

Ready on Day One

Meeting the Brexit Borders challenge

Charlie Elphicke MP
April 2017

Contents

Introduction and acknowledgements

Foreword by Xavier Bertrand

Summary overview

The Brexit Borders Challenge	1
Part 1: Resilient Roads to the Channel Ports	5
1.1. The Port of Dover: serving UK prosperity and the national interest	5
1.2. Channel Ports: essential to Britain's economy	8
1.3. The need for a new Thames crossing	10
1.4. The need to widen the M20 / upgrade the M2 and dual the A2	12
1.5. The M20 lorry park	14
Part 2: The Brexit Customs Challenge	17
2.1. The Brexit Customs Challenge	18
2.2. A Trusted Trader Scheme	23
2.3. Comparable customs systems around the world	24
(i) Singapore: efficient and high-tech	24
(ii) Canada: low-cost and fast	25
(iii) Australia: Responsibility for Businesses	26
2.4. Implementation in Britain	27
Part 3: Government action, legal powers and international agreements	30
3.1. The infrastructure challenge	30
3.2. Brexit Infrastructure Bill	32
3.3. New Entente Cordiale	34
3.4. A reformed Aarhus Convention 1998	35
3.5. One Government at the Border to ensure order	37
Part 4: Conclusion	40

Introduction and acknowledgements

In writing this report, I wish to express my sincerest thanks and acknowledgement to the many transport businesses and industry groups who have helped to advise and ideas. Their taking part in round tables and seminars helped draw together this detailed plan to be Ready on Day One. Many businesses also wrote up detailed practical guidance and all have kindly reviewed this report and helped to improve it no end. Any errors or omissions remain my own.



Charlie Elphicke, MP for Dover and Deal

This report sets out a detailed plan to ensure that the Channel Ports will be ready on day one to avoid gridlock and meet the Brexit Borders Challenge. This includes:

1. **Resilient Roads to the Channel Ports.** The new Thames Crossing taken forward at speed, the M2/A2 upgraded and dualled all the way to the Channel Ports and the planned M20 Lorry Park to be delivered on time.
2. **Open for Business** with systems ready on day one to ensure that customs controls are handled seamlessly, with long queues avoided and technology used to speed customs processing.
3. **A New Entente Cordiale** to extend the Le Touquet Treaty to cover customs co-operation and build a new era of deeper co-operation with France.
4. **A Brexit Infrastructure Bill.** It takes years to build the simplest road. Yet we have less than two years to get ready. A powerful new law to speed through administrative processes would enable vital projects to be delivered on time.
5. **One Government at the border to ensure order.** There is a mind boggling array of ministries, quangos and agencies with border responsibilities. There should be a single ministry where the buck stops. This will avoid muddle and confusion that would otherwise undermine our ability to be ready on day one.

Gridlock at the Channel Ports will mean gridlock for the UK economy. With proper planning we can not only be ready on day one – we can make Brexit a real success.

It has been incredible to see how much positive energy we have in our transport businesses. My thanks to: the Dover Harbour Board, AB Ports, Forth Ports, the Port of Antwerp, the Port of Calais and Eurotunnel. The advice of ferry operators including DFDS and P&O has been very greatly appreciated.

Hauliers often bear the brunt of any queues or delays at our borders. They are determined to make sure that trade will continue to flow smoothly after we leave the EU. My gratitude to the Road Haulage Association and the Freight Transport Association for their practical advice on what will work.

Customs processing is a complex and specialised area that few can fathom. So my thanks to senior officials at HMRC, CNS (a division of Dubai Ports World) and to Tony Smith, the former head of UK Border Force, who is now Chief Executive of Fortinus Global Ltd.

Shippers and freight forwarders have also provided invaluable advice – including Neil Wiggins of IVOPS, as well as Paul Wells and Richard Catt on behalf of the Freight Liaison Group representing Dover Custom Brokers and Freight Agents.

My thanks also to Jeremy White of Pump Court Tax Chambers for his invaluable legal insight.

Finally it has been hugely encouraging to have the positive participation of the Calais authorities and the Hauts-De-France region – I am hugely grateful to regional president Xavier Bertrand for writing the Foreword to this report and his team for their positive and optimistic approach as to how Britain and France can work together as close partners in the years to come.

Charlie Elphicke MP

House of Commons

April 2017

Foreword

Partners yesterday, partners tomorrow

The initiative taken by Charlie Elphicke through the "*Ready on Day One*" report presents three great merits.

The first is to recall that the challenge of BREXIT not only affects the future of Dover, Kent and the UK- but also that of Britain's immediate neighbours. This is especially true of the Irish Republic and the Hauts-de-France region of France whose economy and people will be the first affected in their daily lives.



Xavier Bertrand, President of the Hauts-De-France region

The second merit is to see a leading elected official mobilise his expertise for concrete solutions rather than yield to the temptation of the ongoing battle against a popular decision implemented by a democratically elected government. One can regret the vote of British voters. However, sovereign choice is not less binding to all and cannot be challenged. The time for collective stupefaction must end. The central question is no longer that of knowing what you and we will become, but what you and we will do tomorrow to make what is necessary possible. This report puts forth concrete ways to act. Some fall within the jurisdiction of British authorities, others fall under a new post-BREXIT Franco-British partnership that Charlie Elphicke and I earnestly desire.

The third merit is to focus on the issue of infrastructure. The first steps taken by the British and European politicians focus on legal issues, starting with the rights of British citizens and companies in Europe and those of Europeans in the United Kingdom. Fortunately, these approaches are complementary. The resources allocated to the port economy in Dover, Dunkirk and Calais will be essential to preserve the cross-Channel link that irrigates the economy of both countries. Our national leaders would commit a serious mistake to only see our two ports as doors to the outside, customs and borders: they are multipliers of wealth for companies that export and import, logistics and shipping notably, and for hundreds of thousands of direct and indirect jobs for our territories. The Channel route is a single artery that supplies a much larger regional and national economy.

The Port of Calais must be ready on day one. The massive investments already made in recent years should contribute. But we must work together with Dover to make the same choices for investments in new digital tools to boost fluidity, fast lanes, as well as increased monitoring and the fight against terrorism.

Finally, the Le Touquet Treaty should be reviewed from top to bottom. A subject of tension between French and English elected officials for three years, we will be obliged to do this to adapt its content to the new post-BREXIT legal context and to our respective new obligations in terms of controlling illegal immigration and the fight against commercial fraud.

No one can predict what the relationship between the UK and the EU will be like in 25 years. Reunion or prolonged separation? History has more imagination than men: it could surprise us once again. But our deadline is to be ready for the separation scheduled for March 2019, whatever the conditions under which BREXIT will happen. If national political structures will invariably see their links stretched thin, the local and regional partners of the past will remain neighbours and partners in the future.

This cross-Channel link requires it, and we will intensify our efforts in the service of the people of Kent and the Hauts-de-France.

Xavier Bertrand

President of the Hauts-de-France Region.

Xavier Bertrand held a number of senior positions in the French government, including Work, Pensions & Health Minister.

Summary overview

Armageddon. Doomsday. Traffic delays of “biblical proportions”. Industry leaders have been trenchant in their warnings of the serious disruption we face if we are not ready on day one of Brexit at Dover and other Channel Ports.

We hope that even though we will be leaving the European Single Market, a trade deal will be done that will enable tariff free trade to continue. There is no doubt of the British Government’s commitment for such a deal to be done. Yet two years is a very short time - and it is likely that the EU will struggle to be able to move swiftly enough. The EU Commission must negotiate any deal and the European Parliament approve it. In addition there are key French and German elections in this period as well as a requirement for the 27 remaining EU Member States to sign off any deal that is done. The recently signed EU-Canada trade deal took nearly a decade to agree. So the risk that negotiations become protracted is real and must be planned for. That is why it is vital that Britain is ready on day one for every eventuality. The most important preparations of all will be at Dover and the Channel Ports that account for 40% of all trade with the EU.

Dover is the gateway to and the guardian of the nation. The Port of Dover is at the frontline of British trade, handling £120 billion of imports and exports every year. The Port is the busiest port for Roll-on / Roll-off traffic by tonnage in the country. More than 10,000 freight vehicles pass through the docks each day. Similar amounts of traffic are handled by the Channel Tunnel.

Disruption at the Channel Ports will be felt right across the country. This is not just a local issue. Gridlock at Dover will gridlock the UK economy too. We’ve seen in recent years how finely balanced the infrastructure is and how problems at the Channel Ports rapidly become very serious. Tailbacks in 2015 caused by strikes at Calais were estimated to cost Britain’s economy £1 billion. In 2016, a lack of French Border Police at Dover caused huge tailbacks on the roads to the Port of Dover.

This Report sets out a comprehensive plan to ensure the Channel Ports can continue to operate normally and efficiently post-Brexit:

1. **Resilient Roads to the Channel Ports.** The new Thames Crossing taken forward at speed, the M2/A2 upgraded and dualled all the way to the Channel Ports and the planned M20 Lorry Park to be delivered on time.
2. **Open for Business** with systems ready on day one to ensure that customs controls are handled seamlessly, with long queues avoided and technology used to speed customs processing.
3. **A New Entente Cordiale** to extend the Le Touquet Treaty to cover customs co-operation and build a new era of deeper co-operation with France.
4. **A Brexit Infrastructure Bill** It takes years to build the simplest road. Yet we have less than two years to get ready. A powerful new law to speed through administrative processes would enable vital projects to be delivered in time.
5. **One Government at the border to ensure order.** There is a mind boggling array of ministries, quangos and agencies with border responsibilities. There should be a single ministry where the buck stops. This will avoid muddle and confusion that would otherwise undermine our ability to be ready on day one.

This Report is divided into three parts as follows. Part 1 sets out the need to invest in the roads that lead to our Channel Ports as well as investment in port infrastructure. Part 2 details the steps that must be taken to meet the Brexit customs challenge, including lessons that can be learned from systems in Singapore, Canada and Australia. Finally Part 3 sets out legal reforms that are needed to empower the Government to deliver key infrastructure projects required successfully to deliver Brexit on time. This includes the introduction of a Brexit Infrastructure Bill as well as a revised Le Touquet Treaty and a reformed Aarhus Convention.

Deal or no deal, Britain must be ready on day one.

The Brexit Borders Challenge

Withdrawal from the EU will involve a set of intricate negotiations, both in terms of scale and complexity. The Government hopes to deliver a smooth and orderly British exit (Brexit) with tariff-free access to European trade.¹ Yet, the Prime Minister has emphasised that what matters most for Britain is not getting a deal, but getting a *good* deal.² The outcome of the Article 50 process is difficult to predict – some estimate that there is a one in three chance that Brexit negotiations will fail.³ It is clear that the country is “entering a race with time.”⁴ Britain must therefore be fully prepared in the event of no deal – or in the event of a deal that sees the end of tariff free trade with the EU.⁵

Nowhere does this matter more than at the UK’s Channel ports. In the summer of 2015 strikes by French ferry workers led to scenes of “absolute bedlam” at the Port of Dover.⁶ Queues of 4,600 lorries stretched back 30 miles. Businesses lost £21 million worth of stock.⁷ Emergency teams handed out more than 18,000 bottles of water and 6,500 meals to truckers and

¹ Prime Minister, ‘The government’s negotiating objectives for exiting the EU: PM speech’ (17 January 2017) at para. 8.13, available at: <<https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>> (accessed 7 March 2017): “Our new partnership should allow for tariff-free trade in goods that is as frictionless as possible between the UK and the EU Member States.”

² *Ibid.* stating that “no deal for Britain is better than a bad deal for Britain.” See also the reported comments made by the Secretary of State for Exiting the EU to his Cabinet colleagues of the need “to prepare for the unlikely scenario in which no mutually satisfactory agreement [with the EU] can be reached” in R. Merrick, *The Independent*, ‘Brexit: David Davis urges Cabinet to draw up back-up plans for UK leaving EU without fresh trade deal’ (28 February 2017) available at: <<http://www.independent.co.uk/news/uk/politics/brexit-latest-news-david-davis-cabinet-back-up-plan-uk-leave-eu-trade-deal-wto-a7603911.html>> (last accessed 7 March 2017).

³ Lord Kerr of Kinlochard, who was involved in the drafting of Article 50 TFEU, recently stated: “I rate the chances of breakdown [in Brexit negotiations] at well over 30%.” See HL Deb, 21 February 2017, col 229 available at: <[https://hansard.parliament.uk/Lords/2017-02-21/debates/5061080A-55F6-4500-91D4-10EC50BBC33C/EuropeanUnion\(NotificationOfWithdrawal\)Bill#contribution-33DEBE0F-40E9-4D1F-A458-E10D2A3300B3](https://hansard.parliament.uk/Lords/2017-02-21/debates/5061080A-55F6-4500-91D4-10EC50BBC33C/EuropeanUnion(NotificationOfWithdrawal)Bill#contribution-33DEBE0F-40E9-4D1F-A458-E10D2A3300B3)> (accessed 15 March 2017).

⁴ Comments of Pascal Lamy, former Director of the World Trade Organization (WTO) at an Institute for Government event on 16 March 2017. See O. Illott, *Institute for Government*, ‘Pascal Lamy: Brexit trade deal is not possible in two years’ (20 March 2017) available at: <<https://www.instituteforgovernment.org.uk/node/4748>> (accessed 30 March 2017).

⁵ The implications of no deal for the UK are examined in-depth in House of Commons Foreign Affairs Committee, ‘Article 50 negotiations: Implications of ‘no deal’’ (12 March 2017) HC 1077 available at: <<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmfa/1077/1077.pdf>> (accessed 14 March 2017).

