Tony Lane's Thoughts 2017

Last year I spent May in France, which gave me a distant look-out post on the referendum campaign. This year I'm doing the same, with my gaze on the unfolding Brexit negotiations. Again, I'm writing down some thoughts in the hope of clearing my mind.

The EU's first negotiating priority, we suddenly learn, is the position of their nationals living in Britain. At first sight the Labour Party shares this priority. Sir Keir Starmer said in a recent policy statement:

"…on day one of a Labour Government, we will immediately guarantee that all EU nationals currently living in the UK will see no change in their legal status as a result of Brexit, and we will seek reciprocal measures for UK citizens in the EU."

For my part I can only agree with the Labour Party. It shames the Conservative Party that this was not their position from the outset. And "day one" ought to have been 24 June 2016: then and there, the UK Government ought to have announced unilaterally that the position of the 3m European nationals already legally present in the UK were unaffected: and that they could stay as long as they wished, without discrimination, enjoying the same treatment as UK nationals, under the same laws. Their position ought never to have been allowed to become an issue.

After failing to grant such a unilateral assurance, HMG did, to its rather limited credit, seek early agreement on mutual guarantees, in advance of the main negotiations. It was reported that several EU Member States concurred: until a veto came from Germany. The reasons for that act of inhumanity may now be emerging.

Since both sides are now claiming to want mutual guarantees, and the EU is saying these are its first priority, you might think the problem was close to solution. Not so. The EU has just issued a long draft negotiating text, of baffling complexity. President Junker artlessly remarks that we could sign it quickly, but he doubts if we will. He may be right, because their text does not, after all, seek (in Sir Keir's words) "a guarantee that all EU nationals currently living in the UK will see no change in their legal status as a result of Brexit." The EU is not seeking equal treatment under UK law, but under European law, however that may evolve and change over time.

This is surely the German veto pursued in disguise? During what may be several decades of these individuals' lives in the UK, differences will surely open up progressively between UK and EU law, in ways that cannot now be predicted. After all, the forces driving economic legislation will be fundamentally different, if only because the UK is a zone of low unemployment, while the Eurozone is a zone of high unemployment. Junker's proposal would produce, as this gap widened, up to 3m

Europeans living in the UK under a different system of law. Unable to integrate, they would form a state within a state. There is a name for such a system - apartheid.

One assumes that this is a wrecking position, intended to lead to an early road block, and choreographed so as to enable the EU, when it does, to claim the mantle of virtue. Why are they looking for an early road block? Later I consider possible reasons for this.

PS. At first I hesitated to question the EU's sincerity in this way. Was I being too suspicious? But after drafting the above, I saw this in the Daily Telegraph: "The EU has been plotting for weeks to thwart Theresa May's plans to secure a deal for British expats in Europe and migrants in the UK, the Daily Telegraph has learnt. Jean-Claude Juncker, the European Commission president, is reported to have been "astonished" by Mrs May's demand that an agreement be reached by the end of next month. But documents seen by this newspaper disclose that Mrs May made exactly the same demand to Donald Tusk, the European Council president, at a meeting three weeks earlier."

Cherry Picking – What Counts as a Cherry? – What is the Cake?

European leaders constantly tell us, fingers wagging, that we can't "cherry pick". We can't expect to leave the EU and continue to enjoy its benefits. We can't expect to stay in the Single Market without recognising the inseparability of its four freedoms, including freedom of movement.

At first this sounds so reasonable. The principle is unassailable. The question is whether it addresses the current situation.

What actually is cherry-picking? It depends what you count as a cherry, and what you count as the cake. Presumably a "cherry" is meant to be a benefit of membership which is conditional on, or inseparable from, the other obligations of membership. In that case what cherries is the UK attempting to pick? And from what cake?

a) Is it the right to abandon freedom of movement? That, we are told, is cherry-picking because in this case the cake is the Single Market, whose "four freedoms" are inseparable. But this is wrong at two levels. First, the UK has is not trying to separate that cherry from that cake. It wants to leave the Single Market. Second, this not just because of freedom of movement, but because we want to take back control of our laws and law-making. Escaping from the Single Market is a benefit of Brexit, not a cost. The wagging fingers miss their mark.

b) But it's true enough that we are seeking a free trade agreement. Is that cherry-picking? How can a free trade agreement be a cherry? On no reckoning can it be a benefit of membership inseparable from the obligations. The EU has made free trade agreements with Canada, Mexico and many third countries No-one has ever suggested

that these agreements cede to the third-country partner some illegitimate benefit which ought to have been confined to EU members. They are not "cherries".

