30 TRUTHS ABOUT LEAVING ON WTO TERMS

Why WTO offers a safer haven than the Backstop

by Rt Hon the Lord Lilley & Cllr Brendan Chilton

GLOBAL BRITAIN

Labour LEAVE

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7th January 2019

INTRODUCTION

The best way out of the current impasse over the draft Withdrawal Agreement with the EU would be to accept President Tusk's offer, made in March[1] and repeated as recently as October, of a Free Trade Agreement involving zero tariffs and including services – extended to the whole UK. That would involve replacing the Irish Protocol in the draft agreement by a commitment by Ireland, the EU and UK that they will retain an invisible border between Northern Ireland and the Irish Republic, as all have pledged to do if there is no Withdrawal Agreement.

As Donald Tusk rightly stated[2], this is the only potential agreement with the EU compatible with the UK leaving the Single Market and Customs Union – as promised during the referendum and in the Conservative manifesto pledge.

Such an agreement should be relatively simple to negotiate since we start even more closely aligned – with zero tariffs and identical regulations – than Canada and the EU were when they finished negotiating their Comprehensive Economic and Trade Agreement.

However, in case the EU refuse any substantive renegotiation of the draft agreement, the government should simultaneously complete preparations for leaving without a withdrawal agreement on WTO terms.

Ever since the referendum the Brexit-opposing media have been demonising what they call "No Deal" but should be called WTO +++. The pluses of moving to WTO terms after 29th March are explained in the following chapters:

[1] On 7th March 2018 Donald Tusk, President of the European Council issued a statement[1]: "*I propose that we aim for a trade agreement covering all sectors and with zero tariffs on goods. Like other free trade agreements, it should address services. And in fisheries, reciprocal access to fishing waters and resources should be maintained*." He added: "*I propose close cooperation within the following areas. Firstly, … terrorism and international crime … Secondly, we invite the UK to participate in EU programmes in the fields of research and innovation, as well as in education and culture … Thirdly, I am determined to avoid that particularly absurd consequence of Brexit that is the disruption of flights between the UK and the EU. To do so, we must start discussions on this issue as soon as possible*." Statement by President Donald Tusk on the draft guidelines on the framework for the future relationship with the UK. Council of the EU. 109/18 07/03/2018.

[2] Ibid "*in her speech last Friday, Prime Minister Theresa May confirmed that the UK will leave the Single Market, leave the customs union and leave the jurisdiction of the ECJ. Therefore, it should come as no surprise that the only remaining possible model is a free trade agreement. I hope that it will be ambitious and advanced – and we will do our best, as we did with other partners, such as Canada recently – but anyway it will only be a trade agreement*."

THE IMMEDIATE BENEFITS OF WTO +++

1. **Far from 'crashing out' we will be 'cashing in'**.

   - **We will keep upwards of £39 billion – which will**:

     - Boost our GDP by up to 2% over the next couple of years.

     - It will improve our balance of payments significantly.

     - Be spent on our own priorities – be it the NHS, training, defence, lower taxes on the 'just about managing' or on business.

   - The Lords' (heavily pro-Remain) EU Financial Affairs Sub-Committee concluded that "*Article 50 allows the UK to leave the EU without being liable for outstanding financial obligations under the EU budget*"[3].

   - If the EU disputes this, we can confidently submit the issue to a suitable international arbitrator. (See Annex A for analysis of £39 billion claim).

2. **We will end uncertainty – economic and political.**

   - Under the government's draft Withdrawal Agreement, **corrosive uncertainty** will continue for two years – or even longer – about the basis of our future trading and other links to the EU.

   - Whether companies find leaving with no Withdrawal Agreement welcome or a challenge, they will know where they stand and start investing again to take advantage of opportunities or to cope with problems.

   - It will also put an end to Britain's disproportionate political focus on the Brexit process and we can concentrate on other priorities and on making positive use of the powers we regain from the EU.

3. **The Irish border issue will be solved by administrative measures without need for a backstop – as all parties have promised in the event of 'no deal'.**

   - The UK, Ireland and EU have all given assurances that if the UK leaves without a Withdrawal Agreement they will not introduce infrastructure or checks on the border between Ireland and Northern Ireland[4].

     - **Leo Varadkar**: "*I've made it very clear to my counterpart in the UK and also to all the other EU prime ministers that under no circumstances will there be a border – full stop*."

[3] Brexit and the EU budget: The House of Lords European Union Committee March 2017

[4] https://order-order.com/2018/10/18/will-not-hard-border/

"In terms of a no deal scenario … we won't be installing a border between Northern Ireland and Ireland, and everyone knows that."

- When an Irish MP asked **Juncker**: "*If negotiations fail with the Tory government on the exit agreement … will you give us a clear commitment that the European Union will not impose a border, customs posts or any other kind of infrastructure on the frontier in order to protect the European borders?*" **Juncker** replied: "*Yes*".

- **Jon Thompson**, CEO of HMRC: "*Our consistent advice to ministers has been, we do not … require any infrastructure at the border between Northern Ireland and Ireland* ***under any circumstances***"[5].

- We already have an invisible border despite different duty levels, different VAT rates and zero rates on trade across the border. We tackle smuggling of tobacco, alcohol, red diesel, drugs, arms etc. without border posts or checks at the border. If EU and UK product standards in, say, vacuum cleaners diverge, trading standards officers at sales outlets – not customs officials – will enforce the rules.

- For a full explanation of how an invisible border can be implemented, see *The Border between Northern Ireland and the Republic of Ireland*[6]. An invisible border does not require new technology but is based on bringing together administrative processes that are all already in practical use in various countries. It is designed to be compatible with simplifications in the EU Union Customs Code.

4. **We can then take up Tusk's offer of a Canada +++ style free trade deal (FTA)– for the whole UK, (once the Irish border issue has been resolved administratively).**

- **We can continue to trade with the EU on zero tariffs while negotiating a Canada +++ deal.** This is permitted by Article 24 of the WTO treaty[7].

- So, WTO +++ and Canada +++ are not mutually exclusive. Indeed, leaving on WTO terms will make it easier to negotiate an EU/UK free trade agreement, from a more equal position.

[5] DEXEU Select Committee on 29th November 2017

[6] *The Border between Northern Ireland and the Republic of Ireland*, ERG, 12th September 2018

[7] Article 24 5c https://www.wto.org/english/tratop_e/region_e/region_art24_e.htm

EXERCISING OUR RIGHTS AS A WTO MEMBER

5. The WTO is a safe haven not a hard option.

- The WTO was set up to provide the basic framework for countries to trade with each other.

