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Mutual Interest

How the UK and EU can resolve
the Irish border issue after Brexit

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PROMOTING POLICIES THAT LIFT PEOPLE FROM POVERTY TO PROSPERITY

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FOREWORD

In March 2019 we will embark upon a new era in the history of this great nation.

We should be optimistic about our prospects: we are the world's fifth largest economy, supported by the world's most dynamic, creative and resourceful population

But there are real challenges, and so we must work together to maximise the opportunities and minimise the disruption caused by Brexit. This paper recommends a pathway to minimising potential disruptions at the Irish border, so that we can ensure a future for the UK and the Republic of Ireland that is open and inclusive, that creates growth and jobs, and encourages innovation and enterprise.

The Legatum Institute is not pro Leave or pro Remain. We are pro a prosperous future for this nation and we owe it to all the people of the UK—regardless of how they voted in the referendum—to achieve the best Brexit possible.

EXECUTIVE SUMMARY

MAXIMISING THE UK'S AND THE REPUBLIC OF IRELAND'S MUTUAL INTEREST IN TRADE OPPORTUNITIES AROUND THE WORLD

THE CONTEXT

Free trade and free and competitive markets have been the most powerful antidote to poverty since the Second World War. As a wealth-creating engine, trade has an unparalleled record. Trade has changed lives and communities. It has transformed villages and towns, and given hope and opportunity to billions. As the UK leaves the EU, it is vital that we do everything in our power to increase trading opportunities for the people of the UK, including those in Northern Ireland, and for the people of the Republic of Ireland, the rest of Europe and the wider world.

While some look at the particular issue of the Irish border as only a problem to be solved, we believe that it is also an opportunity. We do not seek to minimise the very real challenges that the people of Northern Ireland and the Republic face. However, we believe it would be a mistake not to recognise the opportunity that the people of Northern Ireland in particular have if the UK is more open to the world and engaged in trade liberalising initiatives with many countries, as well as global institutions like the World Trade Organization (WTO).

THE CHALLENGE

Brexit will create a new border after March 2019, transforming the existing boundary between Northern Ireland (NI) and the Republic of Ireland (ROI) into one that separates the UK from the European Union (EU).

There has been considerable concern that given the history of the conflict in NI that the UK leaving the EU could destabilise the hard-won peace agreement. It is critical that any solutions proposed do not lead to a return to violence. Both the UK and the EU have recognised the urgency of this by including resolution of the Irish border issues as one of three immediate issues which must be resolved before the future framework of the trading relationship can be discussed (along with citizens' rights and the financial settlement).

This transformation has significant implications for commerce and security for both the UK and the ROI; maintaining an appropriate balance between the ease of movement for goods and people and the effectiveness of border controls is of paramount importance to both nations.



Above: Border between Republic of Ireland and Northern Ireland at Newry, Co Down. August 2017.

Source: Laura Hutton / Alamy Stock Photo

The challenge is how to make sure that the UK leaving the EU will not lead to an unnecessary hardening of the border between NI and ROI.

The imposition of tariffs between NI and ROI would suggest that NI and ROI are returning to the days of trade barriers, and could increase the perception of division, as well as giving rise to economic hardships. Equally, the ROI's economic reliance on trade with the UK means it would be adversely affected if the UK and EU fail to agree a free trade agreement (FTA) after Brexit, with suitable interim measures if no trade deal has been agreed by March 2019.

The challenges posed by the border mirror those that must be resolved between the UK and EU, but this challenge also provides an opportunity. The problem presented requires solutions that can be deployed between the UK and the rest of the EU, and could become a model for other border arrangements around the world.

RESPONDING TO THE CHALLENGE

The UK's Prime Minister, Theresa May noted in her Lancaster House speech that no one wants a return to the borders of the past. In her letter giving notice under Article 50, she said: "we must pay attention to the UK's unique relationship with the Republic of Ireland and the importance of the peace process in Northern Ireland ... we want to avoid a return to a hard border between [the UK and the Republic of Ireland], to be able to maintain the common travel area between us, and to make sure the UK's withdrawal from the EU does not harm the Republic of Ireland". In its guidelines issued in response (the "Guidelines"), the European Council stated that it "welcomes and shares the UK's desire to establish a close partnership between the [EU] and the UK after its departure". It also reiterated the aim of avoiding a hard border ("while respecting the integrity of the Union legal order") and noted that the EU should "recognise existing bilateral agreements and arrangements between the United Kingdom and Ireland which are compatible with EU law". This was followed by the negotiation directives given by the Council to the Commission (the "Directives"), which state that "the unique circumstances and challenges on the island of Ireland will require flexible and imaginative solutions. Negotiations should in particular aim to avoid the creation of a hard border on the island of Ireland."

Out of challenge comes opportunity; creating a prototype for ensuring smooth, low friction border between nations.

The proposals in this document seek to provide those flexible and imaginative solutions. Creativity and ingenuity will be at a premium in devising these solutions, and we believe that the talents of the British, Irish and fellow European peoples are up to the task of finding the kinds of solutions that can not only solve this unique challenge but can serve as a prototype for ensuring smooth borders around the world.

The UK Government's stated policy of leaving the EU Customs Union and the Single Market does not prevent the UK and the EU achieving a resolution to the Irish border issue.

There is a spectrum of border arrangements, from the current situation to the kind of hard border that exists between most countries. Some allege that there is no border now and that inevitably leaving the EU Customs Union will mean the return of a border which could increase the likelihood of a return to violence. However, since the border does currently exist, our goal is to ensure that it does not harden significantly and that we can deliver a low friction, low visibility border.

While much has been made of potential special arrangements between ROI and NI, we believe that any settlement will be determined by the wider agreement between the UK and EU. This creates an opportunity to deploy the kinds of solutions in the Irish context that would also work in the UK-EU context. It also presents an opportunity in the UK-EU negotiations to seize the initiative and discuss the future trade relationship now, as we cannot discuss the issues between the ROI and NI without discussing the future relationship between the UK and the EU.

There is an opportunity for advanced customs clearance mechanisms to be deployed on the border, which can also be used to serve UK-EU trade more generally.

A resolution does not require special status for Northern Ireland, although special status for specific exporters through enhanced Authorised Economic Operator (AEO) and similar programmes may be necessary.

Finding an inclusive solution to the Irish problem presents an important opportunity to build momentum towards a broader settlement between the UK and EU.

KEY RECOMMENDATIONS

FACILITATING EASE OF MOVEMENT FOR PEOPLE AND GOODS

1. Facilitating the free movement of people between NI, ROI and the UK mainland (GB) can be achieved by the indefinite continuation of the Common Travel Area (CTA).
2. The process of delegated immigration controls should continue, with ROI authorities to administer EU citizens arriving in the ROI, including those wishing to travel onward into the UK.
3. The most effective way to reduce border disruption for trade in goods between NI and the ROI is by the UK and EU agreeing a smooth customs arrangement, and using the best practice legal and technology tools. This is an opportunity to deploy the latest technology available in a limited area which could become a prototype for other regions—turning a challenge into an opportunity.
4. The UK should consider awarding a prize for technological solutions to incentivise the development of innovative solutions from the private sector, and universities.
5. The Governments of the UK and ROI, as well as the EU, should focus on the appropriate mechanisms to minimise the disruption to relatively low-volume, high frequency trading across the border.
6. The UK Government should not consider introducing a customs union or single market between NI and the ROI which would require a border between GB and NI.
7. The UK Government should examine options including an enhanced AEO programme or other trusted trader scheme to minimise the disruption caused by customs checks at the border.
8. The UK Government and the Government of the ROI should utilise existing bodies to create a joint committee responsible for ensuring proper implementation of the border agreements.
9. The UK Government should consider the use of free zones, or free ports, in NI, and discuss their use in the ROI and at the border with the ROI and EU counterparts.

DELIVERING EFFECTIVE SECURITY FOR PEOPLE AND GOODS

1. The UK should remain a member of the Schengen Information System (SIS)
2. Agreeing a zero tariff deal between the UK and EU will eliminate a major incentive for cross-border smugglers between NI and the ROI.
3. The Special EU Programmes Body (SEUPB) or other Belfast Agreement bodies should be used to monitor the border, conducting risk assessments and advising when border security should be tightened or relaxed.
4. The UK should consider remaining in the European Anti-Fraud Office (OLAF) on an interim basis (and paying for such participation).