⁶ See comments of Christine Drury, Chairperson of Westwell village Parish Council, in BBC News, ‘Calais lorry queue ‘could clear in 48 hours’ after port reopens’ (2 July 2015) available at: <<http://www.bbc.co.uk/news/uk-england-kent-33359337>> (accessed 8 March 2017).

⁷ See figures outlined by the Road Haulage Association in L. O’Carroll, *The Guardian*, ‘Post-Brexit customs gridlock could choke UK trade, experts warn’ (20 February 2017) available at: <<https://www.theguardian.com/uk-news/2017/feb/20/post-brexit-customs-gridlock-could-choke-uk-trade-experts-warn>> (accessed 8 March 2017).

passengers.⁸ Four days' disruption cost the UK economy an estimated £1 billion.⁹ A year later, in the summer of 2016, a shortage of French border staff led to "extraordinary disruption" in Kent.¹⁰ There were delays of up to 10 hours with traffic queuing back 12 miles from Dover.¹¹ Some motorists were forced to sleep in their cars for two nights.¹²

"The snakes of traffic outside Dover are a reminder that we cannot expect life to carry on as normal after Brexit."

Editorial, *The Independent*, July 2016

Others have warned of a future "Armageddon scenario" at the Port if we do not plan and invest now in anticipation of no deal with Brussels:¹³ with gridlock choking UK trade;¹⁴ burdensome customs checks lengthening lorry queues in Dover;¹⁵ and bottlenecks affecting the car industry in the Midlands, farmers in Wales and the distilleries of Scotland.¹⁶ Labour peer, Lord Berkeley has warned that "if there were a 24-hour traffic jam at Dover, it would stretch up the M20, the M2 and the A2, and round the M25 as far as Stansted airport."¹⁷ Lucy Moreton, General Secretary of the ISU union for borders, immigration and customs has spoken of a "Doomsday

⁸ *Ibid.*

⁹ See T. Waggott, 'Open letter from Chief Executive Port of Dover – why the Port of Dover must keep the nation moving' (6 July 2015) available at: <<http://www.doverport.co.uk/about/news/open-letter-from-chief-executive-port-of-dover-/13043/>> (last accessed 6 March 2017).

¹⁰ R. Wilkinson & G. Stubbs, *The Independent*, 'French security checks cause four-hour ferry delays at Dover' (23 July 2016) available at: <<http://www.independent.co.uk/news/uk/home-news/dover-delay-border-checks-france-security-nice-state-of-emergency-a7152071.html>> (accessed 15 March 2017).

¹¹ T. McVeigh & J. Tapper, *The Guardian*, 'Dover port delays: families stuck on roads told chaos will last until Monday' (24 July 2016) available at: <<https://www.theguardian.com/world/2016/jul/23/port-of-dover-seven-hour-delays-border-checks-france>> (accessed 9 March 2017).

¹² Z. O'Brien, *The Daily Express*, 'We Warned Brexit would have consequences' – Calais politician as Brits queue for two days' (25 July 2016) available at: <<http://www.express.co.uk/news/uk/692847/Calais-politician-Brexit-Brits-Dover-Traffic-queues-delays>> (accessed 14 March 2017).

¹³ See comments of Tim Waggott, Chief Executive Officer of the Port of Dover, in S. Jack, 'Dover delays: Could they become the norm?' (28 March 2017) available at: <http://www.bbc.co.uk/news/business-39424166> (accessed 7 April 2017). See also the "nightmare scenario" described by James Hookham, Deputy Chief Executive, Freight Transport Association in Home Affairs Committee (Wednesday 25 January 2017) at Q.137, available at: <<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/implications-of-the-uks-exit-from-the-european-union/oral/46107.html>> (accessed 31 March 2017).

¹⁴ L. O'Carroll (n 7).

¹⁵ European Commission, 'Speech by Michel Barnier, Chief Negotiator for the Preparation and Conduct of the Negotiations with the United Kingdom, at the plenary session of the European Committee of the Regions' (22 March 2017) available at: <http://europa.eu/rapid/press-release_SPEECH-17-723_en.htm> (accessed 29 March 2017).

¹⁶ L. O'Carroll, (n 7).

¹⁷ Lord Berkeley, HL Deb, 6 February 2017, Volume 778, Column 1546 available at: <<https://hansard.parliament.uk/lords/2017-02-06/debates/751F3858-4F43-42AD-AF10-2F3CA2378DE2/BrexitTransport>> (last accessed 7 March 2017).

scenario” at our border.¹⁸ If on day one no trade deal has been agreed, Britain must be fully prepared. This means planning for the transition now.

As an island nation, the UK’s economic success has always been founded on maritime trade. The UK Ports industry is the second largest in Europe, handling almost 500 million tonnes of freight each year.¹⁹ The overwhelming majority of goods imported and exported from the UK – about 95% of freight by volume every year – comes and goes through sea ports rather than airports.²⁰ Ports are also significant investors and employers in their own right, with the UK ports sector contributing £7.7 billion in direct gross value added (GVA) to GDP each year.²¹ The ports sector contributes an estimated £2 billion in taxes to the UK Exchequer,²² and directly employs 118,000 people.²³ Prioritising the UK’s international gateways is essential to ensure that our thriving island economy maintains and enhances its global reach. Britain must keep trading; goods must keep moving.

As the UK withdraws from the EU, the significance of the UK border will increase. The Government says it is committed to establishing a new customs arrangement with the EU that ensures cross-border trade for UK businesses remains as frictionless as possible.²⁴ Cooperation on addressing any regulatory challenges to trade at the border is vital. Due to the nature, volume and speed of the trade passing across the Dover Straits, issues around a new set of customs clearance and border controls are acute. This is especially true for Roll-on / Roll-off (Ro-Ro) freight routes which currently have no requirements for customs declarations. Ro-Ro freight accounts for around 78% of the UK’s existing trade with European markets.²⁵ Clear and

¹⁸ See Sky News, ‘Fears of migration surge and ‘daily gridlock’ in Dover after Brexit’ (2 April 2017) available at: <<http://news.sky.com/story/fears-of-migration-surge-and-daily-gridlock-in-dover-after-brexit-10821930>> (accessed 5 April 2017).

¹⁹ Department for Transport, ‘UK Port Freight Statistics: 2015’ (21 September 2016) at page 1, available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/555338/port-freight-statistics-2015.pdf> (accessed 7 March 2017).

²⁰ House of Commons Transport Committee, ‘The Ports Industry in England and Wales’ (15 January 2007) HC 61-I at page 5, available at: <<https://www.publications.parliament.uk/pa/cm200607/cmselect/cmtran/61/61i.pdf>> (accessed 15 March 2017).

²¹ Oxford Economics, ‘The economic impact of the UK Maritime Services Sector: Ports’ (May 2015) at page 9, available at: <http://www.britishports.org.uk/system/files/documents/ports_the_economic_impact_of_the_uk_maritime_services_sector_0.pdf> (accessed 7 March 2017).

²² *Ibid.* at page 10.

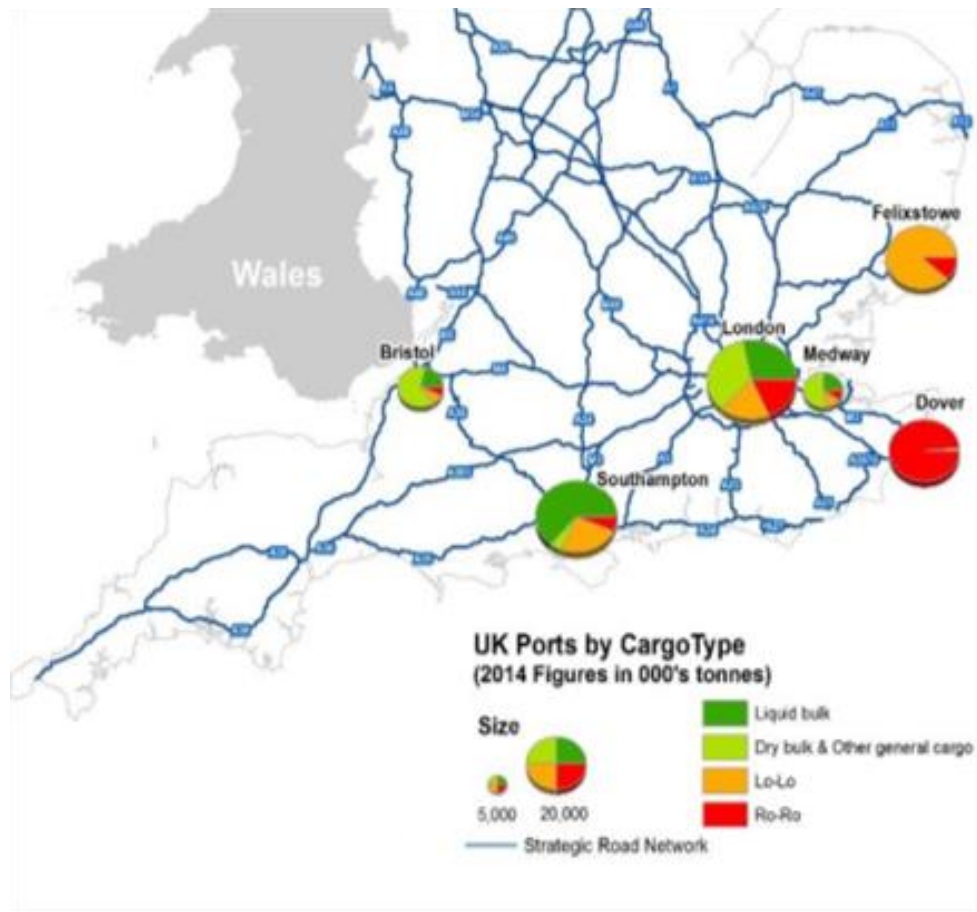
²³ *Ibid.* at page 3.

²⁴ Department for Exiting the European Union, ‘The United Kingdom’s exit from and new partnership with the European Union White Paper’ (2 February 2017) available at: <<https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper>> (accessed 4 April 2017).

²⁵ British International Freight Association, ‘What Brexit Means for UK shipping,’ <<http://www.bifa.org/news/articles/2016/jul/what-brexit-means-for-uk-shipping>> (accessed 4 April).

workable mechanisms must be put in place to avoid delays. The Port of Dover is at particular risk as 99% of the Port’s total traffic by tonnage in 2015 was Ro-Ro.²⁶ The Channel Tunnel is also, in effect, a Ro-Ro port in the way it operates. The rapid transit of time-sensitive goods across our national border must be secured. Supply chains rely on predictable deliveries – the country must be ready on day one for the seamless transit of freight through our Channel Ports.

Figure 1: UK ports by cargo type (2014)



Source: Highways England²⁷

²⁶ Department for Transport, ‘Table 0409 - Dover port traffic, annually: 2015’ (last updated 21 September 2016) available at: <<https://www.gov.uk/government/statistical-data-sets/port04-individual-port-traffic>> (accessed 30 March 2017).

²⁷ Highways England, ‘International gateways and the strategic road network’ (29 November 2016) at page 9, available at <[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/600269/SEGP - Underpinning Report - International gateways and the SRN.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/600269/SEGP_-_Underpinning_Report_-_International_gateways_and_the_SRN.pdf)> (accessed 4 April 2017).

Part 1. Resilient Roads to the Channel Ports

Strong transport links to the Channel Ports are vital to the development of the UK economy and the growth of its regions. Efficient access to these ports by road is crucial if the country is to deliver jobs and growth as well as an export-led approach to trade post-Brexit. Gridlock at the Channel Ports will mean gridlock for the UK economy.

This part concludes that there are three key priorities for Government to focus on to deliver the resilient roads that can ensure readiness. These are:

1. **A Resilient Thames Crossing.** The roads from the Channel Ports across the Thames are hopelessly inadequate. Taking forward the new Thames Crossing is vital to giving the roads system the resilience it needs. Yet to take a decade would be to take too long - there needs to be a system to deliver vital infrastructure like this within a much faster time frame.
2. **Resilient Roads to the Channel Ports.** The M20 should be widened, while the M2/A2 should be dualled all the way to the Channel Ports. There need to be full and effective motorways to the Channel Ports to ensure gridlock is avoided.
3. **Resilient lorry parking and customs handling facilities to meet every challenge.** The M20 lorry park must be progressed urgently and delivered on schedule. This will do much to ensure queues are avoided in the event of problems at the Channel Ports and provide space for any necessary customs checks to be made.