- **Six out of the EU's top ten trading partners trade under WTO rules including our biggest national export market, the USA – with which we have a surplus, unlike the huge deficit in our trade with the EU. Others are China, Russia, India, Brazil and Japan.**

- The WTO guarantees:

    - No discrimination. So, the EU could not impose punitive tariffs or barriers to UK trade.

    - Most Favoured Nation terms. So, the EU and all other countries must grant us the best terms they give to other countries with whom they have no preferential agreement.

    - Dispute resolution mechanism.

- President Trump's disregard for WTO[8] and other international trade agreements is regrettable but more likely to be aimed at the EU than at an independent UK. Moreover, once the UK takes up its role in the WTO it will, as the 5th largest economy in the world, be able to take the lead in reviving support for international trade liberalisation that has lacked a champion[9].

6. UK exports on WTO terms have grown far faster than to the Single Market.

- **UK exports to countries we trade with on WTO terms have grown 3 times faster than our exports to the Single Market since it was established[10].**

- Despite all the hype about the Single Market, membership has proved of little benefit to UK exporters. Indeed, countries similar to the UK, who are outside the EU, have increased their exports to the Single Market far faster than we have[11].

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[8] In particular, the US has refused to nominate new members of the Appellate Body which threatens to hamper the hearing of appeals. He has also questionably invoked 'security considerations' to justify steel and other tariffs.

[9] *Plan A+ Creating a prosperous post-Brexit UK* - Shanker Singham et al 24th Sept 2018

[10] *It is Quite OK to Walk Away* by Michael Burrage, Civitas April 2017

[11] *It is Quite OK to Walk Away* by Michael Burrage, Civitas April 2017

7. EU tariffs would amount to less than half the UK's net contribution to the EU budget.

- **Tariffs on UK exports to the EU will amount to £5-6 billion. This is half the UK's net contribution to the EU of £10-12 billion. Paying £10 billion to avoid £5 billion has not been a good deal!**

- **Our exporters to the EU will face an average tariff of 4% – far outweighed by the 15% improvement in competitiveness due to the exchange rate movement triggered by the referendum.**

- Although UK exports to the EU would incur tariffs of £5-6 billion, EU exports to the UK would bear tariffs of £13 billion (if we retained the EU external tariff)[12]. That is because in addition to exporting far more to us than we do to them, EU exports to the UK tend to be the most highly protected – i.e. we could obtain them more cheaply elsewhere if we reduce or abolish some of those tariffs.

- Even if we slash many of those tariffs – as we should – or use the revenues to cut VAT to prevent the cost of living rising – we will be able to use some to help those sectors facing the highest tariffs.

- In particular, if any farming sectors are rendered uneconomic by EU tariffs they can – and should – be helped generously to adjust. Overall the UK is a net importer of agricultural produce from the EU so farmers as a whole (though not consumers) would be net beneficiaries if the UK applied the Common External Tariff to food imports from the EU as well as the rest of the world. To balance the interests of farmers and consumers we could abolish tariffs on foodstuffs that the UK does not produce and scale back other food tariffs to a level that still provides farmers with a reasonable overall level of protection while they are being helped to adjust to the diversion of exports away from the EU market.

- We can also, within WTO rules, help car manufacturers, for example, by removing tariffs on components and offering financial help with R&D, marketing efforts, training budgets and reducing industry specific and more general taxes.

8. The UK is a WTO member so does not "need to re-join it".

- **The UK is a member in its own right** (as are all founder members of GATT, the precursor of the WTO).

- Indeed, the UK has been paying its own individual subscription to the WTO despite the EU exercising most of our functions.

[12] *Potential post-Brexit tariff costs for EU-UK trade* by Justin Protts, Civitas October 2016

- The one important agreement under the WTO to which the UK belongs via the EU and not in its own right is the General Procurement Agreement which gives access to $1trillion of public procurement projects in other signatory states. The WTO has, however, now agreed to the UK continuing as a member in its own right.[13]

9. We can start to trade on our chosen tariff schedules before they are agreed by all WTO members.

- **We can start trading on our chosen tariff schedules immediately we leave even if we have not reached full agreement with all other WTO members on them.**

- It is quite normal to do so -–indeed the EU itself has failed to update its tariff schedules to take account of the last two increases in membership. But this has not caused any problems in practice for the EU (including ourselves).

10. The UK is making good progress in replicating the EU's most important preferential trade arrangements.

- **Switzerland, which accounts for over a quarter of all our exports to countries with which the EU has FTAs, has agreed to carry over all existing preferences if we leave without a Withdrawal Agreement on 29th March[14].**

- There is every prospect of deepening that agreement subsequently, particularly as far as services are concerned.

- A similar agreement with Canada is reportedly imminent and South Africa and its partners in the Southern African Customs Union have agreed to replicate to the UK the terms of their agreement with the UK[15].

- Just five countries – Switzerland, Canada, Korea, Norway and Turkey – account for three quarters of UK exports to the nearly 70 countries (many of them micro-states) with which the EU has preferential trade agreements.

- **No country has refused to negotiate rollover deals when we leave.**

- One significant country said it sees no point in starting talks until it knows whether the UK is going to leave the EU customs union. Leaving without a Withdrawal Agreement will unlock the door to negotiations with them.

- Other countries have agreed in principle, that they will initially replicate the existing deal with the EU then, in a couple of years' time, discuss deepening it beyond what

[13] https://www.wto.org/english/news_e/news18_e/gpro_28nov18_e.htm

[14] https://www.gov.uk/government/news/uk-and-switzerland-agree-to-transition-trade-agreement-after-brexit

[15] https://www.express.co.uk/news/politics/1009722/Brexit-news-latest-theresa-may-trade-deal-africa

the EU (because it can only move at the pace of the slowest of 27 members) was able to consider.

11. We can take up Japan's invitation to join the Trans Pacific Partnership.

- **We would be the only non-Pacific country with preferential access to that huge market.**

- The EU has not been invited to join.

- We will be linked through it to our Commonwealth partners – Canada, Australia, New Zealand, Singapore, Malaysia and Brunei – most of whom have indicated a desire to develop even deeper economic links alongside that.

12. New Bilateral trade deals need not take a long time to negotiate.

- **The average time taken to negotiate a trade deal is 28 months – for all the deals worldwide negotiated in the last two decades**[16].

- That, however, includes multilateral deals which can take longer, especially those with the EU because all 28 member states have a veto. Bilateral deals are much quicker.

- Australia negotiated three agreements – with Korea, Japan and China – within 13 months[17].

