1: It will allow the UK to cash in, not crash out - the UK will not have to pay the £39billion divorce bill.

This is not a ‘divorce bill’ it is the UK paying its obligations. These obligations are determined by a specific formula that adds up the UK’s contribution to EU annual budgets up to 2020, payment of outstanding commitments; and financing liabilities up to the end of 2020.

Even if a “hard Brexit” means exiting the authority of the European Court of Justice, the UK remains a part of the international community. This means that the EU could go to the International Court of Justice if no agreement is reached on this. Article 70 of the Vienna Convention (VCLT) would be crucial. It states:

*“Unless the treaty otherwise provides or the parties otherwise agree, the termination of a treaty under its provisions or in accordance with the present Convention:*

*(a) Releases the parties from any obligation further to perform the treaty;*

*(b) Does not affect any right, obligation or legal situation of the parties created through the execution of the treaty prior to its termination.”*

Would clause (a) remove any financial obligation from the UK? Or would clause (b) confirm the financial obligation on the UK?

While the report of the House of Lords Financials Affairs Sub-Committee states that we can legally leave without a deal and not pay our commitments, legal opinion is more complex and divided[[1]](#footnote-1).

There is a view that holds that Article 50 preserves the customary international law rule in Article 70 VCLT (1) (b) and, this includes the UK’s financial obligations arising out of its EU membership.

Finally, why would any other nation sign a trade deal with the UK after the UK had been seen to try to escape its obligations to the EU?

2: It avoids the corrosive uncertainty which the transition period would bring.

Businesses are clear that the transition brings greater certainty, not uncertainty.

* The CBI have said “To provide the certainty that businesses need, transitional arrangements will be required.”[[2]](#footnote-2)
* The IOD said the transition period “will allow business operations and investment decisions to carry on without unnecessary disruption for the time being.”[[3]](#footnote-3)
* The FSB said it is “vital to allow trade, access to labour and skills to continue on current terms while new trade arrangements are finalised.”[[4]](#footnote-4)

The paper itself recognises that some companies will find leaving without a deal a “challenge”. This rather undersells the risks which businesses have described as “very disruptive”[[5]](#footnote-5) and “devastating”[[6]](#footnote-6).

Businesses also emphasised to the BEIS Select Committee that “although they can prepare in crisis management terms for a no deal exit, they cannot mitigate against all the risks.”[[7]](#footnote-7)

3: The UK will be able to use administrative measures to solve Irish border issue, without the need for a backstop.

In the absence of a customs union and ‘common rules’ with the EU, there will be a need for customs and regulatory checks on the Irish border. This is because countries on either side of the border have to manage and control for the differences in customs and regulatory regimes, including in the goods permitted entry, and in the tariffs/quotas applied. Even with a deep and comprehensive UK-EU free trade agreement (SuperCanada) border controls will still be necessary.

All goods crossing a border need to be declared and cleared for exit and entry. Electronic and preclearance systems can work (e.g. for Authorised Economic Operators) as a means of speeding up this process, but they still entail considerable resources, infrastructure and the capacity for physical inspections. A border is always a ‘hard’ border to the extent that it requires demonstrated/declared conformity with – and enforcement of – procedures for the movement of goods across it. Both demonstrating and enforcing compliance with customs procedures requires infrastructure and resources.

Under World Trade Organization (WTO) rules (Agreement on Trade Facilitation), each state must enforce its customs border. It is not a matter of choice or unilateral action.

Evidence shows that even the most technologically-advanced means of customs border management (e.g. Norway-Sweden) rely on regulatory alignment, close cross border cooperation and effective capacity for inspections and enforcement in order to minimise disruption to trade.

These provisions do not substitute for the need for checks and inspections but merely aid efficiency in crossing the border legitimately and in identifying potential breaches of compliance or false declarations. They do not avert a ‘hard’ border but help minimise time delays in crossing it.

4: After resolving the Irish border issue, the UK as a whole will be able to enter a Canada +++ style free trade deal, such as the one suggested by Donald Tusk.

While a "zero-for-zero" interim tariff deal may be legally feasible according to the rule-book (on the commitment that it will become permanent), it is also highly unlikely that the remaining EU27 countries would agree to such an arrangement without significant concessions from the UK government on budget contributions and free movement of people. There is also no obligation under WTO rules for either side to agree to tariffs of zero.

CBI director-general Carolyn Fairbairn said: “A Canada free-style deal is not the answer for the UK. It would introduce friction at borders, it would not solve the Irish border, it would damage the supply chains on which thousands and thousands of jobs depend.”

It would also fail to achieve any significant mutual recognition of technical standards. Nothing is established, for instance, on medicines, cars or on the labelling and regulation of agricultural products. Non-tariff barriers in such areas would increase costs for UK exporters and disrupt trade flows.

