



Briefing Notes for Meeting with the British-Irish Parliamentary Assembly

23 January 2017

This document has been prepared by the Centre for Cross Border Studies for its meeting with Committee A (Sovereign Matters) of the British-Irish Parliamentary Assembly to discuss the implications of Brexit. It focuses on the following issues: the implications of Brexit for trade for both Northern Ireland and Ireland; possible options for the border between Ireland and Northern Ireland; the movement of people between Ireland, Northern Ireland and the rest of the UK; and reciprocal rights of Irish and Northern Ireland citizens.

About The Centre for Cross Border Studies

The Centre for Cross Border Studies (CCBS), based in Armagh, Northern Ireland, has a strong reputation as an authoritative advocate for cross-border cooperation and as a valued source of research, information and support for collaboration across borders on the island of Ireland, Europe and beyond.

The Centre empowers citizens and builds capacity and capability for cooperation across sectors and jurisdictional boundaries on the island of Ireland and further afield. This mission is achieved through research, expertise, partnership and experience in a wide range of cross-border practices and concerns.¹

The Centre's current analysis of the implications of Brexit, therefore, is closely informed by the Centre's particular concerns and builds on the series of Briefing Papers it published in the run-up to the referendum on the UK's membership of the European Union,² as well as its submissions to

¹ For further information, please visit www.crossborder.ie

² Published in collaboration with Cooperation Ireland, these were: "The UK Referendum on Membership of the EU: What does it mean for us?" (<http://crossborder.ie/site2015/wp-content/uploads/2016/02/CCBS-and-Cooperation-Ireland-EU-Referendum-Briefing-Paper-1.pdf>), "Potential Constitutional Consequences" (<http://crossborder.ie/site2015/wp-content/uploads/2016/03/EU-Referendum-Briefing-Paper-2.pdf>), "Cross-Border Cooperation, Peace-Building and Regional Development" (<http://crossborder.ie/site2015/wp-content/uploads/2016/06/CCBS-Cooperation-Ireland-EU-Referendum-Briefing-Paper-31.pdf>), "Citizen Mobility" (<http://crossborder.ie/site2015/wp-content/uploads/2016/06/CCBS-and-Cooperation-Ireland-EU-Referendum-Briefing-Paper-4.pdf>), and "Economic Development" (<http://crossborder.ie/site2015/wp-content/uploads/2016/06/EU-Referendum-Briefing-Paper-5.pdf>).

relevant inquiries by the House of Lords European Union Select Committee,³ the House of Commons Northern Ireland Affairs Committee,⁴ as well as oral evidence given to the Oireachtas Joint Committee on the Implementation of the Good Friday Agreement and to the Oireachtas Joint Committee on Jobs, Enterprise and Innovation.⁵

The implications of Brexit for trade for both Northern Ireland and Ireland

UK Government's position

Without knowledge of the final result of negotiations between the UK and the EU on the terms of the UK's exit and any subsequent agreement on trading arrangements it remains premature to offer definitive conclusions on the implications of Brexit for trade and other areas. However, the UK Prime Minister's recent speech on her government's negotiating objectives offers some broad parameters that begin to address the lack of clarity in terms of the UK's future relations with the EU. Crucially, for trade these include that whatever the UK's proposals to be brought to negotiations, they "cannot mean membership of the Single Market", and "that full Customs Union membership prevents [the UK] from negotiating [its] own comprehensive trade deals".⁶ However, whereas the UK Prime Minister's statement rules out membership of the Single Market, her comments relating to the Customs Union were less definitive. The Prime Minister suggested alternative outcomes from the upcoming negotiations wherein the UK could "reach a completely new customs agreement, become an associate member of the Customs Union in some way, or remain a signatory to some elements of it". Among a number of possibilities, this leaves open the option of sectoral membership of the Customs Union but, as the Prime Minister made clear in her speech, the UK's preferred option is to achieve "a new, comprehensive, bold and ambitious free trade agreement" with the EU. If, on the other hand, the UK cannot conclude what it considers to be a fair deal, Theresa May highlighted how in that situation we "would be free to strike trade deals across the world. And we would have the freedom to set the competitive tax rates and embrace the policies that would attract the world's best companies and biggest investors to Britain. And – if we were excluded from accessing the single market – we would be free to change the basis of Britain's economic model".⁷

³ "Submission to the House of Lords European Union Select Committee's Inquiry on Brexit and UK-Irish Relations" (<http://crossborder.ie/site2015/wp-content/uploads/2015/10/CCBS-submission-to-House-of-Lords-EU-Committee-Inquiry-Brexit-and-UK-Irish-Relations.pdf>).

⁴ "Submission to the Northern Ireland Affairs Committee Inquiry: Future of the land border with the Republic of Ireland" (<http://crossborder.ie/submission-to-the-ni-affairs-committee-inquiry-future-of-the-land-border-with-the-republic-of-ireland/>).

