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How Not to Fix the Irish Border

March 2018

Dr Katy Hayward

I have taken a long pause for breath before writing this response to Shanker Singham's piece ['How to fix the Irish border problem'](#). After all, what we need in consideration of the Irish border issue – at any point, but especially now – is calm, rational, evidence-based discussion, not further contention. There is a risk that (as has been wisely said about scholarly writing on Northern Ireland's Troubles) we could start a whole new meta-conflict here: a conflict about what the conflict is about.

But this article by Singham is not to be easily disregarded. Many of his arguments here have been posed already by those in high places and with serious power. His views are influential and his arguments are formed to equip people who are responsible for helping navigate the UK's course out of the EU into the blue beyond.

His article is quite a long one; my response is almost twice as long. This is unavoidable given that any attempt to test some of his strongest claims against evidence requires more elaboration than that provided by Singham.

There is a border but there is no problem

Perhaps the most interesting point to make about this article that claims to fix the Irish border problem is that it is premised on downplaying the very existence of that problem in the first place.

'The problem' for Singham, is not the existence of a customs border across Ireland but that 'potential solutions' are 'mischaracterised by people who seem determined to deny that they could work'. The problem, therefore, lies in the 'inaccurate assumptions, emotional responses and misreporting' on the issue; *not* in the existence of a harder border itself.



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For a start, such a claim can only be met with some bemusement by anyone with a passing acquaintance with the history of Northern Ireland. The Irish border, some might claim, has always been a problem, and a particularly knotty one at that.

But to more substantive matters: notably, Singham does not deny that there will be a customs border along the Irish border and down the Irish sea (between Ireland and Britain) 'which could cause difficulties and delays for businesses and individuals on both sides'.

Singham's first point by way of assurance is that there is already a border between Northern Ireland and the Republic of Ireland. This is actually, surprisingly enough, not news to those of us who have lived on both sides of the border and who have attempted to move bank accounts or re-register cars or transfer our children between school systems... or those of us who as a matter of routine have two wallets, one for each currency.

Nor – more to the point – is it news to either Irish nationalists or Ulster unionists.

The integrity of the territory?

To the next point, Singham namechecks the Belfast Agreement of 1998. He claims that to have 'no border at all would be at odds with' this Agreement, which 'is concerned with respecting the integrity of the territory of Northern Ireland as part of the United Kingdom'. In a very basic way, he is right; if there was indeed no border at all there would have been no need for the Agreement.

But I disagree that the 'concern' of the Agreement is as he puts it here; instead, it would possibly be fairer to say that the 'effect' of the Agreement has been to stabilise the position of Northern Ireland in the UK. NI Life and Times survey data shows that the post-Agreement arrangements slowly enabled a majority of Catholics to see devolved status within the UK as their preferred status for Northern Ireland. (Contrast the results of the [1998 survey](#) with those of [2016](#)).

But this acceptance of UK government is highly conditional and it is contextual – based on the proper functioning of a power-sharing Executive within multilevel arrangements for governance of Northern Ireland, including north/south and British/Irish. This is one reason why proper recognition of the 'Irish dimension' is crucial to upholding the 1998 Agreement and the relative stability it has brought.



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In fact, the [1998 Agreement](#) made the explicit point that:

it is for the people of the island of Ireland *alone, by agreement between the two parts* respectively and *without external impediment*, to exercise their right of self-determination. [emphasis added]

It affirmed that at the time the majority will in Northern Ireland was to remain in the United Kingdom. It also allowed for such time in the future that, should the majority view change, Northern Ireland's constitutional status would change.

This is both a genius and a deeply problematic feature of the Agreement: it managed the border question *without* resolving it, by 'agreeing to disagree'. The political aspirations of unionism and nationalism are, the Agreement recognises, 'equally legitimate' although entirely at odds on the 'border question'. Any recognition of the 'rights and interest' of communities in Northern Ireland can only be properly addressed in this nuanced context.

There will be a harder border

Then, apropos of very little, Singham adds that:

For there to be no change at all at the Irish border would require the entire UK to be in the Customs Union and Single Market, which would eliminate any possibility of an independent trade policy.

This is perhaps where the rub lies. For there to be 'no change at all' in the Irish border is essentially what the First Minister and deputy First Minister asked of the Prime Minister in their [joint letter](#) of August 2016.

Indeed, it is what the people of Northern Ireland and Ireland have been consistently led to believe by Leave campaigners during the referendum and by senior British politicians ever since. Singham, quite rightly, notes that such a scenario – minimal disruption to the Irish border – would require 'the entire UK to be in the Customs Union and Single Market'.

And this scenario – requested by unionist and nationalist politicians alike – is dismissed out of hand because it 'would eliminate any possibility of an independent trade policy'. I am sure Switzerland or Norway would be surprised to hear that they don't have their own independent trade policies. Indeed, haven't we all been under the misguided belief for so very long that even as an EU member-state the UK had its own trade policy?



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Nor does customs union membership prohibit 'independent' trade policy. Deals can be done with those countries and those sectors not covered by the customs union. It would be a matter for negotiation.