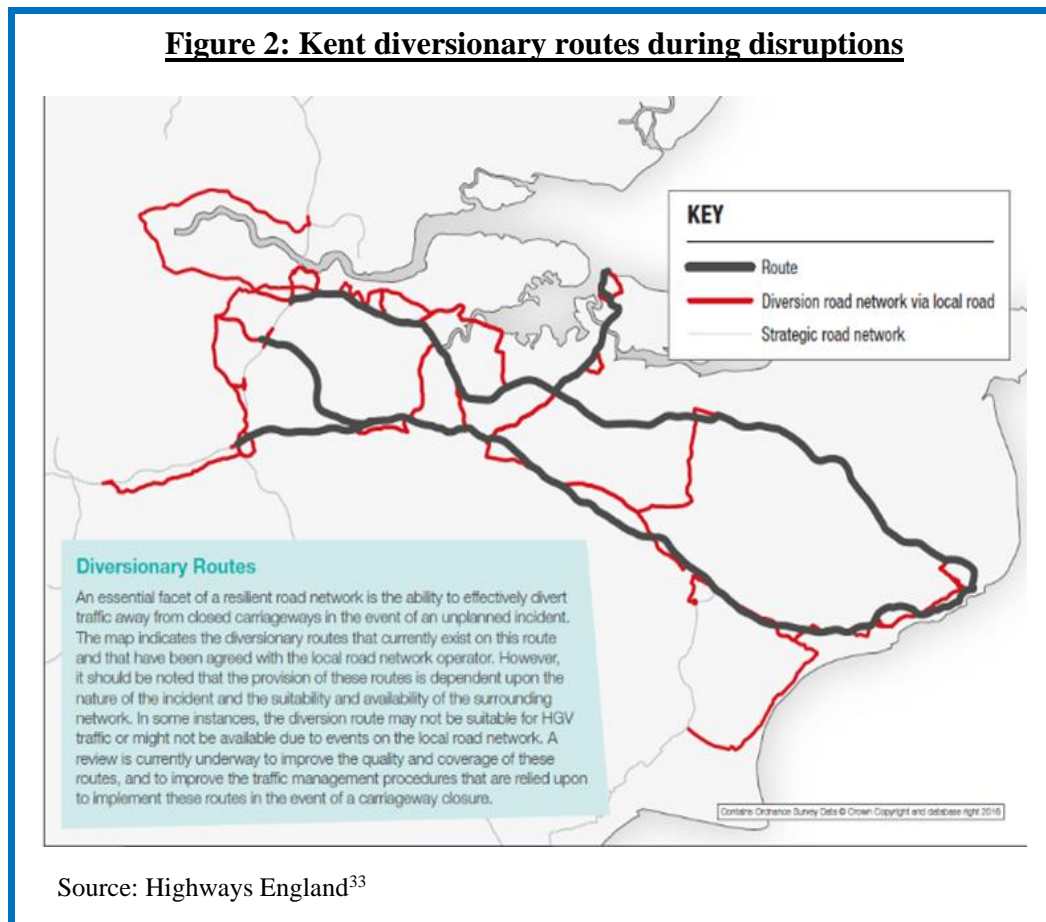
This matters because the relatively short distances over which freight moves means that roads will remain the dominant route for the carriage of goods to and from UK ports for the foreseeable future. As noted above, Dover and Eurotunnel act as the gateway to the UK for over 40% of Britain's trade with the EU. The road network is already finely balanced and overloaded – leaving the EU will add greater pressure which is why urgent investment must be made over the next two years.

1.1. The Port of Dover: serving UK prosperity and the national interest

The Port of Dover is an essential element of the UK economy and European logistics chain. The Port handles £119 billion of trade annually,²⁸ and is the busiest freight port in Northern

²⁸ Oxera, 'Independent economic impact assessment of the Port of Dover', available at: <http://www.doverport.co.uk/administrator/tinyMCE/source/Oxera%20Port%20of%20Dover%20infographic%20v10.pdf> (accessed 6 March 2017).

Europe with more than 10,000 freight vehicles passing through the docks every day.²⁹ Dover is the busiest Ro-Ro ferry port in the EU, handling 34% of all Ro-Ro freight traffic in the UK during 2015.³⁰ More than 50% of UK imports that pass through Dover end up travelling to Birmingham and beyond.³¹ This is particularly significant given the rapidly expanding economy of the West Midlands, the value of whose exports grew 11% in 2015/16.³²



²⁹ See written evidence submitted by the Port of Dover to the House of Commons Transport Committee inquiry into Operation Stack (16 October 2015) available at: <<https://www.parliament.uk/documents/commons-committees/transport/Port-of-Dover-written-evidence-Operation-Stack-Written-evidence.pdf>> (accessed 15 March 2017).

³⁰ Department for Transport, ‘Road goods vehicles travelling to mainland Europe: October to December 2016 (quarter 4)’ (16 February 2017) at page 12, available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/592505/ro-ro-october-to-december-2016.pdf> (accessed 6 March 2017). Routes between UK major ports and European ports tend to be dominated by the Roll on / Roll off method of transportation which accounted for 73% of all main freight units in 2015.

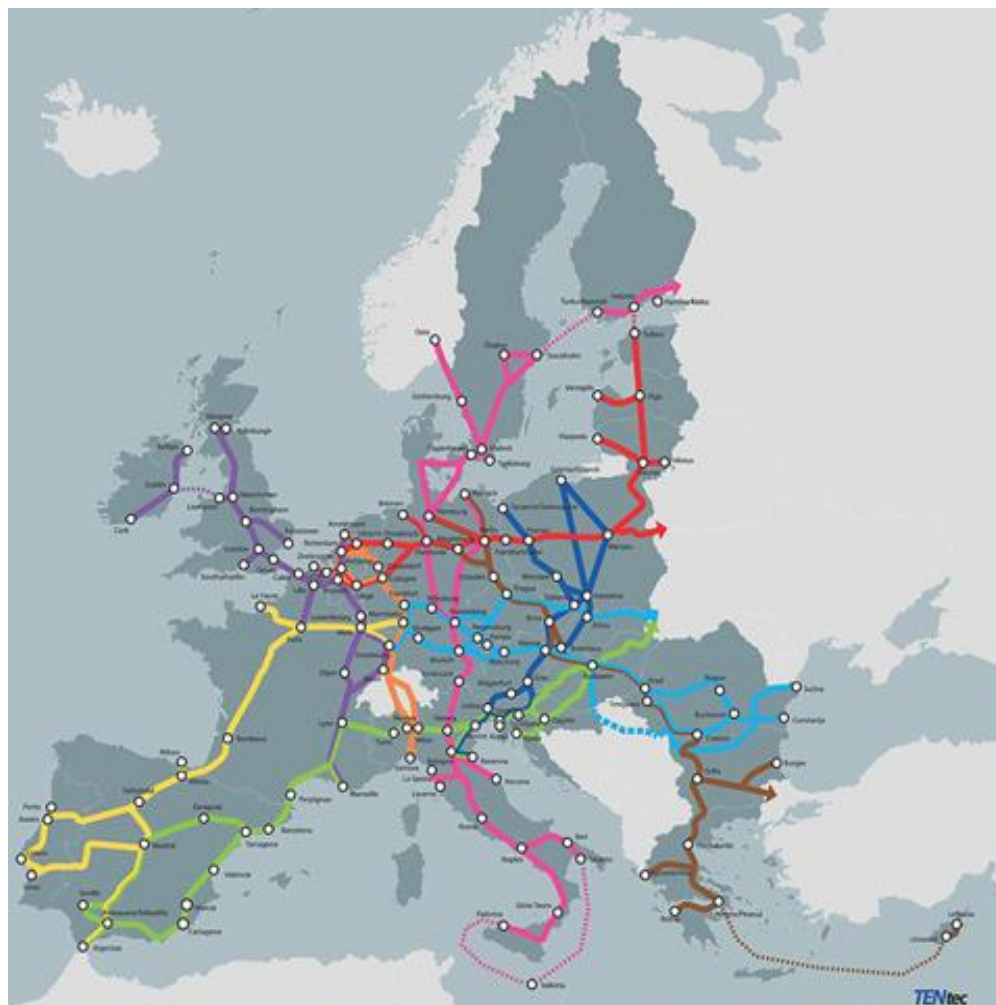
³¹ Kent and Medway Economic Partnership, ‘Briefing Note: Infrastructure Summit 2017’ (January 2017) at page 3, available at: <http://kmep.org.uk/documents/KMEP_Infrastructure_Summit_Feedback_-_20_January_2017.pdf> (accessed 16 March 2016).

³² HMRC, ‘Regional Trade Statistics Q3 2016’ (6 December 2016) at page 3, available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/574672/RTS_Q3_2016.pdf> (accessed 7 April 2017).

³³ Highways England, ‘Kent Corridor to M25: Route Strategy’ (March 2017) at page 13, available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/600312/Kent_Corridors_to_M25_Final.pdf> (accessed 31 March 2017).

Routes through Kent and Folkestone provide an essential link between the Channel Ports, London and the rest of the UK. The M20, the A2 / M2 route and the Dartford Crossing – the only road crossing of the Thames Estuary East of London – are all critical parts of the country’s road network. Ensuring the free-flow of traffic through these routes is a key national priority. A resilient road network should have the capacity to divert traffic away from the primary network in the event of disruption. Figure 2 (above) shows possible local diversionary routes. In almost every case these are unsuitable for Heavy Goods Vehicles (HGVs).

Figure 3: Trans-European Transport Network, TEN-T Core Network Corridors



Source: European Commission³⁴

³⁴ European Commission, Trans-European Transport Network TENtec available at: <http://ec.europa.eu/transport/infrastructure/tentec/tentec-portal/site/en/innovation.html> (accessed 16 March 2017).

Being the closest UK port to mainland Europe makes Dover and the Channel Tunnel critical links of national and international importance offering the fastest, cheapest and most efficient crossing for goods. Aside from the Channel Tunnel and the Port, there is no realistic crossing alternative for hauliers. The Dover to Calais route is the only core seaway identified by the EU as connecting the UK with mainland Europe as part of the Trans-European Transport Network (TEN-T).

As part of the North Sea-Mediterranean Corridor – one of ten core TEN-T network corridors – the Port is part of a comprehensive network, distinguished by its strategic importance for European and global transport flows. Last year, 2.6 million road haulage vehicles passed through the Port,³⁵ with freight traffic having grown by 30% in the last three years.³⁶ The Port’s success is therefore intrinsically linked to the wellbeing of the broader UK economy.

1.2. Channel Ports: essential to Britain’s economy

Goods travelling through UK Channel Ports are essential to keep the Northern Powerhouse whirring and to prevent the Midlands Engine conking out. Disruption of any kind to the free-flow of freight vehicles passing through these ports will have serious knock-on effects for the entire British economy. This is particularly true of the industries and economies of Britain’s regions (see Table 1 below).

Table 1: Manufacturing contribution to regional incomes (2014)

Region	Income (2014, £bn)	Share due to manufacturing	Share due to manufactured exports	Share of EU in exports
North East	47,702	15.20%	10.14%	48.04%
North West	149,869	15.56%	9.99%	49.41%
East Midlands	95,178	17.46%	9.81%	46.94%
Wales	54,336	16.98%	9.33%	47.59%
West Midlands	114,755	14.97%	9.15%	42.48%
Northern Ireland	34,384	15.60%	8.61%	48.14%
East of England	138,801	12.21%	7.86%	47.43%
South West	121,070	11.91%	7.72%	45.48%
Yorkshire and The Humber	106,467	14.72%	7.70%	50.78%
Scotland	123,543	11.53%	6.06%	49.40%
South East	239,698	8.76%	5.87%	48.48%
London	364,310	2.62%	1.27%	50.15%

Source: The UK in a Changing Europe (2017)³⁷

³⁵ Port of Dover, ‘Annual Traffic Statistics’ available at: <<http://www.doverport.co.uk/about/performance/>> (accessed 6 March 2017).

³⁶ Port of Dover Press Release, ‘Europe’s Busiest Ferry Port Hits All-time Freight High’ (24 November 2016) available at: <<http://www.doverport.co.uk/about/news/europes-busiest-ferry-port-hits-all-time-freight/13253/>> (accessed 15 March 2017).

³⁷ L. A. Winters, ‘Brexit and the regions: a lighter shade of dark’ (20 October 2016) available at: <<http://ukandeu.ac.uk/brexit-and-the-regions-a-lighter-shade-of-dark/>> (accessed 16 March 2017).

Economic analysis shows that leaving the EU Single Market is very likely to re-orient the location of economic activity within the UK. Brexit is likely to boost manufacturing relative to services which will favour regions outside London and the South-East.³⁸ Manufacturing makes the largest percentage contribution to regional income in the East Midlands and Wales, with the North West, North East, West Midlands and Northern Ireland not far behind. The regional incomes of the North-East and North-West have the highest contributions from manufactured exports meaning that they rely heavily on effective transport links to the Channel Ports.

Recent research by the Northern Economic Futures Commission and the Institute for Public Policy Research emphasises the importance of an effective transport infrastructure for the development of regional economies.³⁹ The Prime Minister has stated that the Home Office and the Department for Transport are also fully committed to investing in transport links to ensure the country is ready for Brexit.⁴⁰

“Lots of production lines in the Midlands and the North could close if we don’t get this right.”

Tim Waggott, Chief Executive, Port of Dover
(April 2017)

In a wide-ranging study of more than 180 infrastructure projects, Sir Rod Eddington analysed the potential for strategic transport decisions to affect the productivity, stability and growth of the UK economy over the next 30 years.⁴¹ Among its findings, the Eddington Report concluded that interventions improving journeys in areas “used by business passengers, freight, airport or port users” often offer very high returns and wider benefit-cost ratios.⁴² The House of Commons Transport Committee has also highlighted the importance of ensuring that ports have

³⁸ *Ibid.*

³⁹ IPPR North and the Northern Economic Futures Commission, ‘Northern Prosperity is National Prosperity: A Strategy for Revitalising the UK Economy’ (November 2012) at page 109, available at: http://www.ippr.org/files/images/media/files/publication/2012/12/northern-prosperity_NEFC-final_Nov2012_9949.pdf?noredirect=1 (accessed 7 March 2017).

⁴⁰ Prime Minister’s Questions, Volume 623 (22 March 2017) available at: <https://hansard.parliament.uk/commons/2017-03-22/debates/091167A6-E1E6-44D9-BEF4-C877BCD394DD/Engagements> (accessed 31 March 2017).

