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Brexit negotiation is not about playing to the gallery

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Delegates from the EU Informal Summit gather for the family photo at the Grandmaster's Palace in Valletta, Malta, during an informal summit.

Britain is ill prepared for the Brexit trade negotiations. They will be gruelling, tense and very complex - and the Prime Minister should re-think her tactics



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On June 24 2016 the world was surprised to learn that Prime Minister David Cameron, after losing the Brexit referendum, did not have a Plan B.

As a result, the decision by his successor, Theresa May, to call for time before invoking **Article 50** was seen as wise: the UK needed time and space to recover from the shock, to engage businesses in outlining the best options for its trade relationship with the EU, and to prepare for the negotiations to come.

I have been directly involved in international trade negotiations myself. In my experience, any country approaching a negotiation – especially a complex one such as Brexit – requires:

- 1) a trade policy with a clear understanding of offensive and defensive sectors according to long term strategic objectives;**
- 2) a team of skillful negotiators;**
- 3) political masters who understand how negotiations work and open up the space for the negotiators to do their jobs.**

Progress has been made during the last nine months yet, for all the upbeat rhetoric from the Government and Brexiteers, the UK is not even close to where it should be on any of these counts.

The UK's plan for the forthcoming coming negotiations with the EU has not been disclosed. It is indeed highly unlikely that such a plan even exists as the Government has not yet managed to define a UK Trade Policy.

A coherent Trade Policy requires deciding which sectors the Government will seek to protect, in relation to which countries, which sectors should be defended at all costs, and which sectors may become the “price to pay” for wider objectives. Without such a Trade Policy, any choices that the Government makes in the negotiations with the EU (or in any other negotiations) will unavoidably result in a series of ad hoc decisions, rather than leading to long-term strategic outcomes.

A Trade Policy requires honesty, to determine who will be the likely winners and losers in the short and long term. This is an impossible task for a Government that refuses to even hint at the fact that there might be any losers in negotiations with the EU for fear of failing to meet the hyper-optimistic threshold set by the extreme Brexiteers.

Progress has been made in setting up the negotiating teams, with negotiators brought together from various government departments and also from other countries (even countries such as Australia and New Zealand with whom the Government also wants to negotiate).

However, with more than 300 posts as yet unfilled, and with some staff who in the past used to deal with minor EU issues now rebranded as EU experts, indications are that there remain significant gaps in expertise.

And while some have been given training (mostly at “intermediate level” according to the government's own tender documents), many still do not have the skills needed to confront the formidable EU team with whom they will have to negotiate.

Challenges are also apparent at ministerial level: from David Davis breezily claiming that the UK will enjoy the “exact same benefits” from the single market after Brexit (something that is – even under the best possible agreement – simply impossible), to the disclosure that the Government has not even bothered to conduct an analysis of the cost of relying on WTO terms only, and Boris Johnson happily declaring that no deal would be “perfectly OK”. Officials are trying hard to

get ministers up to speed. But many speak privately of the difficulty in presenting some ministers with an objective analysis of pros and cons. As seen with the resignation of the former UK Ambassador to Brussels, Ivan Rogers, trying to present a candid view to the Government can come at a high personal cost.

While all this looks messy, it can be sorted out with some additional time, allowing ministers to upgrade their skills, negotiators to be recruited, training to be up-scaled, more technical work put into defining negotiating priorities and costs, and so on. But there is something that cannot be fixed with time – and that lies at the very top of this undertaking, with the Prime Minister.

International negotiations are not wars. They are processes whereby two parties agree on a deal only if both of them believe that they are better off with said deal than they are today.

The Brexit negotiations are highly unusual since, uniquely, two parties will negotiate a trade deal where both realise they will end up worse off than they are today. But regardless of the end point, trade negotiations are processes conducted by people who need to create a positive dynamic among themselves. For negotiations to work it is imperative that political bosses on both sides create a positive climate from the outset, providing negotiators with as much negotiating space as possible to do their jobs. What the British Prime Minister has done so far, though, is exactly the reverse.

Any European that has observed the UK for the last nine months could be forgiven for being confused as to whether the UK Government actually wants a deal with the EU at all. The Prime Minister has declared that no deal is better than a bad deal even before the negotiations have begun.

She has threatened to punish the EU by setting up a low tax and low regulation area. She has even dared to threaten them with the withdrawal of cooperation on defence.

And if that was not enough, she rushed to hold hands with a US President whose declared opinion is that the EU should break up and whose best friend is one of the biggest Europhobes alive, Nigel Farage. Trying to generate a positive negotiating dynamic against this background will be very challenging indeed.

One of the problems for the Prime Minister is that for all her barking, Europeans are well aware that most of these are empty threats. When she threatens the possibility of no deal, she declares that the country will nonetheless be a “free trade champion”, so the EU is reassured that it will encounter few trade barriers in the UK under even the worst scenario.

Also, any attempts to turn the UK into a low tax and regulation haven will encounter a strong defensive response from the European side and also hit the UK’s public finances and the quality of public services even further, something that all Europeans know the PM can hardly afford.

Europeans are also aware of the dangers that the Prime Minister faces within the UK. Her flat refusal to even consider the proposal for the application of the Single Market to Scotland, as initially proposed by Nicola Sturgeon, has now led to a possible second referendum on independence there. The UK, a country that on 23 June decided to put its whole economy at risk on behalf of its national identity, is now seeing how that very national identity may be broken from the inside as a result.