⁵ "Introductory statement to oral evidence submitted to the Joint Committee on the Implementation of the Good Friday Agreement: Implications of the UK Referendum decision for the GFA and its Institutions" (<http://crossborder.ie/oral-evidence-implications-of-the-uk-referendum-for-the-good-friday-agreement-and-institutions/>), "Introductory statement to oral evidence submitted to the Joint Committee on Jobs, Enterprise and Innovation: Economic implications of the UK Referendum decision" (<http://crossborder.ie/oral-evidence-economic-implications-of-the-uk-referendum-decision/>).

⁶ "The government's negotiating objectives for exiting the EU: PM speech", (<https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>).

⁷ It is interesting to note that in his foreword to the Policy Exchange's report, *Clean Brexit*, which sets out similar parameters for Brexit as outlined by the Prime Minister, Lord Lawson writes: "In practice, we must accept that our free-trade offer will be rejected and that no remotely acceptable post-Brexit trade agreement between the UK and the EU is negotiable", and that with that offer rejected "we are happy to fall back on

Northern Ireland

By rejecting continuing membership of the Single Market and placing in doubt membership of the Customs Union, the UK Government's priorities for the negotiations that will follow the triggering of Article 50 do not appear to immediately allay the concerns outlined by the former First and Deputy First Ministers of Northern Ireland in their joint letter to the Prime Minister in August 2016. In that letter they stressed that "it is critical to our economy that our businesses, both indigenous and FDI companies, retain their competitiveness and do not incur additional costs. We therefore need to retain as far as possible the ease with which we currently trade with EU member states and, also importantly retain access to labour". Moreover, in addressing the agri-food sector in particular, they note how the "sector, and hence our wider economy, is [...] uniquely vulnerable both to the loss of EU funding, and to potential tariff and non-tariff barriers to trade".⁸

Historic relative underperformance in export growth has been seen as one of the root causes of the underlying structural weaknesses in Northern Ireland's economy. In 2014, of total sales of goods and services by Northern Ireland companies estimated to be worth £65.8bn, 65.9% of sales (£43.4bn) were within Northern Ireland itself and 19.3% (£12.7bn) in Great Britain, while exports represented 14.8% (£9.8bn) of that total.⁹ Exports of goods represented 84.7% of all exports sales (worth £8.3bn), with exports of services representing 15.3% of the total (worth £1.5bn) but, crucially in terms of any barriers in trade resulting from Brexit, in 2014 59.1% of Northern Ireland's exports were to the EU and 40.9% to the rest of the world.¹⁰ However, within these overall figures there are significant sectoral divergences in relation to the comparative weight of EU and non-EU export destinations, as can be seen in the following tables on 2014 sales in the manufacturing and agri-food sectors.¹¹

