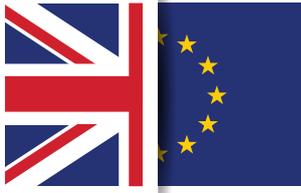


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Mrs May clarified her government's position on Brexit in a London speech on 17 January. She had previously promised a plan to manage the process but the speech was more a wish list than an action plan. Yet her key message was crystal clear, and a reassurance for the Brexiteers in her party: The UK is leaving the EU. It is moving from membership of the EU to what she called a partnership with the EU, although there was no indication as to what that meant in practice. Tricky problems, like maintaining the Common Travel Area and access to the Single Market, await practical solutions. The main points of the speech were as follows.

Leaving the EU

Her opening point left no room for doubt. The UK is leaving the European Union. It is not seeking to replace full membership with either partial or associate membership. Neither will it adopt a model used by other countries (such as Norway or Switzerland), which she accurately described as being half-in and half-out of the EU. Instead, she wants the UK to be fully out. In place of membership she wants a new form of partnership, which was left unspecified.

Leaving the Single Market

Her second point was equally clear, with no room for ambiguity: the UK will be leaving the Single Market. She was adamant it will not seek to retain membership of the Single Market but will seek the greatest possible access to it, which is to be achieved through "a new, bold and ambitious free trade agreement" with the EU. Logically speaking, leaving the Single Market will mean the return of technical, physical and

financial barriers to trade between the UK and the EU (after all, the removal of such barriers was the original definition of the single market). Despite that, she claimed this new agreement would provide the greatest possible access to the Single Market on a fully reciprocal basis. Furthermore, it would take the form of "tariff-free trade".

In addition, the UK would not be paying an admission fee to the Single Market (as Norway does). No explanation was given as to how this state of affairs was to be achieved.

Leaving the Customs Union

Her third point has led to some confusion. She said the UK would also be leaving the Customs Union (established by the Rome Treaty). Here the rationale was that the UK did not want to be bound by a Common External Tariff (the core element of any customs union) and wanted the freedom to negotiate its own trade agreements internationally. The confusion arose, however, when she

Our objectives include a proposed free trade agreement between Britain and the European Union, and explicitly rule out membership of the EU's single market.



went on to say that the UK wanted a customs agreement with the EU which was left undefined. In fact she confessed she had “no preconceived position” on how a customs agreement was to be achieved and added that she had “an open mind on the matter”. For the sake of completeness she further indicated that the UK would withdraw from the EU Common Commercial Policy, which governs international trade policy. That said, the situation is clear enough, the UK is leaving the Customs Union as well as the Single Market. It will establish its own tariff schedules at the WTO. By implication, the WTO formula will apply to UK/EU trade failing agreement on a new relationship with the EU.

Legal Certainty

Mrs May offered some succour to business with her insistence on the need for legal certainty, a point she had stressed in her appearance before a Commons committee before Christmas. Accordingly, all EU law will be automatically transposed into UK domestic law the day Brexit comes into force. In short, the *acquis* will become British law, capable of being amended by the UK parliament, of course. In a conciliatory gesture to the British trade union movement she went on to say that as the body of European law was translated into UK domestic regulations she would ensure that workers’ rights were fully protected and maintained. On the trickier matter of certainty about citizens rights she repeated the mantra that she while she wanted to guarantee the rights of EU citizens already living in Britain and the rights of British nationals in other member states a formula would have to be agreed between the parties. It remained an important priority for Britain, she said, to resolve that challenge as soon as possible. It goes without saying that it is a priority for other Member States as well, notably Ireland.

Phased Implementation

Mrs. May had said before Christmas that she wanted to avoid an abrupt end to EU membership, known as the “cliff-edge”. She repeated that objective and said she expected the negotiations to be completed within two years (as specified by Article 50 TEU). In her scheme of things there will be no abrupt change from membership to non-membership. Instead there will be a “phased process of implementation”. The process could differ for different business sectors and will be a matter for negotiation. If that’s to be the case then it’s obvious the negotiations will go on for longer than two years and that there’ll have to be some sort of “bridge” between the end of EU membership and the start of the implementation phase. An interim legal relationship would appear unavoidable. Business should plan accordingly.

The Common Travel Area

Mrs May said she will work to deliver a practical solution that allowed for the maintenance of the Common Travel Area with the Republic, while protecting the integrity of the United Kingdom’s immigration system. This qualification went unnoticed. That was all the more remarkable because of her remarks on border controls, which came immediately afterwards. She made the obvious point that ‘you cannot control immigration overall when there is free movement to Britain from Europe’. In her view, the message from the British public before and during the referendum campaign had been clear: Brexit must mean control of the number of people who came to Britain from Europe. And she concluded, “that is what we will deliver”. So her qualification that the CTA must respect the integrity of the immigration system should be taken at face value.

No Deal would be Better than a Bad Deal

There was a distinct change of tone in the last part of the speech in which she shifted from being conciliatory to confrontational. She warned the EU that no deal would be better than a bad deal. Were that to happen then the UK would be free to strike trade deals across the world, set competitive tax rates and embrace the policies that would attract the world's best companies and biggest investors to Britain. If excluded from accessing the single market Britain would be free to change the basis of its economic model (repeating the sentiments of the Chancellor, Philip Hammond, a few days earlier). She didn't define what she meant by "a bad deal" but by implication it means being denied tariff-free access to the Single Market. If so, there's big trouble ahead.

Conclusion

The speech highlighted the contradictions in the UK approach to the EU: there is to be a clean break but the UK is still to have access to the Single Market without paying for the privilege; the Common Travel Area is to be maintained but controls are to be imposed on UK borders to limit immigration from Europe (which presumably includes us). How these contradictions are to be resolved is for the future. But at least business now knows with certainty that Britain is leaving the EU and hopes to do so by March 2019. So far, the EU has not responded to the speech beyond polite words of welcome for the clarifications it offered.

The Brexit Insight is produced by the IIEA Brexit Project Group chaired by Dáithí O’Ceallaigh, former Ambassador to the UK. This issue is written by Brendan Halligan, Chairman of the Institute.

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