Helena Vieira   March 12th, 2018

The Irish border: no technology is smart enough

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The past two weeks of the Brexit cycle has once again seen Ireland at the centre of the Brexit debate following key publications and speeches from both the UK and the EU.

On Wednesday 28 February, the EU stirred debate with the publication of its draft Withdrawal Agreement. This 120-page text aims to provide a legal underpinning to

what was agreed by both parties in last December's Joint Report.

It is a draft text that will be discussed by the EU Council before it is sent formally to the UK for negotiation. The Agreement features six sections covering various aspects to do with the departure of the UK from the EU and the transition period. However, it is the Agreement's Protocol on Ireland / Northern Ireland that has generated most debate.

This protocol addresses the commitments made by both the UK and the EU to ensure there will be no hard border on the island of Ireland post-Brexit. It sets out in legal terms how "Option C" would work should agreement fail to be reached on Options A (border avoided through comprehensive future trade model) and B (UK proposed technical solutions to avoid a border).

Brexiteers are up in arms at the prospect of Northern Ireland retaining full alignment with the rules of the EU's Internal Market and the Customs Union which are integral to North-South cooperation, the all-island economy and the protection of the Good Friday / Belfast Agreement.

However, despite the Prime Minister's claims that 'No UK prime minister could ever agree to it' this was exactly what she agreed to when she signed off on Paragraph 49 of the Joint Report last December in order to reach the sufficient progress threshold that was needed to open the way to discussions on the future trade agreement. On that occasion, the UK also signed off on Paragraph 50, which stated that should Option C come into play, the UK would ensure that no barriers would emerge between Britain and Northern Ireland.

While the EU's draft text does not address Paragraph 50 as the EU sees this as an internal UK commitment, the UK Government has also failed to address this commitment, instead criticising the Commission for ensuring that the UK would be held to the commitments made in December **should no alternative solution be found** – and this is the critical point.

Despite the fallout from the Protocol, its publication has led to increased focus on how to solve the border issue. The British Irish Chamber of Commerce agrees with both the UK and Irish Governments that the solution for the island of Ireland should be found through a comprehensive future framework for trade. Our How to Make Brexit Work for All: Big Principles for a Strong Brexit Partnership paper, published last November, puts forward a trade solution that would address the border conundrum.

The UK Government has yet to put forward a credible solution for the border issue. In the Prime Minister's 2 March speech on the UK's future Economic Partnership with the European Union, there was little new on how the UK Government expects to meet its commitments on the border with the Prime Minister referencing the Government's previous papers on Customs and Ireland as containing the solution. These proposals have already been dismissed by the EU as unrealistic.

The EU Council's Draft Guidelines for negotiating the future trade relationship between the UK and the EU, published on 7 March, also does little to address the border issue and would seem to plan for Option C coming into play unless the UK puts forward more concrete proposals on this issue.

And now on to the contentious issue of technical solutions, the "Option B" for addressing the border issue, which has become topical once again with the recent publication of the Smart Border 2.0 report.

Firstly, it should be clarified that this is not an "EU report" as some have alluded to but rather a report that was presented by its author to the European Parliament's Committee on Constitutional Affairs (AFCO) for consideration.

Secondly, what is proposed in this report involves the erection of physical infrastructure such as cameras and gates – this is in direct contradiction to UK Government Policy. It also recommends manned posts at the busiest border crossings and fails to address how local traffic will be dealt with.

Furthermore, the technology proposed in this report is untested. This creates concern about the reality of such a system operating to the standards that will be required by the EU. The EU Committee of the House of Lords recently concluded in its examination of the issue that there is "**little prospect that the technology required entirely to resolve the Irish border issue could become operational under the timetable for Brexit currently envisaged**".

Finally, the issue of regulatory and standards checks including animal welfare and sanitary and phytosanitary checks is not addressed. This is a key element of cross border trade with "food and live animals" accounting for a third of Northern Irish exports to the Republic in 2016. These checks need to take place at borders and will be mandatory if the North diverges on regulations. The failure to address this, shows why we need to look for alternative wide-ranging solutions such as a new customs arrangement between the UK and the EU to address this issue.

While the dial has moved on the realities of Brexit in some areas (UK acknowledgment of less access to the EU's internal market and loss of Financial Passporting), the fallacy that the UK can trade independently with non-EU nations while having a frictionless border on the island of Ireland seems to remain within the UK Government.

With Brexit moving ever closer, it is incumbent on all of us who value facts over ideologies to talk openly and honestly about what deals are on offer for the UK as an independent trading nation. This is the last stumbling block to achieving what truly could be a close and ambitious trading relationship that would indeed become the "Option A" for the Ireland / Northern Ireland conundrum and with much greater benefits for all beyond this. A comprehensive new Customs Partnership is the best solution and the Chamber is working hard to bring this about.

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Notes:

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