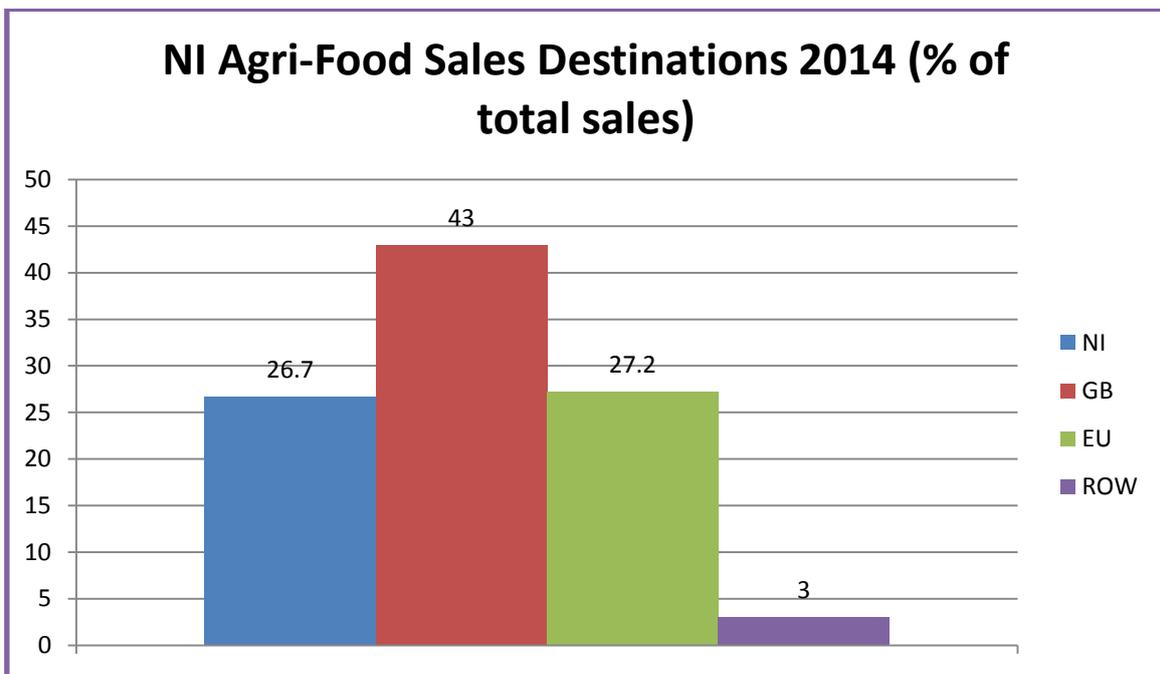
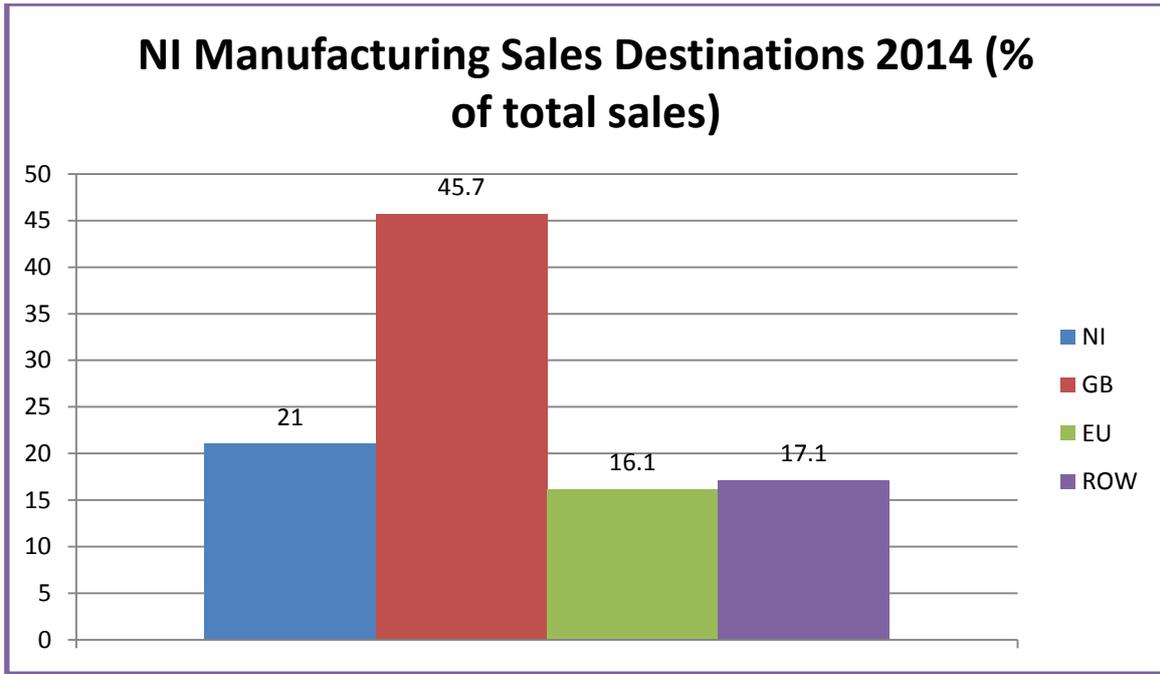
World Trade Organisation rules". Liam Halligan and Gerard Lyons, Policy Exchange, *Clean Brexit* (January 2017), <https://policyexchange.org.uk/wp-content/uploads/2017/01/Policy-Exchange-Clean-Brexit-16th-January-2017.pdf>, p.2, [last accessed 19/01/2017].

⁸ <https://www.executiveoffice-ni.gov.uk/publications/letter-prime-minister-rt-hon-theresa-may-mp> [last accessed 19/01/2017].

⁹ See Centre for Cross Border Studies and Cooperation Ireland, "EU Referendum Briefing Papers – Briefing Paper 5: The UK Referendum on EU Membership: Economic Development" (2016), <http://crossborder.ie/the-uk-referendum-on-eu-membership-economic-development/> [last accessed 20/01/2017], and NISRA, "Northern Ireland Broad Economy Sales and Exports Statistics: Goods and Services Results 2014" (July 2016), https://www.economy-ni.gov.uk/sites/default/files/publications/economy/BESES-Goods-Services-Publication-2014-Headline-results-pdf_1.pdf [last accessed 20/01/2017].

¹⁰ 2015 data show that Northern Ireland is the part of the UK with the second highest proportion of its exports destined for the EU (56%), and the one with the highest share of goods imports from the EU (73%). Wales had the highest proportion of exports destined for the EU (67%), with England having the lowest (47%), whilst Scotland has the lowest share of goods imported from the EU (38%), and England the second highest (56%). See House of Commons Library Briefing Paper, No. 7851, "Statistics on UK-EU Trade" (6 January 2017), p.9, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7851> [last accessed 20/01/2017].

¹¹ Data taken from NISRA, Northern Ireland Manufacturing Sales & Exports Headline Results 2014" (16 December 2015); https://www.economy-ni.gov.uk/sites/default/files/publications/deti/BEE%20Manufacturing%20Publication%202014%20-%20Headline%20results_2.pdf [last accessed 20/01/2017], and Department of Agriculture, Environment and Rural Affairs, "Size and Performance of the Northern Ireland Food and Drinks Processing Sector, Subsector Statistics 2014, with provisional estimates for 2015", <https://www.daera-ni.gov.uk/sites/default/files/publications/dard/Size%20and%20Performance%20NI%20Food%20%26%20Drink%202014-15%20Final%282%29.PDF> [last accessed 20/01/2017].