So are we trying to cherry-pick? European leaders' find the idea comforting, but it is inaccurate. Their constant harping on this theme is symptomatic of a psychological condition. This is having wide consequences, of which more later.

What is the EU's Real Negotiating Aim?

The European leaders are "kitchen sinking"; their list of negotiating demands expands continuously. Their demand for reparations has climbed from 60bn to 100bn euros: they are now demanding control over the UK's internal tax policies: they setting conditions undermining our territorial integrity. New demands are being added, it sometimes seems, for fear that their existing demands might be accepted. They keep repeating that everything is complicated and time-consuming; which of course it will be if they make it so.

These are surely wrecking demands, best explained by wrecking aims. Most trade negotiations have the simple aim of maximising mutual commercial interest, and usually also of strengthening political relations and goodwill. But as the Article 50 negotiations approach, European leaders have been proclaiming a very different aim. In their different ways, they are all saying the same: that their aim is not trade for mutual benefit, but to make Britain suffer: -

President Junker of the European Commission says Britain's post-Brexit economy cannot be allowed to grow faster than the Eurozone;

President Tusk of the European Council says he is not aiming at a workable agreement, but to frighten us into begging to come back in;

The outgoing President Hollande of France insisted that Britain must pay a penalty for leaving;

Chancellor Merkel warns German industry that it mustn't mind its trade with the UK being disrupted, because it's all for the higher good of damaging Britain.

Yet these leaders deserve sympathy, because their dilemma is intractable. They can't afford to let the world see Britain prospering as a result of leaving the EU. Yet how can they prevent it?

If Britain's EU membership actually conferred a benefit, which it was seen to lose on departing, then all would be well: everyone would draw the appropriate conclusion.

But what if, as many expect, Britain proves to be "better off out"? Reasons for expecting this were set out in [my 2016 Thoughts]. In that case everyone will draw the opposite conclusion.

The Brussels bureaucracy, we may suspect, secretly fear the same, unless they can manage to impose a trading relationship to destroy value, not create it. After all, they too can do the sums.

And if they cannot do that, they must at all costs avoid a trade agreement which benefits Britain. If it harms the 27, too bad. But it imperatively must harm Britain.

This analysis of European aims needs to be pondered by British negotiators. So long as these priorities remain the guiding spirit of the European side of the negotiations, it is illogical to expect an acceptable free trade agreement to result. The need for a credible fall-back becomes daily more vital.

The Need for a Fall-Back Plan

Free trade agreements are usually concerned to promote mutual benefit. Instead of this, however, the Brussels bureaucracy seems to have one overriding negotiating priority; to demonstrate to the world that Britain is losing by leaving. They sometimes say they are willing to suffer themselves, just as long as Britain suffers too. This is more like war than negotiation.

Even so they might find this task impossible if Britain begins to look "better off out", as many expect. They can achieve it only by imposing a trading relationship that destroys value rather than promoting it. An agreement that promotes mutual benefit will be unthinkable for them.

On this analysis, it seems irrational for the UK government to envisage an acceptable result from the negotiation. The need for a credible fall-back becomes daily more vital.

In January the Prime Minister said "no deal is better than a bad deal''. She has recently repeated it. In some circles it seems to be considered provocative to envisage any fall-back position at all. Fortunately we now read that the Cabinet Secretary has instructed Departments to redouble work in this area. This is good news because: -

In any negotiation, the stronger party is the one best prepared for the consequences of walking away;

And as we have seen, all the circumstances point to the improbability if a negotiated agreement emerging;

The counterparty (in this case the EU) needs to know that a fall-back plan is available; and needs to know enough about it to consider it credible; but should be left guessing about the break-off point.

