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Dubious Partnership: The Legal, Political, and Economic Implications of Adding the United Kingdom to the North American Free Trade Agreement

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INTRODUCTION

The United Kingdom (U.K.) has never fully embraced close ties with the European continent. The debates in the United Kingdom over the adoption of the euro and membership in the European Union (EU) exemplify this resistance. Members of the Conservative Party in the United Kingdom have been leaders in this resistance movement. Over the past few years, another aspect of this resistance movement has been advanced. A small, vocal minority of the Conservative Party has recently begun advocating the pursuit of a free trade agreement with North America.¹ Originally, these advocates saw joining the North American Free Trade Agreement (NAFTA) as a viable economic alternative to EU membership.² Recently, however, the Conservatives have asserted that a NAFTA-U.K. agreement would be compatible with United Kingdom's membership in the EU and are preparing the EU to embrace U.K. membership in NAFTA.³

The debate has occurred predominantly in the United Kingdom and has remained largely absent from American shores. However, a small wing of the Republican Party, led by Senator Phil Gramm of Texas, brought this issue to the United

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1. George Monbiot, *Vote Tory for a Federal Superstate: Joining Nafta as Hague Proposes Would Destroy Our Independence*, THE GUARDIAN, Sept. 7, 2000, at 20.

2. *Id.*

3. *See id.*

States (U.S.) by supporting a NAFTA-U.K. trade agreement.⁴ During an address in London in the summer of 2000, Senator Gramm mentioned that while Americans do not currently discuss the topic, "they will."⁵ Moreover, then-Presidential candidate George W. Bush's foreign policy advisor, Condoleezza Rice,⁶ stated during the summer of 2000 that if the United Kingdom applied to join NAFTA, the United States would not object.⁷ As a result of the likelihood of an increased debate regarding U.K. membership in NAFTA in this country and apparent support from the White House, it is important to analyze three significant issues raised by such an agreement.

The first variable to consider is how this proposed agreement would affect the economies of both the United Kingdom and North America. The next major economic relationship to consider is the potential effect on the United Kingdom's relations and treaty obligations with the EU. Finally, the United Kingdom and the United States must speculate about how the EU might react to such an arrangement and whether the EU could take punitive action against United Kingdom under the treaty establishing the EU.

This Note will examine the viability of U.K. membership in NAFTA. Part I outlines a brief history of NAFTA and the EU. Part II looks at the relationship between NAFTA countries, the United Kingdom, and the EU. Part III discusses the economic, legal, and political consequences of U.K. membership in NAFTA. Finally, the Conclusion contends that the Republicans in the United States and the Conservatives in the United Kingdom who support this proposal have failed to fully consider the implications of their proposal. The Conclusion further contends that the costs of U.K. membership in NAFTA would outweigh the benefits for both the United Kingdom and the United States.

4. Bronwen Maddox & James Landale, *Senator Urges Sceptics to Back U.S. Pact*, THE TIMES OF LONDON, July 5, 2000, at 4.

5. Senator Phil Gramm, Address at a meeting of the Centre for Policy Studies on Euroland and NAFTA (July 4, 2000) (transcript available at <http://www.cps.org.uk/gramm.htm>) [hereinafter Gramm Address].

6. Rice is currently President Bush's National Security Advisor. See, e.g., Mike Allen, *Bush Taps Rice for Security Advisor*, WASH. POST, Dec. 18, 2000, at A1.

7. Toby Harnden, *Bush aide supports Britain in Nafta*, THE DAILY TELEGRAPH, July 29, 2000, available at <http://news.telegraph.co.uk>.

I. FORMATION OF NAFTA AND THE EU

A. NAFTA FORMATION

Circumstances leading to the formation of NAFTA date back to the 1930s,⁸ when major trade barriers existed against agricultural goods throughout the world.⁹ Mexico had imposed large barriers against agricultural commodities from the United States.¹⁰ Efforts to address these barriers led to the General Agreement on Tariffs and Trade (GATT) in 1947.¹¹ The GATT did not mandate free trade, but encouraged member states to enter into agreements to reduce trade barriers either through a common market or a free trade zone.¹² A common market encourages the free exchange of capital and labor, whereas a free trade zone "offers special trading concessions" to its member states.¹³

The most widely recognized common market is the European Community (EC).¹⁴ The integration of Europe into the European Community motivated negotiations for a free trade zone for North America.¹⁵ In the 1980s, the United States and Canada negotiated a trade agreement that reduced trade barriers.

8. James B. Wadley & Cynthia Langford, *What NAFTA Means to Midwest Agriculture: A View From the Edge of the Flintheads*, 34 WASHBURN L.J. 255, 258 (1995).

9. These trade barriers were caused by:

As the populations increased throughout the world and modes of transportation improved, the complexity of trading conflicts increased. The failure to negotiate structured agriculture trade practices in the post World War II period and the complexity of agricultural trade issues caused the international trade in agricultural commodities to be plagued with trade barriers and predatory practices.

Id. at 258.

10. *Id.*

11. This was the "most expansive effort" that resulted from these early trade negotiations. Wadley & Langford, *supra* note 8, at 259; *See generally* General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT].

12. GATT art. XXIV.

13. Free trade zones also do not encourage integration of the economies of member states, whereas a common market does encourage such integration. Wadley & Langford, *supra* note 8, at 259; *See also* GATT art. XXIV.

14. The Treaty of Rome created the European Economic Community, which is the forerunner of the present European Community. Wadley & Langford, *supra* note 8, at 259.

15. Some saw the European Community as a challenge to North America, and this seems to have stimulated the interest in a free trade zone for North America. *Id.*

ers between the two countries.¹⁶ Both countries signed the Canada-United States Free Trade Agreement (CUSTA) in 1988.¹⁷ In June 1990, Mexico entered into negotiations to establish a trilateral free trade agreement with the United States and Canada.¹⁸ Negotiations for a free trade agreement began in February 1991.¹⁹ These negotiations led to the establishment of NAFTA, which entered into force on January 1, 1994.²⁰ NAFTA is designed to eliminate all trade barriers between the United States, Canada, and Mexico and create the largest "totally free" trade zone in the world.²¹

B. EU FORMATION

Hopes for European political and economic unification began at the end of World War II.²² The possibility of future hostility among the European states was the prime motivation behind the proposed unification.²³ On May 9, 1950, French Foreign Minister Robert Schumann proposed the unification of the French and German coal and steel industries as the first step.²⁴ Schumann's proposal was seen as revolutionary because of the competitiveness between these particular industries in the two countries.²⁵ Despite such obstacles, the treaty establishing the European Coal and Steel Community (ECSC) was signed in Paris on April 18, 1951.²⁶ Efforts to create a European Defense Community and a European Political Community failed,²⁷ but on March 25, 1957 two treaties signed in Rome created the European Atomic Energy Community (Euratom)²⁸ and the

16. *Id.* at 260.

17. Canada-United States Free Trade Agreement, Jan. 2, 1988, U.S.-Can., 27 I.L.M. 281.

18. Wadley & Langford, *supra* note 8, at 260.

19. This was initiated by President Bush's announcement to Congress that CUSTA was to become trilateral. *Id.*

20. North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., art. 101, 32 I.L.M. 289, 297 (1993) [hereinafter NAFTA].