Although for both the Northern Ireland manufacturing and agri-food sectors the internal UK market is the most important (underlining the need for improvement in Northern Ireland's export performance), and the EU market is a prime export destination for both sectors, manufacturing sales in 2014 to the rest of the world exceeded those to the EU by 1%, but the EU market far outweighs the importance of non-EU export destinations for the agri-food sector. The value of agri-food export sales to the EU in 2014 was £1.3bn, with only £140.3 million to the rest of the world, whereas in the manufacturing sector exports to the EU were worth £2.9bn, but exports to non-EU countries were valued at £3.1bn. However, in assessing the impact of Brexit on Northern Ireland trade and considering options going forward, it is important to note that the food and drinks processing sector

“accounted for 21 per cent of Northern Ireland’s total manufacturing export sales in 2014”.¹² On balance, the introduction of tariffs to trade with the EU would be more damaging to Northern Ireland’s agri-food sector than to manufacturing in view of the generally higher tariffs imposed by the EU on agricultural imports, and its current export focus on the EU market cannot easily be redirected to other export markets in the short to medium-term.

Crucially, not only is the EU the favoured market for Northern Ireland exports, the Republic of Ireland stands as the prime destination for those exports. Of Northern Ireland’s agri-food sector’s total 2014 sales to the EU, 61.7% were to the Republic of Ireland (worth £708 million), which also took 48.3% (£1.4bn) of Northern Ireland’s manufacturing sector’s exports to the EU.¹³ Therefore, if Brexit results in any obstacles to cross-border trade that would negatively impact on the volume of that trade, this would represent a serious challenge to Northern Ireland’s overall export performance, particularly for the agri-food sector.

Given its significant dependence on foreign labour to address gaps in the domestic labour-force, production in the agri-food sector (as well as the wider economy to differing extents) will also be hampered by restrictions on access to EU workers as a result of the UK’s departure from the Single Market. Moreover, unless the UK secures post-Brexit access to the Single Market through equivalence arrangements favourable to Northern Ireland exporters, costly obstacles to trade could emerge if the UK’s regulatory environment were to diverge from that of the EU and EEA. Such a divergence would not only pose increased difficulties and costs to Northern Ireland trade with the EU, including cross-border trade with the Republic of Ireland, but it would also pose significant challenges to all-island supply and production chains, as well as to the wider all-island economy.

If the UK were to secure access to the Single Market through equivalence arrangements (which appears unlikely in light of the Prime Minister’s recent comments), the Northern Ireland Executive should exercise its powers over devolved areas such as employment law, energy and consumer affairs to shape its regulatory framework in order to achieve the best possible trading arrangements with both the rest of the UK and the EU. Indeed, as the Nevin Economic Research Institute has argued, “the Executive could seek new powers in areas like consumer goods safety and regulation, which are currently reserved to Westminster but which were recently transferred to the Scottish government”.¹⁴ However, the same think-tank also warns against Northern Ireland pursuing continued membership of the Single Market if the rest of the UK were to leave (even if that option seems a remote possibility given the major obstacles posed by opposition both in Westminster and Brussels); it states: “While NI has sales of £3.5bn annually to ROI, it has sales to GB amount that amount to over £12.5bn [...]; it will lose cross-border trade to ROI outside the Single market, but not enough to warrant NI diverging from the UK”.¹⁵

¹² Department of Agriculture, Environment and Rural Affairs, op. cit., p.14.

¹³ In terms of total exports to both EU and non-EU destinations in 2014, the Republic of Ireland took 55% of Northern Ireland’s agri-food sales and 23.5% of manufacturing sales.

¹⁴ NERI, *Quarterly Economic Observer* (Winter 2016), p.21.

¹⁵ NERI, op. cit., p.20. The Scottish Government has taken an opposing view in terms of Scotland’s future, proposing that the UK Government support it in acquiring full or associate membership of the EEA, and therefore access to the Single Market and adherence to its underpinning four freedoms, although remaining outside the EU Customs Union and the Common Agricultural Policy and Common Fisheries Policy. See the

This could be seen as based on a pragmatic assessment of Northern Ireland's current reliance on sales to the GB market, but it could also be viewed as risking setting Northern Ireland's economy on a course where its export performance would remain stagnant or decline, and dependent on sustainable consumer demand in GB. That consumer demand could be adversely affected, however, either through economic shocks to the UK or through entry into the UK market of more competitively priced goods as a result of any Free Trade Agreements entered into by a UK outside the Customs Union that were not favourable to the Northern Ireland economy or parts thereof. Moreover, the agri-food sector would face a particular disadvantage in comparison to its counterparts in EU Member States if current EU supports derived from the Common Agricultural Policy were not replaced by the UK Government.¹⁶ The scale of that challenge is illustrated by the most recent figures on farm incomes in Northern Ireland, which rose in 2016 by 22% to £244 million (from £199 million in 2015), but where the value of direct subsidies was £276 million.¹⁷

Increased threats to the Northern Ireland economy due to obstacles inhibiting its ability to trade become more pronounced if it were excluded from the Customs Union. Exclusion implies the burden of dealing with complex Rules of Origin procedures when exporting to the EU – a burden to be borne by businesses and government administration. In light of the importance to Northern Ireland businesses of the market in the Republic of Ireland, this will impact on cross-border trade and create a customs border irrespective of any potential agreements on safeguarding the freedom of movement of people across the border between the two jurisdictions on the island of Ireland.