So far the Government has confined itself to vague hints at two possible fall-back options: -

"Tax haven option". This lacks all credibility. If the government believes the growth of the economy can be increased by further cuts to corporation tax and other taxes, it should cut them now, without waiting for a negotiation to fail.

Trading on WTO terms. The Article 50 letter describes this as the "default position [which] we must work hard to avoid". The tactics of such reluctance seem doubtful.

The need, surely, is for a worked out fall-back plan, whose credibility and benefits can subtly be made apparent to those on the other side of the negotiating table. A good fall-back position plan is one which is both attractive as an alternative and credible as a deterrent. I shall try to indicate one in later Thoughts.

A Tax Haven as a Fall-Back Plan?

… I previously suggested that, while negotiating for a Free Trade Agreement, the UK government needs to be realistic about the chances of getting one on acceptable terms. It therefore needs a fall-back plan that is both attractive as an alternative, and credible as a deterrent. For both these purposes, its Plan B needs to be worked out fully in advance, understood by the opposition and ready for adoption if needed.

Government spokesmen have dropped hints, though hardly more, of further cuts in corporation tax and other business taxes, if not satisfied in negotiation. This strategy lacks credibility for several reasons: -

Britain already has one of the lowest rates of corporation tax in the world - 19% now, and 17% promised. At 17%, companies keep 83% of their profits. Beyond that point, diminishing returns must set in.

If the government believes the growth of the economy can be increased in this way, then it should act now, regardless of a failed negotiation. Once negotiation has failed, no-one is going to give credence to tax cuts that have been withheld up to that moment.

There is anyway no question of tax cuts focussed preferentially on exports (violates the GATT): still less on exports to Europe in particular.

There is also a political consideration. Cuts in business taxes are unpopular. If the Article 50 negotiations reach deadlock and HMG is reduced to a fall-back position, the circumstances will be inescapably controversial. There will be a crisis atmosphere, thick

with blame. The government will want a fall-back position which draws the country together; but anything looking like more tax avoidance for businesses will drive it apart.

It really does not look as though a credible fall-back position can be found down this route. The Government needs a different sort of Plan B. Later I will try to suggest one.

A Food Policy for Brexit

When Britain joined the EU in 1973 there was wide recognition that, among many costs and benefits, the greatest cost was the impact on the CAP on the price of food. That cost has been paid by British consumers for 44 years, and is still being paid today. This, when we leave the EU, and can at last stop paying it, will be one of Brexit's greatest dividends: one of the main and most visible benefits to flow directly through to the general public. It will benefit especially those "just about managing."

Full liberation however will depend however on radical changes in trade policy and agricultural policy.

It seems that the CAP holds food prices some 17% above the level in the world outside. This is because it imposes prohibitive tariffs on food imported from third countries: apparently up to 60% and more. Soon we will no longer have to accept this imposition; we will be able to slash these tariffs to zero, and once we can we surely must.

Such radicalism will bring not only social advantages but negotiating advantages too. It will also support our aid policy. We will in any event be making Free Trade Agreements with many countries outside Europe. Many of them are suppliers of food, including Africa, North and South America plus the Antipodes. Some of them are poor countries whose development has been held back by the CAP. The UK's willingness to eliminate food taxes will mean a lot. It will be a strong negotiating card.

When their supplies from these countries come in tariff free, prices in the UK market will fall. This will have far-reaching effect on the UK's food trade with Europe: -

No longer compelled to buy costly European supplies, UK consumers will be free to cease doing so.

EU farmers, once our prices are 17% below European levels, will see no point in exporting food to us.

The EU, for its part, faced with low-priced food supplies available from across the Channel, will have to block them by applying the full weight of the CAP tariffs.

These consequences will be controversial. (As they were in the closely similar circumstances of 1846): -

At best, it means that any UK-EU Free Trade Agreement cannot cover agricultural products.

As this prospect emerges during trade negotiations, it will be a source of additional resentment in the EU. It may delay or even block progress with any Free Trade Agreement.

British farmers will therefore gain from reduced European competition, but they will at the same time suffer from increased competition from outside Europe. Since prices will fall on balance, British farmers will need compensation through additional direct payments of some sort.

In the end these changes will face the government with an inescapable question about how large the agricultural sector needs to be in the new circumstances.