21. Wadley & Langford, *supra* note 8, at 261.

22. Christine Alice Corcos, *EEC Law: A Practical Guide*, 22 CASE W. RES. J. INT'L L. 195, 197 (1990).

23. *Id.*

24. *Id.*

25. *Id.*

26. TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY, Apr. 18, 1951, 261 U.N.T.S. 140 [hereinafter ECSC TREATY].

27. Corcos, *supra* note 22, at 197.

28. TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY, Mar. 25, 1957, 298 U.N.T.S. 167 [hereinafter EURATOM TREATY]; See Lisa Borgfeld White, *The Enforcement of European Union Law: The Role of the European Court of Justice*

European Economic Community (EEC).²⁹ These agreements included six states: Belgium, France, Germany, Italy, Luxembourg, and the Netherlands.³⁰ The United Kingdom was invited to join this union, but declined.³¹ In 1967, the Merger Treaty provided that the four institutions³² created by the ECSC Treaty serve the European Communities jointly.³³

The United Kingdom joined the EEC on January 1, 1973 along with Denmark and Ireland³⁴ mainly because of the potential economic and labor improvements inherent in membership.³⁵ On July 1, 1987, the Single European Act became effective, which provided for a single, internal market within the EEC.³⁶ The Treaty on European Union (TEU), which entered into force on November 1, 1993, formed the EU and provided for "economic, monetary, and political union."³⁷ The Treaty of Amsterdam formed the present European Community in 1997.³⁸ In this Note, the countries that are parties to this treaty will collectively be referred to as the EU.

and the Court's Latest Challenge, 18 HOUS. J. INT'L L. 833, 836 (1996).

29. Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11 [hereinafter EEC Treaty].

30. EURATOM TREATY pmb.

31. Roger J. Goebel, *The European Union Grows: The Constitutional Impact of the Accession of Austria, Finland and Sweden*, 18 FORDHAM INT'L L.J. 1092, 1094 (1995).

32. The four institutions are Commission, Council, Parliament, and European Court of Justice (ECJ). White, *supra* note 28, at 836.

33. The three European Communities are the ECSC, Euroatom, and the EEC. White, *supra* note 28, at 836.

34. *Id.*

35. Allen Neely, U.K. Resistance to European Integration: An Historical and Legal Analysis With an Examination of the United Kingdom's Recent Entry into the European Monetary System, 10 DICK. J. INT'L L. 113, 114 (1991).

36. White, *supra* note 28, at 836.

37. TREATY ON EUROPEAN UNION pmb., Feb. 7, 1992, O.J. (C 191) 4 (1992) [hereinafter TEU].

38. Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, Oct. 2, 1997, O.J. (C 340) 1 (1997) [hereinafter Treaty of Amsterdam].

II. RELATIONS BETWEEN NAFTA COUNTRIES, THE EU, AND UNITED KINGDOM

A. THE UNITED KINGDOM'S RELATIONSHIP WITH THE EU

1. *Development of a common market: From EEC to the EU*

European unification began in 1951 with the formation of the ECSC and the EEC, forerunners of the present-day EU.³⁹ The United Kingdom's ties to the ECSC and the EEC were troubled, with a late membership application in 1962⁴⁰ and the halting of negotiations in 1963⁴¹ due to fears of eroding national sovereignty.⁴² The United Kingdom debated the issue internally until electing to join formally in 1972.⁴³ When the United Kingdom joined the European Economic Community, it entered into the Community as a "dualist" country,⁴⁴ meaning that the treaty would not become part of U.K. domestic law unless passed by an Act of Parliament.⁴⁵ The treaty became U.K. law with Parliament's passage of the European Communities Act of 1972.⁴⁶

The EEC became the EU in 1992 through the TEU.⁴⁷ The TEU established the common goal of a single European currency.⁴⁸ The TEU has a wider policy scope than the EEC did, including issues such as a "common foreign and security policy" and "justice and home affairs."⁴⁹ The Treaty of Amsterdam subsequently amended the TEU⁵⁰ and created the current Treaty Establishing the European Community (EC Treaty).⁵¹

39. Neely, *supra* note 35, at 114.

40. *Id.*

41. *Id.*

42. This position was summarized by Hugh Gaitskell of the U.K. Labour Party when he warned of the "end of United Kingdom as an independent European state . . . the end of a thousand years of history." *Id.* at 118; *See also infra* Part II(a)(2).

43. Neely, *supra* note 35, at 113.

44. Michael H. Lee, *Revolution, Evolution, Devolution: Confusion? The Erosion of the "Supremacy of Parliament" and the Expanding Powers of the Courts in the United Kingdom*, 23 SUFFOLK TRANSNAT'L L. REV. 465, 466 (2000).

45. *Id.*

46. *Id.*

47. Tore Totdal, *An Introduction to the European Community and to European Community Law*, 75 N.D. L. REV. 59, 62-63 (1999).

48. TEU art. B.

49. TEU art. B.

50. Treaty of Amsterdam pmbl.

51. TREATY ESTABLISHING THE EUROPEAN COMMUNITY, Nov. 10, 1997, O.J. (C

EU law has supremacy over the law of its member states through the doctrine of direct effects. This doctrine was developed through European Court of Justice (ECJ) cases concerning the application of community law before national courts⁵² and allows the EU to override the national courts and legislatures of its member states if national law is contrary to EU law.⁵³ The doctrine of direct effects also requires that members of the EU coordinate their economic policies to ensure commonality.⁵⁴

2. Double-edged sword: Internal conflict between nationalism and benefits of a global economy

The United Kingdom's attitude toward its perceived decreased national sovereignty has been a major factor in its resistance against integrating with Europe.⁵⁵ EC proposals seeking to control the United Kingdom's internal affairs in certain areas such as agriculture,⁵⁶ immigration,⁵⁷ and monetary policy⁵⁸ have met resistance and have been perceived as a threat to the United Kingdom's sovereignty. Language from U.K. leaders also indicates that there is widespread concern over the sovereignty of the United Kingdom as a state and the national identity of its citizens.⁵⁹ This concern has given rise to a U.K. group called "Eurosceptics," referring to those who generally criticize the United Kingdom's involvement with the EU.⁶⁰

Eurosceptics mainly consist of senior members of the

340) 3 (1997) [hereinafter EC TREATY].

52. Ronald A. Brand, *Direct Effect of International Economic Law in the United States and the European Union*, 17 NW. J. INT'L L. & BUS. 556, 572 (1996-97).

53. "The European Court of Justice has followed a steady course in finding Community law to be both directly effective in the national courts of the Member States and to have primacy over national legislation." *Id.*

54. Article 99 states that "Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council. . ." EC TREATY art. 99.

55. Neely, *supra* note 35, at 117.

56. *Id.* at 124.

57. *Id.* at 127.

58. *Id.* at 130.

59. U.K. leaders from both the Labour and Conservative Parties have expressed concern over the U.K. national identity. *Id.* at 114. Hugh Gaitskell, a member of the Labour Party, warned of the end of United Kingdom as an independent state. *Id.* Prime Minister Margaret Thatcher, a Conservative Party member, gave "dire warnings of the dilution of national identity, the sharing of political power and the emergence of a Brussels 'superstate.'" *Id.* at 118.

60. The Impact on the U.S. Economy of Including the United Kingdom in a Free Trade Arrangement With the United States, Canada, and Mexico, USITC Pub. 3339, Inv. No. 332-409 at 1-3 (Aug. 2000) [hereinafter ITC Report].

