusion, greatly limits the possible range of solutions. The EU, which has now deemed itself as a guardian of the GFA, is not actually a party to the Agreement, which was signed only by the UK and Irish governments. In fact, there was very little mention or discussion of the EU during the negotiations which concluded with the Good Friday Agreement. There was no actual EU participation in those Talks.

The question of a ‘frictionless’ border was avidly seized upon by Brussels, as a way of putting pressure on the British Government, especially on the issue of a financial settlement. With the then British Government extremely anxious to reach an accommodation with the EU on the terms of the divorce settlement and transitional arrangements, the UK agreed to the following in the December 2017 Withdrawal Agreement:

In the absence of agreed solutions, the United Kingdom will maintain full alignment with those rules of the Internal Market and the Customs Union which, now or in the future, support North-South cooperation, the all island economy and the protection of the 1998 Agreement.

EU negotiators maintained that this meant that in the absence of any other agreed solution, Northern Ireland would remain in the Customs Union and Single Market when the rest of the UK departed, described as the ‘Backstop’ option by the Irish Government. This would essentially pass over the economic management of the area to Brussels. While the EU and Irish Government’s interpretation of the meaning of alignment almost certainly represented some overreach in World Trade Organisation terms, the UK Government, possibly suffering from buyer’s regret, heavily disputed this interpretation.² However, the demise of the Theresa May Premiership essentially signalled the end of the Backstop as a credible way forward. The EU and the Irish Government essentially conceded, in the 17 October EU/UK Deal, that the Backstop could be dropped.

²*Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*, EU Commission, 19 March 2018, p.108, p.110 (https://ec.europa.eu/commission/sites/beta-political/files/draft_agreement_coloured.pdf)

III

The Policy Options

The public mood in Ireland has changed with the arrival of Boris Johnson as Prime Minister. The appointment of a fully committed and determined set of pro-Brexit Ministers emphasised the seriousness of Johnson's intent about leaving, with or without a deal, on Halloween. While Irish spokespersons and their supporters continued to articulate the mantra that the Withdrawal Agreement must be the basis for any Deal, in private they were fully aware that they had missed the boat by failing to compromise on the Backstop at a time when a compromise would have greatly assisted the May Government.

The UK has made it clear that in the event of a No Deal, it intends to keep the border soft and will be opposed to erecting a physical customs frontier on the island of Ireland. As an independent State, it will have the ability to carry out that policy successfully. Ireland, unfortunately, under current arrangements will be subject to Brussels and may not be able to match that offer. Hence the paradox that the Republic of Ireland may be forced to introduce new physical restrictions on trade. This is an embarrassment for Ireland because any EU attempt to resurrect the border will lead to chaos. There is simply no real possibility of re-erecting peacefully the type of security arrangements which existed during the Troubles. One of the great achievements of the Good Friday Agreement was the total removal of these forts and other installations. This has helped restore stability in Border communities.

Options

Therefore, if we accept the bone fides of all sides in wanting to avoid a hard border on the island of Ireland, what are the various options, available to the negotiators in putting together a possible future trade deal?

Firstly, it has to be recognised that the Irish border, however invisible to the naked eye, does exist. There are differing excise, personal taxation, currencies and VAT rates between North and South. However, despite the presence of low-level smuggling of oil products to the North and alcohol products to the Republic, neither Government has felt the necessity to have physical border checks. Enforcement is very much intelligence led. Any proposed long term

new trade arrangements, post Brexit, need to ensure that there is no undue hardening on that position.

It also has to be recognised that there are already differences between Northern Ireland and GB in areas such as animal and plant health. The clear veterinary view in the UK and Ireland is that it makes sense to have distinct animal health strategies on the island of Great Britain (GB) and on the island of Ireland. Again, it would be very undesirable politically, greatly to increase the current divergence between Northern Ireland and the island of Britain in any future trade arrangements, for the same reasons as a hard land border would be undesirable.

Against that background and depending on the outcome of the overall EU/UK agreement on future trading arrangements, the following are, at least in theory, options -

- Britain to remain in the Customs Union (BRINO)
- The Chequers' proposals – Now superseded by the Withdrawal Agreement
- The so-called Backstop
- The No Deal Option
- Ireland opts for an EFTA type arrangement with the EU (Ch IV)
- Technological solution (Ch IV)

Brexit In Name Only - BRINO

BRINO, Brexit in Name Only, (or alternatively Beano, Brexit Exiting in Name Only), is very much the preferred solution of the European Union and indeed the Irish Government. It was also the preferred approach of much of the British establishment and now appears to be the Labour Party's future Brexit focus. They hoped that the UK would stay in the Customs Union and the Single Market. This would mean that Brexit was essentially symbolic in nature and without substance.

Much of the early negotiation tactics by Brussels was geared towards inducing the UK down this line. Of course, the EU and many Europhiles in the member states felt that the whole Brexit process could be reversed, and the UK would

recant and come back to the EU fold, pushing the concept of ‘A People’s Vote’. If that were not possible, then BRINO was the next best thing. In fact, those British Remainers pursuing the BRINO line needlessly complicated the early Brexit discussions, as Brussels and the various capitals kept a weather eye on political developments in Westminster. There was little point in being generous to the UK, if a hard-line policy stance strengthened the EU Commission’s own allies in London.

However, from a British point of view, it would seem a pretty pointless exercise for the UK to absent itself from all the decision-making process in the EU but still be prepared to accept completely rules which the EU alone decided. A variation of this concept is the so called Norwegian model whereby the UK remained in the European Economic Area (EEA) or in a bespoke bilateral deal with the EU.³ It is also clear that in some variants of the Customs Union membership, including the UK belonging to the EEA, the EU would expect the UK to abide by the four fundamental freedoms of the Treaty of Rome, freedom of movement for people, capital, goods and services. It would also keep the Federalist European Court of Justice (ECJ) heavily enmeshed in the UK legal system, again without a British member of the Court’s judiciary. Also, it should be recognised that there is a tendency with all EU institutions, especially the ECJ, to engage in mission creep and gradually enhance their own powers at the expense of the national Governments. This would inevitably lead to friction, post Brexit, in a BRINO type arrangement.

The EU of course favours this option as a means of keeping control of the UK and restricting the UK’s ability to plot an independent path and become a serious competitor to the EU.

³ Another option could be EFTA membership (European Free Trade Association), with its existing four members, Norway, Switzerland, Iceland and Liechtenstein of which the UK was a founding member, but left in 1973 to join the then EC. It can agree FTAs with third countries. The EFTA–EU Free Trade Agreement covers tariff-free trade for some products (including agriculture and fish), but does not cover services or non-tariff barriers (eg divergences in regulatory standards). It includes free movement between its member states. Although EFTA countries are outside the EU Single Market and not bound by the four freedoms and Customs Union, three of its current members, Norway, Iceland and Liechtenstein submit to these by being members of the EEA.

This type of future relationship between the UK and the EU would be in direct opposition to the reasons why a majority of British voters opted for Brexit, including return of sovereignty, the independence of the courts, as well as national immigration controls, etc. Indeed, one of the main attractions of Brexit, is that it will allow the UK to establish an independent international trade policy, something that is particularly neuralgic for the EU.

It is of course true that the British Labour Party has chosen a variation of this as its preferred policy option, if Brexit is to take place at all. It talks about ‘a customs union’ as opposed to the EU Customs Union, without in any way really clarifying the differences. But the suspicion must be that this is purely a tactical position, viewed primarily as a method of trying to keep the different factions in the party under a single policy line and also something which could attract support from diehard Remainers in the Conservative Parliamentary party and hopefully bring as much disruption to that Party as possible. In reality, it must be doubtful that any new Labour Government would wish to be shackled by restrictive EU regulations which would curb their freedom of action. The Opposition Leader, Jeremy Corbyn, and his chief lieutenant, John McDonnell, are hardly likely to welcome the EU Commission and ECJ vetting their radical economic plans, despite some of their public utterances to the contrary.

