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# A CLEAN MANAGED BREXIT

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5 June 2019

Exiting the EU: a proposed Government policy for UK withdrawal from the EU following the rejection of the Withdrawal Agreement and Political Declaration on the Future Relationship with the EU



## Foreword by Steve Baker MP

The negotiated EU Withdrawal Agreement and Political Declaration have failed absolutely. The Commons rejected the Agreement three times and it became clear the legislation implementing an ostensible deal with Labour would also be rejected.

The United Kingdom is set to leave the European Union on 31 October 2019. A new Prime Minister will be in office following the Conservative Party's leadership contest this summer, probably by the end of July. The new Prime Minister will have around three months further to prepare the United Kingdom to leave the European Union.

It is vital they enter office with a clear and deliverable plan: a plan that respects the referendum result, has the support of both Conservative and DUP MPs, facilitates a renewed and lasting confidence and supply agreement and can be achieved without further protracted negotiations and delay.

This document presents the necessary plan. It is recommended the new Prime Minister should adopt the following proposals as the basis for Government policy.

This paper argues the new Prime Minister should revert to the original strategy set out in Theresa May's Lancaster House speech, around which the Conservative Party united, and the offer made to the UK by the European Council: a future partnership based not on the close mandatory alignment and single customs territory which the draft agreement was designed to facilitate, but one centred on a mutually-beneficial advanced free trade agreement.

This document draws heavily on previously-published work listed in the references, and especially the alternative written ministerial statement – *A Better Deal and a Better Future* – published in the aftermath of the first defeat of the agreement on 15 January.

No one voted to ask permission to leave. We voted to leave with the hope of negotiating mutually-beneficial cooperation as an independent country. We continue to hope to do so, conscious that the negotiated agreements did not deliver future arrangements on trade and security, beyond an unacceptable backstop pointing to a destination we could not bear.

This work could not have been prepared without the contributions of colleagues. I am particularly grateful to Suella Braverman MP, Sir William Cash MP, Iain Duncan-Smith MP, Charlie Elphicke MP, Mark Francois MP, Marcus Fysh MP, Sir Bernard Jenkin MP, Lord Lilley, Craig Mackinlay MP, Priti Patel MP, Owen Paterson MP, Sir John Redwood MP, Jacob Rees-Mogg MP, Anne-Marie Trevelyan MP, Theresa Villiers MP, Barney Reynolds, and Shanker Singham for helpful comments. Errors and omissions remain my own.



Steve Baker MP

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5 June 2019

## Summary

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Three resounding defeats in the House of Commons and an emphatic rejection at the polls render the current Withdrawal Agreement dead. Nevertheless, it remains imperative that the United Kingdom leaves the European Union by 31 October. The current delay has already done severe damage to public trust in our democratic institutions and poses an existential threat to the Conservative Party. It will simply not be listened to on any issue until Brexit is delivered.

Ideally, our exit would be achieved with a new wide-ranging, zero-tariff, zero-quota free trade agreement (FTA) of the kind offered by Donald Tusk in March last year. Our present trading arrangements with the EU can be maintained for a temporary period under GATT XXIV so long as the UK and EU both agree to negotiate an FTA and notify the WTO of a sufficiently detailed plan and schedule to agree it.

If this cannot be achieved, the UK must be prepared to leave without a formal agreement but with the practical contingency arrangements which have already been agreed. In any event, the Alternative Arrangements protocol can be used to ensure a seamless border between Northern Ireland and the Republic of Ireland.

## Leaving the EU on 31 October 2019 while seeking a better deal

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As things stand, the UK will leave the EU on 31 October 2019 in both UK domestic law via the *European Union (Withdrawal) Act 2018* and in international law via the agreed extension under *Article 50 TEU*. The European Communities Act 1972 will be repealed, restoring total sovereign control to the UK, including over agricultural policy, fisheries within the UK's Exclusive Economic Zone and environmental standards.

There is no democratic case for stopping or further delaying the process of leaving the EU. It is a democratic and legal imperative that the Government and Parliament implement the decisions already taken. Any further delay risks grave corrosion of public trust in democratic politics and our institutions. The current delay has rendered the Conservative Party irrelevant: it will not be listened to on any issue until Brexit is delivered.

