

The Commonwealth and the EU: let's do (trade with) both

 blogs.lse.ac.uk/brexit/2015/12/10/the-commonwealth-and-the-eu-lets-do-trade-with-both/

10/12/2015

*The Leave campaign argues that quitting the Union would enable Britain to negotiate free trade agreements with more Commonwealth countries. **Steve Peers** says it certainly could – although the EU already has, or is negotiating, FTAs with most Commonwealth states – but they probably wouldn't compensate for the loss of free trade with the EU.*



The UK has a finger in many pies: the EU, NATO, the United Nations Security Council and the Commonwealth, to name just a few. Of these, the Commonwealth – which has just finished its latest summit meeting – obviously has the closest specific link to British culture and history, since it's mainly comprised of our former colonies. (A few Commonwealth members are not former colonies, and some obscure ex-colonies like the USA chose not to join. For a full list of members, see [here](#)).

Like many British citizens, I have friends and relatives in many Commonwealth countries: Canada, India, New Zealand, Australia, Singapore and South Africa. But I also have friends in the rest of the EU, as well as a professional interest in EU law. There's no incompatibility between the two at a personal level: we can all enjoy poutine as well as paella, or watch Antonio Banderas one day and Hugh Jackman the next. But is the same true of the UK's trade relationships?

When the UK joined the EU over forty years ago, it sundered special trade links which it had with most of the Commonwealth, and replaced them with trade links with the EU (as it's called now). One of the arguments sometimes invoked in favour of the UK leaving the EU in the forthcoming referendum on membership is that the UK could reverse this process, reviving its Commonwealth trade.

But a lot has changed in forty years. In my view, what's true for individuals is also true for the country as a whole: the UK does not have to choose between trade with the Commonwealth and trade with the EU, but can (and increasingly does) have both.

Background

Back in 1973, the UK had to end special trade ties with the Commonwealth because the EU is a customs union, which (according to the definition set out in international law) means that it has common trade rules with the rest of the world. The EU has power to sign certain types of trade deals, instead of its Member States (although in practice those deals are usually subject to Member States' unanimous consent). But the EU's powers don't extend to **all** types of 'trade deals', as that phrase is used by non-specialists. Those powers apply to the imposition of taxes at the border (known as tariffs) or other economic regulation of trade between countries, but **not** to commercial agreements with other countries to buy British goods. So, for instance, the UK and India were free to conclude [£9 billion worth of trade deals](#) of that broader type during the recent visit of the Indian Prime Minister.



The clipper ship Anglesey in 1852. Picture: [National Maritime Museums](#) via a [Creative Commons licence](#)

It's sometimes argued that trade deals are irrelevant, because 'governments don't trade, businesses do'. While it's true to say that much trade takes place on the basis of contracts between companies, governments still play a large role – either as purchasers of many goods and services, or as regulators with the power to impose tariffs or regulation which might reduce the volume of trade.

When the UK joined the EU, the EU was mainly only interested in special trade deals with nearby countries (although this included the Commonwealth countries of Cyprus and Malta). Mostly the EU then preferred to trade with third countries on the basis of multilateral rules instead. However, the EU did extend its existing special trade agreement for former sub-Saharan African, Caribbean and Pacific (ACP) colonies of France and Belgium to most of the former colonies of the UK in those parts of the world. But it did not extend any special treatment to richer Commonwealth countries, like Canada and Australia, or Commonwealth states in Asia, like India or Malaysia.

But times have changed. In recent years, the EU has become more interested in negotiating bilateral trade agreements with many countries, and not relying so much on the multilateral trade system established by the World Trade Organisation (WTO). This has transformed the EU's trade relationship with Commonwealth countries (along with many other states).

EU/Commonwealth trade today

The result of this change in policy is that the EU has agreed free trade agreements (FTAs), or is in the process of negotiating free trade agreements, with the vast majority of Commonwealth states – a full 90% of the 50 Commonwealth countries that are not in the EU. This includes the six Commonwealth states that accounted (in 2011) for [84% of Commonwealth trade](#) – and many more besides.

More precisely, there are already FTAs in force between the EU and 18 of those 50 Commonwealth states (36% of the remaining Commonwealth). The EU has agreed FTAs with 14 of those countries (28%), subject only to completing the ratification process. It is negotiating or about to start negotiating FTAs with 13 states (26%). That leaves only 5 Commonwealth states (10% of the non-EU total) that the EU is not planning FTA talks with. (For full details of the status of EU trade relations with each of the countries concerned, see this [annex](#)).

Of course, the Commonwealth includes many different types of economy, but the EU has agreed FTAs with two of the wealthiest Commonwealth states (Canada and Singapore), and has recently committed to talks with two more (Australia and New Zealand). It also has deals or is negotiating with most of the larger developing Commonwealth members (India, Nigeria, South Africa and Malaysia).

It's sometimes suggested that the EU's trade deals with other countries don't benefit the UK. But the UK's exports to Commonwealth countries have been [increasing](#) at over 10% a year – with increases (over two years) of 33% to

India, 31% to South Africa, 30% to Australia and 18% to Canada. In fact, since 2004, British [exports to India](#) are up 143%. Needless to say, this increase in trade with the Commonwealth (while an EU member) must have created or maintained many British jobs.

Criticisms of the EU's trade policy

The EU's trade policy is often criticised on three particular grounds. While there may be some force to these arguments, the issue in the upcoming referendum is whether these problems would actually be solved by the UK leaving the EU.

