

A View toward the Post-Brexit Future: the UK in the NAFTA? Part I

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[Patrick Pearsall, Thomas Wingfield \(Jenner & Block LLP\)](#)

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To many, it would seem foolish even to ask whether the UK might join the North American Free Trade Agreement. Yet, the UK should explore all possibilities open in a post-Brexit world. As we explain, the idea that the UK might join the NAFTA is not only conceptually interesting, but also merits entertaining with a degree of seriousness.[fn] See discussion with Patrick Pearsall on [“Predictions for a post-Brexit UK/US trade agreement”](#).[/fn]

How do the NAFTA and the EU compare? In many ways, there is no comparison. The NAFTA is a free trade agreement. The EU is an economic and political union. There are 3 states in the NAFTA. There are 28 states in the EU. There is no NAFTA parliament. There are no NAFTA elections. There is no NAFTA legislation. There is no NAFTA court of justice. The NAFTA Trade Commission is not the equivalent of the European Commission in purpose or powers. There is no NAFTA central bank. There is no NAFTA single currency. There is no NAFTA common external tariff. There is no NAFTA common trade policy. The NAFTA does not require anything like the level of bureaucrats employed in Brussels.

The things that the NAFTA is not are the same things that many supporters of Brexit most dislike about the EU. It is a recurrent argument that the EU is a free trade arrangement which has got out of hand, taking too much control and interfering in too many areas. Many Brexit supporters say that the EU has overreached itself over time. Many who voted to leave in 2016 voted to enter in 1975. For such voters, perhaps the EU should be more like the NAFTA: free trade without a super-state. Certainly, the NAFTA represents an alternative to the EU model.

Should the UK be talking about the NAFTA?

So far, to the limited extent that UK membership of the NAFTA has been spoken about at all, it has been introduced principally as a contingency plan in the event that negotiations with the EU fail to come to an acceptable conclusion. In other words, the NAFTA would come into play only on a 'no deal' scenario with the EU. But is it correct to view the question as a binary choice? Would NAFTA membership be compatible with a future agreement with the EU? That, of course, depends upon the terms of that agreement. Hence, it is important that these issues are evaluated now, rather than later. An agreement with the EU and agreements with non-EU countries should not be considered in isolation from one another. For the same reason, it is unlikely to be the most effective strategy to negotiate them purely sequentially. There should, at the very least, be simultaneous consideration and discussion.

However, the current focus in the UK is on the UK's future relationship with the EU. Every day, folks are eager for updated news, gossip and speculation about the state of negotiations. This question –

how the UK will deal with the EU in the future – is undoubtedly important, affecting incalculable aspects of living and doing business in the UK. But the EU question is not the only question. There is also the question of the UK's future relationships with non-EU states. It is a mistake to focus on the EU to the exclusion of the non-EU. But it is an understandable mistake. Individuals, media outlets and even governments can only direct their attention in so many directions and only have finite resources to bring to bear.

The almost exclusive prominence (at least in column inches) currently given to agreeing a “new partnership” with the EU is also encouraged by the UK Government's goal in those negotiations to secure “a time limited implementation period” of perhaps two years, during which access between the markets will continue on current terms. According to the Government, the “UK would intend to pursue new trade negotiations with others during the implementation period.”^[fn] *Preparing for our future UK trade policy*, Department for International Trade, 9 October 2017, p.8.^[fn] In other words, this is largely a question for another day.

However, there is no guarantee that the EU will agree to such a standstill period following legal Brexit. (The EU's guidance for the next phase of Brexit negotiations states that transitional arrangements should cease 21 months after Brexit day.^[fn] COM (2017) 830, 20 December 2017, ¶21.^[fn]) Nor that, if agreed, either period would be long enough for the UK to conclude the new trade agreements desired. The UK-EU Article 50 negotiations effectively have a two year cut-off, and time may already be feeling tight.

The Government's white paper '*Preparing for our future UK trade policy*' is by its own admission only an “early step”.^[fn] *Preparing for our future UK trade policy*, p.5.^[fn] As negotiations move onto new ground, now is an appropriate time to take stock. The EU accounts for very roughly half of the UK's trade.^[fn] *UK Overseas Trade in Goods Statistics August 2017*, Office for National Statistics (ONS), 10 October 2017.^[fn] The other half must be considered alongside.

