

SSHRC ERCS Strategic Knowledge Project on future Canada – UK Trade Relations – Some Notes for a Report

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Current legal situation governing trade between Canada and the UK

- a) International law: WTO, CETA, Agreement on Strategic Cooperation, various side agreements on alcohol, Air Tsp Bilateral, Atomic Energy Cooperation involving trade: drugs, environment, human rights etc
- b) Domestic law: treatment of UK goods and services under existing Canadian legislation
- c) Problems to be resolved: status of the UK and UK origin final and intermediate products and services under WTO and CETA etc

Possible developments as a result of Brexit

- a) Crash out with no transitional agreement or terms of future trade relations
- b) Negotiated departure with clear indication of the next steps to be taken by the UK and the EU
- c) Outlines of a future negotiated departure with indeterminate situation

Necessary action by Canada

- a) Adopting a negotiating position respecting UK status under WTO, CETA and other relevant treaties
- b) Negotiating with the UK – this should be happening now
- c) Negotiations with EU in consequence of b)
- d) Amending domestic law to give clear position or to allow Canada to adopt a position

Outcome desired by both parties

- a) Canada and the UK have a mutual interest to maintain and strengthen trade ties
- b) Canada and the UK should consult to ensure that Canada supports the UK's demarche before the WTO
- c) Canada and the UK should seek to maintain application of CETA-type benefits to the UK during a transitional period 2019 -2020
- d) Canada and the UK should seek to go beyond WTO MFN and NT commitments on goods and services by the early conclusion of a FTA based on the model of CETA

Current and future legal situation between the UK and Canada

- a) Canadian policy
- b) UK policy

CANADA – UK TRADE RELATIONS

1. Canada and UK wish to maintain MFN and preferential rights “CETA+” Trudeau – May summit

This involves clarifying WTO goods and services bindings and maintaining mutual CETA preferential rights as well as dealing with other issues such as trade in special goods (atomic energy etc) and specially regulated services such as international air transport.

This involves negotiation at the WTO. In principle Canada supports the UK's efforts but is not necessarily in agreement with the process of “rectification” of the text of its tariff proposed by the UK or satisfied by some of the solutions proposed for TRQs or quotas. Canada is one of several countries following the USA calling for negotiations to reach agreement on the UK's new tariff before the matter is settled

Canada has to adapt to the state of relations between the UK and EU

As long as the UK is treated as still a part of the EU during the phase-out period, this involves minor regulatory adjustment, or no measures at all if the UK ultimately decides to stay in the EU. However, if the UK leaves the EU without a withdrawal agreement in place Canada will have to take extensive legislative measures to preserve the UK's MFN and preferential status as these currently all depend on legislative measures premised on the UK being part of the EU. In the event of legislation in the very short period of November 2018 – March 2019 Canada will have little time to negotiate and may have to impose a solution with respect to TRQs, quotas and rules of origin.

Canadian and UK officials have been in contact to seek to avoid major difficulties. But Canadian officials are also locked into complex negotiations with the USA over the US demand to renegotiate NAFTA. The outcome of these negotiations is vital to the Canadian economy and must take precedence over any others.

The EU has yet to formalize its position with respect to EU trade agreements with third party states such as Canada. The proposed Customs legislation before Parliament in September 2018 should clarify these matters. At present the only indication is the commitment in the Withdrawal Act to maintain all EU legislation in place until amended by Parliament, including the EU's tariff and services bindings.

2. Possible Scenarios

Canada's preferred scenario – UK should withdraw art 50 notice – no change in legal status as long as CETA remains in provisional or permanent application

Canada would welcome this outcome and would be spared much administrative and possibly legislative action should this transpire.

UK's stated preferred scenario – Withdrawal agreement + 19 month phase-in period

This allows all parties more time and room to adjust. For the phase-in period the UK can continue to be treated as a Member of the EU by third parties such as Canada.

Possible scenario – UK “crashout” without an agreement with EU

This would result from the failure of the UK to reach an agreement with the EU both on the terms of leaving as well as the outlines of the future economic relationship. It would involve the UK ceasing to enjoy any rights of membership in the EU and having to radically redefine its trading relationship with both the EU and all other trading partners, including Canada.