5: WTO is a safe haven, not a hard option. Six of the EU’s top 10 trading partners trade under WTO rules.

Most of our trade is with the EU or countries the EU has free trade agreements with — about 57% of our exports and 66% of our imports in 2016. That doesn’t mean that we trade the rest under standard World Trade Organisation WTO rules alone.

We only trade with 24 countries and territories under WTO rules (meaning no preferential trade agreements). But even with these 24, the EU has a variety of arrangements which make trade easier. For example, in accepting CE marked goods or other certifications of compliance and conformity raised in the EU as meeting domestic standards criteria.

The EU doesn’t have a free trade agreement with 5 of its top 10 biggest trading partners (US, China, Russia, India & Brazil) but we do have preferential arrangements that facilitate trade with these countries meaning that we don’t trade on WTO rules alone[[8]](#footnote-8).

6: UK exports to countries trading on WTO terms have grown 3 times faster than to the Single Market.

Export growth rates are not a helpful measure of the level of access that exporters have to various markets. This specific argument has already been comprehensively rebutted by [here](https://blogs.sussex.ac.uk/uktpo/2018/08/07/trading-on-wto-rules-is-not-the-best-option-the-treachery-of-growth-rates/).

7: EU tariffs on exports from the UK would amount to less than half the UK’s current net contribution to the EU budget.

The weighted average tariff, if the UK were to default to WTO tariffs on UK food imports from the EU, would be 22 per cent[[9]](#footnote-9). Such a scenario would put upward pressure on consumer food prices.

Fishing exports to the EU would be subject to a 9.6% tariff under WTO rules. Clothes manufactured in the UK and exported to the EU would face an 11% tariff[[10]](#footnote-10).

Likewise this does not take into account the impact of non-tariff barriers. WTO rules on this are very limited and not recognised universally. Regulations on product safety, rules of origin and quotas are all non-tariff barriers and could have a substantial impact on business.

8: The UK is already a WTO member so would not need to rejoin it.

This is correct.

9: We can start to trade on the new tariff schedules as soon as we leave, without waiting for agreement from other WTO members.

In June last year the UK circulated its draft Goods Schedule, to which New Zealand raised an objection. This is the first step towards raising a trade dispute. While trading on uncertified schedules doesn’t prevent entering into FTAs, it does cause additional uncertainty[[11]](#footnote-11). It could give others pause in opening FTA negotiations. Up to 20 countries were reported to be looking to raise objections[[12]](#footnote-12).

10: The UK is making good progress in replicating the EU’s most important preferential trade arrangements - Switzerland has already agreed to carry over existing preferences.

During the referendum Brexiteers suggested this would be the easiest thing in the world. By 2017 Liam Fox was saying “it is not quite as simple as rolling them over”[[13]](#footnote-13). Now it appears that there is a risk of these countries seeking to renegotiate these deals, rather than just roll them over.

Switzerland is only the second rollover agreement struck. Even if we do manage to roll them all over on the same terms, we would be running to stand still as we currently enjoy access to these agreements.

11: The UK could take up Japan’s invitation to join the Trans-Pacific Partnership.

Japan’s Shinzo Abe is one of the many international leaders who are urging us to avoid a No Deal Brexit[[14]](#footnote-14). Liam Fox said the UK wanted to see how the TPP evolved after America's exit from it before making such a move. The TPP countries make up 8% of our exports[[15]](#footnote-15) and would not nearly make up for the loss of EU trade leaving without a deal would cause[[16]](#footnote-16).

12: Bilateral trade deals do not have to take a long time to renegotiate. The average renegotiation time is 28 months.

We leave the EU in 81 days, and have no major deals ready to go. Even if we were able to quickly strike new deals, the Treasury’s analysis shows that they would not make up for the loss of EU trade[[17]](#footnote-17).

13:“Micro” trade agreements will not be a big issue.

Many countries do have micro agreements, on trade and other matters, however we need to negotiate them in the next 81 days or face a cliff edge. This would also require goodwill from our international partners.

14: Scares about delays to imports are ‘ludicrous’, because Britain will control its borders.

Not to impose customs controls – or to impose them ineffectively – would mean the creation of huge opportunities for criminal activity (i.e. smuggling of counterfeit, restricted, or prohibited goods). This would reduce public revenue collection and undermine legally compliant businesses.

Ineffectual enforcement of controls along the Irish border would mean it would become a renowned loophole for illegal imports into both the UK and the EU markets, with tangible consequences for revenue collection, legitimate business and consumer safety. As a way of example, without ‘rules of origin’, and a way of enforcing them, goods made in a country like China could be imported through Ireland, avoiding UK import taxes – or vice versa. This undermines the single markets of both the UK and EU.

Even if we conducted customs/regulatory checks away from the border, we would still need to verify, at the border, that checks have actually been made ‘away from the border’. Again, this can speed up the process, but it cannot remove the need for border checks.

