

## Sir Ivan Rogers

# Where did Brexit come from and where is it going to take the UK?

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### INTRODUCTION

Thank you very much for your invitation to give this lecture tonight. You asked me to talk for about an hour on where Brexit came from and where it may take us.

I will try and cover both, including in answering questions later, but if I may, given the intense political crisis, I want to focus primarily on where we now are, and why we are there, and then look again at what our real options are.

We desperately need clear and honest thinking about our choices not just for the weeks but for the years, indeed decades, ahead. I continue to think that our political debate is bedevilled by what, at the time I resigned, I termed “muddled thinking”, and by fantasies and delusions as to what our options really are in the world as it is.

As opposed to several different worlds people on different sides of the debate would prefer to inhabit.

To be clear at the outset, I think these fantasies, which one would have hoped would be dissipating by now in the face of reality, are being propagated on all sides. The denialism is pretty universal. But if we are to take good decisions about our future, it is now genuinely urgent that we get beyond the myth-making.

I am not going to speculate pointlessly about the votes next week. But I want to set out how and why we have reached an impasse and why I believe the risks are appreciably higher than either the markets or the commentariat believe.

Why then have we reached such a severe moment of political and constitutional crisis?

## 1. ZOPA and TINA

To begin to answer this question, let me first remind you of an old friend of all negotiators: the ZOPA.

Any negotiation has, in negotiators' jargon, a ZOPA, a Zone of Possible Agreement, which is defined by where the interests, incentives and bottom lines of the sides can intersect.

From the Prime Minister's point of view, the deal struck on November 25<sup>th</sup> with the EU is in the ZOPA. Indeed, it's the only deal acceptable to her which could be.

As it was indeed within the ZOPA for the EU too – it's a good deal for them – which meant it was not hard at all to line up Michel Barnier and Heads of State and Government to say that this was the only deal they would do.

They would have said that even if not exhorted to by London, and assumed that such statements, which reinforced the Prime Minister's "it's either my way or the highway" strategy, would help the Prime Minister to get it over the line in Westminster.

The Prime Minister, as I say, decided that her best course was to reach the ZOPA with the EU, which was consistent with her red lines, though actually she has revised her red lines during the negotiation - I shall come back to that - and then seek to drag her own Party and/or a majority in the Commons to the realisation that she had done the only deal that could be done, and thus reached the only ZOPA that existed.

And by this means to convince her Party and a Commons majority, that the choice - "it's my way or the abyss" - was real, not contrived.

This is our old friend, The TINA strategy. TINA of course standing for "There Is No Alternative".

The "abyss" was of course different, dependent on whom she was addressing. To her own Right it was the "abyss" of the cancellation/ reversal of Brexit, as advocated by many on the Left. "I am delivering hard Brexit, leaving the Single Market and Customs Union, resuming national control over laws, borders and money".

To the moderate Labour MPs, whom she wanted – still wants - to detach from their leadership, it was the “abyss” of the hardest possible “no deal” Brexit as advocated by the Right. “I am delivering a compromise Brexit, which involves long term commitments to align UK rules with EU ones in the most sensitive sectors for many of your constituents.”

The message to both extremes in the debate was – is – you risk ending up with your worst nightmare world if you push your first preference all the way. You must accept my compromise. As it is the ONLY compromise which:

- To the Brexiteers: “delivers Brexit over the line, and renders it irreversible except by a fresh accession process, even if it is not the Brexit you want;”

- To the Remainers: “avoids a disorderly no deal Brexit and delivers a softer Brexit than many in my Party want”. - If that is your strategy, you of course refuse to take “no deal” off the table, as having it on the table has been completely central all along to attempting to force through the deal you want.

## **2. FOREIGNERS READ OUR NEWS TOO**

Although, let’s be honest, the other party in this negotiation – the EU - has never for one minute believed that the UK would go through with “no deal” as it is self-evidently a lot worse – in economic terms - for the UK than the deal, and a lot worse for the UK than it is for the EU. They can see we might just do it by accident, indecision or incompetence. But not on purpose. The EU side has, however, persistently underestimated the accident risk. And it has insufficiently understood from the outset that, for reasons I explain later, a lurch out to a WTO only world, which both leaders and technocrats think an obviously wholly irrational course, could be attractive to a sizeable chunk of the governing Party.

It’s never been a credible threat in EU eyes, because the consequences are obviously so damaging to a Government that inflicts a “no deal” outcome on the country when an alternative negotiated outcome is available, that they are relaxed that no Government could do it and survive. Not least because they are very confident that if it did, it would be have to be back at the negotiating table within weeks with its chequebook open, desperately seeking a preferential deal because WTO terms are so unpalatable and the

damage from going there so asymmetrical - much worse for the UK than the EU. Nothing in the last 2 1/2 years has shaken that mindset, and much has reinforced it.

So constant repetition from past and current Cabinet Ministers of the proposition that keeping “no deal” on the table is “our strongest card” with the EU is, and always has been, discounted as nonsense.

Why would a Government which was seriously prepared to go for “no deal” be pressing them so strongly from late 2017 onwards for what is clearly a deeply unappealing “status quo without voice” transition of 2 years - which it wrongly terms an “implementation period” to cover its desperation in pleading for it - unless it knew that “no deal” is, in the recent words of the Foreign and Business Secretaries, “cataclysmic” and “disastrous”?

If the other side’s threats in a negotiation make no sense and contradict all the evidence of what they are actually doing, in my experience, you just ignore them.

Indeed, no-one who was genuinely contemplating a “no deal” outcome in 2016, whilst having assured the public that it would never come to that, would have wanted to trigger Article 50 in the way and at the time we did. They should have wanted to be sure that we would, by the end of the 2-year process, be as ready as we could ever be to jump without a deal.

Which is why it is clear that those who might always have been keen on ending up without a deal and who pushed hardest for an early invocation of Article 50 - all on the Right - evidently did not understand that they had thereby fundamentally weakened, not strengthened, their own position.

They are now blaming the Prime Minister for doing something they were cheering her on to do.

And they are now seeking to rectify their mistake by demolishing the Prime Minister’s deal - more later on why - and running down the clock without any other proposition emerging. Because, as we all know, at the end of Article 50, the legal default is “no deal”, unless there is both reason and unanimity from the 27 to extend it.

