Brexit White Paper July 2018 fails to deliver frictionless trade

The Government's recent White Paper entitled *The Future Relationship between the United Kingdom and the European Union* is unworkable, risky wishful thinking regarding frictionless trade with the Single Market (and wider European Economic Area, EEA). The White Paper also fails to take cognisance of how the European Union (EU) and Single Market functions, and its direction of travel making it unlikely that the EU can accept it. If the EU did accept these insubstantial, 'cherry picking' proposals, businesses and regulatory authorities, etc. would struggle to make them work.

This short examination does not consider *Facilitated Customs Arrangements* etc. It is difficult to work out exactly what is being proposed and how it will operate. However, it appears to be unproven and to increase the complexity and costs of importing and exporting goods and services.

A major shortcoming of the White Paper is the lack of detail. It is unclear what the various terms used and their proposals actually mean in practice, what they cover and what they omit. There is also no recognition of any problems or limiting issues that need to be addressed, and no consideration of timescales or resources needed to turn the theory into reality. Important terms not explained include: *goods, services, Common Rulebook, Free Trade Area for goods, approvals and authorisations, 'sit alongside', 'open and fair'* and *'participation in EU agencies'*. These are critical to understanding and avoiding impracticalities, ambiguities, arguments (with the EU) and confusion.

Whilst goods and services are to be treated differently there is no analysis on how they can be separated, which will often be impractical. The only example of a product, vaguely and briefly considered, is mutual recognition of type approval of motor vehicles, which is itself unlikely to be acceptable to the EU.

The White Paper's aspiration is for frictionless access for goods – a free trade area part in and part outside the Single Market. There would then be one set of approvals and authorisations for goods to be sold in both markets (UK and Single Market). How this will work is unclear given that EU Directives (the EU *Acquis*) relating to the Single Market governs how it functions.

The EU's direction of travel (for the Single Market), is towards harmonised standards, regulations, and enforcement or surveillance through a top down centralised legalistic and bureaucratic framework – this gives the European Commission and agencies ultimate control inside the Single Market. This is the basis for frictionless trade. The European Free Trade Association (EFTA) incorporates relevant EU Directives into their own body of EFTA/EEA law in order for them to participate in the wider EEA.

Generally there are no deviations from the EU Directives except those permitted within the existing legal regulatory framework. Any change must be incorporated into EU law first. Countries outside the Single Market (and wider EEA) are 'third' countries effectively outside EU control or surveillance

necessitating appropriate measures regarding imports. The White Paper then effectively ignores this and assumes the EU will agree to the changes and the UK exceptionalism being proposed.

The White Paper does not mention any actual EU/EEA legislation and how it will be affected, nor discuss practicalities. There is also no acknowledgement of the EU's position on trade in goods with 'third' countries. The EU's legally mandated arrangements to control diseases and parasites etc. in imported livestock, products, plants, packaging etc. from 'third' countries are largely glossed over.

Note: 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* , 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 setting out 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 and Global Approach Directives,* in *Notice to stakeholders withdrawal of the United Kingdom and EU rules in the field of industrial products*. The adverse effect of Mrs May's Brexit on a frequently essential part of this product jigsaw (the work of Notified Bodies for mandatory conformity assessment of products) is explained here.

According to EU law, products of animal origin (meat and meat products) imported into the EU must be inspected (sanitary checks) at Border Inspection Posts (BIPs). For products of plant origin (for plants and plant-derived foods) phytosanitary checks are required at Community Entry Points (CEPs, Designated Points of Entry, DPE).

The White Paper's advocacy of regulatory alignment and mutual recognition adds further complexity. It will inevitably require considerable amendment to existing EU Directives covering a wide range of products and associated production, regulatory and conformity assessment and market surveillance. This is far from straightforward or quick given that requirements are effectively intertwined; change one here and there can be a knock-on effect elsewhere. Then there is creating new precedents that produce anomalies elsewhere and situations that can be exploited by others to gain an unfair or unreasonable advantage.

Also, more errors and anomalies are likely to occur when time is short to develop revised legislation, standards, conformity assessments, accreditations and market surveillance processes etc. Obviously it is far from certain that the EU will agree to this in any instances. If they did it would impose new uncertainties and risks where before matters were fairly settled and predictable.

Notified Bodies need accreditation for carrying out mandatory independent conformity assessment on a wide range of products to be placed on the market in the EEA. They need separate accreditation (Designated Body, Debo) when carrying out assessments relating to national specific or

special cases covered by EU/EEA legislation. The White Paper proposes *a Common Rulebook (harmonisation with EU rules)* applying to goods to be exported to the Single Market but not to services. Clearly the work of Nobos and Debos are services falling outside any compliance with the *EU Rulebook* whatever that vague term is supposed to mean in this context; for example, EU Directives with or with European specifications, mandatory conformity assessment, market surveillance etc.

Under the White Paper's proposals a new product could be assessed by a Debo and then exported to the EEA where the Debo's accreditation and product conformity assessment is currently not recognised. Getting this recognition raises a host of practical problems, such as who gives the Debo accreditation, how is the Debo assessed, who keeps the register of accredited Debos and test houses, and what should the Debo now include in its product conformity assessment and certification? Where an existing product undergoes a material change requiring further or updated assessment, more difficulties must result in determining whether this is Debo or Nobo work or a combination and who does what.

Mrs May's Government is proposing an unworkable Brexit in name only. However, instead they could have opted for a workable real Brexit by remaining temporarily in the Single Market (or wider European Economic Area, EEA) under much more favourable and flexible conditions by re-joining the European Free Trade Association (EFTA). (Further information see The EFTA/EEA Solution to the Current Brexit Impasse, Brexit Reset, Eureferendum.com, various posts on Campaign for an Independent Britain and affiliates)

So far there is little indication that the UK's negotiators actually understand much, if anything, about the minutiae of the EU Directives and how the EU/EEA functions. Even if the EU agreed to this White Paper (a big 'If'),

amongst customers, suppliers, regulators, conformity assessors (e.g. Notified Bodies) and organisations involved in market surveillance. The frequent questions would be "Where do we find the requirements?", "Must we comply with this requirement?", "What does this requirement actually mean?", and "How much is this going to cost us?"