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An Anglo-NAFTA Union: Does It Make Sense?

Casey Burgess*

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I. Introduction

The last few years have witnessed political debate within in the United Kingdom over what the nation's role should be in the realm of international trade. Some take the position that the United Kingdom should take steps to integrate further with the

* J.D. Candidate 2003, Dedman School of Law, Southern Methodist University; Former Law Clerk for Daniel Madden Turbitt, Administrative Judge, United States Merit System Protection Board, Dallas Field Office; and Co-Founder Cyber Innovations, LLC in Highland Park, Texas. The author extends his deepest thanks to Larry B. Pascal of Haynes and Boone for suggesting this article for publication. This article is dedicated to the memory of a fallen comrade, Dave Williams of Drowning Pool. Rest in peace buddy.
European Union (EU). Others take the position that the United Kingdom should pull out of the EU and seek to negotiate membership in the North American Free Trade Agreement (NAFTA). Another faction takes the view that the United Kingdom should remain in the EU and unilaterally become a member of NAFTA. Still others have proposed a new NAFTA, North Atlantic Free Trade Agreement (NAFTA II), with Britain serving as a bridge between the two continents.

Through a brief analysis of history and a comparison of the EU and NAFTA, this paper will analyze the various political positions, which can be described as Europhile and Eurosceptic, as well as the legal and economic implications of adopting any of the above policies.

II. The EU and NAFTA

A. The EU

The EU is an economic union with fifteen Member States, including: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the UK. The EU is home to 350 million people and has a combined Gross Domestic Product (GDP) of over $7 trillion. It is the world's second largest economy behind the United States. The EU is currently contemplating an expansion, which could include the nations of Bulgaria, the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Romania, Slovenia, Slovakia, and Turkey.

1. Brief History of the EU

The European Union has its beginnings with the European Coal and Steel Community (ECSC), which was created by the governments of Belgium, France, West Germany, Italy, Luxembourg, and the Netherlands on April 18, 1951. The six nations transferred a portion of their sovereignty to the ECSC and saw an increase in coal and steel trade of 129 percent over the next five years. Encouraged by their success, the six nations sought further integration, and created both the European Economic Community (EEC) and the European Atomic Energy Community (EAEC or EURATOM) through the Rome

7. Id.
Treaties, which took effect in 1958. In 1967, the communities created by the above treaties became collectively known as the European Communities.

The European Communities received a major overhaul in 1993 with the signing of The Treaty on European Union, commonly known as the Maastricht Treaty. The Maastricht Treaty provided a blueprint for an Economic and Monetary Union (EMU), a new Common Foreign and Security Policy (CFSP), and the Justice and Home Affairs (JHA) policy to deal with asylum, immigrations, customs and police cooperation, and the like.

The Treaty of Amsterdam took effect in 1999. This treaty strengthened the CFSP and increased the "EU's ability to undertake joint foreign policy actions." A further treaty, the Treaty of Nice, was signed in December 2000 and takes effect in 2005. This treaty deals primarily with internal governance of the EU.

2. Structure of the EU

a. The Three Pillars

The Maastricht treaty created a system known as the "three pillars." Pillar One includes the ECSC, the EEC, the EAEC, and the requirements for EMU. It also sets out guidelines for EU action in areas such as education and the environment. Pillar Two established the CFSP, enabling the EU to take joint action in international affairs. Pillar Three created the JHA.

Members of the EU have surrendered a portion of their national sovereignty to the EU in areas covered by Pillar One, leading to the EU being described as a supranational entity. The individual nations have agreed to cooperate under Pillars Two and Three, but still retain the right to veto measures.

b. Institutional Framework of the EU

The EU is also governed by five institutions: the European Court of Justice, the European Court of Auditors, the European Commission, the Council of the European

8. Id.
9. Id.
10. Id.
11. Id.
12. Id.
13. Id.
14. Id.
15. Id.
16. Id.
17. Id.
18. Id.
19. Id.
20. Id.
22. Id.
Union, and the European Parliament.\textsuperscript{23} The European Court of Justice serves as the EU's Supreme Court by ensuring the appropriate interpretation and application of the various EU treaties.\textsuperscript{24} The European Court of Auditors is responsible for overseeing the budget of the EU.\textsuperscript{25} The European Commission proposes legislation, oversees the implementation of treaties and decisions, and has the ability to investigate and take legal action against entities that violate EU rules.\textsuperscript{26} The Council of the European Union enacts laws based on legislation proposed by the European Commission.\textsuperscript{27} The European Parliament is the EU's public forum, where EU policies can be amended or rejected.\textsuperscript{28} There is also a European Central Bank (ECB) that is responsible for the Euro and monetary policy.\textsuperscript{29}

c. EU Legislation

As noted in the above paragraph, the EU has the ability to enact legislation. Former Belgian Permanent Representative to the EU, Philippe de Schoutheete, has pointed out that there are two fundamental principles of EU law.\textsuperscript{30} These are "the direct effect of Community law" that "in itself creates rights and obligations for individuals," and "Community law prevails over national law."\textsuperscript{31}