It must therefore be the unshakable policy of the Government to leave the EU by 31 October 2019, in accordance with democratic mandates and UK law. Critically, the EU cannot extend the UK's membership without UK consent. The Government must rule out requests for further extensions. The Government must maintain the constitutional and economic integrity of the United Kingdom as we leave the EU.

It is the evident preference of Parliament and the nation that the negotiated agreements are rejected: there is no mandate to exit the EU through the negotiated agreements. Furthermore, the EU has insisted repeatedly that it will not reopen the draft Withdrawal

Agreement. It has also insisted it will not allow the UK to purchase the negotiated Implementation Period, as suggested in the *Malthouse Compromise*<sup>1</sup>.

Therefore, to fulfil existing democratic mandates, it must be the policy of the Government that the UK should now exit the EU without the negotiated draft Withdrawal Agreement.

The Government must continue to prepare the UK to leave the EU on World Trade Organisation (WTO) terms by 31 October 2019, while tabling draft treaties to establish a relationship between the UK as a whole and the EU appropriate to a friendly, trusted and independent third country, consistent with the offer made by the European Council on 7 March 2018<sup>2</sup>, which included an advanced FTA.

The current draft Withdrawal Agreement is completely defunct. It has received three resounding defeats in the House of Commons and attracted little public support, with only 9% of voters endorsing it by voting Conservative in the European Parliament elections on 23 May 2019.

Therefore, the UK should not propose to revise the Withdrawal Agreement: the UK should leave the EU without it. Without prejudice to the UK's departure from the EU by 31 October 2019, the UK could consider proposals from the EU to revise the draft Withdrawal Agreement and Political Declaration to meet the criticisms made by Parliament. Substantial changes would be required. An indicative list is provided in Annex A.

## Leaving the EU without the draft Withdrawal Agreement

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### EU contingency plans

The absence of a Withdrawal Agreement does not mean the absence of cooperation with the EU. The EU has completed its preparations for the UK leaving without a deal as set out in the EU Communication of 19 December 2018, *Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: Implementing the Commission's Contingency Action Plan*.

The document proposes mutual guarantees for the rights of citizens and, amongst other things, the continuation of air services, road haulage and other matters for a temporary period. The Government should seek to build on these welcome and sensible measures.

To supplement this, and outside of the framework of an FTA, the UK will remain part of numerous multilateral agreements covering the UK and EU and will continue to negotiate and agree deals which the majority of WTO states have with each other.

### UK actions

#### The financial settlement

In the absence of a Withdrawal Agreement, the Government must not consider the UK to be liable for the estimated £39 billion payable to the EU under that Agreement, according to the doctrine that nothing is agreed until everything is agreed. This decision reflects the terms of

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<sup>1</sup> <http://bit.ly/MCExplainer>

<sup>2</sup> <http://bit.ly/EUofferMar>

Article 50, which make clear the EU Treaties cease to apply to the exiting state after the expiry of the two year period.<sup>3</sup> The decision also reflects the advice of the House of Lords European Union Committee *Brexit and the EU budget*, published on 4 March 2017, which concluded that in such circumstances, the UK would leave the EU without being liable for outstanding financial obligations.

However, in the event of a legal challenge by the EU, the Government could allow the UK to voluntarily submit the question of any financial liability to the EU after exit to an appropriate international arbitration mechanism for determination.

The Government should apply a substantial part of the estimated £39 billion saved from cancellation of the Withdrawal Agreement on measures, including tax cuts, to mitigate any potential negative effects of leaving the EU on WTO terms, to compensate businesses and sectors for exceptional costs of adaptation, and on measures to increase business investment, training and research and development, and economic growth.

An additional £39 billion spent in the UK economy and not transferred to the EU over the next two years is expected to boost economic growth, alongside the immediate improvement in the UK balance of payments. The prospects for economic growth will also be enhanced by a shortening of the period of uncertainty for business and investors, which would otherwise have been extended for at least another two years during the Implementation Period.

### Citizens' rights

The UK should, under our own domestic law, unilaterally guarantee the rights of EU citizens currently in the UK to continue to live and work in the UK broadly as they do today. EU citizens will enjoy national treatment and indefinite leave to remain, without additional rights in excess of UK citizens.