In the first instance the UK would have to determine its status at the WTO and to bind its commitments under the GATT and GATS for goods and services, which currently are all defined by the commitments of the EU. The 2018 Withdrawal Act maintains all existing EU law, including trade commitments, in force. Thus, the UK is offering to work on the basis of the equivalent of the EU's existing tariff and services commitments. The UK has made an overture at the WTO proposing a customs tariff based on the EU's tariff to be accepted by other WTO Members on the basis of “rectification.” The USA and others, including Canada, have refused on the ground that this represents a new tariff that can only be bound by agreement with other WTO Members pursuant to negotiations with them. Dr Bartels has written that as an original WTO Member, the UK has the right to present its new tariff to the WTO and that this tariff should be considered bound under WTO law. However, a number of WTO Members do not agree and a process of negotiation has begun at the WTO. Of particular concern are the TRQ's and quotas currently bound by the EU. As of September 2018, it was not clear how the UK proposes to bind its service commitments.

Possible scenario – extended withdrawal and negotiation period at UK request and with EU acceptance

The TFEU art 50 two year delay may be extended by agreement of the states' parties. This would allow more time to conclude the difficult negotiations both with the EU and at the WTO as well as making more time to consider the issues raised by third party agreements such as CETA. UK policy with respect to third party trade agreements has yet to be formalized in domestic law let alone begin negotiations to conclude new bilateral agreements. But this is a major element of stated UK policy to become a major trading nation again and to replace much of its trading relationship with the UK by new and broader free trade agreements with third countries. This will, of necessity, be a lengthy process.

3. Other issues that must be covered (apart from goods and services under the WTO.)

There are a number of areas that must be dealt with if trade in goods and services is to continue unchanged between Canada and the UK. Under the Chicago Convention, the right to offer scheduled air transport services from one country to another must be done through airlines designated and by a state and substantially owned and controlled by nationals of that state. Currently this function is performed by the EU on behalf of all its member states. If the UK becomes a separate territory for air transport

purposes it will no longer be covered by the EU – Canada Bilateral Treaty. A new treaty setting out the terms on which Canadian aircraft will fly to the UK and UK aircraft will fly to Canada will have to be in place before March 29 for companies of both countries to plan their services. Normally such plans are made many months in advance and the normal delays have already been passed. Fortunately the formalities for a treaty are relatively simple and the Canadian Transportation Act allows such an agreement to be made by Ministers. If the procedure is relatively straightforward the underlying issues may not be so simple. Landing rights and slots at Heath Row Airport have always been a source of contention and business as usual may not be easy to maintain.

Trade in nuclear materials such as radio-active isotopes, nuclear fuel and raw material are all regulated by a number of international agreements to guarantee that safeguards are in place to protect public safety and international security. These materials are subject to international safeguards as well as export and import controls. Since the UK has announced its intention to denounce the EURATOM Treaty which governs the trade and movement of these goods in the EU, even regulating the ownership of fuel for nuclear reactors, it will be necessary for Canada and the UK to clarify the rules governing the trade in nuclear materials. The working of Canadian export controls, if goods are to pass through the UK, will also have to be reviewed as the EU has taken over responsibility in this area in recent years and now the UK will reassume responsibility.

AGREEMENTS BETWEEN CANADA & THE UNITED KINGDOM

General Search of Treaties between Canada and the EU in the Canada Treaty Series = Total 117

Bilateral = 39

Multilateral = 78

“List of treaties by country: Canada” (n.d.), online: *European Union* <<http://ec.europa.eu/world/agreements/searchByCountryAndContinent.do?countryId=6067&countryName=Canada&countryFlag=treaties>>.

Official Title	Date of Signature	Type
Bilateral Treaties		
Agreement between Canada and the European Union on security procedures for exchanging and protecting classified information (*)	04/12/2017	Bilateral
Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part (*)	30/10/2016	Bilateral
Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part	30/10/2016	Bilateral