They are of course far from the only ones who appear to have been taken by surprise as to what the Article 50 process covers and what it does not.

I come back to this issue later.

### **3. THE CREDIBILITY CRISIS**

Domestically, if you are pursuing the Prime Minister's strategy, you would of course talk up the credibility of "no deal" in order to concentrate minds that it might be a genuine option, to try force people towards your deal in preference.

Despite knowing that it is a grossly irresponsible choice, for which neither private nor public sector is ready.

The private sector is not ready, after all, primarily because you yourselves have consistently told it there WILL be a transition that it can completely rely on, and so companies do not need to take precipitate action. Because you are desperate they do not act as you know they would if they knew there would be "no deal", as that would hit both the economy and the public finances.

Begging the private sector not to activate contingency plans for "no deal" because you will not allow it to happen, but then allowing it to happen, would be an extraordinary act of folly and self-harm by a Government whose reputation with investors would never recover, and would not deserve to.

The problem at political level though, is that it is simply not a sufficiently convincing threat for any camp to shift position. Time might still make it so, if the Prime Minister could, metaphorically, take the ball to the corner flag and run down the clock.

But the widespread belief that this is her intention - aside from profoundly annoying the private sector, which has no reliable basis on which to plan, and therefore increasingly has to assume the worst because it now gets no reassurance that there is a plan to avoid it - merely persuades Parliamentarians that they must take the ball off her.

Those who don't want "no deal" think it so self-evidently self-harming on a grand scale that no responsible Government will do it. They think they easily have the numbers in the Commons to stop it happening anyway; and think that the more "no deal" hoves into public view, the greater their chance of persuading the public that Brexit is going badly

wrong, and may prove a disaster. And that a new referendum is needed, as the public was hoodwinked the first time about how Brexit could turn out.

And those who do like the idea of “no deal” are delighted if serious “no deal” contingency plans are visibly commenced, because they think that helps their prospects of selling to the public the proposition that “no deal” is perfectly viable and “won’t be so bad, that it can be “managed”, and that it is at least “proper Brexit” unlike the dog’s breakfast that is the Prime Minister’s deal” - capitalising, they hope, on a public appetite for the whole charade of the last 2 1/2 years to end.

So neither side has reacted, in the last 2 months, in the way the Prime Minister hoped and presumably expected. They have just dug in.

As if those reactions to both wings of the debate were not bad enough, those in the centre who are neither hard Brexiteers nor Reversers also do not accept the Prime Minister’s “it’s my way or the abyss” contention.

They think they have much superior softer Brexit “compromise” options to hers to offer, and therefore do not accept that her ZOPA is the best, let alone, only one.

And they think that their options for the future relationship have a better chance than the Prime Minister’s of commanding a majority in the Commons when it comes to the next or final “meaningful” vote.

#### **4. REVOLUTIONARY POLARISATION**

Of course, it is in the interests of the Prime Minister, but also of both the Right who advocate “no deal”, managed or not, and of the People’s Vote lobby, to demonstrate that all “middle way” options don’t work. And to hope that time plays in their favour.

There is therefore nothing more vicious in British politics right now - and that is really quite a high bar, sadly - than the attacks by the People’s Vote supporters on the proposed Norway + option.

Or the assaults by the European Research Group Right on anyone in their Party who might countenance supporting a permanent Customs Union.

We have this reached the point in what I have previously described as the Brexit

Revolution when it is essential for both the revolutionaries and the counter-revolutionaries to extirpate any “compromiser”.

That is a pretty common feature of revolutionary politics. It is just that the UK is not very used to revolutionary politics, in which polarisation progressively narrows the space for compromise, and indeed compromise, always a fairly dirty word in UK politics, becomes a term of abuse.

The revolutionaries declare that every version of Brexit bar their own is not truly Brexit.

The People’s Voters declare every soft Brexit version playing on variants of either a Customs Union or a Common Market without the political integration, is an unacceptable compromise, and that only reversal of the referendum result will do.

## **5. THE ONE TRUE BREXIT**

We are left with the bizarre spectacle of Brexiteers, many of whom used to argue that exiting to Norwegian or Swiss style destinations would be a vast improvement on remaining in the EU, because these were vibrant Parliamentary democracies whose peoples had bravely spurned European political integration in favour of free trading relationships from outside, arguing that if the U.K. now “escaped” only to such a destination, it would be a terrible betrayal.

It would be “Brexit in Name Only”, as bad as or worse than, the Prime Minister’s lousy deal, and a triumph for the “deep state” that has been wanting to sabotage Brexit from the outset.

Whatever one thinks of the Norwegian or Swiss models, to characterise Norway and Switzerland as countries which, despite their sovereign votes not to join the EU, in some way failed to make good a genuine “escape” from European political integration, is patently absurd.

One can, by all means, argue that neither model is appropriate to the UK, and that we can do better.

Then set out what you think is better in what you propose, and demonstrate why you have reason to think it is negotiable. With a bloc that, understandably, will think we are

a much larger partner, but also a much more sizeable future competitor, than either of those, and will therefore prosecute its own interests very carefully. But one cannot argue that Norwegian/ Swiss type models are “not Brexit at all”.

Unless one is also arguing that the integrationist ratchet which Eurosceptics believed was pulling us in to where we did not want to go – a perfectly arguable case, incidentally – applies equally to Norway and Switzerland. But this view is absurd.

And this bombardment of propaganda from those saying that anything other than a so-called “clean break no deal” Brexit is “not really Brexit” comes from the very people who, before and immediately after the referendum, promised the voting public that a preferential trade deal with the EU was “in the bag”. And would be the work of weeks, if we were unlucky, as the EU would be so desperate to conclude such a deal with us to take effect the day after exit.

This was always piffle, to use no more impolite a term.

## **6. NO EASY WAY OUT: POETRY AND PROSE**

But it reveals an underlying and important truth in this debate, which always worried me when I looked, well before and straight after the referendum, at how best we could get on and deliver Brexit if the public voted for it.