United Kingdom's Conservative Party.⁶¹ Despite their criticism of the United Kingdom's involvement with the EU, Eurosceptics advocate U.K. membership in NAFTA.⁶² Opponents view this proposal as a political method to reduce or sever ties with the EU.⁶³ Despite its potential effects on relations with the EU, Eurosceptics believe that NAFTA membership is plausible and believe that any EU legal action would violate the policies of the World Trade Organization (WTO).⁶⁴

The United Kingdom has historically resisted integrating with the rest of Europe. Part of the reason lies with the geography of the United Kingdom. As an island, the United Kingdom has been isolated from the rest of Europe, prompting some Britons to view themselves as "a small island anchored off a politically turbulent continent."⁶⁵ This attitude furthered the development of the U.K. Navy in previous centuries, allowing U.K. colonization of lands beyond Europe.⁶⁶ The development of the U.K. economy centered on colonization and "there was little incentive to pursue ties with the continent."⁶⁷

Centuries of economic, military, and political successes through colonization fostered an "independent spirit" among Britons.⁶⁸ The United Kingdom did not experience the same degree of economic devastation as the rest of the European continent after 1945.⁶⁹ Instead, the United Kingdom emerged trium-

61. Nicholas Watt, *Major Warns Tories Against U.S. Trade Ties*, THE GUARDIAN (London), Sept. 12, 2000, at 6.

62. Nicholas Watt, *Top Tories' Secret Plot to Quit EU: Eurosceptic Conservatives in Talks With Americans Over Trade Deal That Could Replace Links to Continent*, THE GUARDIAN (London), Mar. 18, 2000, at 2.

63. *Id.*

64. Melissa Kite, *Hague 'Should Take Britain Into Nafta'*, THE TIMES OF LONDON, July 26, 2000, at 10.

65. Neely, *supra* note 35, at 116 (quoting Northedge, *Britain and the EEC: Past and Present*, in *BRITAIN AND THE EEC* 20 (Roy Jenkins, ed. 1982)).

66. The easy access to the sea which the British Isles affords led naturally to a national preoccupation with conquering the sea. *Id.* at 116. Britain, "with its vast scattered Empire and innumerable Imperial Outposts and its unchallenged naval might, virtually policed the world for half a century or more." C.G. BAMFORD & H. ROBINSON, *GEOGRAPHY OF THE EEC* 12 (1983).

67. Neely, *supra* note 35, at 116.

68. Neely writes that:

The independent spirit of the U.K. is to be expected in light of their great economic, military, and political successes of the past several centuries. While maintaining a far-reaching colonial empire, the United Kingdom (U.K.) was at the forefront of the industrial and agricultural revolutions of the eighteenth and nineteenth centuries.

Id. at 116.

69. *Id.*

phant.⁷⁰ After World War II, the United Kingdom desired to maintain a status comparable with the United States and the Soviet Union, the major victorious nations.⁷¹ This caused the United Kingdom to see itself as somewhat separate from the “defeated or occupied”⁷² nations of Europe. The United Kingdom was unable to possess the global influence of the other Allied powers, but this postwar attitude affected future Prime Ministers and explained their reluctance to join an integrated Europe.⁷³

Another factor in the United Kingdom’s resistance to EU membership was that the United Kingdom had historically been in conflict with countries on the European continent. The United Kingdom organized international alliances against threats by powerful states, such as France during the Napoleon era and Germany during the first half of the twentieth century.⁷⁴ With France serving as a leader in the movement toward a unified Europe, centuries of conflict between the United Kingdom and France dampened enthusiasm among Britons to forge an alliance with France, despite the potential benefits.⁷⁵ Sentiments against Germany after World War II also negatively affected U.K. attitudes toward the European continent.⁷⁶

Despite the resistance toward integration with the EU, the United Kingdom recognized significant benefits from EU membership.⁷⁷ In areas such as employment, labor, and the economy, the United Kingdom saw competition with its EU counterparts as disadvantageous.⁷⁸ Though Eurosceptics may prefer NAFTA membership and withdrawal from the EU, there has not been a serious proposal for the United Kingdom to rescind

70. Neely argued that when World War II ended, the U.K. did not experience the destruction of the European continent. This led United Kingdom to see itself as “proud and victorious” for its “national achievement” and U.K. politicians found it difficult to “stoop to join forces with such ‘down-and-outs.’” *Id.* (quoting Northedge, *supra* note 65, at 20).

71. Roy Jenkins, *United Kingdom and Europe: Post-Blair’s Election and the Pre-Single Currency*, 21 *FORDHAM INT’L L.J.* 630, 630 (1998).

72. *Id.*

73. *Id.*

74. Neely, *supra* note 35 at 117. “Traditionally, the U.K. mind-set has been one of organizing ‘international coalitions against the most threatening state of the day, the France of Louis XIV and Napoleon, the Germany of the Kaiser and Hitler.” *Id.* (quoting Northedge, *supra* note 65, at 20-21).

75. *Id.*

76. *Id.*

77. *Id.* at 117.

78. *Id.* at 117-118.

its membership from the EU⁷⁹ because the policies of the two largest parties in the United Kingdom officially advocate EU membership. Conservative Party policy is to forge free trade ties with North America while remaining a member of the EU.⁸⁰ Labour Party philosophy also advocates EU membership as long as such membership will "strengthen [the U.K.'s] economic interests and maintain [the U.K.'s] influence in Europe."⁸¹ In spite of U.K. nationalism, "the economic realities of the late twentieth century . . . mandated compromise"⁸² with the EU.

The United Kingdom's membership in the EU has not been superficial, as the United Kingdom tends to implement EU directives more completely and rigorously than other EU members.⁸³ As a result, membership in the EU has had a significant influence on U.K. economic and legal policies.⁸⁴ It is estimated that as much as two-thirds of U.K. laws are a reflection of EU policy.⁸⁵

B. CURRENT RELATIONS BETWEEN THE UNITED STATES AND THE UNITED KINGDOM

In November 1999, the issue of U.K.-NAFTA ties received attention from the U.S. Senate Finance Committee, when Senators William Roth⁸⁶ and Daniel Patrick Moynihan⁸⁷ expressed support for the proposed trade arrangement.⁸⁸ On November

79. *Id.* (noting that with the existence of a "long-standing debate on the merits of EU policy in the U[nited] K[ingdom] . . . the certainty of U.K. membership in the EU is generally not considered in political debate").

80. Watt, *supra* note 61, at 6.

81. Steve McCabe, *Anti-Euro Brigade Threat to Economy*, THE BIRMINGHAM POST, Aug. 9, 2000, at 13.

82. *Id.* at 117.

83. ITC Report, *supra* note 60, at 1-3.

84. *Id.* (claiming that the "commercial and legal structures" of United Kingdom have evolved from its membership in the EU). The report also noted that municipal law of member states is shaped by the EU, which "increasingly regulates business, social, health, safety, and other norms in Western Europe." *Id.* at 1-2.

85. *Id.* at 1-3.

86. At the time, Senator Roth, a Republican, represented Delaware and chaired the Senate Finance Committee. Stephen Barr, *IRS Watchdog Says Bark Was Unintended: Inspector's Memo Hinted at Case Quotas for Agents*, WASH. POST, Nov. 19, 1999, at A3.

87. At the time, Senator Moynihan represented New York and was the ranking Democrat on the Senate Finance Committee. Ellen E. Schultz, *Bill Would Require Greater Disclosure When Employers Change Pension Plans*, WALL ST. J., Mar. 19, 1999, at B8.