13. The many 'micro-agreements' between the EU and other countries will not be a major issue.

- Some argue that 'no country trades just on WTO terms – there are many little known side-deals which the UK will not have'. This is a debating point usually made by people who have no idea what these side-deals consist of. They are little known because most are of little importance. **The majority are not about trade, most of those which relate to trade are useful but not essential, over half are international agreements to which the UK may already be party or able to accede to in our own right.**

- For example, the EU has 147 micro arrangements with the USA[18]:

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[16] *Why Do Trade Negotiations Take So Long?* Christoph Moser and Andrew Rose, Journal of Economic Integration June 2012

[17] *"Within six months Australia had signed a trade deal with South Korea. Japan took eight months, China 13."* Matt Ridley, Times 17th March 2017

[18] http://ec.europa.eu/world/agreements/searchByCountryAndContinent.do?countryId=6063&countryName=United%20States%20of%20America&countryFlag=treaties

- 85 of these are multi-lateral agreements. For example – the Paris Climate Agreement (to which the UK is a party), an Air Transport Agreement (to which the UK is a party), a Convention on the International Recovery of Child Support.

- Of the 62 bilateral agreements, half do not relate to trade

- Only 31 have some relevance to trade, for example:
  - Coordination of Energy-Efficient Labelling Programmes for Office Equipment;
  - Agreement in the form of an exchange of letters between the EU and the US on matters related to trade in wine;
  - Agreement between the EU and the US on customs cooperation and mutual assistance in customs matters.

- Doubtless many if not most of these agreements are worth replicating if relevant to products that the UK trades. Each government department is reviewing relevant agreements and where necessary initiating discussions about rolling them over.

- A handful of these side deals with a number of other countries are of particular value and worth replicating as a priority – particularly those involving mutual recognition of compliance testing. This would enable our testing bodies to be able to test that UK goods conform to EU, US or other countries' standards.

- It is worth noting that the EU has 97 side-deals with Russia a country against whom it operates sanctions. It is surely inconceivable that it would be less willing to replicate similar deals with the UK.

- More fundamentally, WTO Agreements impose obligations on countries to agree mutual recognition where it is objectively justified. Refusal by the EU (or the UK) to agree Mutual recognition Agreements for their mutual trade would be treated under WTO Rules as arbitrary and discriminatory, since each would be offering MRAs to other countries for the same products and services and would also be permitting domestic producers to sell these same products or supply these services in their home market.

LEAVING WITHOUT A WITHDRAWAL AGREEMENT BY 29th MARCH NEED NOT CAUSE DISRUPTION

Why scare stories about leaving without a Withdrawal Agreement took hold.

- Initial forecasts were made before any preparations were announced. Clearly without preparations, there could be serious disruption. But most problems can be mitigated or prevented by timely action.

- Scare stories attract viewers or readers. So, even journalists who knew that these scares can be averted had to carry the story. Subsequent measures to avert them get little coverage.

- Remain dominated media – especially within broadcasting – have been eager to hype up fears but reluctant to report measures taken to avert them.

- *The government itself is hyping up such stories to try to persuade MPs to vote for the draft Withdrawal Agreement deal on 14th January[19]. These stories should be treated with scepticism*.

The scares relate to a) potential delays to imports (through Dover), b) delays to exports (via Calais) and c) various other stories e.g. about planes, hauliers, product compliance, financial transactions etc.

Most of the scare stories focus on projected difficulties of Britain ***importing*** everything from medicines to food.

14. **Scares about import delays are particularly ludicrous since Britain will control its own borders.** Why on earth would we prevent things we need from entering our country?

    - **HMRC and DEFRA say they will not need to carry out any additional checks at the border.**

        - They only carry out physical checks if there is a perceived risk (of drugs, dutiable goods like tobacco and alcohol, illegal immigrants, or disease in food, animals and plants) [20].

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[19] A civil servant revealed that the government has completed far more preparation for leaving without a Withdrawal Agreement than it is willing to reveal, at least until Parliament has voted on the deal. https://www.telegraph.co.uk/politics/2018/12/28/course-no-deal-has-planned-does-government-want-think-otherwise/

[20] Evidence to DEXEU Select Committee 29th Jan 2017. ***Q237 Jon Thompson:*** The fundamental question here is whether what is currently intra-EU traffic will be any more risky post leaving the European Union than it is now? What we intervene on now is risk and intelligence-based. That is a system we will continue to apply in the future. We may not intervene any more than we do now". ***Q237 John Bourne:*** From our point of view, we absolutely agree with you: we do not think there are significant reasons to alter our risk assessments on day one. We have been doing this for a long time and nothing has really changed; hopefully, we have got relatively appropriate risk management processes in place now.

- They do not see any increase in risk on consignments from the continent after Brexit[21].

- Customs declarations are not checked at the border. They are filed electronically via the CHIEF (Customs Handling Import and Export Freight) computer in Salford.

- The computer identifies only about 1% of consignments from outside the EU as needing investigation.

- But physical checks are usually carried out away from the border at the destination or warehouse.

- Nor are taxes and duties collected at the port. As the CEO of HMRC said: "*There is a slight misconception that somehow tax is collected at the actual border. It is very, very largely not collected at the actual border; in fact, no taxes are actually collected in Dover. It is all done electronically, machine to machine, through the national customs hub in Manchester*."

- **Moreover, HMRC says it will "*prioritise flow over compliance*" - i.e. it will wave vehicles through to avoid queues even if initially customs declarations have not been properly completed**.

- Dover Port Authority confirms it does not expect problems with handling imports[22].

- The UK Major Ports Group (which handles 75% of UK seaborne trade as against 6% via Dover) confirmed that it already has "*the capacity and infrastructure to handle large volumes of both EU and non-EU trade today without 'logjam'*"[23].

- If the EU agrees to start negotiating the free trade agreement offered by President Tusk, UK/EU trade can continue with no tariffs or quotas. Though customs declarations would be introduced they would be a (largely pointless) bureaucratic requirement. Until we altered any external tariffs (either unilaterally or as part of a free trade deal with a third country) declarations of origin would also have no financial consequences. So, no serious new checks would be required.

- If the EU refuses to negotiate and tariffs therefore come into effect on EU/UK trade, the UK could suspend collection of all tariffs (on non-EU as well as EU goods) for the

[21] Evidence to Public Accounts Committee 5th September 2018. **Q148 Jon Thompson**: "you can examine only four lorries that come off any ferry. Because we are leaving the European Union, we are not suddenly going to say, 'We'll check 20.' We have to be practical and work backwards. You can check four. Is there any genuine, significant revenue risk in the other 76? We are managing that system now and we need to continue to manage that system."

[22] Evidence to DEXEU Select Committee 29th Jan 2017.

[23] Tim Morris, CEO, British Major Ports Group Letter to Telegraph 8th December 2018

first few months after Brexit[24]. Companies could then become familiar with making customs declarations before they have any financial implications (other than VAT). This would make it easier for customs officers to wave through potentially non-compliant vehicles without concern about lost revenue. It would also remove importers' concerns about possible future compliance investigations.[25]

15. There will not be shortages of medicines.

- Stories about potential shortages of medicines seem to have originated in the belief that there would be difficulty in authorising drugs when the European Medical Agency left the UK. Once the UK government made clear that we would continue to recognise drugs authorised by the EMA the original basis evaporated.