Which I always thought rather probable in a referendum where the Remain side was defending what was concrete, known and pretty unpopular – unpopular for a host of good reasons as well as less good ones - and the Leave side could offer vaulting visions of the future post Brexit, without needing to be specific about where we should end up.

Eurosceptics, despite the narcissism of small differences, could always hold together when we were in the EU. Because they did not have to define a post Brexit destination or, crucially, an exit route and method.

They could unify around the need to escape the integrationist maw, and decide that they could cross the bridge of what to do next, in the unlikely event that they succeeded in getting an in-out referendum.

People - some senior names in the Cabinet, some former senior members - who are now

ferently on a so-called clean break Brexit, were, within the last 3 or 4 years, to be heard proposing continuing with Single Market and Customs Union membership after we left, or arguing, as I have said, for Norway style EEA options. Plenty said so to me both when I was in my Sherpa and Permanent Representative roles.

Their real beef, after all, was with Political Union, Monetary Union, potential Fiscal Union, with European citizenship and its implications, and with the sense that issues got progressively sucked away from the national to the supranational level and never came back.

Even Nigel Farage can be heard in 2015 TV interviews toying with an EEA type destination he now completely anathematises as a total betrayal of the purpose of Brexit.

The Institute of Economic Affairs indeed offered a large prize, once David Cameron's Bloomberg speech had dangled the realistic prospect of a referendum to decide whether to stay or leave, to help define an agreed destination and exit path. Because they could see the looming crisis over what on earth Brexiteers could ever coalesce around both as the destination and the path to reach it.

But the winner's model was quietly, rapidly – and, I might add, sensibly, given that it obviously did not work – buried.

And the most thoughtful sceptic attempts to map an exit route – embodied, I think, in a lengthy tome called Flexcit, which is a genuine, serious attempt at least to grapple with what insider experts knew were inordinately complex issues - were spurned by the mainstream Brexiteers, despite some brief dabbling by the likes of Owen Paterson.

Why? I am afraid that is simple.

Because as soon as you have to define what you really DO want post Brexit, as opposed to what you don't want, and as soon as you have to map out a genuinely viable very complex path to exiting an organisation you have been part of for 45 years, and which has inserted itself in every domain of UK life – which is exactly what you most object to about it - the unity completely fragments, and small differences about where we actually want to go become large ones.

Dominic Cummings, when chairing Vote Leave, shrewdly deliberately avoided

proposing any plan and focussed the entire campaign on what it didn't want, and ensuring that resonated with the maximum number of voters who might find Brexit appealing, but would have radically different ideas of what it would deliver for them.

The last thing he, or the political leaders of the campaign, wished to do was to set out a proposed destination, and a route map to reach it.

That would have completely torn the fragile coalition apart. And it would have exposed the desirability of the destination, in comparison with a status quo with which much of the public had very good reasons to feel unhappy, to close scrutiny.

It would have been unwise to disappoint people who were prepared to vote, for very different reasons, for Brexit -and I am not disparaging either the reasons or the people, I am just saying the reasons were often mutually contradictory - by specifying a clear destination which opponents could then have dismantled. Far better to keep the destination vague and to focus the assault on that people can see they do not like about the ancien regime.

And that is why, now, with the road running out, and under the pressure of simply having to specify where one wants to end, and how to get there, the option of "WTO only" - which all serious leave thinkers and politicians had themselves disparaged before the referendum - has now emerged, in various guises, as the preferred option of the hard Brexiteers.

As one astute commentator, who voted leave, put it rather superbly this weekend, it is the "I have no solutions and can't be arsed to think" option.

In all honesty, though now it's a gross dereliction of responsibility and a huge failure of leadership, under cover of increasingly empty demagogic rhetoric about betrayal.

The Prime Minister's proposed deal is now suffering precisely the same fate at the same hands as did continued EU membership in the referendum.

It is there: concrete and attackable. Everyone can specify what they do not like about it. Which is plenty. To both sides, it seemingly looks worse than what we are leaving.

You campaign in poetry, but you govern in prose, as the saying goes. And the campaigners - on both sides, because this applies in spades to the Remain lobby now too

- still vastly prefer to carry on campaigning in poetry than having to govern in prose.

The Brexiteers again avoid having to say anything serious or precise about what their destination means and how it works. They just assert loudly that it's freedom and is not some ghastly, toxic, sordid compromise with 27 other players' realities.

The adjectives flow freely in the newspaper columns and the indignation about the nation's humiliation is notched up a level every passing week.

## **7. THE “WTO DEAL” CANARD**

But as to solutions they advance as better than the horror that they think is the Prime Minister's proposal, we still get only vacuities.

We hear that all links with the past could and should be severed in one go, and that shall be free from horrible entanglements. And thus from having to acknowledge that there are very difficult trade-offs, and that life after Brexit will be bedevilled with one long, difficult negotiation after another with our nearest neighbours and biggest trading partners. And that those negotiations will force very hard choices on us. As they do, every year, on the Swiss, for example.

But a jump to WTO-only freedom of course makes no sense. Particularly from people who say we must leave the EU in order to pursue our sovereign free trade deals with other trade blocs or countries. Which indicates that trading either “on WTO terms” or via those preferential trade deals struck by the EU when we were in it, as we do now, is no use and is “holding us back”.

If the supposed route to prosperity for post Brexit “global Britain” lies through a global lattice work of preferential trade deals, how can one possibly seriously argue that the ONLY bloc with which one does not need a free trade deal is the one with which one does easily the largest volumes of trade?

And if a preferential trade deal with the EU is, in practice, essential, then you obviously gain nothing by tumbling completely out to WTO rules, and then having to try and scramble your way back up the hill to a preferential deal, under huge time pressure, notably in those many sectors and issues on which a resort to WTO rules gives you nothing.

You just hand the perfect negotiating hand to the other side. Listening to Ministers and ex Ministers now loudly asserting that going out all the way would give us all the cards in a free trade negotiation with the EU leaves one not knowing whether to laugh or cry.

Let me just repeat it in case you are wondering whether this can possibly be right or whether I am spoofing.

We are now being flogged the proposition that in order to move from a deep preferential agreement - the supranational political, juridical and enforcement aspects of high you deplore, but which gives you much the best trading terms with the bloc, above all in the sectors in which you are highly competitive - to a less deep, but normal EU preferential agreement which gives you substantially better access than WTO terms, the best route is to go all the way out to WTO terms first.