88. Andrew Marshall, *U.S. Senators Call for Britain to Join Nafta*, THE INDEPENDENT (London), Nov. 20, 1999, at 21.

18, 1999, under the authority of Section 1332(g) of the Tariff Act of 1930,⁸⁹ the Senate Finance Committee formally requested the U.S. International Trade Commission (ITC) to "investigate the impact of including the United Kingdom in a free trade agreement with the United States, Canada, and Mexico."⁹⁰ The ITC Report resulted from a nine-month study analyzing the impact of the proposed trade arrangement on the economic relationships between the countries.⁹¹

The ITC Report made special note of the "healthy trade relationship" between the United States and the United Kingdom leading to increased trade and investment.⁹² With the United States as an ally after World War II, the United Kingdom did not believe a close alliance with Europe was necessary.⁹³ Support from the United States for a united Europe dampened this relationship during the 1960s.⁹⁴ However, many Britons still feel a "special relationship" with the United States.⁹⁵ This sen-

89. The statute reads, in pertinent part, that "[t]he commission shall put at the disposal of . . . the Committee on Finance of the Senate, whenever requested, all information at its command, and shall make such investigations and reports as may be requested by the . . . said committees or by either branch of the Congress." Tariff Act of 1930, 19 U.S.C.A. § 1332(g) (1988).

90. ITC Report, *supra* note 60 at 1-1.

91. *Id.* Specifically, the Senate Finance Committee requested that the Commission's report include:

- (i) an overview of the current economic relationship among the United States, Canada, Mexico, and the United Kingdom (U.K.);
- (ii) the identification of all existing barriers to trade and investment among the United States, Canada, Mexico, and the U.K.;
- (iii) for the United States and the U.K., the estimated effect of eliminating these barriers on a number of economic aggregates; and
- (iv) a discussion on any increase in the quality or selection of goods, or other consumer benefits.

Id. at ix.

92. *Id.* at x.

93. "Britain did not feel the need to look to Europe for friends when she was the 'close ally and associate of her great comrade-in-arms, America.'" Neely, *supra* note 35 at 117 (quoting M. SHANKS & J. LAMBERT, *THE COMMON MARKET TODAY AND TOMORROW* 18 (1962)).

94. *Id.*

95. Zbigniew Brzezinski, *Forging a Bipartisan and Strategic Approach to Foreign Affairs*, 43 U. MIAMI L. REV. 5, 7 (1988).

There is no doubt, for example, that our Anglophile feelings had a lot to do with the emergence of the Anglo-American alliance in World War II, and with the special relationship between the United States and Great United Kingdom, that remains after the war and extends into the alliance that we undertook with Europe.

timent is demonstrated by the fact that the United States is the United Kingdom's largest trading partner.⁹⁶ The ITC report mentioned the "similar business cultures, the English language, similar law and tax structures, and shared liberalization in telecommunications, financial sectors, and energy" as reasons for the vast trade between the two countries.⁹⁷

The question remains whether there are advantages to the United Kingdom joining NAFTA. U.S. Senator Phil Gramm⁹⁸ outlined some advantages during his speech to the Centre of Public Policy in July 2000. Gramm has been an advocate of free trade during his years in the Senate and believes that there should be "no impediments to the trade of legally-produced and sold goods."⁹⁹ To accomplish his hope for free trade throughout the world, the Senator argues that free trade must exist between the United States and Europe.¹⁰⁰ An agreement between the United Kingdom and the United States would be a vital first step in creating an eventual trading zone between Europe and North America.¹⁰¹ He sees the EU as a hindrance to free trade¹⁰² since regional trade blocs result in increased protectionism toward those outside the blocs.¹⁰³

Gramm asserts that global free trade brings about more positive changes than does political diplomacy.¹⁰⁴ He credited the market forces from the free trade policies of the United States with Asia and Western Europe as bringing down communism in Eastern Europe and the Soviet Union.¹⁰⁵ He contends that the current EU promotes protectionism¹⁰⁶ and cites

Id.

96. Trade with the United States totals 13% of total U.K. trade and 90% of U.K. trade with North America. ITC Report, *supra* note 60, at 2-1.

97. *Id.* at 1-5.

98. At the time, Senator Gramm was a Republican from Texas and chairman of the Senate Committee on Banking, Housing, and Urban Affairs. *Likely New Senate Committee Chairmen*, WASH. POST, May 25, 2001, at A37.

99. Gramm Address, *supra* note 5.

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.*

104. Gramm discussed the period after World War I as a time when the United States attempted to promulgate changes in the world through treaties. *Id.* However, this policy was not successful, according to Gramm, and after World War II, the U.S. policy focused on economics. *Id.* With \$13 billion in aid at the time through the Marshall Plan, the U.S. markets purchased goods in Asia and Europe and, according to Gramm, world trade expanded markets in Europe and Asia. *Id.*

105. Gramm Address, *supra* note 5.

106. *Id.*

examples of nations that were required to increase tariffs as a condition to EU membership.¹⁰⁷ The Senator claims that this condition of membership is a violation of Article XXIV of the GATT, which prohibits regional trading blocs from erecting trade barriers between member nations and non-member nations.¹⁰⁸ He views the United Kingdom's involvement with NAFTA as a potential disruption of a regional trading bloc, which will facilitate free trade throughout the world.¹⁰⁹

Gramm advocates a free trade agreement between the EU and NAFTA countries.¹¹⁰ However, despite his belief in free trade throughout the world, he feels that such an agreement is not currently possible¹¹¹ because countries such as Greece and France would not support the arrangement.¹¹²

C. RELATIONS BETWEEN THE UNITED STATES AND THE EU

Historically, the United States has supported unification of Europe and maintained close ties with the EU.¹¹³ The EU is the United States' single largest trading and investment partner,¹¹⁴ which has prompted several cooperative efforts between the two. In November 1990, the United States and the EU adopted the Transatlantic Declaration,¹¹⁵ which outlines economic, scientific, educational, and cultural cooperation between the two, and establishes biannual meetings between the presidents of the U.S. and the EU Commission.¹¹⁶

In July 1994, a joint U.S.-EU summit was held in Berlin.¹¹⁷ The purpose of the summit was to establish cooperative efforts in the areas of foreign and security policy, combat organized

107. *Id.*

108. GATT art. XXIV. Gramm states that Article XXIV requires that "a regional arrangement must facilitate trade among members not raise trade barriers between its members and other nations." Gramm Address, *supra* note 5.

109. Gramm Address, *supra* note 5.

110. *Id.*

111. *Id.*

112. *Id.*

113. John R. McIntyre, *Dispute and Conflict Resolution in U.S.-EU Economic Relations: The Antidote of Regulatory Cooperation*, 18 FORDHAM INT'L L.J. 1698, 1699 (1995).

114. *Id.*

115. Transatlantic Declaration on EC-U.S. Relations, Nov. 22, 1990, U.S.-EU, available at http://europa.eu.int/comm/external_relations/us/economic_partnership/declaration_1990.htm. [hereinafter Transatlantic Declaration].

116. McIntyre, *supra* note 113, at 1699.

117. *Id.*

crime and drug trafficking, and promote democracy and economic cooperation in Central and Eastern Europe.¹¹⁸

Relations between the United States and the EU took a further step toward increased cooperation in December 1995, when President Clinton, Prime Minister Felipe Gonzalez,¹¹⁹ and President Jacques Santer¹²⁰ signed the New Transatlantic Agenda (NTA).¹²¹ The NTA is designed to further cooperation and consultation between the United States and the EU in the areas of diplomacy, response to global societal challenges, expanding international economic relations, and people-to-people relations.¹²² The main purpose of the NTA was to determine the future economic and political partnership between the United States and the EU in the post-Cold War era.¹²³ Ambassador Stuart Eizenstat¹²⁴ proclaimed the signing of the NTA "the most significant step in U.S.-EU relations since the beginning of European integration in the 1950s."¹²⁵

118. *Id.* at 1700.

119. Prime Minister Gonzalez was prime minister of Spain from 1982-1996. Carla Vitatham, *Socialist Party in Spain Elects a New Leader*, WALL ST. J. EUR., July 24, 2000, at 2.

