Northern Ireland and the backstop:
Why 'alternative arrangements' aren't an alternative
by Sam Lowe
29 May 2019

Technical fixes for the Irish border will only work if created in conjunction with affected communities and businesses. Even then, alternative arrangements will struggle to overcome the need for deep regulatory and economic integration.

The UK may be getting a new prime minister, but one of the biggest obstacles to parliamentary approval of a Brexit plan remains: the backstop, designed to avoid a hard border in Ireland. The backstop would ensure Northern Ireland remain integrated within the EU's customs union and single market for goods, supplemented by an EU-UK customs union, until it was rendered unnecessary either by the future relationship itself, or other means. In layman's terms, it is an insurance policy enabling the UK and EU to fulfil their shared commitment to respect the Northern Ireland peace agreement by keeping the border as open after Brexit as it is now.

May's Brexit plan, and indeed her premiership, have floundered because Brexiters refuse to accept the backstop, which they say will keep the UK tied to the EU indefinitely. Ever since the proposal was revealed in the Withdrawal Agreement they have argued that there are readily-available, technical means – which have been labelled 'alternative arrangements' – for keeping the Irish border free of physical infrastructure and associated checks after Brexit.

A technical solution would also allow those politicians advocating a more complete rupture with the EU to argue that their preferred course of action would not inevitably lead to border controls between Ireland and Northern Ireland, or make Northern Ireland's trading relationship with the EU distinct from Great Britain's. Several groups have tried to come up with alternative arrangements, though none have come up with a workable solution yet.

Enter Prosperity UK, a group founded in 2017 which aims to look constructively at Britain's future outside the EU. Its Alternative Arrangements Commission (AA Commission) is co-chaired by Nicky Morgan and Greg Hands, two senior Conservative backbench MPs with ministerial experience. Drawing

on the March 11th 2019 EU-UK joint instrument that partners the withdrawal agreement, the AA Commission intends to produce proposals that involve a mix of customs co-operation, facilitation and technology. Its technical advisors include independent customs experts such as Lars Karlsson and Hans Maessen, and Shanker Singham of the Institute of Economic Affairs.

The AA Commission is still in its infancy and has not yet published conclusions. But previous work by Karlsson, Maessen and Singham gives us a flavour of the type of approach it might consider.

Broadly speaking, technical solutions to the Irish border issue tend to cover the same ground, and look something like this:

★ In order to avoid the need for physical infrastructure on the Irish border, registered exporters will pre-declare the goods they intend to export to customs authorities via an online web-portal.
★ Their declaration will be assessed for risk, and then either cleared for passage over the border, or they will be asked to stop off en-route at a facility where further checks can be carried out. Alternatively, checks could be done on-site at the dispatcher's premises.
★ The importer would go through the same declaration process on their side and pay any duties owed.
★ So long as there is some means of registering the exact time goods physically cross from one country to another, be it trusting the traders to declare it, or tracking technology such as GPS, there is technically no need for physical infrastructure and an assigned choke point on the border itself.

While proposals similar to the one sketched out above, in theory, remove the need for physical infrastructure on the border, associated checks are very much still in play. Checks will still happen; they will just be carried out away from the border – which leads to a sensitive discussion as to how far away from the actual frontier checks need to be in order to not be understood as border checks. Five miles? Ten miles? Belfast? The Port of Larne? It is not an easy question to answer, but it needs to be addressed if such arrangements are ever to come into effect.

There is then the question of how to police those who choose not to play by the rules. How to identify exporters who, for whatever reason, choose not to register, not to pre-declare, and not to play ball in general? One obvious solution is for customs officials to work with the police and perform randomised stop-and-search checks on vehicles around the border area (which would be needed even in the event that everyone was signed up and participating in order to keep the system honest), combined with an increase in intelligence-led policing and enforcement. This already happens to some degree because of excise and VAT-related smuggling. But smuggling opportunities would potentially be significantly larger than they currently are, thus requiring a notable increase in the scale of checks. Stops could be made less random by erecting number plate recognition cameras that could more readily identify suspicious behaviour, but this would require physical infrastructure, taking the whole discussion back to square one. Why the additional intrusion into the lives of people living and working on the border caused by stepped-up customs checks would be any less disruptive than physical infrastructure is a question that largely remains unanswered by proponents.

