



Challenges with Common Market 2.0 *Article*

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What is Common Market 2.0?

Common Market 2.0 is great branding for a new trading relationship with the EU. It resonates with the notion that the European Economic Community was only about trade when the UK joined in 1973. In fact, the founding member states had always seen the overriding objective as achieving lasting peace in Europe. They saw trade as the principal means to achieve that end by building deep relationships between European countries. In 1973 and 1975, UK leaders were clear with the public that the UK would play a key role in developing closer political unity between European countries.

CM2 describes the trade part of the future UK-EU relationship. It has nothing to do with the Withdrawal Agreement and comes after the transition period. The main benefit of CM2 would be to maintain, to a large extent, frictionless trade between the UK and the EU27. CM2 does not provide the smooth, full participation in the Single Market that EU members enjoy, and it will carry some limited economic costs. Note that CM2 would take the UK out of the EU's Common Fisheries Policy and the Common Agricultural Policy.

Benefits

CM2 offers the UK the economic benefits of EEA membership with the added advantage of a customs union between the UK and the EU. As a result, it would largely protect jobs, the economy and the union of the United Kingdom.

To do this, the UK becomes a member of European Free Trade Association (alongside Switzerland, Norway, Iceland and Liechtenstein) and continues as a signatory to the European Economic Area Agreement (CM2 is sometimes known as 'Norway plus', or 'Norway plus Customs Union'.)

A customs union allows tariff-free trade between its members, who apply common external tariffs to goods originating from third countries. Customs checks on the origin of imported goods happen mainly at the customs union's external borders. CM2 would therefore avoid border infrastructure to conduct customs checks on the island of Ireland, unlike a Canada-style FTA or 'no deal'. However, infrastructure to conduct other checks would be needed if the UK chooses to diverge from EU regulatory and technical rules (for example, if the UK adopted different agri-food standards.) The near frictionless trade between EU members depends on the customs union, common standards and regulation as well as the EU VAT area and EU customs cooperation.

EEA membership means that the UK would still adhere to the four freedoms of movement (goods, services, capital and people). Many see these freedoms as self-evident benefits, but a minority does not. The EEA Agreement limits freedom of movement of people to EEA economic migrants with controls similar to the EU's economic self-sufficiency tests, that the UK chooses not to apply.

As part of its close relationship with the EU, the UK would pay the EU for the programmes in which the UK participates and continue to collect import tariffs on behalf of the EU. The EEA Agreement is much wider than a free trade agreement and covers:

- Horizontal areas such as social policy, consumer protection, environment, company law and statistics;
- Competition and state aid rules of the EU Treaties;
- Participation in EU programmes such as those for research (Horizon 2020) and education (Erasmus).

Challenges - trade

It would not be straightforward for the UK to become an EEA-EFTA member. The UK would need to agree special treatment with EFTA to allow it to have a comprehensive customs arrangement with the EU. EFTA members currently strike their own free-trade deals with third countries outside the EU, but if the UK stayed inside a customs union with the EU, it would be excluded from EFTA trade negotiations.

Although the European Commission supports a Norway-style agreement for the UK, the three existing EEA-EFTA members have concerns about CM2. Leading politicians from Iceland and Norway have expressed reservations about the UK joining their group. EFTA members take decisions by consensus, but the UK's size means that it could dominate EFTA's relationship with the EU and potentially destabilise it. On the other hand, EFTA members would not benefit from UK participation when negotiating trade deals as a bloc.

The UK could negotiate independent trade deals but would have limited freedom to do so. The deals would have limited scope on imports to deviate from EU's tariff schedules, regulatory and technical rules. If there are deviations, the UK would need to introduce extra checks and controls on its exports to the EU. In addition, although the UK would not participate in the EU's negotiation of new trade deals, it would have to comply with them.

Challenges – laws and rules

To ensure consistent application of EEA rules, the three EEA-EFTA states established the EFTA Surveillance Authority and the EFTA Court, which correspond to the European Commission and the European Court of Justice. As an EEA-EFTA member, the UK would no longer be subject to the direct jurisdiction of the ECJ but would be overseen by the EFTA Court causing a step change in its workload.

Although it is independent, the EFTA Court tends to follow the judgements of the ECJ closely (and vice versa). For example, the EFTA Court interprets EU rules and regulations in the same way as the ECJ. And, while EFTA rulings are not legally binding on its member states, there would be significant political and diplomatic costs if the UK tried to ignore them. The UK would have a judge on the EFTA Court, which would mean that the UK would retain a judicial voice in the development of single market law.

EEA-EFTA members incorporate EU laws and regulations relating to the single market into domestic laws and rules. The UK could seek adaptations and exemptions from certain rules. It could even reject some, provided it was willing to accept reduced market access in the relevant areas.

EEA-EFTA members have no seats on the European Council or Parliament but participate in Commission activities as it shapes regulation and formulates rules. Inevitably, the UK would have less influence than it does now - becoming more of a rule-taker than rule-maker. This would be problematic in many areas, for example data sharing and privacy and for important services sectors such as financial and legal services.

Single market participation is also critical for the UK's agriculture and fisheries sectors, but CM2 takes the UK out of the Common Agricultural Policy and the Common Fisheries Policy. This would give the UK greater freedom in these policy areas. Tariff-free UK-EU trade could probably be negotiated, subject to, for example, for fisheries, concessions on access to UK waters. However, any deviation from EU standards on imports would lead to additional checks and controls on exports, making it hard to have open markets for food and drink, which could put jobs at risk.

On the question of freedom of movement of people, the EEA safeguards are limited in scope and require ongoing review. They allow the UK to take safeguard measures, but they also allow counter measures, which make UK citizens in other EEA countries vulnerable.

Conclusion

CM2 is an interesting proposition that tries to follow the referendum result with minimal economic self-harm. CM2 seems superficially attractive and envisages a close economic relationship between the UK and the EU which would benefit both.

However, EFTA has to agree to it and existing EFTA members could object. If they grant their support, it would require UK negotiation with the EU and EFTA. This would be followed by careful and technically-challenging legal drafting to establish the rules for a bespoke EEA-EFTA relationship alongside a bespoke customs relationship with the EU. The further the UK wanted to diverge from the trade conditions of EU membership, the greater the need for additional checks and controls, causing frictions to trade.

The short-term benefits would be a Brexit with limited economic damage and a satisfactory outcome for the all-important services sector. However, the UK would lose the benefit of influencing EU policies including trade, agriculture and fisheries. In the long term, the UK's weakened influence over EU/EEA policy and rule-making would no doubt lead to long-run competitive disadvantages for the UK – as indeed would any Brexit scenario because of the EU's regulatory power and the size of its market.

Rather than running hard to end up in a worse position than EU membership, perhaps a better solution for the UK would be, with the public's support, to cut through the Gordian knot of Brexit by revoking Article 50.

Sources

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Versions

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