

Islington to Camden, redux: the ERG and Northern Ireland

By Professor Alex De Ruyter and David Hearne

The latest media splash on Brexit is a result of the European Research Group's (ERG) most recent publication on the Northern Ireland border^[1]. In essence, the ERG is a research group run and supported by a group of influential Conservative MPs seeking what has colloquially come to be known as a "hard Brexit". The well-known Conservative MP, Jacob Rees-Mogg is the current chair of the group. As a group devoted to securing a hard Brexit, it is unsurprising that the ERG believes that the issue of the Northern Ireland border has been used to prevent their preferred Brexit vision.

As such, yesterday's paper on how to solve the "border problem" has been keenly awaited. In spite of the name, the result is not "research" in the sense traditionally accepted by academics. Instead it is argues a particular case drawing on work or statements of others – in essence a synthesis of work already done. The paper begins by attempting to set trade across the border in context, arguing that Ireland only accounts for 4.9% of total sales. This is a deeply misleading use of statistics: no country in the world includes *domestic* sales when accounting for the importance of a particular export destination. As such, Ireland is Northern Ireland's most important export partner *by far*. Yes, sales to the British mainland are greater than those to Ireland, but even then Ireland remains a crucial trading partner. As for the discussion of the importance of British trade to the Irish Republic, it is indeed in Ireland's interests to ensure trade is as frictionless as possible – as such it is hardly surprising that the Republic's preferred vision of Brexit is rather "softer" than that espoused by the ERG. Ireland is potentially enormously impacted by a policy that it didn't vote for and doesn't support.

Similarly misleading are some of the references of the document. As an example, it is stated that, 'Previous Irish administrations were discussing with the EU similar ways to "obviate the need for customs posts."^[1] In fact, the work being done was preparatory work to *minimise* the need for customs checks. The rather selective

quotation was not from an official but a rather speculative sentence written by a journalist, “However, RTE News understands that officials from the Revenue Commissioners have been meeting European Commission experts since last Autumn in order to explore ways of using modern technology to all but obviate the need for customs posts.”^[2] Once again, “all but obviate” has very different connotations, implying that *some* customs posts would still be needed. In any case, it is clear from the article that the work done was very preliminary and it is far from clear what progress was actually made vis-à-vis substantial reductions in border checks

More broadly, the thrust of the paper relies upon twin pillars: firstly that VAT is already applied without a hard border, and secondly that a variety of technological solutions can obviate the need for physical infrastructure and checks. The problem is that neither of these pillars stands up under scrutiny. It is certainly true that all VAT registered traders must report (and be able to show evidence if demanded) exports to HMRC. Of course, traders who are not VAT registered would need to make customs declarations (and it is an open question how well compliance could be enforced). More importantly, however, is the issue of who loses out in the event of VAT fraud: the UK exchequer. Broadly speaking, companies do not need to pay UK VAT on goods exported to an Irish company. In other words, VAT fraud in this case defrauds the UK exchequer by declaring goods for export and then selling them inside the UK.

As can be seen, even in the event of VAT fraud by UK companies, the market in the rest of the EU is unaffected. In contrast, were companies to fail to pay customs duties on entry into the EU then it is the EU that loses out and whose market is compromised. In other words, the two are fundamentally different issues – one involves defrauding the UK exchequer (compromising the UK market) whereas the other involves unauthorised import into the EU (compromising the EU market).

As for the second issue regarding technological solutions on the border, two key issues present themselves. The paper relies heavily on earlier evidence presented to the EU^[3]. None of the examples of existing borders used in this work avoided some physical border controls (and all involved a wait time for some goods crossing). Indeed, the case of Norway is anomalous because Norway is part of

the European Economic Area! More generally, “nine technologies and ten treaty changes would have to be implemented, possibly over a decade”^[4]. Given the UK government’s track record in delivering complex IT systems on time, this does not inspire confidence.

That a small proportion of total Irish imports are physically inspected is no consolation: 1% of a large number is still a large number. Customs declarations are waved aside as being “similar to VAT” (patently untrue – as pointed out above). Of course countries endeavour to facilitate customs declarations by allowing them to be completed online – this does not (and cannot) remove the need for physical infrastructure. Spot checks still occur. The reality is that the technological situation envisaged by the authors has not been achieved anywhere else *in spite of enormous incentives to do so*.

Similarly, it is not good enough simply to wave away the potential problem of fraudulent declarations of origin (particularly in the case of a UK free trade agreement with a third party). That EU tariffs are *on average* only 4% masks significant variation and some tariffs are much higher. In any event, the Irish are quite right to insist on a more solid guarantee than, “we don’t think this will be a problem and anyway you should trust us”. The UK would do the same if the situation were reversed and would be well within its rights to do so. Similarly, the fact that Northern Ireland has only a handful of terminals able to handle a large quantity of freight is not reassuring – why on earth should the Irish accept *any* level of fraud, particularly when the incentives for HMRC to end it are minimal. To reiterate – most British citizens would be rightly outraged if we were on the receiving end of such practices.

Again the paragraph on product compliance misses the point. Product compliance is ultimately enforceable on the border. The fact that it is rarely necessary to do so in practice is in part because the border exists: problems with compliance lead to stricter border checks. In terms of phytosanitary rules, even the ERG appear to acknowledge that additional checks would be needed were the UK to diverge from “equivalence” with the EU’s phytosanitary standards (especially with regard to agricultural produce). Indeed, even “[i]f regulations are recognised as equivalent, there may still be checks to ensure conformity with those regulations, although their frequency can be reduced.”^[1] As such, it is clear that the proposals

from the ERG do not “solve” the border issue in any realistic sense and require of the Irish something that the British would (quite rightly) find objectionable if applied to ourselves.

1. European Research Group. *The Border between Northern Ireland and the Republic of Ireland post-Brexit*. 2018; Available from: <https://brexitcentral.com/european-research-group-publishes-guide-keeping-irish-border-invisible-post-brexit/>.
2. RTE News, *Taoiseach says work under way to minimise customs checks post-Brexit*. 2017, Available from: <https://www.rte.ie/news/2017/0119/846135-enda-kenny-davos/>
3. Karlsson, L., *Smart Border 2.0: Avoiding a hard border on the island of Ireland for Customs control and the free movement of persons*. 2017, Director General for Internal Policies of the Union: Brussels.
4. Budd, Leslie. *Northern Ireland's Dance to the Music of Time of Brexit*. 2018, Centre for Brexit Studies. Available at: <https://centreforbrexitstudiesblog.wordpress.com/2018/06/08/northern-irelands-dance-to-the-music-of-time-of-brexit/>