The Labour Leader has hardened his stance on accepting EU oversight of British Government policy. Mr Corbyn was quoted in *The Guardian* on 21 December as stating:

I think the State aid rules do need to be looked at again, because quite clearly, if you want to regenerate an economy, as we would want to do in government, then I don't want to be told by somebody else that we can't use state aid in order to be able to develop industry in this country.

The Irish Government, of course, would greatly welcome the UK staying in the Customs Union, as it would undoubtedly alleviate the problems of a potentially hard border between the North and the Republic and also allow for continued unfettered free trade across the Irish Sea, something that economically is much more important to Ireland than the North/South border.

In reality, these proposals have been overtaken by events, and especially the arrival of Boris Johnson as Prime Minister and his rejection of any proposal to keep the UK inside the Customs Union. It would need an election in the UK and a change of Government in London for this option to come into consideration again.

The Chequers' proposals/ Withdrawal Agreement

The Chequers Proposals, initially published in July 2018 and outlined later in the British White Paper, were closely aligned to the BRINO option, and subsequently developed for the Withdrawal Agreement. They allowed for full free trade in goods until an alternative was developed for the Irish border issue and a future trade agreement was achieved, hence no need, in the interim, for a physical border in Ireland, and also free trade across the Irish Sea. These features, coupled with the continuation of the Common Travel Area, made them very attractive from an Irish point of view.

However, the proposals stood no real chance of being accepted in their proposed form. They would, in reality, severely have curtailed the UK's ability to conclude trade deals with non-EU countries, despite claims to the contrary by the former British Prime Minister. They were unacceptable to many Conservative Party MPs and to the membership of that party. It would also have meant that the UK would have no real input into the formulation of industrial standards but would have to accept what Brussels decided.

Also, the EU Commission has made it clear that it is strongly opposed to the idea of splitting trade in goods from trade in services. It would also oppose any Brexit deal which conferred much of the benefits of EU membership on the UK without free movement of people. The Commission regards itself as the guardian of the *acquis communautaire*, (the accumulated body of European law), much as the ideologues of the Vatican and the Kremlin once stood guard on their own orthodoxies in the past. Hence, Chequers, and its plea for flexibility on the EU side, was an affront to the Brussels establishment.

The real question relating to the Chequers proposals was the relative silence of the Irish authorities on the issue. These proposals were overwhelmingly in the country's interests, yet the Irish Government did not endorse them. It was a

classic example of the failure of Dublin to act in the country's own national interest. It chose instead to remain subservient to Brussels, a sad state of affairs.

The Withdrawal Agreement incorporated much of the Chequers' proposals but has been undone by the inclusion of the Backstop, which is developed further below. There is currently almost no political support in Britain for the Withdrawal Agreement since the resignation of Theresa May.

The So-Called Backstop and the Withdrawal Agreement

The Backstop was so called because it is the supposed fall-back position on the Irish border in the event of all else failing. This, on the face of it, appeared to indicate that if the UK could not come up with a solution to this issue to Ireland and to the EU's satisfaction, then there must be full alignment of policies in the two parts of Ireland. Essentially, this means that Northern Ireland would have to remain subject to the EU's regime - it would be annexed economically by Brussels. It would require a full customs border in the Irish Sea between two parts of the UK. This would be against a background where Northern Ireland is fully integrated into the UK's Single Market and the island of Great Britain is by far its largest outside trading partner. Later that Northern Ireland focus was extended to oblige the whole of the UK to remain in an EU Customs Union, under the Northern Ireland Protocol of the proposed Withdrawal Agreement (2017) and which was proposed without any end.

It has been argued that the Irish interpretation of the Backstop would run foul of international regulations in GATT. No State runs different tariff levels to international trade for different parts of their jurisdictions.

Whatever about the interpretations of international regulations or the specific meaning of what was agreed in Brussels in December 2017, it should be realised that this form of Backstop is undeliverable by a British Government. This is not just because the present Conservative Government needs the support of the DUP at Westminster. In reality, no British Prime Minister could agree to full internal custom barriers inside the UK against part of its territory. It was noteworthy that no major British political figure, pro- or anti-Brexit, has openly supported the Backstop option. In addition, the UK House of Commons

passed an amendment to the 2018 Customs Bill which specifically outlawed any special treatment of the North for customs purposes. It should be noted that the amendment was passed without division. There was absolutely no appetite in Britain, including the leadership of the Opposition Labour Party, for the type of approach that Dublin was pursuing.

After the December 2017 agreement in Brussels, the Irish Taoiseach, Leo Varadkar, in a moment of self-congratulations, claimed that the Backstop was now ‘rock solid, bullet proof and cast iron’. No doubt, today he regrets that outburst which only served to fuel opposition to what was being proposed.

If Ireland and the EU, however, had continued to push the hard Backstop option to finality, then the British would have had to go for No Deal. Boris Johnson has categorically ruled out any question of its acceptance. If the fruitless pursuit of the Backstop, means that there can be no overall agreement, then the policy would be seen as wholly counterproductive. This would mean a hard border, not just North/South, but for the vast bulk of our exports which access the world through the UK transport system.

To quote the Irish-American tennis player, John McEnroe, when disputing a line call at Wimbledon, ‘Are you serious?’.

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 damage to its own economy. Any hard border in the Irish Sea and North/South would hurt Ireland a lot more than it would Britain. As the main Irish business organisation IBEC stated:

Ireland’s geographic position, with the use of the UK as a land bridge to other EU states, and the reliance on UK suppliers and markets, in addition to the land border with Northern Ireland, means it is uniquely exposed to the cost, complexities and disruptions associated with applying and administering a customs border. The economic implications are potentially enormous.

In addition, I believe that the Backstop option, with the implication of a border in the Irish Sea, presents the same dangers to the Good Friday Agreement that a hard border on the island of Ireland represents. It would psychologically cut off Unionists from their fellow citizens in Britain. The Irish Government signed up to the concept of parity of esteem for both traditions in Northern Ireland, not just for Nationalists. The aggressive pushing of the hard Backstop option would appear to conflict with the spirit, if not the letter, of the Good Friday Agreement.

Under the original Withdrawal Agreement proposals, the dangers of the UK being trapped indefinitely in a Backstop arrangement or alternatively having to agree to an unfavourable future trade deal was graphically illustrated by the comments of French President Macron, who threatened to veto any future trade deal unless French fishermen were given favourable access to the rich British fishing grounds. This type of approach could, in effect, mean no exit from the Backstop unless Britain conceded on a whole range of different issues. It would place the UK in a seriously disadvantaged position for future trade talks with the EU.

The Irish Government, faced by Boris Johnson's determination to reject the Backstop, and with the prospect of a No Deal, if they persisted with the policy, exercised a rapid U Turn and agreed to its demise in the latest Withdrawal Agreement.

The No Deal Option

For the Irish to push the UK into a position where it would have to walk away from a future free trade deal with the EU over the Irish border would be simply insane, given the economic implications.

In a No Deal situation, Ireland would find itself in a difficult position, physically cut off from mainland Europe, with its primary trading route to the rest of the world, the land bridge through the UK, subject to new restrictions. Its main market for the country's indigenous industries, especially food and drink, would be in jeopardy.

