Government Issued Documents
Includes all UK White Papers and Canadian notices regarding CETA and Brexit.

Canadian Customs Law
Outlines the architecture of Canadian Customs Law and how tariffs are encapsulated in federal legislation.

Customs Tariff Analysis
Analyses the scope of the CETA provisions within the Customs Tariff Act and the associated regulations. Aims to identify possible remedies for a ‘hard Brexit’ where the EU has not accepted a transitional application of CETA to the UK.

ONGOING RESEARCH QUESTIONS
- Is CETA incorporated into UK domestic law by the proposed Withdrawal Agreement?

TIMELINE OF BREXIT EVENTS

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
</tr>
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<tbody>
<tr>
<td>1973</td>
<td>The UK accedes to the European Union</td>
</tr>
<tr>
<td>May 7, 2015</td>
<td>David Cameron wins in general election with commitment to hold an in/out referendum.</td>
</tr>
<tr>
<td>June 23, 2016</td>
<td>Referendum occurs – vote for the UK to leave the European Union</td>
</tr>
<tr>
<td>July 13, 2016</td>
<td>Theresa May becomes prime minister</td>
</tr>
<tr>
<td>January 24, 2017</td>
<td>Judgment of the Supreme Court: R (on the application of Miller and another) (Respondents) v Secretary of State for Exiting the European Union (Appellant)</td>
</tr>
<tr>
<td>March 16, 2017</td>
<td>Royal Assent of the European Union (Notification of Withdrawal) Act 2017</td>
</tr>
<tr>
<td>March 29, 2017</td>
<td>Article 50 of the Treaty on European Union is triggered</td>
</tr>
<tr>
<td>June 26, 2017</td>
<td>Formal negotiations on withdrawal begin between the UK and the EU</td>
</tr>
<tr>
<td>June 26, 2018</td>
<td>Royal Assent of the European Union (Withdrawal) Act 2018</td>
</tr>
<tr>
<td>July 12, 2018</td>
<td>White Paper: The future relationship between the United Kingdom and the European Union</td>
</tr>
<tr>
<td>July 18, 2018</td>
<td>First Reading of the Trade Bill</td>
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**BREXIT PROCEDURE**


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**SPECIALISED BREXIT INSTITUTIONS**

<table>
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<tr>
<th>Canada</th>
<th>UK</th>
<th>EU</th>
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<tbody>
<tr>
<td>Department for Exiting the European Union</td>
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**KEY UK LEGISLATION**

**United Kingdom**

- European Union (Notification of Withdrawal) Act 2017
- European Union (Withdrawal) Act 2018

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**GOVERNMENT ISSUED DOCUMENTS**

UK White Papers:
- “The Future Relationship between the United Kingdom and the European Union”

UK CETA: Research
- The impact of the EU-Canada Comprehensive Economic and Trade Agreement on the UK
- The implications of an EU-Canada FTA for the UK

- “One of the possible outcomes of the terms of the United Kingdom’s withdrawal from the European Union includes the possibility for a time-limited transition period following Brexit during which the United Kingdom would, in some aspects, continue to be treated like a Member State of the European Union. Depending on the details and other outcomes of such a transition period, Canada would consent to the United Kingdom remaining party to CETA and all other Canada–European Union agreements.” [2931]

- “Should the European Union and the United Kingdom not reach an agreement on their future relationship in time for Brexit, the Government of Canada is discussing a transitional agreement with the United Kingdom that will allow a seamless transition of CETA, while respecting the United Kingdom’s lack of jurisdiction to negotiate free trade agreements while it is a Member State of the European Union. Post-Brexit, once the United Kingdom has the legal competence to negotiate trade agreements, Canada will work with the United Kingdom to ensure we take full advantage of our particular bilateral trade relationship.” [2931]
**Abstract**