Agreement on Air Transport between Canada and the European Community and its Member States (*)	17/12/2009	Bilateral
Agreement on civil aviation safety between the European Community and Canada	06/05/2009	Bilateral
Agreement between the European Community and the Government of Canada on the conclusion of GATT Article XXIV:6 Negotiations	25/06/2007	Bilateral
Agreement between the European Community and the Government of Canada establishing a framework for cooperation in higher education, training and youth	05/12/2006	Bilateral
Agreement between the European Union and Canada establishing a framework for the participation of Canada in the European Union crisis management operations - Declarations	24/11/2005	Bilateral
Agreement between the European Community and the Government of Canada on the processing of Advance Passenger Information and Passenger Name Record data	03/10/2005	Bilateral
Agreement in the form of an exchange of Letters with the Government of Canada on the modifications of Annex V and Annex VIII to the Agreement between the European Community and the Government of Canada on sanitary measures to protect public and animal health in respect of trade in live animals and animal products	15/03/2005	Bilateral
Agreement between the European Community and Canada on trade in wines and spirit drinks	16/09/2003	Bilateral
Agreement in the form of an Exchange of Letters between the European Community and Canada pursuant to Article XXVIII of GATT 1994 for the modification of concessions with respect to cereals provided for in EC Schedule CXL annexed to the GATT 1994	31/03/2003	Bilateral
Agreement between the European Community and the Government of Canada renewing a cooperation programme in higher education and training	19/12/2000	Bilateral
Agreement between the European Communities and the Government of Canada regarding the application of their competition laws - Statement by the Commission - Exchange of Letters	17/06/1999	Bilateral
Agreement amending the Agreement for Scientific and Technological Cooperation between the European Community and Canada	17/12/1998	Bilateral
Agreement between Canada and the European Atomic Energy Community for cooperation in the area of nuclear research	17/12/1998	Bilateral
Agreement between the European Community and the Government of Canada on sanitary measures to protect public and animal health in respect of trade in live animals and animal products	17/12/1998	Bilateral

Agreement on mutual recognition between the European Community and Canada	14/05/1998	Bilateral
Agreement between the European Community and Canada on customs cooperation and mutual assistance in customs matters	14/12/1997	Bilateral
Exchange of Letters recording the common understanding on the principles of international cooperation on research and development activities in the domain of intelligent manufacturing systems between the European Community and the United States of America, Japan, Australia, Canada and the EFTA countries of Norway and Switzerland (Canada) - Annex: Terms of reference for a programme of international cooperation in advanced manufacturing	31/03/1997	Bilateral
Agreement for the conclusion of negotiations between the European Community and Canada under Article XXIV:6	22/12/1995	Bilateral
Exchange of letters between the European Community and Canada on the conclusion of negotiations under Article XXIV:6	22/12/1995	Bilateral
Implementing Agreement between the European Atomic Energy Community represented by the Commission of the European Communities and Atomic Energy of Canada Limited designated as implementing agent by the Government of Canada on the involvement of Canada in the European Atomic Energy Community contribution to the engineering design activities (EDA) for the International Thermonuclear Experimental Reactor (ITER)	25/07/1995	Bilateral
Agreement for Scientific and Technological Cooperation between the European Community and Canada	17/06/1995	Bilateral
Agreement in the form of agreed minutes on certain oil seeds between the European Community and Canada pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT)	31/01/1994	Bilateral
Agreement in the form of exchanges of letters between the European Community and the Government of Canada concerning fisheries relations - Memorandum of understanding	20/12/1993	Bilateral
Agreement between the European Economic Community and Canada concerning trade and commerce in alcoholic beverages - Exchange of Letters	28/02/1989	Bilateral
NO LONGER IN FORCE Memorandum of Understanding between the European Atomic Energy Community represented by the Commission of the European Communities and the Government of Canada concerning cooperation in the field of fusion research and development	06/03/1986	Bilateral
Agreement in the form of an exchange of letters between the European Atomic Energy Community (Euratom) and the Government of Canada, amending the Agreement between the European Atomic Energy Community (Euratom) and the Government of Canada of 6 October 1959 for cooperation in the peaceful uses of atomic energy - Agreed minutes to the Agreement in the form of an exchange of letters between the European Atomic Energy Community (Euratom) and the Government of Canada, amending the	21/06/1985	Bilateral

Agreement between the European Atomic Energy Community (Euratom) and the Government of Canada of 6 October 1959 for cooperation in the peaceful uses of atomic energy		
Agreement in the form of an Exchange of Letters between the European Atomic Energy Community (Euratom) and the Government of Canada intended to replace the 'Interim Arrangement concerning enrichment, reprocessing and subsequent storage of nuclear material within the Community and Canada' constituting Annex C of the Agreement in the form of an Exchange of Letters of 16 January 1978 between Euratom and the Government of Canada	18/12/1981	Bilateral
Agreement negotiated between the European Economic Community and Canada under Article XXVIII of GATT concerning certain products in the fruit and vegetables sector	16/10/1979	Bilateral
Amendment to the Agreement of 6 October 1959, in the form of an exchange of letters, between the European Atomic Energy Community (Euratom) and the Government of Canada for cooperation in the peaceful uses of atomic energy	16/01/1978	Bilateral
Framework Agreement for commercial and economic cooperation between the European Communities and Canada	06/07/1976	Bilateral
Agreement with Canada negotiated under Article XXVIII (5) of GATT, signed on 19 August 1969	19/08/1969	Bilateral
Agreement with Canada negotiated under Article XXVIII (5) of GATT, signed in Geneva on 15 November 1968	15/11/1968	Bilateral
Agreement with Canada under Article XXVIII of GATT on certain residues resulting from the extraction of olive oil, signed in Geneva on 15 June 1967	15/06/1967	Bilateral
Cooperation agreement between the European Atomic Energy Community (EAEC Treaty) and the government of Canada concerning the peaceful uses of atomic energy	06/10/1959	Bilateral
Exchange of Letters between the Government of Canada and the European Atomic Energy Community (Euratom)	06/10/1959	Bilateral
Technical agreement between the European Atomic Energy Community (Euratom) and the "Atomic Energy of Canada Limited" on the peaceful uses of atomic energy	06/10/1959	Bilateral
Multilateral Treaties		
Agreement extending the Framework Agreement for International Collaboration on Research and Development of Generation IV nuclear energy systems (*)	10/11/2016	Multilateral