In Northern Ireland, a No Deal outcome, especially one where the Backstop was the primary cause, would deepen communal divisions and make the pro-British part of the population there even more convinced that Irish Governments would not take their welfare, or their Britishness, into consideration in any future constitutional arrangements for the area. Political progress in Northern Ireland has traditionally depended on London and Dublin working together. This was the basis of the Good Friday Agreement. The present level of distrust between the British and Irish Government not only makes future progress more difficult but endangers the whole basis on which the Good Friday Agreement was built, namely the two countries as partners and mutually supportive.

A No Deal Brexit could have serious implications in the security area, especially in the North West of Northern Ireland (Derry, Strabane etc.) where Dissident Republicans have recently grown in strength, both politically and in terms of operational capability.

Ireland probably had within its powers to assist the UK and EU avoid a No Deal scenario. At different stages during the May Premiership, it could have unilaterally pushed the EU to put a time limit of two years on any Backstop arrangement. Given the desire on all sides for a reasonable settlement, this may have helped that Government get the Withdrawal Agreement through the House of Commons and allowed the discussions on a future trading arrangement to be completed inside the two-year transition period. However, that window of opportunity may have passed. It again was a bad miscalculation by Dublin.

IV

How to Make Brexit Work Ireland's Opportunities

Ireland EFTA type arrangement with the EU

The Irish Government has placed huge importance on maintaining a 'frictionless' border on the island of Ireland. This is understandable, given the history of the border and also the need to preserve the stability engendered by the Good Friday Agreement. However, Dublin has completely placed the onus on the British Government to come up with a solution. It has worked on the basis that it was the UK's decision to leave the EU that caused the problem and hence has absented itself from making any suggestions. Its only contribution was to ask the British Government to stay in the Single Market and Customs Union, something that Prime Minister Theresa May and her Cabinet have ruled out as not reflecting the wishes of those who voted for Brexit.

The Irish Government even initially refused to enter into direct talks with London on the matter, instead choosing to work only through the EU negotiators. They have belatedly gone back on that refusal as the possibility of forcing the UK to stay in the Customs Union has receded.

However, one option which has not been seriously considered to date is that Ireland should itself agree to depart the EU Customs Union to preserve frictionless movement of goods and people with the UK. Since Ireland is the main beneficiary of the current arrangement, this is surprising. The Irish Government could ask the EU for a special arrangement, so it could stay in the EU but outside the EU Customs Union but maintaining, as far as possible, a customs union with the UK. If this were not possible as it breaches the need to 'respect the integrity of the Union's Legal Order', then membership of the European Free Trade Area (EFTA) or some similar arrangement which allowed Ireland to continue its membership of the EEA, on the lines of Iceland, Norway and Liechtenstein, could be considered as an option.

If avoiding a hard border in Ireland is so important politically, then there is an onus on the Irish Government carefully to examine all options for its avoidance. This option certainly has its attractions for all the parties concerned: Ireland, the UK and the EU.

There is no doubt that Ireland has benefitted economically and culturally from its membership of the EU. However, the attractiveness of full membership, once the UK departs, will have been reduced considerably.

The UK is still Ireland's most important trading partner. The Welsh port of Holyhead alone took 425,000 HGV vehicles on the Irish Sea route in 2016 and is now the second busiest ferry port in the UK, second only to Dover. Other Welsh and English ports receive large volumes of Irish goods on their way to markets around the world.

While it would be possible to establish some streamlined customs arrangements with the UK, many of these goods will ultimately pass through the English Channel ports to EU countries and be subject again to custom procedures. It would be much better to have one set of customs to deal with, rather than two.

In addition, as Ireland has prospered economically, it has moved away from being a net recipient of EU funds. The Irish net contribution in 2019 is estimated at over €1bn and rising, (with its contribution to the EU budget of €2.85bn and receipts at approx. €1.7bn). This is similar on a per capita basis to the UK's present contribution. This is even before the EU proposes measures to fill the gap in the budget left by the UK's departure. These measures are likely adversely to affect Ireland, as the EU will be seeking larger payments from the present net donors, as well as cuts to the Common Agricultural Policy (CAP), an area where Ireland gets most of its receipts from the EU (around two thirds). Norway, a country in EFTA with a similar population to the Irish Republic, pays the EU a much lower figure for full access to the EU's Single Market. Norway decides, in conjunction with Brussels, what EU programmes it participates in and subsequently makes a contribution towards these programmes.

In addition, the Irish have always mistakenly looked on the EU as an economic project. As the more grandiose political schemes of Europhiles like Macron, or the SPD in Germany, become more apparent, then Ireland will have less enthusiasm for Brussels. In addition, it should be admitted that much of the Euro enthusiasm in Ireland has traditionally been a form of Anglophobia. With

the UK no longer there, the love affair with Brussels will increasingly cool, as Ireland is forced to give up even more of its sovereignty.

This will be particularly true when the EU seeks to curb Ireland's attractiveness to Foreign Direct Investment (FDI), because of its corporation tax rate of 12.5 per cent. The move to a common consolidated corporation tax (CCCT) would force even the most Europhile Irish politician to reconsider the country's continued participation in the Euro project. If Ireland was outside the EU, then the ability of Brussels to dictate its tax rates would be eliminated. The EFTA type arrangement would, of course, maintain full and free access to the Single Market.

An EFTA type arrangement would greatly suit Ireland in the fishing area. Ireland is allocated an even smaller per cent of the total fish caught in its own rich fishing grounds, than the UK is in its waters. Once the UK regains control of its maritime resources, other EU countries will be looking at enhanced quotas off Ireland as compensation. In an EFTA type arrangement, Ireland could, like Norway, greatly revive its fishing communities and, in conjunction with the UK, end the huge over fishing which is going on at present around our islands. For Ireland, this is important because 90 per cent of the country's exclusive economic zone is actually maritime, by far the highest in the EU.

If Ireland were to opt for an EFTA style deal with the EU, this would relieve the UK of the need to solve the thorny issue of the Irish border, as Ireland could maintain the present Customs Union with the United Kingdom, thus preserving the mutually beneficial arrangements between the two islands. The downside for Ireland would be its exclusion from the decision-making process in Brussels. However, with a voting share of between 1-2 per cent in the Council of Ministers, it is arguable whether Ireland, at present, has much of a say in EU law making. Ireland has always been a rule taker from Brussels.

In addition, there are attractions to the EU for agreeing Ireland's exit to an EFTA linkage. The usefulness of Ireland in the negotiations has now passed, with the UK agreeing to a generous financial settlement, provided an overall trade agreement can be reached. The new PM in London is completely opposed to the Backstop. To countries on the European mainland, Germany,

France, the Netherlands etc., it is doubtful whether the huge difficulties in finding a solution to the Irish border are worth the candle. As the EU showed in its notorious bailout for Ireland, it was more than willing to dispense with Ireland's national interests when faced with wider EU considerations. Given the small size of the Irish economy, relative to the whole EU, it is extremely doubtful that it is in the EU's interest to allow the Irish Backstop to scupper a wider deal.

Ireland is situated in the middle of Anglophone North Atlantic countries, with the UK to the east and Canada to the west. It will be separated from the rest of the EU, not only by water but also by the UK. Geographically, historically and linguistically it will be an oddity in the EU. If a free trade area is established by the USA, Canada and the UK, it would be a much more natural fit for Ireland, than to be left as a small English-speaking state on the periphery of a centralising EU Superstate.

Better to take matters into our own hands and seek EFTA membership, even for a period, to assess the country's future options post Brexit.

Technological Solution

If all the other options are ruled out, we come to the technological solution by a process of elimination. The UK has ruled out continued membership of the Customs Union, Ireland will not consider the EFTA route, the EU demands that we must stick rigidly to its Legal Order and the Backstop is not really an option. The election of Boris Johnson as Leader of the Conservative Party and Prime Minister on a ticket of rejecting the Withdrawal Agreement, essentially means that a number of other options are ruled out. This means all sides will have to be innovative. The key may lie in the technology area, or as commonly called the Max Fac.

