



## MRS MAY'S SPEECH

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My first reaction, watching Theresa May's speech, was that The UK is going to put itself, and all the other EU countries, to a lot of trouble, so that it can leave EU, and then simultaneously re-join it in selected areas.

It wants a partnership with the EU on Customs, on state aid and competition, on transport, on energy, broadcasting, financial services, atomic power, aviation, on the enforcement of court judgements and on a long list of other fields.

As an EU member today, it already has a partnership with the 27 countries of the EU on all these things. This was worked out painstakingly over 45 years of UK membership of the EU. It now wants to tear that up, and negotiate a new partnership on all these different questions. And it wants to get the job done within two years.

All this is being done in the name of "taking back control", but it looks to me that, in many areas, control is being taken back, only to be given away again immediately. A lot of work, for very little product!

Just as Gordon Brown had five "tests" for joining the Euro, which were so loose that he could interpret them any way he liked, Theresa May has five tests for an acceptable Brexit outcome, which will mean different things to different people. In fact they sounded more like the introduction to an election manifesto, than a prism through which to measure the success of a negotiation on some of the most technical and specialist of legal topics.

Originally the UK was promising a frictionless border in Ireland. Yesterday, Mrs May seemed to retreat from that, speaking of a border that would be "as frictionless, as possible".

Her idea of a Customs Partnership, to avoid a hard border in Ireland, seemed like a smuggler's charter.

She envisages the UK having different rates of tariffs on goods entering the UK, to the tariffs charged on goods entering the EU. That is the whole point of leaving the Customs Union. She then suggests that the UK would charge the UK tariff on goods "intended" for the UK, and the (different) EU tariff on goods passing through the UK but "intended" for an EU country (most likely Ireland).

In this way, she hopes no customs checks would be needed at the Irish border, or in Irish ports. The scope for abuse, and exchanging of goods, seems to be unlimited here. Consignments could be substituted for one another, and there would be no check on them when they crossed the Irish border. Such an arrangement would be very difficult to police, and is unlikely to satisfy the EU Customs Code.

If the EU and the UK are to have different rates of tariff, her idea of exempting what small businesses along the Irish border from any control at all seems like an invitation to smuggle.

Presumably, Mrs May will want the EU Customs Code amended to take on her ideas. But if that is done, similar concessions will be demanded along all the other borders to which the Customs code applies, such as the EU borders in Eastern Europe. Mrs May should not forget that whatever she negotiates will have to be approved by all 27 EU countries.

The most valuable test that Mrs May wishes to apply to a Brexit agreement is that it should be one that would endure, and not require constant renegotiation.

But she said things elsewhere in her speech that will make it very difficult to pass that test.

She stressed that any Trade Agreement with the EU could be changed afterwards by the UK Parliament. That is a recipe for instability. At the moment the UK Parliament cannot overrule an EU rule, to which the UK had previously agreed. After Brexit, that would no longer be so, and, as a result, business would know that everything about any future UK/EU trade agreement would be subject to the vagaries of British politics.

British politics has already forced the UK to renege on 45 years of Treaty based agreements with the EU. So a mere Trade Agreement, which a new UK Parliament could unilaterally alter, will not be a solid base for investment.

Every time the UK Parliament tries to go back on something in the Agreement, there will have to be a new negotiation.

Furthermore Mrs May ruled out the UK Courts accepting the decisions of the European Court of Justice (ECJ) on many disputed matters. The best she could say is that the UK Courts would “look at” ECJ rulings, before making their own British decisions. That means that UK interpretations will gradually diverge from standard EU/ECJ interpretations. When that happens, renegotiation and uncertainty will be inevitable.

She advocated, instead of accepting ECJ jurisdiction, the idea of an “arbitration mechanism” that would be independent of the EU and the UK. That might work for a country which trades a limited number of products with the EU. But Mrs May herself said that she wants an agreement with the EU that would cover more subjects than any trade agreement anywhere else in the world.

An arbitration mechanism, covering the vast range of EU’s dealings with the UK, if it is to be truly independent, would soon become a rival to the ECJ. It could develop a different interpretative philosophy to the ECJ. That would undermine the common legal order of the EU, and is unlikely to be accepted.

One of the tests that Mrs May set for an acceptable Brexit, was that it would be one that would strengthen the Union between the four “nations” that make up the UK.

But the process of Brexit itself is having the opposite effect. In the way the referendum was set up, a majority of English and Welsh “leave” voters were allowed to overrule “remain” majorities in the two other “nations”, Scotland and Northern Ireland.

The Brexit Referendum was a crude exercise for English power, to satisfy a purely English political agenda.

There is growing dissatisfaction in the devolved Assemblies, including even in Wales, about the way Westminster is making decisions on EU related matters, that are the prerogative of the Assemblies in Edinburgh, Cardiff and Belfast.

It is good that Mrs May’s speech at last got into some detail. This will have had some educational value for her Party.

But the text of the Withdrawal Treaty is not yet agreed, and that must be done before the substantive negotiation can begin on the matters Mrs May talked about in her speech.

But the fact that the UK has not come up with a legal text of its own for the Withdrawal Treaty, to reflect the agreement Mrs May made in December, but is still criticising the EU version virulently, shows that we have long way to go on this unproductive, time wasting and tragic road to Brexit.