

Brexit – It's Still Happening



Michael Dougan, University of Liverpool

Option 1

UK keeps relatively close relationship with EU:

- minimises disruption in trade and security
- reduces tensions over “hard border” in Ireland
- but requires UK to become de facto “rule taker”

Option 2

UK seeks relatively distant relationship with EU:

- tallies with Brexit slogan: “take back control”
- but increases disruption in trade and security
- and complicates problems facing Ireland
- plus begs the question: what does UK intend to do with its newfound “freedom”?

Johnson Government's Choice

- Clear decision to pursue Option 2 (while denying any of its associated problems)
- UK left EU in January 2020 on basis of Withdrawal Agreement – including Protocol addressing Irish border
- Fractious negotiations over future EU-UK relationship in trade, security etc
- Last minute deal on Trade and Cooperation Agreement (now being provisionally applied)

Better than a kick in the teeth

Slim pickings are better than none – though TCA still contains nothing UK didn't already enjoy as Member State of EU

E.g. zero tariffs / zero quotas on trade in goods

E.g. limited access to European security / law enforcement resources

But compared to 5 decades in EU?

- “Zero tariffs / zero quotas” is subject to rules of origin requirements
- Full array of customs checks and controls now applies to trade in goods
- Non-tariff barriers: no more free movement of goods or services based on mutual recognition
- Minimal provisions on mobility of persons
- Multiplication effects for various sectors / activities

Legal status and effects of the TCA

- EU law: rights vest directly in individual citizens / businesses; fully enforceable as such before EU & national courts
- TCA: explicitly rules out any individual rights / enforcement; merely relations between contracting parties as matter of public international law; reverts to traditional dispute settlement techniques

Overall?

- An extremist Brexit, of sort once advocated only by far right lunatic fringe
- TCA is only one strand in EU-UK relations and (even within its own field of application) Brexit remains far from “done”
- Does nothing to address wider problems: international status; domestic tensions; ongoing threat to liberal social market democracy