

Mrs May and David Davis misunderstand the EU and the EEA

Knowledge is power, so it is very worrying when our senior politicians repeatedly display – through obvious errors and factually incorrect statements – a lack of understanding of the European Union (EU) and how it functions. These errors must inevitably undermine any chance of negotiating a satisfactory outcome for the United Kingdom and time is running out.

For example, Mrs May in her Our Future Partnership speech at the Mansion House on 2nd March 2018 said:

For example, the Norway model, where we would stay in the single market, would mean having to implement new EU legislation automatically and in its entirety – and would also mean continued free movement.

Norway participates in the European Economic Area (EEA) through membership of the European Free Trade Association (EFTA). Actually it only implements EU legislation necessary for functioning of the EEA, which at most constitutes around 25% of the total EU *acquis* (or system of laws). More than 90% of these EEA related laws reportedly originate in global bodies anyway, meaning that even if we left the single market, the UK would still need to abide by them for global trade unless we decided to leave the World Trade Organisation (WTO) as well. Various members of EFTA have unilaterally invoked Article 112 (the Safeguard Measures) of the EEA Agreement to restrict free movement. In the case of Liechtenstein, it was free movement of people whereas for Iceland it was free movement of capital. The UK could do the same if retains membership of the EEA by re-joining EFTA. The “four freedoms”

are NOT indivisible for non-EU countries, whatever M. Barnier may say. Ironically Articles 112 and 113, which Mrs May fails to understand and rejects, are reproduced closely by the EU in their draft Withdrawal Agreement, Article 13, allowing the EU unilaterally to restrict freedom of movement including immigration into the EU from the UK.

Mr Davis' understanding of the EU's *modus operandi* is no better, For example, Mr Davis, in his Foundations of the Future Economic Partnership Speech in Vienna 20th February 2018 said:

The European Union itself has a number of mutual recognition agreements with a variety of countries from Switzerland to Canada to South Korea. These cover a huge array of products – toys, automobiles, electronics, medical devices – and many many more. A crucial part of any such agreement is the ability for both sides to trust each other's regulations and the institutions that enforce them. With a robust and independent arbitration mechanism. Such mutual recognition will naturally require close, even-handed cooperation between these authorities and a common set of principles to guide them.

He appears unaware of the EU's overall longstanding approach for the said *huge array of products* and didn't quote any examples of regulations, institutions and authorities where his ideas are actually working. So there is a bit of guesswork here as to what he intended and how well this fits in with the EU's position, what is enshrined in EU law, and consequently how likely his (and Mrs May's) new panacea for 'frictionless' trade (mutual recognition of standards) is to be realised.

The EU's direction of travel (for the Single Market), by contrast with Mrs May's and Mr Davis's speeches, is towards harmonised standards, regulations, and enforcement or surveillance through a top-down centralised legalistic and bureaucratic framework. It is also a long established,

publicly stated ambition that 'third' countries (outside the EU, or wider European Economic Area, EEA) should adopt or follow at least some EU-style measures. The EU's approach (to products) is outlined in principle in *COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT Enhancing the Implementation of the New Approach Directives*, in more detail in the EU's *Guide to the implementation of directives based on the New Approach and the Global Approach* and encapsulated in EU law in *REGULATION (EC) No 765/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93*. The EU has also recently spelt out its position, which is consistent with its *New Approach Directives*, in *Notice to stakeholders withdrawal of the United Kingdom and EU rules in the field of industrial products*. The adverse effect of Mrs May's Brexit on a frequently essential part of this product jigsaw (the work of Notified Bodies for conformity assessment of products) is explained here.

The EU would seem to prefer an orderly Brexit, judging by its website, although it appears to have realised that even a smooth Brexit will be highly disorderly for many organisations with the UK reverting to "third country" status. A seamless Brexit is looking increasingly unlikely as our government's failure to grasp the rigidity of the EU's position has left it in denial of the consequences for trade. After many years of ceding powers to Brussels, we have ended up with a Prime Minister and chief negotiator who are completely out of their depth, while the Department for (not) Exiting the European Union lacks essential competence. It is instructive to look at what serious items are missing from Mrs May and Mr Davis's speeches rather than what is said which is often largely a collection of wishful thinking, anecdotes, regurgitated vacuous clichés and irrelevant boiler-plating.

The serious items that should feature include: an outline of how the EU is understood to manage trade (useful background); full specifics on what exactly 'frictionless' trade means quoting specific examples – named products, commercial activities and enterprises; the barriers that will exist (taking cognisance of EU requirements, such as here); how in practice these will be addressed in ways acceptable to existing EU ways of working (in other words, how, when necessary, will we still be compliant with EU laws, regulatory practices and organisational frameworks); cost breakdowns; how payment for extra costs incurred will be addressed; a planned timetable; risk analyses and management arrangements; outlines of work to date including feasibility studies and assumptions; measures for functional integration across interfaces; signposts to further work and information. Interfaces tend to cause problems and successful integration between, for example, different countries, standards, organisations, market surveillance practices, etc. would need particular practical attention.

If we are to see a seamless departure from the EU – and indeed, until we have the necessary expertise, it is logical to seek a stopgap, time-limited arrangement which will retain near 'frictionless' access for trade whilst ensuring that we truly exit the political structures of the EU on 29th March 2019 and largely cease to contribute to its politically motivated budget. Remaining within the EEA via re-joining EFTA is the only viable option. To date we have not received an explanation from Mrs May why she rejected this route nor why she has shown no interest in using the flexibility in the EEA agreement to get a bespoke deal. Her incorrect statement in her speech (quoted above) is nowhere near an explanation.

In contrast to a practical and relatively straightforward temporary solution to buy time, we hear instead a great deal of waffle about a long-term Free Trade Agreement (FTA) like no other. Mrs May, Mr Davis *et al* are set on maintaining

'frictionless' trade by pressurising the EU to bend its existing rules (primarily incorporated into EU Laws and European Court of Justice, ECJ judgments), alter its longstanding direction of travel and at the same time pay all the extra costs (to the EU) of such a deal. This arrangement is one which the EU can, and most likely will, refuse.

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