DELIVERING EFFECTIVE ENERGY SECURITY

1. NI should remain within the Single Energy Market (SEM).
2. The UK Government should examine options for integrating with the EU's Integrated Single Electricity Market (I-SEM) from March 2019.
3. The UK Government should consider devolving to the NI Assembly additional legislative powers relating to the energy market.
4. The UK Government must ensure that interconnection arrangements for energy are pro-competitive, and that the necessary infrastructure is in place to transport the required volume of electricity between networks.
5. The Governments of the UK and the ROI should examine financing an additional North-South interconnector to generate savings for energy consumers.
6. The UK should look at increasing the use of interconnectors from countries with energy surpluses including reviving the Icelink interconnector from Iceland.

PRIORITIES FOR THE BORDER

Ensuring ease of movement for people and goods

Ensuring border controls do not have a detrimental impact upon businesses, families and communities.

Delivering effective security for people and goods

Ensuring that secure arrangements apply at the border whilst avoiding any disruption of the Common Travel Area

Delivering energy security

Ensuring no disruption of the energy supply in both NI and the ROI.

Image: Beacon of Hope statue in Thanksgiving Square, Belfast.

PRIORITIES FOR THE BORDER

1. EASE OF MOVEMENT FOR PEOPLE AND GOODS

Brexit will allow significant trade opportunities for the UK, including the people of Northern Ireland in terms of trade opportunities with the world. The UK, able to negotiate trade deals with many countries and to follow the trade policy blue print we have laid out at <http://www.li.com/activities/publications/a-blueprint-for-uk-trade-policy> can create significant opportunities for all of its people, including those that live in NI. While it is important to ensure that the UK does not do anything which takes these opportunities off the table, it is important to minimise any of the disruptions caused by leaving the EU.

Brexit will create a new border after March 2019, transforming the existing border between Northern Ireland and the Republic of Ireland into one that separates the UK from the EU.

This transformation has significant implications for commerce and security, both for the UK and the ROI; maintaining an appropriate balance between the ease of movement for goods and people and the effectiveness of border controls is of paramount importance to both nations.

In reality cross-border trade between NI and the ROI is relatively low, comprising just 5 percent of NI total sales, against 21 percent to GB. On the other hand, GB is one of the ROI's most important markets: trade across the Irish Sea accounts for 24 percent of its imports and 12 percent of its exports.

The UK Government's stated policy of leaving the EU Customs Union and the Single Market does not prevent the UK and the EU achieving a resolution to the Irish border issue.

This report examines the implications of Brexit for the Irish border, how the disruption it causes can be minimised, and how both the British and Irish peoples can take advantage of the opportunities it creates.

A detailed Technical Note, authored by Austen Morgan, Shanker Singham, Victoria Hewson and Alice Brooks is available as a link on our website: <http://www.li.com/activities/publications>.

1.1 Ensuring ease of movement for people

One of the key deliverables of a successful negotiation is continuation of some of the core aspects of the identity of the NI/ROI border.

The UK's planned departure from the Single Market will end the free movement of people between the UK and members of the European Economic Area (EEA).

Currently, the freedom of movement between ROI and the UK is provided for under the CTA, as well as pursuant to both countries' membership of the EU. The CTA has been in force since 1922 and predates the UK and ROI's EU membership. The UK and EU have indicated that it should continue to apply after Brexit. Once freedom of movement under the EEA comes to an end, it should continue for UK and Irish citizens in their respective territories under the CTA.

The free movement of people can be achieved by the indefinite continuation of the CTA.

As the ROI is not a part of the Schengen Area, it already administers passport control for EU citizens at its border. Immigration officials from the UK and the ROI have acted under delegated authority from each other since the 1950s, and there is nothing to prevent this continuing after Brexit.

Delegated authority could also be exercised to process EU citizens arriving in the ROI, who wish to transit into the UK. The UK Border Agency could delegate immigration control for EU passenger transit into the UK to their ROI counterparts.

The process of delegated immigration controls should continue to administer EU citizens arriving in the ROI, including those wishing to travel onward into the UK.

In order to ensure that EU citizens cannot work illegally, either in NI or GB, both UK immigration officials and employers will need to strengthen existing immigration checks.

In order for this system to work, we recommend the following:

1. The ROI would have to remain outside the Schengen Area.
2. The UK should not require visas for tourist travel for EEA nationals, as such requirements would not be enforceable by Irish border authorities and would require full immigration controls at the Irish border, since the EEA and UK systems would differ.
3. The UK will need to address enforcement of immigration controls behind the border.

1.2. Facilitating ease of movement of goods and services

1.2.1 What is the actual flow of trade across the border?

It is widely assumed that there is a very high volume of trade across the Irish border that would be severely affected by any hardening of the border and this is why many have called for retaining membership of the EU Customs Union, or something very close to it, for trade between NI and the ROI. However, as summarised below, trade between NI and the ROI is much less than is commonly supposed. It is trade between the ROI and GB, and NI and GB which is much larger and more important to both NI and the ROI. The tables below illustrate the point.

The structure of the sales figures of the NI economy in 2015 is summarised below, using the most recently available figures:

Table 1: Turnover of NI economy, 2015¹

DESTINATION	£ MILLION	PERCENTAGE (%) OF TURNOVER
Turnover	66,699	100.0
NI sales	43,745	66.0
GB sales	13,848	21.0
ROI sales	3,377	5.0
Rest of EU sales	1,927	3.0
Rest of world sales	3,803	6.0
Total external (non-NI) sales	22,955	34.0
Total exports (non-GB and NI)	9,106	14.0

Looking at percentages only, 66.0 percent of sales are within NI and 21.0 percent in GB, making a total of 87 percent—nearly all—within the UK. A further 6 percent is NI's share of UK exports to the rest of the world. The figures for the ROI and the rest of the EU are a great deal less: 5 percent of NI sales to the ROI and 3 percent to the rest of the EU. Agricultural produce that is processed in the ROI and returned to NI for sale there or elsewhere accounts for some of the 5 percent of sales made to the ROI. Broadly, the pre-1973 trade pattern, with roots in the 19th century, has proved remarkably resilient.

The ROI has also recently published figures relating to its 2015 imports and exports of goods with GB and NI, summarised below. At a high level, these tables show how reliant the ROI is on GB both as an export market and an import supplier, and how in most sectors NI trade is a relatively small proportion of the ROI total.

The tables below show the volume of exports of goods from the ROI to GB and to NI, and the volume of imports of goods from GB and NI into the ROI.²

By looking at these tables, we can compare the level of trade between ROI and GB, versus ROI and NI.

¹ Source: NI Research and Statistics Agency (www.nisra.gov.uk/publications/curr915,357ent-publication-broad-economy-sales-exports-statistics).

² Central Statistics Office, *Ireland, Brexit Ireland and the UK in Numbers*, December 2016 (available at www.cso.ie/en/media/csoie/releasespublications/documents/statisticalpublications/Brexit.pdf).