The technological solution is essentially based on the British paper of August 2017. In addition, there are no simple off the shelf solutions available which can be copied from places like the US/Canadian border or Norway/Sweden. Having crossed the Canadian frontier many times, it is not a simple straightforward matter and trade and individuals can be held up for hours at times. Something similar would lead to chaos and possibly civil disorder in

Ireland. It should be factored in that the greatest resistance to a hard border lies in the strongly Republican districts just North of the boundary line. It would be a nightmare trying to construct and maintain any new permanent structures. Nobody wants a fixed line of confrontation in the middle of the peaceful Irish countryside.

It should also be remembered that there was no existing prototype for the Good Friday Agreement. It was constructed for the particular circumstances of Northern Ireland but drew on the lessons learned from other international settlements.

Therefore, the authorities will have to construct something unique. It will not be perfect and will not be to anybody's 100 per cent satisfaction. As a seasoned negotiator, the late David Ervine of the Progressive Unionist Party (PUP) said during the GFA Talks, everybody should get what they need, not what they want, and there should be parity of pain and satisfaction all round.

The first step is to remove any question of using the border for immigration control. The UK has already indicated that it will focus its efforts, to limit immigration of EU nationals, at the employment level. There is already very good cooperation between the immigration authorities, including sharing information on visa applications, informal liaison officers regularly at Belfast and Dublin airports etc. This could continue and be enhanced, as long as the UK maintains visa free arrangements with EU countries.

These immigration arrangements should in theory continue as before. They can be maintained as long as the UK does not impose visa restrictions on any of the remaining 27 states. This is unlikely, especially in the short to medium term. The other proviso is that Ireland stays out of the Schengen arrangements and maintains its own mini Schengen with the UK, Isle of Man and the Channel Islands. The present commitment to the maintenance of the Common Travel Area should assist Ireland to successfully ward off pressure from Brussels on Schengen.

The next area to exempt is, as indicated by the August British paper, local traffic and agriculture. These make up to 80 per cent of trade transactions on

the Irish border. They are characterised by high volume and frequency but low value transactions. However, exempting these will require a level of flexibility from the EU which is not evidenced to date.

However, the exemptions appear to be compliant with GATT regulations.

David Collins, who is Professor of International Economic Law at City, University of London, and an acknowledged WTO specialist, has pointed out that, in a free trade deal type, along the lines of the recent EU/Canada Comprehensive Economic and Trade Agreement (CETA):

The land border between the UK and Ireland need not have any physical infrastructure and as such should not represent a political obstacle to a UK-EU FTA. Article XVIII of the GATT and the Trade Facilitation Agreement of the WTO require that WTO members must minimize customs procedures as far as reasonably possible. Moreover, special arrangements to streamline borders (as between Northern Ireland and the Republic of Ireland) such as those involving regular trader exemptions and technology, are permitted under the exemption for border traffic under Article XXIV of the GATT.⁴

Also, the UK has already indicated that, in a limited number of areas, including energy, animal and plant health, transport etc., it makes perfect sense to align the regulatory requirements throughout the island of Ireland. This can be achieved, in part, through the mechanism of the North/South implementation bodies which have operated on an all island basis in several areas since 1999 and are based on the North/South Strand of the Good Friday Agreement.

The remaining element, which in reality means large firms with a defined number of employees or turnover, can be accommodated by a trusted trading arrangement. While any British Irish operation on the border would be *sui generis*, one model which would be worth looking at is the Australian one.

⁴ David Collins, *Negotiating Brexit: The Legal Basis for EU & Global Trade* (Politeia, 4th edition, July 2018).

The main features of the Australian Trader Programme (ATT), which is rapidly growing, includes:

- A single point of contact between the Australian Border Service and the Trusted Trader Business. Communications are normally electronic.
- A composite monthly return submitted by the Trusted Trader, rather than returns on every cargo.
- A single consolidated return for multi types of goods rather than a different declaration for different goods type.
- Regular discussions between the companies and the Australian Border Service.
- Use of a special Logo, clearly designating the goods as coming or going to a Trusted Trading company.
- Extensive use of smart technology in custom clearance such as bar code scanning.
- Priority for these companies in any dealing with the Border Service.

All trusted trader systems operate on a self-assessment and self-regulation basis. Responsible companies will not wish to violate the law, and this would be backed up by a system of audits and on-site inspections, much as the present VAT system operates.

In addition, there could be a further requirement that all HGV operators on the island of Ireland install a special tracking device in their vehicles so that the customs authorities could check whether any company returns tallied with the physical evidence of the tracking device. These types of arrangement could be modified over time, as experience is gained in where the snags will arise and where it works well. However, if operated with a coordinated mutual recognition programme by the two customs services, it may be sufficient to facilitate all parties desire to avoid a hard border. The fresh proposals, tabled by British Prime Minister Boris Johnson, after his meeting with Taoiseach Leo Varadkar in Cheshire, reflect this approach. Both leaders felt that the proposals demonstrated a pathway to an agreement.

It is noteworthy that many custom officials, both Irish and British, privately are confident that they could successfully operate such a system. There would, of

course, still be a need to have some monitoring of vehicles crossing the border on the main routes, but this could be achieved through technology, with the use of cameras. There are already cameras installed on the main Dublin/Belfast highway, just south of the border city of Newry. These are unobtrusive, and taken with the other arrangements, might be adequate enough to avoid any new installations.

There may also have to be some limited checks at ports connecting Ireland, both North and South, with Britain. These would constitute a similarly unobtrusive arrangement to ensure that areas which remained aligned on an all island basis, and where there was some divergence with Britain, were also monitored. It is also likely that this system would require some spot checks at mainland European ports on Irish vessels to ensure the system was not being abused as a back door into the EU.

As with the present EU/Swiss model, a supervising committee, comprising expert representatives of the EU and the UK could meet regularly to monitor its operation and advise authorities on the need for any changes.

There have been doubts raised about the viability of a purely Max Fac solution. Much of this criticism of the technological approach came from politicians who, apart from having no real knowledge of customs arrangements or technology, had a vested interest in discrediting this approach. They were trying to undermine the Brexit referendum result. On the other hand, I have been struck by the consistent private advice of current and former customs officials who believe that the Max Fac approach is entirely viable, even if it would be expensive and take some time to implement. They claim that this is the way customs procedures in developed economies will go in the future.

In support of this view, the Policy Department for Citizens' Rights and Constitutional Affairs of the European Parliament heard testimony from Lars Karlsson, former Director of the World Customs Organisation, to the effect that Max Fac could ensure an open border in Ireland. Karlsson helped prepare 'Smart Border 2.0, Avoiding a hard border on the island of Ireland for customs control and the free movement of persons'.

This study provides ‘background on cross border movement and trade between Northern Ireland and the rest of Ireland and identifies international standards, best practices and technologies that can be used to avoid a ‘hard’ border as well as case studies that provide insights into creating a smooth border experience. The technical solution provided is based on innovative approaches with a focus on cooperation, best practices and technology that is independent of any political agreements on the UK’s exit from the EU and offers a template for future UK-EU border relationships’.

This view would appear to have the support of Niall Cody, chairman of the Irish Revenue Commissioners, who in testimony to an Irish Parliamentary Committee stated:

‘I’m practically 100 per cent certain we will not be providing new trade facilitation bays in whatever parts of Donegal, Monaghan or Cavan’. He further confirmed that most cross-border trade related to the food and construction industries and could be documented online and cleared via an automated e-border.’

The suspicion is that objections to Max Fac are essentially political not practical. Hence, Ireland does not need the Backstop to ensure an open border and we should desist being used by those in Brussels to make Brexit as difficult as possible.