The Corn Laws took courage to abolish. So will their modern CAP equivalent. At the moment the impression seems to be that this is a benefit of Brexit that the UK Government would sooner ignore. A former Permanent Secretary at MAFF has recently written that no great changes are needed. Yet such change is one of Brexit's biggest prizes. The least that can be said is that it needs more ventilation.

WTO – Myths Exploded

The government's Article 50 letter describes the WTO as "the default position [which] we must work hard to avoid". That wording was poor tactics, because the benefits of that default position have been much misunderstood, and that misunderstanding weakens HMG's hand.

TARIFFS

Absent an acceptable free trade agreement, British and EU exports to one another will both face import duties. The rates of duty will those now existing, ie the EU's existing Common External Tariff. This means less than it sounds. Since the GATT was founded in the 1940's, successive rounds of tariff negotiation have come close to eliminating the import duties imposed by the main industrialised countries on most industrial products. Averaging across the range of goods the UK actually exports to Europe, the EU's average external tariff is apparently around 2-3%.

It is strange that this is not better known. Well-publicised studies, though they doubtless intend to present a fair picture, have drawn attention to a few stray high rates of duty, without even mentioning that the overall level is close to zero.

Tariffs at 2-3% make little difference to trade. They are dwarfed not least by currency movements. And it is noteworthy that British exports have for some years been growing

faster outside Europe, where they face (usually low) tariffs, than within it, where they do not.

As far as revenues are concerned, Britain would collect more than it pays over. And even that takes no account of the budgetary savings on leaving the EU, which would be greater than any tariff revenues.

It may be asked if Brussels could raise these tariffs tomorrow? No, because these levels of duty are "bound"; which means that in the course of WTO negotiation, the EU has undertaken not to increase them.

Then can Brussels impose special penal rates just to spite Britain? No. The WTO is built on two great principles of equal treatment. First, the Most Favoured Nation Principle, which requires all WTO members (EU Member States included) to treat one another equally. After Brexit, Britain, as an EU Member, will also have this right to equal treatment. It will face the EU's existing CET, and no more. (This equally true in the converse direction of course. The tariffs Britain inherits on exit cannot be increased.)

NON-TARIFF BARRIERS

Another myth is that the GATT deals with tariffs, but not with NTB's (such as laws setting technical or regulatory standards). This is very far from the case. Actually the WTO's rules on NTB's (contained in GATT Article III) are quite as tough as its rules on tariffs: -

NTB's are subject to the GATT's second great principle of equal treatment - the National Treatment Principle. Any laws applied to imported products must treat them equally with domestic products. In other words, it requires all such laws to be non-discriminatory.

Article III prohibits the use of any such laws for protectionist purposes.

When Britain exits the EU, British exports to the EU must of course comply with EU internal laws (as must those of any third country). But under those laws, they must receive equal treatment with European domestic products.

What is the difference, then, between the access secured by GATT Article III and the access secured by membership of the Single Market? Yes indeed, there is the difference represented by the CET (3% or whatever the case may be). But is there anything else?

Not much, it seems, as long as we are talking in terms of substantive law. The big difference is that European law can be enforced more firmly, first by the Commission and then as necessary by the Courts. Enforcement is admittedly another story.

But in assessing the merits of the WTO rules as a fall-back position, it is essential to dispel the myths that have been allowed to accrue around them. Leaving these myths to

accrue without contradiction has been a huge and damaging failure on the UK government's part.

Dealing with Rogue Rates of Duty

For the most part, the added value of a Free Trade Agreement looks rather slender. We have seen that, contrary to widespread belief, the EU's Common External Tariff on industrial products is very low. Averaging across the range of goods the UK actually exports to Europe, we apparently get a figure in the region of 2-3%.

Nevertheless high rates remain in some rogue sectors.

FOOD is dealt with in above. Brexit will revolutionise the UK's entire food economy, in much the way it was revolutionised by the 1846 abolition of the Corn Laws, a revolution undone by the 1973 adoption of the CAP. Under the CAP we are compelled to keep food prices up, by imposing prohibitive tariffs of up to 60% and more. These serve to sustain retail food prices, at apparently 17-20% above world levels. Once free to do so, we can, and therefore surely must, abolish all food taxes once again? Or will we go on condemning UK consumers to CAP food prices when we are no longer compelled to do so?