EU legislation can take various forms. The most restrictive form of EU legislation is the regulation. A regulation can be compared to a U.S. federal law in that it is binding in its entirety and is obligatory throughout the EU.\textsuperscript{32} Directives are binding in the results they seek to achieve, but leave it up to the Member Nation to choose how to implement them.\textsuperscript{33} "Decisions are binding in their entirety upon the party to whom they are addressed."\textsuperscript{34} "Lastly, recommendations and opinions are not binding."\textsuperscript{35}

B. NAFTA

NAFTA is a free trade agreement with three Member States: Canada, Mexico, and the United States. NAFTA is home to 406 million people and has a GDP of $11 trillion.\textsuperscript{36} NAFTA reduces tariffs between Member States, and gives Member States the better of national treatment or most favored nation (MFN) treatment.\textsuperscript{37}

\begin{itemize}
\item \textsuperscript{23} Id.
\item \textsuperscript{24} Id.
\item \textsuperscript{25} Id.
\item \textsuperscript{26} Id.
\item \textsuperscript{27} Id.
\item \textsuperscript{28} Id.
\item \textsuperscript{29} Id.
\item \textsuperscript{31} Id.
\item \textsuperscript{32} European Union, supra note 21.
\item \textsuperscript{33} Id.
\item \textsuperscript{34} Id.
\item \textsuperscript{35} Id.
\end{itemize}
NAFTA’s structure is much simpler than that of the EU because it is a free trade agreement instead of an economic union. NAFTA has no comparable institutions to the European Parliament, the European Court of Justice, the European Commission, or various other EU institutions. This means that Member States are not required to give up a portion of their sovereignty to participate in NAFTA, with the possible exception of chapter 11 arbitration which will be discussed later in the paper.

Major NAFTA institutions include the Free Trade Commission (FTC), the NAFTA Secretariat, Commissions on Labor and Environmental Cooperation, the North American Development Bank (NADB), and various committees and working groups.38

The FTC is NAFTA’s central institution, comprised of the trade ministers of each Member State.39 The FTC meets only as required and serves two basic functions: 1) “supervising the implementation of NAFTA,” and 2) assisting the resolution of disputes of Member States arising out of NAFTA.40 The NAFTA secretariat administers dispute settlement procedures under chapters 14, 19, and 20 of NAFTA.41 The Commission for Labor Cooperation was created under the North American Agreement on Labor Cooperation (NAALC).42 This commission deals with labor rights and standards in the NAFTA region.43 The Commission for Environmental Cooperation was created under the North American Agreement on Environmental Cooperation (NAAEC),44 and encourages protection of the North American environment.45 NADB and the Border Environmental Cooperation Commission (BECC) work together in preserving the environment and promoting the health and welfare of residents in the U.S.-Mexico border region.46 BECC assists border communities with environmental infrastructure, and NADB finances projects recommended by BECC.47 Lastly, various committees and working groups carry on the day-to-day implementation of NAFTA.48

The relative simplicity of NAFTA, as well as the fact that NAFTA does not require a Member State to forgo a piece of its sovereignty, has led a vocal minority, mainly right wing Tories, to call for the United Kingdom to seek membership in the agreement and reduce ties to the EU. The next section of the paper will examine some unique aspects of British history and culture that lend themselves to Eurosceptic arguments. Additionally, various Eurosceptic and Europhile arguments will be analyzed to come up with an answer on what could be the United Kingdom’s best option.

39. Id.
40. Id.
41. Id.
43. United States Trade Representative, supra note 39.
45. United States Trade Representative, supra note 39.
46. Id.
47. Id.
48. Id.
III. British Culture and History

The United Kingdom is an island nation that has not been conquered by a foreign power since the Norman conquest of 1066. This fact caused Britain to take a somewhat different path of cultural development than its European neighbors. Three areas of British culture that stand out from that of Europe are economic liberalism, the English common law tradition, and Protestantism.

The United Kingdom has held fast to its liberal roots since the Scottish philosopher Adam Smith published *The Wealth of Nations* in 1776, and an argument can be made that liberal strains of thought go back much further. The common law also holds a special place in the hearts of Englishmen. This uniquely Anglo tradition dates back to feudal times. The theological rift between the United Kingdom and Europe dates back to the rivalry between the Celtic and Catholic churches in the early days of Christianity and was further cemented by various events, such as the crusades against the Knights Templar, and the establishment of the Anglican Church by Henry VIII.

