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Uncustomary Zeal: The Referendum Pledge to Avoid a Customs Union

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Introduction

Following the referendum, claims have been made that the nature of the vote allows for a range of 'Soft Brexit' options. However, this is a flagrant rewriting of history.

The argument that the pursuit of any form of Customs Union arrangement for a post-Brexit UK is legitimate is absurd, as a review of the cached online briefing material proves.

Consequently, political moves by supporters of continuing membership of the European Union, to push for a Customs Union, should be binned from the outset as being a refutation of the referendum result.

More information on the systemic problems associated with the Customs Union model are covered in a separate Red Cell paper.

Background

The Remain side, and in particular Downing Street media officers, were the main source of press material on the Customs Union during the campaign. This is because they sought to rubbish the model, and in particular the Turkish Customs Union format. Clearly there was no mandate for that option from the Remain side.

The official Leave campaign was Vote Leave. Its website did include elements of forward look on future trading arrangements. This website constitutes the only material that might be legitimately considered an "official" pro-Brexit view of what the end terms should be.

The website included a specific section looking at trade models. This is cached and can be readily accessed today.

The relevant section was prominently signposted, easily accessed, and named "'Leave' looks like". There is no possible ambiguity or obscurity on where any modelling or future conceptualisation might be found.¹

The basic premise that was set out was that an end deal would be predicated upon a form of free trade arrangement, with enhanced agreements to remove Technical Barriers to Trade. Because of the variety of types of FTA available, no specific preferred model was named. Instead, it was pointed out that the continent of Europe was covered by a lattice work of types of deal, so it was implausible

¹ https://deref-mail.com/mail/client/agsJgGi3ajo/dereferrer/?redirectUrl=https%3A%2F%2Fweb.archive.org%2Fweb%2F20160323021945%2Fhttp%3A%2Fwww.voteleavetakecontrol.org%3A80%2Fbriefing_newdeal

that there would be a no-deal cliff edge. Moreover, global institutions were now key in developing international commercial standards rather than simply the EU institutions legislating internally.

It might usefully be noted that input for these lines included material drawn from several papers by this author – particularly;

- **42** – looking at the immense variety of models of trade deal the EU has signed up to²
- **The Life of Laws** – looking at the international hierarchy of trade regulation making³
- **New World Order** – looking at models in the Americas⁴
- **The National Interest** – looking at the need for an FTA for the UK⁵

These papers were produced independently in the latter part of 2015, and informed the material being put online at that time. (The author himself subsequently joined the Research pillar of the Vote Leave team in a senior capacity.) All these papers rejected the concept of a Customs Union in favour of a developed Free Trade Agreement.

By the nature of campaigning, the Vote Leave website itself did not expend volumes on academic treatise on the minutiae of negotiation points, since the objective was to get as many voters as possible to read it without falling asleep. What was clear in the text, however, was that elements that are inherent to the formation of any Customs Union were expressly ruled out for how the future trade deal would look.

Similarly, reference to developing a customs partnership is clearly expressed in terms of addressing Non Tariff Barriers bilaterally, as part of a normal free trade deal.

It might also here be added that more material was deployed expressly stating that the UK should end up leaving the Single Market. We pass over the detail here other than to note this was categorically clear both on the “‘Leave’ looks like” page but also in Vote Leave press releases.⁶

What was said

The following points express what was actually stated online, for anyone from the media or the public seeking answers to what Brexit meant, set out by the official Leave campaign.

Items in bold below are in bold in the original.

The overall context was one of an environment where trade deals removed obstacles, and cited an FTA state by name as a model;

we will have a new UK-EU trading relationship. There is a European free trade zone from Iceland to the Russian border and we will be part of it. The heart of what we all want is the continuation of tariff-free trade with minimal bureaucracy. Countries as far away as

² <http://www.theredcell.co.uk/uploads/9/6/4/0/96409902/42.pdf>

³ http://www.theredcell.co.uk/uploads/9/6/4/0/96409902/life_of_laws.pdf

⁴ http://www.theredcell.co.uk/uploads/9/6/4/0/96409902/new_world_order.pdf

⁵ http://www.theredcell.co.uk/uploads/9/6/4/0/96409902/the_national_interest.pdf

⁶ We may revisit it in another briefing note.

Australia have Mutual Recognition agreements with the EU that deal with complex customs (and other 'non-tariff barrier') issues. We will do the same.

The objective would be a new free trade and cooperation mechanism;

Overall, the negotiations will create a new European institutional architecture that enables all countries, whether in or out of the EU or euro, to trade freely and cooperate in a friendly way. In particular, we will negotiate a UK-EU Treaty that enables us 1) to continue cooperating in many areas just as now (e.g. maritime surveillance), 2) to deepen cooperation in some areas (e.g. scientific collaborations and counter-terrorism), and 3) to continue free trade with minimal bureaucracy. The details will have to await a serious negotiation but there are many agreements between the EU and other countries that already solve these problems so we will be able to take a lot 'off the shelf'.

There prospect of a transitional passage is inferred, but also its temporary nature;

There will be three stages of creating a new UK-EU deal - informal negotiations, formal negotiations, and implementation including both a new Treaty and domestic legal changes. There is no need to rush. We must take our time and get it right.

Most significantly, the UK would take back control of its ability to negotiate its trade deals – something that is fundamentally impossible in a Customs Union;

we will retake control of our trade policy. We will leave the Common Commercial Policy that gives the Commission control of all UK trade agreements. After we retake control, we will negotiate new agreements with countries like India, which represent the future of global growth, much faster than the EU slowcoach wants to or is able to.

And this rather critical criterion is also highlighted as the second point in the summary, right at the top of the web page

Europe yes, EU no. We have a new UK-EU Treaty based on free trade and friendly cooperation. There is a European free trade zone from Iceland to the Russian border and we will be part of it. We will take back the power to negotiate our own trade deals.

Conclusion

There is no conceivable way that anyone pushing for a Customs Union deal can claim that they have the moral authority to pursue one. There is equally no legitimate argument that they may make that the Leave vote did not sanction leaving the Customs Union.

The universally-accessible policy page of the official Leave campaign, in its only policy site, in the section entitled "Leave Looks like", and which was heavily signposted, indicated that the UK must take back control of its international trade deals. This is impossible without being outside of a Customs Union.

Anyone arguing for a new Customs Union, even just a partial one, must admit this fact.

The reality however is that the concept of a Customs union is simply being used by most of its advocates purely as a cynical cypher for staying in the EU by surrogate.