120. President Santer was president of the European Commission, the executive body of the EU. Anne Swardson, *EU Nations Find Accord on Budget, Plan Looks Ahead to Expanded Union*, WASH. POST, Mar. 26, 1999, at A30.

121. Hugo Paemen, *Looking Back . . . And Ahead*, 23 FORDHAM INT'L L.J. 529, 530 (2000).

122. *The New Transatlantic Agenda*, Dec. 3, 1995, U.S.-EU, 6 DEP'T ST. DISPATCH, Dec. 4, 1995, at 894-95 [hereinafter NTA].

123. *Id.* at 894.

124. Ambassador Eizenstat served as the U.S. Representative to the EU. Craig R. Karpe, *European Cultural Protectionism and the Socioeconomic Forces That Will Defeat It*, 5 IND. INT'L & COMP. L. REV. 425 (1995).

125. Paemen, *supra* note 121, at 530.

III. MEMBERSHIP IN NAFTA WILL ADVERSELY AFFECT THE UNITED KINGDOM'S ECONOMIC, LEGAL, AND POLITICAL RELATIONSHIPS

A. ECONOMIC CONSEQUENCES OF U.K. MEMBERSHIP IN NAFTA: THE NEGATIVES OUTWEIGH THE POSITIVES

1. *The Study Conducted by the United States International Trade Commission*

The Senate Finance Committee, when commissioning the ITC Report, requested that that the ITC study the effects of U.K. membership in NAFTA on the economies of the United States and the United Kingdom in the following areas:

- (a) the volume of trade in goods and services between the two countries; (b) Gross Domestic Product (GDP) for each country resulting from increased trade and investment; (c) employment across industry sectors; (d) amount of foreign direct investment (FDI) between the two countries; and (e) final prices paid by consumers in each country.¹²⁶

The ITC Report analyzed each of the above items under two models. The first was a U.K.-NAFTA agreement with the United Kingdom remaining a member of the EU.¹²⁷ The second looked at a U.K.-NAFTA agreement with the United Kingdom withdrawing from the EU.¹²⁸ Under the first model, trade between the United States and the United Kingdom modestly increases.¹²⁹ The second model demonstrates similarly modest increases in U.S.-U.K. trade.¹³⁰ However, the second model shows a large decrease in trade between the United Kingdom and Europe.¹³¹ These sharp decreases are based on the trade barri-

126. ITC Report, *supra* note 60, at Appendix A (Letter from Senator William V. Roth, Jr., Chairman of the Senate Finance Committee, and Senator Daniel Patrick Moynihan, ranking member of the Senate Finance Committee, to the Honorable Lynn M. Bragg, Chairperson of the United States International Trade Commission dated November 18, 1999).

127. ITC Report, *supra* note 60, at 4-4.

128. *Id.*

129. U.S. exports would increase by \$1.9 billion (0.24%) and imports would increase by \$2.9 billion (0.32%). *Id.* at 4-5. U.K. exports would increase by \$1.7 billion (0.57%) and imports would increase \$3 billion (0.94%) under the same model. *Id.*

130. Under this model, U.S. exports are predicted to increase by \$2 billion (0.29%). *Id.* at 4-8. Imports are predicted to increase by \$5.2 billion (0.61%). *Id.* at 4-12.

131. Under the same model, U.K. exports are expected to increase by \$8.8 billion

ers that the United Kingdom would face from the EU upon withdrawal.¹³² As statistics show under both models, with the exception of U.K.-EU trade, the effect of U.K. membership in NAFTA on exports and imports would be minimal.

The United Kingdom and United States economies would see negligible growth if the United Kingdom joined NAFTA. Under both models, the ITC found minimal effects on various economic indicators for the United Kingdom and the United States. Gross Domestic Product (GDP) gains under both models appear to be statistically insignificant.¹³³ U.K. and U.S. labor markets would be largely unaffected by membership in NAFTA, with the largest increases in the U.K. textile and transportation industries and the U.S. agricultural industry.¹³⁴

Additionally, foreign direct investment (FDI) would see minimal changes because of U.K. membership in NAFTA.¹³⁵ FDI are assets within a foreign country held by a domestic corporation.¹³⁶ FDI accounts for between thirty to forty percent of world trade.¹³⁷ Increasing FDI expands world trade because foreign corporations purchase goods and supplies from their home countries.¹³⁸ Some trade experts theorized that FDI would in-

to NAFTA members, but decrease by \$18.8 billion to EU members. *Id.* Total U.K. imports would decrease by \$13.8 billion (4.34%). *Id.*

132. *Id.*

133. Using the first model, U.K. GDP would increase by \$100 million (0.10%) and U.S. GDP would increase by \$55 million (near 0%). ITC Report, *supra* note 60, at 4-6. The ITC Report noted that the GDP for the EU would decrease by \$1 million and the GDP for Canada would decrease by \$42 million. *Id.* Under the second model, the U.K. GDP would decrease by \$173 million (0.02%) and the U.S. GDP would increase by \$86 million (less than 0.001%). *Id.* at 4-13. GDP for the EU would decrease by \$708 million and the GDP for Canada would decrease by \$49 million. *Id.*

134. Looking at both skilled and unskilled laborers, the demand under the first model agreement appears to be small in both the United States and the United Kingdom. *Id.* at 4-7. The largest demand increase in the United States would be in the agricultural sector, with an increase of 0.15%. *Id.* at 4-11. The largest demand increase in the United Kingdom would be in the textiles and apparel sector, with a projected increase of 1.26%. *Id.* Most other sectors would likely increase or decrease by less than 0.25%. *Id.* Under the second model, the demand for skilled and unskilled labor would see modest increases projected to be between 0.01 and 0.23% in the United States. *Id.* at 4-17. The U.K.'s labor market would see more dramatic changes, especially in the textiles and apparel sector and the transportation sector. *Id.* The textiles sector would see a decrease of 3.4% whereas the transportation sector would decrease by 6%. *Id.*

135. *Id.*

136. Charles O. Roehrdanz, *Reducing the U.S.-Japan Trade Deficit by Eliminating Japanese Barriers to FDI*, 4 MINN. J. GLOBAL TRADE 305 (1995).

137. *Id.*

138. *Id.*

crease if the United Kingdom altered its relationship with the EU.¹³⁹ This increase is due to decreasing the economic regulatory burden on the United Kingdom from the EU.¹⁴⁰ The majority of trade experts interviewed by the ITC agreed that FDI would decline if U.K.-EU relations were altered.¹⁴¹ Many experts felt that investment would decline if the United Kingdom did not adopt the euro,¹⁴² making it appear likely that investment would decline if a more drastic move were adopted by altering U.K.-EU relations.¹⁴³

The ITC Report also noted that several experts do not believe United Kingdom's adoption of the euro is necessary to attract FDI.¹⁴⁴ Other factors have attracted foreign investors to the United Kingdom including relatively low wages, tax rates, business regulations, and a pro-business legal system.¹⁴⁵ These factors will continue to attract business investment in the United Kingdom.¹⁴⁶ The ITC Report stated that the United Kingdom is an attractive foreign investment choice because it is within the EU's Common External Tariff.¹⁴⁷ Companies also invest in the United Kingdom because they see the United Kingdom's EU membership as a method of gaining access to the EU's political decision makers.¹⁴⁸ Applying the two models, the ITC Report found that FDI would show almost no change under both models.¹⁴⁹

Applying both models, the ITC Report demonstrated that manufacturing output would show insignificant changes.¹⁵⁰ The

139. ITC Report, *supra* note 60, at 1-4.

140. *Id.*

141. *Id.*

142. The euro is the single European monetary currency, currently adopted by eleven EU countries, but not yet by United Kingdom. Rosali Pretorius, *European Monetary Union: Part I*, I.B.F.L. 1998 16(12), 131-135, 132 (1998).