And, if in a customs union with the EU, such UK negotiations would happen from the point of much greater clarity and certainty about the Irish border – and sure in the knowledge that trade with a proximate and powerful trading entity would be secure and, moreover, reasonably frictionless.

Border controls

Moving along, Singham helpfully lists the typical controls needed at an international border:

Such controls are normally needed at international borders to manage flows of people, for security, and to conduct trade-related functions. The trade functions are payment of import duties, including rules of origin compliance, confirmation that goods meet the standards of the market (manufacturing standards or animal and plant health requirements, known as sanitary and phytosanitary "SPS" measures), payment of VAT and excise duties, anti-smuggling and anti-counterfeiting operations, and any other international treaty functions (for example, the policing of wildlife trade rules).

He claims that some of these are already in place at the Irish border, which is not true. Although anti-smuggling cooperation happens between the relevant agencies on both sides of the border, there are no controls at the border at the moment. All other controls (SPS, import duties, VAT payment) happen away from the Irish border at sea or air entry points. Indeed, what makes these controls so invisible and frictionless at the moment is the common EU membership of Ireland and the UK. The use of the VIES system for making VAT payments easy across borders, for example.

Singham then dismisses speculation about the need for immigration controls at the Irish border. I agree with him that these will be unlikely, but I disagree that this is because of the Common Travel Area. The use of 'point of contact' controls will be the most favoured means of monitoring access of EU citizens to residency, study and work in the UK. These controls will not be 'visible' but they will have real, material impact on people's lives – just as with the other forms of control that Singham proposes for goods, to which we now turn.

A customs border in practice

Addressing 'the question of what a customs border actually means in practice', Singham states that:

although customs checks are part of the requirements at the EU external border now, in practice most of the necessary formalities are conducted electronically, with checks taking place pre-arrival, followed up in a small minority of cases at warehouses, or even in the market and payments made on account.

So we are quite clear that customs checks are required at the EU's external borders. It is absolutely true that most of the formalities are conducted electronically, and that a small minority of checks are needed, some of which are performed in warehouses. But for typical customs practice these warehouses are often likely to include purpose-built trade facilitation centres. These may be away from the border, but not so far away as to make the journey between them and the border too vulnerable to sneaky games of consignment swopsies.

He is not so right, however, on the notion that customs checks happily take place 'in the market'. For a faulty, dangerous or mis-declared or undeclared product to get on the market puts the whole system at risk. Unless it comes as part of a pre-planned customs sting, such an 'on market' check is an admittance of a leaky border, not a sign nor indeed a tool of a secure and effective customs agency.

At the moment HMRC physically checks only 4 per cent of consignments arriving in the EU at the UK external border; the Irish authorities only check 1 per cent. Consequently, even if a border operation along the lines of other third country frontiers were reintroduced, one could expect to see at least 95 per cent of goods pass the border without checks, albeit with physical infrastructure in place for those that are stopped.

We have recognition here that current customs practice entails having physical infrastructure in place for border checks. Singham rightly claims it is just a matter of a tiny percentage of consignments that are physically checked in an entry point (although he should also include checks on board ships in transit as well as those in port).

But to extrapolate a figure from the current level with the UK as an EU (and Customs Union member) to one in which the UK is outside the EU and Customs Union is a fundamental error of calculation. Goods from EU countries will no longer be in free circulation in the UK and will be subject to checks. That greatly increases the amount of customs declarations having to be processed and scrutinised. Moreover, the type of



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quality and efficiency of the customs declaration process that Singham proposes here will diminish rather than enhance the capacity for effective risk management.

And he also appears to have forgotten that customs borders work both ways: the EU will also be treating UK imports as [those from a third country](#).

SPS and BIPs

He then states:

The only goods that are required to go through specific entry points are animals and animal products, which must pass through ports/crossings with border inspection posts (BIPs) where veterinary checks can be done by accredited handlers and vets.

There are problems with this assertion. Specific entry points are required not just for animal products (through Border Inspection Posts [BIPs]) but for other goods subject to customs requirements. That is why there is such a thing as a 'red' and 'green' and 'blue' channel in airports. That is why some sea ports are allowed to process international trade (Le Havre, for example) and others are not (such as Cherbourg). To manage a customs land border you typically have 'approved' roads and 'unapproved' roads for goods subject to customs formalities – such things as are well-remembered by the generations of people who used to traverse the Irish border for trade until the 1990s.

Singham then goes on to labour the point about internal EU borders already having some friction at the moment for meat and animal products due to the 'sensitivity of health and safety concerns', being only relieved by mutual recognition of accreditation and inspection regimes. This is an odd argument to make for two reasons. First, this relates to an area of harmonisation within the EU (due to those health and safety concerns) – mutual recognition doesn't come into it. Secondly, there is no friction at the Irish border at the moment in this regard – the Border Inspection Posts on the island of Ireland are instead at sea and air entry points.

Ironically, there is a severe risk that such friction would be *introduced* at the Irish border unless there is a particular exception made for Northern Ireland in the area of sanitary-phytosanitary (SPS) standards (thus requiring harmonisation of NI laws and regimes with the EU's). Without flexibility from both sides, the Irish border would become a seriously hard one for the movement of products in the agri-food sector, which is one of the most closely integrated and economically significant in the Irish border region.



