

EU Draft Agreement and Theresa May's Rebuttal

On 28.02.2018 the EU Commission published the Draft Withdrawal Agreement outlining the terms of Brexit following negotiations.

Theresa May has since rejected the proposal and stated that the Draft would "undermine the UK common market and threaten the constitutional integrity of the UK by creating a customs and regulatory border down the Irish Sea, and no UK prime minister could ever agree to it." She has the support of the leader of the Democratic Unionist Party in this matter whose leader, Arlene Foster, has welcomed the PM's comments and stating that what is proposed would be "economically catastrophic".

What Mrs May and Mrs Foster are referring to is the proposal within this Draft for a "common regulatory area" after Brexit on the island of Ireland as a whole. This would see an implementation of the "area without internal borders in which the free movement of goods is ensured", should the EU and the UK fail to agree a solution to prevent the creation of a hard border between Northern Ireland and the Republic of Ireland. Should this happen Northern Ireland would effectively remain part of EU's customs union, align with the EU on VAT, obey Brussels rules on state aid, and remain under the jurisdiction of the ECJ. The UK are eager to avoid this.

However, despite this, it must be highlighted that the EU has reaffirmed its commitment to avoiding a Hard Border in Ireland in this agreement. They, it seems, are as keen as any to avoid seeing the Good Friday Agreement reversed and a Hard Border being introduced in Ireland.

She stated that her speech at Mansion House was to set out her "vision for the future economic partnership between the United Kingdom and the European Union." But she spent a lot of her time looking back and taking the opportunity to repeat previous speeches.

Mrs May did outline two options for the customs arrangement between the UK and the EU as she stressed that "existing models will not work", such as the agreements between the EU and Norway or the EU and Canada. Both arrangements have elements which the UK is looking to avoid, for example the Free Movement of People that we would retain if we followed Norway's example by joining the Single Market. Or, stringent customs checks at the borders as we would have if we took our lead from Canada.

The options were laid out by Theresa May in her speech as follows:

"Option one is a customs partnership between the UK and the EU. At the border, the UK would mirror the EU's requirements for imports from the rest of the world, applying the same tariffs and the same rules of origin as the EU for those goods arriving in the UK and intended for the EU. By following this approach, we would know that all goods entering the EU via the UK pay the right EU duties, removing the need for customs processes at the UK-EU border.

But, importantly, we would put in place a mechanism so that the UK would also be able to apply its own tariffs and trade policy for goods intended for the UK market....

Option two would be a highly streamlined customs arrangement, where we would jointly agree to implement a range of measures to minimise frictions to trade, together with specific provisions for Northern Ireland."

The PM has highlighted in her speech that she would like the Customs Requirements to be "as simple as possible" and has stressed that we are in a unique position as we are not forging a new relationship but looking to develop a pre-existing one. This position should allow for us to have a stronger relationship from the onset and, Mrs May seems to believe, enable us to secure a more favourable agreement.

Whilst her speech still avoids the details we are looking for in order to see how Trade will be impacted upon

following our exit from the EU, this is a step forward and we hope to see more progress soon.

Several responses have been provoked by the Prime Minister's speech including a reiteration by the Labour Party that Jeremy Corbyn would look to negotiate and secure a new Customs Union between the EU and the UK to avoid a Hard Border in Ireland. John Major has advised that a Customs Union might be the only way to avoid a Hard Border.

There has also been a response from Stefaan de Rynck who is the main advisor to Michel Barnier, in a speech on Monday evening that was probably not the positive response Mrs May was hoping for. The Guardian has quoted him as stating that the EU "are more concerned with maintaining the integrity of the EU single market than any loss of access to British markets".

Fortunately for the UK there is time to negotiate the Draft as the final withdrawal agreement is not due until October 2018 when it will hopefully be ratified by the European Parliament. A lot of work is still required by the UK's negotiating team to secure a good deal and decide how they would like to proceed, the hardest element they will have to overcome will be the EU's seeming lack of enthusiasm for the British Markets. We have a long way to go and the details need to be tied down sooner rather than later.

Useful Links and Our Resources

Draft Withdrawal Agreement from the EU: https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement.pdf

Theresa May's rebuttal speech from Mansion House: <https://blogs.spectator.co.uk/2018/03/theresa-mays-our-future-partnership-speech-in-full/>

Article on Stefaan de Rynck's comments: <https://www.theguardian.com/politics/2018/mar/06/eu-brex-it-adviser-deals-blow-to-theresa-mays-free-trade-proposal>

Article on Theresa May's Rebuttal: <https://www.theguardian.com/commentisfree/2018/feb/28/the-guardian-view-on-the-eu-draft-withdrawal-agreement-exposing-theresa-mays-leadership-void>