Table 2: ROI exports to the UK, 2015

PRODUCT ³	2015 EXPORTS (EUR 000S)			% OF WHICH:	
	TOTAL	GREAT BRITAIN	NORTHERN IRELAND	GREAT BRITAIN	NORTHERN IRELAND
Food and live animals	9,877,833	3,914,147	594,844	39.6	6.0
Beverages and tobacco	1,287,469	243,999	89,355	19.0	6.9
Crude materials, inedible, except fuels	1,770,659	393,744	74,370	22.2	4.2
Mineral fuels, lubricants and related materials	772,924	418,289	27,119	54.1	3.5
Animal and vegetable oils, fats and waxes	57,142	11,681	6,042	20.4	10.6
Chemicals and related products	64,224,048	3,900,022	193,990	6.1	0.3
Manufactured goods classified chiefly by material	2,105,212	915,357	233,006	43.5	11.1
Machinery and transport equipment	16,808,258	2,557,527	154,937	15.2	0.9
Miscellaneous manufactured articles	14,298,763	1,120,212	200,811	7.8	1.4
Commodities and transactions not classified elsewhere	1,205,035	335,168	169,651	27.8	14.1
TOTAL	112,407,343	13,810,147	1,744,125	12.3	1.6

Table 3: ROI imports from the UK, 2015

PRODUCT ⁴	2015 IMPORTS (EUR 000)			% OF WHICH:	
	TOTAL	GREAT BRITAIN	NORTHERN IRELAND	GREAT BRITAIN	NORTHERN IRELAND
Food and live animals	6,686,796	2,842,473	483,907	42.5	7.2
Beverages and tobacco	876,066	305,119	32,452	34.8	3.7
Crude materials, inedible, except fuels	854,625	162,863	59,948	19.1	7.0
Mineral fuels, lubricants and related materials	5,104,270	3,140,700	33,296	61.5	0.7
Animal and vegetable oils, fats and waxes	244,545	45,463	17,375	18.6	7.1
Chemicals and related products	13,977,824	2,391,244	64,523	17.1	0.5
Manufactured goods classified chiefly by material	4,697,709	1,796,843	127,536	38.2	2.7
Machinery and transport equipment	27,890,812	2,963,996	89,698	10.6	0.3
Miscellaneous manufactured articles	8,166,076	2,443,560	75,986	29.9	0.9
Commodities and transactions not classified elsewhere	1,612,285	810,744	106,622	50.3	6.6
TOTAL	70,111,009	16,903,005	1,091,343	24.1	1.6

³ Standard International Trade Classification level 1

⁴ Standard International Trade Classification level 1

We can see from the above tables that exports of goods from the ROI to NI are only 1.6 percent of total ROI exports. Although the figures do not precisely match the NI turnover figures (partly because the NI figures include services), both these tables taken together indicate that this trade is much less than might generally be expected.⁵

This data reinforces the importance to the ROI of securing a beneficial trade and customs arrangement for its trade with GB, which accounts for 12.3 percent of goods exports and 24.1 percent of goods imports. There is also a high volume of services trade between the ROI and the UK. Equally, the ROI is a key trading partner for GB, so while managing the land border is vitally important for political, cultural, and security reasons, a solution for trade between the ROI and GB is of critical importance for both nations. Research by Open Europe suggested that the GDP losses that the ROI could be exposed to range from a best-case scenario of 1.1 percent to a worst-case scenario of 3.1 percent⁶ (which is worse than the projected outcomes for the UK), and some Irish businesses are already suffering as a result of the depreciation of sterling.⁷ The ROI clearly has a strong incentive to push for progress on trade aspects of the Article 50 negotiations and to advocate a zero-tariff agreement with maximum market access.

The sectors of key importance to NI trade are agriculture, manufacturing, and chemicals. The nature of such products means that recognition of standards and sanitary and phyto-sanitary (SPS) measures will be key to ensuring that trade of goods in these sectors between GB, NI and the ROI encounters minimal disruption.

1.2.2 Addressing specific concerns in agricultural trade

ROI is a major agricultural exporter. Many Irish people rely on farming for their livelihoods, and have been exporting to GB and to a lesser extent NI relying on the fact that they do not need to fill in customs forms or comply with different product standards. This is especially true for products like beef and dairy. NI farmers also need to ensure that they have access to ROI markets and so it will be important to ensure that the ROI does not have regulatory barriers to NI agricultural exports.

That said it is important not to lose sight of the fact that almost 40 per cent of the ROI's food and live animal exports go to GB. Only 6 per cent go to NI. This could potentially be jeopardised if the EU and UK do not come to agreement on agricultural products standards. For Irish farmers, it is the EU-UK arrangements that is the most important arrangement.

The UK can use the WTO Agreement on Sanitary and Phyto-sanitary measures (SPS Agreement) to put pressure on the EU to agree suitable mutual recognition provisions on the date of Brexit. Article 4 of the SPS Agreement provides that members should recognise each other's regulations, even where they are not technically identical.

Even, if the UK chooses to adopt different food safety standards after March 2019, the SPS Agreement gives the UK the right to take legal action to ensure that it is able to continue exporting to EU member states, provided that the purpose of the regulation (maintaining effective food standards) is secured.

⁵ The Irish ambassador to the UK illustrated this noting that he thought trade levels were high but should be higher: in one answer to the House of Lords EU Committee: "I cannot remember the figure, but quite a high percentage of Northern Ireland exports come to the south. Our economic links in Ireland are below the level they should be for two neighbouring jurisdictions on an island." (Oral and written evidence, Q8, September 6, 2016)

⁶ Raoul Ruparel, "How Would Brexit Impact Ireland" *Open Europe*, April 2015 (openeurope.org.uk/today/blog/how-would-brexit-impact-ireland).

⁷ For example, see *Irish Times*, "Enterprise Ireland Report Reveals Brexit Impact on Irish Exports", May 15, 2017 (www.irishtimes.com/business/economy/enterprise-ireland-report-reveals-brexit-impact-on-irish-exports-1.3083605).

We note, in Appendix 2 that Ireland is not the only country with a significant reliance on the UK market. We list other countries that have a similar reliance from whom the Irish government could draw allies.

1.3 How to improve ease of movement for goods and services

From March 2019, customs checks will be required for goods transiting between NI and the ROI. Whilst necessary, it is essential that they do not create an unnecessary and disproportionate obstacle to the movement of goods and services. Ensuring movement of goods and services that is as frictionless as possible given the constraints should be a key consideration of any UK-EU customs arrangement.

1.3.1 Understanding what happens at the border now

Some commentators have suggested that there is no border now between NI and ROI and any suggestions of a border could have catastrophic consequences for the peace process and for the livelihoods of people in both NI and the ROI. It is therefore important to understand what is happening at the border now, and that there is in fact a spectrum between what is happening now, and the restrictive one might find between two countries elsewhere in the world.

New customs controls on the Irish border does not mean that we are returning to the days of uniformed customs guards on both sides of the border with a physical wall or fence. The current arrangements do include inspections for a variety of reasons. To put this in context, in general, for all imports, the UK border authorities physically inspect only 4 percent of consignments, and the Irish authorities only 1 percent.⁸

A border includes other things besides customs. Currently, at the UK and Irish governments have the right to carry out inspections for anti-counterfeiting, and for some potential immigration violations which is why there is a border now (albeit a very porous one).

The notion that we are moving from no border at all to a hard one is not true. The critical thing is to make sure that from the perspective of people and traders they see as little disruption as possible consistent with security and other goals.

Seeking to ensure as minimal hardening of the border as possible is a very different proposition from trying to make sure that there is never a border between the ROI and NI. This is obviously not what is required. There is, in reality no way to have no border between two countries. Even if a customs union existed between ROI and NI, it would still require monitoring of technical rules and the anti-smuggling checks that take place in the current arrangement. If Northern Ireland were somehow to be part of the EEA this would mean no checks would be necessary for products and agriculture under technical rules.⁹ If that membership included the rest of the UK such an approach would prevent the UK itself from negotiating with other countries, and exercising leadership in global fora such as the WTO and global standards setting organisations. If such EEA membership were limited to NI, this would disrupt the integrity of the UK single market, something that would not be politically acceptable to either the UK Government or the unionist majority in NI. Continued membership of the EU Customs Union would mean that customs checks for payment of duties would not be necessary (although other checks would be). But this again would either (if applied to all UK)

⁸ World Bank Logistics Performance Index 2016.

⁹ TBT and SPS measures.

prevent the UK from exercising an independent trade policy, or if applied only to NI would require a customs border inside the UK which would not be acceptable to the British people. **The most effective way to reduce border disruption between NI and the ROI is by the UK and EU agreeing a customs arrangement, utilising technology and flexible legal solutions to solve problems.**

We have laid out in other papers such as *Brexit, Movement of Goods and the Supply Chain*¹⁰ how other countries have used electronic clearance and other mechanisms to deliver customs solutions that speed goods across borders.

In the last few years, technology solutions to tracking products has developed in ways that cannot have been imagined even ten years ago, let alone before the UK and the ROI were in a customs union. There are so many potential solutions here that it makes no sense to put at risk the considerable trade opportunities that are possible for the UK simply because of misplaced fears about what constitutes customs clearance, and the supposed difficulty of customs administration.

We can learn from the experiences of other borders, such as the US-Canada border which we have described in detail in our *Brexit, Movement of Goods and the Supply Chain*¹¹ paper.