<table>
<thead>
<tr>
<th>CETA</th>
<th>Canada–European Union Comprehensive Economic and Trade Agreement Implementation Act (Bill C-30)</th>
<th>Amendmends to the Customs Tariff Act (&quot;Customs Tariff&quot;)</th>
<th>CETA related regulations</th>
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<td>CETA Rules of Origin Regulations (SOR/2017-175)</td>
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<td>CETA Rules of Origin for Casual Goods Regulations (SOR/2017-176)</td>
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<td>CETA Tariff Preference Regulations (SOR/2017-177)</td>
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<td>Regulations Defining “EU country or other CETA beneficiary” (SOR/2017-178)</td>
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</tbody>
</table>

**General Reference:** Daniel Kiselbach et al., *Canadian Customs Law*, 1st ed (Toronto: Carswell, 2012).

**CHAPTER 1 - OVERVIEW**

1 - Introduction

- “The Canada Border Services Agency (“CBSA”) provides integrated customs services, CBSA officers collect customs duties established, for example, under the *Customs Tariff* and the *Excise Tax Act*.” [10]
- “Canada Revenue Agency (“CRA”) officers collect taxes or charges under other statutes…”
- “Finance Canada designs Canada’s tariff and tax policies…”
- “Many of Canada’s customs laws are harmonized with, or based upon international agreements. Of particular importance are the so-called “Uruguay Round” agreements, which are the basis of the World Trade Organization (“WTO”) system.” [11]

2 – Customs Laws Related to Duties and Taxes

- “Customs duties, taxes and charges are imposed pursuant to various provisions set out in the *Customs Act*, the *Customs Tariff*, the *Excise Tax Act*, the *Special Import Measures Act*, regulations made under those Acts, and other Acts and regulations.” [12]
- “The *Customs Act* regulates the importation of “goods”. [13]
- “Customs duty is levied under the *Customs Tariff* on goods described in the List of Tariff Provisions. The *Customs Tariff* also deals with a variety of customs issues. These include: (a) the origin of goods and rules of origin…(e) special measures, emergency measures and safeguards…” [14]
- “The *Excise Tax Act* provides that an importer must pay Goods and Services Tax (“GST”) on goods calculated at the rate of 5%. Under that Act the term “goods” has the same meaning as in the *Customs Act*.” [15]
• “The Special Import Measures Act provides for the imposition of, amongst other things, anti-dumping duty, countervailing duty or provisional duty on imported goods. In general, the Act indicates that a duty shall be levied on dumped or subsidized imported goods respected which the Canadian International Trade Tribunal (“CITT”) has made an order or finding.” [17]

3- Customs Policies
• “The CBSA and other agencies and departments have published policies, notices, forms, guides and brochures…The CBSA issues D-memoranda describing legislation, regulations, policies, and procedures that CBSA officers use for administration and enforcement.” [18]
• “The CRA issues policies that CRA officers use for administration and enforcement of GST and HS applicable to the import or export of goods and services. The CRA has issued memoranda, technical notes and policies …” [18]
• “Foreign Affairs and International Trade Canada issues policies that Department of Foreign Affairs and International Trade (“DFAIT”) officers use respecting such matters as the issuance of import or export permits in accordance with the Export and Import Permits Act.” [19]
• “Health Canada issues policies that Health Canada officers use respecting the safety of various goods. Importers, manufacturers, advertisers, or retailers of consumer products in Canada must ensure that their products comply with legislation such as the Canada Consumer Product Safety Act, the Hazardous Products Act, the Cosmetic Regulations or the Food and Drugs Act.” [20]
• Other agencies: Canadian Food Inspection Agency (“CFIA”) and Environment Canada that are also implicated in the importation of goods.