To avoid a customs border between Northern Ireland and the Republic of Ireland and safeguard cross-border trade, the Nevin Economics Research Institute has suggested that “While the economic case for NI remaining in the Single Market without the rest of the UK is not particularly strong, there is a stronger case for NI to remain within the Customs Union even without Great Britain”.¹⁸ However, not only would this require Great Britain securing a Free Trade deal with the EU to enable tariff-free trade between Northern Ireland and Great Britain, it would also imply a customs border between Northern Ireland and Great Britain that the same NERI report recognises could be politically difficult in Northern Ireland. Moreover, bearing in mind that Northern Ireland is the destination for less than 2% of the Republic of Ireland's total volume of export trade, such a solution would not address Brexit's impact on trade between the Republic of Ireland and its more significant market in Great Britain.

Scottish Government, *Scotland's Place in Europe* (2016), <http://www.gov.scot/Resource/0051/00512073.pdf> [last accessed 22/01/2017].

¹⁶ Safeguarding of Northern Ireland's agri-food context needs to be undertaken in a context where its weight in the Northern Ireland economy is greater in terms of GVA than is the case for the UK overall. In 2014 Northern Ireland's agri-food sector provided 5.2% of GVA, whereas UK agri-food as a whole provided 2.1%. See Centre for Cross Border Studies, *A Study of Cross-Border Flows Within the Agri-Food Sector: A Snapshot of Four Border Counties* (February 2016), p.11, <http://crossborder.ie/site2015/wp-content/uploads/2016/06/DFA-project-Agri-Food-Report-FINAL.pdf> [last accessed 22/01/2017].

¹⁷ Department of Agriculture, Environment and Rural Affairs, “Statistical Press Release: Northern Ireland agricultural incomes in 2016” (31 January 2017), <https://www.daera-ni.gov.uk/sites/default/files/publications/daera/ni-agricultural-incomes-2016.pdf> [last accessed 31/01/2017].

¹⁸ NERI, op. cit., p.23.

Republic of Ireland

From the Irish perspective, the potential negative consequences of Brexit – almost regardless of its ultimate nature – “are likely to be material” given “Ireland’s close trade and financial linkages with the UK”.¹⁹ In 2015 Ireland’s exports of goods and services to the UK were worth €39bn or 16.8% of total exports, with imports from the UK of goods and services worth €29.9bn (approximately 13.7% of total imports).²⁰ The UK in 2015 was, therefore, Ireland’s main export destination for services (€23.5bn, with the USA coming second, importing Irish services worth €12.2bn), and its second most important destination for goods (€15.5bn) after the USA (€26.2bn).²¹ In 2015 Ireland had an overall trade surplus with the UK of €9.1bn due to its significant surplus in terms of services (€11.5bn), but with a trading deficit in goods of €2.3bn.

Ireland’s Department of Finance has identified the five manufacturing sectors that are likely to be most impacted by any barriers to trade with the UK as a result of Brexit,²² particularly if the UK were to leave the Customs Union. These are: pharmachem, food and beverage, traditional manufacturing, materials manufacturing, and electrical equipment, with three of them (traditional and materials manufacturing, and electrical equipment) with over a quarter of their exports going to the UK. Moreover, any tariff and non-tariff barriers to trade between Ireland and the UK could impact negatively on production costs in those Irish manufacturing sectors that “depend on the UK for close to 25 per cent of their production inputs (Traditional Manufacturing, Materials Manufacturing and Electrical Equipment)”.²³ In terms of services, “the exports of Financial Services and Transport are disproportionately orientated to the UK”, with Computer Services forming “the largest service sector exporting to the UK in value terms, circa. €6bn for a 30 per cent share of total services exports to the UK in 2014”.²⁴

As is the case in Northern Ireland, the Republic of Ireland’s agri-food sector faces considerable challenges caused by Brexit, particularly if the UK leaves the Customs Union. Not only are there significant North-South flows in the sector that would face difficulties provoked by the introduction

¹⁹ Department of Finance, *Getting Ireland Brexit Ready* (October 2016), p.4, http://www.budget.gov.ie/Budgets/2017/Documents/Getting%20Ireland%20Brexit%20Ready_final.pdf [last accessed 19/01/2017].