Because that will give you the whip hand in negotiations with a bloc for which the absence of any preferential deal covers a vastly lower proportion of its trade than it does of yours.

And the bloc would therefore come begging for a new preferential deal, drop completely its demand for the backstop, accept that technological and administrative solutions to the border suffice, when they have repeatedly previously made clear they cannot, and settle for much less than the money that the U.K. Prime Minister had already agreed to pay if she got an acceptable Withdrawal Agreement – which she now publicly agrees she has.

This stuff would make snake oil salesmen blush.

The reality is that you would in exiting to WTO terms reset the baseline for future FTA talks in the worst possible place for U.K. negotiators.

We would start them as a bog standard third country with no preferential deal in place, not as a former member of the club seeking to argue, notably in goods, that the baseline should be everything we wish to retain in friction free trade about the world we had as members. In other words, by deliberately going to “no deal and WTO”, you reset the baseline from which we all start as MFN (most favoured nation) trade, and have to build everything up from that tabula rasa base.

Whatever one thinks of the Prime Minister's proposed outcome, one can see that the whole purpose of the all U.K. backstop, aside from escaping her impossible but self-imposed predicament on a Northern Ireland specific one, is precisely to avoid that. On goods, anyway.

And to start from a baseline of the status quo and negotiate on how far, if at all, liberalisation needs to be wound back from its current deep level, because we are leaving the legislation, adjudication and enforcement machinery of the bloc.

On services, the Prime Minister is, as I say, because of her free movement absolute red line, reconciled to starting with the tabula rasa route. Indeed the Political Declaration text is explicit on the point. Both sides will begin with their WTO commitments, and the EU side with its commitments in existing FTAs, and work up from there.

The Political Declaration cites Article V of the GATS (the General Agreement on Trade in Services) which just sets out the basic requirements for two WTO members trading solely on WTO terms which seek to embark on Free Trade Agreement negotiations.

As I say, this is, thanks to UK red lines, about as unambitious as it can get. There is a sizeable gap between WTO commitments and the services regimes which the EU applies to third countries, and EU FTAs essentially concentrate on closing that gap, rather than seeking to get anywhere close to extending the level of services trade liberalisation you get when in the Single Market.

So let's be clear exactly what we are doing here.

Thanks to our own choices and red lines, we are starting from the most unambitious tabula rasa baseline possible on the sectors of the economy in which we run a huge trade surplus with the EU.

But we are seeking, on key goods sectors in which we run a massive trade deficit, to start from the baseline of membership, and with the objective of building and improving on the Single Customs territory, whilst somehow simultaneously developing a fully independent trade policy.

It's therefore really not too surprising that the EU thinks this is a very decent basis for itself for the next round, and was prepared to stretch its principles to deliver an all UK

backstop - which one has to presume the Prime Minister told them was the key to unlocking a deal – even though that marks a sort of splitting of the 4 indivisible freedoms, 2 by 2.

It's heading to an asymmetrical deal in its favour.

As for Westminster though, we are deep in the Alice in Wonderland world of UK politics where the vast bulk of the peculiarly antiquated debate about our trading future has been focussed on goods and tariffs issues.

Where tariffs are, outside agriculture, very low with very few exceptions. Where services represent 80% of the economy and tradeable services much the fastest growing element of our trade; where barriers to services trade are all about regulatory architecture. And where the difference between commitments which are at Single Market levels and those in an FTA on Canadian lines could represent the loss of a very substantial percentage of our current total services exports to the EU.

To be clear, the Canada deal is actually good FTA by world standards. But it does not deliver the Canadians a uniform position in the EU market. (Or vice versa). The general provisions in services liberalisation are counteracted by more than 500 sectoral or regional exemptions – often relating to corporate form, to the necessary qualifications of service providers, or to discrimination on grounds of nationality.

None of which are legal internally in the EU. But all of which can and will be applied to us when we leave.

And all of which are perfectly legal under WTO rules, whatever those who witter on endlessly about the marvels of WTO terms, without understanding or wishing to, the difference between them and Single Market terms, tell you.

Because WTO terms, which are critically important, are merely a foundation upon which you build when seeking deeper freeing up trade, bilaterally, plurilaterally or regionally, via FTAs or less ambitious agreements. And services trade is extremely hard to liberalise as you are dealing with entrenched cultural preferences and intractable regulatory barriers.

It cannot be repeated often enough, because we are about to find out the hard way in a

trade negotiation, that leaving the Single Market makes trade, notably in services in which we are world class, LESS free. Much less free. Because we are closing off ways in which our world class firms can provide services seamlessly cross border.

And the “declinists talking Britain down” are supposed to be the people who point out the damage this will do to many of our most brilliant firms? Give me a break.

So I will make one extremely confident prediction for the post Brexit trade talks ahead, regardless of which Prime Minister we have and whether they espouse what is in the current Political Declaration or whether they profess to want a Canadian style deal.

When we get into them, we will discover, at a granular level, just how bad it is to start from a tabula rasa third country baseline on services. And we shall then spend a lot of negotiating capital and use a lot of concessions on other issues – and the free movement of people question is, as we have seen, intimately linked to services provision - to try and lever up our level of market access into what used to be our home market to something nearer Single Market levels.

What is dismal about our political debate is the inability to start that debate until it is upon us.

## **8. DELIVERING THE GOODS**

To revert to goods, as I say, the Prime Minister wants to build on and improve the Single Customs Territory and deliver deep and lasting regulatory alignment on a “common rule book” (more properly known as the EU one...) whilst simultaneously delivering a fully sovereign trade policy across both goods and services.

How one pulls off this amazing three card trick is, understandably, not fleshed out in the Political Declaration because the internal contradictions would then be too painfully obvious.

If we aspire to have as friction-free trade as the Prime Minister says she wants and regulated good sectors need, delivering minimal checks on cross border trade, we obviously pursue the maximum possible regulatory alignment. Which, whilst not removing the need for all border checks, will limit their scale. And we take on so-called level playing field commitments, to guarantee the other side that this alignment is

guaranteed to persist, and we won't engage in regulatory arbitrage.