First of all, it's often argued that EU trade agreements are not fair for developing countries. In fact, the EU's negotiation of FTAs with developing Commonwealth countries in the last decade is in part due to WTO rulings that the EU could not just sign one-way trade deals, liberalising only access to EU markets; such treaties have to liberalise trade on both sides (the EU had resisted this). The EU does offer less generous unilateral trade preferences as an alternative to two-way deals (and some Commonwealth states, like Bangladesh, prefer this).

If the UK left the EU, it could decide *not* to sign trade deals with some of the developing Commonwealth countries that the EU has signed deals with. It could also offer a more generous version of unilateral trade preferences. However, the UK would *not* be free to sign deals for one-way trade liberalisation, since it would be bound by the same WTO rules on trade agreements that the EU breached when it signed those deals. Moreover, while not replacing the EU's trade deals would arguably help the poorest countries' economies, UK exports to those States would logically be lower.

The second argument is that the EU's trade deals are a problem for the environment and public services, and give industry overly generous intellectual property protection, with the result (for instance) that prices of basic medicines rise due to extended patent protection. But this argument is equally made against many trade deals that the EU is not a party to at all – such as the recent [Trans-Pacific Partnership agreement](#).

So, while (stepping outside the Commonwealth for a moment) the planned EU/US trade agreement, known as TTIP, has attracted critics concerned about its effect upon the UK's health care (among many other things), those issues would not magically go away if the UK, having left the EU, sought to negotiate its own trade agreement with the USA instead. The controversial parts of the draft deal are surely attractive to the US side as well as the EU side; it's not as if the EU is in a position to issue non-negotiable demands to desperate, poverty-stricken Americans.

The third argument is that the EU is not sufficiently interested in pursuing trade deals. As the facts discussed above show, it's quite false to suggest that the EU is not interested in trade deals with Commonwealth countries, or that the UK's EU membership makes it impossible for British businesses to increase their exports to those countries. But could it be argued that the UK alone would do a better job of negotiating such trade deals, and negotiating them more quickly, after Brexit?

It's true that it often takes years to negotiate EU trade agreements, and that some negotiations stall or slow down to a snail's pace (with India, for instance). But this is not unique to the EU. Over twenty years ago, for instance, the Clinton administration developed a plan for a 'Free Trade Area of the Americas' – but it has never come to full fruition, and talks eventually fizzled out. There's no guarantee that the UK alone would be able to reach agreements more quickly than the EU as a whole.

In any event, as noted above, the EU already has agreed trade deals with 64% of Commonwealth countries, and is negotiating with another 26%. Some of the latter negotiations are likely to be completed by the time that Brexit took place – since that would probably happen two years after the referendum date, so likely in 2018 or 2019 (for more discussion of the process of withdrawal from the EU, see [here](#)).

So the UK would have to ask perhaps three-quarters of its Commonwealth partners for trade deals to replace those already agreed with the EU. They might agree quickly to extend to the UK a parallel version of their existing

arrangement with the EU, since that would not really change the status quo. But they might not be interested in negotiating any *further* trade liberalisation. If they are interested, they will ask for concessions in return, and this will take time to negotiate.

For the remaining one-quarter or so of states, the UK will have to start negotiations from scratch, in some cases having to catch up with EU negotiations that are already underway. And there is no guarantee that these other states will want to discuss FTAs, or that negotiations would be successful.

Overall then, there's no certainty that UK exports to the Commonwealth would gain from Brexit. They might even drop, if some Commonwealth countries aren't interested in replicating the EU's trade agreements. Alternatively, they might increase – but it's hard to see how any gain in British exports would be enormous, given the existence of so many FTAs between the EU and Commonwealth countries already, and the uncertainty of those states' willingness to renegotiate those deals.

Could this very hypothetical increase in exports to the Commonwealth make up for any loss in UK exports to the EU following Brexit? Obviously, this assessment depends on how Brexit would affect UK/EU trade relations. That's a hugely complex subject, which I will return to another day, but suffice it to say that while I think a UK/EU trade deal after Brexit is likely, it's far from guaranteed. And it's hugely unlikely that any such trade deal would retain 100% of the UK's access to the EU market. There are many reasons to doubt this could happen, but first and foremost: why would the EU send the signal that a Member State could leave the EU but retain all of its trade access? If it did that, the EU would be signing its own death warrant.

The key fact to keep in mind here is that the UK's trade with the Commonwealth is [less than one-quarter](#) of its trade with the EU. So to make up for even a 10% drop in exports to the EU, the UK would have to increase exports to the Commonwealth by more than 40%. How likely is that, when the vast majority of trade between the EU and the Commonwealth would already be covered by FTAs at that point?

Taken as a whole then, it's clear that the UK *can* remain a member of the EU *and* trade with the Commonwealth – and that this trade will only increase in future as more EU FTAs with Commonwealth states come into force or are negotiated. Leaving the EU, on the other hand, is liable to lead to reduction in trade with the remaining EU without any plausible likelihood that trade with the Commonwealth would increase by anything near the level necessary to compensate.

This post represents the views of the author and not those of the BrexitVote blog, nor the LSE.

[Steve Peers](#) is a Professor in the School of Law at the University of Essex. His research interests include EU Constitutional and Administrative, Justice and Home Affairs, External Relations, Human Rights, Internal Market and Social Law, and he is the editor of [EU Law Analysis](#), where this post originally appeared.

- Copyright © 2015 London School of Economics