V Conclusion

In the end, it is hoped that a free trade agreement will be concluded between the UK and the EU, allowing for full tariff-free trade in goods between the two entities. In such circumstances, it is likely that there will have to be a separate protocol on customs arrangements on the island of Ireland. The contents of the protocol will, of course, greatly depend on what is covered in the main agreement and would possibly be along the lines described above. However, the issue of the Irish border is key for any Irish Government. The spectre of past betrayals haunts the corridors of power in Dublin. Hence the declaration by the Taoiseach Leo Varadkar that he is determined that his Government ‘will never again leave Northern nationalists and Northern Ireland behind.’

Therefore, the problems with the Irish border issue are that they are essentially political in nature. The relevant importance of North/South trade to the overall Irish and British economies is relatively small. However, with so much history and political capital invested in maintaining the Good Friday Agreement, the importance of solving this matter is out of proportion to the economic gains.

This emotive issue has been used as a weapon by those wanting to thwart the result of the Brexit referendum, including leading members of the British establishment. This is a very uncomfortable position for Ireland. Whatever the outcome of the Brexit process, Irish and British people will have to live alongside each other. Our history has been characterised on occasions by poor and short-term decision making. This is a time when Ireland should, by all logic, be working hard to ensure a beneficial outcome which restores the excellent relations between the two countries. Ireland needs to be the foremost advocate for comprehensive free trading arrangements between the EU and the UK. Unfortunately, the border issue has gotten in the way. We need to settle on a way forward as soon as possible, and by a method which does not seek to scupper the referendum result. The history of ignoring and reversing referenda results in the EU is shameful. We certainly do not need another example.

In addition, Ireland must keep its options open. Until recently it was almost taboo, close to treasonous, for anybody in Ireland seriously to question the country’s slavish devotion to the EU, yet there are very few in Government

circles who have a deep understanding of what the ‘Project’ is all about. I think we can confidently predict, as elsewhere in the EU, there will be growing disenchantment with Brussels and the desire of Europhiles for a United States of Europe. The whole sustainability of the European Union, as presently constituted, is in serious long-term doubt. Ireland needs to be on the right side of these historical developments.

Historically, the UK has been at the forefront of developments in the EU, including reform of the CAP (accepted by all now), the Single Market, Budgetary control, scepticism of the euro, etc. The disenchantment with the Brussels model is also spreading to other countries. Recent elections in the Netherlands, Germany, Austria, Slovenia, Hungary, Sweden, and Italy have all shown increasing support for a different type of arrangement in Europe. An exception was the particular circumstances in France, where the choice was between Macron and the National Front’s Marine Le Pen and as recent polls have indicated Macron’s support has greatly diminished. In addition, the large fall in support for Europhile centre right and centre left parties in the recent European elections further demonstrated this trend. Therefore, Ireland would be very short sighted to tether its future to a ship which is showing distinct difficulty in staying afloat.

Ireland needs to look after its own self-interest and realise that its deep connections with its neighbour, the United Kingdom, are more valuable than temporary plaudits from Brussels for being ‘the best boy in the classroom’. The further abandonment of Ireland’s remaining sovereignty is what is facing the country unless it changes course.

There is no need for the Irish border question either to derail the EU/UK Brexit discussions or to determine the overall agreement. The Border question has been used by elements within the Remain camp to try and block the UK’s departure from the EU. It is certainly not in the long-term interest of Ireland to be used in this cynical manner.

While there is no comparable international example that can be readily used to solve the issue, goodwill and common sense should allow for a workable solution. It could be based on major exemptions for small companies and

purely local trade, as well as agricultural and food products. The remaining trade could be monitored and operated on a trusted trader system. Under these arrangements, there would be no need for any new physical infrastructure on the border. The danger is that politics, not practicalities, will get in the way.

The UK has now resolved to the EU's satisfaction the arrangements for the soft Irish border under the Johnson-EU deal. That has now passed its second reading in the UK House of Commons. The focus, once the UK leaves the EU will be on the future, one in which it will be in Ireland's interests to take a lead in the talks for a comprehensive free trade deal.

There are good economic reasons for Ireland to work with the UK to secure the best outcome for free trade, quite apart from its long and strong ties, cultural, social and political. Moreover, by throwing itself wholeheartedly behind and winning a comprehensive EU-UK Free Trade Deal, the Irish government could at a stroke have a UK-EU FTA to Ireland's economic benefit. It would in doing so, underline the spirit of the Belfast Agreement, alleviate the need for current border checks and meet the concerns of Unionists and Nationalists alike.

The Legal Framework: Ireland's Options

A Commentary – David Collins*

Ray Bassett's thoughtful and informative paper raises a number of interesting recommendations for the Republic of Ireland after Brexit worthy of serious attention.

Ireland's economy is of course inextricably linked to the United Kingdom, far more so than any other European Union member state, and in that sense it has the most to lose from a weakened relationship between the UK and the EU. Even worse, as Bassett sensibly observes, would be for Ireland and the UK to sacrifice their even closer mutual ties to serve the interests of the EU's economic hegemony over the region. Unnecessary barriers to trade in goods erected at the behest of the EU at the border with Northern Ireland or an entirely new set of trade barriers imposed between Great Britain and Northern Ireland could be harmful economically, politically and socially. A comprehensive FTA between the UK and EU would alleviate many of the concerns associated with a regulatory barrier between Great Britain and Northern Ireland, a goal consistent with and envisaged by the Prime Minister Boris Johnson's new Withdrawal Agreement. That goal if and when achieved would minimise the need for inspections as a consequence of broad regulatory alignment. Still, failure to achieve an FTA between the UK and the EU for any reason, whether because of the Irish border, citizenship rights or continuing jurisdiction of the ECJ, is hardly a disastrous outcome.

The UK can continue to engage in prosperous trade with Ireland and the rest of the EU, along with the rest of the world, under its membership of the World Trade Organization (WTO). While sub-optimal with respect to having a comprehensive FTA with the EU, the no-deal WTO scenario is not to be feared and the UK government has wisely been preparing its position at the WTO in the years since the Brexit referendum, particularly under the Boris Johnson government.

But there are other options for Ireland regarding its relationship with the UK and the EU which have been carefully set out by Bassett and deserve close consideration. Rightly dismissing the Brexit-In-Name-Only in which the UK stays in the EU's Customs Union or Single Market, Bassett argues that

Ireland has two best options, both of which could yield optimistic outcomes for people in Ireland with limited challenges.

First, Bassett suggests that Ireland could consider also leaving the EU but retain close ties to the region through membership of the European Free Trade Association (EFTA) or through an arrangement which resembles it. An EFTA-style agreement with the EU, along the lines of that which is currently in place between the EU and Norway, Liechtenstein and Iceland or that between the EU and Switzerland would allow Ireland to leave the Customs Union but remain in the Single Market. Under such conditions, Ireland would be able to set up its own external trade policy by which Ireland and the UK would be able to align their customs procedures and trade regulations, eliminating any difficulties in relation to the goods crossing the border with Northern Ireland. Bassett shows that Ireland stands to gain from leaving the EU, not only by recovering its annual payments to Brussels and its fishing rights, but also by pursuing a tax regime which is attractive to foreign investment but which stands to be curtailed by EU rules going forward. Moreover, given its small size and limited voice in EU law-making, Ireland has always been a rule-taker under the EU regime, unable to structure an economic policy which suits its domestic interests. An EFTA-style arrangement would function as an FTA and as such could fit within GATT rules on preferential trade arrangements (Article XXIV), provided it covers substantially all trade, which it would.