### Trading arrangements

While tabling the legal text of a set of agreements in our mutual interests, the UK should complete preparations to leave the EU and to assume a trading relationship on WTO terms.

The Government should accelerate work to mitigate the consequences of exiting without the Withdrawal Agreement in place, including taking unilateral and reciprocal measures, and reaching stand-alone agreements in our mutual interests where that proves possible.

The UK should propose to the EU that we continue our free trade under a temporary FTA in goods with zero tariffs, no quantitative restrictions and full cumulation under rules of origin to provide for at least a two-year General Agreement on Tariffs and Trade (GATT) XXIV compliant standstill arrangement, pending the negotiation of a comprehensive advanced FTA.

The UK should continue to uphold high standards, including in relation to food safety and animal welfare.

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<sup>3</sup> On the basis the date for the end of the transition period remains fixed at the end of December 2020 this figure could now be an estimated £8bn less due to the UK payments to the EU during the extension.

### Tariffs and quotas

In default of such an agreement, the UK should take such measures on agri-food tariffs and quotas as are necessary to avoid inflation in the UK, including on agri-food products. This will include a) unilateral applied tariff reductions on a WTO Most Favoured Nation (MFN) basis or b) applying *erga omnes*<sup>4</sup> Tariff Rate Quotas (TRQs) for agricultural products and c) opening FTA agreements with agricultural exporters such as Canada, Australia and New Zealand (TRQ or otherwise) in contemplation of fuller agreements in due course.

The Government does not intend to harm EU agricultural exports into the UK market, but in the absence of an interim FTA to avoid tariffs, this would be the unavoidable consequence of our need to ensure that we do not suffer food price inflation on exit from the EU. It would be a necessary step along the road to an agreement with the EU.

### Services

The UK will seek to implement two-way arrangements for mutual recognition on services, including enhanced equivalence for financial services, which continue services trade for the benefit of both parties<sup>5</sup>. The drafting for services can be relatively simple, and could be implemented in final form, effective from exit day.

### Offers of bilateral cooperation with the EU

The Government should seek to build mutual confidence and trust between the UK and the EU after exiting the EU, by offering bilateral cooperation in areas of mutual interest in a spirit of goodwill and cooperation. The Government should continue to maintain a positive approach towards concluding a comprehensive FTA with the EU as quickly as possible.

To those ends, the Government should table immediately draft treaties providing for a UK-EU *Free Trade Plus* agreement, including:

- Indefinite alternative arrangements to provide an invisible and compliant border between the UK and the Republic of Ireland under either WTO rules or an FTA, using currently available administrative and technical procedures but without any need for new technology. No new infrastructure or checks at the border will be required, in accordance with the commitments given by the EU and by the Government of the Republic of Ireland;
- Cooperation on defence and security, without prejudice to the primacy of NATO;
- A comprehensive advanced FTA including best-in-class chapters covering zero tariffs in goods and the majority of agricultural products, customs and trade facilitation, government procurement, regulatory coherence – including specific sectoral annexes such as for pharmaceuticals – competition policy and state aid, an open services chapter with maximum liberalisation, no restrictions in all four modes of service supply in market access or national treatment, mutual recognition of occupation licensing, specific sectoral annexes in key areas including telecoms, data and financial services, investment and dispute settlement; and
- Cooperation on other issues, including civil court cases, the sovereign base areas, Gibraltar, research and innovation, education and culture.

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<sup>4</sup> That is, quotas open to all.

<sup>5</sup> The EU has indicated it wishes to do this in the Political Declaration.

## The UK's future trade strategy

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Political, trade and regulatory independence for the UK is not an ideological position: it is the basis on which most countries around the world choose to govern themselves. Independence will bring new opportunities for our economy. It will not preclude a comprehensive FTA with the EU. It will bring material growth, allow the UK to conclude other FTAs, and strengthen the UK in EU negotiations.