On the regulatory side, the biggest hurdle is overcoming the need for SPS (food and plant hygiene) checks and controls. Here EU law vis-à-vis imports is particularly strict. Products of animal origin entering from third countries can only enter the EU's territory via an approved veterinary border inspection post, where they are subject to document, identity and physical inspection. Only the EEA

countries and Switzerland, who apply the EU's SPS regime both domestically and in relation to imports from third countries (effectively extending the EU's SPS firewall), have managed to ensure their exports of animal origin avoid these checks. (Note: Switzerland has a derogation allowing it to import heavily labelled, hormone grown beef.) As such, it is difficult to see a solution for Northern Ireland which does not involve it remaining within the EU's SPS regime. If Great Britain does not do the same, then this will mean an increased frequency of checks (which already exist for live animals) on products of animal origin entering Northern Ireland from Great Britain.

There is then the question of timing: how long would it realistically take to put the new processes and technology in place? Karlsson, for example, says "Can the model be implemented during a potential transition period? My answer is yes, it can." This seems overly optimistic.

Take the hypothetical online web-portal needed for exporters to pre-declare their shipments, for example. As part of the system, traders would benefit from a single, digital point of contact, where they can input all of the data required, as easily as possible – a so-called 'single window'. The data would then be analysed by algorithms and the relevant government agencies, facilitating a decision as to whether further checks are needed or they are cleared to cross the border. The issue here is not that the technology does not exist (it does, and it is not particularly challenging to design a website where people input some information). But getting the 36 British government departments and agencies involved in managing a border co-ordinated and aligned behind one system, in a country where not all government departments even use the same email provider, is a significant challenge.

Any such system would also require UK and EU customs authorities to work closely together, and (more challengingly) be prepared to recognise each other's process and share sensitive data and information.

Ultimately, however, the consent of the people most directly affected by arrangements for the border will be necessary for any technical solution to succeed. Any system-based approach requires the majority of traders to play ball, register, and comply with it, whatever schemes are created to manage trade across the border. This is not to say that consent could never be obtained, just that it is not there yet. Furthermore, there is little sign of the necessary groundwork being done. Northern Irish people and business groups at present appear to be a secondary consideration to what is predominantly an intra-party Westminster debate. Whereas the backstop, or a close, highly integrated economic relationship between the EU and UK, removes the need for physical infrastructure or associated checks by ensuring no new regulatory or customs border is created, technical solutions are premised on the acceptance of a new border, combined with efforts to ensure it is as unintrusive as possible. Any solution that assumes that a border community that is predominantly Irish nationalist, and against leaving the EU, will readily accept the existence of a new customs and regulatory divide faces an uphill struggle.

None of the questions posed above have easy answers – but those putting forward new approaches for managing the Irish land border must find answers to them. It is not impossible that one day new technology and processes will replace integrated regulatory and economic alignment as the basis for frictionless borders. But that day has not yet come, and it is difficult to make the case that Northern Ireland, given its specific circumstances, should be used as a testing ground for something that does not exist anywhere else in the world. For now, the backstop remains necessary for several reasons: as an inhibitor on the more reckless instincts of some Westminster politicians; as the ultimate insurance policy against a collapse in future negotiations; and as a mechanism for safeguarding the still-fragile peace process in Northern Ireland.

The Brexit trilemma lives. The UK can have two of the following three things, but not all of them: single market and customs union exit; a whole-UK Brexit; and no Irish border. The existence of a backstop in the withdrawal agreement suggests that May, albeit reluctantly, understood this. But the penny still hasn't dropped for many Brexiters in her party and beyond.

Sam Lowe is a senior research fellow at the Centre for European Reform.