- The story then morphed into fears of unspecified supply problems[26], notably of Insulin – given credence by the PM without any explanation of why there might be problems.

  Insulin is supplied by a Danish company – Novo Nordisk[27]. It is not going to withhold it. The EU is not going to ban its export[28]. The UK is not going to impede its import. The company is keeping four month's supply in the UK.

- The WTO's Pharmaceutical Tariff Elimination Agreement automatically means that tariffs do not apply to finished medicines. The Agreement covers 10,000 medicinal products across the European Union, Canada, United States, Japan and Norway[29]. It covers almost 90% of the world's pharmaceutical trade[30].

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[24] This would involve foregoing revenue running at about £3bn pa from tariffs currently levied on goods imported from outside the EU (80% of which is currently handed over to Brussels as it would be during the proposed transitional period).

[25] Under existing legislation HMRC can carry out administrative checks of a trader's records for up to three years post entry. A temporary suspension of tariffs will mean that that risk would not hang over traders who through unfamiliarity may not have correctly completed their declarations in this initial period.

[26] Guardian: *Take a prescription drug? Here's how Brexit could put you at risk* 31/07/18 (accessed via: https://www.theguardian.com/commentisfree/2018/jul/31/prescription-drug-brexit-pharmacy-supply-chains-shortages).

[27] Pharmaphorum: *Novo Nordisk CEO reassures UK patients over Brexit insulin supplies* 17th September 2018 (accessed via: https://pharmaphorum.com/news/novo-nordisk-doubles-uk-insulin-stockpile-in-case-of-no-deal-brexit/)

[28] The UK runs a surplus with the EU in pharmaceutical products. In evidence to the DEXEU Select Committee, the Association of the British Pharmaceutical Industry (ABPI) said: *"45 million packs of medicines leave the UK every month and go to Europe, and 37 million packs of medicines leave the continent and come to the UK".* 17th May 2018.

[29] *UK Parliament*, 6th December 2018, (accessed via: https://publications.parliament.uk/pa/cm201719/cmselect/cmbeis/382/38205.htm#footnote-178).

[30] *US Trade Representative*, 6th December 2018, (accessed via: https://ustr.gov/issue-areas/industry-manufacturing/industry-initiatives/pharmaceuticals) .

- The Medicines story now depends on the supposed risk of tailbacks of lorries trying to get to and through Calais impeding imports to the UK – see 19 below.

16. There will be no shortages of food or sandwiches.

- Stories that the UK will run out of food[31] and sandwiches[32] seem to have originated in the belief that the UK would have to check 100% of animal, plant and food products entering the UK. This assumed that the UK would still operate the EU Customs Code (misinterpreted and rigidly applied) – whereas we will be free to set our own rules on imports.

- **DEFRA made clear that it would continue to base Sanitary and Phyto-Sanitary checks on risk, that the riskiness of consignments from the EU would not change post Brexit, so it would not carry out any more physical checks after Brexit than before.**

- So, this story, too, now depends on the supposed risk of tailbacks of lorries trying to get to and through Calais, impeding imports to the UK – see 19 below.

17. Just-In-Time deliveries will continue despite the need for customs declarations.

- **Just-in-Time and Just-in-Sequence supply chains can and do operate across customs frontiers in the UK and worldwide**.

- **21% of auto manufacturers' bought-in supply chain comes from outside the EU against 36% from the EU and 43% from within the UK[33]**. The reliable operation of production lines is as dependent on these non-EU imported JIT/JIS supply chains as those from the EU. Customs procedures at UK ports have never been cited as a problem for these supply chains.

- Ford and General Motors depend on supply chains that operate across the Canadian/US/Mexico borders where, because NAFTA is a free trade area not a customs union, there is a customs border[34].

- Fresh cut flowers (which are very time sensitive) travel daily from the Netherlands across the customs border to Switzerland. (Because single market rules apply both sides of the Swiss border, flowers do not face SPS checks there but the example

[31] Guardian: *UK could run out of food a year from now with no-deal Brexit, NFU warns* 7th September 2018 (accessed via: https://www.theguardian.com/politics/2018/aug/07/uk-run-out-of-food-no-deal-brexit-national-farmers-union)

[32] BBC: *Brexit threat to sandwiches* 26th July 2018 (accessed via: https://www.bbc.co.uk/news/business-44960293)

[33] *Trade Post Brexit* Boston Consulting Group, Herbert Smith Freehills and Global Counsel

[34] This was highlighted by the recent agreement on revisions to the North American Free Trade Agreement. https://www.cnbc.com/2018/10/01/ford-general-motors-rally.html

illustrates that ordinary customs declarations, which apply to flowers as to all goods, do not result in delays.)

- Although delays in deliveries are undesirable, UK motor manufacturers already have to cope with the sometimes prolonged delays at Channel ports (resulting in Operation Stack – see 20 below), delays on motorways such as the M25 and across Europe between EU suppliers and UK plants, caused by bad weather and other incidents.

18. The UK will not run out of clean water.

- The story that the UK would be unable to import, produce or store the chemicals required to ensure pure water supplies appears to emanate from leaked versions of a briefing designed to frighten Cabinet ministers into supporting the Chequers deal. Described by the source as "*Project Fear on steroids*"[35], it was produced by a government unit that has not actually been involved in preparation for Brexit.

- The UK will be able to import chemicals needed to purify drinking water. As the laws regulating water purification will be set by the UK, there is no reason that leaving the EU will affect the legal framework needed to import chemicals.

19. HMRC's computer systems will be able to handle the extra declarations even if the new system is not fully on line.

- The existing customs computer (CHIEF) has been expanded to handle up to 300 million declarations[36].

- The new Customs Declaration System (CDS which is essentially the existing Dutch system) is being phased in since August 2018 for imports and should start being introduced for exports in March 2019 at the earliest. However, the two systems can run in parallel.[37]

- Problems with new computer systems can never be ruled out. But that risk would have existed without Brexit. After Belgium introduced its new customs system it experienced periods of disruption resulting in congestion.