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Singham asserts that the SPS regime in the UK could continue much as it is at the moment, averting the need for further pesky checks or barriers. But, being so keen on that 'independent' trade policy, wants to allow for the scenario in which the UK 'considers changes to its SPS regime in this area'. He quite blithely says this would be balanced on the matter of 'costs' to consumers (rather than on their health and safety). He then makes the point that the government of Northern Ireland could have the devolved choice about whether then to go with the SPS regime of the UK or EU. He neglects the point (as noted above) that 'border checks for meat and animals' *already exist between Northern Ireland and Great Britain.*

Wilful misrepresentation

Singham then seeks to make what he claims is the most significant point and one in which he corrects 'wilful misrepresentation' of the Irish border issue. He does so by stressing that trade across the Irish border is not all that important and uses a few figures (without proper attribution – 'Northern Ireland government figures') to 'prove' this. The figures are completely at odds with all those I have seen so far (including from the NI Statistical Research Agency) and they give the impression that cross-border trade is of negligible importance for the NI economy. That is the point, of course.

Before getting into the detail of those figures, how about we frame this differently? That is, from a starting point in which the only place that could possibly have the 'best of both worlds' post-Brexit is Northern Ireland. The EU is willing to allow it to have bespoke arrangements that would mean it would be attractive to FDI seeking participation in the EU Single Market, as well as benefiting from being part of 'Global Britain'. If the UK government were to allow for a distinct, ambitious outcome for NI, such a positive scenario could be on the cards.

Instead, framing the future of the Irish border as being a zero-sum calculation for Northern Ireland in terms of choosing between the EU or Great Britain is most likely to see NI fall between Ireland and Britain, with predictably bad economic consequences. The shame of the destructive implications of this would only be outweighed by the fact that they are – still – utterly avoidable.

To critique Singham's selective use of statistics here with a bit more detail: He says these figures are about 'turnover'. The closest figures I have seen for this are those on value of sales in NI. This gives a very different impression to studies on, for example,



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the number of businesses involved or the combined value of integrated supply chains or the value of services. One thing we notice in these [actual figures from NISRA](#) is that NI internal sales are a huge proportion of all sales (66%), with 20% going to GB. The values of NI sales in GB are so large because they are dominated by the largest businesses.

Northern Ireland is not a strong, globalised economy by any means. Only 14% of sales from NI are officially exports; of these, sales to the EU outstrips sales to the rest of the world at a ratio of 3:2. Within this, NI sells more to the Republic of Ireland than it does to the rest of the EU combined. Ireland is – by a considerable margin - NI's largest trading partner outside of the UK.

That said, it is slightly misleading to separate ROI figures from the rest of the EU in some sense because that cannot happen in real terms, i.e. sales to ROI cannot be treated separately from the EU. If we have barriers to trade with the EU, we have barriers to trade with the ROI, i.e. new barriers to trade on 60% of all exports from NI.

The significance of cross-border trade is far more than its current volume. Sales to Ireland are typically the first step for export for most NI-based firms; putting up any barriers to such trade now would have knock-on effects on the likelihood and capacity of NI businesses to export further afield in the future.

It is foolhardy to downplay the importance of cross-border trade for Northern Ireland's economy, not least because it is so disproportionately important for local NI-owned businesses. The cross-border market is worth [£5.15 billion to the all-island economy](#); NI is a net beneficiary of this arrangement, benefitting from £3.4bn of sales in goods and services into Ireland. In fact, Ireland represents 14% of external sales of goods and 39% of external sales of services from Northern Ireland outside the UK. SMEs make up 81% of the trade value of sales to Ireland. Taking yearly averages, over the past 5 years, [19.5% of NI SMEs](#) export south across the border.

And this is a highly integrated border economy. The [InterTradeIreland Cross Border Supply Chain Linkages](#) report found that a very significant share of cross-border trade is accounted for by firms that trade simultaneously in both directions. The data shows a majority of cross-border trade occurs in intermediate inputs (i.e. components of final products) and highlights the considerable level of interconnectedness of cross-border supply chain integration.



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So, why should the quest for 'Global Britain' bring with it new barriers to such a large proportion of Northern Ireland's already-undersized export market? I reiterate the point: Brexit does not have to mean a choice between barriers with GB or with the EU. All-UK customs union arrangements with the EU would avoid the need for a customs barrier either on the Irish border or in the Irish sea. Given the very real costs to NI businesses and individuals to arise if the Irish border became a customs border with the EU, the rationale and evidence for this decision would surely need to be spelled-out at some point.

Singham then notes the low value of sales in NI for companies in the south (compared to GB) and claims that, 'For both economies intra-Irish trade is marginal, even after 40 years of EU membership'. This is an incredibly distorting argument to make. Northern Ireland has [3% of the UK's population](#) and is [worth but 2% of the UK's economy](#). If it forms a market for Irish goods that is 10% of its sales to GB, this shows quite how disproportionately significant Ireland is.

But, I reiterate, the critical point is not about the value of cross-border trade but about the fact that it need not be sacrificed or put at risk by Brexit – if the flexibility of the EU in relation to Northern Ireland was to be matched by flexibility from the UK's side too.