Secondly, Bassett explores the technological solution for avoiding the problem of the 'hard border' between the Republic and Northern Ireland with Ireland retaining its membership in the EU and in that sense keeping its status-quo. Under the arrangements proposed by the UK, Ireland will be able to continue to enjoy a prosperous trading relationship with the rest of the UK even when the latter departs from the EU's Customs Union in line with the political will of the British people and its government which has committed to such a course all along. This can be achieved through maintaining an open border for people with no passport checkpoints, which is entirely realistic as long as Ireland stays outside of the Schengen area and agrees on visa-free travel with the UK. It also contemplates exempting local traffic and agriculture, and retaining some regulatory alignment with the EU on matters

such as animal and plant health. These proposals have been picked up in earnest by the Johnson government, in contrast to that of his predecessor. Practical solutions including composite monthly returns on VAT rather than border checks, self-regulation, audits and occasional vehicle inspections means that the border with Northern Ireland will be, for the most part, as frictionless as it is today, with the Swiss-EU border as well as the Australian Trade Programme cited as helpful examples. Encouraging studies into the use of smart technology such as bar code scanning, which Bassett does not examine but others have drawn attention to, could also help to smooth this process. These strategies are entirely compatible with WTO rules under the GATT as they do not discriminate against goods originating from outside the EU/Ireland. In fact they fulfil the UK's obligations under Article VIII of the GATT (regarding customs formalities) and the Trade Facilitation Agreement.

From a UK perspective, either of these options is preferable to Brexit-In-Name-Only in which the UK remains inside the EU's Customs Union or Single Market. For the Irish people, which option is preferable depends on the extent to which Ireland wishes to retain linkages to the EU. Bassett makes a case that Ireland would thrive on its own, but if it chooses to remain within the EU, this should not prevent Ireland from maintain a healthy trading relationship with the UK - its closest trading ally.

Family Ties – The Economic and Political Reality

A Commentary – Liam Halligan*

The Republic of Ireland Act came into force in 1949. When Ireland ‘went into Europe’ in 1973 – at the same time as the UK and Denmark – the country, formally speaking, was not yet twenty-five years old. This marked the moment when the Irish people, after the long struggle for independence, were finally able to escape British dominance, and fully represent themselves diplomatically on the world stage.

Brussels-backed motorways and other structural fund spending have since been important in terms of cementing the Republic’s relationship with the European Union. But it was release from the ‘British yoke’, after centuries of struggle, that has made EU membership central to the identity of modern Ireland. Despite that, as Ray Bassett highlights in this lucid and timely pamphlet, the UK remains hugely important to the Republic – both economically and culturally.

The result of the June 2016 Brexit referendum is the latest twist in the deep and complex history of the relationship between these two intertwined nations. Brexit is happening at a time when such relations – between Ireland and the UK, and between the six counties of Northern Ireland and the twenty-six that form the Irish Republic – have perhaps never been more stable than they have ever. The impasse over ‘the Backstop’, though, clearly puts those improved relations at risk.

In her Lancaster House speech of January 2017, Prime Minister Theresa May said ‘an important priority’ during Britain’s Brexit negotiations with the EU was the safeguarding of joint UK–Irish interests. ‘The family ties and bonds of affection that unite our two countries mean that there will always be a special relationship between us’, said May – words unthinkable from a Conservative leader until relatively recently.

The multi-faceted impact of Brexit on Ireland, though, clearly includes sensitive issues relating to the 320-mile North-South border. As Bassett says, ‘goodwill and common sense should allow for a workable solution’. A combination of e-border technology, exemptions for small, local cross-border

flows of goods, and a more extensive ‘trusted trader’ scheme, would allow the UK to leave the EU’s protectionist Customs Union, delivering on the Brexit vote, while avoiding the need to erect border infrastructure that might spark renewed sectarian violence. Such proposals were detailed in a UK government paper of August 2017. But with Leo Varadkar having replaced Enda Kenny as Taoiseach the month before, they were instantly rejected by both Dublin and Brussels.

Pointing to the relatively low value of North-South trade, Bassett highlights that ‘problems with the Irish border issue are ... essentially political in nature’. With so much history and political capital invested in maintaining the 1998 Good Friday Agreement, which Bassett helped deliver of course, ‘the importance of solving this matter is out of proportion to the economic gains’. Unfortunately, as he says, ‘this emotive issue has been used as a weapon by those wanting to thwart the result of the Brexit referendum’ – not least by the EU’s Chief Negotiator Michel Barnier.

But the Irish government, too, is pursuing ‘a high-risk strategy which could backfire badly’. Dublin, as Bassett observes, is ‘doggedly insisting that UK either stay in the Customs Union or alternatively agree to detach Northern Ireland economically from the rest of the UK’. Varadkar should remember, instead, that ‘economically, the UK is vital for Irish interests’ and Ireland’s ‘deep connections with its neighbour, the UK, are more valuable than temporary plaudits from Brussels for being the best boy in the classroom’.

Economically, the Republic of Ireland does indeed remain closely related to Britain, with the UK accounting for around €1bn of Irish trade each week and one in ten jobs across the country. Ireland has diversified since joining the EU, but not in a manner that is commonly understood. Back in the mid-1970s, around half of all Irish trade was with the UK, a share that has since fallen to around 15 per cent. But much of that diversification away from Britain has headed across the Atlantic, with the US now accounting for a quarter of Irish trade. Add in the rest of the world and, after Brexit, almost two thirds of Irish goods and services exports will be destined for non-EU markets.

While reliance on direct UK trade has lessened, some employment-heavy sectors remain highly dependent. Around 55 per cent of Irish exports of timber and construction materials are sold in Britain, along with 50 per cent of beef exports, almost half of clean technology and electronics exports and 42 per cent of all food and drink. In purely practical terms, around four-fifths of the Republic's goods exports use the UK as a 'land bridge', passing through western British ports and travelling by road across the UK, before leaving southern and eastern British ports, headed for the EU and global markets.

Ireland clearly has every interest – far more than any other EU member – in London and Brussels striking a comprehensive free-trade agreement, maintaining 'frictionless' trade flows. Yet the chances of that happening would be significantly enhanced if, as Bassett says, Dublin 'announced that it does not want to see Ireland and the Irish border used as a weapon to thwart Brexit' while 'signaling it is willing to engage in meaningful discussions on practical measures to ensure no undue hardening of the present land border with Northern Ireland'.

Since 1973, Ireland has been, for the most part, an enthusiastic EU member, joining the single currency, while serving as an important example of small country success for new Eastern European member states. Despite the efforts of an overwhelmingly pro-EU political and media establishment, though, there have been signs of public discontent. The electorate rejected the Nice and Lisbon Treaties in 2001 and 2007 respectively, before being urged, on both occasions, to vote again.

Then a bailout was forced upon Ireland at a time when the country, while weak, was not technically bankrupt, in a bid to calm financial markets and prevent a break-up of the broader Eurozone. The Irish state ended up burdened with huge debts as a result – on which it is still paying the EU's punitive rates of interest, with Brussels refusing all attempts by Dublin to pay-off or refinance these loans.

Since that bailout, Ireland has staged an impressive economic recovery, largely due to its strong trading links with the US and UK, which have both grown much faster than the Eurozone since 2010. While the Republic is unlikely to

follow the UK out of the EU anytime soon, Bassett wisely points to potential flashpoints that mean the country ‘must keep its options open’.

Now a net EU contributor, Ireland’s membership bill is, Bassett reports, ‘over €800m this year and soon to top the €1bn mark – similar in per capita terms to the UK’s present contribution’. After Britain has left, as a relatively wealthy nation, Ireland’s required payments will rise further still. The EU’s repeated challenges of Ireland’s sovereign decision to charge low corporation tax rates to help win foreign direct investment – a strategy central to the recent recovery – are also set to become more intense. And, Bassett predicts, ‘as the more grandiose political schemes of Europhiles like Macron and the SPD in Germany, become more apparent, Ireland will have less enthusiasm for Brussels’.