While most European nations have adopted some form of economic liberalism and some have embraced Protestantism, most British would probably still view the combination of economic liberalism, Protestantism, and the common law as uniquely British. Much of Europe suffered under failed economic experiments until the end of the Cold War, Catholicism is still the dominant religion in much of Southern Europe, and the common law is typically the basis of jurisprudence in English speaking countries.

While the British isles have stayed a somewhat steady course, Europe has suffered under the atrocities of the inquisition, fascism, communism, and nazism. It is no wonder that Britain has seen itself as an outsider and grown to distrust Europe. Eurosceptic notions held by the British right are a modern manifestation of historic prejudices. This paper will now explore their arguments.

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IV. Europhiles v. Eurosceptics

A. EUROPHILES

Europhiles view the EU as beneficial to the United Kingdom and believe that Britain "should be involved economically, politically, and culturally in Europe." They point out that Britain is a leading country in the EU and that 53.8 percent of the United Kingdom's exports in 2000 were purchased by fellow EU states. Europhiles claim that foreign corporations choose to invest in the United Kingdom because it serves as a gateway to the EU. Europhiles claim that Eurosceptics have a "xenophobic little England attitude." They say that "Britain would still be Britain" if it integrated further with the EU. Europhiles point out that the failure to adopt the Euro has cost the United Kingdom economically. One prime example is in the job market. Supporters of the Euro blame the volatility of the British pound for 115,000 job losses. Statistics show that each unemployed person costs the British government £12,000 a year in higher benefits and lost tax revenue. This number multiplied by 115,000 costs the British taxpayer £1.3 billion annually. Europhiles use this and similar examples to show that the United Kingdom cannot economically afford to resist further integration with the EU. Europhiles point out that "[t]he European Union is the most successful example of how countries can cooperate on issues of common concern without sacrificing their vital interests and national distinctiveness." Supporters of the EU claim that Britain will only get the maximum benefit of its EU membership if it participates fully in the EU.

B. EUROSCPTICS

Eurosceptics generally view the EU with disdain, feeling that further integration with the EU will mean the loss of British identity and sovereignty, and being trapped in a "Fortress Europe." One topic that has proven to be sensitive is EMU. An overwhelming

60. Centre for European Reform, Objectives, at http://www.cer.org.uk/n2about (last visited Aug. 11, 2002).
64. Britain in Europe, supra note 62.
66. Id.
67. Id.
69. Id.
majority, 70 percent, of British voters oppose the United Kingdom's involvement in EMU. Opponents of further economic integration claim that adopting the Euro will mean handing over the reins of financial control to Brussels. This would mean that Parliament would no longer be able to adjust the economy in accordance with the wishes of the British electorate. Eurosceptics further claim that EMU would mean transferring the reserves of the Bank of England to the European Central Bank. This would be a quite literal transfer of financial control to the EU. Finally, opponents of EMU claim that the Euro is doomed to fail due to a lack of labor mobility. They argue that the barriers of language and culture are too large for the Euro to be a success.

Eurosceptics view the idea of political integration with equal loathing. Critics claim that the EU views state sovereignty as outdated. They state that further integration with the EU will mean joint foreign defense and a joint judicial system, as well as the common external tariffs that were bargained for. A joint foreign defense could be a particular problem for a nation like the United Kingdom, due to its military alliances with the United States and the commonwealth. Likewise, a joint judicial system would probably not integrate very well with England's common law tradition.

V. Should the United Kingdom Seek Membership in NAFTA?

Eurosceptic views have led some prominent British leaders to look for an alternative to further EU integration. As explained above, Eurosceptics see the EU as a failure and believe that further integration will mean additional erosion of British sovereignty. The suggestion that appears to get the most press is that the United Kingdom should seek membership in NAFTA. This position has been promoted by such notable political leaders as former British Prime Minister Margaret Thatcher, and U.S. Senator Phil Gramm. Europhiles, such as Tony Blair, have also expressed an interest in strengthening economic ties to NAFTA. The next few pages will explore whether this is a good idea.

73. Id.
74. Id.
75. Id.
76. Id.
78. Id.
A. WHY NAFTA?

One reason seeking membership in NAFTA would seem to make sense for the United Kingdom is the cultural similarity between Britain, the United States, and Canada. All three nations share a common language, a liberal political and economic tradition, and common law. There is also a great deal of trade between NAFTA and the United Kingdom. "Britain is the biggest single investor in the U.S." The United States and Canada account for 69 percent of the United Kingdom's foreign direct investment, compared to 20 percent in the EU. The United States is the United Kingdom's largest single trading partner accounting for 13 percent of the United Kingdom's total trade. The United Kingdom also has reason to be interested in Mexico. Mexico engages in the most international trade of any Latin American nation and is the eighth largest trading nation in the world. The United Kingdom is the second largest investor in Mexico behind the United States.

