

Observations on future negotiations, freedom of movement and trade agreements

Dr Liam Fox, speaking on the *Sunday Politics*, said that he would like Britain to exit the EU on 1st January 2019. To achieve Brexit in that timeframe, an Article 50 notification would need be made no later than the end of December this year, and all matters would have to be resolved without the need for an unanimously agreed extension to the negotiation period.

This is the equivalent of putting the cart before the horse. Fox is putting the timeframe before the outcome. That is worse than wrongheaded. The most important element of this whole process is not the timing, but Britain getting an agreement with the EU that serves the interests of both, and that the agreement ensures continuity of market participation to protect British jobs, trade and the economy. That should come first, not the timings.

It is worth making clear that the timing of the notification to the European Council of our intention to leave the EU, under the terms of Article 50, is entirely a matter for the withdrawing country. The EU cannot compel Britain to make formal notification and cannot dictate the timing of it. Much needs to be done before making the notification, to ensure we are prepared and ready with a clear agenda and understanding of what can be done and compromises that may need to be made. That is in the interest of Britain and the EU. (**Update on 29/06:** Angela Merkel has since ruled out informal preliminary discussions, therefore our approach needs to change and is covered here.)

So, what of that negotiation? People in the media and on the

remain side keep saying the EU won't give Britain a good deal as they will want to punish us, partly for our decision to leave, and partly to dissuade any other EU country trying to follow suit, (Pausing for a second, just what kind of entity is it that tries to preserve its membership by resorting to intimidation and fear? Certainly not a healthy, democratic or benign one).

Those people are either unaware of, or ignoring, one extremely important constraint. International law, and the rules of the European Union itself, require that the negotiation with a withdrawing state must be carried out in good faith. This prevents the EU from inflicting retribution on Britain. In addition to that the EU, in its own words is "committed to liberalising world trade". After its deal with Japan, the EU restated it is "committed to creating a free, fair and open international trade". Those stated commitments bind the EU to working with Britain to achieve a positive and mutually beneficial deal, such as supporting Britain's continued participation in the single market after joining EFTA.

One expectation of many leave voters is that leaving the EU will bring about an end to freedom of movement. Realistically that is not something that can happen immediately. Brexit is a process, not an event. The immediate aim of leaving the EU to regain control over our nation's affairs but preserving jobs and trade by staying part of the single market, is best served by continuing freedom of movement for now.

However, many people do not realise that remaining part of the single market after leaving the EU does give Britain the ability to control freedom of movement in a way we cannot inside the EU. This is borne out by the example of Liechtenstein. This tiny country, like Norway and Iceland, is an EFTA member state and participates in the single market as a signatory of the EEA agreement. But Liechtenstein has suspended the full application of freedom of movement and has

instead applied a quota system for migrants. This is something that could work well for Britain, giving control over EU migration that we could not otherwise have.

Liechtenstein's arrangements were formalised in 1999, and in 2015 it was concluded that there was no need to alter the current rules. That meant the provisions adopted by Liechtenstein on the so-called "sectoral adaptations" could remain unchanged. Having applied these arrangements for 17 years there is no suggestion that it should be discontinued. As a full non-EU contracting party to the terms of the EEA agreement, it follows that what can legally be applied there can apply to any non-EU country participating in the EEA who wish to adopt the same. It's not perfect, but it can be a very effective holding position while Britain starts the much longer task of negotiating a truly comprehensive trade agreement with the EU that would make EEA participation unnecessary longer term.

While all this is going on, some on the remain side and in the media claim that we would need to re-negotiate all 40 trade agreements made with other countries by the EU on Britain's behalf while we were a member state. Only that isn't correct.

The established principle in international law called *presumption of continuity* will give Britain the ability to continue trading with those 'third countries' on the same terms as we did before we left. The reunification of Germany in 1990, the velvet divorce of the Czech Republic and Slovakia in 1993 and the handover of Hong Kong in 1997 all provide precedent to this principle. All Britain needs to do is agree to honour the treaty obligations to which it was party as an EU member state.

Britain can follow the example of Slovakia, which sent a letter to the Secretary General of the United Nations stating their intent to remain a party to all treaties signed and

ratified by Czechoslovakia, and to ratify those treaties signed but not ratified before dissolution of Czechoslovakia, and that under international law all treaties signed and ratified by Czechoslovakia would remain in force.

Added to this, EFTA membership allows a state to have two sets of trade agreements – ones negotiated by the state itself and others negotiated by EFTA as a bloc. By way of an example, Switzerland has a trade agreement with China, but EFTA itself does not. So by joining EFTA we would automatically become party to trade agreements signed by that bloc which would add to the agreements we would already have, giving Britain a greater number of agreements than enjoyed by any EU state.

Taken together, following a responsible and phased approach to untangling over 40 years of EU membership does not necessarily entail all the pain and consequences some would have us believe. It's a long road ahead and by navigating it carefully, in the interests of our people and our business sector, we can make the experience positive and rewarding.

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