The UK and ROI should be trying to improve the efficiency that currently exists at the Irish border. We advocate an integrated system which can be largely remote, using electronic technology at the border and ongoing inspections and audits by authorities away from the border. Operators of commercial vehicles would be required to log journeys and loads online in advance of travel. Automatic number-plate recognition is already used by the Police Service of Northern Ireland in crime prevention and detection, so applying it here would not be a radically new departure. The network of static cameras could be expanded to record all cross-border transit. There would inevitably be false declaring, as there always is with all systems. But that could be deterred by spot checks away from the border, and enforcement achieved through criminal sanctions and/or civil penalties (again, practices that are common under existing EU customs regulation). The Norway-Sweden border implements a similar model for the routes across the border permitting freight, and the congestion charge for drivers in central London is another analogous example. However, the extent to which the Irish border can be regulated in this way will be determined by how it can be accommodated within the framework of EU law and whether technology solutions will be cost-effective for all border crossings. The majority of freight is likely to be carried along main routes where it will be easier; however, agricultural products and livestock are likely to be less restricted to such routes and solutions will be more difficult.

1.3.2. Successful administration of the border between the EU and non-EU countries

The UK will not, of course, be alone in having to manage a border with an EU member state. Arrangements governing Norway's border with the EU, and the Swiss border with the EU, are managed by joint committees comprised of representatives from the EU and European Free Trade Association (EFTA) members and the EU and Switzerland, respectively. We discuss below the potential use of certain Belfast Agreement bodies which could be re-tooled in the future to serve this purpose.

¹⁰ www.li.com/activities/publications/special-trade-commission-brexit-movement-of-goods-and-the-supply-chain

¹¹ *ibid*

Existing successful borders between the EU and third countries include the EU–Norway border and the EU–Switzerland border. Key features of how these borders function are summarised below; they are regulated in practice by formal agreement between the relevant contracting countries.

The EU–Norway and EU–Switzerland agreements apply to inspections and formalities concerning the carriage of goods between the customs territories of each contracting party. Both have worked well and they differ only in respect of dispute resolution where the EU–Switzerland agreement is more specific because any disputes between Norway and the EU are covered under the EEA agreement.

Under these agreements, the parties are obliged to carry out such inspections and formalities with the minimum delay necessary and preferably in one place, while implementing measures to ensure the free flow of traffic as far as possible. There is a focus on making customs facilitation technology-based and with minimal disruptions, with random inspections on a consignment-by-consignment basis or otherwise based on computerised risk analysis. Similarly, there is an express obligation on the contracting parties to use simplified procedures and data-processing and data-transmission techniques to facilitate export, transit, and import of goods. The parties also agree to recognise each other’s custom checks and certifications.

The parties must also cooperate, particularly in relation to customs security matters. As referenced above, these agreements are administered by joint committees, which consist of representatives from the EU and Switzerland, and the EU and EFTA members, respectively.

The UK should seek to a similar agreement with the EU regarding inspections and formalities of goods crossing the UK–EU border, whether at the NI–ROI border or elsewhere. This should be straightforward at the date of Brexit when the UK and EU product regulation is identical. As we diverge from the EU by choice or because we have entered into an agreement with another country that requires us to do so, we will need to ensure that we maintain some form of mutual recognition. Only if we fail to do that will the EU insist on additional inspections and certification of certain goods crossing the border (for example, agriculture or chemicals). It is always open to the UK to simply accept European product standards unilaterally to allow trade to flow across the border and prevent back-up of trucks on Irish roads. In this way, UK consumers will have access to European products without problems.

Streamlining border controls: International comparisons

The effective use of border security technology has expedited customs clearance in other regions of the world. The border between Sweden and Norway is subject to online submission of all documents, and the crossing of pre-registered vehicles is logged using number plate recognition software. The effective use of similar electronic checks enables \$1.5bn worth of cleared goods to cross the US–Canada border each day.

1.4 Recommendation 1: Special status for traders not for the region

The nature of the trade across the border does mean that there is an opportunity to craft a very specific special status programme for small traders. The parties should be aiming for a programme where these traders can fill in the minimum of forms, and pay duties (if necessary) once or twice a year. If this can be achieved then these traders, their families and their communities can see minimal disruption and their fear of the unknown will lessen. The issue of goods should therefore be solved by using a combination of trusted trader programmes, electronic border measures, risk assessment tools, and in particular an enhanced AEO programme to give special status for customs clearance to the relatively small number of operators who undertake more concentrated, repeat business. This is also an opportunity to improve the AEO programme if the UK and ROI/EU agree, specifically for the NI/ROI traders to make it easier and quicker to qualify.

The UK Government should examine options including an enhanced AEO programme or other trusted trader scheme to minimise the disruption caused by customs checks at the border.

1.5 Recommendation 2: The UK Government and the EU can agree special services arrangements between NI and the ROI

There are many people who provide services across the border. There are specific WTO rules (under Article II(3) of the General Agreement on Trade in Services) which allow special arrangements in services trade in border regions that do not need to be shared under WTO principles to all WTO members. These can be used to craft special rules and special status for these providers.

1.6 Recommendation 3: Use of Special Economic Zones to deliver prosperity to the people of NI and the ROI

Much of the work around the Irish border has rightly focused on minimising the disruptions associated with the UK leaving the EU Customs Union and the Single Market. However, when NI is no longer in the EU, there are opportunities which can be taken advantage of so that economic gains can be delivered for its people. Many countries around the world have used free trade zones, special economic zones and similar arrangements to generate economic activity, job creation and to alleviate poverty. There is no reason why these Special Economic Zones (or SEZs) could not be deployed in NI to lead to economic activity and job creation there giving opportunities to the people of NI which they did not have before. Others have suggested free ports in the rest of the UK which could also be linked to the SEZs in NI to lead to increased opportunity in the UK as a whole.¹²

¹² See *The Free Ports Opportunity*, Rishi Sunak at <http://www.cps.org.uk/publications/the-free-ports-opportunity/#>

Ideally, the EU would agree to allow the potential for such zones to also be deployed in the border region of the ROI as well. Indeed an SEZ across the border, shared by both NI and the ROI could generate economic activity between NI and the ROI, facilitate cooperation, ease trade frictions and enable cross border relationships to develop faster. Given how little change there has been since trade patterns established well before 1973, this might do much to foster trade between NI and the ROI and increase the percentages that such trade represents as a percentage of trade of each with the rest of the world. Presented properly, such a proposal would be difficult for the EU to resist based on their stated positions with regard to the Irish border questions.

1.7 Recommendation 4: A future comprehensive end state agreement which is an FTA between the UK and EU

As Prime Minister Theresa May said in the Lancaster House speech, the goal or end state is a comprehensive, ambitious FTA with the EU. Such an agreement will include many chapters in various areas, but the core requirements are listed below. The most important thing such an agreement can do is to ensure that all barriers between EU and UK trade are removed so UK and EU businesses can easily trade without obstacles and impediments:

1. Zero tariffs and quotas;
2. Rules of origin based on substantial transformation and change of tariff classification, so that originating goods include goods produced in all countries where the EU and UK have trade agreements respectively (known as cumulation);
3. Agreement on Technical Barriers to Trade (TBT) and SPS measures; Mutual recognition for product regulation, conformity assessment and market surveillance (such mutual recognition agreements (MRAs) could exist outside the framework of a trade agreement);
4. A customs arrangement that ensures expedited customs clearance along the lines suggested above;
5. Regulatory coordination and coherence mechanisms to allow the UK and EU's regulatory systems not to impose trade barriers to each other's trade;

Special Economic Zones

Special Economic Zones (SEZs), a more advanced form of Free Trade Zones, are areas that are considered outside of national borders for customs purposes. Consequently, no tariffs are paid for goods that enter a SEZ until they enter the open market in the country. If goods are exported directly from an SEZ, no tariff is paid (though an import tariff is payable as usual).

SEZs and Free Trade Zones often have preferential tax and regulatory regimes, and can be supported by incentives such as infrastructure investment and corporation tax incentives. Estimates suggest that free ports in the UK could create 86,000 jobs.

