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Propose Temporary Free Trade Deal to EU, Negotiate Long term FTA! Withdrawal Agreement must go, say lawyers, if UK is to make its own laws and avoid being trapped under EU law with no vote.

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PDF: [Avoiding the Trap - How to Move on from the Withdrawal Agreement](#)

The Conservative Party will soon choose a new leader and Prime Minister to take the UK out of the EU on 31 October 2019. For all contenders the big question is whether the UK leaves with or without a deal.

The authors* of *Avoiding the Trap - How to Move on from the Withdrawal Agreement*, Martin Howe QC, Sir Richard Aikens and Thomas Grant, make clear that the Withdrawal Agreement, including the ‘backstop’, the Northern Ireland Protocol, should be shelved. If accepted, it would bind the UK international law and make Brexit illusory. (*Avoiding the Trap* sets out in detail what is wrong with the Withdrawal Agreement: see end of this press release for a summary.)

There is no legal obligation to conclude a Withdrawal Agreement in order to leave the EU under Article 50. Given the failure to reach any satisfactory deal, the refusal by the EU to change the terms and by Parliament to pass them, we should call a halt.

Instead, the new PM should concentrate on the longer term relationship with the EU. In particular:

- A ‘no deal’ exit means no Withdrawal Agreement under Article 50, not leaving the EU without any deals of any kind.
- Without any trade deal, the EU and the UK would be required by WTO rules to charge the same tariffs on goods imported from one to the other as for goods from the rest of the world. But the new PM should propose continuing zero tariffs on goods between the UK and the EU via a simple temporary Free Trade Agreement, until a long term FTA is negotiated and ratified. Unlike a Transition Period, this arrangement would not subject the UK to EU law. It would also allow the UK to make its own trade deals with other countries, such as the USA.
- The EU would benefit from a zero tariff deal, because EU goods exports to the UK are much higher than goods exports in the opposite direction, and are concentrated in high tariff sectors.
- There is no insuperable problem about the Irish border. The Channel ports and the Irish land border are already fiscal borders for the imposition of VAT and Excise Duties on imported goods - collected through electronic returns. The same processes can be applied to the collection of trade tariffs, without physical infrastructure on the border itself.
- Because the UK already has the same regulations for goods these UK rules will be the same post-Brexit as the EU’s, unless and until divergence occurs in particular areas, there will be no legal barrier against the continued importation to the UK of goods made and certified under EU standards and rules, and so no danger of food and medicine shortages.
- The EU will be bound by WTO rules to recognize UK goods as conforming with EU standards unless and until there is a relevant divergence in rules in the UK or EU.
- As for services, the UK is a net services exporter. In the financial sector, EU industries’ access to the City is important, if not vital. Here the default position under the Withdrawal Act 2018 should be accepted: EU-based service providers would continue to be recognised and able to provide services to UK customers unless and until UK rules are positively changed.

What is wrong with the Withdrawal Agreement

- (1) It perpetuates the doctrines of ‘direct effect’ and supremacy of EU law over UK law, obliging UK courts to strike down Acts of Parliament if inconsistent with vague provisions of the WA or of EU laws to which it gives effect.
- (2) It perpetuates the jurisdiction of the ECJ, a foreign court with no British judge, either directly, or via a backdoor mechanism modelled on the EU’s agreement with Ukraine, under which the arbitral tribunal is bound to refer matters of EU law for decision by the ECJ.
- (3) It includes mechanisms (unique in international law) to deal with breaches that could lead to financial penalties or discriminatory trade sanctions.
- (4) The Northern Irish Protocol (‘backstop’) has no exit clause unless agreed by the EU, so is unique for an international treaty. It would trap the UK and severely reduce scope for negotiation on any future agreement. But even if it were dropped from the WA, the other parts of the WA impose serious constraints.
- (5) Under the WA, the UK though nominally leaving the EU, would during the ‘transition period’ still be subject to all EU laws (including new ones), the jurisdiction of the ECJ, the decisions of EU institutions such as the Commission and EU Parliament and the UK would play no part in the institutions or in the EU legislative process.
- (6) Most important of all, the UK (under Art 184) would be *legally required* to negotiate a future agreement *in line with principles in the Political Declaration*. Failure to do so would mean being locked into the backstop Protocol with no way out and no legal means of complaint. This is a fact missed, it seems, by Mrs May and a number of the Conservative leadership contenders. The WA is not merely, as is often claimed, about the mechanism for our withdrawal and arrangements in the short term; it in effect binds the UK into a permanent relationship with the EU in which it remains subject to many of the constraints of membership, while having no vote.

Avoiding the Trap - How to Move on from the Withdrawal Agreement, by Martin Howe, Richard Aikens and T. D. Grant, is published by **Briefings for Brexit** and **Politeia**, 14a Eccleston Street, SW1 W9LT, priced £8-00. Hard copies are available to journalists on request from press@politeia.co.uk.

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