⁴¹ CEBR, ‘The Economic Effect of Road Investment’ (February 2017) available at: <https://www.fairfueluk.com/publications/files/assets/common/downloads/publication.pdf> (accessed 4 April 2017).

⁴² Transport Committee, Oral and Written evidence given by Sir Rod Eddington (session 2005-6), HC737-I, 30 November 2005.

the greatest possible connectivity to the country's principal road networks as means of accommodating freight transport.⁴³

1.3. The need for a new Thames crossing

For many years, the roads to the Channel Ports across the Thames have been inadequate. A new crossing is needed over the Thames. Since 1963, the Dartford Crossing has acted as a vital transport artery for vehicles and the passage of goods from Dover over the Thames to the east of London. But the Crossing is now unfit for purpose. Originally designed for use by up to 135,000 vehicles per day (or 49.3 million a year),⁴⁴ the current combination of tunnels and bridge is now operating at 117% of capacity.⁴⁵ A quarter of crossings are currently made by Light-Goods Vehicles (LGVs) and Heavy-Goods Vehicles (HGVs). This figure is expected to rise to 34% by 2041.⁴⁶ This overcrowded route is at least partially closed more than 300 times a year and it can take as long as five hours for traffic to travel smoothly again after an incident.⁴⁷ This has the effect of forcing hauliers to either face the delay, or to travel up to 100 miles out of their way to avoid it.⁴⁸ Expanding or widening the Dartford Crossing route is not an option. Steps taken so far to improve traffic flow have not had a sufficient effect. Demand is rising inexorably (see Figure 4 overleaf). A new connection across the River Thames is required. This is why it is necessary to build the Lower Thames Crossing as a key national priority.

⁴³ House of Commons Transport Committee, 'Access to Ports' (18 November 2013) HCC 266 at page 8, available at: <<https://www.publications.parliament.uk/pa/cm201314/cmselect/cmtran/266/266.pdf>> (access 29 March 2017).

⁴⁴ Highways England, 'Lower Thames Crossing' available at: <<http://roads.highways.gov.uk/projects/lower-thames-crossing/>> (accessed 17 March 2017).

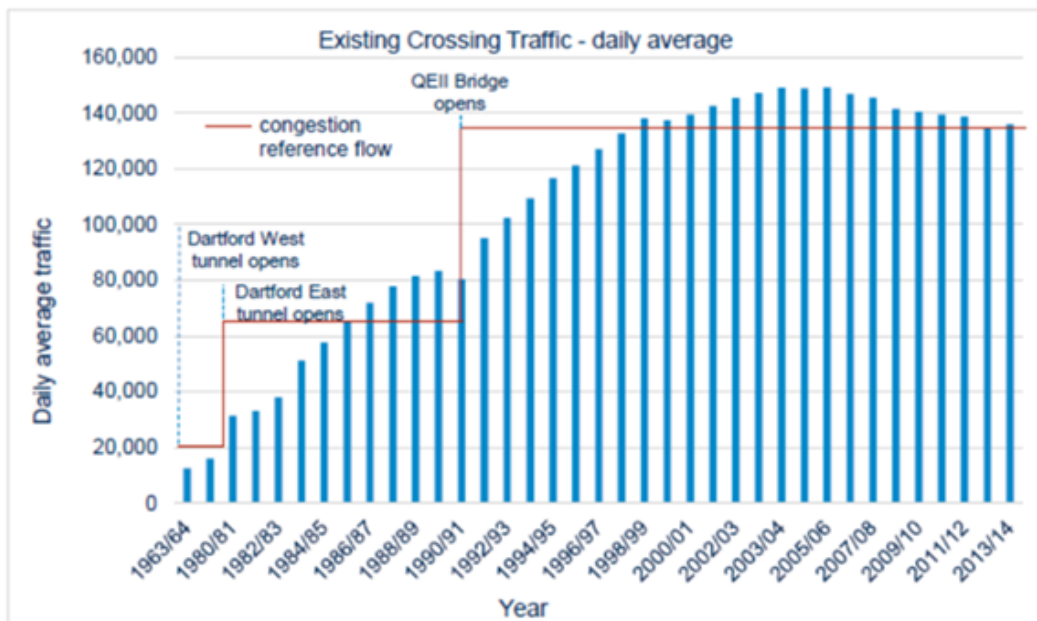
⁴⁵ Kent and Medway Economic Partnership (n 32) at page 3. In 2014 there were 141,000 daily vehicle crossings. See Highways England, 'Lower Thames Crossing Fact Sheet: Traffic Modelling' (2016) at page 2, available at: <https://highwaysengland.citizenspace.com/cip/lower-thames-crossing-consultation/user_uploads/lower-thames-crossing-consultation-factsheet---traffic-modelling.pdf> (accessed 17 March 2017).

⁴⁶ Highways England, 'Lower Thames Crossing: Summary Business Case' (2016) at page 3, available at: <https://highwaysengland.citizenspace.com/cip/lower-thames-crossing-consultation/user_uploads/lower-thames-crossing-consultation-summary-business-case.pdf> (accessed 17 March 2017).

⁴⁷ *Ibid.*

⁴⁸ *Ibid.* at page 4. Other hauliers are also forced to divert owing to the height limits imposed upon vehicles entering the Western tunnel.

Figure 4: Average annual daily traffic flow across the Dartford Crossing since opening in 1963 (2-Way Annual Average Daily Traffic)



Source: Highways England (2016)⁴⁹

This Report welcomes the decision by the Government and Highways England to make a decision on the route. The route chosen is Route 3 (see Figure 5 overleaf for Route 3 and the other shortlisted routes). This crossing should not simply be a M25 relief road. It should connect with the M11 to provide a route to Northern England and the regions. By connecting Kent and Essex utilising a previously non-existent route, the Lower Thames Crossing would have a significant effect on reducing the pressure upon the currently overloaded Dartford Crossing and improve access to the Channel Ports.⁵⁰ Both are estimated to reduce traffic volumes on the route to around 90% of its intended capacity.⁵¹ This represents a reduction of almost 30% on present volumes. A key priority is that the crossing should be built as soon as possible. To take 10 years would be to take too long. It is essential that this important infrastructure is delivered as soon as possible.

⁴⁹ Highways England (n 46) at page 3.

⁵⁰ Department for Transport, 'Review of Lower Thames Crossing Options, Final Review Report' (April 2013), at pages 36-38, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210625/final-review-report.pdf (accessed 4 April 2017).

⁵¹ *Ibid.*

Figure 5: Route 3 and other shortlisted routes for the Lower Thames Crossing



Source: Highways England (2016)⁵²

1.4. The need to widen the M20 / upgrade the M2 and dual the A2

The M20 and A2/M2 are increasingly congested.⁵³ Forty-one percent of traffic on the M2/A2 and M20/A20 corridors is freight.⁵⁴ A staggering 70% of traffic on the way to Dover uses the

⁵² *Ibid.* at page 8.

⁵³ Kent County Council, 'Lower Thames Crossing: Appendix A' at page 1, available at: <https://democracy.kent.gov.uk/documents/s63496/Item%20C3%20-%20Appendix%20A%20-%20LTC%202013%20Consultation%20Response.pdf> (accessed 4 April 2017).

⁵⁴ Kent County Council, 'Freight Action Plan for Kent: Consultation draft' (12 March 2017) at page 4, available at: http://consultations.kent.gov.uk/gf2.ti/-/740130/24321093.1/PDF/-/Freight_Action_Plan_Consultation_Draft.pdf (accessed 17 March 2017).

M20, which is also the main route for freight to the Channel Tunnel.⁵⁵ This number is far higher than the national average, where HGVs are 5.3% of total traffic.⁵⁶ The growth of the Channel Ports coupled with the increasing inability of the Dartford Crossing to handle traffic means that major roads to the Channel Ports desperately need investment. As Highways England has noted: “The projected growth in shipping and roll-on roll-off traffic means that while these corridors are busy now they are set to experience a year on year increase in activity into the foreseeable future”.⁵⁷

The Lower Thames Crossing would deliver increased capacity. But it will not fully alleviate the transport situation across Kent. Commitment to the project must come in tandem with further work to alleviate the pressure on the region’s overloaded road network. In particular the A2, M2 and M20 urgently require upgrading.⁵⁸ This includes the need to dual the single carriageway elements of the A2 on the way into and out of Dover. An upgraded A2 would connect Dover and the Lower Thames Crossing, both of which can be expected to face rapid growth, which will exacerbate the existing need for dualling. This would have the effect of making the A2 a significant new strategic route between the North, the Midlands and Europe.⁵⁹

The M2 and the A2 at Brenley Corner near Faversham should also undergo junction improvement works.⁶⁰ If they were dualled, the A2/M2 from Dartford to the Docks could pay for themselves. Each LGV which used this route would save between 4.2 and 4.5 miles, which for an average vehicle is around 1 gallon of diesel, which for millions of journeys per year would soon add up. The M20 should also have its hard shoulder strengthened for use by HGVs,

⁵⁵ Transport Select Committee, Operation Stack, Qq85, 87 [Paul Watkins]; Port of Dover (OPP 004), Kent County Council (OPP 021), Dover District Council (OPP 034) available at:

<<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmtrans/65/65.pdf>> (accessed 4 April 2017).

⁵⁶ Department for Transport, ‘Provisional Road Traffic Estimates Great Britain: January 2016 - December 2016’ (9 February 2017) at page 3, available at:

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/590516/prov-road-traffic-estimates-jan-2016-to-dec-2016.pdf> (accessed 17 March 2017).

⁵⁷ Highways England, ‘Kent Corridors to M25 Route Strategy Evidence Report’ (April 2014) at page 62, available at:

<[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364209/Kent Corridors to M25 Evidence Report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/364209/Kent_Corridors_to_M25_Evidence_Report.pdf)> (accessed 12 April 2017).

⁵⁸ Kent County Council, ‘Growth and Infrastructure Framework – Transport’ at page 3, available at:

<https://www.kent.gov.uk/_data/assets/pdf_file/0016/50308/Transport-infrastructure-needs-and-requirements-GIF.pdf> (accessed 17 March 2017).

⁵⁹ Kent County Council Cabinet minutes, 15 July 2013,

<<https://democracy.kent.gov.uk/documents/s41718/Cabinet%2015%20July%202013%20LTC%20FINAL%2020.pdf>> at page 9, (accessed 4 April 2017).

⁶⁰ The idea of minor improvements at major junctions such as these is heavily supported by both the Rees-Jeffreys and Eddington Reports.

in order to improve its resilience, as suggested by the European Gateway Strategic Delivery Group.⁶¹ A preliminary costing for these improvements amounts to less than £280 million.⁶²

Upgrading the M2/A2 would improve links to the new Thames Crossing. The current Highways England plan for lorries to weave across Kent is inefficient and make little sense to anyone with knowledge of the roads to the Channel Ports.

“We overflow our available space two or three times a week, at peak times. That will be a daily occurrence.”

Tim Waggott, Chief Executive, Port of Dover
(April 2017)

1.5. M20 Lorry Park

More than two in every three HGVs entering Britain do so through Dover or the Channel Tunnel.⁶³ For vehicles leaving Britain that figure rises to 88% when the Eurotunnel service is included.⁶⁴ Road freight traffic is increasing at 4% a year, with the industry currently worth an estimated £74 billion to the British economy.⁶⁵ The result of this, combined with both the EU’s Working Time Directive and the poor state of Highways England roads in Kent, means that there is now a growing problem with lorry parking. Lorries frequently park informally, by the roadside, negatively impacting traffic flow and local residents. The environmental impact (pollution and noise) is worsened when engines must be kept on, for example, for a heater or for refrigeration.⁶⁶

⁶¹ House of Commons Transport Committee, ‘Operation Stack’ (23 May 2016) HC 65 at page 35, available at: <<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmtrans/65/65.pdf>> (accessed 17 March 2017).

⁶² Kent County Council Cabinet (n 59), at page 8.

⁶³ Kent County Council, ‘Freight Action Plan for Kent’ at page 5, available at: <http://consultations.kent.gov.uk/gf2.ti/-/740130/24321093.1/PDF/-/Freight_Action_Plan_Consultation_Draft.pdf> (accessed 4 April 2017).

⁶⁴ Department for Transport, ‘Road goods vehicles travelling to mainland Europe: October to December 2015 (quarter 4)’ (18 February 2016) at page 4, available at: <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/500682/ro-ro-2015-04.pdf> (accessed 17 March 2017).

⁶⁵ Kent County Council (n 63) at page 5.

⁶⁶ *Ibid.* at page 9.

The severity of this problem is clearly shown when Operation Stack is in use,⁶⁷ as was the case for 32 days in the summer of 2015.⁶⁸ At one point 7,000 HGVs were stacked on the M20, and it took around 36 hours to clear them.⁶⁹ This is especially damaging to “just in time” supply chains. For example major exporters such as Rolls Royce had to delay their production line, as essential parts failed to arrive in time.⁷⁰ The cost of Operation Stack to the economy is estimated to be £250 million per day,⁷¹ plus a further £50,000 in policing.⁷² The freight industry alone bears £750,000 a day in costs whilst these emergency measures are in place.⁷³

There are currently no holding areas for trucks at border areas in the UK or the EU of sufficient size to handle customs formalities for trucks on departure or arrival. There is an urgent need for long term resilience planning given that problems arise with daily traffic of 10,000 HGVs. In the next decade, this figure is expected to rise to almost 16,000, so it essential to plan ahead and to be ready on day one.⁷⁵

Figure 6: Operation Stack



Source: Kent Live (2015)⁷⁴

⁶⁷ Operation Stack is a traffic management system that involves the emergency use of the M20 to park freight traffic bound for the Channel Tunnel or the Port of Dover.