A study by the Centre for Policy Studies showed that NAFTA economies are growing at a rate twice that of the EU. The study also showed "that NAFTA countries outperform Europe in job creation." Between 1992 and 2000 Mexico had a 38 percent increase in jobs while the United States and Canada had a 13 percent increase. During the same time period, the EU only experienced a 3 percent increase in employment.

As indicated in the above analysis, NAFTA has the added attraction of having a much simpler agreement and structure than the EU. There is no supranational bureaucracy in NAFTA as there is in the EU. This makes NAFTA favorable to those in British society who fear that the United Kingdom is giving up its sovereignty and identity.

B. OPTIONS FOR JOINING NAFTA

There are two basic approaches for joining NAFTA that have been suggested. Lady Thatcher claims that it would be in the United Kingdom's best interest to pull out of the EU and join NAFTA. Others, like Conrad Black, would like to see the United Kingdom

82. John Redwood, Britain Needs To Change Course: The EU is Becoming the Economic and Political Enemy of America, DAILY TELEGRAPH (London), Feb. 6, 2001, at 18.
84. Id.
87. Id.
89. Id.
90. Id.
91. Id.
remain in the Common Market without further integration with the EU, while still joining NAFTA.\textsuperscript{93}

Conrad Black's suggestion brings up an interesting question. Would it be possible for the United Kingdom to unilaterally join NAFTA and remain a member of the EU? The answer to the question appears to be probably not. As noted above, the EU adheres to a common commercial policy that is binding on Member States.\textsuperscript{94} This common commercial policy is based on "uniform principles" intended to harmonize economic and market interests among EU Member States.\textsuperscript{95} If states that are members of the EU had the ability to negotiate free trade agreements on their own, this would seem to frustrate the purpose of the common commercial policy, which was intended to harmonize the economic interests of Member States. Others have apparently shared this thought. In 1979 the ECJ handed down a ruling stating "that Article 113 of the EC Treaty was within the exclusive competence of the EU and that [M]ember [S]tates must adapt their interests to the common interests of the EU."\textsuperscript{96} This indicates that the EU's treaty-making power is exclusive, and member states are not allowed to enact treaties that would endanger established EU law.\textsuperscript{97} This being the case, it is difficult to see how Britain would be able to play both sides of the Atlantic by being a member of both the EU and NAFTA. The likely result of an Anglo-NAFTA union would be the United Kingdom's expulsion from the EU. This indicates that Lady Thatcher's suggestion is the only real option if the United Kingdom is serious about joining NAFTA, and as some British conservatives probably see it, subsequently getting out from under the EU's thumb.

C. LIKELY PROBLEMS THAT WOULD ARISE FROM AN ANGLO-NAFTA ALLIANCE

The Eurosceptics are at least partly right. Joining NAFTA and leaving the EU could have some positive benefits for the United Kingdom. Doing so would mean that Britain would have more control over its economic and defense policies. It seems that the negative consequences of taking such an action would be contrary to the United Kingdom's best interests, however.

1. Economic Impact of Britain Joining NAFTA

The available data does not indicate that there would be any significant economic benefits to the United Kingdom's inclusion in NAFTA.\textsuperscript{98} The International Trade Commission (ITC) recently found that EU Member States "carry on about four times as much

\begin{itemize}
\item \textsuperscript{93} Should Britain Join NAFTA?, Nat'l Online, at http://www.tv.cbc.ca/national/pgminfo/black (last visited Aug. 28, 2002).
\item \textsuperscript{94} Treaty Establishing the European Community, Aug. 31, 1992, art. 113, (C 224) O.J. 44 (1992).
\item \textsuperscript{95} Daniel S. Potts, Note, Dubious Partnership: The Legal, Political, and Economic Implications of Adding the United Kingdom to the North American Free Trade Agreement, 11 Minn. J. Global Trade 155, 175 (2002).
\item \textsuperscript{96} Id.
\item \textsuperscript{97} Id. at 175–76.
\item \textsuperscript{98} Id. at 174.
\end{itemize}
trade with the UK as does the United States." This fact shows that, if joining NAFTA means expulsion from the EU, it would be a costly venture because Britain would likely face high tariffs from its European neighbors. There is also concern that Britain would have to renegotiate trade agreements that have been signed by the EU on its behalf.