Given that UK food prices are heading for a level 17-20% below European levels, it is unlikely that any UK-EU Free Trade Agreement can cover agricultural products. The EU will not be prepared to import duty-free food from a low-price zone across the Channel. Indeed it looks as though, UK-EU food trade will largely cease. In this way, CAP tariffs will cease to be an issue.

IMPORT QUOTAS. These apply mainly to food (eg NZ lamb), and we are told they raise issues of great complexity. Not if we are clear in our aims. After Britain has once again renounced taxes on food imports, it will no longer have any interest in restricting them by quota.

On TEXTILES, the EU's CET is apparently 15-20%. Britain is a net importer, and is unlikely in future to export textiles to the EU on any scale. It will gain a large consumer benefit by cutting or eliminating this duty once free to do so.

On MOTOR VEHICLES, the EU's CET is 10%, more than three times its average rate for industrial products. Britain has substantial exports of vehicles to Europe, all from foreign-owned plants, and many relying heavily on international supply-chains in which inputs are imported from EU Member States. Safeguarding these against a 10% tariff barrier is generating lively controversy: -

There have been suggestions that foreign direct investment, automotive and other, has located in the UK merely in order to gain preferential access to the Single Market; and

will leave if that preference ceases. In its pure form, this argument can be discounted, because much of that investment (apparently about half) comes from within the Single Market itself;

A more convincing objection is the degree to which supply-chains have become internationalised. When components and sub-assemblies cross and re-cross national borders, even low rates of import duty can be very disruptive. Yet this problem too can clearly be overcome, because cross-border supply-chains are successful in many parts of the world, not just within the EU;

To an important degree, a remedy seems to be available through abolishing import duties on automotive parts, components, sub-assemblies &c. (Absent a free trade agreement, this can of course only be done on most favoured nation basis.) This would enable integrated international supply chains ending up at UK assembly plants to function without regard to tariffs;

The main suppliers would be Europe & Japan. European suppliers of car parts, and they would for the first time be competing in the UK market on level terms;

Further supply-chain flexibility might be gained if the areas round foreign-owned UK assembly plants could be designated as export processing zones;

More generally, a 10% tariff would give the UK Exchequer the better of the revenue bargain. A large surplus would be available to channel into regional aids if necessary to safeguard employment. (To say nothing of the budgetary savings arising!)

The Competition Rules – A Redeeming Feature

One by one the supposed advantages of EU membership crumble on inspection. Tariff freedom is good, but it is only freedom from rates averaging no more that 2-3%. The few high rates of duty apply where Britain will in future have limited export interest (food, textiles); or else (cars) where mitigating measures are available. As for NTB's, the EU cannot use them with discriminatory or protectionist effect, without violating GATT Article III. We need to stop paying unnecessary prices for our food. We need to order our own trade relations. The Single Market, while adding nothing to GATT Article III, is inseparable from a cat's cradle of dysfunctional regulation which has reduced the EU economy to 30 years of economic stagnation.

Is there nothing in the Treaties of benefit for Britain? YES. YES. YES. The competition rules!

Britain owes the competition rules a triple gratitude: -

They have controlled cartels and dominance more firmly than our previous laws ever did.

They have shielded our industry from the threat of anti-competitive aids granted by other Member States.

More than that however, their most valuable gift may have been to save us from our own worst instincts. This they surely did in the 1970s, and continuously thereafter. And what now, when we have a government in which those instincts have reappeared in such a primitive form? Some critics of Brexit see this as the main argument for remaining in the EU.

How can we get by without the Competition Rules in the Treaty? Somehow we have to construct a substitute for them: -

As far as cartels and dominance go, we have done this: we have translated the competition rules of the Treaty of Rome into our own domestic competition law.

But where will the discipline on state aids come from? It is hard to see any alternative to including it in free trade agreements, backed by effective machinery for resolving disputes and compensating firms damaged by illegal aids.