[35] Mail on Sunday 25th October 2018 https://www.dailymail.co.uk/news/article-6425479/Michael-Gove-backed-hearing-UK-run-drinking-water-DAYS-No-Deal.html

[36] Q145 Public Accounts Committee Oral Evidence HMRC Standard Report and Accounts 5th September 2018

[37] "*In the event that CDS is not fully ready [for exports] by 29 March 2019, HMRC intends to use the existing CHIEF system as a contingency*." The UK Border: Preparedness for EU Exit NAO 24 October 2018

Exports through Calais

Almost all the scare stories about shortages of medicines, food, water etc in the UK assume that Calais will – either through lack of preparation or deliberately – slow down the transit of lorries from the UK; this will mean ferries cannot unload; which means ferries will be unable to return to the UK to reload; so lorries will back up from Dover and Folkestone up the M20. The resulting congestion on Kentish roads is assumed to affect not just outbound lorries but also incoming lorries. However:

20. France is actively determined to prevent delays at Calais for fear of losing trade to Belgian and Dutch ports.

- **The National, Regional and Local authorities in France have expressed their determination to maintain a smooth flow of commerce on which the prosperity of this depressed area of France depends.**
    - The Prefecture says: *"The sole objective is to guarantee the free flow of cross channel trade and to preserve the competitiveness of the ports of the region against competition from the ports of Rotterdam, Antwerp and Zeebrugge"*[38].
    - The Mayor of Calais says delays would be "*economic suicide*"[39].
- **A deliberate go-slow at Calais would be a breach of three treaty obligations:**
    - The original WTO Treaty forbids discrimination against goods from any country.
    - The Trade Facilitation Agreement, which came into force in February 2017, requires signatories (including all EU member states) to facilitate – not hinder – trade. Border checks should be proportionate to risk;
    - The EU's own Constitution[40] requires them to co-operate with adjacent countries to establish an area of good neighbourliness.
- The French authorities are taking tangible steps to eliminate potential delays:
    - Adding three extra lorry lanes at Calais to offset the 2min checks they expect per lorry.

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[38] « *Tout l'objectif est de garantir la fluidité des liaisons transmanche et de préserver la compétitivité des ports de la région face à la concurrence des ports de Rotterdam, Anvers et Zeebruges.* La préfecture et les services de l'État en région Hauts-de-France 18th July 2018

[39] BBC: "French officials dismiss UK fears of Calais 'go-slow'" https://www.bbc.com/news/uk-politics-45990243 26th October 2018

[40] Treaty for European Union Article 8. 1. "*The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation*".

- Creating a Border Inspection Post (BIP) to inspect live animals and food 12kms from Calais to avoid congestion. (Hauliers will need to open a Transit document to cover the journey from port to BIP. Ferry terminals will probably demand that vehicles carrying animals and relevant food products have these formalities organised before they embark).

- Acquiring a scanner that can inspect freight trains destined for the Channel tunnel at 30 km an hour.[41]

- The French government has introduced a law before the Assemblée Nationale[42] giving it all necessary powers to ensure the smooth flow of goods in the event of a no deal Brexit.

- The French Minster responsible for Brexit preparedness: "*We absolutely have to prepare for the worst, that is to say that in March there is no legal relationship with our British friends. We do not know what is going to happen, which is why the Prime Minister has asked us to prepare for a no-deal Brexit – for the worst-case scenario*."[43]

- **"***Recruitment [of 700 staff] in the customs sector has begun because even with a deal, we don't know exactly what type of future relations we'll have with the UK, so controls may be needed. That means customs officers, infrastructure and parking areas. It also means modernizing our controls to make sure they're as smooth as possible and don't cause traffic jams on arrival in France*."[44]

- One third of lorries going from Dover to Calais are returning empty (reflecting the EU's huge trade surplus with the UK). So, the Calais authorities will have a third fewer declarations to clear than Dover.

- The French are acutely aware that other channel ports – especially Zeebrugge, Antwerp and Rotterdam – are eager to win trade away from Calais. It is estimated that other roll-off-roll-on ports could handle 40% of Dover/Calais trade.

- The EU Commission, too, recognises the need to facilitate trade through the Short Straits and authorised: "*Customs authorities may issue **authorisations for the use of facilitation measures** provided for in the Union Customs Code, when economic operators request them, and subject to relevant requirements being met. Ensuring a level-playing field and smooth trade flows will be particularly challenging in the areas with the densest goods traffic with the United Kingdom. The Commission is working*

[41] Les Echos 4th October 2018.

[42] Projet De Loi, *habilitant le* Gouvernement *à* prendre *par ordonnances les* mesures *de* préparation *au* retrait *du* Royaume-Uni *de l'*Union européenne, (Procédure accélérée) 8th Nov 2018.

[43] Gérard Darmanin, also in charge of customs, told France Bleu Nord radio.. Daily Express 3rd October 2018.

[44] Mme Nathalie Loiseau, Minister for European Affairs. French Embassy, London 4th December 2018.

with Member States to help find solutions in full respect of the current legal framework."[45]

21. Operation Brock could handle tailbacks in the unlikely event that they occur, so incoming lorries will not be seriously delayed.

- Operation Brock, with enhanced capacity and improved traffic routing, will replace Operation Stack ahead of Brexit (though permanent lorry parks may also be needed in future, regardless of Brexit, in case past problems at Calais recur).

- Operation Stack[46] has been activated on 211 days between 1998-2015 as a result of:
    - Blockades of Calais by fishing boats
    - Industrial disputes on ferries
    - Immigrants besieging security fences
    - Fires and breakdowns in the Channel Tunnel
    - Severe weather in the English Channel
    - Snow blocking roads around Calais

- In summer 2015 Operation Stack was in force almost continuously for more than three weeks;

- At the peak, 7,000 Heavy Goods Vehicles (HGVs) were queued on the M20, taking 36 hours to work their way through;

- **There is no record of any JIT manufacturing plants having to halt production in the UK as a result of these delays.**

- Preparations for Operation Brock have closed off two lanes of thirty miles of the M20 for several weeks while hard shoulders have been strengthened.

    - This has effectively provided a trial run of what it would be like if these two lanes were used to park two thirty-mile-long slow moving queues of lorries.

    - Traffic in the remaining lanes was limited to 50mph and liable to congestion when accidents occurred.

    - Although this has caused inconvenience (not least to an author of this document!) it has not attracted the notice of the national media let alone brought the nation to its knees.

[45] Preparing for the withdrawal of the United Kingdom from the European Union on 30th March 2019: A Contingency Action Plan 13/11/2018 COM (2108) 880

[46] *Operation Stack* House of Commons Transport Committee 23rd May 2016

Miscellaneous Scare Stories

22. Planes WILL continue to fly to and from the EU.

- **The EU has announced[47] that it will allow UK airlines to fly over, land in and return from EU airports even if there is no Withdrawal Agreement, subject to the UK reciprocating.**

- Several UK airlines had already established EU bases to enable them to fly to and within the EU even in the absence of this decision.

- The only restriction on UK based flights is on 'cabotage' – i.e. UK planes will not be able to fly to one EU destination, pick up passengers and fly on to another destination[48].

