

# Road to Nowhere

**A Brexit Transition?**



**EFTA 4 UK Discussion document 17/11/2017**

## **Brexit Timetable:**

- **23 June 2016 - the UK votes to leave the European Union in a public referendum.**
- **29 March 2017 - Theresa May sends Article 50 letter to European Council President Donald Tusk to notify him of the UK's intention to leave the EU.<sup>1</sup>**
- **19 June 2017 – Negotiations formally begin in Brussels.<sup>2</sup>**
- **29 March 2019 - UK is provisionally scheduled to leave the European Union.<sup>3</sup>**

*“...Sed fugit interea, fugit irreparabile tempus”*

- Virgil

## **Executive Summary**

- The Government is currently seeking a bespoke Free Trade Agreement with the European Union, not to replicate any existing arrangements between the EU and a third country.
- The Prime Minister is aiming for a new arrangement which is more comprehensive than the EU-Canada CETA agreement.
- It is unlikely that the UK will be able to achieve such a deal; and even if one is reached, it will take several years to negotiate, ratify and be implemented.
- There is at present a very real risk of a 'no-deal' Brexit which would be damaging to the UK economy and international relations.
- We believe the best option for the UK would be to adopt an 'off-the-shelf' model such as the EFTA/EEA relationship with the EU which is enjoyed by Iceland.
- Her Majesty's Government is instead seeking a 'transition' or 'implementation' period after 29<sup>th</sup> March 2019.

## The Government's position

The Prime Minister has of late seemingly admitted that a bespoke deal cannot be agreed and ratified in time for 2019, so she is now proposing a 'transition' or 'implementation' period after the UK formally leaves the EU:

**"A period of implementation would be in our mutual interest. That is why I am proposing that there should be such a period after the UK leaves the EU. Clearly people, businesses and public services should only have to plan for one set of changes in the relationship between the UK and the EU.**

**So during the implementation period access to one another's markets should continue on current terms and Britain also should continue to take part in existing security measures. And I know businesses, in particular, would welcome the certainty this would provide. As of today, these considerations point to an implementation period of around two years."**<sup>4</sup>

How the Prime Minister believes this implementation idea could work in practice is unclear. Since we would be outside of both the EU (European Union) and European Economic Area (EEA) after March 2019, the UK would be entering into an unprecedented legal and administrative grey area.

## The present situation

At present, our trade with the other EU 27 member states is based on our EU membership and its internal market.

Our trading relationship with the EFTA (European Free Trade Association) countries are based on the EEA Agreement, to which all EU members and three of the four EFTA states are signatories.

[N.B. The fourth EFTA state (Switzerland) trades with the EU based on a series of extensive bilateral agreements.]

It is the view of David Davis, Secretary of State for Exiting the European Union that: **"The UK is party to the EEA agreement in its capacity as an EU member state, so on exit day the EEA agreement will cease to operate in respect to the UK."**<sup>5</sup>

If Mr Davis is correct, then on ‘exit day’ the UK will have no formal trading relationship with the EU27 or EFTA4.

The question then is – on what legal terms will the UK trade with the EU?

Mrs May says “**access to one another’s markets should continue on current terms**” so she clearly isn’t referring to World Trade Organisation (WTO) terms. So on what terms is she referring to?

The EU’s Article 50 suggests *some kind* of agreement should be concluded after the two-year Article 50 period, but it is very vague:

#### **“Article 50**

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention.

**In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.**

That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.”<sup>6</sup>

Similarly vague is **Article 8** of the European Union consolidated Treaties<sup>7</sup> which states that:

*Article 8*

1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.

2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

Even if we take both of these texts into account, it doesn't explicitly provide a firm and detailed legal basis to allow the continuance of zero-tariff and non-tariff barrier free trade.

As reported on the **POLITICO** website<sup>8</sup>, Article XXIV of the General Agreement on Tariffs and Trade (GATT) does allow for "interim agreements", however the agreement states:

**"...any interim agreement referred to in subparagraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time."**

For this interim period to be valid under WTO/GATT rules then, the implementation period would presumably need a plan and a schedule in place by March 2019, which looks increasingly unlikely.

Even were the UK to successfully agree a transition period with the EU, during this period the UK would be in a form of limbo comprising the worst of all possible states – still making budgetary contributions, accepting FoM, still subject to the ECJ but without MEPs or other representatives in Brussels. It would be the ultimate expression of 'pay but no say'.

Mrs May wishes this transition/implementation period to last **“around two years”**. We don’t believe this would be sufficient time to negotiate a sufficiently deep and comprehensive Free Trade Agreement with the EU.

**Sir Ivan Rogers**, Britain's former permanent representative to the EU advised ministers that the view of the EU27 was that a free trade agreement could take as long as ten years.<sup>9</sup>

He also said that even once concluded, the deal might not survive the process of ratification in the EU member states.

Irish Foreign Minister **Simon Coveney** said just this week that:

**“This is a very fundamental change in the relationship between Ireland and Britain and Britain and the EU and it will require significant adjustment. The appropriate timetable is closer to four or five years than it is to two.”<sup>10</sup>**

Even **if** the UK was to arrange a transition/implementation period, and **if** we could somehow speed up negotiation and ratification of a new deal – what sort of deal could we expect?

We know that the EU’s chief negotiator Michel Barnier has repeatedly stated<sup>11</sup> that the UK’s choice is between a Canada-style agreement; or a Norway Style agreement, but no ‘hybrid’ deal is available.<sup>12</sup>

## Conclusions

Mrs May is hoping for something she won't get – namely a 'Super-Canada' deal, and she hopes to get to this via a 'transition/implementation' period which seems to be unworkable and have no basis in law.

If we want as a nation a longer time to discuss our new relationship with the EU it would be far easier to simply extend the Article 50 period; which is allowed for, under the treaty.

If we did so, there would be no legal confusion as we would still be an EU member state, with all the rights, benefits, duties and obligations thereof.

Some commentators believe that the government couldn't persuade the public of the merits of this approach, but the alternative – a transition in which we are de facto in the EU but have no MEPs or say is surely more unpalatable?

In any case, the government is not interested in this approach, since it attempting to introduce an amendment to the European Union (Withdrawal) Bill to set the exit date as 11pm on 29 March 2019 in law.<sup>13</sup>

Our best hope for a 'Smart Brexit' and to avoid either a 'no-deal' crash out therefore, is for the UK to apply to rejoin the **European Free Trade Association** (EFTA), (which the UK helped to create in the 1960s) and then broker a deal with Brussels using the EFTA countries as precedents. This should be relatively quick and straightforward, leaving time for the UK to deal with the myriad of other Brexit-related tasks it needs to deal with.

There is literally no feasible alternative at present, and we must not continue on this 'Road to Nowhere'.

**“The future is certain, Give us time to work it out**

**We're on a road to nowhere, Come on inside**

**Takin' that ride to nowhere, we'll take that ride**

**We're on a road to nowhere**

**We're on a road to nowhere**

**We're on a road to nowhere”**

**- Road to Nowhere, Talking Heads, 1985**

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