This however may not be what the present UK government now wants. For the moment it seems oblivious of the clash between its rhetoric on free trade and its revived "industrial strategy" based on choosing favoured sectors. They have not grasped that free trade means that your trading partners decide which of your sectors prosper. In due course that clash will reveal itself and have to be resolved.

> *[A] commented:*
>
> *I profess no expertise. But*
>
> *(a) our exporters will have to continue to meet EU regulatory requirements for at least that part of output going to the EU ;*
>
> *(b) the UK will have the opportunity to relax standards for domestic sales, but might not do so ;*
>
> *(c) and even if we did, the cost of supplying to two different standards would reduce the cost saving.*
>
> *>>>>>>>>>>*
>
> *Tony Lane:-*
>
> *Many thanks for this.*
>
> *I would agree with you if I was running a firm, all or most of whose output went to the EU27. Doubtless such firms exist.*

But firms differ, which is why I am attracted by the DEEMED TO SATISFY model which I tentatively put forward [above]. In other words Lord Cockfield's original idea. I understand there are other precedents for this sort of approach.

Where we may disagree is over the implication in your point (c), that any single set of standards can spare us the cost of supplying to different standards. Least of all when a growing majority of our exports go outside the EU.

>>>>>>>>>

[B] commented:

I agree that NTBs including process, pregulation and standard are the key area. But I am inclined to think this may be a bit heroic.

For example:

Will it be enough for our exporters to satisfy EU standards for exports to the EU? The EU objective is to level the playing field i.e.to require the exporting state to comply in its domestic market , is it not?

What about self-certification?

The 6% looks huge to me . Even forgetting Congdens political affiliations I would want to unpack the vast amount of work that must have gone in to producing a credible figure. What does he assume as the alternative? Does he assume regulation is never needed or has he designed an ideal minimally restrictive efficient alternative?

Does the GDP base include everything whether regulated or not?

I take [A's] points.

Generally in the fields I know the regulatory objective was not perverted in the way you suggest, at least at the time I was closely involved , i.e. Around 6 years ago. It was much worse in the 70s.

... I would sorely like to believe all this. The capacity of our leaders to make a Horlicks of everything they touch enhances the attractiveness of the default scenario.

Escaping the Maze of EU Regulation

Professor Congdon tells us the greatest penalty EU membership is that of its dysfunctional regulatory legislation. He calculates the cost at 6% of GDP, rising at ½%

per annum. Shedding this cost, which he expects to take ten years, will permanently raise Britain's growth rate and become Brexit's biggest dividend.

Similar if less dramatic conclusions are reached by other analysts. They seem entirely plausible because : -

The motivation of Single Market regulation has been suspect from an early stage. Its professed aim was to open markets by harmonising at minimal compliance cost. But another objective was always overriding: to maximise the transfer of legal competence from the Member States to the centre. And for this purpose complexity and prescriptiveness were sought after rather than avoided. Each Directive plants a flag in a process of legislative colonisation, and the larger the new colony the better. See above.

The original Single Market intention had been different. Cockfield's aim had been a minimally-prescriptive form of regulation which he launched as a "New Approach". A Council Directive would specify an "essential requirement". Alternative standards were allowed if they were recognised as meeting that requirement. Private sector standardisation was encouraged. The "New Approach" however was soon abandoned as soon as Cockfield back was turned, because for Delors, as he admitted himself, the true aim of the Single Market was political integration, not just freer trade;

That is history, but its results remain in the form of the EU's chronic economic stagnation. This process, when the EU turned from being a growth leader to a growth-laggard, began with the regulatory avalanche that followed the Single European Act.

Today we are told escape is impossible, for a variety of reasons: -

At first we were told that it would involve re-negotiating 120,000 pages of regulation. But no, the 120,000 pages are to be re-patriated, and however intricate the process of cleansing may be, it will at least be a unilateral one;

So now, from the lofty intellectual heights of the Financial Times we learn of the "paradox of regulation" (revealed in a recent article by Phillip Stephens): that trade requires regulation. What the FT means, but cannot bring itself to say, is that trade requires minimising differences in regulation;

The FT thinks all will be well if we avoid applying different standards to domestic and European trade, and learn to love our European chains. But how can we avoid different standards anyway, given that we are a country that exports all over the world, with 44% of exports going to the EU (equivalent to 13% of GDP) and 56% to the rest of the world?