Some trade impediments could be resolved by the UK Government establishing SEZs within NI. Equivalent SEZs could also be established in the ROI and, subject to EU agreement, could straddle the border itself. While such SEZs will not solve all of the problems of trade between NI and the ROI, they will play a role in ensuring a pro-competitive and tax efficient set of rules inside them; this could stimulate economic activity and private sector job creation, which is much needed in NI.

The UK Government should consider the use of SEZs in NI, and discuss their use in the ROI and at the border with their ROI and EU counterparts.

6. Disciplines such as one would find in other trade agreements on intellectual property protection, protection of investment, liberalisation of services trade, and a comprehensive dispute settlement mechanism; and
7. Bilateral agreements in other areas outside of trade such as aviation.

1.7.1 Getting to the end state: Interim measures in the event that there is no FTA between the UK and the EU in March 2019

The EU and UK have barely over a year between this time of writing and the October, 2018 deadline the EU has given itself to negotiate a Withdrawal Agreement in order to give them enough time to go through their own ratification processes. It is unlikely that the full FTA will be reached in this period. For this reason, Prime Minister Theresa May referred to the need for an implementation phase for an FTA, which would be required from the end of March 2019 in her Lancaster House speech. In reality, FTAs themselves frequently have transition periods, and implementation phases so what is likely to emerge after March 2019 should be regarded by the British and EU peoples as a process. The important thing is to make sure that the process as of March, 2019 gives sufficient business certainty early enough for that reassurance to mean something. Businesses need to plan and unless they can clearly see this process unfolding, they may be forced to activate contingency plans and to put investment decisions on hold, which will be bad for their own businesses, UK consumers and the UK economy.

This implementation phase will need to have certain interim measures which will be necessary to give comfort to businesses and farmers so that they fully understand the trajectory between the current state and the end state. If we are unable to give this level of certainty, investors will limit their investment plans, and businesses will be forced to put in place contingency plans and could relocate out of the UK. Once these measures are agreed, it will be important for the UK and EU to implement them, preferably as early as possible. Knowing that these measures will be in place will give reassurance to the global business community, as well as UK investors and UK small businesses seeking to trade in Europe and around the world. This will lay a foundation on which individual businesses can build. If we are able to build on this with an effective independent trade policy, including a range of trade agreements, and leadership in the WTO, this will give additional opportunities for these businesses and will lead to major benefits for the British and Irish people.

These measures which would be applied for a short period (less than two years) would be those that are allowed under WTO rules such as:

1. A zero for zero tariff deal, with accompanying rules of origin that would be based on the rules of origin that the EU currently applies in its trade agreements (allowing products to be deemed originating if they are substantially transformed in the UK or EU or other country that either has an FTA with, such that the ultimate product itself has a different tariff classification than to original)
2. In the event that we cannot agree such rules in time, a commitment by both sides to maintain the common external tariff to the rest of the world unless required to change it

because of a commitment in a trade agreement or through unilateral action. In such event, either side could pay the other the difference, so importers do not have to prove origin.

3. MRAs regarding conformity assessment and market surveillance which would be agreed on the day of Brexit because at that time both sides would have identical regulation (since both would be applying the European *acquis*), with an understanding that the agreement on MRAs would then be subject to WTO rules on TBT and SPS measures which, broadly, require WTO members to recognize each other's systems even where technical regulation differs if the end goal of regulation is the same.
4. In services, such as financial services, a regulatory coordination/recognition mechanism which could, on an MRA basis, continue for longer than the interim period or could be wrapped into the ultimate FTA.
5. Agreements in areas like aviation which are outside the ordinary scope of trade agreements, to ensure that there is minimal disruption to flights.
6. Some consideration of whether we should participate in certain European regulatory bodies on the understanding that we would pay for this, and would be, for that period, a rule-taker in those areas. Ultimately the different industries concerned could evaluate whether other arrangements would be preferable or whether they are prepared to pay to be a rule-taker in certain areas for a short period in order to minimise disruption to their industries. This allows those industries to make their own decisions having fully analysed what they are paying for and what regulatory environment they can expect.

1.7.2 Interim arrangements must not constrain Global Britain and limit British trade and domestic reform leadership

We should evaluate these measures through the lens of whether they take any opportunities off the table in terms of the UK's potential for trade leadership, as expressed through trade deals, participation in regional agreements or wider groupings (such as the Transpacific Partnership, NAFTA, etc), as well as in the WTO and global standard setting organizations. If they are deemed to take these opportunities off the table, they should be avoided if at all possible. They should also be considered from the perspective of how they might prevent the UK from leading at home through improving its domestic regulatory environment. The success of Global Britain depends not only on its ability to break down barriers abroad but critically on who we aspire to be as a nation. The UK must have a domestic regulatory environment that gives the country's businesses and people the best chance of being successful at home and abroad. Any arrangements the UK has with the EU in the interim or as a final end-state must be such that it can be successful as a sovereign nation in the world.

The UK should also seize the initiative and demonstrate leadership in the UK-EU relationship by seeking to jointly notify to the WTO membership the UK and EU's common intent to negotiate an FTA and the specific interim measures which both seek. This could give comfort to the business community globally and to other WTO members about what the future relationship will be. Such a notification could also form the basis of agreed early harvest measures between the UK and EU along the lines set out above.

What is the Schengen Information System and how does it differ from the Schengen Area?

The Schengen Information System (SIS) is an electronic database system which aims to preserve security in the absence of internal border checks, through creation of security co-operation between participating countries. Although the UK and the ROI are not members of the Schengen Area, they both participate in SIS within the context of law enforcement co-operation. Both countries have opted out of the common border control and visa provisions applicable to the Schengen Area. This means that EU citizens are subject to passport control on entry to the UK and the ROI (and vice versa for UK and Irish citizens travelling to the EU).

SIS permits competent authorities (for example, police) to consult and enter alerts on SIS regarding people and objects wanted under six specified categories. Such categories include persons wanted for arrest, missing persons, and objects wanted for seizure or use as evidence in criminal procedures. The alert system also provides information concerning the action required once the person or object is found. In this way, participants in SIS can communicate with each other on matters of security and crime prevention and co-operate to reach a resolution.

2. DELIVERING EFFECTIVE SECURITY

Delivering effective security at borders is a major global challenge. This challenge has been heightened in recent years by terrorism, and other non-traditional forms of conflict. The UK is in a leadership role in dealing with such global threats. Its key membership of security arrangements such as the FVEY (five eyes—with the US, Australia, New Zealand, and Canada), as well as some of the arrangements listed below mean that it must act like a security leader in developing security solutions for the Irish border. FVEY is based on the cornerstone UKUSA agreement on signals intelligence which is the foundation of modern security cooperation around the world. This knowledge is critical and should be deployed in solving the security dimensions of the Irish border.

2.1 Ensuring that secure arrangements apply at the border for people

Though neither the ROI nor UK are part of the Schengen area, both nations are participants in the Schengen Information System, which enables information-sharing between national law enforcement agencies. This should continue and supplement what the UK does in other security fora.

Although, it is open to the ROI to become a full member of the Schengen Area, this would significantly undermine the CTA. Should the ROI join the Schengen Area, strict border control would then need to be implemented for travel between the UK (including NI) and ROI, creating a hard immigration border between the two countries, as the ROI would no longer implement passport control on entry by EEA citizens.

In reality, the ROI and the UK obtain equal benefit from the existing bilateral co-operation and the existence of the CTA. The UK's participation in SIS and other security and justice programmes following the exit date would clearly assist in maintaining the CTA at an adequate level of security on both sides of the Irish border. This would also need to be supported by the UK and the ROI actively using SIS and (in the ROI's case, at least) exercising their rights to exclude individuals who pose a risk to security.¹³

In addition to the SIS, the UK should remain in OLAF, the European Anti-Fraud Office on an interim basis and pay for such participation.

The UK should remain a member of the SIS and OLAF (on a temporary basis)

¹³ Under Article 27 (1) of Directive 2004/38.



Currently, whilst the CTA facilitates the movement of people between the UK and the ROI, it imposes limits upon full border security. This has not always been the case, as the ROI has periodically empowered its immigration officials to monitor those entering and leaving its territory.

If the UK and EU do not agree a zero tariff deal then there is a real possibility that the border might be used as an easy way of avoiding the tariffs and smuggling products into the UK.