⁶⁸ Kent County Council (n 63) at page 13.

⁶⁹ House of Commons Transport Select Committee, ‘Operation Stack’; Qq2, 5, 51, <<https://www.publications.parliament.uk/pa/cm201617/cmselect/cmtrans/65/65.pdf>> (accessed 4 April 2017).

⁷⁰ *Ibid.* at page 27.

⁷¹ Kent County Council (n 63) at page 13.

⁷² Kent Police evidence to Transport Committee (n 61), at page 23.

⁷³ *Ibid.* at page 26.

⁷⁴ S. Payne, ‘Operation Stack in Place on the M20’ (12 March 2013) available at: <<http://www.kentlive.news/snows-forces-operation-stack-phase-2-m20/story-18392076-detail/story.html>> (accessed 17 April 2017).

⁷⁵ Kent County Council (n 63) at page 13.

The building of the proposed Stanford West lorry park on the M20 would be able to accommodate 3,600 lorries when Operation Stack is in use. This would ease traffic flow by reducing the level of Stack which would need to be used. The Government has set aside £250 million for the Stanford West lorry park, which according to most estimates should be sufficient.⁷⁶ Bigger than the Vatican City in size, this will be the second largest park of its kind in the world. This project is urgently required to manage road resilience where there are problems at the Channel Ports.

The lorry park cannot operate in isolation. A rate of release approaching the 300 per hour level, which the Port of Dover would like to see, would overload the M20 as it currently stands.⁷⁷ A range of options – from the A2/M2, the M20, lorry parks to the use of traffic flow technology,⁷⁸ – must be deployed in tandem to enable transport to flow efficiently.⁷⁹ There must be investment to support the Channel Ports. Alternative proposals to shift trade to other ports are simply not feasible as the short sea route across the English Channel is the fastest, most cost-effective route.⁸⁰

⁷⁶ House of Commons Transport Select Committee (n 61) at page 28.

⁷⁷ House of Commons Transport Select Committee (n 61) at page 24.

⁷⁸ *Ibid.* at page 3.

⁷⁹ *Ibid.* at page 4.

⁸⁰ *Ibid.* at page 40.

Part 2. The Brexit Customs Challenge

In writing this Report, many organisations and businesses were consulted in order to gain a better understanding of how a post-Brexit UK border can be delivered. These organisations included UK Port authorities, shipping companies, freight agents, hauliers and expert consultants. This consultation resulted in the formation of 5 Guiding Principles (detailed below) designed to meet the Brexit customs challenge and to make sure Britain is ready on day one.

These principles will enable seven key priorities to be met that will enable Britain to be open for business and trade to flow seamlessly. These priorities, which are explored in detail in Part 2 include:

1. **That the border should be a tax point, not a search point** so far as possible. That self-assessment should be relied on for customs declarations as it is for VAT. The enquiry and audit function should be directed to the place of business of the importer / exporter rather than the border to the greatest possible extent.
2. **Be in the Common Transit Convention.** This form of ‘passport for goods’ is important to avoid stops and potentially checks at every EU member state frontier.
3. **Mutual recognition of meat should continue.** Meat inspections currently account for 80% of all inspections for non-EU trade. Continuing with mutual recognition of food will eliminate the need for most checks at the border.
4. **The establishment of a Trusted Trader Scheme.** Adapting the current authorised economic operator system to become trusted traders will enable the strongest focus to be applied to the greatest risks – as well as encourage more hauliers to meet trusted trader standards of business and compliance.
5. **The closest possible working relationship with France.** Each member state has flexibility in setting customs processes as long as tariffs are accounted for. Deepening the relationship between the Channel Ports and France will be an essential element to ensure that trade continues to flow smoothly.
6. **Technology should be used to speed customs processing.** The gold standard to aspire to is the 10 seconds it takes in Singapore. The new Customs Declaration Services (CDS) systems should aim for this service level as well as electronic documentation including bills of lading.

7. **Evolution not revolution.** Building on existing systems that hauliers and shippers are familiar with will be essential to making sure the UK is ready on day one. Shock changes should be avoided.

2.1. The Brexit Customs Challenge

The UK's withdrawal from the EU must act as a catalyst for financial investment by Government in our country's border. The UK's current customs system, CHIEF,⁸¹ operates at an annual capacity of 100 – 150 million declarations. After Britain leaves the EU, the total volume is expected to increase to 350 million.⁸²

New customs processes will need to emphasise speed and simplicity. Britain currently has no appropriate system for applying customs to the 4.5 million journeys which hauliers travelling to and from the EU take each year.⁸³

“Using current customs practices and applying them to UK / EU traffic risks delays of biblical proportions which would strangle growth and hurt the entire economy.”

Richard Burnett, Chief Executive, Road Haulage Association (March 2017)

There must be special provision for certain products in any new system going forward. For example, around 24% of British meat is exported, while imports make up 45% of consumption.⁸⁴ Of this, a huge percentage - around 80% of 2 million tonnes of imports in 2015 – comes from the EU.⁸⁵ If tariffs are introduced, the meat sector is likely to undergo huge change after Britain leaves the EU, as tariffs for meat products are high.⁸⁶ Meat makes

⁸¹ The Customs Handling of Import and Export Freight (CHIEF) system. Further information available on HMRC website at: <<https://www.gov.uk/guidance/chief-trader-import-and-export-processing-system>> (accessed 17 March 2017).

⁸² Grosvenor International Systems, ‘CHIEF Replacement - Customs Declaration Services (CDS) - What do we know at the moment?’ (21 October 2016) available at: <<http://www.customs.net/news?aid=8784>> (accessed 17 March 2017).

⁸³ Road Haulage Association, ‘Brexit and Road Haulage – The Customs Control Danger’ (5 February 2017) available at: <<https://www.rha.uk.net/news/press-releases/2017-02-february/brexit-and-road-haulage-%E2%80%93-the-customs-control-dang-en>> (accessed 17 March 2017).

⁸⁴ International Meat Trade Association, Overview of Current UK Meat Import and Export Trade, 8th August 2016, <http://www.imta-uk.org/images/stories/pdf_docs/imports_paper/Overview%20of%20Current%20UK%20Meat%20Import%20and%20Export%20Trade.pdf> at page 2 (accessed 4 April 2017).

⁸⁵ *Ibid.* at page 10.

⁸⁶ *Ibid.* at page 6 and 11. The sector is also heavily restricted by EU quotas

up about 80% of checks at the border and as a perishable product cannot be kept waiting.⁸⁷

Any new system should be fully integrated and digital so as to allow trade to move through the border, as seamlessly as possible. Changes to how customs checks are conducted must be introduced, minimising human intervention to reduce costs for both government and hauliers.⁸⁸

The Government says it is committed to making trade with the EU as frictionless as possible after Brexit.⁸⁹ Achieving this goal requires developing pragmatic solutions that build on existing processes. Evolution and familiarity are most likely to ensure that the system will operate effectively from day one.

This Report recommends that this should be achieved according to the 5 Guiding Principles set out overleaf.

Figure 7: Total UK meat imports from EU Member States (2015) (tonnes)

(Tonnes)	EU
Beef	223,290
Processed Beef	50,914
Lamb	7,599
Processed Lamb	8,442
Pork	344,697
Processed Pork	377,280
Poultry	389,328
Processed Poultry	156,151
Red Meat Offal	25,042

Source: International Meat Trade Association⁹⁰

⁸⁷ The refrigeration units containing the product also need to be kept on, which often entails keeping the trucks running, which is both costly and environmentally damaging. Therefore it makes sense to move these trucks to a specific clearance area for checks, preferably one with ready access to the national grid, to keep the units running with a minimum of pollution. The proposed M20 lorry park is the ideal location for this to happen, all in one place. See Freightlink, ‘Brexit Update (Part 1) – How will this affect UK hauliers and couriers?’ (5 July 2016) available at: <<https://www.freightlink.co.uk/knowledge/articles/how-will-brexit-affect-uk-hauliers-and-couriers>> (accessed 17 March 2017). Logistics firm Europa Worldwide, have called for a 24 hour service to deal with the anticipated increase. See Transport Operator, ‘Hauliers gear up for hard Brexit’ (29 January 2017) available at: <<http://transportoperator.co.uk/2017/01/29/hauliers-gear-hard-brexit/>> (accessed 17 March 2017).

⁸⁸ IBM notes the need to release goods as soon as they are no longer required for inspection, which is of huge value for perishables, as well as the need to reduce administrative burdens. See IBM, ‘Declaration management system: An import and export solution for customs administrations’ (January 2017) at page 5, available at: <<https://public.dhe.ibm.com/common/ssi/ecm/go/en/gob12346usen/GOB12346USEN.PDF>> (accessed 17 March 2017).

⁸⁹ See ‘The United Kingdom’s exit from, and new partnership with, the European Union’ at paras. 8.44 and 8.48, available at: <<https://www.gov.uk/government/publications/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union-white-paper/the-united-kingdoms-exit-from-and-new-partnership-with-the-european-union--2#ensuring-free-trade-with-european-markets>> (last accessed 6 March 2017).

⁹⁰ International Meat Trade Association, ‘Overview of Current UK Meat Import and Export Trade’ (8 August 2016) at page 10, available at: <http://www.imta-uk.org/images/stories/pdf_docs/imports_paper/Overview%20of%20Current%20UK%20Meat%20Import%20and%20Export%20Trade.pdf> (accessed 7 April 2017).

➤ **Principle 1: Embrace digital data-driven processes and systems to minimise delays for freight and enable regulatory agencies to target interventions based on risk.**

Business and regulatory agencies must work together to minimise the cost and delay of interventions at the border. Business can provide data to government systems (notably Border Force’s Advanced Freight Targeting Capability). This will enable government to target interventions, whether they involve a documentary or a physical examination. The focus should be on high risk freight so as to allow routine, legitimate cross-border trade to move unimpeded. This would reduce the cost to government of the people and infrastructure needed to undertake widescale interventions. The best data comes as early as possible from the factory or consolidation centre where the truck is loaded. This doesn’t just improve the quality of the data - it increases the time for systems and officials to undertake a measured risk assessment.

➤ **Principle 2: Create joined-up information and physical processes with the EU-27, particularly with Member States where the UK shares a “land bridge” border.**

It is essential that any customs and tariff systems should be joined-up. Every EU-bound export from the UK will be an import into the EU, and vice-versa. Under current EU customs law, delivery of customs systems and processes is the responsibility of individual Member States. To make these import / export processes as frictionless as possible, the UK should partner with France and other Member States so that the movement of goods involves a single process rather than two separate and disparate declarations. In practice, this raises three issues.

First, we must recognise the benefit of aligning the UK’s post-Brexit customs processes with those of the EU so that the information requirements and processes are consistent for interlocking customs transactions. HMRC’s CDS programme is already aiming to meet the requirements of EU Customs Law. This will enable business to create “super-transactions” which embrace combined imports and exports.

Second, it is important to encourage the UK’s regulatory agencies to actively share information with the regulatory agencies of EU Member States. This will improve the targeting of illegitimate trade and to minimise the disruptive impact on legitimate trade. Maintaining common customs machinery is key, and so it is imperative for all parties that UK-EU movements are recorded on the New Community Transit System (NCTS) and the Excise Movement Control System (EMCS). It should also be possible to apply the Import Control System (ICS) for safety checks.

Third, for the “land bridge” countries of France and Belgium, the UK should seek to extend the principles of the Le Touquet Treaty to cover juxtaposed customs checks as well as checks for people (as detailed further in Part 3 of this Report).

➤ **Principle 3: Build on the UK’s existing customs systems and processes that currently deliver one of the world’s most efficient customs regimes.**

The UK has an established, efficient set of processes and systems for enabling and controlling the imports and exports of non-EU countries. These processes and systems span government and trade platforms. They are based on a positive, trade-enabling relationship between HMRC and business which, in a maritime environment, allows for the majority of cargo to be cleared by customs before it is unloaded from the ship.

The challenge for UK-EU movements is their incredibly short timescales. Channel freight arriving at Dover, for example, typically involves short Ro-Ro routes. It is important that Government and trade work together to incorporate regulatory processes into existing supply chain management. Modern technology will be required to optimise the customs clearance process at ports, allowing the border to be treated as a tax point and clearances to be managed swiftly. Indeed, the border should be a tax point, rather than a search point, to the greatest possible extent. Special provision will need to be made with regard to perishable goods; to the presentation waivers (of goods and documents); self-assessment⁹¹; accelerated examination and clearance; pre-departure & pre-arrival declarations⁹² and processing⁹³; immediate release⁹⁴ and release outside of business hours, as well as minimum clearance controls at the border and maximum controls post clearance.

⁹¹ Union Customs Code entry in the declarant’s records (EIDR) should be implemented in the UK from day 1. UCC self assessment in the EU should be brought forward.

⁹² European Commission, ‘Pre Arrival / Pre Departure Declarations’ available at: <https://ec.europa.eu/taxation_customs/business/customs-procedures/general-overview/pre-arrival-pre-departure-declarations_en> (accessed 18 April 2017). See also HMRC, ‘The Union Customs Code’ (October 2014) available at: <<https://www.gov.uk/guidance/introduction-of-the-union-customs-code-ucc>> (accessed 18 April 2017).

