

****EEA AND NO TRANSITION

The Conservative party position as presented by the Prime Minister is that the United Kingdom will leave both the European Single Market and The European Customs Union when it leaves the European Union.

The Labour party position is that, depending on who you are listening to, that the United Kingdom should stay in the European Single Market and the European Customs Union when it leaves the European Union.

The United Kingdom cannot stay in the European Customs Union when it leaves the European Union. The European Customs Union is defined in the Treaty on the Functioning of the European Union (TFEU) Article 28:

The Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

and then in the next article headed "The Customs Union" it states:

THE CUSTOMS UNION

Article 30 (ex Article 25 TEC)

Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature. (<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>)

Leaving the European Union NECESSARILY requires that the United Kingdom leaves the European Customs Union. Once the United Kingdom has left the European Union it will need to draw up a new Customs Agreement between itself (by then a third country) and the European Union.

That is not the case however with the European Single Market. The European Single Market is the European Economic Area (EEA). The European Economic Area is a vast geographical space from Iceland to Greece and Portugal to Poland (https://en.wikipedia.org/wiki/European_Economic_Area).

Theresa May, the MP for Maidenhead, Leader of the Conservative Party and Prime Minister says that if we stay in the European Economic Area then we have not left the European Union. She has apparently been told this by her former special advisor (SpAd) Nick Timothy who, it seems, she regards as talking sort of infallibly. This view of Mrs May's is nonsense.

If the United Kingdom moved from the European Union to the European Economic Area that would not make the United Kingdom continuing members of the European Union.

In the EEA, the UK would be out of the jurisdiction of the European Court of Justice (ECJ) since in the EEA there is the EFTA court instead which does not necessarily follow the rulings of the ECJ although it takes account of them. The UK would be out of the Common Agricultural Policy (CAP), the Common Fisheries Policy (CFP), The European Customs Union, the Common Trade Policy (and thus be able to conclude our own bi-lateral or multi-lateral trade agreements), The Common Foreign and Security Policy, Justice and Home Affairs and Monetary Union (which we do not partake in anyway) (<http://www.efta.int/eea/eea-agreement>)

Moreover although it is true that the EEA countries subscribe to the four freedoms (the Freedom of Movement of Capital, Goods, Services and People) this application can be changed by the unilateral (that means you don't have to ask anyone else) invoking of article 112 of the European Economic Area agreement:

CHAPTER 4 SAFEGUARD MEASURES

Article 112

1. If serious economic, societal or environmental difficulties of a sectorial or regional nature liable to persist are arising, a Contracting Party may unilaterally take appropriate measures under the conditions and procedures laid down in Article 113.
2. Such safeguard measures shall be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Priority shall be given to such measures as will least disturb the functioning of this Agreement.
3. The safeguard measures shall apply with regard to all Contracting Parties.

Article 113

1. A Contracting Party which is considering taking safeguard measures under Article 112 shall, without delay, notify the other Contracting Parties through the EEA Joint Committee and shall provide all relevant information.
2. The Contracting Parties shall immediately enter into consultations in the EEA Joint Committee with a view to finding a commonly acceptable solution.
3. The Contracting Party concerned may not take safeguard measures until one month has elapsed after the date of notification under paragraph 1, unless the consultation procedure under paragraph 2 has been concluded before the expiration of the stated time limit. When exceptional circumstances requiring immediate action exclude prior examination, the Contracting Party concerned may apply forthwith the protective measures strictly necessary to remedy the situation. For the Community, the safeguard measures shall be taken by the EC Commission.
4. The Contracting Party concerned shall, without delay, notify the measures taken to the EEA Joint Committee and shall provide all relevant information.
5. The safeguard measures taken shall be the subject of consultations in the EEA Joint Committee every three months from the date of their adoption with a view to their abolition before the date of expiry envisaged, or to the limitation of their scope of application. Each Contracting Party may at any time request the EEA Joint Committee to review such measures. (<http://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Main%20Text%20of%20the%20Agreement/EEAAgreement.pdf>)

I think that the United Kingdom could successfully argue that it believes that "serious economic, societal or environmental difficulties of a sectorial or regional nature liable to persist are arising" because of Immigration and unilaterally suspend Freedom of Movement (important observation: this would only apply to immigration of EU nationals I believe and not Commonwealth ones).

The European Union has proposed its own solutions in a recent paper which this blogger continues to assert are completely unacceptable (<http://www.consilium.europa.eu/media/32236/15-euco-art50-guidelines-en.pdf>). Paragraphs 3 & 4 state:

3. As regards transition, the European Council notes the proposal put forward by the United Kingdom for a transition period of around two years, and agrees to negotiate a transition period covering the whole of the EU acquis, while the United Kingdom, as a third country, will no longer participate in or nominate or elect members of the EU institutions, nor participate in the decision-making of the Union bodies, offices and agencies.
4. Such transitional arrangements, which will be part of the Withdrawal Agreement, must be in the interest of the Union, clearly defined and precisely limited in time. In order to ensure a level playing field based on the same rules applying throughout the Single Market, changes to the acquis adopted by EU institutions, bodies, offices and agencies will have to apply both in the United Kingdom and the EU. All existing Union regulatory, budgetary, supervisory, judiciary and enforcement instruments and structures will also apply, including the competence of the Court of Justice of the European Union. As the United Kingdom will continue to participate in the Customs Union and the Single Market (with all four freedoms) during the transition, it will have to continue to comply with EU trade policy, to apply EU customs tariff and collect EU customs duties, and to ensure all EU checks are being performed on the border vis-à-

vis other third countries.

Mrs May has before her two choices:

She could sign up to a situation where the United Kingdom does what it is told without any representation until at least **31st December 2020**. As her new 'deep and special' relationship with the European Union will not be completed by then, this Vassal status will be ongoing perhaps indefinitely.

OR

She can stay in or rejoin an organisation which takes the United Kingdom out of the European Union. Inside the European Economic Area, the United Kingdom could have its own trade, fishing and agricultural policies separate from the EU but still retain all its regulatory alignment with the EU with these new policies

If Mrs May chooses the former, I think she will condemn her party to a generation of opposition. The electorate are not stupid. They will see the Vassal state for what it is and they will not stand for it.

Vassal state means continuing membership of the European Union without representation.

The European Economic Area means the United Kingdom has left the European Union.

It must be EEA for the United Kingdom.

Thanks to a contributor to the Boiling Frog blogroll