Public pressure on ‘official Ireland’ to shift its slavishly pro-EU mindset would certainly rise if the UK concludes a post-Brexit trade agreement with the United States. The Republic would then be geographically in the middle of a UK–US free-trade agreement which it would be forbidden to join due to EU membership. A trade bloc tailor-made for Ireland, economically and culturally, would be off limits – an absurdity that would be exposed for all to see. That’s one reason Bassett suggests the Republic could eventually take the Swiss route and become part of the European Free Trade Association, maintaining much of its institutional closeness to the EU, but free to sign its own trade deals.

A distinguished former diplomat, Bassett has been widely criticized by the Irish establishment for daring to air uncomfortable truths about Dublin’s response to the UK’s Brexit vote. While this has caused him personal distress, he has continued regardless, speaking out against ‘rising Anglophobia’ in Ireland and imploring politicians on both sides of the Irish Sea, as he does in this essay, to get beyond ‘the poor and short-term decision-making’ that has ‘characterized our history’. For that, Bassett deserves deep gratitude and respect – not just in the Irish Republic, but among the citizens of its nearest neighbour too.

How to Trade on Trust – Bar Codes, Technology and Pre-Clearance A Commentary – John Mills*

One of the enduring tropes in the Brexit debate is that you must be in the Single Market to trade with it. This seems to be largely behind the determination of so many MPs to see the UK remaining as close as possible to the EU. The fear is that if the UK is not inside the Single Market, UK exporters will find it much more difficult to sell there, exports to the continent will decline, jobs will be lost, and the UK economy will be badly hit. There is little evidence that these fears are likely to be realised, especially on the scale alleged, and even if some are, the EU27 is likely to suffer more than the UK.

Trade between the UK and the EU27 does not take place between governments; it occurs between companies, who perceive that buying from suppliers outside their country's borders is more advantageous – i.e. better value – than relying on domestic suppliers. Will these calculations change because of Brexit? It is difficult to see why they should. Even if tariffs are re-imposed – which may not be very likely even with No Deal – they will average only about 2.5 per cent, although they could be significantly higher for motor vehicles and agricultural goods. If there is No Deal, however, sterling will very probably fall far enough to offset these mostly relatively minor hurdles.

Would the paperwork involved in the UK–EU27 exports be much more complicated than now, thus adding significantly to the costs of exporting to the EU? The only material difference between the paperwork needed for the current 'free movement' of shipments from the UK to the continent and future free trade (or trade on WTO terms) is that only one extra document is required. This is a certificate of origin, which in almost all circumstances presents no problem or significant costs to provide. The idea that huge additional costs and complications are entailed is simply not borne out by practical experience. The most compelling evidence for this is the success achieved by the many large economies in the world – the USA, India, Australia, Canada and Japan – all of whom sell vast quantities of goods to the EU on WTO terms.

Would the UK find that there were regulatory barriers making it much more difficult than now to sell goods from the UK to the EU? Very unlikely. At the moment, the UK and the EU27 are in full regulatory alignment and it would make overwhelming sense for this to remain substantially the position. If there

were good reasons for UK regulations to divert from those in the EU, exporters would, of course, have to comply with EU requirements. This is what exporters must do all the time with all the markets into which they sell. Would the EU deliberately erect regulatory barriers to UK exports? Again, very unlikely, not least because doing so would put them in breach of WTO obligations by which they are legally bound and to which they are legally beholden.

Although often contended that there will be queues of lorries at Dover and elsewhere, both the relevant port operators and customs officials appear to be confident that traffic can be kept moving, although, there may be some teething problems to start. Very sensibly, those in charge of checking paperwork – almost all of which is now done by pre-clearance – say that they will give priority to avoiding hold-ups rather than to detailed customs monitoring.

Of course, not all our exports to the EU27 are goods. About half are services – everything from finance to tourism, and from educational facilities to professional services. Most of these are not likely to be greatly affected by Brexit, although there have been concerns that financial services, in particular, would be adversely impacted. But provided proposals for services trade are based on mutual recognition with equivalence for the financial sector, as HMG proposes, financial services should flourish. This model already operates between the US and EU. Thus, there are sensible ways round potential problems as well as substantial offsets. There is still far from being a fully competitive market for services in the Single Market and the City may gain more from avoiding the wrong sort of regulation by being outside the EU than it loses on access to the continent.

There therefore seems to be little reason for thinking that UK sales to the EU will fall because of Brexit but EU sales to the UK may be more vulnerable, and this may help rather than hinder the UK economy. If No Deal were to cause sterling to depreciate, this would make UK exports relatively more competitive, which could certainly help us. And there are also other factors which could work in our favour. At the moment, every year we have a huge balance of payments deficit with the EU27. In 2017 we had a surplus of £23bn on services but this was dwarfed by a massive £95bn deficit on goods, leaving us with an overall trade deficit with the EU27 of £72bn. This sucks demand out

of the UK economy and piles up debt. If overall trade – against expectations – were to be reduced, there would be a silver lining. The trade deficit would very probably go down. Of course it would also do so if our exports become relatively more competitive. Furthermore, if tariffs were to be re-imposed, because of our huge goods deficit, receipts to UK customs would be far higher than to those on the continent – by a factor of perhaps £13bn a year to £5bn.

For the UK, it is clearly true that a No Deal outcome would involve considerably more short-term uncertainty than an agreement which would avoid a clean break on 31 October 2019, if this is still possible. Much will then turn on how helpful and co-operative those on the ground will be. Inevitably, there will be teething problems and some disruption. The big advantage of No Deal, however, is that the UK will then be able to start negotiations with the EU – probably for a free trade deal along Canada ++ lines – unencumbered by the onerous legally binding commitments entailed in any variant of the Withdrawal Agreement, particularly round the Irish border and the £39bn up-front payment.

The Withdrawal Agreement, the Norway option, and holding a second referendum are all options fraught with problems. It is still doubtful if there is a majority in the House of Commons for any of them. Although there is no majority in the House of Commons for No Deal either, the UK may well get there by default. Of course, it would have been better if the UK had spent the last three and a half years negotiating a free trade agreement with the EU27, instead of trying to be half in and half out of the EU. Both Donald Tusk, the President of the EU Council, and Michel Barnier, the chief EU27 negotiator, have advocated this approach during the past few months. With the Parliament elected in 2017 determined to stay substantially within the Single Market and Customs Union, however, we have not taken advantage of this opportunity. We are therefore where we are, with very little time left. This is why the UK's best option appears still to be to hold its nerve and to do all possible to make a No Deal Brexit credible. This seems to be the only way of obtaining sufficient changes to the terms of our withdrawal from the EU to get a deal through Parliament. It also looks like the best way also of avoiding huge problems stretching ahead as the UK starts negotiating the next stage of its relationship with the EU27, with all the cards in the EU's hands.

