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House of Lords,
Westminster,
London SW1A 0PW

The Rt Hon Theresa May MP
Prime Minister
10 Downing Street
London SW1A 2AA

17 September 2018

Dear Prime Minister,

I have long been deeply puzzled why in our correspondence since 2 November 2106 you appeared to have closed your mind to the option of using our continued full membership of the EEA, including full participation in its governance, during the proposed 21 month implementation period starting at the end of March 2019. You know well from our correspondence that I have *never* suggested permanent membership of the EEA Agreement. All I have ever asked is that you do not ignore the EEA option and end up presenting to Parliament a false choice between your bespoke agreement and coming out without agreement under the WTO rules with all the serious temporary difficulties that that involves.

Having read your letter this weekend I now realise your firmly held position has been based on a deeply mistaken belief about the content of the EEA Agreement. In para 8 of your letter to me there is a very serious and alarming error. It reads:

“I should also add that the EEA would not provide a solution for the Irish border issue. It would deal with industrial goods but not checks on sanitary and phytosanitary standards for agrifood, nor with customs.”

The facts are that the very first Annex of the EEA Agreement is devoted to these issues of sanitary and phytosanitary standards [SPS] for agrifood. The Annex is for the most part a 269 page bibliography of the relevant legislative Acts concerning SPS matters which are contained in the EEA *acquis*. That is a lot of regulation. Yes, of course, you are right – SPS issues are central to the Irish Border Issues – they do require much more intensive checking efforts than customs and it is at the border at which agrifood movements account for a relatively high proportion of total movements. I would never have suggested to you using the EEA for the 21 month period and maybe a little more unless the EEA had covered SPS.

I cannot understand how you have come to be misled over this long period on this SPS issue. I am sure it was not deliberate but it may reflect a deeper problem you face in that you are not being advised by people of long experience of EU matters nor of negotiating with the EU. The lack of due diligence is quite extraordinary and may explain why Irish Border Issues have been allowed to appear more intractable than they are. I notice even last week the Taoiseach was talking about the EEA more positively

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than before. I have no doubt that during 21 months working together the UK as a non-EU member of the EEA and the Irish Government as a EU member we can come to satisfactory arrangements that will lead into the wording of a Canada-like EU/UK trade agreement.

Another reason for being a full member of the EEA during this period is that we would be operating under the EFTA Court *not* the ECJ and when we leave the EEA Agreement we could, I am sure, 'dock alongside the EFTA Court', wording which the EU has used when discussing the Swiss aversion to coming under the ECJ; an aversion which I believe is shared by the British people.

In your Future Relationship paper which you set out at Chequers in para 35, manufactured goods and agrifoods are put on the same level. A common-rule book is required for each (See your sentence "as for manufactured goods...") in order to remove additional regulatory checks at the border. Annex 1, to which I have already referred and which deals with SPS issues, is, in effect, that common-rule book for agri-food, and is already written. It is readily available on the following link: (<http://www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex1.pdf>). This can serve until such time as a new agreement can be reached. Hence there is no need for an Irish backstop for these regulatory measures – only customs needs to be sorted, which is much easier and is largely about a modest amount of money, not public health.

For all of these reasons I urge you to take one last opportunity preferably bringing in advisers who know about these issues in detail and would never have allowed you to be under such an important misapprehension about the EEA Agreement, and be ready to give Parliament a proper choice, not a false one based on fear. That has already been tried in the referendum and it failed. It will do so again. The people of this country do not like being bullied.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Owen', with a long horizontal stroke extending to the right.

DAVID OWEN