⁹³ United Nations Economic Commission for Europe, ‘Pre-arrival at processing’ available at: <<http://tfig.unece.org/contents/prearrival-processing.htm>> (accessed 18 April 2017).

⁹⁴ WCO Immediate Release Guidelines Version (2014) available at: <<http://www.wcoomd.org/en/Topics/Facilitation/Instrument%20and%20Tools/Tools/Immediate%20Release%20Guidelines>> (accessed 18 April 2017).

➤ **Principle 4: For “land bridge” routes, adopt the existing principle in the EU Customs Union that the driver of the truck is responsible for customs formalities rather than the ferry or train operator.**

The overwhelming majority of non-EU freight entering the UK is carried by ships and aircraft that are unloaded at the port of destination and then subsequently collected by a truck or train. Where a truck drives through the customs frontier, EU customs law currently makes the driver responsible for customs formalities. This reflects the fact that trucks can divert at short notice to different ferry / train operators, and that the driver is the most appropriate party to be accountable for the freight on board the truck. It makes sense for UK processes to work within the wider EU system to ensure the greatest degree of ease possible. As many lorries carry multiple loads for different customers of the haulier concerned, processes need to accommodate the necessary declarations in the simplest way possible.

➤ **Principle 5: Minimise the requirement for routine documentary and physical examination of food products by negotiating mutual recognition of quality standards and procedures.**

A large proportion of regulatory document checks and physical examinations of non-EU cargo relates to food, particularly meat products. In fact this accounts for 80% of all non EU cargo checks. As noted above, food and other perishable goods account for a very large proportion of goods exported from and imported to the UK. Disrupting these supply chains with documentary and physical checks would incur cost, delay and queues. Accepting continued mutual recognition of standards would minimise the need for checks and help avoid delays at the border. The alternative, introducing new meat checks at a port like Dover, would result almost immediately in shortages of these products at supermarkets due to the severe delay caused. It is therefore important that the UK and EU should continue to recognise one another’s standards after the UK leaves the EU.

2.2. A Trusted Trader Scheme (TTS)

Whether or not tariffs are imposed, the introduction of customs formalities will lead to disruption at UK Channel Ports. This will also create additional costs for importers and exporters. It is therefore vital that processes are developed to speed the passage of goods from day one, whilst ensuring strong security. New technologies and customs schemes allow businesses and firms that are shipping goods to perform much of the work themselves, in a user-friendly way.

The most important programme to simplify border controls is the ‘Trusted Trader Scheme’ (TTS), currently used in countries such as Canada and Australia.⁹⁵ Under a TTS, companies register themselves with a government agency as a trusted trader. The benefits of such a scheme are obvious – hauliers spend less time queuing,⁹⁶ and government agencies are better able to direct their efforts to tackle higher risks.⁹⁷ Businesses can also remove the cost of running a separate system to deal with customs and have a clearer expectation of what those costs might be in practice.

The UK currently operates an Authorised Economic Operators (AEOs) system,⁹⁸ which could be adapted to become a TTS. When AEO status is obtained in one EU Member State it applies across the rest of the European Customs Union.⁹⁹ Although this would no longer apply to the UK when it leaves the Customs Union, it should not be difficult to obtain a Mutual Recognition

“We already know the impact of port delays – just one hour’s delay adds £15,000 cost to the road haulage industry – so a streamlined process is vital.”

James Hookham, Deputy Chief Executive,
Freight Transport Association (2017)

⁹⁵ Owing to the geographical diversity of these two countries, these systems operate in subtly different ways, with Canada focussing on a land border with the USA, while Australia focuses on ports. The USA also runs a similar system.

⁹⁶ Speed is improved by a decrease in the need for physical examinations and interventions (currently 1.5% of containers are stopped), helped by the use of gamma radiation technology to quickly scan the inside of containers. Gamma radiation technology uses levels of radiation that are below safety levels for members of the public. In Canada, the drivers of freight vehicles have the option to leave the vehicle before it is scanned.

⁹⁷ Allowing a greater number of traders to pass by unchecked allows the limited resources of the border agencies to be better targeted. Attention can be given to inspecting a reduced pool of containers and border force staff are physically deployed to more important areas of the border.

⁹⁸ HMRC, ‘Guidance: Authorised Economic Operator’ (last updated 30 November 2015) available at: <https://www.gov.uk/guidance/authorised-economic-operator-certification> (accessed 17 March 2017).

⁹⁹ European Commission, ‘Authorised Economic Operator’ available at: http://ec.europa.eu/taxation_customs/general-information-customs/customs-security/authorised-economic-operator-aeo/authorised-economic-operator-aeo_en#who_can_become (accessed 17 March 2017).

Agreement (MRA) which will help to smooth the transition. As of November 2015 the EU had MRAs with the USA, China and Japan. The Australian Government has also expressed its intention to prioritise MRAs with countries that use a TTS.

2.3. Comparable customs systems around the world

The main aspects of the systems in Singapore, Canada and Australia are outlined below.

(i) Singapore: efficient and high-tech

Singapore's border agencies are so well regarded that they are in direct competition with commercial firms for tech talent. The United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) proposed in 2005 that the best method of doing business was to implement a so-called single window system.¹⁰⁰ This is comprised of a single point of data submission, a single process for analysing that data, and finally a single process for making decisions regarding customs release and cargo clearance. It is important to note that the UK's current CHIEF system was designed with this purpose in mind, but has not implemented it. A future CDS would need to fulfil this purpose on day one.

Singapore Customs is the sole facilitator of trade and customs at the border.¹⁰¹ This has the effect of huge increases in efficiency.¹⁰² Singapore Customs has responsibility not just for the collection of customs revenue and tax, but also for prevention of those seeking to evade duties. It also has enforcement powers, such as preventing illegal imports and exports (or duty evasion) obligations under Free Trade Agreements.

By keeping customs procedures simple, as well as acting as a regulator with enforcement powers, Singapore Customs is able to act rapidly to respond to the needs of both government and users. Adopting this approach in the UK should be considered, since traders can often find dozens of UK Government agencies all competing for jurisdiction over a single shipment, which causes unnecessary delays. It has been noted that keeping the two separate has the feel

¹⁰⁰ G. McLinden *et al.* (eds.), *Border Management Modernization* (World Bank Publications: 2010) at page 133.

¹⁰¹ Following the merger of several government agencies in 2003, Singapore Customs is responsible for taking the lead in dealing with all matters relating to customs checks. Immigration remains the purview of a separate agency.

¹⁰² In Singapore it has been estimated that the transition to a fully merged system could save businesses as much as £340m per year in man hours. In the UK this saving would be significantly higher. See <http://technews.co/2016/10/10/singapore-govt-s-new-agency-govtech-to-make-online-services-more-user-friendly/> (accessed 4 April 2017).

of an ‘unnatural’ divide, and that bringing them together with one chain of command would increase efficacy.¹⁰³

(ii) Canada: low-cost and fast

The Canadian example demonstrates that the costs of implementing a TTS can be low. The Canada Border Services Agency (CBSA) estimates that the delivery of the three TTS in 2012-13 was around CAN\$9.3 million, facilitating the movement of CAN\$81 billion the previous year.¹⁰⁵ This is

Figure 8: Canadian FAST lane for hauliers



Source: The Bellingham Herald¹⁰⁴

estimated to have also saved the industry CAN\$5.6 million for a reduction in inspections and CAN\$43.7 million in alterations to accountancy.¹⁰⁶

Transportation times in Canada are also reduced by access to Free and Secure Trade (FAST) lanes that enables faster goods clearance at the border.¹⁰⁷ As of April 2016 there were 71 importers, 679 carriers and over 61,000 drivers with FAST approval.¹⁰⁸ FAST drivers must pay

¹⁰³ Department of Homeland Security, ‘An Assessment of the Proposal to Merge Customs and Border Protection with Immigration and Customs Enforcement’ (November 2005) at page 77, available at: https://www.oig.dhs.gov/assets/Mgmt/OIG_06-04_Nov05.pdf (accessed 7 April 2017).

¹⁰⁴ The Bellingham Herald, ‘WU student study freight traffic at border’ (16 November 2015) available at: <http://www.bellinghamherald.com/living/magazine/article43471923.html> (accessed 17 March 2017).

¹⁰⁵ Canada Border Services Agency, ‘Evaluation of the Trusted Traders Programs - Final Report’ (April 2014) available at: <http://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2014/ettp-epnf-eng.html> (accessed 17 March 2017).

¹⁰⁶ *Ibid.*

¹⁰⁷ However the goods themselves must meet a set of particular requirements. The goods (i) must not be prohibited, controlled or regulated importations as set out in any act of Parliament or provincial legislation; (ii) must not be subject to the release requirements of any other government department; and (iii) must be shipped directly to Canada from the continental U.S. or Mexico. See Canada Border Services Agency, ‘Free and Secure Trade - About the Free and Secure Trade Program’ available at: <http://www.cbsa-asfc.gc.ca/prog/fast-expres/about-appropos-eng.html> (accessed 17 March 2017).

¹⁰⁸ Canada Border Services Agency, ‘Free and Secure Trade: Terms and Conditions’ available at: <http://www.cbsa-asfc.gc.ca/prog/fast-expres/cond-modal-eng.html> (accessed 17 March 2017).

a notional (CAN\$50) cost in order to obtain their status, provided they agree to a set of terms and conditions.¹⁰⁹ Their membership card lasts five years, and the benefits for approved drivers include increased business, and can be used as a form of identification.¹¹⁰ Eligibility for the FAST scheme does however rely on all parties in the import chain – importers and hauliers – being approved. Unless all the importers are trusted, then the dedicated FAST lane cannot be used.

Moreover, inspections carried out by other areas of government can discourage companies from applying for FAST approval. For example, the Canadian Department of Agriculture is responsible for inspecting food imported into Canada. This takes place regardless of whether FAST lane approval has been obtained. The solution to this problem has been found in the mutual recognition by Canada and the USA of safety standards in companies' food production cycles, which allows importers to cross the Canadian border unimpeded.¹¹¹

The UK should consider adopting the FAST and RFID / Nexus systems for use at Dover, which as a 'land bridge' has a uniquely high volume of Ro-Ro traffic.

(iii) Australia: Responsibility for Businesses

In Australia, the Trusted Trader Programme aims to expedite cargo checks, and to increase long term economic growth whilst cutting short term costs. The stated aim of this scheme is that 40% of Australian trade becomes trusted – which could amount to just a few hundred major companies.

In order to qualify for the Australian Self-Assessed Clearance (SAC) Declarations programme, there is a fairly non intensive process which must be followed. The initial stage is merely to express an interest, with a form which can be filled out in minutes.¹¹² Assuming the requirements are met at this stage, a self-assessment must then be submitted. This is a far more rigorous questionnaire.¹¹³ This stage excludes new companies which have not been trading for

¹⁰⁹ *Ibid.*

¹¹⁰ Canada Border Services Agency, 'Free and Secure Trade' available at: <<http://www.cbsa-asfc.gc.ca/prog/fast-expres/menu-eng.html>> (accessed 17 March 2017).

¹¹¹ Canadian Food Inspection Agency, 'Food Safety Systems Recognition Arrangement' available at: <<http://www.inspection.gc.ca/food/safe-food-production-systems/recognition-arrangement/eng/1461855282008/1461855380043>> (accessed 4 April 2017).

¹¹² Australian Border Force, 'Australian Trusted Trader: Expression of Interest' (July 2016) available at: <<http://www.border.gov.au/AustralianTrustedTrader/Documents/sample-eoi.pdf>> (accessed 17 March 2017).

¹¹³ Australian Trusted Trader, 'Australian Trusted Trader: Self-Assessment Questionnaire' available at: <<http://www.border.gov.au/AustralianTrustedTrader/Documents/sample-self-assessment-questionnaire.pdf>> (accessed 17 March 2017).

more than one year, as they are unable to provide significant proof regarding their history of compliance. Finally the most intensive part of the process is a validation at the business' site of the declarations made in the self-assessment. This is estimated to take around a day, provided that all relevant staff are present.

The result of this is that the administrative burden is pushed away from the border to the factory door. This is better for the Government, but also for the companies themselves, since they are able to take some responsibility 'in house', for paying duties quarterly, rather than individually. Britain should seek to make any such scheme accessible to SMEs as well as big corporations.

A self-assessment type system should be considered for implementation in the UK.

2.4. Implementation in Britain

A system of e-manifests could easily be implemented in Britain, since all customs declarations must already be submitted electronically to CHIEF by importers or exporters.¹¹⁴ It should be relatively simple and inexpensive to adopt this for the new CDS system being developed as a replacement for CHIEF. In addition to keeping costs down, Britain should also ensure that there is a similar scheme, which caters for SMEs, who would struggle to meet substantial costs. This would support developing companies and industries which rely on 'just in time' couriers.

It is essential that Britain seeks to join the Common Transit Convention to operate a 'passport for goods' system. This does not only apply to EU member states, but also to Turkey and the European Free Trade Association (EFTA) countries such as Switzerland. This would enable hauliers to trade without being stopped for customs checks at every member state border. It has been suggested that membership might be sought via membership of the EFTA or simply through a separate agreement.¹¹⁵ Irrespective of the path chosen, it is imperative for Britain's economy that UK hauliers are not delayed as they progress through EU Member States.

¹¹⁴ IBM, 'Declaration management system: An import and export solution for customs administrations' (January 2017) at page 5, available at: <https://public.dhe.ibm.com/common/ssi/ecm/go/en/gob12346usen/GOB12346USEN.PDF> (accessed 17 March 2017).