According to its Prime Minister, “it is time for Britain to get out into the world and rediscover its role as a great, global, trading nation.”^[fn] ‘The government's negotiating objectives for exiting the EU’, Theresa May, 17 January 2017.^[fn] The Secretary of State for International Trade, Liam Fox, has spoken of having around 40 free trade agreements ready to go “the second after midnight” after Brexit in March 2019.^[fn] Subsequently, provided for in the Trade Bill 2017-19.^[fn] However, these planned agreements are proposed only to replicate those trade agreements already existing between the EU and non-EU states. When the UK leaves the EU, it will leave more than the EU. Here again, the aim is to preserve the status quo a while longer, avoiding a cliff edge and disruption of trade. So, if these future agreements become reality, they would be essentially transitional, neither moving the UK forward nor offering an alternative to the EU model.

What might be the benefits of joining the NAFTA?

The figures vary according to the source, but the US, Canada and Mexico have a combined GDP of around the same as, if not more than, the combined GDP of the EU. Britain, the US, Canada and Mexico account for more than 30% of the global economy. They are connected by the Atlantic and the internet. The US and Canada are, like the UK, in the G7. The US is the UK's largest single country trading partner. Together the NAFTA nations account for 13% and 20% of the UK's imports and exports respectively (comparing with 53% and 45% for the EU).^[fn] ‘Who does the UK trade with?’, ONS, 21 February 2017.^[fn]

Joining the NAFTA may have certain advantages.^[fn] For the avoidance of doubt, it is beyond the scope of this article to evaluate, and we take no position on, whether NAFTA membership would actually make sense for the UK. ^[fn] The US and Canada, in particular, are obvious present and future

trading partners with the UK in whatever form that takes. They have substantial common cause with the UK, in economic as well as other matters. They share many principles of law. The 23-year old NAFTA brings with it a degree of certainty, perhaps unobtainable with less established or yet-to-be-agreed arrangements. There is a degree of certainty about the jurisprudence. The existing NAFTA relationship is well-known and well-analysed. The UK would have a sense of what it was getting into.

The UK would not be starting from scratch. Joining the NAFTA could be construed as an extension of the UK's present pragmatic policy of adopting/adapting existing trade agreements with the EU. Provided the NAFTA survives and the existing three states are open to a new member, the UK could sign up relatively quickly by the standards of treaty negotiation (if not quick, then quicker). Canada, Mexico and the US have effective and experienced negotiating teams up and running (perhaps worryingly effective and experienced). The UK Government is under significant time and resources pressure. Brexit brings new challenges to Whitehall and exposes existing challenges which have long been absorbed by the intervening bureaucratic infrastructure in Brussels.

What is the history of this idea?

The idea of the UK joining the NAFTA is not entirely novel, although its history is patchy. In 1998, Newt Gingrich, then Speaker of the House of Representatives, mooted the UK as an associate member. In 2000, Republican Phil Gramm, then chairman of the Senate Committee on International Trade, announced that doors would be opened in Washington "in a matter of a week" if the UK knocked. Kenneth Clark, now Father of the House of Commons, responded "I hope nobody believes that Senator Gramm is typical of American opinion, because he ain't." UK Foreign Secretary Robin Cook described the idea as "barmy", agreeing with a leaked Foreign Office memo. To all this, Senator Gramm replied that "[Barmy] is not a word in the American-English dictionary, which reminds me we have been separated too long [...] I was still unsure whether I was being complimented." [fn] 'We back Britain joining Nafta, says US Senator', *The Telegraph*, 5 July 2000. [fn]

The Senate Finance Committee had requested an investigation into the impact of including the UK in the NAFTA "in order to determine whether the success [...] can be replicated with other trading partners". The subsequent International Trade Commission report found that "[b]ecause trade between the UK and the North American countries is subject to relatively low tariffs, [...] elimination of these tariffs would have minimal effects on the economies of the countries in question." [fn] Investigation 332-409, Publication 3339, August 2000. [fn]

To the extent that the idea subsequently had any significant traction, it was largely amongst the politically conservative and Euro-sceptical of both sides of the Atlantic. Conrad Black, sometime transatlantic media tycoon and prison inmate, has been another notable advocate of the idea as "based on the Anglo-American free market model", predicting that "Britain would be received [by the US] with rejoicing and extensive reminiscences about Churchill and Roosevelt" and "[i]f America were jubilant, Canada would be ecstatic." [fn] *Britain's Final Choice: Europe or America?*, Centre for Policy Studies, 1998, pp.13, 27. [fn] He did not speculate how Mexico would feel.

In the second part of this article, we consider the present degree of appetite for this idea, the restrictions on the UK's freedom to negotiate whilst still a member of the EU and the implications of the uncertainty about the future of the NAFTA itself.