²⁰ CSO (2016), “Goods Exports and Imports”, <http://www.cso.ie/en/releasesandpublications/er/gei/goodsexportsandimportsdecember2015/> [last accessed 20/01/2017], and CSO (2016), “International Trade in Services”, <http://www.cso.ie/en/releasesandpublications/er/its/internationaltradeinservices2015/> [last accessed 20/01/2017].

²¹ In terms of the relative importance to the UK of Ireland as a destination for its exports in goods and services, “5 percent of the UK’s exports in 2014 went to Ireland, worth £28 billion, whilst 3 percent of the UK’s imports came from Ireland, worth £17 billion”, making it the UK’s fifth most important trading partner after the USA (£88bn in exports and £52bn in imports), Germany (£43bn in exports and £71bn in imports), France (£31bn in exports and £37bn in imports), and the Netherlands (£34bn in exports and £36bn in imports); House of Lords Library Note, “Leaving the European Union: The UK and Ireland”, pp.9-10, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2016-0060#fullreport> [last accessed 20/01/2017].

²² Department of Finance, *UK EU Exit: An exposure analysis of sectors of the Irish economy* (October 2016), http://www.budget.gov.ie/Budgets/2017/Documents/An_Exposure_Analysis_of_Sectors_of_the_Irish_Economy%20_final.pdf [last accessed 20/01/2017].

²³ Department of Finance, op. cit., p.v.

²⁴ Department of Finance, op. cit., p.16.

of a customs border, if the UK were to pursue a cheap food policy in its approach to striking Free Trade Agreements, Irish producers and processors would find it hard to retain their competitiveness in the UK market. However, if their Northern Ireland counterparts are not offered equivalent support from the UK Government, they will nevertheless continue to benefit from the EU's Common Agricultural Policy.

Although conscious that the sectors most at risk from the UK's departure from the EU are largely composed of indigenous SMEs, in its planning for Brexit the Irish Government has identified not only the need to intensify UK market support for Irish businesses, but also to increase market diversification.²⁵ Market diversification measures could in the medium to long-term lead to an acceleration of an historic trend that has seen the share of Irish exports going to the UK declining from 50% in 1973 to around 17% today.²⁶ Such diversification through redirection towards other EU Member States could also be augmented as a result of EU Free Trade Agreements with other nations.

Possible options

A possible option that would to some extent accommodate the needs of both jurisdictions on the island of Ireland would entail an agreement between the UK, Ireland and the EU that would allow Northern Ireland to remain within the EU Customs Union, and legitimise tariff-free trade between the UK and Ireland. This could avoid the imposition of a customs border between Ireland and Northern Ireland, and secure trade flow between Ireland and the UK. However, this would not avoid the imposition of tariffs on Irish exports to other EU Member States where there would be any input into production from Great Britain. Given that the political obstacles may be insurmountable for this option to be realised (not least because the EU may not want to set this type of precedent), the reduced option (although still politically challenging) would be for Northern Ireland to remain in the EU Customs Union, thereby relieving the need to create a customs border on the island of Ireland, but imposing one between Northern Ireland and the rest of the UK.

Options for the border between Ireland and Northern Ireland

It is imperative that every effort is made to maintain the relative invisibility of the border between Ireland and Northern Ireland. The introduction of physical structures along the border, whether to control the movement of people or goods, would risk becoming the target of attacks by elements seeking to undermine the ongoing peace and reconciliation process. However, whereas this may be avoided in relation to the movement of people, it is difficult to see how this could be done in terms of the movement of goods if the UK – including Northern Ireland – leaves the Customs Union, and unless the UK secures a comprehensive Free Trade Agreement with the EU.

Replication of the model employed at the Norway-Sweden border and the use of electronic means could to some extent reduce the obtrusive nature of a physical border and delays in the movement of goods. However, this would not obviate the need for customs checks or the administrative burden

²⁵ See Department of the Taoiseach, Appendix: Summary of key actions to manage contingencies arising (24 June 2016), http://www.merrionstreet.ie/en/News-Room/News/Contingency_Framework_Summary.pdf [last accessed 22/01/2017].

²⁶ See House of Lords European Union Committee, *Brexit: UK-Irish Relations* (December 2016), p.8, <http://www.publications.parliament.uk/pa/ld201617/ldselect/ldeucom/76/76.pdf> [last accessed 22/01/2017].

and associated costs for both businesses and governments to fulfil and manage the bureaucratic processes associated with customs clearance and rules of origin regulations.

With all of the UK outside the Customs Union, the ability to minimise the presence of the border separating the two jurisdictions on the island of Ireland could be constrained by the obligations imposed on the Republic of Ireland as an EU Member State with an external border. The UK Government may, as its Secretary of State for Exiting the European Union has suggested, accept “that a loss of revenue to smuggling might be a price that [needs] to be paid in order to maintain an open border”,²⁷ but this option may not necessarily be open to the Republic of Ireland. Moreover, an approach that in seeking to minimise the presence of the border leaves space for an increase in smuggling could provide a source of illegal finance for elements opposed to the peace and reconciliation process.