It will also be important to ensure that other security arrangements can be put in place to cover customs security as discussed below.

Agreeing a zero tariff deal between the UK and EU will eliminate a major incentive for cross-border smugglers between NI and the ROI.

There are a number of intergovernmental bodies in which the governments of NI, the UK and the ROI could collaborate to monitor the security status of the border which arose out of the 1998 Belfast Agreement (also known as the Good Friday Agreement).

Above: The ROI and the UK are both participants in the Schengen Information System, which enables information-sharing between national law enforcement agencies.

2.2 Ensuring continued reliance on the Belfast Agreement and utilising its implementation bodies

Far from threatening or destabilizing the Belfast Agreement, there are ways that some of the bodies established under those agreements can be used to help maintain a secure border between NI and ROI that facilitates trade. Some form of oversight over what is happening at the border will be necessary to give people confidence that smuggling and other illicit activities are kept to a minimum.

Six North-South implementation bodies were established on March 8, 1999 as a result of the Strand Two (north-south) part of the multi-party agreement, annexed to the British-Irish agreement. The bodies deal, respectively, with: inland waterways; food safety; trade and business development; special EU programmes; language; and aquaculture and marine matters.¹⁴

It will be beneficial for NI and ROI authorities to continue to work together using existing bodies as vehicles where relevant. Co-operation across the border in this way is essential to minimise disruption and maximise opportunities for the UK and the ROI following the exit date, as well as preserving the existing co-operation and interdependence between the ROI and NI in key sectoral areas.

The Special EU Programmes Body (SEUPB) currently exists to administer EU structural funds. These were spent in the ROI, and also in NI. This north-south body co-ordinated departments in Belfast and Dublin. When the UK withdraws from the EU, this body will be redundant (unless, as some—including the Irish government¹⁵—have called for, NI continues to participate in some EU programmes that entail continued funding). If the structural funds destined for NI will be provided by the UK government in the future, then the UK continuing to sit on a co-ordination body for EU funding with Irish government would be unnecessary and, for the Irish government, undesirable.

We believe that the SEUPB can then play a significant role in the future. The ROI will require the UK, under the Belfast Agreement, to agree another set of functions, whether connected with the EU or not. The ROI will have support within NI to do this. The SEUPB could become a body dealing with trade over the Irish border and oversee co-operation on border facilitation and enforcement. This would require another international agreement, involving the government of NI (after its restoration, subject to the ongoing negotiations between the Democratic Unionist Party and Sinn Fein). The North South Ministerial Council can continue to fulfil its role under the Belfast Agreement of “considering the EU dimension of relevant matters including implementation of EU policies and programmes” (the policies and programmes in this case being trade and customs facilitation).¹⁶ Its other functions of co-operation on “matters of mutual interest within the competence of the Administrations, North and South” should continue. The meetings required to “consider cross-sectoral matters (including in relation to the EU) should continue, and the reference to the EU will remain relevant due to the ongoing importance of EU trade policy and regulation”.

The SEUPB can be used to help monitor the border and make recommendations on implementation of risk assessment and other border management tools

¹⁴ This body is called the Foyle, Carlingford and Irish Lights Commission. London and Dublin have failed to agree regarding Irish lighthouses (which were never transferred by the UK to the ROI). The UK’s recent response to questions concerning Foyle and Carlingford is to refer to this body. But co-operation regarding aquaculture does not address the two aspects of the territorial dispute.

¹⁵ *Ireland and the Negotiations on the UK’s Withdrawal from the European Union: The Government’s Approach*, May 2017, page 23 (www.merrionstreet.ie/MerrionStreet/en/EU-UK/Key_Irish_Documents/Government_Position_Paper_on_Brexit.pdf).

¹⁶ Section 17 of Strand Two of the Belfast Agreement.

There are a range of other surveillance techniques which can be used to deliver security at the border. It is important to take this opportunity to develop the most advanced techniques possible. We outline some of these techniques in the attached appendix. As noted earlier, competitions can be used to incentivise the private sector to find solutions to the security issues, just as they have been in other areas (such as for space exploration—with the Ansari X-Prize for low orbital space flight). The power of the private sector should be harnessed to provide solutions to this particular problem.

3. DELIVERING ENERGY SECURITY

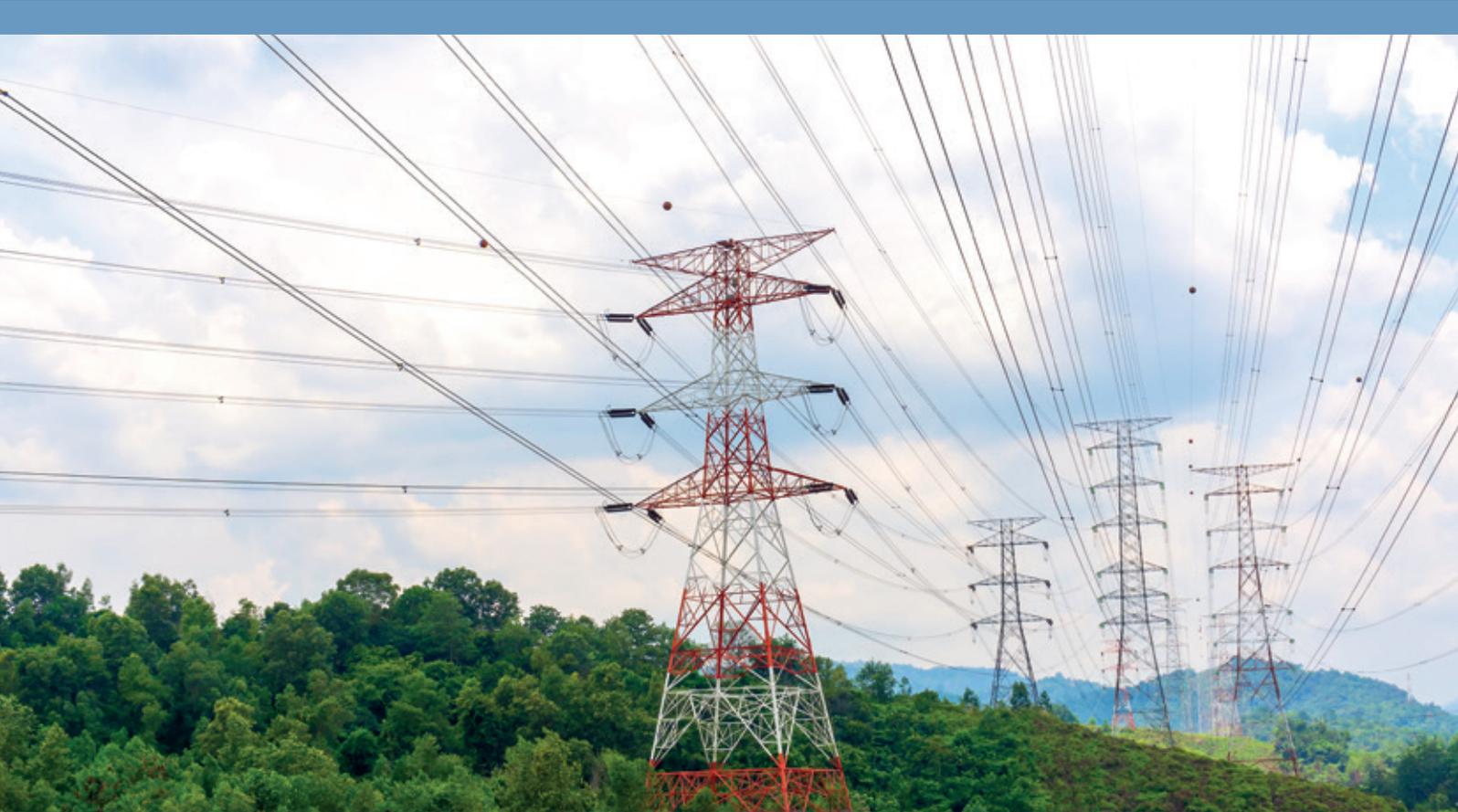
3.1 The importance of maintaining security of energy supply in NI; Enabling fuller devolution of powers to the Northern Ireland Assembly

When Brexit occurs, it is very important that the security of energy supply in the ROI and NI should be maintained. No-one wants Brexit to lead to instability in energy supply or an increase in energy costs for the Irish and Northern Irish people. Security of energy supply in the ROI and NI is currently underpinned by the Single Electricity Market (SEM), which, since 2007 has enabled free trade in power over the whole island. Maintaining a single electricity market in the island of Ireland allows cooperation across the border and enhances collaborative activities. The SEM is not a creation of European law, and so its legal basis will remain in place after Brexit. The challenge after March 2019 will be integration of the SEM with EU electricity markets through the Integrated Single Electricity Market (I-SEM). I-SEM redesigns the existing SEM to bring it into line with EU energy regulation. This is connected to the EU's Third Energy Package whose aim is a liberalised EU energy market. I-SEM is expected to be implemented in 2018 (during the Brexit negotiations, which would mean under the Repeal Bill, it would then form part of UK law at the point of Brexit).