A border spectrum

Singham concludes this section with a statement I wholly concur with:

There is a spectrum. At one end is the current low visibility border (but a border nonetheless), and at the other is a very hard border such as between neighbouring countries that have no trade agreements and low trust. All parties must ensure that the solutions proposed move from the current low visibility border further along the spectrum as little as possible.

He supplements this, however, with a non-sequitur: 'There is no inherent reason why physical controls at the border are needed to manage this new situation'. And he claims that this is 'pointed out' in the evidence, 'among others' (none of whom are named, but one presumes he refers here to his own evidence) of Jon Thompson as head of HMRC given to the committee on Exiting the EU.

Notably, the evidence of Jon Thompson has been used very selectively here – indeed, only the mere existence of such 'evidence' is claimed, no details are provided.

Thompson gave [evidence to the Public Accounts Committee in October 2017](#) that the UK's exit from the EU will bring forward the four major risks already threatening the



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UK's new customs IT system (CDS). These risks include the nature of technology itself, the proper functioning of which can never be guaranteed; this risk grows without further funding being provided and inadequate time for proper and thorough testing of the technology.

He also claimed that 5000 new staff would have to be recruited to help manage the new customs and tax arrangements between the UK and EU after Brexit. This means, [Thomson told the Committee on Exiting the EU in November 2017](#), an annual bill of an additional £200m to help manage the post-Brexit regime. He noted that the number of customs declarations to be processed by the HMRC after Brexit would be expected to increase almost fivefold.

At this hearing, Thompson said he was confident that the system would be introduced by March 2019 (perhaps this is the remark that Singham is claiming as supporting evidence for his argument?) but admitted that 'technology projects somethings go wrong for things that you don't foresee'. The evidence of Mr Thompson does not, then, appear to offer the type of reassurances that Singham claims – indeed, it only appears to give further cause for concern.

The Proposal

Moving onto Singham's proposal. His first is for a zero-tariff Free Trade Agreement between the UK and EU. This makes perfect sense as a negotiating objective for the UK. It does not, however, avoid the problems that arise from being outside the single market and customs union.

Customs, as Singham himself noted at the start of his piece, are not merely about the collection of duties. When managing a customs border, you still need to know what is coming across it, regardless of whether duties are owed.

So we then come to the question of 'how to manage the formalities associated with trading from outside of the customs union and single market'. Singham's answer, however, is a non-starter. He claims that 'a bilateral border arrangement' can be agreed with or without a FTA under an exemption for frontier traffic under GATT. He claims that this 'bilateral UK-EU highly facilitated solution' can apply to other UK-EU borders too. Significantly, he denies that this would manage to 'eliminate frictions entirely'.



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He also acknowledges that 'there will be new administrative processes for businesses that currently do not trade outside the EU, and associated costs'. A study prepared for Manufacturing NI and [presented at the IET conference in March 2018](#) showed that the cost of administrative processes associated with exporting a good from NI into the Republic of Ireland after Brexit would be £478 per consignment. When a company makes hundreds or thousands of such declarations per year – and each would be significant, noting the quantity, weight, value, insurance etc. of each consignment – then this is a cost that can be ill-afforded.

Technology

Singham claims that avoiding the need for physical infrastructure 'respect[s] the commitments made in the Phase I Joint Report'. This is an incredibly narrow interpretation of those commitments, which included the [UK recalling 'its commitment to the avoidance of a hard border, including any physical infrastructure or related checks and controls'](#), and, more importantly, to facilitate the continued operation of the 1998 Agreement.

Here Singham proposes to meet the problem with a nicely honed bit of jargon:

'This can be done by bringing best practice and available technology solutions to bear in an environment of trust and regulatory compatibility.'

Where is the best practice that sees a customs border implemented effectively with no physical infrastructure or checks? The [NI Affairs committee](#) (not overwhelmingly loaded with 'Remainers') reported that it was unable to locate any example of such a border anywhere in the world.

So where are the technology solutions that Singham claims are 'available'? The HMRC's incoming CDS system – even if it to be in place in time for March 2019 and operate free of hitches – is not intended to operate the customs border without the other tools of customs enforcement, such as infrastructure, warehouses, inspections.

Perhaps unsurprisingly, it is at this point that Singham calls for an 'environment of trust' between the UK and EU to make this possible. But such an environment can only be built by frank and open engagement with the serious issues embodied in the Irish border. Trust is not built by, for example, diminishing the significance of the carefully-negotiated commitments made in a joint statement, nor by brushing aside the facts, nor by ignoring the opportunities for a positive, agreed solution in favour of a brutal outcome in which there appear to be no winners.



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A standard third country approach?

Singham notes the benefits of a 'bilateral border process' and offers the Norway/Sweden border as an example. But here he mentions only Karlsson's 'Smart Border' report here rather than the fact that Norway is in the EEA, Schengen zone, an associate member of the EU's Customs Policy Group and in a Safety and Security Agreement with the EU.