- In practice, this is of minor importance as all but a few UK routes to the EU are return flights to a single destination.

- The same restriction applies to UK and other non-US airlines flying to the US.

23. British planes WILL continue to fly to the US and other destinations.

At present UK flights to the US are made under an EU/US agreement.

- **However, the UK has successfully negotiated an 'open-skies' agreement with the US to allow flights to continue after Brexit[49]. The deal is one of nine bilateral services agreements.** The others are with Albania, Georgia, Iceland, Israel, Kosovo, Montenegro, Morocco and Switzerland. Discussions with Canada are at an "advanced stage".

24. Aircraft manufacturers will be able to export products like Airbus wings

Before the Chequers meeting a number of companies issued statements about potential problems when the UK leaves the Customs Union and Single Market (some suspected they were prompted by the Dept. of Business, Energy and Industrial Strategy (BEIS)). Among them was Airbus which warned that "*In the absence of a Brexit agreement, UK aerospace companies will not be covered anymore under existing regulatory approvals including European Aviation Safety Agency approvals. All UK companies [including all Airbus*

[47] The EU announced this in principle on 13th November 2018 but this was barely reported by the Main Stream Media allowing the 'planes won't fly' scare to run until 19th December.

[48] The two airlines most affected by this are Iberia and Aer Lingus. Their UK shareholding will no longer count towards the requisite 50% EU ownership. So, they will be unable to fly between destinations within the EU (or even within Spain and Ireland) unless they adjust their ownership structure – which they presumably will do. https://www.euractiv.com/section/uk-europe/news/brussels-cuts-iberia-and-aer-linguss-wings-to-fly-in-eu-after-brexit/

[49] https://www.bbc.co.uk/news/business-46380463 29th November 2018.

component suppliers] will need to transfer their Design, Production and Maintenance Organisation Approvals into the EU."[50] It has, however, now been announced that:

- **The Commission is legislating to extend the validity of existing aviation safety licences temporarily – so Airbus and other UK aeronautical producers should be able to export wings and other aviation products to the EU.**

- This temporary measure gives time for a permanent solution: EASA will be able to recognise the UK's safety systems so that the UK (like other non-EU countries) will be able to issue safety licences recognised by EASA[51].

25. British haulage companies WILL be able to operate between the UK and EU.

- **The EU has now agreed[52] that the UK road hauliers will continue to be licensed to operate in the EU (provided that the UK reciprocates).**

- This extension is for 9 months – to the end of 2019 – to give time "*to ensure that an adequate number of permits be available within the ECMT system, so as to ensure basic connectivity*." The ECMT (European Conference of Ministers of Transport) of 43 states issues licences covering haulage across 43 member states including all EU members except Cyprus. It has already set the number of licences for 2019 which is not sufficient to cope with the extra numbers which will be required after Brexit.

- **The UK has negotiated continued membership of the Common Transit Convention** (EU, EFTA plus Turkey, Macedonia and Serbia). "*Membership of the CTC will help ensure that trade moves freely between the UK and CTC members after the UK leaves the EU. It will provide cash flow benefits to traders and aid trade flow at key points of entry into the UK, as traders will only have to make customs declarations and pay import duties when they arrive at their final destination*."[53]

- The UK's membership of the CTC was supported by the EU. "*In the interest of the Union, the Commission is also supporting the United Kingdom in securing its accession to the Common Transit Convention as a non-EU transit country, … as well as its accession to the Convention on the simplification of formalities in trade in goods*[54]*.*"

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[50] http://www.airbus.com/company/worldwide-presence/uk.html#Economy

[51] In November the Commission started the process of granting approvals to new UK applications when it "*invited the European Aviation Safety Agency (EASA) to start processing certain applications from UK entities in preparation for the time when the United Kingdom will not be a Member State*."

[52] Regulation of the European Parliament and of the Council on common rules ensuring basic road freight connectivity with regard to the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the Union. Brussels, 19th December 2018 COM(2018) 895.

[53] https://www.gov.uk/government/news/uk-to-remain-in-common-transit-convention-after-brexit

[54] Preparing for the withdrawal of the United Kingdom from the European Union on 30th March 2019: A Contingency Action Plan 13th November 2018 COM (2108) 880

- Although the Commission seeks to discourage Member States from making bilateral accords with the UK on freight transport, it concedes that: "*the respective competent authorities will be able to cooperate as necessary for the good implementation of the Regulation … so that the least possible disturbance is brought to the management of the road freight transport services … after the United Kingdom's withdrawal*"[55].

26. Trade in animals, plants and food products WILL continue after Brexit.

- The EU recognised that: "*In a no deal scenario, as of the withdrawal date, the entry of many goods and animals subject to sanitary and phytosanitary (SPS) rules will be prohibited unless the United Kingdom is listed in EU law as an authorised third country*"[56].

- **However, the Commission therefore announced that: "*the Commission will – if justified – swiftly list the United Kingdom, if all applicable conditions are fulfilled, so as to allow the entry of live animals and animal products from the United Kingdom into the European Union*".**[57]

- A veterinary Border Inspection Post (BIP) is to be created 12 kilometres from Calais so it will not be necessary to reroute the trade in animals to other ports which already have BIPs, though that alternative will be available too.

- It was suggested that there will be insufficient vets to certify all animal exports to the EU. But at present all exports of live vertebrates to other EU countries require "*either an Export Health Certificate (EHC) or, more generally, an EU- specific version of an EHC known as an Intra Trade Animal Health Certificate (ITAHC)*"[58] which involve veterinary certification. After Brexit an EHC will be required for trade with the EU also requiring veterinary certification so there will be little difference.[59]

27. UK citizens will not face high roaming charges when travelling in the EU.[60]

- **Phone companies have stated they will not charge roaming fees.** Dave Dyson, the CEO of Three, said "*my ambition is to free our customers and offer 100 per cent roaming worldwide at no extra cost...*" Vodafone has also confirmed this.

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[55] ibid

[56] Brexit preparedness: European Commission proposes visa-free travel to the EU for UK nationals in a no deal scenario – if the UK also grants reciprocal visa-free travel to all EU citizens Strasbourg, Press Release 13th November 2018

[57] ibid

[58] Nonetheless, "work is under way to make the application process simpler and ensure there is enough capacity among appropriately trained veterinarians" P 64 Partnership Pack: preparing for changes at the UK border after a 'no deal' EU exit. Third edition 21st December 2018

[59] All animal movements within the EU are made under the Trade Control and Expert System (TRACES). The UK is producing its own version of that system to be used after Brexit.