But that entails a major political sacrifice. Because this really drives a coach and horses through "taking back control" on goods trade and regulation.

Prime Ministerial euphemisms like a "common rule book" cannot conceal that, to retain market access and minimise frictions in goods trade – and hence to prevent the relocation of major businesses from the U.K. – we are, in practice, going to have to bind ourselves voluntarily to align on the EU's law book, and to implement masses of rules and norms we shall have had no part in setting.

Plenty of others outside the EU, including the Swiss, accept essentially that bargain on goods of course because the EU is a regulatory union behemoth which can and does export its standards extraterritorially. And it has a huge enough market that firms will design their manufacturing around its rules.

This infuriates the sovereigntists to the Prime Minister's Right, because it manifestly will trammel the U.K's trade policy on goods, and it will limit the FTAs the U.K. can pursue to partners whose regulatory orders are not fundamentally at odds with the EU's.

But welcome to the world. Sovereignty in these domains, as in data, many services, procurement and so on, is not unadulterated even if you are a sizeable player but not a global rules setter.

And for those whose agenda is essentially both sovereigntist and geostrategic - they actually know enough to know that in goods regulation, we will never be a global rule setter, but they would much rather be a rule-taker from the US than the EU, but would also much rather not say that to the British public because they do not think they would have the votes – this Withdrawal Agreement points in a direction they view as anathema.

Because, as they see it, it's driven by business interests which are beholden to a model of business predicated on a close economic relationship with the EU. Well, "fuck business", as someone once said.

To avoid having to debate the reality of what this stance means for the UK economy – and fiscal position - we get 2 rhetorical devices. In both, the bluster fails to conceal the

absence of substance.

First, we get the “go global, not parochial little Europe” routine.

Sure, increasing our trade with fast-growing parts of the planet should of course be a major U.K. goal. And that will, over time, further shift U.K. patterns of trade.

But that shift is happening – as it happens, faster – for “global Germany”, “global France” as indeed everyone else within the EU and everywhere else in the developed world. Which is why German trade flows with China earlier this decade for the first time surpassed those with France, when, 20 years previously, they had barely registered on the same scale.

And flows from both Germany and France to both China and India have long - vastly - surpassed Britain’s. The idea that it is impossible to have a global, Atlantic, Asian or African vocation from within the EU is, again, just crass.

The case for strengthening trade ties beyond the EU also in no way makes the argument that deeper trade liberalisation within the EU bloc – and deeper liberalisation, notably on services, in which cross border liberalisation is much tougher to achieve than on tariffs and is always easier within a bloc than with markets outside it - should be abandoned. Nor is it true that geography no longer matters on services trade.

Our reality is that UK services exports into the EU in the year of the referendum amounted to about 90 billion sterling.

This is as much as our exports to our next 8 biggest export markets put together.

It is fatuous to suggest that when you immediately substantially worsen your terms of trade in services with massively your largest market – which, as I have set out, even an FTA, compared with Single Market membership, automatically will do, immediately once exit happens/ after the end of a transition period – instant trade deals with other fast-growing regions will, on services, substitute for the loss.

I have so far met not a single senior executive in a major services firm in any service sector who believes this.

And understandably. The loss is immediate, sizeable and certain, because one’s legal

position changes overnight. The potential gain is speculative and in the middle distance, depending on what deals an independent U.K. can conclude which might lever open others' services markets better than current EU deals.

And on that, the evidence before companies' eyes is clear. The UK Government is struggling, as it was always going to, even to stand still in the short term with third countries with whom, via EU membership, we have trade deals out of which we slip on exit. This is not a criticism of those doing the hard work, incidentally. There is just an immense volume of technical work, even to aim to stand still, not roll backwards, in the next few years.

Second device. You attempt to derisk "no deal" to the public by claiming that it is not really an alarming "no deal" at all but a liberatory "managed no deal", a "no deal set of mini deals", a "multi deal". The new euphemisms keep on coming.

Which with one bound enables you to avoid the backstop, avoid paying over the money, or much of the money the PM pledged in return for an acceptable Withdrawal Agreement, and delivers all the certainty and continuity all sectors of the economy need on terms which completely suit us.

Stop me if you have heard this one before but I gather that the EU27 will be so desperate when we finally walk away from the table that they will be running after us for a new preferential deal and junking all those tedious preconditions they have spent the last 2 years agreeing unanimously.

And how do you achieve this feat of prestidigitation, given that the WTO prescribes that any preferential trade deal has to cover "substantially all trade" and therefore rules out sectoral mini deals – which is why cake-eating partial Single Market and partial Customs Union deals could never fly? As indeed we were explaining to Ministers every week well before I resigned.

You invoke Article XXIV of the WTO to argue that you can jump out to WTO terms, but then have up to a 10 year interim period in which you do not have to re-impose tariffs across the Channel, which would wipe out sizeable chunks of the U.K. food industry, for example, because you are in the process of negotiating an FTA.

Just one slight problem with this. It's a wilful and awful misinterpretation of Article

XXIV. As those dreaded trade experts keep pointing out. But in common with other such claims, despite being rebutted as nonsense by people who actually understand WTO rules, the claim is never retracted.

It also takes two to negotiate an FTA, and in circumstances when the U.K. has walked away from a Withdrawal Agreement, is refusing any agreement with a backstop and saying that money it had previously agreed to pay is withheld until any final trade deal is reached, it will not be difficult at all for the EU to adopt a common position on how to react.

Nor will the EU, in the event of a “no deal” share the latest Brexiteer fantasies that all we need to do is flout the WTO’s Most Favoured Nation principle and carry on according each other preferences and refusing to levy tariffs as if nothing had changed. It is bizarre listening to self-styled defenders of the liberal international order even suggest this nonsense.

It is all just about setting up the argument that if we do it ourselves, the EU is intransigent and mean in not reciprocating.

But under WTO law, they simply cannot. And non-reciprocal preferential free trade is simply illegal. So we cannot either.

But “no deal” has, let’s be honest, become just the latest canvas for Brexiteer dreams. None of this has to be true. It just has to sound compelling and reassuring to people.