15: There will be no medicine shortages.

2/3rds of medicines enter the UK from the EU. The Association of British Pharmaceutical Industries is clear that stockpiling alone isn’t enough. If there aren’t shortages it’ll be because the industry has taken unprecedented steps to mitigate this, with AZ and GSK spending £100m on preparation[[18]](#footnote-18). This is money that could otherwise be spent on research and development.

16: There will be no food shortages.

While there will not be widespread food shortages, delays at the border could cause shortages of specific foodstuffs, for instance certain types of cheese. Likewise it is possible that this disruption could lead to price rises even if there are not shortages.

The Managing Director of Arla Foods said “Our dependence on imported dairy products means that disruption to the supply chain will have a big impact. Most likely we would see shortages of products and a sharp rise in prices, turning everyday staples like butter, yoghurts, cheese and infant formula, into occasional luxuries. Speciality cheeses, where there are currently limited options for production, may become very scarce.”[[19]](#footnote-19)

17: Manufacturing supply chains and other goods deliveries will not be significantly affected.

This has not been the view of the business community. It is not just the impact of tariffs that would be significant. The impact of a range of changes will be negative, for instance changes to Rules of Origin.

Likewise a study suggests that an extra 2 minutes taken on checks on vehicles could triple the length of queues at the ports[[20]](#footnote-20). This would create substantial delays to have a huge impact on just in time manufacturers.

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

While predictions of running out of clean water are very much a worst case scenario, the chemicals currently used cannot be stored easily due to their volatility. This means that the industry depends on just in time supply chains[[21]](#footnote-21). Therefore in the event of a no deal Brexit the industry would be required to put in place contingency measures which in the worst case could cause disruption. The Government’s Civil Contingencies Unit, which was the source of these reports, exists precisely to anticipate unlikely but exceptionally damaging risks – which is precisely what it has done here.

19: HMRC’s computer systems will be able to handle extra customs declarations, even if its new system is not fully online.

Lord Lilley’s own paper admits that there is no way to guarantee there are no IT problems. “Problems with new computer systems can never be ruled out.”[[22]](#footnote-22)

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

While this is correct, France will be bound to follow EU rules, which may not be in line with French interests on this matter.

21: A new traffic routing system will prevent serious delays to incoming lorries.

According to the National Audit Office report that Lord Lilley’s report cites “*many of the changes needed to be made by government under a ‘no deal’ scenario may not be ready on time. In particular:*

*11 of 12 critical systems needing to be replaced or changed to manage the border were at risk of not being delivered on time and to acceptable quality. New infrastructure to track and physically examine goods cannot be built before March 2019. Without this, the UK will not be able to fully enforce compliance regimes at the border on day one.*

*…*

*There is an increased delivery risk due to the high interdependence between ‘at risk’ government programmes reliant on another ‘at risk’ programme. For example, seven of the most critical border systems are interdependent with the Customs Declaration Service and/or its legacy system CHIEF (Customs Handling of Import and Export Freight); and all must be ready on day one for the border to operate as planned*.”[[23]](#footnote-23)

22: Planes will continue to fly to and from the EU.

The EU has made contingency plans to allow UK planes to use EU airspace in the event of no deal, if the same offer is made to EU planes in UK airspace.

An International Air Transport Association report found four key issues lacked clarity: air services agreements, safety framework, security, and border management[[24]](#footnote-24).

23: Planes will continue to fly to the US and elsewhere.

The UK has struck a deal with the USA to enjoy the same access as we currently do under the EU Open Skies Treaty. The UK has also secured bilateral air service arrangements with Albania, Georgia, Iceland, Israel, Kosovo, Montenegro, Morocco and Switzerland. However, these are all of limited utility without access to EU airspace being maintained – something the Withdrawal Agreement delivers.

24: Aircraft manufacturers will still be able to export parts, such as Airbus wings, despite claims to the contrary.

As the report points out, this is a temporary measure and does not resolve the problem in the long term.

25: British haulage companies will still be able to operate between the UK and the EU.

The European Commission’s “Action Plan includes proposals for a time limited arrangement for international road haulage between the UK and the European Union. The plan is limited in scope and does not directly copy what happens now with the Community Licence. Introduction is also conditional on the UK Government introducing reciprocal arrangements.”[[25]](#footnote-25)

26: Trade in animals, plants and food will continue after Brexit.

While trade will continue it will face significant additional barriers, nobody suggested that trade would cease entirely. Some of the extra barriers have been outlined in the report to the Dutch Government by KPMG[[26]](#footnote-26).

27: UK citizens will not face high mobile phone roaming charges when travelling to the EU.

While this is correct the commitment has been made by providers whereas it is required within the EU by law.

28: UK car manufacturers have obtained approvals to sell their models to the EU.

This is the case for existing models however new models of car are not covered by this approval.

