

Mrs May and Mr Davis Misunderstand the EU and the EEA

Where knowledge is power our senior politicians repeatedly show 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 Brexit 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, meaning the UK would need to implement them anyway for global trade, unless we leave the World Trade Organisation (WTO), et al. Various members of EFTA (Liechtenstein for immigration and Iceland for financial controls in particular) have unilaterally invoked Article 112 (the Safeguard Measures) of the [EEA Agreement](#) to restrict free movement, just as the UK could do if retains membership of the EEA by re-joining EFTA. Ironically, Articles 112 and 113 of the EEA agreement, which Mrs May fails to understand and rejects, are reproduced closely by the EU in their draft [Withdrawal Agreement](#), Article 13, allowing the EU to unilaterally restrict freedom of movement (including immigration into the EU from the UK).

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, automotive industry, electronics, medical devices — and 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 together with a robust and independent arbitration mechanism.

Such [mutual recognition](#) agreements will naturally require close, even-handed cooperation between these authorities and a common set of principles to guide them.

Mr Davis 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, 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.

That panacea is impossible to achieve as it takes the EU backwards away from its objectives for STANDARDS WHICH ARE WHOLLY ONES OF conformity.

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 declared ambition that 'third' countries (outside the EU, or wider European Economic Area, EEA) would 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](#)* .

This approach is further outlined 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 where can be found 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 their *New Approach Directives*, in [Notice to stakeholders withdrawal of the United Kingdom and EU rules in the field of industrial products](#). There are already over 48 such Notices to Stakeholders.

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 their [website](#), although they appear to have realised that it will be highly disorderly for many organisations; the UK reverting to 'third' country status outside the EEA with our government in denial of the [consequences for trade](#).

After many years of ceding powers to Brussels it looks increasingly that Mrs May and Mr Davis are completely out of their depth and the Department for (not) Exiting the European Union lacks essential competence. It can be instructive to look at what serious items are missing from Mrs May and Mr Davis's speeches, that should be there, rather than what is said which is often largely a collection of wishful thinking, anecdotes, regurgitated vacuous clichés and irrelevant boiler-plate.

The serious items that should be there include:

- an outline of how the EU is understood to manage trade (useful background);
- full specifics on what exactly 'frictionless' trade means in the context of many 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 methods of working (compliant with EU laws, regulatory practices and organisational frameworks);
- cost breakdowns and how payment for extra costs incurred is to be addressed;
- planned timetable, risk analyses and management arrangements;
- outline of work to date including feasibility studies and assumptions;
- measures for functional integration across interfaces;
- signposts to further work and information. ie Interfaces tend to cause problems and successful integration between, for example, different countries, standards, organisations, market surveillance practices etc. would need particular practical attention.

On the way out of the EU, and until we have the necessary expertise, it is logical to go for an intermediate stage of limited duration to retain near 'frictionless' access for trade whilst on 29th March 2019 completely exiting the political structures of the EU and largely ceasing to contribute to its politically motivated budget.

Remaining within the EEA via re-joining EFTA then is the only viable option. To date we have not received an explanation from Mrs May why she rejected this route or did not want to use the flexibility in the EEA agreement to get a bespoke deal. Her incorrect statement in her speech (quoted above) is nowhere near an explanation.

By contrast to a practical and relatively straightforward temporary solution to buy time, Mrs May's and Mr Davis's public position for the long term is via a Free Trade Agreement (FTA) like no other. To get their way and maintain 'frictionless' trade, as at present, the EU must (in their view): bend its existing rules (primarily incorporated into EU laws and European Court of Justice, ECJ, judgments); alter its longstanding direction of travel; provide and pay for whatever extra is required (in the EU). This is an offer the EU can, and most likely will, refuse. Why would they ever reverse their life's work and agree with May and Davis?

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