When we assured by the former Foreign Secretary that “ample, balanced and pragmatic mini deals” will be prepared in a jiffy once we have just said “no” to the current deal, he knows full well it isn’t true. It’s just a pale repetition of the same tired old rhetorical tropes we heard from him in 2016, 17, 18.

And that EU common position post a collapse of the Withdrawal Agreement will not, I can assure you, be one begging for the immediate start of FTA talks. It will be a calm repetition that there is readiness to open FTA talks the moment the UK makes good on its promises on the backstop and money.

Coupled with a whole set of unilaterally decided measures to assure continuity where the EU side most requires it. Of course there will not be the complete termination of

trade and investment flows or of every flight. What there would be – it already exists - is shelves of legislation, EU and national, to deliver continuity where it most mattered to them, and to public safety and health here, but to deliver enough discontinuity and pain where it matters to force the UK back to the table to agree the same or worse terms.

## **9. THE COUNTER-REVOLUTIONARIES**

But the proponents of reversing the revolution before the mandate from the referendum has even been fulfilled, are likewise now utterly determined not to compromise. Their guns are therefore trained on all “softer” versions of Brexit, involving close and deep relations with the EU from outside it.

Nothing is worse for them than either the Norway+ proposals or the kind of Association Agreement type models advanced by federalists like Andrew Duff, who accept the fact of Brexit, and want to find pragmatic solutions for a post Brexit relationship which might work. And might keep the relationship deep, amicable and robust.

Because they think that if they can eliminate all softer Brexit options from the field, they would face a straight fight with the Prime Minister’s deal which the avid Brexiteers will have helped them discredit and demolish.

But this means that if they do not succeed in stopping Brexit via a new referendum, they will have spent much of the last year attacking the type of post Brexit relationship which they will then want to advocate as the post exit trade negotiations get under way. Unless the only option they can support after exit is a campaign for immediate re-accession to the EU, using Article 49. In which case, we are seeing the mirror image of the Brexiteers’ strategy pre referendum: a rather masochistic hope that things go as badly as possible.

But I fear also see in the incipient campaign to stay in “a reformed Europe” many of the British exceptionalist delusions which have run through pro EU circles since at least Maastricht. The key reason David Cameron shifted over time from a Bloomberg vision of pan EU reform and flexibility to a narrower focus on entrenching key bits of a sui generis British deal was, as he once put it to me: “most of these people (his fellow leaders) don’t really agree with me on much of that”.

With the highly ironic – in today’s circumstances - exception of trade liberalisation, on which actually they largely did agree with him, and are much more liberal than the US

Establishment, that was largely right.

## **10. MIDDLE WAY?**

The proponents of middle way Brexit options to the Prime Minister's proposal say, with justice, that the agreement she has reached with the EU is purely a factor of the preferences - the red lines – she took into the negotiation.

And that hers is not actually a soft Brexit. It's clearly a hard Brexit which ultimately involves leaving both Single Market and Customs Union, and thus guaranteeing that there will be less trade and on worse terms, with the EU, than their own alternatives - be that a permanent Customs Union or a European Economic Area based deal - would deliver.

But that she is just postponing elements of that transition. And therefore offering false temporary comfort to regulated goods sectors, who will still face the shock a little further down the line when we still do leave the Customs Union, and no comfort to those hit by the unequivocal decision to leave the Single Market.

And on that of course, M Barnier and EU leaders back them up.

Because they have said incessantly that were the Prime Minister to exhibit flexibility on her red lines, different – by which they mean economically preferable for the UK – deals would be doable. It is, in other words, it is the Prime Minister's own preferences which are constraining the level of trade preferences and market access on offer to us after Brexit.

They would say that, of course. “It's your choice, and you must finally decide what you want” has been the EU negotiating stance throughout.

But it is essentially right, and the PM herself has, after all, publicly accepted that her own positions on the need completely to end free movement and to escape the jurisdiction of the European Court of Justice mean we shall leave the Single Market.

What we all know after the last 2 1/2 years, and, more importantly, the EU knows it too, is that the single most important objective for the PM, which has dictated where the ZOPA was, has been ending free movement of people and having complete national control over which Europeans, not just which non-Europeans, get the right to settle

here.

That the market access of U.K. services companies into very easily our largest export market has been surrendered for that.

Because the provision of services across borders frequently necessarily entails free movement of people – it constitutes, in the jargon, one mode of supply of such services - if you end free movement of people, the corollary will be radically to reduce market access into the EU by UK services companies.

I cannot recall any Brexiteers acknowledging that inevitability during the referendum campaign. They still, as I say, wrongly consistently assert that a Canadian deal will be fine for the UK and not involve a radical reduction in trade flows.

The Prime Minister, after months of pointless effort trying for models of post Brexit services trade which it was obvious the EU would never agree for a third country which did not want an EEA type deal, had, by the time of Chequers, concluded that this game was up.

The needs of goods sectors, and notably EU regulated manufactured goods sectors have therefore been accorded much greater importance than the needs of service sectors.

And this has frankly rather bemused EU elites who are used to a British political elite who they think, basically correctly, never really thought about the EU in anything other than purely economic, mercantile terms. Suddenly, you are dealing with a UK elite which seems not to be deriving its negotiating positions from any analysis you recognise or remember of the UK's vital national economic interests.

This is what has led us to the Customs Union debates of the last 2 years.

The PM came under strong pressure from key, successful U.K. manufactured goods sectors, from autos to pharmaceuticals, from aviation to chemicals, all of whom told her that their commitment to remaining heavily present in the UK depended on perpetuating a business model constructed on the basis of Customs Union membership and adherence to harmonised Single Market rules in their sectors.

All of these sectors are mass exporters to the EU. All currently operate under EU-level regulatory frameworks. None has an appetite for regulatory divergence from the EU. It

is clearly senseless for them, as to market their goods on the EU market, they will, post Brexit, have to demonstrate compliance with precisely the same rules and standards.

National sovereignty in these sectors is, for them, therefore purely notional. And in a world of trade blocs – US, EU, China – which set and impose extraterritorially their own standards, an autonomous U.K. is not a big enough market to become a global standard setter.

This put the Prime Minister in an exceptionally difficult position.