[60] BBC: *EU network changes could revive roaming fees* 29th November 2018 (accessed via https://www.bbc.co.uk/news/technology-45509370)

- **The Government has confirmed it would legislate to "*apply a financial limit on mobile data usage while abroad*".**[61]

28. UK Car manufacturers have obtained type approval of their models to sell into EU.

- **Although the EU will cease to recognise existing type approval certification after Brexit, car manufacturers have renewed their certification with the recognised Swedish certifier.**

- Manufacturers of other products are taking similar steps to obtain certification if it is required to ensure their products continue to be recognised as compliant with EU law – just as they do to export to the USA and other countries.

29. Importers will NOT face adverse cash flow impacts because of earlier payment of VAT.

- At present, imports from outside the EU have to pay VAT immediately whereas VAT on imports from the EU is postponed until the importer's next VAT return. It was feared that when EU states become third countries VAT would be required up front which would have a big impact on companies' cash-flow. **HM Treasury announced, however,[62] that to avoid imports from the EU having to pay VAT earlier it will postpone it on imports from all third countries. The Treasury, and not business[63], will bear the cash-flow impact.[64] HMRC is making this a high priority to be ready by 29th March and, particularly, to ensure that software suppliers are also ready**.[65]

- Exports to the EU will continue to be zero rated – as they are to third countries. Exporters will no longer have to keep a European Sales List since the export declaration will provide proof that goods have been exported. (Previously, proof could – in theory at least – be provided by matching exporters' and importers' declarations via the VAT Information Exchange System to which the UK will no longer be party.)

30. Performers WILL be able to tour and perform in the EU.

- Opera singers, musicians, bands and other performers have been concerned that they may be unable to perform and particularly take instruments and equipment on

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[61] "*The limit would be set at £45 per monthly billing period, as at present (currently €50 under EU law). The government would also legislate, subject to parliamentary approval, to ensure the alerts at 80% and 100% data usage continue.*" DCMS Guidance "*Mobile roaming if there's no Brexit deal*" 13th September 2018

[62] VAT for businesses if there's no Brexit deal - GOV.UK 23RD August 2018

[63] https://uk.reuters.com/article/uk-britain-eu-vat/british-businesses-relieved-at-no-deal-brexit-vat-tweak-idUKKCN1L81N5

[64] Postponed accounting for VAT on imports has also been introduced in France which will help trade in the opposite direction. http://www.douane.gouv.fr/articles/a13194-postponed-accounting-for-import-vat

[65] Q138-Q141 Public Accounts Committee Oral Evidence HMRC Standard Report and Accounts 5th September 2018

tour. However, **performers can use the ATA Carnet[66] which allows the temporary import of equipment – to 77 countries as well as, in future, the EU. It is operated in the UK by the London Chamber of Commerce and Industry.**[67]

- The Beatles et al were able to go to and from Liverpool and Hamburg long before the UK joined the European Community! It ought to be easier for performers to cross borders now than then because of a degree of international liberalisation but the UK should certainly seek to negotiate removal of unnecessary tax and other obstacles.

[66] Partnership_pack_prepare_for_no_deal_changes_at_border__Third_edition_.pdf 21st December 2018

[67] https://www.londonchamber.co.uk/export-documents/ata-carnet/

CONCLUSION: ARMAGEDDON OR THE MILLENNIUM BUG?

Remember the Millennium Bug? About 100 days before the turn of the millennium, Prime Minister Tony Blair announced that he stood ready to call out the Army to cope with civil unrest caused by the economic and social collapse that might be unleashed by the Bug at midnight on 31st December 1999. Despite spending an estimated $75 billion world-wide to tackle the threat it was still feared that: planes would fall from the sky, lifts would crash down their shafts, the electricity grid might melt down, the telephone system would fail, computers would not work or go rogue and the whole financial system might collapse. The CBI (of course!) joined all political parties in warning how serious these consequences could be.

Almost no-one dared suggest that this was all grossly exaggerated. Anyone who did so was accused of dangerous complacency that might undermine the national effort. Most sceptics felt it was safer to be wrong with the herd than risk the odium of suggesting the Emperor had no clothes.

In the event, nothing happened. There is some dispute now as to whether this is because the risk was greatly exaggerated or because thorough planning prevented problems emerging. Perhaps it was a combination of the two.

Comparisons with the Millennium Bug

Now we hear similar apocalyptic fears about leaving the EU without a Withdrawal Agreement. The Defence Secretary announces that 3,500 troops will be on standby[68]. The Prime Minister suggests that her insulin may be at risk. Remain campaigners talk of chaos, catastrophe and Armageddon.

Will this all prove as exaggerated as the Millennium Bug? If no preparations were made by governments or business, there would be serious disruption. That was the perceived position when leaving on WTO terms began seriously to be discussed. So, it was understandable that disturbing scenarios began to circulate. But now far more is being done not just this side of the Channel but in France and by the EU Commission to prepare for, and therefore prevent, problems materialising.

Nevertheless, the same asymmetries apply to reporting and commenting on what will happen come 29th March 2019 as did ahead of 31st December 1999: scare stories attract readers and viewers whereas reassurance does not; it is far safer to join the chorus of fear than to go out on a limb and point out how irrational most of the fears are; reassurance is derided as complacency.

Moreover, this time – unlike with the Millennium Bug – those who wish to prevent Brexit have a vested interest in whipping up fear, ignoring measures that will prevent those

[68] However, the troops are logistics experts and spare manpower. Unlike in Blair's Millennium Bug scare, they are not to deal with civil unrest. Moreover, Gavin Williamson admits no Department had sought their help. Hansard 18th December 2018

dangers materialising and silencing those pointing out the upside of leaving. Broadcasters, in particular, have often cast aside their Ofcom obligations to balance and impartiality. Many adopt the highly partisan vocabulary of the Remain campaign. Trading on WTO terms is "falling off a cliff edge". Leaving without a Withdrawal Agreement is routinely described as "crashing out" never as "cashing in". Nor are those who assert that any deal is better than no deal ever challenged as to why they are so willing to give away £39billion for nothing in return? Channel 4 produced a half-hour programme of unchallenged predictions about the horrors of a 'no deal' Brexit without mentioning that it saves £39billion. And, like the BBC, it has not reported the welcome news about the French authorities' plans to avoid congestion at Calais, let alone that HMRC say they will not need to carry out additional checks at Dover.

In addition, this time the government is clearly determined to play up the supposed horrors of leaving with no Withdrawal Agreement in the hope of persuading MPs to vote for the EU's unloved draft 'deal'. The government is in the bizarre position of preparing to leave on WTO terms, while pretending that its preparations will be unsuccessful. *In fact, talking up the horrors of 'no-deal' is not merely self-contradictory it is extraordinarily irresponsible.* The PM's only hope of securing any substantive changes in her draft deal depend on her convincing the EU she is prepared – in every sense – to leave on WTO terms.