In the absence of such an agreement (which one presumes will be the case given the UK's expressed intention to leave the Single Market), Singham notes that Ireland will be required by the EU 'to deploy a standard third country approach to its trade with the UK'. Here he adds a note that this approach would include Northern Ireland. But (and forgive the repetition), the EU has stated that it is willing to find 'flexible and imaginative solutions' for Northern Ireland – this could entail something other than a 'standard third country approach' to this region. Why is this so completely disregarded in Singham's effort to 'fix' this problem?

That aside, Singham assumes that there is no flexibility in terms of the big picture arrangements and instead focuses on what might be done to mitigate the effects of NI/UK being treated as a third country. He claims there are 'many options' here. For a start, he says, the UK could assume that goods coming in from the EU are safe and thus eliminating regulatory compliance checks. That's fine at one level, if a customs border was only for dealing with one-way traffic. But customs enforcement relates to both imports *and* exports. Secondly, outside a customs union and single market, the UK would still have to apply Rules of Origin checks, to know which (or what portion of) goods originate in the EU.

Pesky details aside, Singham proposes the implementation of 'a cooperative bilateral solution'. It is at this point that his claims closely mirror those made in the [UK's Position Paper on Northern Ireland/Ireland](#) from August 2017. By definition, he is here talking about specific solutions for Northern Ireland – certainly treating Northern Ireland differently in key respects to the UK as a whole. Again it makes me wonder why he is focusing on specific solutions that focus on the tools rather than the arrangements here, i.e. the software rather than the hardware of this matter.



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Two categories of trader

He suggests a separate protocol for Northern Ireland/Ireland. That is as far as the commonality with the EU Commission's approach ends. Singham suggests that this could protocol could provide for 'two categories of trader' *on the island of Ireland*. Immediately, then, we are talking about a Protocol that would differentiate between traders in the Republic of Ireland and the rest of the EU. And immediately it seems as though he is denying the essential point he acknowledged just a couple of paragraphs before, i.e. that NI/UK will be a third country after Brexit and Ireland will be obliged to approach it as such. Why would any serious solution entail Irish businesses effectively being denominated as outside the Single Market and Customs Union merely as a result of their wish to continue to trade with their near neighbours or to continue to participate in the integrated supply chains that cross the border?

Back to the proposal: Singham posits a very broad interpretation of large or small traders here (covering value of consignments, number of employees or turnover). He suggests here that if traders are 'entirely confined to the border zone' (not defined), then they can automatically be defined as 'small'.

All companies and individuals wishing to trade across the border would need to notify the authorities and identify in one of the two categories. Here Singham then turns to unsubstantiated and unreferenced figures to support his argument. Again I have not heard these figures before so rather than repeat them I will outline the principle, which is based in fact: most businesses trading across the Irish border are small.

Now we come to the nub of Singham's solution: to see these small businesses 'largely removed from the border processes'. He later explains that this means they won't be required to make consignment declarations 'but authorities will monitor and enforce in order to ensure that thresholds are not breached'. How this monitoring and enforcement happens – especially given that the companies and individuals do not have to submit data about what and when they are moving across the border – is not spelled out.

He then turns to the larger businesses and the need to support them in the changed environment.

These traders would have to meet capability and security requirements, which would be supervised by HMRC or the IRC [Irish Revenue Commissioners] under arrangements similar to the existing Authorised Economic Operators (AEO) scheme. In exporting to the other side of the land border, they would



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complete all necessary paperwork in their home jurisdiction, submit it to authorities on both sides through a joint platform certifying their goods were safe to be released, rules of origin requirements had been met (or if not, the amount of duty that would be due), and so on, and stating the destination of the goods (for example, the importer's premises). The consignment would then be sealed to cross the border. The initial declaration would be sufficient to release goods onto the market with formal completion of the process. Any necessary payments of VAT and import or excise duties would be made afterwards.

Some brief remarks on this proposal. First, this does not sound all that much like a 'soft' border. In fact, it is pretty much a typical process of crossing a customs border. All this 'necessary paperwork', including submission of declarations to authorities on both sides, adds time and costs. Presumably the quasi-AEO status will mean that they don't have to wait for clearance to be given by both sides to cross the border. Presumably it also means that the businesses will have their own stash of tags for sealing containers for transit as 'cleared' goods. He doesn't address the fact that as a third country, payment of VAT will have to occur at point of import rather than afterwards at the destination, but that is a minor point amid all this.

More broadly, it is worth noting there are remarkably few businesses in Northern Ireland with AEO status at the moment – partly a reflection of the small size of RoW exporting from NI and partly because of the incredible bureaucracy and costs entailed in gaining such a status at the moment. If this was to be rolled out more widely (and to ROI companies too), it would mean an enormous change in the business landscape here. It would be like putting on a full diving suit with oxygen tank and flippers in order to walk through a puddle that one has crossed every day for years without so much as a pair of wellies.

Singham claims that this will be different to typical processes of moving goods into the EU's customs union because 'all imports from the other side' automatically are either from small traders (exempt) or large traders (facilitated by that quasi-AEO status, which he takes as equivalent to exemption for all intents and purposes.