Goods Exports and Imports classified by commodity and principal countries (€million)

Country by Section level of SITC		Exports		Imports	
		Jan-Oct	Jan-Oct	Jan-Oct	Jan-Oct
		2017	2018	2017	2018
Great Britain		12,069	11,447	14,207	14,823
0	Food and live animals	3,235	3,302	2,411	2,580
1	Beverages and tobacco	173	168	230	242
2	Crude materials, inedible, except fuels	330	373	158	169
3	Mineral fuels, lubricants and related materials	299	425	2,133	2,526
4	Animal and vegetable oils, fats and waxes	11	14	40	36
5	Chemicals and related products	4,148	3,371	2,559	2,243
6	Manufactured goods classified chiefly by material	806	848	1,519	1,634
7	Machinery and transport equipment	1,832	1,651	2,486	2,676
8	Miscellaneous manufactured articles	969	1,017	1,773	1,848
9	Commodities and transactions not classified elsewhere	266	278	896	868
Other EU (2)		40,074	46,877	23,915	29,753
0	Food and live animals	3,522	3,622	2,516	2,686
1	Beverages and tobacco	321	339	381	357
2	Crude materials, inedible, except fuels	797	887	264	266
3	Mineral fuels, lubricants and related materials	221	246	341	757
4	Animal and vegetable oils, fats and waxes	63	37	138	140
5	Chemicals and related products	23,558	30,482	4,829	9,451
6	Manufactured goods classified chiefly by material	745	793	1,563	1,598
7	Machinery and transport equipment	6,053	5,310	11,629	12,205
8	Miscellaneous manufactured articles	4,435	4,721	1,487	1,517
9	Commodities and transactions not classified elsewhere	358	439	768	775
USA		27,824	32,741	13,742	12,622
0	Food and live animals	412	265	179	225
1	Beverages and tobacco	465	481	15	14
2	Crude materials, inedible, except fuels	36	31	44	42
3	Mineral fuels, lubricants and related materials	169	104	155	332
4	Animal and vegetable oils, fats and waxes	0	0	1	1
5	Chemicals and related products	17,219	24,102	5,045	2,867

Goods Exports and Imports classified by commodity and principal countries (€million) ...contd.

6	Manufactured goods classified chiefly by material	193	147	330	348
7	Machinery and transport equipment	4,666	2,740	6,852	7,654
8	Miscellaneous manufactured articles	4,610	4,824	1,035	1,026
9	Commodities and transactions not classified elsewhere	53	48	87	113
China (3)		4,327	4,160	3,668	4,339
0	Food and live animals	752	625	30	36
1	Beverages and tobacco	4	2	0	0
2	Crude materials, inedible, except fuels	61	46	35	32
3	Mineral fuels, lubricants and related materials	1	51	0	0
4	Animal and vegetable oils, fats and waxes	1	1	0	0
5	Chemicals and related products	712	1,274	245	518
6	Manufactured goods classified chiefly by material	25	35	396	405
7	Machinery and transport equipment	2,309	1,621	1,776	2,120
8	Miscellaneous manufactured articles	462	505	1,127	1,174
9	Commodities and transactions not classified elsewhere	0	0	58	53
Rest of World		17,517	21,184	9,507	11,447
0	Food and live animals	1,445	1,292	745	875
1	Beverages and tobacco	151	161	130	110
2	Crude materials, inedible, except fuels	257	292	254	260
3	Mineral fuels, lubricants and related materials	133	118	1,257	1,310
4	Animal and vegetable oils, fats and waxes	3	2	42	43
5	Chemicals and related products	10,735	13,173	1,912	2,324
6	Manufactured goods classified chiefly by material	135	135	443	495
7	Machinery and transport equipment	2,560	3,815	3,271	4,497
8	Miscellaneous manufactured articles	1,931	1,984	1,383	1,461
9	Commodities and transactions not classified elsewhere	167	211	70	72
Total		101,810	116,409	65,040	72,984

1 Trade statistics revised since 2000. October 2018 is based on current Intrastat response levels. See background notes.

2 Includes estimates for traders below the Intrastat threshold and transactions where the EU country was not specified.

3 China includes Hong Kong and Macao.

Source: Central Statistics Office,

<https://www.cso.ie/en/releasesandpublications/er/gei/goodsexportsandimportsoctober2018/>

Ireland's Largest Import and Export Destinations by Value (€million)

Country	Exports		Imports	
	Jan-Oct	Jan-Oct	Jan-Oct	Jan-Oct
	2017	2018	2017	2018
Austria	324	358	236	268
Belgium	10,886	14,789	1,174	1,421
Bulgaria	74	85	21	42
Croatia	32	40	9	9
Cyprus	22	20	3	21
Czech Republic	325	490	328	579
Denmark	522	615	358	428
Estonia	19	18	10	15
Finland	274	248	143	122
France	4,494	4,581	8,492	8,775
Germany	8,464	8,712	5,854	9,297
Great Britain	12,069	11,447	14,207	14,823
Greece	279	463	54	59
Hungary	245	264	97	323
Italy	2,157	3,035	1,314	1,345
Latvia	53	73	42	39
Lithuania	20	26	64	85
Luxembourg	97	146	24	65
Malta	28	117	8	9
Netherlands	4,844	6,378	1,986	2,494
Northern Ireland	1,604	1,676	1,143	1,228
Poland	1,041	891	532	535
Portugal	392	364	219	176
Romania	269	291	85	76
Slovakia	48	65	38	45
Slovenia	63	71	26	24
Spain	2,167	2,132	1,080	1,224
Sweden	636	765	409	566
EU country not specified ²	694	165	165	483
Total EU	52,142	58,323	38,123	44,576
<i>of which United Kingdom</i>	13,673	13,122	15,350	16,051
Euro-Zone³	34,631	41,595	20,768	25,484
Australia	722	723	76	89
Brazil	144	292	177	191
Canada	890	1,199	511	444
China ⁴	4,327	4,160	3,668	4,339
India	284	272	591	483
Japan	1,925	2,943	970	1,232
Malaysia	154	171	307	331
Mexico	1,212	1,179	231	286

Ireland's Largest Import and Export Destinations by Value (€million)...contd.

Norway	311	300	962	863
Russia	407	444	274	484
Saudi Arabia	598	456	7	8
Singapore	574	576	289	399
South Africa	195	234	93	96
South Korea	544	524	834	648
Switzerland	5,051	6,162	467	588
Taiwan	213	277	243	290
Thailand	146	118	320	362
Turkey	445	490	456	452
USA	27,824	32,741	13,742	12,622
Other countries	3,337	3,360	1,941	2,016
Country unknown ⁵	366	1,465	756	2,185
Total Non-EU	49,668	58,086	2,822	3,740
Overall Total	101,810	116,409	6,818	8,588

¹ Trade statistics revised since 2000. October 2018 is based on current Intrastat response levels. See background notes.

² Includes estimates for traders below the Intrastat threshold and transactions where the EU country was not specified.

³ Euro-zone members from January 2015: Austria, Belgium, Germany, Spain, Finland, France, Luxembourg, Greece, Ireland, Italy, the Netherlands, Portugal, Slovenia, Malta, Cyprus, Slovakia, Estonia, Latvia and Lithuania.

⁴ China includes Hong Kong and Macao.

⁵ Trade for which the country of origin or country of final destination is unknown.

Source: Central Statistics Office,

<https://www.cso.ie/en/releasesandpublications/er/gei/goodsexportsandimportsoctober2018/>

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Boris Johnson's EU-UK Withdrawal Agreement has passed its first hurdle in Parliament and looks set to be the basis of the British exit from the EU. But, as Ray Bassett explains in *The Irish Border, Brexit & the EU: The Route to Frictionless Trade*, this is only the beginning. Next for negotiation will be the future trading relationship.

The author, a former diplomat who served as Ireland's ambassador to Canada and was also involved in the Good Friday Agreement negotiations as part of the Irish Government Talks Team, warns that the same problems, which dogged the British exit, are still on the table. These relate especially to the Irish border. He considers the difficulties which emerged and the options open to London, Brussels and Dublin.

Now, longer-term solutions are needed which will allow for the easy facilitation of trade and preserve the hard gotten gains of the Good Friday (Belfast) Agreement. More important, Dr Bassett concludes, they must provide reassurances for both communities in Northern Ireland. For this the focus should be on agreeing a future comprehensive UK-EU Free Trade Agreement.

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