The UK Government should work towards NI's continued integration in the all-island I-SEM, due to come into force in 2018.

The UK's electricity legislation post Brexit may remain closely aligned to the EU Third Package, partly because the latest model is based on UK law. Even if the UK and EU approaches diverge, the UK could devolve energy legislative powers to the NI Assembly to enable NI to diverge from the rest of the UK for this area and continue to be part of the all-island electricity market. This would not be a new idea. NI already has an exemption to the UK's carbon price floor set in 2013, which enabled the SEM to continue functioning properly. The issue of devolution of power to Scotland, Northern Ireland and Wales has been discussed in many different contexts. As we continue to examine how devolution can work in the Brexit context, this is one area where devolution could be achieved without damaging the integrity of the UK's single market.

The UK Government should consider devolving to the NI Assembly additional legislative powers relating to the energy market.



Above: The security of supply of electricity on both sides of the border must be preserved.

The security of supply of electricity on both sides of the border must be preserved. The supply of electricity to the market in the island of Ireland can be relatively easily preserved by ensuring that the private interconnection arrangements with the UK and other supplier countries are open and competitive to all market participants. In addition, ensuring that the various interconnectors are able to properly carry large volumes of electricity between the two networks will be important.

The UK Government must ensure that interconnection arrangements for energy support a competitive market, and that the necessary infrastructure is in place to transport the required volume of electricity between networks.

An additional North-South interconnector would allow a reduction of system costs by 1.5%, presenting consumers with potential annual savings in excess of €20m on their electricity bills.

Given that the interconnector arrangements are being discussed with a view to concluding the deal after the UK has left the EU, it will be important for NI to remain within the SEM (or I-SEM).

Generation capacity can also be improved by strengthening the existing interconnectors and by evaluating the feasibility of stalled projects such as the Iceland interconnectors into Scotland and even NI. The Icelink project (an Iceland interconnector into Scotland) was put on hold after the Brexit vote. However the concept of tapping into the Icelandic energy reserve would also have the advantage of bolstering ties with Iceland, for whom the UK is the biggest trading partner, and with whom the UK will have to negotiate fishing rights.

The Icelink energy interconnection project between Iceland and the UK should be re-evaluated with a view to taking advantage of energy surpluses in other markets to benefit NI.

4. THE WAY FORWARD

The recommendations in this paper demonstrate that the disruptions caused by the UK leaving the EU Customs Union and the Single Market can be minimised for the Irish border. But our recommendations are more than just about minimising these disruptions. The situation creates opportunities for the people of NI and the ROI. We have highlighted areas of enhanced cooperation such as in the development of SEZs, and by developing state-of-the-art customs mechanisms by using new technology such as block-chain to provide a solution to a global challenge—ensuring safe and efficient customs clearance. The Irish border is a manageable area in which such techniques could be refined. These can then be spread to many other jurisdictions around the world. Solving the energy security issues will also enable all parties to ensure that there are plentiful and cheaper supplies of energy which will make their businesses and people more competitive. Finally, the fact that many of the issues which need to be resolved for the Irish border must also be solved for the UK-EU relationship allows us to start that discussion with the EU as a matter of urgency. The people of the ROI, the UK and more widely of EU member states will not tolerate the loss of these opportunities because of a rigid, legalistic adherence to an artificial timetable. In cases of urgency, such timetables must give way to reality and a common desire to find solutions to the problems that face us. As the EU has noted, we will need creative solutions to these problems, and the heart of creativity is being flexible and adaptable.

The UK and EU have a shared goal—to maximise opportunities for all their peoples and to minimise disruptions. We need to action that goal immediately, and the Irish border issues are a good place to start.

APPENDIX 1: POTENTIAL SURVEILLANCE TECHNIQUES FOR USE AT THE BORDER

SURVEILLANCE

Persistent surveillance of the border region can be achieved in a number of ways, ranging from aerial-based solutions such as patrols by Unmanned Aerial Vehicle (UAV) assets through to the deployment of aerostats. These solutions, however, are subject to a number of limitations, not least weather and cost. Ground-based solutions also range significantly and can incorporate a series of sensors such as unattended ground sensors, cameras, and ground-wave radar. Another sensor option is a solution similar to that developed to provide ground-based wide-area persistent surveillance on large mining sites.

This solution blends components from both the aerial and traditional ground-based offerings to deliver the target detection and tracking capabilities associated with an aerial platform but with the cost and maintainability benefits of a ground-based solution. The system automatically detects movement and changes in electro-optical full-motion video imagery captured by platforms such as stationary vehicles and surveillance towers. The system processes the real-time video feed from a stationary, panoramic camera; as the camera sweeps the area of observation, the system automatically detects moving targets in the camera's field of view.

Designed to ignore environmental effects such as the waving of trees, moving cloud shadows, and changes in lighting effects, the solution detects and highlights targets that are effectively invisible to the human observer. In addition, a maritime variant is available, able to identify small craft on waterways and at sea. Having been designed and deployed commercially, it has the added benefit of being a commercial off-the-shelf solution; however, the core detection and tracking software is based on a technology broadly deployed in strategic UAV programs across NATO and other allies.

In terms of border crossing controls, this can be achieved through a range of automated and manual solutions. For regular border users, pre-clearance can be given for registered and security-checked individuals and associated vehicles, allowing them to use automated border crossing points deployed using a package of analytics including automated number-plate recognition (ANPR) and biometric solutions such as facial recognition (including through-window capabilities to identify vehicle occupants). This allows for prioritisation to be given to other irregular border users whereby similar analytics can be applied to stream border crossers and more thorough checks can be carried out both manually and via other technologies such as iris-imaging, 3D ultrasonic fingerprint, and under-vehicle scanning (motor vehicles and trains).

To improve convenience, particularly for regular freight carriers, each carrier could be allocated a unique user number, which would then (following first-time registration) be used to log on for pre-clearance. In this way, previous data entry can be stored and the application form pre-filled as far as possible, to reduce the level of input required by the carrier each time they make an application.

The Latest Techniques in Customs Management

The advances in blockchain technology allow a border to remain invisible while still meeting customs requirements. Goods passing through the border will have an existing unique blockchain identifier assigned to them. Their passage through the border can be securely monitored, in a similar way to the surveillance systems described above, and remotely verified to meet customs requirements. Verification, which can, for example, take place through the completion of a funds transfer, adds a permanent new block to the blockchain. Owing to the distributed ledger-based technology of blockchain, many layers of verification can be brought in simultaneously and the ongoing life cycle of the good can continue to be monitored if required.

COMMAND AND CONTROL

In order to consolidate all the data collected from the various components of the border solution and to disseminate these in a timely and usable fashion to the various stakeholders, a comprehensive command-and-control solution is critical. Well-proven products exist on the global market that are able to seamlessly merge multiple data sources, static and dynamic, to deliver user-specific interfaces representing and prioritising data based on customisable standard operating procedures in a range of formats from mapping to dashboard on a range of devices from video walls to hand-held, off-the-shelf units. In addition, many of these solutions integrate data communications (VoIP, video, text, etc.) to allow real-time situational awareness for border security forces.¹⁷

¹⁷ Nicholas Fisher and Stephen Talbot, *Technology Solutions for UK/EU Land Border Security Post-Brexit*, White Paper, UES Advisory, dated March 13, 2017.