Such a blanket exemption for small traders or those in the border zone is a wide open door for smuggling. There are four rather large and startlingly obvious downsides to this: smuggling is directly connected to organised crime (and, on the island of Ireland, paramilitary activity); smuggling pulls the rug from under the feet of legitimate



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businesses; it reduces revenue-collection for the state, and it threatens the safety and security of citizens.

At this point there is some confusion here about which side of the border Singham is talking about. He makes no distinction between what should be in place on either side, effectively ignoring the fact that the UK and the EU will be operating two different customs regimes.

Self-assessed and aggregated declarations

Singham claims that full declarations and payments for each imported consignment need only be made on an aggregated basis, e.g. monthly. This would surely serve to impede the effectiveness of any risk assessment system that (as Singham claims) depends on the monitoring of the movement of goods by authorities.

It is true that there is a self-assessment process already operative under the Union Customs Code but this works because of the rigorous (bureaucratic) AEO system, because of the close integration of database-sharing and communication between customs authorities within the EU, and because of the fact that full and timely information is given on the importation of third country goods.

It is only at this point that Singham returns to what those small traders must do:

Small or local traders would be required to submit simpler returns, perhaps quarterly, showing the extent of their trade, its destination, standards conformity, and make any necessary payments (if they have imported goods that do not meet rules of origin).

Hang on a minute, this looks rather less like exemption now and rather more like formal customs compliance, even if the paperwork is done only a few times a year. I know from bitter experience that doing the housework once a week takes more time than being neat and tidy by habit. Doing monthly or quarterly returns on all trade – if done to a degree that would enable the necessary information on imports/exports to be recorded (e.g. the value, weight, quantity, destination etc.) – would not reduce the burden on businesses, it would merely (as with my housework-heavy Sundays) intensify the misery of the obligation.

Technological wizardry

Now we come to the bit where we find the wonders of technology to extract us from this litany of despair. Singham claims that 'aspects of this process' could be monitored



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remotely. GPS tagging, numberplate recognition, smartphone apps... yes, they are already used for different purposes at the moment. (But, no, they aren't used in the way that would be necessary to ensure the type of monitoring required for customs enforcement.)

But not to worry, Singham assures us, such tech 'is not in itself necessary to make the system work'. Instead, he emphasises the low volume of cross border trade (this is a border [crossed 118,000 times per day](#)) and 'the constraints of geography' mean that compliance can be overseen in other ways. Here he mentions routine border checks 'at business premises and mobile spot checks'. Either we are going to have the type of detailed, on-time, tracked customs declarations and real-time monitoring that will enable the customs authorities to know which vehicles to perform spot checks on, or it will be quite random or down to the whim of the border enforcement officers.

Let's just think about that for a moment. 'Routine' checks at business premises and somewhat random mobile checks on vehicles sounds nothing like a soft or invisible or light-touch border. This sounds like surveillance with bells on.

And if one might imagine that a furniture-seller in Fulham or a small cheese maker in Chester or a florist in Nuneaton would feel unhappy or resentful about such powers been given to UK BorderForce... it should not take someone with a PhD in Irish cross-border relations to point out that such implementation of 'border checks' on the island of Ireland is going to be extraordinarily contentious.

Border checks and controls

Singham proposes the 'control' of the system in the following ways:

ensuring matching of declarations for import and export; routine checks behind the border either at designated trade facilitation posts (as envisaged by the Irish Revenue Commissioners) or at importer and exporter premises; spot checks by mobile compliance units; and trading standards, food standards and other relevant agency enforcement.

Whilst a somewhat muddled outline of the various aspects of customs facilitation, this constitutes a fairly handy summary of what enforcing a hard border would cover. It is notable that Singham is (as with the conditions for small traders) adding details here that don't obviously tally with his earlier claims that the border issue is easily solved.

To take just a couple of these proposals: First, matching declarations on both sides of the border is a necessary part of processing customs. If these are coming a month



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after the event, or even three months, it is reasonable to question how this helps authorities manage risk effectively and efficiently. If they are working from the basis of 'simpler declarations', this question is even more germane.

Designated trade facilitation posts are also routine means of enforcing a customs border – they are physical infrastructures that require manning and resourcing. The fact that they are located away from the border does not make any difference to the fact that they are there for the conduct of 'border checks'.

Singham, remarkably, allows for the fact that these traditional and quite invasive methods of customs enforcement could still be ineffective – and it is at this point that he suggests the deployment of 'technological means' on main roads. For reasons best known to himself, he claims that 'behind the border checks could be used for small, local crossings'. So, allowing that manned checkpoints on motorways would be too insensitive in this context, the alternative is to have checks on the 250+ minor roads that cross the border. This claim is quite a confusing one – does he mean on-site checks at premises (in which case, why mention local crossings?) or does he mean mobile checks? I presume, in the context of this paragraph, he means the latter. Given that there is no way (as yet) of conducting such checks by robot, this will entail feet on the ground.

Even before the outbreak of the Troubles, customs officers in Northern Ireland and the Irish border region were a target for paramilitary violence. The question is not just about the risk to life, however: it is about how many people would be willing to take on such a role and – much more fundamentally – about what such on-the-spot checks and (hand in hand with this) surveillance means in this place. Indeed – to emphasise the point – in any place in the UK.