Given that diverse standards are inescapable, the question is otherwise to manage them. British firms need to be put in a position to choose, taking account of the principal destinations of their output, which will of course differ from one firm to another. The

solution seems obvious: WE SHOULD REVERT TO THE COCKFIELD NEW APPROACH, ie to the way the Single Market was originally meant to work: -

(a) UK regulatory legislation should be couched in terms of the essential requirements to be met;

(b) Different ways of meeting those requirements should be approved: alternative gateways to conformity. Each firm would be free to choose the gateway that suited its own pattern of sales - whether worldwide or domestic;

(c) The EU requirement should be one gateway - provided it met the UK essential requirement. This would suit firms all of whose business is domestic and European;

(d) The relevant ISO requirement should be another gateway, to help firms whose sales lay further afield. And in other cases the US requirement, and so on.

(e) Would there also be a UK gateway as an additional alternative? Yes, in cases where all the others are unjustifiably burdensome.

Congdon may be right in guessing that this process may take ten years. And it's becoming painfully clear that we do not have a de-regulatory government. Machinery is needed to set priorities, establish targets, prod the process forward and keep it moving. Also machinery outside government, in Parliament and elsewhere, to hold the process to account and to demand satisfactory progress. Business & consumers to be consulted about priorities (odd that it's so seldom understood how regulatory costs fall on consumers in the end). The prize is a higher growth-rate.

….

Beware the Ides of March

Article 50 requires an agreement to be concluded with the departing State: -

setting out the arrangements for its withdrawal,

taking account of the framework for its future relationship with the Union.

Logically this seems to suggest that the framework for the future relationship must be agreed before the arrangements for withdrawal. Otherwise the latter cannot take account of the former.

The UK government has said it wishes the two elements to be settled together. It has put this as a matter of preference, not of law. No-one seems to be asking if withdrawal can be invalidated if it fails to follow the Article 50 sequence.

Instead, the EU is "insisting" (their word for what appears to be an illegal stipulation) that the arrangements for withdrawal must be agreed before the framework for the future

relationship. Not only that, but they have latterly begun insisting also that, since Britain will not be a third country until it has left the Union, no future relationship can be agreed until then.

Why is it so important to the EU not to depart from the Article 50 sequence? These shifting stipulations ought perhaps to be causing more concern than they are.

They ought also to be evoking memories of the 1950s. These are interestingly recounted in Britain & the European Community, 1955-1964: Miriam Camps, OUP 1964: -

It seems that all members of the OEEC (precursor of today's OECD) originally agreed to negotiate an outer free trade area for all seventeen members, part of which would be the common market for the inner six;

Five of the inner six were enthusiastic. One was not;

The original aim was that both should come into effect at the same time;

However the five were persuaded to hurry forward their inner negotiation, while obstructing the progress of the outer group;

On completion, the five were further persuaded that the inner six must from that point onwards negotiate as one;

As soon as they were negotiating as one, the six then discovered hitherto undisclosed objections of principle to a free trade agreement with the outer group;

At the end of 1958 they terminated the negotiations.

Déjà vu, anyone?

>>>>>>>>>>>

> Comment by [B]
>
> Myview on this is in our original note of last June. Briefly yes art 50 requires concurrence of arrangement and framework. But if a valid agreement is not reached in time withdrawal takes effect without an agreement. As we rather crudely but hopefully catchily put it the article is a trap.
>
> A shambles seems all too likely, subject to your optimism on the WTO, etc..

>>>>>>>>>>>>>

Which Should be Plan A and Which Plan B?

I'm home again now, and rounding off these rambling thoughts, no longer from abroad.

It is strange that the Prime Minister should be attacked for saying no deal is better than a bad deal. The implication seems to be that she ought to say any deal will do. If she said that, there would be no negotiation, only an abdication.

I have been trying to argue that: -

While pursuing "a bold and ambitious free trade agreement," as its Plan A, the government needs a credible Plan B fall-back position.

