

# Trade between Canada and the UK after Brexit: Where are We?

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Armand de Mestral C.M.

CIGI Senior Fellow

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The Government of the United Kingdom (UK) is committed to leaving the European Union (EU) on March 29, 2019 - a date which is fast approaching. The preferred scenario is for March 29 to be the formal date of departure but to facilitate departure with a 19 month phase-in period, within which the UK can clarify its relationships with third countries like Canada. During the phase-in period, it is planned that the EU and other countries will continue to treat the UK as part of its territory, so that many major legislative and regulatory changes will only have to be made after a further 19 months.

But what happens if the UK does not succeed in reaching a withdrawal agreement with the EU and is completely out on March 29, 2019? This raises a host of difficult issues for the UK and for its trading partners like Canada.

In recent weeks the UK Government has issued a series of papers outlining the steps it plans to take in the event of a no withdrawal agreement and promises to be in a position to deal with every eventuality. The recognition of the possibility of a no withdrawal agreement “crash-out” (variously estimated at 10 – 70%) has alarmed many in the UK and the EU. Kier Starmer of the opposition Labour Party has alleged that the UK will not possibly be ready; British industry spokespersons have also expressed great concern and the confederation of German industry has recently raised the potential difficulties for 84B Euros of German exports to the UK that would be created by a crash-out.

So far the UK Government has focused largely on future relations with the EU. This is to be covered by the already adopted Withdrawal Act and Bills on customs, taxation and trade, currently before the UK Parliament. Little has been done to prepare the ground with countries such as Canada. UK Prime Minister May has paid one visit to Canada in (June) 2018, at which time Prime Minister Trudeau expressed the desire to be able to conclude a “CETA+” agreement which would guarantee not only MFN rights under the WTO but maintain the mutual preferential rights previously enjoyed by both the UK and Canada under CETA. This is necessary as the UK will no longer be a party to CETA once it leaves the EU on March 29, 2019. All that is really known is that both governments wish to continue business as usual.

Canada and the UK can doubtless work out many problems over a 19 month phase-in, but what happens if the UK crashes out of the EU on March 29, 2019? What will be the UK law applicable to the importation of Canadian goods and services and will the UK guarantee the current preferential rights

enjoyed by Canada in the UK under CETA? The first point is to examine the general MFN rights that the UK will offer under the WTO. Unfortunately, even these are in doubt, as the UK has as not yet established a customs tariff under WTO law. A proposed tariff was sent in early August 2018 to the WTO, hopefully to be adopted immediately as needing only “rectification.” But the United States, Canada and five other states took exception to this proposal and have called for negotiations with the UK to reach agreement on this new UK tariff. At time of writing, it is not known what proposal the UK is making to bind its WTO service commitments under the GATS Agreement. WTO Director General Azevedo, while stating on BBC 4 on August 24, 2018 that a UK crash-out would not be the end of the world, also stated that he doubted that the UK could reach agreement on all tariffs and quotas by March 29. The UK can extend these rights unilaterally for imports but may not be in a position to have its rights guaranteed by other WTO Members. <https://www.thestar.com/business/2018/08/24/wto-warns-uk-faces-difficult-shift-to-blocs-rules-post-brex.html>

What of preferential rights that Canadians currently enjoy under the Canada – EU CETA, which entered into force provisionally in 2018. Here again, the UK may be able to offer to maintain these rights unilaterally for imports, by maintaining existing EU legislation in place under the Withdrawal Act, but UK traders may not be in a position to enjoy these rights in Canada. To ensure CETA+ rights for UK goods and services in Canada will require an agreement, which is unlikely to be concluded before March 29. In all likelihood Canada will be in the invidious position of having to unilaterally offer these rights. To do so Parliament will have to pass legislation as complex as the CETA Implementation Act, all in the space of a mere four months and, unless there can be negotiations with the UK, Canada will have to decide unilaterally on issues relating to quotas and TRQ’s to be enjoyed by UK goods as well as replacing the CETA rules of origin which are no longer suitable. Canadian Provinces presumably will all fall into line and accept whatever is decided in Ottawa.

A number of other issues have to be resolved by March 29 in the event of no agreement with the EU. The reciprocal right to fly passengers between Canada and the UK must be redefined. The complex problems surrounding trade in nuclear materials between Canada and the UK must be solved for this important trade to continue, due to the UK’s decision to denounce the URATOM Treaty. These are but two among many.

In light of all this, one assumes that voters in the UK were unaware of the trouble they were creating for themselves and still less the trouble they were creating for their trading partners such as Canada when a slim majority voted for Brexit.