¹¹⁵ A. Renison, 'Navigating Brexit: Priorities for business, options for Government' Institute of Directors Policy Report (February 2017), available at: https://www.iod.com/Portals/0/PDFs/Campaigns%20and%20Reports/Europe%20and%20trade/Navigating_Brexit_Priorities_for_business_options_for_government.pdf?ver=2017-02-20-174338-027, (last accessed 12 April 2017), at page 5.

Britain should look especially to make further use of non-intrusive inspection technology (NII). This allows for all cargo to be scanned using safe levels of gamma radiation.¹¹⁶ This saves a vast amount of time, and the creation of an image for inspection removes the potential requirement for multiple physical interventions (see Figure 9 below).

Figure 9: Example of non-intrusive inspection technology image



Source: US Department of Homeland Security (2014)¹¹⁷

Although a similar system is currently used in Britain, this paper advocates a more widespread usage for vehicles designated as high-risk.

The e-manifest should arrive 24 hours before the cargo. An instant digital scan of vehicles and loads designated high risk would allow for rapid identification of contraband. This system could efficiently target potential issues, in conjunction with an RFID/Nexus type scheme.¹¹⁸

Now is the time to act. International Business Machines Corporation (IBM) has noted that the choices are simple – either to take a route which involves heavy maintenance, and risks the existing IT systems falling apart, or to embrace an entirely new system.¹¹⁹ Since the new CDS is already in development to replace CHIEF, the timing for Britain could not be better to develop a new system, whilst simultaneously building upon the existing AEO system.

¹¹⁶ US Customs and Border Protection, 'Factsheet: Non-Intrusive Inspection (NII) Technology' (May 2013) available at: <https://www.cbp.gov/sites/default/files/documents/nii_factsheet_2.pdf> (accessed 17 March 2017). The percentage of cargo which can be scanned falls to 99% for shipping containers.

¹¹⁷ US Department of Homeland Security, 'Privacy Impact Assessment for the Non-Intrusive Inspection Systems Program' (January 2014) at page 2, available at: <https://www.dhs.gov/sites/default/files/publications/privacy_pia_cbp_nii_jan2014.pdf> (accessed 17 March 2017).

¹¹⁸ *Ibid.* at page 5.

¹¹⁹ IBM (n 114), at page 2.

It is also critical to urgently develop infrastructure to make the Trusted Traders scheme economically viable for businesses. For example, there should be sufficient lanes to accommodate Trusted Traders for maximum efficiency. Learning from the Canadian system it would be possible to allow vehicles to obtain preclearance prior to arrival. Designated FAST lanes would be located further from primary inspection points.¹²⁰ This could be achieved in Britain by extending the Le Touquet Treaty to more locations, and by moving the inspection points to the proposed Stanford West lorry park.

Britain will also need to build upon the systems which are currently in place, such as the AEO scheme, which currently covers 60% of UK imports and 74% of exports, yet only 508 companies.¹²¹ This must be expanded outwards to cover smaller businesses, and developed into a fully-fledged TTS. Britain must seek an MRA for similar schemes with the EU, but also with countries such as the USA – the current single largest market for UK exports.¹²² New technologies should be implemented – Singapore has reduced the waiting time for a customs application from two minutes to under ten seconds, and plans to go further.¹²³ Canada’s RFID and Nexus systems do the same, and Britain should study these systems closely when crafting its own.¹²⁴ A new scheme of self-assessment will allow businesses to pay in arrears and move the administrative burden away from the point of entry.¹²⁵

Ideally therefore, Britain should combine the lessons learned from the three schemes above to implement the following changes:

- 1) A Trusted Trader scheme, which emphasises ease of access for SMEs;
- 2) Customs self-assessment;
- 3) E-manifests and customs preclearance;
- 4) One Government at the border / a ‘single window’ system;
- 5) FAST lanes and improved infrastructure for approved hauliers, especially at Dover; and
- 6) Checks which take place away from the frontier – making the border itself just a tax point, not a regular check point.

¹²⁰ Canada Border Services Agency (n 105).

¹²¹ Open Europe, ‘Nothing to Declare, A plan for UK and EU trade outside the Customs Union’ (27 March 2017) at page 5, available at: <<http://openeurope.org.uk/intelligence/economic-policy-and-trade/nothing-to-declare-a-plan-for-uk-eu-trade-outside-the-customs-union/>> (accessed 4 April 2017).

¹²² *Ibid.* at page 11.

¹²³ *Ibid.* at page 44.

¹²⁴ *Ibid.* at pages 54-5.

¹²⁵ *Ibid.* at page 52.

Part 3. Government action, legal powers and international agreements

As outlined in Part 1 of this Report, investing in infrastructure to enable the continued success of the UK Channel Ports is a key national priority. Efficient access by road and increased resilience is essential. Part 2 set out how customs could be managed at the fast turnaround Channel Ports. Part 3 considers the powers Government needs to be sure to be ready on day one.

This part concludes that there are three key priorities for Government to focus on from an administrative perspective to ensure readiness. These are:

1. **A Brexit Infrastructure Bill.** It takes years to build the simplest road. Yet we have less than two years to be ready. A bill containing sweeping powers to accelerate all the usual processes as detailed below is required. Projects like the new Thames Crossing don't need to take a decade. Such a bill will provide focus, and the necessary powers needed to deliver major projects far more speedily.
2. **A New Entente Cordiale.** The existing Le Touquet Treaty should be extended to cover customs processing. The Government should seek to usher in a new era of amity and friendship with France, building on the Entente Cordiale that was entered into over a century ago.
3. **One Government at the border to ensure order at the border.** A mind boggling array of ministries, quangos and agencies have responsibility at the border. This is confusing and there should be a single department and single ministry with whom the buck stops to avoid muddle and confusion that would undermine the ability of the UK to be ready on day one.

3.1 The infrastructure challenge

It is crucial that government is equipped with the legal powers necessary to improve access by road to the Channel Ports. Efficiency at our border and roads that support the anticipated increase in goods vehicles will ensure a smooth flow of goods and passengers.

Improvements to roads leading to UK Channel Ports are subject to numerous planning conditions under existing legislation. The process of discharging these conditions adds significant delay and cost to delivering time-critical road upgrades. Obstacles to investment are numerous and often include issues around marine management; heritage conservation; state

aid; environmental protection; economic development; local or regional impact assessments; and regulatory regimes. There are a considerable number of domestic Acts and Regulations that also slow down planning approval.¹²⁶ Moreover, huge swathes of onerous EU environmental legislation,¹²⁷ which the Government intends to transpose into domestic UK law through the Great Repeal Bill, will continue to apply post-Brexit.¹²⁸

Figure 10: Kent motorways and trunk roads



Source: House of Commons Transport Committee (2016)¹²⁹

The complexity and uncertainty of the planning system is also a significant barrier to upgrading Channel Port roads. Inconsistencies in the port planning framework in the UK also means that “[t]he system, and legal requirements, are so complicated that they are understood by very few people even within the industry or amongst regulators.”¹³⁰ A lack of consistency and clarity in port planning decisions delays or stops crucial investment in ports from taking place.

¹²⁶ Examples include, but are not limited to, the Planning Act 2008; The Town and Country Planning Act 1990; the Environmental Protection Act 1990; the Wildlife and Countryside Act 1981; the Flood and Water Management Act 2010; the National Parks and Access to Countryside Act 1949; the Countryside and Rights of Way Act 2000; the Acquisition of Land Act 1981; the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 and 2011; the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009; the Town and Country Planning (Development Management Procedure)(England) Order 2015; the Marine and Coastal Access Act 2009; and the Environmental Permitting Regulations (England and Wales) 2016.

¹²⁷ Examples include, but are not limited to, Council Directive 92/2011 on the assessment of the effects of certain public and private projects on the environment; Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora; Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and clearer air for Europe; The Water Framework Directive (2000/60/EC).

¹²⁸ Details of the Government’s approach to transposing EU law into domestic UK law are set out in more detail in Department for Exiting the European Union, ‘Legislating for the United Kingdom’s withdrawal from the European Union’ (30 March 2017) available at: <<https://www.gov.uk/government/publications/the-great-repeal-bill-white-paper>> (accessed 31 March 2017).

¹²⁹ House of Commons Transport Committee (n 61), at page 6.

¹³⁰ House of Commons Transport Committee (n 43), at page 24.

3.2 Brexit Infrastructure Bill

Ensuring that nationally important infrastructure works to enable our ports to succeed is vital. We need to have a law that will ensure infrastructure investment can be delivered as fast as may be necessary. This includes delays for crucial projects which have already been granted permission to go ahead, and for those that may be given the green light in future (including those outlined in Part 1 of this Report).

In Britain, it takes much longer to plan and to prepare roads for construction. Given the urgent requirements, exacerbated by the anticipated increases in use after Brexit, it is necessary to reduce the time taken to commit to and deliver new schemes. Many of the schemes identified by Highways England in its first Road Investment Strategy will not be delivered until 2021. Any schemes identified after 2015 will not be constructed until at least 2021. By way of an example, as Table 2 (below) demonstrates, Britain constructed less than 5% of the length of motorway of France between 2000 and 2009. Even relative to size, when it is considered that the Netherlands constructed five times as much as Britain over the same period, this is profoundly troubling.

“Arrangements for funding local major transport schemes are complex and untested. It is unsurprising that ports are unclear as to whom to approach about projects they think should be taken forward.”

House of Commons Transport Committee, *Access to Ports Report* (November 2013).

Table 2: Motorway network building in Europe (2000-2009)

	Motorway network (miles)	Density of network (UK=100)	Motorways built (miles):		Traffic density on motorways (million vehicle miles/mile)
			Since 1990	Since 2000	
France	6950	115	2700	850	39
Germany	7950	237	1200	680	47
UK	2300	100	300	46	113

Source: Department for Transport (2013)¹³¹

¹³¹ Department for Transport, ‘Action for roads: a network for the 21st century’ (July 2013) at page 13, available at: <https://www.gov.uk/government/publications/action-for-roads-a-network-for-the-21st-century> (accessed 18 April 2017).

The Government must be able to speed-up the decision-making process as there are only two years to be ready. For this reason, this Report recommends the introduction of a Brexit Infrastructure Bill. The Bill would accelerate all usual planning processes, environmental impact assessments and any other consultative measures if there is a determination by the Secretary of State that infrastructure is "urgent". Such a measure would allow the Government to take forward vital projects very swiftly to ensure that urgently needed infrastructure can be delivered in time.

A Brexit Infrastructure Bill could also require a mandatory pre-application 28-day consultation with the public, the community and specialist consultees to take place. All usual planning processes and impact assessments would be suspended if the Secretary of State for Transport was to determine that, under the terms of the Bill, the proposed project was “urgent” or “essential”. There would then be a 28-day consultation process, during which normal consultative measures would be expedited. This would be followed by a second 28-day consideration period. Such a measure would guarantee that the principle of proportionality is observed during the decision-making process and that stakeholders were engaged before upgrade works begin. There would then be a report of both Houses of Parliament, with the requirement that there be an affirmative resolution in both Houses at the earliest opportunity.

This Report also recognises that a balance must be struck – between equipping Government with the powers it needs and concerns about the ongoing applicability of the law. This could be best addressed by including a ‘sunset clause’ in the Bill. A sunset clause is a measure included in a statute or regulation that provides that a law ceases to have effect after a specific date, unless further pro-active action is taken by Parliament to extend the legislation. Such a measure provides legislators with the chance to decide on the merits of a law again after a fixed period of time. The use of sunset clauses has proven to be a long-standing practice in English legislative history, shown to be “in the legal DNA of the UK”.¹³² This report therefore recommends that the Bill should contain a sunset clause of two years after the date in which Britain leaves the EU, in 2021, i.e. that Parliament would have the option to reconsider the measures introduced by the legislation two years after the legislation enters into force.

The Brexit Infrastructure Bill would therefore need to accelerate the usual procedures, albeit for a limited time, if Britain is to stand a chance of being ready on day one. It is critical that

¹³² See especially the Epilogue and Chapter 1 of S. Kouroutakis, *The Constitutional Value of Sunset Clauses: An historical and normative analysis* (Routledge: London, 2016).

complex existing processes are streamlined if the pace of construction is to increase to anything approaching the required level. During this period, as rarely before, the national interest must come before the vested interests to ensure we deliver for Britain.

3.3 New Entente Cordiale

Over a century ago, Britain and France entered into the Entente Cordiale to mark a new era of amity and friendship. In 2003, Britain and France entered the Le Touquet Treaty. This followed on from the 1993 Sangatte Protocol. This agreement allows for the two countries to check persons coming into each country, but to do so on the territory of the other. In effect, the British border is in France, and the French border is in Kent. These immigration controls are vital for both nations, as it allows Britain to check potential migrants and asylum seekers before they gain entry to Britain, and meets a number of French needs.¹³³

As Britain leaves the EU, a new Entente Cordiale could be entered into to deepen Anglo-French trading ties. For it is not just Britain who will need to be ready on day one, but France as well. It is not in the interests of France that there be problems at the Dover-Calais border. The principle concern therefore should be to extend the terms of the Le Touquet Treaty to include customs, in a similar fashion to the US-Canada border. Such an agreement would allow for the smooth flow of goods across the border to continue uninterrupted after Brexit.

There are concerns about what will happen to EU goods and citizens seeking to enter Britain. Lucy Moreton, the general secretary of the ISU union for borders, believes that border staff could be overwhelmed by the need for new checks, and has advocated the recruitment of additional staff.¹³⁴ An orderly system in France also has benefits for the French, since it prevents the chaos of attempts to return goods and people back across the Channel.