The UK should take a four-pillared approach to pursuing a competitive and thriving UK economy, to create a coherent independent trade and regulatory policy, as follows:

### a. Unilateral

The UK should make unilateral reforms to domestic and trade policy. Many EU regulations impede growth; the UK needs the freedom to do better. This will include:

- Improving the way regulations are made, better to support competitive markets, in particular to ensure a pro-competitive environment in digital, financial services, and other areas that are crucial to the UK's economic success, but where continued adherence to EU norms would hold us back;
- In other areas including agricultural policy, considering eliminating tariffs and quotas as they are applied for a period on all products the UK does not produce, to encourage FTAs with trade partners who wish such a policy to persist; implementing methods to rebalance prices of imports of products the UK does produce whose costs are reduced by market distortions in other countries; in agriculture making appropriate provision for WTO compliant support to producers for marketing and environmental stewardship;
- In fisheries policy, restoring sovereignty over UK waters, improving conservation of fish stocks and sustainably addressing barriers to entry for increasing UK owned and operated fishing capacity.

### b. Bilateral

The Government should seek to replicate the EU's agreements with third countries to cover the UK bilaterally, and focus on major trading partners with whom the EU does not yet have agreements.

The Government should conclude bilateral agreements with other states concurrently while negotiating a UK-EU *Free Trade Plus* agreement. Those should include FTAs with the US, India, China, and other partners.

Simultaneous discussions will include partners for more difficult FTAs in the longer term.

While wishing to advance all these agreements, priority will be placed on a UK-US FTA.

Negotiations should be accelerated to roll over existing agreements and agree a new FTA with EFTA. Agreement has already been reached in detail with Switzerland and, in principle, with South Africa.

The Government should take an historic opportunity to conclude Economic Partnership Agreements with developing countries that do not hinder growth, unlike the EU's



Generalised System of Preferences model. Better models will only be possible once the UK has taken control of its tariff and regulatory policy.

### c. Plurilateral

The Government should seek to advance UK membership of major multinational trading arrangements, including the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP). The UK should immediately indicate its desire to be one of the first new accession countries of the CPTPP.

Tariff and regulatory control will be needed to accede to CPTPP. Nothing in our agreement with the EU will prejudice our independent trade and regulatory policy.

### d. Multilateral

The Government should use the UK's WTO membership to reinforce the other pillars of our strategy and to promote wealth creation for the UK economy and the world.

The Government should promote active UK membership of recognised WTO groups as soon as possible, and seek to establish new ones, showing the UK is a committed liberaliser of trade, committed to open domestic settings, for instance:

- The UK should seek to join the Cairns Group of agricultural exporters;
- The UK should launch the 'Manchester Group of Services Exporters', named for the city's role in the historic free trade movement, to support advancement of the Trade in Services Agreement (TiSA);
- The UK should join the e-commerce plurilateral initiative and take a leadership role in services liberalisation.

If the EU unreasonably refuses to recognise on day one of our withdrawal the equivalence of UK regulations which are identical to the EU's, and discrimination can be shown, the UK should take action in the WTO for violation of the WTO's Agreements on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS).

## Conclusion

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After a period in excess of three years since the June 2016 EU referendum, it is now imperative the United Kingdom leaves the European Union on 31 October 2019 if we are to retain confidence in the democratic process.

If necessary, the UK should be prepared to leave the EU without a deal and trade temporarily on WTO terms, until a comprehensive FTA with the EU can be agreed.

Leaving with "no deal" on WTO terms with the EU is not the desired end state. Rather, the desired end state is a relationship of the character offered to the UK by the EU in March 2018 for the whole UK, including a comprehensive FTA: however, it may be necessary to go through a limited period of trading on WTO terms while this is agreed. Commencement of negotiation of the EU-UK FTA should be sought as soon as possible after the appointment of a new British Prime Minister, well before the UK departs the EU on 31 October.

The Government should prepare for any period of transitional trading on WTO terms with the EU, and to deliver the UK's independent global trading strategy. The Government should

simultaneously offer to negotiate with the EU based on legal text to deliver a relationship of the character the EU offered in March 2018, for the whole UK.

As the UK leaves the EU, neither the EU nor its member states are entitled to seek to break apart the UK, nor to retain the power to direct how Parliament legislates or regulates the UK economy. The Government's approach is therefore to adopt an independent trade and regulatory policy, including in our relationship with the EU, in respect of the whole of the UK. This will enable strong trade with both the EU and the world, as well as strengthening the precious union of the United Kingdom of Great Britain and Northern Ireland, without undermining the Belfast Agreement or the peace process.