143. ITC Report, *supra* note 60, at 1-4. "Many U.K. government, business, and union contacts reported that evidence exists from static inward investment figures for 1998 and in highly publicized remarks of Japanese automobile manufacturers that the U.K. stands to lose inward investment if it does not join the Single European Currency." *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.* (noting that many investors invest in United Kingdom because of their membership in the EU).

148. ITC Report, *supra* note 60, at 1-4.

149. Using the first model, the ITC reported that U.K. FDI in the United States would increase by 0.41% and U.S. FDI would increase by 0.27% in the United Kingdom. *Id.* at 4-21. Under the second model, the ITC studied only U.S. FDI in the United Kingdom and found a small decrease of 0.56%. *Id.*

150. Under the first model presented, the ITC found that U.K. manufacturing

ITC reiterated the view of academics and government officials that output from the EU would substantially decrease if the United Kingdom were to leave the EU.¹⁵¹ Examining the prices that would be paid by consumers, the ITC used only the second model, finding modest decreases across market sectors, although the decreases in the United States were less modest than in the United Kingdom.¹⁵²

The ITC also looked closely at the relationship between Europe and the United Kingdom.¹⁵³ Business and government experts were divided on whether the effect would be detrimental to the United Kingdom.¹⁵⁴ Some took the view that a "substantive alteration" to the relationship between the United Kingdom and the EU could be damaging.¹⁵⁵ The EU could apply certain tariffs in U.K. sectors such as financial services, agriculture, and goods and services.¹⁵⁶ Some commentators argued that the EU has a high trade volume with the United Kingdom and would not want to impose excessive tariffs and barriers upon a country in which it highly invests.¹⁵⁷ Business leaders are also concerned that the United Kingdom will have to renegotiate all of the trade agreements the EU signed on behalf of the United Kingdom.¹⁵⁸ This could affect the renegotiated agreements, as the United Kingdom's position may not be "as strong as that of the EU as a whole."¹⁵⁹

There are two other major areas that could be affected by a new NAFTA agreement that includes the United Kingdom: the

output in the United States is projected to increase \$408 million (0.27%). *Id.* at 4-22. The ITC also found that American manufacturing output in the United Kingdom would likely increase by \$413 million (0.27%). *Id.* Under the second model, the ITC looked at only foreign manufacturing output in the United Kingdom. *Id.* The ITC predicted a decrease of \$851 million (0.56%) of U.S. output in the United Kingdom. *Id.* at 4-22.

151. *Id.*

152. The ITC found modest increases in U.S. prices, ranging from 0.15% to 0.31%. *Id.* at 4-17. In the United Kingdom, the ITC found modest decreases across market sectors, though less modest than the U.S. increases, ranging from 0.25% to 1.18%. *Id.*

153. *Id.* at 1-2.

154. ITC Report, *supra* note 60, at 1-3. (stating that this could cause commercial uncertainty and result in "currency volatility and investment flight").

155. The business leaders were especially concerned with the effect that may be incurred through the "adjustment period" after the United Kingdom and the EU alter their relationship and that this "could be extremely damaging to the U.K. economy." *Id.* at 1-4.

156. *Id.* at 1-3.

157. *Id.*

158. *Id.* at 1-3-1-4.

159. *Id.* at 1-4.

EU's regulatory burden and agriculture. Economists are split as to whether the EU regulations help or hinder U.K. economic competitiveness.¹⁶⁰ The EU social charter imposes several regulations on employee and labor relations and workplace rights.¹⁶¹ Difficulty in determining the actual business costs of the EU social policy also makes assessing the extent of the regulatory burden challenging.¹⁶² If the United Kingdom left the EU and joined NAFTA, U.K. businesses would no longer be subject to these regulations.

Agriculture is the other major area that would be affected.¹⁶³ Currently, U.K. agriculture is subject to the Common Agricultural Policy (CAP), which regulates agricultural prices.¹⁶⁴ The ITC Report noted that there is a "virtual consensus" that these price regulations allow U.K. agricultural products to be sold globally.¹⁶⁵ Very few U.K. agricultural sectors would be competitive in the world's agricultural markets without this price support structure.¹⁶⁶ A minority of economists disagreed and argued that the United Kingdom would benefit from the lower prices that elimination of the CAP would provide.¹⁶⁷

The ITC Report provided the most extensive study to date on U.K. membership in NAFTA, although international economist Keith Marsden also studied the issue for the Centre for Policy Studies in London.¹⁶⁸ Despite the fact that both Gramm and Marsden believe that NAFTA is an opportunity for greater economic benefit for the United Kingdom, the ITC Report demonstrated that the economic benefits would be minimal.¹⁶⁹ Nei-

160. ITC Report, *supra* note 60, at 1-3.

161. *Id.* (noting such requirements as the Collective Redundancies Directive concerning redundancy payments, EU mandates requiring companies to meet with unions in certain circumstances, and the EU Acquired Rights Directive protecting the rights of employees when their companies are taken over and the EU Social Charter, which outlines several rights of employees in the workplace).

162. *Id.*

163. *Id.* at 1-5.

164. The ITC report described three methods of price regulation: "price supports, achieved by creating tariff barriers, providing export subsidies and purchasing excess supplies; taxpayers' support, channeled directly to farms, based on the number of animals held and land acreage; and a series of price controls-price supports or direct payment." *Id.*

165. *Id.*

166. ITC Report, *supra* note 60, at 1-5.

167. *Id.*

168. Keith Marsden, *Towards a Treaty of Commerce—Euroland and NAFTA*, Centre for Policy Studies, at <http://www.cps.org.uk/nafta.htm> (last visited Jan. 11, 2001).

169. *Id.*

ther Gramm nor Marsden presented statistical evidence in their speculations contrary to the ITC's findings.¹⁷⁰ Therefore, it does not appear that there are significant economic benefits that would warrant the United Kingdom changing its current economic trade relationships.

2. *The Study Conducted by the Centre for Policy Studies*

Early in 2000 Marsden conducted a study to examine whether the United Kingdom should continue to acquiesce to EU trade policy or join a different trade agreement, most notably NAFTA.¹⁷¹ Marsden's study found that NAFTA countries¹⁷² have larger and more prosperous markets than the EU, with thirty-eight percent more consumers and a twenty percent higher rate of GDP.¹⁷³ In addition, the average worker in a NAFTA country is more likely to earn more and pay fewer taxes than the average EU worker.¹⁷⁴ For example, in the United States, a single worker with no children averages a net income of \$20,388 per year, which is higher than the average German single worker, who earns \$16,577 per year.¹⁷⁵ Dual-income couples earning wages in the United States average a net income of \$35,151, while in Germany they average \$31,199.¹⁷⁶

Marsden's study also concluded that the economies of NAFTA are showing greater expansion than the economies of the EU.¹⁷⁷ The GDP has grown 3.6 percent among NAFTA countries over the past seven years, while in the EU; the GDP has grown only 1.8 percent.¹⁷⁸ NAFTA countries engage in more trade than EU countries.¹⁷⁹ Approximately sixty percent of NAFTA's imports come from beyond NAFTA countries whereas only thirty-seven percent of the EU's imports come from beyond the EU countries.¹⁸⁰ The EU countries rely more heavily on subsidies than NAFTA countries. Reported subsidies in the EU to-