Paris Agreement adopted under the United Nations Framework Convention on Climate Change	12/12/2015	Multilateral
Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled	27/06/2013	Multilateral
Food Assistance Convention	25/04/2012	Multilateral
Agreement on Port State measures to prevent, deter, and eliminate Illegal, Unreported and Unregulated fishing (Not yet in force)	22/11/2009	Multilateral
Agreement in the form of an Exchange of Letters recording the common understanding renewing and modifying the agreement on international cooperation on research and development activities in the domain of intelligent manufacturing systems (IMS) between the European Community and Australia, Canada, the EFTA countries of Norway and Switzerland, Korea, Japan and the United States of America	22/03/2007	Multilateral
Convention on the Protection and Promotion of the Diversity of Cultural Expressions	20/10/2005	Multilateral
Convention for the strengthening of the Inter-American Tropical Tuna Commission established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention)	13/12/2004	Multilateral
United Nations Convention against Corruption	31/10/2003	Multilateral
WHO Framework Convention on Tobacco Control	21/05/2003	Multilateral
International Treaty on Plant Genetic Resources for Food and Agriculture	06/06/2002	Multilateral
Exchange of Letters recording the common understanding reached on the accession of the Republic of Korea to the common understanding on the principles of international cooperation on research and development activities in the domain of intelligent manufacturing systems (IMS) between the European Community and the United States of America, Japan, Australia, Canada, Norway and Switzerland	17/07/2001	Multilateral
Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime	31/05/2001	Multilateral
Stockholm Convention on Persistent Organic Pollutants	22/05/2001	Multilateral
Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organised Crime	12/12/2000	Multilateral
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime	12/12/2000	Multilateral
United Nations Convention Against Transnational Organised Crime	15/11/2000	Multilateral

Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean	05/09/2000	Multilateral
Cartagena protocol on biosafety to the convention on biological diversity	24/05/2000	Multilateral
Amendment to the Montreal Protocol on substances that deplete the ozone layer	03/12/1999	Multilateral
Protocol to the 1979 Convention on long-range transboundary air pollution to abate acidification, eutrophication and ground-level ozone	30/11/1999	Multilateral
Protocol of amendment to the International Convention on the simplification and harmonisation of customs procedures (Revised Kyoto Convention)	26/06/1999	Multilateral
Convention for the Unification of Certain Rules for International Carriage by Air	28/05/1999	Multilateral
Food Aid Convention 1999	13/04/1999	Multilateral
Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade	10/09/1998	Multilateral
Agreement concerning the establishing of global technical regulations for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles (Parallel Agreement)	25/06/1998	Multilateral
Protocol on Heavy Metals to the 1979 Convention on Long-range Transboundary Air Pollution	24/06/1998	Multilateral
Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants (POPs)	24/06/1998	Multilateral
Agreement on international humane trapping standards between the European Community, Canada and the Russian Federation	15/12/1997	Multilateral
Kyoto Protocol to the UN Framework Convention on Climate Change	11/12/1997	Multilateral
International Plant Protection Convention - New revised text approved by Resolution 12/97 of the 29th Session of the FAO Conference in November 1997 - Declaration	07/11/1997	Multilateral
Amendment to the Montreal Protocol on substances that deplete the ozone layer, adopted at the ninth meeting of the Parties	17/09/1997	Multilateral
Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management	05/09/1997	Multilateral
Protocol to amend the agreement to establish a science and technology centre in Ukraine (STCU)	07/07/1997	Multilateral
Exchanges of Letters recording the common understanding on the principles of international cooperation on research and development activities in the domain of intelligent manufacturing systems between the European	01/04/1997	Multilateral