To make matters worse, the ITC report indicates that an Anglo-NAFTA union would have a negligible impact on economies on both sides of the pond. The ITC found that a complete elimination of tariffs between the United States and the United Kingdom would witness an increase of British imports in the U.S. of 7 to 12 percent and a corresponding increase in U.S. imports in the United Kingdom of 11 to 16 percent. Therefore, the ITC concluded that the aggregate output of this increased trade, as measured by GDP, would be minimal.

The reason that a complete elimination of tariffs between the United Kingdom and the United States would have minimal impact is that tariff levels between the two nations are already quite low. U.S. tariffs on British imports generally consist of high duties on a small range of "narrowly defined products." There are also few trade barriers between the United Kingdom and the other NAFTA nations. The trade barriers that do exist include different governmental regulations, differing capital requirements for insurance companies, and different health and safety rules. Accomplishing a complete harmonization of laws and regulations to eliminate these trade barriers would seem to be taking a page from the EU's book of horrors that the Eurosceptics seem so desperately to want to leave on the shelf.

By joining NAFTA and leaving the EU, Britain's efforts to serve as a bridge between the old world and the new would be thwarted. Experts have theorized that foreign direct investment in the United Kingdom would drop if it altered its relationship with the EU. This theory makes sense. If I were the head of a corporation looking to expand into the EU, Britain would be the logical choice for my company's investment due to cultural, economic, and legal similarities between the United States and the United Kingdom, and Britain's physical location (in that it is closer to the United States than Western European nations such as France or Germany). Moreover, by investing in the United Kingdom, I would be gaining access to the entire EU market through the EU's common external tariff. The United Kingdom is also a popular investment destination for North American corporations due to its relatively low wages and tax rates, favorable business regulations, a business friendly legal system, skilled labor, and the English language.
However, if the United Kingdom were to back out of the EU, it would not be as attractive for my company's investment. In this scenario, the United Kingdom would likely lose my investment to its EU neighbors or to other nations, such as Mexico or Switzerland, which have negotiated free trade agreements with the EU.\(^\text{110}\)

2. **British Sovereignty and Common Law**

   a. **EU Direct Effect Doctrine v. NAFTA Chapter 11 Arbitration**

   The Eurosceptics correctly point out that the EU's direct effect doctrine and common policies on commercial affairs and defense have an impact in eroding British sovereignty. The nearest analogy that can be drawn is that the EU is assuming a role much like that of the federal government in the United States, and Member States in the EU are taking the role of states. EU policies are taking a position much like U.S. federal law, where federal law supercedes state law. This supremacy can result in an obvious impact on a state's sovereignty, as demonstrated by the U.S. Civil War.

   While the erosion of sovereignty can be plainly seen under the EU system, a more subtle form of loss of sovereignty is taking place under NAFTA. NAFTA's chapter 11 arbitration provisions have led to much protest and are a sticky point in negotiation of the Free Trade Area of the Americas (FTAA).\(^\text{111}\)

   Chapter 11 of NAFTA provides that NAFTA's Member States shall "accord to investors of another Party... the better of" national treatment or MFN treatment.\(^\text{112}\) MFN treatment means "treatment no less favorable than that it accords, in like circumstances, to its own investors."\(^\text{113}\) MFN treatment means "treatment no less favorable than that it accords, in like circumstances, to investors of another Party or of a non-Party."\(^\text{114}\) Chapter 11 further provides that, "No Party shall directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ('expropriation'), except: (a) for a public purpose; (b) on a nondiscriminatory basis; (c) in accordance with due process of law... ; and (d) upon on payment of compensation."\(^\text{115}\) When an expropriation occurs, NAFTA allows the injured party to sue the offending nation directly.\(^\text{116}\)

   The chapter 11 arbitration process has received much criticism because the proceedings are closed to the public, amicus participation by nongovernmental entities is

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\(^{112}\) NAFTA, supra note 38, art. 1102.

\(^{113}\) Id. art 1102.

\(^{114}\) Id. art 1103.

\(^{115}\) Id. art 1110.

\(^{116}\) Id. art 1116, 1117.
generally excluded, and there is little public knowledge of the status or existence of such proceedings. Chapter 11 arbitration is also criticized because when an award is granted in favor of an investor the payment comes directly from the treasury of the offending nation, meaning that taxpayers are footing the bill.

While chapter 11 arbitration has been criticized for its secretive nature and raiding of government coffers, it has also had the effect of eroding national sovereignty by allowing corporations to challenge laws and regulations, typically environmental in nature, and win. One case on point is the Ethyl decision. Ethyl Corporation "develops, manufactures, blends and delivers leading-edge additive technology for fuels and lubricants around the world." Part of Ethyl's business in Canada was receiving methylcyclopentadienyl manganese tricarbonyle (MMT), "a gasoline additive, from its parent company, mixing it with other agents, and distributing it across Canada." The Canadian federal government became alarmed about the potential negative health effects of MMT and banned the interprovincial and international sale of the substance. Ethyl brought a complaint before a NAFTA tribunal under chapter 11, claiming $250 million in damages due to Canada's expropriation of its business. The panel rejected Canada's argument that the MMT ban was not an expropriation under chapter 11, and Canada eventually settled for $13 million for Ethyl's expenses and repealed the MMT ban.