Electronic system

In order to facilitate his proposal, Singham recognises that would require close collaboration between the UK and Irish customs services, including, ideally, 'a seamless electronic system'. He doesn't specify what is meant by this but one presumes that this relates to the transfer of data and any risk assessment system. The most obvious way in which this would be done would be to ensure that the new CDS is properly connected to the Common Customs Risk Management System (CRMS) even after Brexit. This would, of course, have wider implications for the terms of UK's withdrawal, for example as regards data sharing.



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He also advocates, quite logically, for single window portals for the submission of data on customs. The hitch, however, is in what he briefly mentions, almost as an aside:

it would require the EU to accept that its customs code (UCC) would be enforced differently with respect to small traders and to accept the minimal risk involved.

As noted above – and as the EU has stated bluntly and clearly and repeatedly – effectively throwing a blanket exemption on customs compliance for upto 95% of trade across the border is no mere 'minimal risk'. It is a public declaration of having no intention of effectively enforcing that customs border. A joint UK/EU committee to enforce the border and the right of EU inspectors to cross the border into the north, and vice versa for UK inspectors, is a sticking plaster far from sufficient to cover the fact that the body of the EU's customs union would have been, to all intents and purposes, dismembered.

Anyway, not to worry – perhaps there is a little more logic in some of the less grandiose proposals here. How about a Sanitary-Phytosanitary regime? That's an area that the UK and EU and even the DUP are agreed can work on an all-island basis without too many hiccups. Singham, however, has other ideas.

In the absence of mutual recognition (of both regulations and conformity assessment), Northern Irish exporters of meat products and animals would need to be approved in line with EU requirements for imports and the goods would need to pass through (and potentially be inspected at) BIPs, as described above. The UK shouldn't reciprocate, as it should be taking an approach of openness, both to minimise frictions for importing businesses and to establish a strong record of compliance with the WTO agreements.

Is it worth me mentioning here again that there are already BIPs in operation between Great Britain and Northern Ireland? All live animals entering NI from GB have to enter through the port of Larne, for example, so as to be processed through that BIP. And anyone arriving in NI having been in contact with livestock in Britain has to declare themselves to DAERA officials upon arrival in a NI airport or ferry terminal. Why, one wonders, would it be necessary to go to such extraordinary lengths to introduce friction in agri-food, a most significant sector of cross-border trade, when it has already been agreed in principle that there will be an all-island SPS regime?

In further elaboration, Singham claims that the need for controls at BIPs could be avoided 'at least while the respective regulations are still harmonised' – implicitly acknowledging, despite his claims a moment before, that moving out of harmonisation



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is a process that will bring controls for meat products and live animals unless there is continued harmonisation between Northern Ireland and the EU in this area.

From that somewhat redundant point, he moves to consider another specific idea: Special Economic Zones. Unfortunately there yet again is little detail here about what is meant by that term. It is an idea that has been [proposed by Fianna Fáil](#), yet the idea has not, to date, been taken up with any enthusiasm by political leaders in NI or by senior members of the British government. Perhaps a man of Singham's influence will be the one to make a difference here. OK, there is a lack of actual substance here, but he is careful to make mention of 'minimal formalities', 'investment', and 'preferential tax'. And thus a casual reader might well agree with Singham in his remark: 'it would be up to the EU to explain why they chose not to cooperate in this manner'. Indeed.

The Belfast Agreement

We arrive at the penultimate section of the article, titled 'The Belfast Agreement and Joint Report'. Singham approvingly cites a [position paper of the Irish government](#) in which it noted that the EU-UK future relationship agreement would be where many of the detailed issues for Irish businesses would be addressed. He argues that 'political reasons' have forced the Irish border issue back onto the table at this stage as a block to progress in Phase 2. He interprets this as an effort to force the UK into a single market and customs union with the EU.

In contrast, I don't see any contradiction (or political gaming) in saying, on the one hand, that the UK and EU need to agree on the means by which the full operation 1998 Good Friday (Belfast) Agreement can be protected before the UK withdraws and, at the same time, recognising that only the fine details of the UK-EU FTA will provide a final answer to the nitty gritty concerns of Irish businesses.

Thankfully, Singham does not argue that the UK should renege on its commitments in the Joint Report but he does claim that it is possible to achieve them 'in particular a border with no physical infrastructure' without a common regulatory zone between NI and the EU. Now, may I first just remind our readers that what Singham proposed above in terms of managing the customs border *did* require physical infrastructure (trade facilitation centres, BIPs). And that it also most *definitely* entailed checks and controls – something also that the UK explicitly committed to avoid in the Joint Report and which Theresa May, in her [recent letter to Tusk](#), has guaranteed to avoid.



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And now to the common regulatory zone. As should have been apparent by the reference to the Belfast Agreement, we are not just talking about trade in this regard. Common regulation is needed for continued north-south cooperation across a vast range of areas (142 according to the mapping exercise behind the joint report). These aren't primarily about trade but about things that matter to people in real terms: road safety, flood risk management, teacher qualifications, specialised health services, mobile phone roaming.