In terms of the movement of people, and as will be discussed in more detail in the following section, there should be no need to introduce passport controls at the border between Ireland and Northern Ireland. Bearing in mind that there are already random immigration controls on the movement of people between the two jurisdictions on the island of Ireland targeting non-EU citizens and that Ireland will remain outside the Schengen area, the current location of permanent passport controls away from the border should be sufficient in the post-Brexit context.

The movement of people between Ireland, Northern Ireland and the rest of the UK

In discussing the movement of people between Ireland, Northern Ireland and the rest of the UK, it is important to distinguish between Irish and UK citizens (currently encompassed by the Common Travel Area), and non-Irish and UK citizens of EU Member States. Furthermore, any restrictions to the movement of people between the two jurisdictions on the island of Ireland need to be considered in light of its impact on the 1998 Belfast/Good Friday Agreement, which contains a provision regarding citizenship that was designed to cater for the competing aspirations of the two main communities. In this regard the Agreement recognises “the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose”.²⁸

In terms of the movement of non-Irish EU citizens across the Ireland-Northern Ireland border, and assuming that work currently being undertaken by the UK and Irish Governments on the development of electronic border management systems under the auspices of the Common Travel Area Forum will continue,²⁹ there may be no need to establish *permanent* passport control posts at

²⁷ House of Lords European Union Committee, *op. cit.*, p.26.

²⁸ Northern Ireland Office, “The Belfast Agreement”, available at: <https://www.gov.uk/government/publications/the-belfast-agreement> [last accessed 16/11/2016].

²⁹ Work on the development of electronic border management systems was outlined in a joint statement in December 2011 by the UK’s Minister of State for Immigration and Ireland’s Minister for Justice and Equality, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/99045/21197-mea-sec-trav.pdf [last accessed 26/09/2016]. It should be considered, however, that there may be a call for discussions over the share of any financial burden such systems would incur in light of the UK’s decision to leave the EU.

the more than 200 border crossings between the two jurisdictions on the island of Ireland.³⁰ Instead, an approach could be taken that would permit the entry of non-Irish EU citizens into Northern Ireland from the Republic of Ireland in the knowledge that those who do so without the requisite entitlement (in line with any restrictions imposed by the UK Government following Brexit) would not legally be able to reside, seek employment or gain access to social welfare and healthcare services or benefits. Moreover, in order to avoid the political instability that would be caused in Northern Ireland if any passport controls were to be imposed that would be discriminatory in nature between UK citizens, this approach could be extended to movement of non-Irish EU citizens from Northern Ireland into other parts of the United Kingdom.³¹

Whilst monitoring of entry of non-Irish EU citizens into Northern Ireland and the rest of the UK from the Republic of Ireland cannot involve additional measures that would be politically unacceptable in Ireland, management of those citizens could be undertaken away from the border. This would entail requiring providers of public services to verify the entitlement of those accessing them through proof of identity, although to avoid discriminatory approaches it would also mean imposing that requirement to all those accessing services – not only those suspected of being non-Irish or non-UK citizens.

Importantly, if the UK Government sought to restrict entry from the Republic of Ireland to the UK to non-Irish EU citizens, it would have to address the 2014 amendment to the Immigration (Control of Entry Through Republic of Ireland) Order 1972. Article 4 of the original 1972 order exempted Irish citizens alone from certain requirements for leave to enter the UK, but the 2014 amendment replaced that exemption for one that included EEA and Swiss nationals and their family members, in line with the EU principle of free movement of EU citizens. Revocation of this amendment in order to deny automatic entry from the Republic of Ireland into the UK of non-Irish EU citizens would constitute a clear example of divergence from the current common approach to EU citizens.

Brexit, however, means the continuation of the Common Travel Area in its current form cannot be guaranteed. The land border between the UK and Ireland that is currently an internal border will become an external border separating an EU Member-State from a non-EU country. The UK's departure from the EU will place into question the status of Protocol 20 of the Treaty on the Functioning of the European Union, which functioned to give EU recognition of the CTA as a legitimate arrangement between two Member States subject to the principle of free movement of EU citizens.³²

Brexit means that of the two sovereign states responsible for the CTA only Ireland will remain a signatory to the EU Treaties and, therefore, the CTA's continuation becomes a matter for

³⁰ Although permanent passport control posts may not be necessary, there will be the need – as is already the case – for spot-checking of immigration or residency status of those crossing the border.

³¹ If such an approach were to be adopted in terms of travel between Northern Ireland and the rest of the UK, the possibility may arise that the UK Government whilst not requiring that Northern Ireland citizens should be subject to passport controls at ports of entry in Great Britain, may instead make transport carriers responsible for ensuring that non-UK and non-Irish EU citizens are in possession of any necessary documentation proving their right of entry into the UK.

³² Although the CTA already includes territories that are not within the EU, the Channel Islands and the Isle of Man are not sovereign states, and it is the UK Government that represents them at EU level and in all external foreign policy matters.

negotiation involving the UK, Ireland and the other remaining Member States of the EU. Crucially, the post-Brexit future of the CTA is not dependent on negotiations solely between the UK and Ireland – retention of at least some of the benefits of the CTA will be dependent on EU agreement.