Similar cases have involved Methanex's challenge of California's ban of the fuel additive methyl tertiary-butyl ether (MTBE), MetalClad's challenge to San Luis Potosi's refusal to allow the corporation to open a waste facility, and Loewen Group's challenge of a Mississippi jury award in a lawsuit between funeral home operators.

In the Methanex case, the state of California ordered the elimination of MTBE from the state's gasoline supply by December 31, 2002. The Canadian corporation


122. Thompsen, supra note 121.

123. Id.


brought an arbitration claim under chapter 11 prompting the state to back off its ban of MTBE. In the MetalClad case, San Luis Potosi shut down a waste disposal facility after a geological audit showed that the dump would contaminate the local water supply. The U.S. corporation brought a chapter 11 arbitration action, and the Mexican government was ordered to pay MetalClad $16.7 million. Lastly, in the Loewen Group case, a Canadian funeral home operator claimed a Mississippi jury award, finding it guilty of fraud, was an expropriation under NAFTA chapter 11 and brought arbitration against the United States claiming $725 million in damages.

This analysis shows that, while the EU does erode national sovereignty through the direct effect doctrine and common policies, NAFTA has the unintended effect of allowing a corporation to challenge a nation's sovereignty through chapter 11 arbitration. Because both trading blocs infringe on a nation's sovereignty to some extent, the United Kingdom should look to other factors, such as the economic impact of withdrawing from the EU and control over monetary policy in deciding what action to take.

b. Common Law in the EU

It has long been predicted that the economic integration of Europe would not be possible without a corresponding legal integration. This reasoning led to the direct effect doctrine of EU law discussed above. The idea of legal integration has also led some in Britain to fear that the common law could become extinct. The logic is that European civil law and English common law cannot coexist.

History has proven this notion false. In the United States and Canada, civil law and common law jurisdictions operate side by side. For instance, Louisiana is a civil law state, but the rest of the nation is common law. Another example is Quebec, which is the only civil law province in the otherwise common law Canada. North America shows that civil law and common law systems can coexist.

131. Id.
135. Id.
137. Id.
The United Kingdom also operates under a dual legal system. England and Wales have used a common law system since the Norman Conquest in 1066. Northern Ireland's legal system is patterned after that in England and Wales, but it maintains its own court system. Civil law formed the basis of the legal system in Scotland due to historically close academic and trading links with Europe. The United Kingdom has maintained a dual legal system since its creation in 1707.

The creation of the United Kingdom in 1707 was very similar to the economic and political community being created by the modern day EU. Since 1707, "the same fiscal and commercial laws have tended to apply throughout Scotland, England, and Wales." The British Council points out that the United Kingdom was "an example of an early economic and political community, with shared, but independent, legal systems." Again, this sounds like the modern day EU. It stands to reason that the age-old common law will live on in England and Wales. A united Britain did not destroy it, and it is not likely a united Europe will either.

c. Monetary Integration

When negotiators met to sign the Maastricht Treaty, they saw the creation of EMU as the "crowning achievement" to helping realize a single European market. However, one area where the British seem to agree is that they are strongly opposed to EMU. The British are joined by fellow EU members, Sweden and Denmark, in their reluctance regarding EMU. The citizens of these nations are correct in their lack of enthusiasm over EMU. The results can be catastrophic when the individuals with power over the currency pursue unsound economic policies.

For instance, the Federal Reserve Bank (Fed) is the central bank for the United States. One of the functions of the Fed is to conduct the nation's monetary policy. The Fed primarily does this through regulation of the banking industry. The Fed controls the supply of reserves available to banks through the purchase and sale of Treasury bills.

139. Id.
141. British Council, supra note 139.
143. British Council, supra note 139, at 1.
144. Id.
149. Id.
and through its administration of the discount window and discount rate. The Fed has the power to create money by purchasing Treasury bills on the open market. Likewise, the Fed can contract the money supply by selling Treasury bills on the open market. Creating too much money will cause inflation; contracting the money supply too much will lead to recession. The same logic applies to the discount rate. When the discount rate is high, banks are discouraged from borrowing, thus somewhat retracting the economy. However, when discount rates are low, banks are encouraged to borrow money and lend it to the public, thus increasing the money supply. It should be obvious that going too far in either direction can have negative results.