Knowing that the Right of her Party and the primary enthusiasts for Brexit within it, attached huge importance to having a fully autonomous and sovereign trade policy, and were completely determined to leave the Customs Union, and abandon the Common External Tariff of the EU27, she promised them that we would indeed leave the Customs Union.

She simultaneously promised Dublin that somehow or other the move to a different trade and regulatory regime and different tariffs (plus all the issues, from Rules of Origin rules to anti-dumping provisions) would never necessitate the erection of a hard border across the island of Ireland.

And then, when after finding her Government dependent after the 2017 election, as we have just seen again last week, on Democratic Unionist votes for its survival, she promised the DUP that she would not permit Customs and regulatory divergence between Northern Ireland the rest of Great Britain – which the DUP would regard as a major step on the slippery slope to Irish unification.

The fact that these three promises are manifestly not all deliverable - one can deliver any 2 of the 3 but self-evidently not the third, as they are mutually contradictory promises - led Dublin, rather understandably, to think that unless it secured legal guarantees that, regardless of whichever trade deal the U.K. struck with the EU, there would be no hard border, it would find its own interests subordinated to the other two commitments, and a hard border would be the inevitable consequence.

And the more it heard from both the Prime Minister and the Right wing opponents of the Prime Minister, the more it had that view confirmed. Because the only trade

agreement those people would do with the EU would, as Dublin saw it, clearly guarantee the need for a hard border.

And so they pushed, hard and successfully, for agreement on a backstop provision in the December 2017 agreement. Which then got translated, as was agreed and inevitable, into a legal text for incorporation into the Withdrawal Agreement.

And the only way the Prime Minister thought, once she saw that draft legal text, that she could render it remotely palatable to the DUP, was by promising it would never come into force, and by turning the backstop into an all UK backstop which would remain in force unless and until a different solution was found to avoid the need for a hard border.

But that very commitment to an all UK backstop solution, which, for the PM felt like a breakthrough to a deal which the EU had previously said it could not do as part of the Article 50 process, did not enhance her prospects of getting the Withdrawal Agreement through the House.

On the contrary. It made matters worse.

For the Right, an all UK backstop with no unilateral way in which to exit it, risked condemning the UK in perpetuity to a closer economic relationship than they wanted to have, and depriving the UK of the ability to run a fully autonomous trade policy, even after the end of the period of so-called vassal state transition. It seemed to be heading inexorably to precisely the same policy as that of the Leader of the Opposition: a permanent Customs Union.

The last several weeks have therefore been dominated by the Prime Minister seeking political, and ideally further legal, assurances that the all UK backstop, which, to repeat, she herself deliberately sought as a centrepiece of the Withdrawal Agreement – and not simply a political aspiration for the accompanying Political Declaration - is not intended to lock us in perpetuity into an arrangement which precludes our ever assuming full sovereignty over our trade policy – in goods as well as services.

Those political assurances were forthcoming in the exchange of letters the Prime Minister had with the Presidents of the Commission and the Council the day before the

meaningful vote, but as we saw, they made no difference whatever to the devastating scale of the defeat.

And although I believe the EU side is genuine in not wanting either an all UK or an Ireland specific backstop to be in place for the long term, the reality is that the backstop would come into, and remain in, force unless and until it is replaced by some other arrangement which makes it unnecessary to erect a hard border.

And on this, we remain firmly in the world of make-believe and fantasies.

The Prime Minister still talks as if the need for a backstop will automatically fall away the moment a full trade deal is struck. And that therefore all that matters is cast iron commitments from the other side to expedite and complete a free trade agreement.

But this is manifestly untrue unless the deal were such as to render the backstop otiose. And that is not the sort of trade deal to which even she aspires.

To her Right, we have Brexiteers arguing that we shall be able to use administrative measures and technology to solve the Irish border issue without the need for a backstop. And seemingly believing that there can be some bilateral agreement between the U.K. and Ireland which takes the backstop completely off the table.

But administrative measures can never do more than reduce border frictions.

They will never eliminate them, and have not done so even at borders like the Norway / Sweden border, which, by definition, as it is a border between an EU and an EEA Member who are therefore much more closely integrated than hard Brexit advocates ever want the UK to be with the EU, require fewer administrative measures than an Irish border would, if we conclude any trade deal of the type they want.

Again, if you want less integration with the EU economy, that's a perfectly legitimate argument to make.

But please do not then tell us that there can be friction free trade and seamless borders. Because there cannot be.

And technology, as yet unavailable, even as and when it exists, can address only the Customs issues. A plethora of other border checks necessitated legally by having different regulatory regimes and enforcement machinery once we leave the Single Market, are never going to be solved by technology. A border is not simply about Customs and people checks.

It is even more disingenuous - indeed simply dishonest - to say, as again the hard Brexiteers do, that, after resolving the Irish border issue via administrative measures and technology, the whole U.K. would be able to enter into a Canada style free trade agreement “of the type suggested by Donald Tusk”.

The reality is that Tusk made no such proposal. He said that a Canada style Agreement could be offered to Great Britain only.

But that, to obviate the need for a hard border the Prime Minister had committed to avoid, Northern Ireland would, if the U.K. chose to go for a Canadian type option, need to remain in a much closer economic relationship – entailing a customs border in the Irish Sea. (Which the U.K. Government rejects as a threat to the integrity of the Union.)

And that any deal, Canadian or closer, was necessarily dependent on the UK signing the Withdrawal Agreement with the backstop in it.

This is, in other words, almost the exact opposite of what former Brexit Secretaries and the former Foreign Secretary allege “has already been offered to the UK”. The dishonesty is breath-taking.

To be completely clear. No deal along the lines touted as having already been offered – TO THE UK - has been or ever will be.

A Canada style deal, which itself looks very different from the proposition they espouse, and is seriously bad for the economy, COULD be offered to Great Britain only. But the very “thinness” of the free trade agreement it entails guarantees that radically different arrangements would need to be agreed for Northern Ireland.

You do not, in other words, escape the backstop issue just by wishing it away, let alone

by fantasising about bilateral deals with Dublin, when policy competence for Customs issues resides, on the other side of the negotiating table, at the EU level.