170. *Id.*

171. *Id.*

172. The NAFTA Countries are the United States, Canada, and Mexico. NAFTA, *supra* note 20, pmb1.

173. Marsden, *supra* note 168.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. Marsden, *supra* note 168.

180. *Id.*

total \$203 billion versus \$33 billion in the United States.¹⁸¹ Based on the foregoing examination showing NAFTA as more prosperous and a greater opportunity for U.K. trade, Marsden concluded that it might not be in the United Kingdom's best interest to remain in the EU.¹⁸²

B. LEGAL CONSEQUENCES OF U.K. MEMBERSHIP IN NAFTA

One issue raised with U.K. membership in NAFTA is whether the EU has any legal authority to prevent the arrangement. The legal precedence is not entirely clear, but there are suggestions that the EU would have the ability to block such an agreement.¹⁸³ The EU adheres to a Common Commercial Policy binding on all member states.¹⁸⁴ This policy provides for harmonious economic and market interests for the EU member states based on "uniform principles."¹⁸⁵ The policy also authorizes the EU Commission to "open the necessary negotiations" for "agreements with one or more [member] States or international organizations."¹⁸⁶ Whether this extends to the independent treaty-making powers of the EU member states has been disputed.¹⁸⁷

In 1975, the ECJ held that Article 113 of the EC Treaty was within the exclusive competence of the EU and that member states must adapt their interests to the common interests of the EU.¹⁸⁸ This holding could have the effect of member states adopting positions inconsistent with the EU, thereby disturbing the "institutional framework" of the EU.¹⁸⁹ In areas where the EU has legislatively acted, this ruling restricts a member state's regulation to the extent that it differs from the EU act.¹⁹⁰ This

181. *Id.*

182. *Id.* Some in United Kingdom who advocate joining NAFTA feel that NAFTA members "behaviour are more congenial." *Id.*

183. Conceivably, the ECJ's holding that it can bind EU member states without their consent through an international agreement suggests that the EU could block a treaty concluded by a member state. Judith Hippler Bello, *International Decisions*, 89 AM. J. INT'L L. 772, 787 (1995).

184. EC TREATY art. 133.

185. EC TREATY art. 133.

186. EC TREATY art. 133.

187. Rudolf Geiger, *External Competences of the European Union and the Treaty-Making Power of its Member States*, 14 ARIZ. J. INT'L & COMP. L. 319, 320 (1997).

188. *Id.* at 323.

189. *Id.*

190. *Id.* at 324.

result renders the EU's treaty-making power exclusive.¹⁹¹ Member states are not permitted to make a treaty in an area already covered by EU law which would, "if not legally, but at any rate politically—endanger the application of EU law already enacted in the field concerned."¹⁹²

In 1994, the ECJ held that the EU could legally join international trade agreements that are binding on member states without the individual ratification of each member state.¹⁹³ The most notable example of this ECJ decision is EU membership in the World Trade Organization.¹⁹⁴ The EU claimed while negotiations would be "in very close connection with member states," the WTO's ratification was solely within the authority of the EU.¹⁹⁵ Member states disputed this position and claimed that authority for the ratification of the WTO agreement was joint and not exclusively with the EU.¹⁹⁶ The ECJ determined that pursuant to Article 113 of the EC Treaty, the EC has sole authority to conclude the multilateral agreements on trade in goods.¹⁹⁷ Previously, the ECJ had held that all trade transactions were under the scope of the Common Commercial Policy.¹⁹⁸ This precedent led to the 1994 ruling that the EU was exclusively authorized to conclude the WTO agreement.¹⁹⁹

The 1994 ECJ ruling could greatly affect the treaty-making power of the member states. Currently, member states of the EU are subject to the direct effects doctrine, which states that laws passed by the EU take precedence over the laws of the member states.²⁰⁰ If the EU's treaty-making power were an extension of the direct effect doctrine, then the EU would be imposing its sovereignty in an area that many member states consider fundamental to their existence as a "subject of international law."²⁰¹ Treaty-making power is one aspect of a state's capacity to "enter into relations with other States," one of the four qualifications of a State as a "person of international

191. *Id.*

192. *Id.*

193. Bello, *supra* note 183, at 772.

194. *Id.*

195. Case Law, *WTO—Agreement*, 1 COLUM. J. EUR. L. 338, 339 (1995).

196. *Id.*

197. Bello, *supra* note 183, at 772. The multilateral agreements were the WTO's General Agreement on Trade and Services (GATS), and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). *Id.*

198. Geiger, *supra* note 187, at 326.

199. *Id.*

200. Brand, *supra* note 52, at 572.

201. Geiger, *supra* note 187 at 320.

law.”²⁰² Member states have negotiated international agreements jointly with the EU, perhaps to maintain their seemingly limited sovereignty.²⁰³

Proponents of U.K. membership in NAFTA argue that any action by the EU against the United Kingdom for joining NAFTA would be contrary to the WTO's policy of encouraging the establishment of free trade unions.²⁰⁴ These proponents have misinterpreted the purpose of the WTO. The Final Act Embodying the Results of Uruguay Round of Multilateral Trade Negotiations (“Final Act”)²⁰⁵ established the WTO²⁰⁶ to facilitate international cooperation on trade and economic relations.²⁰⁷ The Final Act also adopted the principles of the GATT.²⁰⁸ The GATT, which was incorporated by the GATT 1994,²⁰⁹ provides states should not be refrained from entering into free trade

202. Montevideo Convention on Rights and Duties of States, December 26, 1933, art. 1, 49 Stat. 3099, 3100 [hereinafter Montevideo Convention]. “The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States.”

203. Geiger, *supra* note 1, at 320.

204. See Kite, *supra* note 64, at 10. The proponents are likely referring to Article XXIV of the GATT, incorporated by the WTO Agreement, which states that:

The Contracting parties recognize the desirability of increasing freedom of trade by the development through voluntary agreements, of closer integration of the economies of the countries parties to such agreements. They also recognize the purpose of a customs union or of a free trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories.

GATT art. XXIV.

205. Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 1125 (1994) [hereinafter Final Act]; See Thomas J. Dillon, Jr., *The World Trade Organization: A New Legal Order For World Trade?*, 16 MICH. J. INT'L L. 349, 350 (1995).

206. Marrakesh Agreement Establishing the World Trade Organization [hereinafter WTO Agreement], art. 1, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 1125, 1144 (1994).

207. Dillon, *supra* note 205, at 350.

208. *Id.*

209. The General Agreement on Tariffs and Trade (“GATT 1994”) shall consist of:

(a) the provisions in the General Agreement on Tariffs and Trade, dated 30 October 1947 . . . (b) the provisions of the legal instruments . . . that have entered into force under the GATT 1947 before the date of entry into force of the WTO Agreement

WTO Agreement, General Agreement on Tariffs and Trade 1994, April 15, 1994, Annex 1A, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 1125, 1154 (1994) [hereinafter GATT 1994].

agreements.²¹⁰ Since the EU is a member of the WTO, it must follow that the EU assure its member states observe the principles of the GATT, including allowing its member states to enter into free trade agreements.