The Great Depression is an example of how this can play out. During the 1920s, the Fed encouraged banks to keep interest rates at an artificially low level. The currency became inflated because money was poured into uneconomical ventures and stock prices were highly overvalued. In 1928 and 1929, the Fed tried to "cool off" the stock market out of fears that it was overvalued and would crash. The Fed reacted too late, however, and the result was the stock market crash of 1929. By 1933, millions were out of work, and 11,000 out of 24,000 U.S. banks had failed.

The result in Germany was much more catastrophic. The Reichsbank held the discount rate at a constant 4 percent from the beginning of World War I through June 1922. As in the United States, investment money poured into uneconomical ventures. This led to rampant inflation. The Reichsbank had raised the discount rate to 90 percent by September 1923, but inflation continued to mount. After September 1923, German interest rates rose to 900 percent. Merchants discovered that the Markrechnung had become worthless and replaced the currency with the Goldrechnung.

152. Id.
153. Id. at 26, 27.
154. Id. at 17.
155. Id.
157. Id.
159. Branden, supra note 157, at 80.
162. Id.
163. Id.
164. Id.
165. Id.
166. Id. at 101.
Data calculated by the Statistical Bureau of the Reich showed that between July 1923 and November 1923, German internal prices had increased 854 billion percent, the price of U.S. dollars had increased 381.7 billion percent, and the cost of living rose 560 billion percent.67 As a result, "Germans had to take wheelbarrow loads of marks into their stores to buy loaves of bread."68

The American and German examples show that a nation's central bank can disturb an economy pretty well on its own. This makes it understandable why nations such as the United Kingdom, Denmark, and Sweden are leery of turning over monetary policy to the ECB. The EU has tried to resolve this problem by the creation of the European System of Central Banks (ESCB).

The two goals for the ESCB are price stability and independence.69 The ECSB is composed of a central institution, the ECB, and the central banks of EU Member States.170 The ECB has two governing bodies, the Executive Board and the Governing Council.171 The Executive Board has six members nominated by the European Council.172 The Governing Council is made up of the Executive Board and the governors of participating central banks.173 Each member has one vote.174 This is seen as a way to preserve price stability and independence.175 This system, however, has some potential problems. Some economists theorize that ESCB representatives will have little reason to pursue price stability, because they will still consider themselves representatives of their respective nations, and they will be looking out for their own nation's interests.176 There is also speculation that the central banks of Member States will still attempt to run monetary policy in their own nations.177 While an in depth analysis of the ESCB is outside the scope of this paper, these examples raise questions of how effective the ESCB can be at maintaining a stable monetary policy for the entire EU.

There are still other reasons why it might be wise to view the Euro with skepticism. One is the fact that the Euro has failed in its objective of becoming an international reserve currency.178 The Euro has dropped in value from $1.20 in 1999 to $0.85 in January 2002.179 Many in Europe also view the EU bureaucracy, of which the ECB is a part, as corrupt and wasteful.180

170. Id. at 468.
171. Id.
172. Id.
173. Id.
174. Id.
175. Id. at 469.
176. Id. at 472.
177. Id. at 471.
178. Edith Y. Wu, Recent Developments in the Currency War: The Euro, the Dollar, the Yen, and the BEMU, 15 Conn. J. Int'l L. 1, 6 (2000).
VI. Joining NAFTA Would Not Make Sense

The above analysis shows that it would not be in the best interest of Britain to join NAFTA. Taking such a bold move as joining NAFTA would likely mean expulsion from the EU. This would be costly to the United Kingdom due to its close proximity to Europe and the bulk of trade done with the continent. There would also be no corresponding economic benefit for the United Kingdom in joining NAFTA. Trade between the United States and the United Kingdom, and Canada and the United Kingdom is virtually duty free already. Any trade barriers that exist between Britain and Mexico will soon be coming down due to the EU–Mexico Free Trade Agreement. Likewise, there would be no benefit to the NAFTA nations in having Britain become a member. There is also a question as to what Britain's legal standing would be in relation to trade agreements that were made for it by the EU. The consensus seems to be that the United Kingdom would have to renegotiate all of the agreements on its own.

The British legal system does not appear to be in any real jeopardy because of the EU. Civil law and common law jurisdictions exist side by side in the same nation in North America. The United Kingdom has also had a dual legal system since its creation in 1707, with Scottish law based off of a civil law tradition and English, Welsh, and later Northern Irish law based on a common law tradition. There is no reason to think that a legal system that has existed for over nine-hundred years in England and Wales will suddenly disappear due to integration with Europe.