This needs to be capable of serving both as a workable alternative if needed, and also as a credible deterrent to over-bidding by the 27

The WTO, once de-mythologised, provides a solid basis for that Plan B: indeed the only one available. It would involve low tariffs and comprehensive safeguards against NTB's; and it would provide them without strings

But the government has weakened its hand by failing to demonstrate the WTO's credibility, and allowing a contrary mythology to take hold.

What are the marks of a good free trade agreement?

Internal tariffs to remain at zero (following GATT Article XXIV);

quantitative restrictions on imports to remain prohibited (following GATT Article XI);

NTB's not to be applied with protectionist effect (following GATT Article III.1);

imports to be accorded national treatment under all internal laws and taxes (following GATT Article III.4);

co-ordinated enforcement of effective competition rules;

effective and impartial dispute settlement.

It will be seen that most of these desirable marks have GATT counterparts.

At the same time an agreement could be dangerous if it emerged festooned with compromises, wrecking amendments and extraneous restraints: -

restraints on Britain's external trade relations, or on its freedom to make free trade agreements elsewhere;

restraints in particular on Britain's freedom to import food from the best suppliers. The 27 will surely seek these. The government needs to be very clear. The Corn Laws need to be repealed again;

restraints in particular on Britain's freedom to cut or eliminate tariffs on key industrial inputs, such as semiconductors and auto parts, where Britain's interest as a user outweighs its interest as a producer;

restraints on internal policies, eg on taxation, monetary policy or social affairs.

The need to keep out extraneous matter is not just an academic concern. It was the rock on which the free trade negotiations foundered in the 1950s. The Six (as they then were) insisted on terms which would have effectively have been an extension of the Common Market rather than a free trade agreement.

Will the free trade agreement include investment provisions? If confined to trade, it can apparently be approved by a QM vote in the Council of Ministers. But with investment included, it will need the approval of each Member State and the European Parliament. (A recent ruling by the ECJ seems to have clarified that point). In this light there is surely a case for excluding investment for the time being? Boldness and ambition should perhaps be an incremental process.

And given these necessary inclusions and exclusions, what are the chances of agreement? The obstacles are legion: -

The government has dropped broad hints that it will not in the end press an objection of principle to a leaving fee; but the EU's financial demands seem to be growing, and this may be precisely because the 27 want to engineer a breakdown on this issue, so as to prevent the negotiations moving onto their second stage;

They have certainly boxed themselves into a dilemma because, having committed themselves to an outcome that harms Britain, they will be compromised by any outcome that Britain can accept;

They therefore have a double motive for loading the negotiation with extraneous provisions, in order both to complicate and delay the negotiating process, while at the same time increasing the chance of Britain rejecting it. (To repeat, this is what happened in 1958);

If the scope of the agreement is such that the approval of the Member States and the European Parliament is required (e.g. because investment is included), then the prospect of timely agreement is surely begins to vanish;

And for all those hoping for deadlock, time is on their side.

Against this background, the prospect of a free trade agreement seems rather remote. The balance of probability must surely be of default to a Plan B based on the WTO?

Meanwhile, and also against this background, it must be remembered that Britain's fastest-growing markets have for many years been those outside Europe, with which we trade successfully on WTO terms. The Single Market was marketed as a pathway to higher growth through freer internal trade. In that, it has conclusively failed: both for the EU and for Britain. Meanwhile third countries (eg the US), have rapidly increased their trade with the EU on WTO terms. All these WTO relationships give their participants the combined benefit of rapidly-growing trade and free hands. Why should that combination be unattainable in Britain's relationship with Europe?

So which is our real Plan A, and which our real Plan B? There seems at present to be no way of telling. The question takes on an ambiguity, because the preferred outcome is not the most realistically probable outcome. The government, for both commercial and negotiating reasons, needs to make clear that it is ready to pursue either option.

It needs to maintain this position both inwardly and outwardly. Inwardly, it needs to keep its mind open, and be alert for signs that the trade agreement is looking attainable. Outwardly, it needs to make its open mind clear to the Brussels bureaucracy and the 27. Outwardly too, it needs to put vastly more effort into briefing business interests on the GATT, and on how a GATT-based arrangement would work. And an equal effort into consulting them and working together on solutions. Here the government needs to get off the back foot. And this work must be made visible to the other side of the negotiating table.