

Brexit – A comparison with the NZ China FTA

Brexit is the name given to the UK's exit from the EU. What the Brexit, should it indeed proceed, means in a legal sense is that the UK must trigger the termination provisions in its treaty with the other nations within the EU (Treaty).

Article 50(2) of the Treaty states:

A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.

Article 50 is remarkably simplistic, and accordingly poses political, legislative and market problems that the press believe will take months to untangle. We will leave this untangling to the UK politicians and EU leaders, and simply watch the effects in the international market from afar. However, what would happen if New Zealand wished to exit from a significant international relationship of its own?

Given the significant upside experienced by New Zealanders following the trade deal with China, it is unlikely that New Zealand would look to terminate that relationship. However, for the sake of argument, we have considered how that process might play out.

The agreement with China is aptly entitled, the Free Trade Agreement between the Government of New Zealand and the Government of the People's Republic of China; we shall call it NZFTA. The NZFTA provides at Article 213(3):

This Agreement shall remain in force until one Party gives written notice of its intention to terminate it, in which case this Agreement shall terminate 180 days after the date of the notice of termination.

The exit provision bears some similarities to Article 50 in that it is likewise simplistic. However, while it is helpful to the leaver, it is not so helpful; to the state wishing to remain.

The notice period is short (180 days will evaporate very quickly) and the lack of provision for consultation as to the effects of the exit is potentially problematic.

So, if we consider the two Articles side by side we see:

Consideration	Brexit	NZFTA
Clarity	Not clear: While simple, Article 50 does not cover certain contingencies such as what will occur if the consultation process breaks down and there is no agreement as to future relations between the UK and the EU.	Clearer: How termination is triggered, the timeframe and consequences of termination are clear though how trade relationships formed under the NZFTA might be continued is not clear.
Certainty	Uncertain: Until the exit agreement is negotiated, the terms of the exit (as opposed to the fact of it) will remain a mystery. This uncertainty will wreak havoc with international markets.	Certain: Once triggered, Article 213(3) will take effect in 180 days.
Timeframe for exit	Medium: Two years will not be long enough to allow the political machine in the UK to come to agreement	Short: If either state were to trigger Article 213(3) the other would have no time to react and insulate against the effects of the

	with the other 27 countries in the EU. However, it is a longer period than granted to NZ or China at Article 213(3)	exit. However, as there is no requirement to consult, the timeframe will not itself place pressure on the two states to negotiate terms for the exit.
Requirement for consultation	High: Effectively, the UK must consult extensively, through the negotiation of the exit agreement, with the EU.	Nil: Article 213(3) requires no consultation. However, as the NZFTA is not a treaty with the same wide reaching and critical effects (it deals predominantly with ease of trade), consultation is not as critical. It will fall to the individual states to resolve the effects of an exit internally and manage a reversion back to trade relations pre NZFTA.
Legislative impact	High: Due to the nature of the Treaty more so than Article 50, the Brexit will require legislative change. The UK has, since 1973, implemented a number of EU edicts into UK law and now	Medium: As a function of adopting the NZFTA, New Zealand has varied and enacted legislation. However, the NZFTA relates predominantly to trade relationships and so the legislative impact of an

	needs to determine which of these should remain part of UK law and which should be repealed or varied.	exit from the NZFTA will be limited to a smaller (than in the Brexit) number of statutes. Also, the NZFTA is a relatively recent agreement and is not so woven into our legislative framework as is the case with the Treaty in the UK.
Fairness	Fair: It is fair that a unilateral decision to exit places requirements on the exiter to permit the other party or parties to contend with the implications of that decision. This is particularly true in a relationship such as that recorded in the Treaty, where the nations to that Treaty have relied on each other and their respective good faith in entering the agreement.	Fair: in the context of a trade relationship, the short notice period, lack of consultation and simplicity of the exit provision does not unfairly disadvantage one party over another. The exiter will be in much the same position as the other party and the cards will lie where they fall; though if the NZFTA ever evolved into a wider treaty, more time and more

		consequences on the exiter might be appropriate.
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In conclusion, NZ is better placed (than the UK in the Brexit) in the event of a termination under the NZFTA due to the nature of that agreement and the terms of Article 213(3). However, the terms of Article 50 might suggest that the drafters of the Treaty never expected a state to unilaterally exit the EU and might be left pondering how they may have drafted Article 50 had they considered the prospect of David Cameron calling a referendum, the people of the UK voting to exit the EU and the advent of a porcine flying school

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