As well as the UK Government's future policy towards entry of EU citizens, another factor influencing the EU's approach to the post-Brexit status of the CTA will be the effect its discontinuation would have on North-South relations in the context of the 1998 Belfast/Good Friday Agreement. Given its role in supporting the peace and reconciliation process in Northern Ireland, the EU and its constituent Member States may be reluctant to be seen as contributing to a hardening of the border with the Republic of Ireland by blocking the retention of the CTA. Instead the EU may opt not to obstruct Ireland, as one of its Member States, in continuing to participate in the CTA, and leave the responsibility of seeking to revise the current arrangements to the UK. This would secure the free movement of UK and Irish citizens between Ireland, Northern Ireland and the rest of the UK.

The current free movement of Irish and UK citizens, as well as EU citizens, has also facilitated the movement of cross-border workers. Whilst there are no definitive data on the number of commuters who cross the Ireland-Northern Ireland border to work, based on the available estimates the Centre for Cross Border Studies' Border People project suggests between 23,000 and 30,000 people are cross-border workers.³³ At present, businesses on both sides of the border have the ability to draw from a labour pool that encompasses both jurisdictions, and can include not only Irish and UK citizens, but also other EU citizens resident on the island of Ireland. However, and as will be discussed in the final section, even if the EU were to sanction the continuation of the CTA, the post-Brexit ability of the Irish Government to accept the free movement of UK citizens into its territory will not necessarily entail its ability to offer them the freedom to take up employment as is currently the case.

Additionally, if the UK Government were to address the concerns expressed by the former First and Deputy First Ministers in relation to Northern Ireland's continued access to retain access to labour by allowing the Northern Ireland Executive to decide on the rights of EU citizens to live and work within its jurisdiction, then this would require the introduction of measures to ensure that those rights were not exercised elsewhere in the UK. In this instance, and in order to avoid the introduction of additional border controls between Northern Ireland and Great Britain, the earlier suggestion for providers of public services in the UK to verify the entitlement of those accessing them through proof of identity should be implemented.

Reciprocal rights of Irish and Northern Irish citizens

In considering the rights of Northern Irish citizens it is once again important to recall their entitlement under the 1998 Belfast/Good Friday Agreement to identify themselves and be accepted as Irish or British, or both. Post-Brexit the UK could opt to continue with the current arrangements in terms of freedom of entry to Irish citizens as set out in the Immigration Act 1971,³⁴ as well as the associated rights conferred to them under the British Nationality Act 1981.³⁵ The Nationality Act

³³ For an overview of the available estimates, see *Border People Briefing* no.5, "The Referendum on UK Membership of the EU: Freedom of Movement of People" (May 2016), <http://borderpeople.info/a-z/briefing-paper-eu-referendum-free-movement-of-people.html>.

³⁴ <http://www.legislation.gov.uk/ukpga/1971/77> [last accessed 01/10/2016].

³⁵ http://www.legislation.gov.uk/ukpga/1981/61/pdfs/ukpga_19810061_en.pdf.

explicitly places Irish citizens outside the definition of “alien”, stating: “‘alien’ means a person who is neither a Commonwealth citizen nor a British protected person nor a citizen of the Republic of Ireland”. This special status for citizens from the Republic of Ireland under UK law is not offered to any other nationality, and alongside the Republic of Ireland’s inclusion within the Common Travel Area means they are treated as being habitually resident for some social welfare benefits as they have spent the required period within the Area to become eligible automatically.

The ability of the Irish Government to maintain reciprocity with a post-Brexit UK outside of the Internal Market will be dependent on whether it is able to secure from the EU and the other Member States the necessary exemptions. This will mean not simply retaining the Common Travel Area in terms of allowing entry of UK citizens into the Republic of Ireland, but also in terms of continuing to offer them the same rights as EU citizens in areas such as employment and social welfare.

However, in assessing reciprocal rights of Irish and UK citizens in the post-Brexit context, a degree of caution needs to be exercised as there may not be sufficient awareness of the degree of current reciprocity afforded by the Irish and UK Governments, and instead a degree of supposition in general discussions to date. Common membership of the EU and adherence to relevant directives may have masked the precise nature of the regulatory framework that governs the treatment of UK and Irish citizens under Irish and UK law. The Centre for Cross Border Studies is currently undertaking work to gather a more definitive view of the current arrangements for UK and Irish citizens in each other’s jurisdictions.

Notwithstanding the status of current reciprocal arrangements between the UK and Ireland and any precedents they may present for the post-Brexit context, it is important that during the negotiations subsequent to the UK’s triggering of Article 50 that the Irish Government make clear to other EU Member States that the post-Brexit retention of these arrangements should not be seen as a matter of conferring preferential treatment on a departing Member State, but rather of the EU adopting a flexible approach to accommodate the specific needs of one of its Members in its geographical context, and in order to support the peace process in Northern Ireland and the wider island of Ireland.