Both free trade agreements also put restrictions on the sovereignty of the nations involved. That is the nature of a free trade agreement. The EU directly restricts sovereignty through the direct effect doctrine and EMU, while NAFTA somewhat restricts sovereignty through chapter 11 arbitration. Even though the United Kingdom may be willing to trade the direct effect for chapter 11, doing so would demand a high price due to losing out on free trade with their European neighbors.

In conclusion, it appears that as things stand now, the United Kingdom should stay put. It would be in the United Kingdom's best interest to maintain free trade relations with Europe, but at the same time it could be detrimental to the United Kingdom to join the EMU. I tend to believe that the EU is trying to go too far. Expecting a nation to hand over its monetary policy to an outside, centralized bureaucracy that may or may not have that nation's best interest in mind is a bad idea that will eventually lead to bad consequences. The lessons learned from the 1920s show that a central bank pursuing unsound economic policies can lead to disastrous results. If you add a supranational bureaucracy to the mix the next time a depression hits, the results could be downright deadly. It also seems unrealistic to expect nations that speak different languages and that have been at war with each other for thousands of years to suddenly harmonize their laws and become a United States of Europe. The reason that the United States works is because of a common language and cultural heritage. The EU does not share in this blessing. I believe that NAFTA has chosen the better model. Under NAFTA, Member States retain the bulk of their autonomy and are free to engage in free trade with whoever they want, as long as they still offer their North American neighbors the better of national or MFN treatment.
VII. NAFTA II

While British membership in NAFTA is probably not in the best interest of the United Kingdom or the NAFTA nations, all of the talk generated by the Eurosceptics has led to an even better idea being floated by Tony Blair’s Labour Party. In a speech before the Canadian Parliament in 2001, Blair called for a NAFTA–EU “political declaration of intent on trade.” In his speech, Blair said that NAFTA and the EU should strive for “duty free and quota free access for everything but arms.” Blair said that North America and Europe should collaborate in promoting a new round of talks at the World Trade Organization (WTO), and that leaders on both sides of the Atlantic should “make a more forceful defence of free trade.” This sentiment was echoed by British Finance Minister Gordon Brown, who said that trade barriers should be removed between the EU and NAFTA.

Supporters of the idea, such as Blair and Brown, claim that a North Atlantic Free Trade Area (NAFTA II) would serve as an “economic NATO” and prevent the United States and Europe from drifting apart. Such a plan would prevent a potential trade barrier war between the EU and NAFTA. It is estimated that a NAFTA–EU union would create an economic benefit to North American and European economies of approximately $350 billion. And best of all, at least for the analysis of this paper, it would eliminate the need for the United Kingdom to choose sides between North America and Europe.

NAFTA II would be an excellent compromise. It would have the advantage of satisfying both the Europhiles and Eurosceptics. Britain would be able to enjoy political and economic ties with both Europe and North America, without taking the risk of being kicked out of the EU and straining relations with its continental neighbors. In order for such a union to take place, the U.S. will need to take a leading role in negotiations. The idea of NAFTA II has been on the table since 1995 when it was first raised by Germany. The Bush administration has not shown much interest in a NAFTA–EU alliance, however. France is opposed to the idea, and opposition would likely arise from non-EU/NAFTA nations for fear of being shut out of such a market.

There are a number of reasons why the Bush administration should take interest in a NAFTA II type of idea. The United States and EU combined command 56 percent of...
the world’s total GDP. The United States and EU combined conduct forty percent of the world’s trade. Bilateral trade between the United States and the EU is $7 billion a day. The United States and EU are each other’s largest trading partners, accounting for one-fifth of each other’s total trade in goods and one-third of each other’s trade in services. Trade between the EU and Canada is also substantial. Bilateral trade in goods and services between the EU and Canada stood at $73.8 billion in 2000, and the EU is the second largest importer of Canadian goods behind the U.S. A recent study conducted by Canada’s Department of Foreign Affairs and International Trade (DFAIT) showed that a Canadian–EU free trade agreement would likely increase Canadian exports to the EU by 15.6 percent, or $3.4 billion. It is also estimated that EU exports to Canada would rise by 34 percent, or seven billion dollars.

A NAFTA–EU alliance is an interesting idea that deserves study. It is the hope of the author that political leaders on both sides of the Atlantic will investigate the possible benefits of such a union and that someday free trade will extend “across the pond.” Until that time, it appears that the United Kingdom should stay put. It would be too costly for the United Kingdom to leave the EU since few, if any, economic gains would be realized by joining NAFTA. The United Kingdom would also be well advised to stay out of the Euro union due to the danger of handing the United Kingdom’s monetary policy over to EU bureaucrats. In conclusion, the United Kingdom should stay right where it is until a NAFTA II type union becomes a reality.

194. Id.
195. Id.
196. Id.
198. Id.
200. Id.