29: New VAT rules will not affect the cash flow of importers.

This is correct, the Treasury will bear the cash-flow impact.

30: British opera singers, musicians and other performers will still be able to tour the EU.

The report cites the ATA Carnet as a solution to this problem. It will dramatically increase paperwork and regulation. One newspaper report of the system went so far as to say “having endured both root canal work and completing a complex carnet form, given a choice I’d go for the dental treatment next time.”[[27]](#footnote-27)

1. <https://www.ejiltalk.org/the-brexit-bill-and-the-law-of-treaties/> [↑](#footnote-ref-1)
2. <http://www.cbi.org.uk/insight-and-analysis/cbi-briefing-on-transitional-arrangements/> [↑](#footnote-ref-2)
3. <https://www.iod.com/news-campaigns/press-office/details/Political-agreement-on-transition-welcome-but-businesses-need-more-time-and-clarity-to-prepare> [↑](#footnote-ref-3)
4. <https://www.bmmagazine.co.uk/news/time-deliver-brexit-transition-period-say-small-firms/> [↑](#footnote-ref-4)
5. [↑](#footnote-ref-5)
6. <https://publications.parliament.uk/pa/cm201719/cmselect/cmbeis/379/379.pdf> [↑](#footnote-ref-6)
7. <https://publications.parliament.uk/pa/cm201719/cmselect/cmbeis/384/384.pdf> [↑](#footnote-ref-7)
8. Indeed the report itself details some of these arrangements on pages 10 - 11. [↑](#footnote-ref-8)
9. <https://brc.org.uk/media/174063/brc-the-tariff-roadmap.pdf> [↑](#footnote-ref-9)
10. <https://unctad.org/en/Pages/DITC/Trade-Analysis/Non-Tariff-Measures/NTMs-trains.aspx> [↑](#footnote-ref-10)
11. <https://www.explaintrade.com/blogs/2018/8/11/why-there-are-objections-to-the-uks-wto-schedule-and-why-you-shouldnt-care> [↑](#footnote-ref-11)
12. <https://www.theguardian.com/world/2018/oct/26/russia-brexit-liam-fox-wto-plan-uk> [↑](#footnote-ref-12)
13. <https://www.prospectmagazine.co.uk/economics-and-finance/the-eu-has-36-free-trade-deals-with-non-eu-countries-will-they-roll-over-to-britain-after-brexit> [↑](#footnote-ref-13)
14. <https://www.ft.com/content/57c4e3ce-ca22-11e8-b276-b9069bde0956> [↑](#footnote-ref-14)
15. <https://www.bbc.co.uk/news/business-43326314> [↑](#footnote-ref-15)
16. <https://www.parliament.uk/documents/commons-committees/Exiting-the-European-Union/17-19/Cross-Whitehall-briefing/EU-Exit-Analysis-Cross-Whitehall-Briefing.pdf> [↑](#footnote-ref-16)
17. ibid [↑](#footnote-ref-17)
18. BBC Radio 4 Today 07/01/2019 Interview with Mike Thompson, Chief Executive of ABPI. [↑](#footnote-ref-18)
19. <https://www.theguardian.com/politics/2018/jul/18/dairy-products-may-become-luxuries-after-uk-leaves-eu> [↑](#footnote-ref-19)
20. <https://www.imperial.ac.uk/news/186530/how-imperials-findings-post-brexit-borders-caught/> [↑](#footnote-ref-20)
21. <https://www.newstatesman.com/politics/uk/2018/11/would-no-deal-brexit-really-mean-running-out-clean-drinking-water> [↑](#footnote-ref-21)
22. Page 16 [↑](#footnote-ref-22)
23. <https://www.nao.org.uk/press-release/the-uk-border-preparedness-for-eu-exit/> [↑](#footnote-ref-23)
24. <https://www.airlines.iata.org/news/aviation-at-high-risk-from-no-deal-brexit?_ga=2.163387452.1454819589.1546872575-1838360703.1546872575> [↑](#footnote-ref-24)
25. [https://www.rha.uk.net/getmedia/04609843-24bd-4f46-a778-674bc27e3222/Commission-proposal-for-haulage-access-in-2019-(Dec-18).pdf.aspx](https://www.rha.uk.net/getmedia/04609843-24bd-4f46-a778-674bc27e3222/Commission-proposal-for-haulage-access-in-2019-%28Dec-18%29.pdf.aspx) [↑](#footnote-ref-25)
26. <https://assets.kpmg/content/dam/kpmg/nl/pdf/2018/sector/overheid/impact-of-non-tariff-barriers-as-a-result-of-brexit.pdf> [↑](#footnote-ref-26)
27. <https://www.independent.co.uk/travel/news-and-advice/business-travel-brexit-poll-referendum-aviation-sterling-duty-free-a7088236.html> [↑](#footnote-ref-27)