If not actively disingenuous it is quite preposterous to claim that the proposition of aligning NI regulations to those of the EU in certain areas 'goes against the letter and the spirit of the joint report and the Belfast Agreement'. The 1998 Agreement explicitly allowed for distinct arrangements in Northern Ireland – through devolution and north/south and, yes, British/Irish cooperation – such as may be seen as beneficial to the people of Northern Ireland.

Singham then moves to dispute the interpretation of 'regulatory alignment' – choosing, somewhat oddly given the context, to interpret it not as the EU interprets and enacts it in its treaties with 3rd countries but according to 'standard principles of international trade', whatever they may be. No examples are given, except to say that: 'Generally, in a trade context, alignment means alignment or regulatory goals.' I'm glad we've cleared that up.

Now, at last, Singham mentions the reason as to why there is any such mention of alignment, i.e. to support 'the protection of the 1998 Agreement, North-South cooperation and the all-island economy'. Here he makes another leap of extraordinary – and unnecessary – ingenuity. Bear with me while I plot it out. He claims that the 'forums for cooperation under the agreement' (by which I presume he means such institutions as the North/South Ministerial Council and joint secretariat and the six north/south implementation bodies, covering such common concerns as food safety and trade) were established to 'coordinate policy implementation'. Fine. But he takes from this – as I say, quite ingenuously – the fact that 'the existence of divergence does not undermine the Belfast Agreement – quite the reverse'.

And, thus, he argues, it is only because there is divergence that there is a need for such institutions. (He uses the term 'a joint committee for coordination' but let's not nitpick here over the extent to which he managed to read this international treaty that happens to be the fundamental reason why the topic of his article is such a critical topic in the Brexit negotiations). So, if I follow him correctly, the argument is: we *need* divergence between NI and Ireland otherwise there would be no need for the Strand 2



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institutions to coordinate across this state frontier, and therefore it would rather undermine the very rationale for having the 1998 Agreement at all.

Without pausing to let that extraordinary revelation sink in, Singham makes his rapier's plunge: 'while there is significant integration within the immediate border areas', 'there is no real all-island economy as such'.

And with that, he has dealt with the Belfast Agreement and the Joint Report, and he moves to conclude.

In conclusion

Singham ends by stating his primary point is that 'across a border of relatively limited economic significance', customs controls can be managed 'on a point to point basis rather than at the border itself'.

Let us be in no doubt, then: it is not the fact of a hard border that is the problem for Singham; it is the assumption that border controls must happen at the border line. In my summary response, I would retort that, whilst the visibility and location of controls at the actual line would certainly cause problems, it is the wider implications of any border controls that are of deepest concern here. It is – to be as clear as possible – the existence of a harder border that everyone wants to avoid.

And this concern is not just because of the economic effects of a harder border (there are no forecasts that I am aware of that have predicted anything other than economic contraction for Northern Ireland for at least the next ten years, under even the most 'soft' of Brexits). The existence of a hard border has deep, material, political, symbolic ramifications for the fragile stability of Northern Ireland established with the 1998 Agreement. Why, there are even emotional and psychological ramifications... such as are the consequences of partition, civil war, paramilitary violence, securitisation and destruction.

These are the 'unique circumstances' of Northern Ireland/Ireland.

And they don't even bear mention in Singham's 4000 word analysis of how to sort out the Irish border issue.

So his final call for 'goodwill (on all sides)' rings somewhat hollow.



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Indeed, it is quickly followed by the assertion that 'it makes no sense for the UK to see its entire customs or goods arrangements constrained by *the supposed needs of the Irish border* [my emphasis], given that the problem of that border can be resolved'.

Even the 1998 Agreement didn't attempt to resolve the problem of the Irish border. As long as British and Irish, unionist and nationalist ideologies and identities thriving in Northern Ireland – and long may there be – there can be no 'resolution' to that border issue. But the Agreement has been largely successful in defusing and managing the contention between those different ideologies and identities by recognising both on the basis of equality – in practical as well as institutional form.

His last point:

'There is no good reason why the Irish border question should dictate both the EU-UK FTA, and the future of the UK's economic, legal and constitutional order for generations to come'.

The UK's constitutional order was fundamentally changed by the implementation of the 1998 Agreement. Northern Ireland was given a distinct position within the UK, and an institutional, economic and legal framework in order to formally recognise its British and Irish dimensions in complementary rather than conflictual form.

Never mind 'generations to come'. Come meet the 'Agreement generation' in Northern Ireland/Ireland – the first beneficiaries of peace and steady economic growth in the new millennium – and tell them why it is that a hard border is really not a serious enough concern to shape the UK's ambitions for its future relationship with the EU.

Katy Hayward is Reader in Sociology at Queen's University Belfast and a Fellow at the Senator George J. Mitchell Institute for Global Peace, Security and Justice. Dr Hayward has 20 years' research experience in border studies and conflict studies, with particular expertise on the Northern Ireland/Ireland border and peace process. She is currently responsible for the Ireland case study of the Canadian SSHRC-funded 'Borders in Globalization' project. She is the author of over 100 publications, including most recently the co-edited book *Dynamics of Political Change in Ireland* (2017) and a study of views from the Irish central border region *Bordering on Brexit* (2017). Contact: k.hayward@qub.ac.uk