The Government should accelerate the development of the UK economy so that we will continue to generate high levels of skilled employment, in which people, families and businesses are able to succeed based on the merits of their ideas and their hard work. An economic system based on fair and open competition and social responsibility will maximise participation in wealth creation and lead to more money in people's pockets and more money for essential public services.

We look forward to an ever-brighter future for the people of the UK, in an enduring cooperative relationship with our European friends and the rest of the world.

## References

The Border between Northern Ireland and the Republic of Ireland post-Brexit  
<http://bit.ly/ERGNI>

A Better Deal, Singham et al

<http://bit.ly/CompBetterDeal>

<http://bit.ly/CompBetterDealSpeech>

Plan A+, Singham and Tylecote

<http://bit.ly/PLANAPlus>

Fact not Friction, Lilley

<http://bit.ly/FactNotFriction>

30 Truths About Leaving on WTO Terms, Lilley

<http://bit.ly/30Truths>

A World Trade Deal, Economists for Free Trade

<http://bit.ly/EFTWorldTrade>

Statement by President Donald Tusk on the draft guidelines on the framework for the future relationship with the UK

<http://bit.ly/EUofferMar>

## Annex A

### Indicative necessary revisions to the draft Withdrawal Agreement and Political Declaration

1. Remove all reference to ECJ jurisdiction, direct or indirect.
2. Remove Article 4 and the direct effect of EU law.
3. Remove all reference to EU law.
4. Remove the point that all EU or member state terms are to be given EU or member state meanings.
5. While guaranteeing EU citizens' rights, do not create an additional category of citizen.
6. Crystallise payment amounts, with a cap to avoid uncertainty.
7. Insert language to require a temporary trade deal.
8. Mutual recognition should be provided for across all topics based on outcome equivalence.
9. Any transitional period must be without the continuation of the European Communities Act, in whatever form.
10. Rewrite the Political Declaration to reflect a conventional advanced FTA across goods and services, including financial services.
11. Any security and defence, international aid and other cooperation must be as equals on an entirely voluntary basis and under our own control.
12. All provisions must have a notice period of at most 2 years.

## Annex B

### Political viability of *A Better Deal And A Better Future*

The Prime Minister will be mindful of the Parliamentary arithmetic, needing to maintain a majority for confidence and supply.

The draft Withdrawal Agreement failed in Parliament three times because it lost the support of Conservative *and* DUP MPs.

There is a sizable minority of MPs who wish to use Commons procedure and a sympathetic Speaker to frustrate and reverse Brexit, or to bring down the Government.

### **There is no decisive route for Parliament to block exit with no Withdrawal Agreement**

The current legal position is that the UK leaves the EU on 31 October 2019 by default.

The *European Union (Withdrawal) Act 2018* is in place and the active parts can be brought into force via 'commencement orders' that afford no opportunity for Parliamentary obstruction. The path to exit without a withdrawal agreement is therefore clear.

Opponents of Brexit have no mechanism to overturn the settled decision of the British people, which has been enacted, if that decision is backed up by a determined Executive. The Government does not need to present amendable legislation to the Commons. The Commons will be in recess, then a new Prime Minister will no doubt seek a prorogation for a new Queen's speech.

Vexatious primary legislation to overturn previous Acts seems very difficult against an Executive determined to uphold democratic mandates enshrined in UK law.

More information may be found at the Institute for Government:

<https://www.instituteforgovernment.org.uk/blog/new-prime-minister-intent-no-deal-brex-it-cant-be-stopped-mps-0>

### **Commons' consent for exit arrangements**

It is untrue to say that there is no Parliamentary majority in the Commons for any deal.

The 'Brady amendment' for a Withdrawal Agreement where the Backstop is replaced with 'alternative arrangements' passed the House of Commons on 29 January by 317 votes to 301.

Moreover, the Brady Amendment supported the 'Malthouse Compromise', which made provision either to revise the Withdrawal Agreement or to exit with no withdrawal agreement on certain conditions, including offering a temporary FTA under GATT Article XXIV.

More information on the Malthouse Compromise may be found here:

<http://bit.ly/MCExplainer>