Under the direct effects doctrine, EU law prevails over both legislation of the member states and their national courts.²¹¹ According to the doctrine of primacy, EU law takes precedence over the member states' municipal law even if the law was passed subsequent to the EU law.²¹² These two doctrines prevent member states from trumping EU law by passing their own law against it, a unique concept in international law.²¹³

The ECJ had held the GATT provisions are within the sole jurisdiction of the ECJ and are not to be interpreted by the national courts.²¹⁴ The ECJ also held that provisions within the GATT are to be applied toward relations between the EU and non-member parties, not within the EU itself.²¹⁵ In essence, this means that EU members cannot challenge actions based on the GATT unless the action is against a non-EU party.²¹⁶ EU member states "are formally GATT members but cannot participate in GATT dispute settlement proceedings [and] . . . cannot invoke GATT provisions before the Court of Justice either."²¹⁷ By denying member states the ability to invoke rights in a treaty to which they are signatories, the ECJ has demonstrated a transfer of sovereignty from the member states to the EU.²¹⁸ The ECJ has since ruled that the EU has "exclusive competence over international trade of goods,"²¹⁹ but that the EU has joint competence with member states regarding two other WTO agreements, the General Agreement on Trade and Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual

210. See generally GATT pmbl.

211. Brand, *supra* note 52, at 572.

212. *Id.* at 575.

213. *Id.*

214. Cases 267-269/81, *Amministrazione delle Finanze dello Stato v. Societa Petrolifera Inaliana SpA and others*, 1983 E.C.R. 801, 1 C.M.L.R. 354 (1984).

215. Case 266/81, *Societa Italiana per L'Oleodotto Transalpino (SIOT) v. Ministero delle Finanze*, 1983 E.C.R. 731.

216. Brand, *supra* note 52, at 579.

217. Fernando Castillo de la Torre, *The Status of GATT in EC Law, Revisited: The Consequences of the Judgment on the Banana Import Regime for the Enforcement of the Uruguay Round Agreements*, 29 J. WORLD TRADE 53, 58 (1995).

218. Brand, *supra* note 52, at 603.

219. James J. Callaghan, *Analysis of the European Court of Justice's Decision on Competence in the World Trade Organization: Who Will Call the Shots in the Areas of Services and Intellectual Property in the European Union?*, 18 LOY. L.A. INT'L & COMP. L.J. 497, 499 (1996).

Property Rights (TRIPS).²²⁰

GATT principles, which have been embraced by the WTO, encourage member states to enter into free trade agreements. As a party to the GATT 1994, the EU would seem to be violating these principles if it prevented the United Kingdom from entering into NAFTA. However, the United Kingdom is also a signatory to the EC Treaty, which means that it is bound to conform its interests to the Common Commercial Policy in Article 113. With the ECJ ruling that member states, such as the United Kingdom, cannot make treaties that are against EU law, if the ECJ holds that the United Kingdom joining NAFTA would be against the Common Commercial Policy, the United Kingdom could initiate a dispute settlement with the WTO. Though the WTO encourages free trade agreements, it is not clear how the WTO would resolve the issue. The WTO, through the principles adopted in the GATT 1994, officially encourages customs unions such as the EU.²²¹ It is not likely that the WTO would intervene in an internal dispute, so the EU could probably be successful in either preventing the United Kingdom from joining or creating negative trade consequences for the United Kingdom if it is successful in joining NAFTA. With the risk of possible sanctions against the United Kingdom for a breach of treaty, it seems that the proponents of U.K. membership in NAFTA are greatly underestimating the legal consequences of such membership.

C. POLITICAL CONSEQUENCES OF U.K. MEMBERSHIP IN NAFTA

The United Kingdom is in a unique political position because of its close relationship with the United States and its membership in the EU.²²² These relationships allow the United

220. *Id.*

221. The General Agreement on Tariffs and Trade reads:

Members . . . recognizing that customs unions and free trade areas have greatly increased in number since the establishment of the GATT 1947 and today cover a significant portion of world trade . . . [r]eaffirming that the purpose of such agreements should be to facilitate trade between the constituent territories and not to raise trade barriers to the trade of other Members with such territories; and that in their formation or enlargement the parties to them should to the greatest possible extent avoid creating adverse effects on the trade of other Members.

Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994, Dec. 15, 1993, Annex 1A, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 1 (1994), 33 I.L.M. 1161 (1994).

222. McCabe, *supra* note 81, at 13.

Kingdom to act as a "bridge" between the United States and Europe.²²³ It also affords the United Kingdom influence within Europe and in the United States. If the United Kingdom were to withdraw from the EU as a result of NAFTA membership, three million jobs that are dependent on EU membership would be at risk.²²⁴ Additionally, the United Kingdom would be a "far less attractive partner" if it withdrew from the EU and, instead of being in the "centre of influence in Washington," it would "put [the United Kingdom] at the margins."²²⁵

The United Kingdom would be losing more than it gains by NAFTA membership because upon joining it would not exert great influence. The terms of NAFTA require each signatory to treat foreign corporations and domestic corporations equally.²²⁶ It has been argued that in reality, foreign corporations are given preference, and some fear large U.S. corporations may be able to impose "unsavory practices" on the United Kingdom.²²⁷ The United Kingdom would be unable to change the terms of the agreement because the agreement has already been negotiated and ratified without the United Kingdom.²²⁸ Opponents to a NAFTA-U.K. agreement feel that entering into this agreement without participating in the negotiations would be disadvantageous for the United Kingdom.²²⁹

The United Kingdom has gradually increased its ties with the EU. The EU adopted the "four freedoms" as items that have free movement within the EU: "goods, services, workers, and financial transactions."²³⁰ Though the United States is the United Kingdom's largest trading partner, more than half of the United Kingdom's trade is with the EU.²³¹ This figure is significantly lower than other EU countries.²³² While the increasing trade relationship does not rule out the possibility of NAFTA

223. *Id.*

224. *Id.*

225. *Id.*

226. Monbiot, *supra* note 1, at 20.

227. *Id.*

228. *Id.*

229. *Id.*

230. ITC Report, *supra* note 60, at 1-2. The European Community, when it was founded, adopted the original four freedoms. *Id.* Since its adoption, several new freedoms have been added, resulting in a "total body of law," or "*Acquis Communautaire*," consisting of legislation and treaties, which "profoundly affects many commercial and social areas of the European common market." *Id.*

231. *Id.* at 1-3. The report noted that external trade with the EU accounts for approximately 52% of the trade with the United Kingdom. *Id.* at ix.

232. *Id.* at 1-3.

membership, it does suggest that the United Kingdom is acclimating as an EU member. Closer U.K. involvement could mean increased trade with the EU.²³³ The feeling among business and government leaders in the United Kingdom is that, realistically, the United Kingdom's future lies in Europe.²³⁴

CONCLUSION

While the proposed U.K. membership in NAFTA has gained backing by some free trade advocates in the United State's Republican Party and the United Kingdom's Conservative Party, members of these parties have failed to fully consider the implications of their proposal. Looking closer at the proposal, it appears there are minimal advantages to U.K. membership in NAFTA. Economic gains would likely be quite modest with significant decreases in labor demand and FDI if the United Kingdom terminated its EU membership. With the EU's legal authority over its member states, including the United Kingdom, it appears that the EU could take legal action or even possibly force the United Kingdom out of the EU for what may be determined a breach of the EC Treaty. Even if the United Kingdom appeals the EU action to the WTO, it could place itself in the center of an international conflict that has the potential to damage its political relations with its EU counterparts. Although it is not clear how the WTO would resolve the dispute, any potential benefits to U.K. membership in NAFTA would be outweighed by the costs. The United States would also experience great costs, as its reliance on the United Kingdom for access to the EU market would be jeopardized, with only modest economic gains. It would be best for both countries to maintain the status quo.

233. The report found that this trend is already occurring. *Id.* "As the United Kingdom and the EU evolve closer together . . . an increasing percentage of the United Kingdom's overall trade and investment is already taking place within the EU." *Id.*

234. *Id.*