Community and the United States of America, Japan, Australia, Canada and the EFTA countries of Norway and Switzerland		
WIPO Copyright Treaty	23/12/1996	Multilateral
WIPO Performances and Phonograms Treaty	20/12/1996	Multilateral
Agreement on trade in information technology products (ITA) implementation of the Ministerial Declaration on trade in information technology products (WTO)	13/12/1996	Multilateral
Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks	04/08/1995	Multilateral
Grains Trade Convention 1995	07/12/1994	Multilateral
Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS)	28/07/1994	Multilateral
Convention on Nuclear Safety	17/06/1994	Multilateral
United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa	17/06/1994	Multilateral
Protocol to the Convention on Long-Range Transboundary Air Pollution of 1979 on Further Reduction of Sulphur Emissions	14/06/1994	Multilateral
Protocol on the provisional application of the Agreement establishing an International Science and Technology Centre (ISTC)	27/12/1993	Multilateral
Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas	24/11/1993	Multilateral
Agreement to establish a science and technology centre in Ukraine (STCU), as amended by the Protocol of 7 July 1997	25/10/1993	Multilateral
Agreement establishing an International Science and Technology Centre (ISTC)	27/11/1992	Multilateral
Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer	25/11/1992	Multilateral
Convention on biological diversity	05/06/1992	Multilateral
United Nations Framework Convention on Climate Change	09/05/1992	Multilateral
Convention on the Transboundary Effects of Industrial Accidents	17/03/1992	Multilateral
Convention on environmental impact assessment in a transboundary context (Espoo Convention)	25/02/1991	Multilateral
Amendment to the Montreal protocol on substances that deplete the ozone layer (London Amendment)	29/06/1990	Multilateral

Agreement establishing the European Bank for Reconstruction and Development - EBRD	29/05/1990	Multilateral
Basel Convention on the control of transboundary movements of hazardous wastes and their disposal	22/03/1989	Multilateral
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances	20/12/1988	Multilateral
Protocol to the 1979 Convention on long-range transboundary air pollution concerning the control of emissions of nitrogen oxides or their transboundary fluxes (NOx Protocol)	31/10/1988	Multilateral
Montreal Protocol on substances that deplete the ozone layer	16/09/1987	Multilateral
Convention on Assistance in the case of a Nuclear Accident or Radiological Emergency	26/09/1986	Multilateral
Convention on Early Notification of a Nuclear Accident	26/09/1986	Multilateral
Vienna Convention for the protection of the ozone layer	22/03/1985	Multilateral
Protocol to the 1979 Convention on long-range transboundary air pollution on long-term financing of the cooperative programme for monitoring and evaluation of the long-range transmission of air pollutants in Europe (EMEP)	28/09/1984	Multilateral
International Convention on the Harmonised Commodity Description and Coding System	14/06/1983	Multilateral
United Nations Convention on the Law of the Sea (UNCLOS)	10/12/1982	Multilateral
Agreement establishing the Common Fund for Commodities	27/06/1980	Multilateral
Convention on the conservation of Antarctic marine living resources (CCAMLR)	20/05/1980	Multilateral
Convention on the physical protection of nuclear material	03/03/1980	Multilateral
Convention on long-range transboundary air pollution (Geneva Convention 1979)	13/11/1979	Multilateral
Agreement on trade in civil aircraft	12/04/1979	Multilateral
Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (NAFO)	24/10/1978	Multilateral
International convention on the simplification and harmonisation of customs procedures (Kyoto Convention)	18/05/1973	Multilateral
International Convention for the Conservation of Atlantic Tunas (ICCAT Convention)	14/05/1966	Multilateral
International Convention for the Protection of New Varieties of Plants, as revised at Geneva on 19 March 1991	02/12/1961	Multilateral

Terms of Reference of the International Lead and Zinc Study Group (ILZSG) - Rules of Procedure of the Group	06/05/1959	Multilateral
Customs Convention on the temporary importation of private road vehicles (1954)	04/06/1954	Multilateral
Hague Conference on Private International Law	31/10/1951	Multilateral
Constitution of the Food and Agriculture Organisation of the United Nations (FAO)	16/10/1945	Multilateral
General Agreement on Tariffs and Trade	30/10/1947	Multilateral
Agreement Establishing the International Trade Organisation	1/1/1994	Multilateral

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