The Le Touquet Treaty is bilateral and separate from the European Union. The decision by the UK to leave the EU has no bearing upon its status as a bilateral treaty.¹³⁵ However the vote to leave will have a distinct impact upon the operation of the border, as the UK is expected to leave the EU Customs Union and Single Market.

¹³³ Migration Watch UK, 'The Implications of Brexit for Border Controls in Calais' (March 2016) available at: <<https://www.migrationwatchuk.org/briefing-paper/376>> (accessed 17 March 2017).

¹³⁴ Sky News, available at: <<http://news.sky.com/story/fears-of-migration-surge-and-daily-gridlock-in-dover-after-brexit-10821930>> (accessed 5 April 2017).

¹³⁵ *Ibid.*

The number of passengers needing to be checked will increase with the end of the UK's participation in free movement. More significantly however, the volume of goods which will need to pass through customs will increase as the UK leaves the EU customs union – it should be noted that in 2015, 42% of Britain's international trade was with the EU.¹³⁶

As the Le Touquet Treaty is a bilateral treaty, and as it is in the interests of Britain and France to enjoy a positive trading relationship, the Treaty should be extended. This Report proposes that the new Entente Cordiale would see the Le Touquet Treaty include customs, goods and people to be subject to checks before they enter Britain and vice versa.

There are also grounds to expand the treaty as it currently stands. Although widely seen as a bilateral agreement, Le Touquet is in fact technically trilateral as it was extended in 2004 to allow for checks at Brussels Midi station.¹³⁷ The Treaty could be extended for systems of juxtaposed controls to include agreements on customs controls with other countries.

The juxtaposed controls system has worked well for migration. Allowing vehicles and passengers to receive clearance before departure would help to minimise disruption and delay at the border. Indeed, as suggested above, UK outbound customs checks could be made in the new M20 lorry park.

3.4 A reformed Aarhus Convention 1998

The 1998 Aarhus Convention (also known as the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters) was designed to give the public the power to take positive action to protect the environment from harm. Article 9 of the Convention, that concerned with access to justice, is designed to maximise access for individuals and NGOs, by ensuring that the costs of a challenge are 'not prohibitively expensive'.¹³⁸ Since case law was deemed to be an insufficient basis for compliance, UK law has undergone clarification, such that the costs are now capped.¹³⁹

¹³⁶ J. Prott, *Civitas*, 'UK-EU trade and jobs linked to exports' (September 2016) available at: http://www.civitas.org.uk/reports_articles/uk-eu-trade-and-jobs-linked-to-exports/ (accessed 17 March 2017). Although this is falling, and expected to fall to 29% by 2035.

¹³⁷ Border Force currently operates in 7 locations outside the British mainland.

¹³⁸ Aarhus Convention, Article 9, Section 4.

¹³⁹ At for individual claimants, £5,000, for NGO claimants £10,000 and £35,000 for defendants. This is enshrined in Part IV of the Civil Procedure Rules of 2013.

The Aarhus Convention is being used to slow down the progress of major infrastructure projects, such as HS2.¹⁴⁰ In 2014, after a lengthy series of appeals through the High Court, Court of Appeals, and the Supreme Court, a claim regarding Article 7 of the Convention, against the UK proceeded to Geneva. It proceeded in conjunction with another claim against the EU. Article 7 concerns the public consultation which must be undertaken, and is used by vested interest appellants such as Hillingdon Borough Council, in this instance. The Aarhus Convention Compliance Committee (ACCC) takes an average of 389 days (sitting just 4 times a year) to resolve cases which are brought to it.¹⁴¹ This kind of delay is completely unnecessary when the timeframe Britain must now work within is considered. Claims to the ACCC can be made by members of the public and NGOs. The delays from the British court system are bad enough, hence the need to create a specialist body to deal with these claims, to save time and money, not just for the legal system, but also so that Britain can be ready on day one.

Although each signatory to the Convention has been able to adapt the system for use with its own legal system, it is notable that in Britain, owing to the low cap on costs, a large proportion of the costs are met by the taxpayer, and that the reviews take a significant amount of time which can result in unnecessary and harmful delays to projects. Another concern is that cap applied to claimants. This means that wealthy claimants, and some NGOs, are able to raise a number of challenges in succession utilising the advantage of the low cap. The balance is then funded by the UK taxpayer. Britain must put the national interest ahead of the vested interests if it is to make a success of Brexit.

Whilst it is not desirable to reduce the numbers of claims, it should be possible to reduce the time taken to review, whilst also reducing the potential burden upon the taxpayer. Therefore a review must be sought along the lines of other countries' implementation methods. This Report argues that Britain should instead appoint an Ombudsman or a tribunal to determine claims made under the Convention. This would avoid expensive and time consuming legal processes and prevent the Convention being used to stop important schemes of national infrastructure. The preferred option for swifter resolutions would be the creation of an Aarhus Tribunal. This would be of similar form to the Lands Tribunal, and would resolve disputes efficiently, whilst

¹⁴⁰ Landmark Chambers, 'Aarhus Convention Compliance Committee declares HS2 complaints admissible' (10 July 2014) available at: <<http://www.landmarkchambers.co.uk/news.aspx?id=3080>> (accessed 7 April 2017).

¹⁴¹ Public Participation Campaign, 'Aarhus Convention Compliance Committee' (available at: <<http://www.participate.org/index.php/compliance-campaign/compliance-committee-in-a-nutshell>> (accessed 7 April 2017)).

also ensuring that costs were kept to an appropriate minimum by preventing either side from claiming costs.

3.5 One Government at the Border to ensure order

It is crucial that Britain's border system supports our nation's economic growth from day one. An integrated approach to border management is key to ensuring that legitimate trade moves swiftly through the Channel Ports. HMRC estimates that there will be a fivefold increase in the number of customs declarations after Britain leaves the EU, from around 60 million a year to over 300 million.¹⁴² Merging customs and immigration border services into a single operational framework is central to being able to process these declarations quickly and efficiently.

Examples from around the world demonstrate the benefits of a single operational framework. In May 2014, the Australian government announced its decision to merge the border control functions of the Department of Immigration and Border Protection (DIBP) with those of the Australian Customs and Border Protection Service (ACBPS). Within the integrated department, the government established the Australian Border Force (ABF) as a single frontline operational border agency, which began its work on 1 July 2015. The ABF currently employs around 5,800 staff¹⁴³ and has an annual budget of AUD \$116 million.¹⁴⁴ In the 2015–16 financial year, the ABF undertook more than two million inspections of air cargo articles, more than 110,000 inspections of sea cargo containers and more than 57.5 million inspections of international post.¹⁴⁵

A recent independent analysis by the RAND Corporation, a global policy think tank, found that the creation of the ABF framework acted as “a catalyst for increasing operational effectiveness and efficiency”.¹⁴⁶ It also noted the good progress made in building the capability of the

¹⁴² L. O'Carroll, *The Guardian*, 'Concerns as HMRC faces 'fivefold rise in customs checks' after Brexit' (31 March 2017), available at: <https://www.theguardian.com/politics/2017/mar/31/uk-ports-struggling-fivefold-rise-customs-brex-it-hmrc-mps-declaration?CMP=Share_AndroidApp_Email> (accessed 5 April 2017).

¹⁴³ Australian Border Force, 'ABF 2020' (2016) at page 28, available at: <<https://www.border.gov.au/ReportsandPublications/Documents/abf-2020.pdf>> (accessed 12 April 2017).

¹⁴⁴ Australian Border Force, 'Portfolio Additional Estimates Statements 2016-17' (2017) at page 10, available at: <<https://www.border.gov.au/ReportsandPublications/Documents/budget/2016-17-paes.pdf>> (accessed 12 April 2017).

¹⁴⁵ Australian Department of Immigration and Border Control, 'Department of Immigration and Border Protection Annual Report 2015–16' (2016) at page 28, available at: <<https://www.border.gov.au/ReportsandPublications/Documents/annual-reports/annual-report-full-2015-16.pdf>> (accessed 12 April 2017).

¹⁴⁶ D. Gerstein et. al, RAND Corporation, 'Assessment of the Consolidation of the Australia Customs and Border Protection Service (ACBPS) with the Department of Immigration and Border Protection (DIBP)' (September 2016) at page xi, available at: <http://www.rand.org/pubs/research_reports/RR1713.html> (accessed 12 April 2017).

integrated organisation. Furthermore, the analysis found that the new Department experienced “increased operational tempo”¹⁴⁷ and that, throughout the integration process, there was “no observable decrease” in the operational capacity of both agencies.¹⁴⁸ The ABF’s creation was also estimated by the National Commission of Audit to generate significant financial savings, with the potential to save AUD \$480.5 (GBP £290 million) over a four-year period.¹⁴⁹

The creation of an integrated border management framework in the US under the ‘One Face at the Border’ initiative has also shown significant benefits. In March 2003, the US government established the US Customs and Border Protection (CBP) service, merging the Animal and Plant Health Inspection Service, the United States Immigration and Naturalization Service, and the United States Customs Service. More than 60,000 CBP staff members help secure 8,000 miles of US land and coastal borders, supplementing the work Department for Homeland Security. The consolidation of these roles and responsibilities has also allowed CBP to develop a seamless approach to customs screened at more than 400 air, land and sea port locations. On any given day, the CBP processes nearly a million passengers entering the US; inspects 66,000 truck, rail and sea containers; seizes nearly 6 tonnes of illicit drugs; and apprehends more than a thousand individuals for violations or outstanding criminal warrants.¹⁵⁰

Analysis undertaken by the Migration Policy Institute has shown that the ‘One Face at the Border’ initiative has created some welcome efficiencies.¹⁵¹ These advantages include a single point of contact for those entering the country, a reduction in the duplicative efforts of multiple government agencies, and the ability to allocate more resources to facilitate trade and travel.¹⁵² Moreover, respondents inside and outside the government uniformly agreed that there are advantages to having one operational framework at the border.

In the UK, existing policies for border operational activities are scattered among the Home Office, HMRC and the Foreign Office. If the country is to be ready on day one to process customs effectively, a single operational framework designed to deal with multiple frontline services at our nation’s border must be developed. This should combine customs, immigration,

¹⁴⁷ *Ibid.* at page 44.

¹⁴⁸ *Ibid.* at page 39.

¹⁴⁹ National Commission of Audit, ‘Towards Responsible Government: Phase One’ (February 2014) available at: <<http://www.ncoa.gov.au/report/>> (accessed 12 April 2017).

¹⁵⁰ Department of Homeland Security, ‘U.S. Customs and Border Protection at 10 Years’ (March 2013) available at: <<https://www.dhs.gov/blog/2013/03/28/cbp-10-years>> (accessed 12 April 2017).

¹⁵¹ D. Meyers, Migration Policy Institute, ‘One Face at the Border: Behind the Slogan’ (June 2015) available at: <<http://www.migrationpolicy.org/research/one-face-border-behind-slogan>> (accessed 12 April 2017).

¹⁵² *Ibid.* at page 11.

border security, and agricultural protection into one coordinated and supportive service. Such a move would act as a reform measure, not simply a savings measure.

This is currently being explored as part of planned proposals under the One Government at the Border (OG@B) programme. The programme is designed “to develop and deliver a single, coherent service based on better common data, within a shared policy, regulatory and legislative framework, focusing on the movement of goods”.¹⁵³ There are some 30+ organisations with an interest in creating a virtual single government service at the border. The main service providers are Home Office/Border Force for security and inspections, BEIS for licensing and permissions and HMRC for declarations and tax collection.

OG@B currently has no status as a cross cutting government portfolio. Whilst HMRC has included it as part of the Transformation Directorate (together with the other customs transformation work) and put a small team together to manage the work, other departments do not have dedicated resources with the right skill sets to help produce the documentation essential to getting this into formal portfolio governance. HMRC also currently has 57 systems in use at the border, and is reviewing a further 24. This enormous number of legacy systems and staff must be condensed into one operational framework, operated by one set of staff, controlled by one department.

Strong consideration should be given to the UK adopting the ‘single window’ system, putting HMRC in the driving seat at the border, which would operate as the single agency dealing with all customs issues. Although Border Force would continue to resolve migration issues, the two would be placed under the jurisdiction of a single minister and / or a single department.

¹⁵³ British International Freight Association, ‘One Government at the Border’ available at: <http://www.bifa.org/news/articles/2015/may/one-government-at-the-border-research-volunteers> (accessed 12 April 2017).

4. Conclusion

To ensure we are Ready on Day One of Brexit, we need:

1) Resilient Roads. The roads to the Channel Ports must be upgraded as set out in Part 1. This means the A2 must be dualled, the M20 lorry park built on schedule and the Lower Thames Crossing taken forward – as well as investment in the Channel Ports themselves to ensure they are fully ready on day one.

2) Britain open for business with a border modernised to handle the customs challenge of Brexit as set out in Part 2. Building on the five principles for a strong customs system, the seven priorities ranging from trusted trader schemes to mutual recognition agreements, systems can be delivered to ensure Britain remains open for business.

3) Order at the border, with the Government having the powers needed to ensure the infrastructure to deliver Brexit and be ready on Day One as detailed in Part 3 of this Report. The national interest must come before the vested interest.

Britain can thrive as a global trading nation post-Brexit. Yet it's vital we make the best possible start to life outside the European Union. Business must be confident that we are prepared for the challenges ahead. We must heed their warnings and take action now to ensure that, deal or no deal, Britain will be more successful than ever.