## CONCLUSION

You have listened patiently to a long exposition of how we arrived at this major crisis. And I'm sure you will be both in need of a stiff drink and asking "so what, given we are here, should we now do, to get out of this hole?"

Before Christmas, in a lecture I gave in Liverpool, I suggested that 9 lessons might usefully be applied to the situation we shall face for the next few years.

We were told yesterday that the Prime Minister has, in the last several weeks since reaching agreement with her EU colleagues but not coming close to persuading the House that it's the right agreement, learned 6 lessons.

Whether or not she has learned any of the right lessons, time rolls on and Plan B evidently bears an uncanny resemblance to Plan A.

So let me conclude my rather less snappy animadversions tonight by distilling just a few lessons at least from what I have said tonight.

I have gone for four.

**First, Article 50 can, for all its oddities, probably can work as an exit route.**

And countries do have to be able to exit the EU, if that is their democratic choice. If the U.K. cannot manage it, and we are the size of the smallest 2/3 of Member States put together, there really is a huge problem.

BUT... it only really works if the exiting country has worked out where it is exiting to. And is very clear sighted and basically united about what it wants to gain and what it is prepared to lose.

Neither applies in the UK.

At the moment, we have a political class still determined not to look realities in the eye. But they will only damage their reputation further with the public if they continue to fail to.

And we have very little unity: perhaps less than 30 months ago, with growing risks to both social and national cohesion. Indeed with a growing risk that the U.K. will break up.

We need a political discourse that recognises there is no single, perfect answer. There never was, inside or outside the EU. Not a discourse in which all sides play the “everything but my own version is either a humiliation, a betrayal or a total disaster”.

And we need a political process which enables the public to see the choices. Or we shall have many bitter years in which we only really hear from the losers as trade-offs - and huge trade-offs are coming - are made untransparently.

**Second, we have to understand how the EU works and negotiates, because we shall, like it or not, not ever be floating free of ties and responsibilities in the mid-Atlantic.** We shall, like an outsized Switzerland, be negotiating on everything – from fish to financial services, from food and farming to fundamental rights, and that is just the “fs” - for as long as both UK and EU exist.

There is no leap to freedom which permanently ends this. It’s just exactly what intensity or relationships one wants and why that needs deciding.

It does not pay to be starry-eyed or naïve in negotiating with the EU machine, and for all the belligerent talk and now the fist-waving “no deal” rhetoric, senior Ministers have been both, and have been rolled over repeatedly.

The EU is a difficult negotiating partner. It has treated this process as essentially a technocratic one of “de-accession” - the reverse of the process when one joins. That style works on accessions, because it’s an inevitable process of convergence on a known destination – the voluminous EU law book. And the EU then dictates the entire game and exhibits strategic patience.

But here we are heading to an unknown and contested destination. And the EU style of negotiating is inflexible. And in this negotiation, technocratic overreach in the departure

of a major Member State may still end badly. The EU side too, at leader level, has to think harder about why, and about where it is going with the UK in the longer term.

Repeatedly saying “we never get anything coherent from you in London”, even if very often true, is not really enough.

**Third, baselines – where you start from - matter in negotiations.** We started on this one in a way calculated to land us up where we have duly ended.

I have explained on the impending trade negotiations, assuming we get there, why I would profoundly not want to start out from a WTO-only baseline. And why the current Withdrawal Agreement already tilts the playing field nicely in the EU’s direction for the talks to come.

And, to revert to that Canadian example I gave - demonstrating why a Canada type deal gives services companies so much worse terms than what we have now. It is precisely the discussion and negotiations to try and winnow down the length of the lists of exemptions, carve-outs, and national discriminatory rules which takes all the time.

Only Ministers and ex Ministers who have never personally conducted a trade negotiation think this can be quick and easy. And if you start from a bog standard third country with no preferences baseline, others will ensure you pay a heavy price – within and way beyond that sector – for every step you take back towards what you used to have automatically.

And the fact that everything is – and has to be – connected is another reason why “no deal maxi multi mini deals” or whatever the latest fiction is called, won’t work.

No one is going to sign off on what they know the UK most urgently wants, till they have also banked a lot of what it doesn’t want. I am sorry if that sounds rough. But others do have interests and politics too.

And if we end up seeking to get a quick and dirty trade deal done at all costs before the election and escape the vassaldom of transition, the EU will use the pressure of the ticking clock in the next phase just as effectively as they have in this, to extract concessions.

**Fourth and finally, one cannot rule out an extension of Article 50**, whether a technical, short one, because we are too short of time to get the legislation through in good order. Or a longer one because it remains such a total mess and both sides at top political level conclude that a disorderly and bitter “no deal” at this point is better avoided.

One can see that on such an issue, leaders might well be in a different place from technocrats. Although, by and large, at every stage so far, leaders have been inclined to be less flexible than the Brussels apparatchiks.

But an extension is not a given, and it is not a UK decision. And I still encounter a lot of scepticism in other capitals about whether it serves much purpose, if all it does is to license a prolongation of the same old self-absorbed British political debate.

Which as I have said, seems to specialise in outrage about what we absolutely cannot tolerate, but be terribly short of proposals for what we could live with post Brexit which have any chance whatever of being agreed and of the UK side actually adhering to for too many months after it has left.

Extra time is only of any real value if you make use of it to progress and change the national debate.

I have said today, as I said before Christmas, that it is really time to wake up. I've said today, perhaps more clearly, that it is not just one side of this debate which seems to be lost in its own dreams. I understand why each of these alternative versions of reality is more attractive to those who wish to live there, than the real world that I see. And I know that reality that as I have understood it and lived it for many years - with my many companions who work so hard on behalf of our public, our politicians and our governments – is cold, boring, and prosaic and peopled by desiccated technocrats who can always come up with some tedious reason why you can't have all of what you want all of the time.

I know that those who have kindly cheered my remarks and comments have been buoyed by the hope that I might be helping to puncture the dreams being peddled by their opponents, and perhaps by the thought they could discern a lurking poetry in the

dead hand of my bureaucrat prose. I am not able to do more than throw a bucket of cold water on those who sleep on and on, in the hope that they - finally - wake up and notice that the fire could consume them.