The Reality

The simple truth is that roughly the same number of lorries will pass through Dover after Brexit as do now. Hauliers will have to complete a customs declaration, but these are despatched electronically in advance and checked automatically by the Customs computer in Salford. They are not examined at the border. Customs declarations and declarations of origin are required for goods traded across the Swiss border but do not result in long delays or lengthy queues for the 23,000 lorries and 2.2 million people that cross every day. There is no reason why they should cause excessive delays at Dover or Calais. To prevent congestion at its port, Rotterdam intends to require exporters of goods destined for the UK to have registered that their customs declarations have been filed in order to obtain entry to the port – Dover should consider a similar requirement. The priority between now and 29th March must be boosting preparations by companies, customs agents and software providers to ensure they are as ready as possible to implement the customs procedures that will be required of them and aware that they must do so before goods are despatched to the port.

There will be roughly the same number of physical checks of vehicles arriving at Dover as at present because checks are based on an assessment of risk. And the risks of concern to HMRC are smuggling of tobacco, alcohol, drugs and illegal immigrants – none of which risks are likely to change after Brexit. Tariffs, if they are introduced, will not be collected at the port any more than VAT, which is and will remain by far the largest tax on imports, or duties on tobacco and alcohol – the next biggest. Tariffs, like these existing taxes, will be paid electronically – "computer to computer".

HMRC has made it clear it will "prioritise flow over compliance" during the initial period when hauliers may arrive without having completed their customs declarations properly. In

other words, customs officials will be instructed to wave vehicles through – and follow up later – rather than let congestion build up.

The one additional policy this document suggests is that, if negotiations on an EU/UK free trade deal have not begun, the government should consider suspending all tariffs (both on EU and non-EU imports) for a period of months after Brexit day. This will allow hauliers time to get used to the new procedures and make it easier for customs officers to wave through non-compliant vehicles without concern about lost revenue. It is very unlikely that businesses in the UK would disrupt their existing supply arrangements to source from abroad if the suspension of tariffs is known to be going to last for only a few months.

People on both sides of the Brexit debate need to be more realistic about the adjustments required as a result of Brexit. Both tend to exaggerate the extent to which the EU will deliberately put obstacles in the way of British trade. Of course, the EU wants the UK to be seen to face problems as a result of leaving – not out of malice but to discourage electors in other member states from supporting eurosceptic parties.

However, the EU and France in particular, are clearly determined to ensure a smooth flow of trade through Calais – not for our benefit but for fear of losing business to Belgian and Dutch ports. Likewise, the EU is legislating to ensure that planes will fly, lorries will drive, and Airbus will get its wings – because it is in its interest.

Most of the other changes British businesses and official bodies have to make are not deliberately concocted by the EU but are the natural consequence of our change of status from a member state to a third country.

Once we have left, British companies may need to do what American, Japanese, Chinese companies do – get the products which they wish to sell into the EU, certified as complying with EU standards by an authorised body in an EU member state. UK car manufacturers, for example, are reportedly confirming the 'type approval' of existing models with the Swedish certification body. For some products such a process may only be necessary until a UK-based body is recognised as able to certify compliance with EU rules. The EU already recognises certification of many products by national bodies in a number of non-EU states.

These procedures are tiresome but one-off and similar to the processes exporters undertake to trade in many other major markets.

Will leaving without a Withdrawal Agreement and trading on WTO terms be Armageddon or a damp squib? Will it be chaos or, like the Millennium Bug, a non-event?

It would be rash to predict that 'everything will be all right on the night'. Unforeseen problems may arise, and some businesses may fail to prepare for foreseeable problems. But experience suggests that if one prepares for them, what could have been major problems turn out to be minor. The odds are that a WTO+++ Brexit is likely to turn out nearer the Millennium Bug than Armageddon.

That will be a great disappointment to opponents of Brexit! But they will get over it.

Then we can all turn our minds to what is far more important than the terms of leaving – namely how we use the powers we regain once we have taken back control of our laws, our money and our borders. That is an exciting and positive challenge.

'Annex A: Does the UK owe the EU £39 billion?

Britain should of course pay any sums it legally owes the EU – if any. The Lords Committee concluded that in the absence of a Withdrawal Agreement we had no financial obligation to the EU. City lawyers reached the same conclusion. The amounts indicated in the draft Agreement have been offered in the expectation of a positive trade deal[69] on the basis that '*nothing is agreed unless everything is agreed*'.

According to the NAO there are four main components:[70]

- **Annual net contributions**. Nearly half the expected £39 billion would have represented the UK's net annual contributions to the EU during the 21-month transition period, which will not arise without a Withdrawal Agreement. No-one contests that we would keep this if we left with no transition period.

- **Reste à liquider**. The EU authorises some spending commitments on programmes extending several years ahead. Britain's net share of these outstanding commitments is put at about £18billion. There is no precedent for a country leaving an international organisation being expected to contribute to ongoing programmes initiated when it was a member[71]. Organisations whose income declines, whether as a result of their membership base shrinking or some other reason, have to readjust their budgets.

- **Pensions.** The remainder is largely a contribution to the accrued pension liabilities of civil servants (net of repayment of our contribution to EIB capital). But the EU has always chosen to finance its pension liabilities on a pay-as-you-go basis, not on the basis of accrual of entitlements. New member states therefore pay for the actual pensions of civil servants who retired before the new country joined. Indeed, the UK has been paying towards pensions earned before we became members. To apply the pay-as-you-go principle while we the UK was a member state but then to apply the accruals basis in respect of pensions payable after we leave, is manifestly unjust. Again, there is no precedent for an organisation which funds its pensions on a pay-as-you-go to charge a leaving member on an accruals basis.

- **EIB capital.** The only significant positive item is the return of the UK's initial capital contribution to the European Investment Bank. However, the EU proposes to withhold the UK's share of the bank's accumulated capital which logically only built up because of the UK's initial investment.

To smooth the EU's ruffled feathers, we should agree to submit the EU's claims to arbitration by an appropriate international tribunal – with every confidence of winning.

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[69] It would be almost unprecedented to pay for a trade deal or for 'access to the EU market'. The normal 'payment' for tariff free access to another country's market is allowing that country tariff free access to one's own market. A 'zero for zero' trade deal would mean the UK foregoing £13 billion tariffs on the EU's much larger exports to the UK versus the EU foregoing £5 – 6 billion tariffs on UK exports to the EU. So, it would be particularly strange for the UK to pay for that.

[70] Estimated figures from *Exiting the EU: the financial settlement* National Audit Office report 20April 2018

[71] The Withdrawal of the UK from the European Union: analysis of potential financial liabilities. Charlie Elphicke MP and Martin Howe QC Sept 2017

7 January 2019