APPENDIX 2: RELIANCE BY MEMBER STATES ON THE UK AS A TRADING PARTNER

Apart from the ROI, the UK accounts for significant shares of the trade of several other member states, both as an export market and as an import supplier, as shown in the two tables below.¹⁸ These countries will also be looking to prioritise their own interests in the ongoing Brexit negotiations and are countries with whom the ROI might look to form alliances within negotiations.¹⁹

Table 4: Share of exports to the UK, by EU member state, 2015 ²⁰

COUNTRY	VALUE (AS % OF TOTAL TRADE)
Ireland	14
Cyprus	10
Netherlands	9
Belgium	9
Spain	7
Germany	7
Sweden	7
France	7
Poland	7
Portugal	7

Table 5: Share of imports from the UK, by EU member state, 2015

COUNTRY	VALUE (AS % OF TOTAL TRADE)
Ireland	25
Cyprus	9
Malta	7
Netherlands	6
Sweden	5
Belgium	5
Spain	5
Denmark	5
France	4
Germany	4

¹⁸ This analysis uses 2015 data from UN Comtrade, accessed via the World Integrated Trade Solution database.

¹⁹ The Legatum Institute Special Trade Commission is carrying out detailed work to assess the impacts of tariffs and trade disruptions on other member states.

²⁰ Subject to Rotterdam and Antwerp effects which may push up Netherlands and Belgium shares by a few percentage points.

Alliances can be forged by those EU Member States that have the most significant trade relationships with the UK to support the ROI.

In order to benefit from the opportunities of leaving the EU, both in domestic policy and in the sphere of international trade, the UK as a whole needs to leave both the EU Customs Union and the Single Market.²¹ The objective of the UK government, which is shared by the EU, is to achieve this with as little disruption as possible, and to enter into a new, close, and ambitious trading relationship.

The trade that does cross the border is characterised by traders who may trade relatively small volumes, but do so repeatedly, such as agricultural producers, the dairy and milk processing industry and other traders. Consequently, the Governments of the UK and the ROI, as well as the EU, should focus on the appropriate mechanisms to minimise the disruption to this kind of cross-border economic activity.

The Governments of the UK and the ROI, as well as the EU, should focus on the appropriate mechanisms to minimise the disruption to this relatively low-volume but high frequency trading across the border.

²¹ These arguments are set out in greater detail in Shanker Singham and Victoria Hewson, *Brexit, Movement of Goods and the Supply Chain*, February 2017 (www.li.com/activities/publications/special-trade-commission-brexit-movement-of-goods-and-the-supply-chain) and Shanker Singham, *A Blueprint for UK Trade Policy*, April 2017 (www.li.com/activities/publications/a-blueprint-for-uk-trade-policy).

ABOUT THE LEGATUM INSTITUTE SPECIAL TRADE COMMISSION

The Legatum Institute Special Trade Commission (STC) was created in the wake of the British vote to leave the European Union. At this critical historical juncture, the STC aims to present a roadmap for the many trade negotiations which the UK will need to undertake now. It seeks to re-focus the public discussion on Brexit to a positive conversation on opportunities, rather than challenges, while presenting empirical evidence of the dangers of not following an expansive trade negotiating path.

The STC draws upon the talent of experienced former trade negotiators from the US, Canada, Mexico, Australia, New Zealand, and Singapore, among other nations.

In the coming few months, the STC will host a number of public briefings that offer advice to key stakeholders on EU negotiations.

THE COMMISSIONERS

Alden Abbott

Deputy Director, Edwin Meese III Center for Legal and Judicial Studies and John, Barbara, and Victoria Rumpel Senior Legal Fellow, Heritage Foundation, USA; former Director of Antitrust Policy, Federal Trade Commission; Legatum Fellow.

Grant Aldonas

Senior Advisor, Center for Strategic and International Studies (CSIS); former Under Secretary for International Trade (George W Bush administration).

Luis de la Calle

Founding Partner and Managing Director, De la Calle, Madrazo, & Mancera, Mexico; former Undersecretary of International Business Negotiations, Ministry of Economy in Mexico; former Minister of Trade Issues, Mexican Embassy, Washington, DC.

Alan Oxley

Managing Director, ITS Global; former Australian Ambassador to Singapore, the UN, and the WTO; co-founder of the Cairns Group; senior fellow, ECIPE.

Razeen Sally

Associate Professor, Lee Kuan Yew School of Public Policy, National University of Singapore; Chairman, Institute of Policy Studies, Sri Lanka; former Chair, World Economic Forum Global Agenda Council on Competitiveness; Director and co-founder of ECIPE.

Francisco Sanchez

Chairman, CNS Global Advisors; former Under Secretary for International Trade (Barack Obama administration).

Shanker Singham

Chairman of the Legatum Institute Special Trade Commission; Director of Economic Policy and Prosperity Studies, Legatum Institute; CEO of Competere; former Managing Director, Competitiveness and Enterprise Cities project, Babson Global.

John Weekes

Senior Business Adviser at the Canadian law firm Bennett Jones; former Canadian Chief Negotiator for NAFTA, Ambassador to the WTO and Senior Assistant Deputy Minister, Department of Foreign Affairs and International Trade.

All commissioners will serve the Commission in an individual capacity.

MISSION STATEMENT

The purpose of the Legatum Institute Special Trade Commission (STC) is to understand and guide the process that the UK and other governments are engaged in as a result of the Brexit referendum.

The Commission will provide the academic firepower to enable a successful process that includes:

1. The UK's relationship with Europe;
2. The relationship with the countries that more holistically embrace open trade, competition on the merits as an organising economic principle, and property rights protection;
3. The bilaterals with other key trading partners;
4. The relationship with the Commonwealth and developing countries; and
5. The underpinning WTO relationship.

The STC's combined expertise and experience, spread over two hundred years and hundreds of trade agreements puts it in a unique position to be a trusted and independent advisor to the series of post-Brexit processes that could and should lead to the creation of a global economic engine.

This realises the Legatum Institute's theory of change which is ultimately driven by the need to lift the global poor out of poverty and to create jobs, hope and opportunity for the world's people through the application of property rights protection and open trade systems that are characterised by competition on the merits as the organising economic principle.

The STC's role is to help shepherd governments, stakeholders and others towards increased global prosperity which is available if the inflection point in history that the Brexit vote represents is capitalised on.

ABOUT THE AUTHORS

Shanker Singham

Shanker Singham is Director of Economic Policy and Prosperity Studies at the Legatum Institute. He is also a trade and competition lawyer as well as an author and adviser to governments and companies. He holds an M.A. in chemistry from Balliol College, Oxford University and postgraduate legal degrees in both the UK and US. He has lectured, written and spoken extensively, including more than one hundred articles and book chapters and the leading textbook on trade and competition policy. He is a frequent contributor on trade issues to major news outlets. Singham has begun work on identifying and quantifying anti-competitive market distortions and how to create the preconditions necessary for wealth creation, competitiveness, and productivity. He is currently the CEO and Chair of the Competere Group, the Enterprise City development company incubated at Babson College. He is based in London.

Austen Morgan

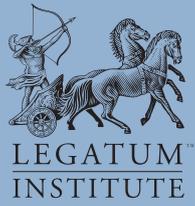
Dr Austen Morgan is a barrister in London and Belfast and was one of the UUP's lead negotiators for the Belfast Agreement. He practises from: 33 Bedford Row chambers. He is the author of *The Belfast Agreement: a practical legal analysis* (London 2000).

Victoria Hewson

Victoria Hewson is a Senior Associate at CMS Cameron McKenna LLP, currently seconded to act as counsel to the Legatum Institute Special Trade Commission. In practice, she advises banks and financial institutions on technology, outsourcing and fintech. She has an LLB from University College London. Before becoming a lawyer, she worked for Procter & Gamble in Frankfurt and Newcastle upon Tyne on finance and employee services projects.

Alice Brooks

Alice Brooks is a newly-qualified lawyer at CMS Cameron McKenna LLP, currently seconded to act as counsel to the Legatum Institute Special Trade Commission. In practice, she has experience in the real estate, technology, restructuring and energy sectors. Alice graduated from University of Birmingham with a bachelor of arts in History with American and Canadian Studies and went on to complete a graduate diploma in law at the University of Law in London.



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