Many realise the Prime Minister desperately needs to buy time to get things off to a better start – hence all the focus from businesses in the last few months on getting a transitional period agreed. That transitional period should keep things as they are for a few years while she gets her teams up to speed and gives businesses enough time to adapt. But, here comes

the next problem. The obvious way to obtain a transitional arrangement is for the PM to place the UK temporarily within the European Economic Area until she has secured a replacement deal with the EU. By not doing so – and also refusing to allow even a temporary role for the European Court of Justice after March 2019 - she has effectively blown that chance. Even if the UK agrees to pay an extraordinary amount of money for access to the single market on current terms for a few transitional years, access cannot be extended on those terms unless the European Court of Justice continues to play the role it does today.

Most of the steps the Prime Minister has taken over the last nine months have made things worse – for Europe and for the UK. She still has time to try to get to a better place, but that requires her abandoning her “because I say so” style and also doing a u-turn on her position on the European Court of Justice, so that businesses and her own negotiating team have time to adapt.

Tempting as it may be for her to continue projecting an image of immovable strength to gain domestic praise, international deals are not made with rigid ultimatums and threats – they are made with flexibility and charm.

When approaching the Brexit negotiations the Prime Minister would be wise to remember that she is fighting for the place in history that her predecessor could not achieve – not just for more praise on the front page of the *Daily Mail*.

• **Miriam González Durántez** is an international trade lawyer

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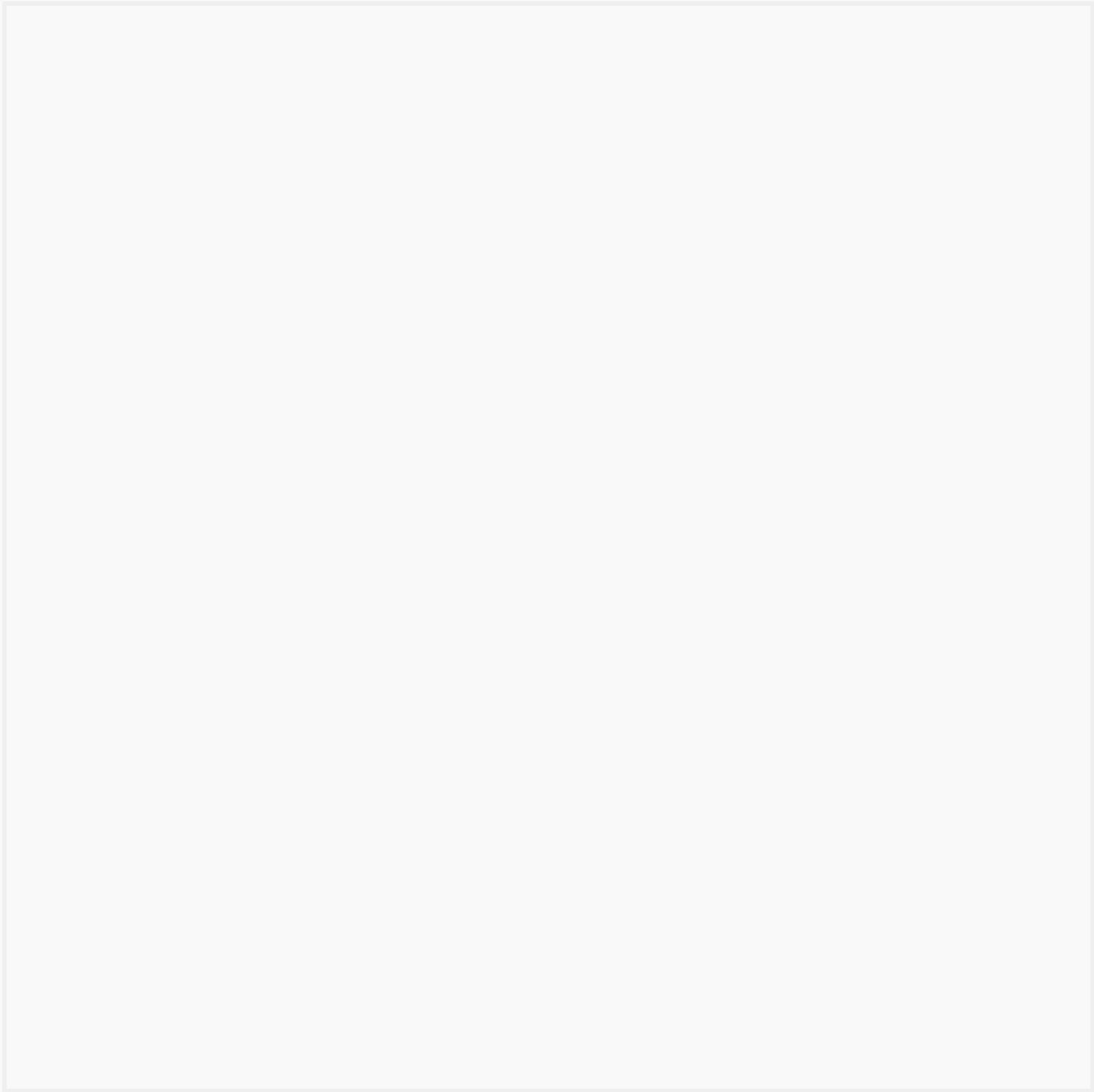
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