CHAPTER 5 - ORIGIN
1- Introduction
   (a) Rules of Origin
   • “According to the World Trade Organization, there is no international definition of origin. However, rules of origin are generally said to fall into 2 categories, namely, preferential and non-preferential. The WTO Agreement on Rules of Origin … is an important source for the rules of origin and sets out the minimum standard for the application of preferential and non-preferential rules of origin.” [260]
   • “Most of the WTO agreements resulted from the 1986-1994 Uruguay Round of negotiations … referred to collectively as the Final Act of the 1986-1994 Uruguay Round of Trade Negotiations… Annexed to the WTO Agreement are several agreements, including the Rules of Origin Agreement. In 1994, Canada passed legislation to implement the Final Act to allow Canada to take advantage of the WTO negotiated agreements.” [260]

(b) Preferential Rules of Origin
• “Preferential rules of origin are used to determine whether goods are eligible for preferential tariff treatment and applicable rates of duty.” [260]
• “Importers may claim preferential tariff treatment respecting goods originating in a country or territory covered by a free trade agreement territory, or where Canada has unilaterally granted preferential tariff rates.” [260] ➔ FN: An excerpt of Annex II to the Rules of Origin, Annex II: Common Declaration with Regard to Preferential Rules of Origin:
  o ‘2. For the purposes of this Common Declaration, preferential rules of origin shall be defined as those laws, regulations and administrative determinations of general application applied by any Member to determine whether goods qualify for preferential treatment under contractual or autonomous trade regimes leading to the granting of trade preferences going beyond the application of para 1 of Article I of GATT 1994.

(c) Non-Preferential Rules of Origin
• “Non-preferential rules of origin are used to determine the country of origin for purposes other than the granting of preferential tariff treatment.” [261]
• “The WCO has stated that the Rules of Origin Agreement covers only rules of origin used in non-preferential instruments such as Most-Favoured-Nation Tariff (“MFNT”), anti-dumping and countervailing duties, safeguard measures, origin marking requirements, discriminatory quantitative restrictions or tariff quotas, and trade statistics.” [261-262]

2. Tariffs
   (a) General Provisions
   - [262-263] “Unless otherwise provided for in an order made by the Governor in Council, or specified in a tariff item, goods are entitled to a tariff treatment other than General Tariff (“GT”) under the Customs Tariff only if:
     a) Proof of origin is given in accordance with the Customs Act requirements; and
     b) The goods are entitled to that tariff treatment in accordance with rules of origin regulations or specified orders [ref: Customs Tariff s.16; 31(1)(a); 34(1)(a); 38(1)(a) or 42(1)(a); ss. 45(13), 48, 49(1)]
   - “The Governor in Council may exempt goods entitled to a tariff treatment other than the GT from proof of origin or other conditions.” [263] Customs Tariff s. 24(2)
   - List of Countries and Applicable Tariff Treatment in the Customs Tariff which lists the countries and territories that are the beneficiaries of each of the tariffs.

3. General Tariff
   (a) Countries and Territories
   - “The GT applies to very few countries that are either not WTO members or not covered under a trade agreement with Canada. At this time, only goods from North Korea are subject to the GT. Under the GT goods are subject to a customs duty rate of 35%. Goods are subject to the GT unless proof of origin is given in accordance with the Customs Act, showing that they are entitled to preferential treatment.” [264-265]

4. International Agreements - WTO Framework
   (a) Most-Favoured Nation Tariff (MFNT)
      (i) Countries and Territories
      - “The MFNT is extended to all members of the WTO, and is based upon the WTO’s Most-Favoured-Nation clause. All WTO parties are required to grant treatment to each other that is as favourable as they extend to any other country respecting the application of duties, taxes and trade regulations. The rules of origin respecting the MFNT are set in the Most-Favoured Nation Tariff Rules of Origin Regulations [SOR/98-33; Memorandum D11-4-3, note 41]. Countries and territories that have been designated as beneficiary countries for the purposes of the MFNT are listed in the List of Countries and Applicable Tariff Treatments in the Schedule to the Customs Tariff.” [265-266]
      (ii) Rates of Duty
      - “Unless a more favourable rate applies to those goods, the rates of duty applicable to goods originating from a MFNT country are set out in a column entitled the MFNT in the List of Tariff provisions shown by certain letter codes.” [266] Source Customs Tariff s. 30.
      (iii) Rules of Origin
      - “Goods originate in a country that is the beneficiary of the MFNT if:
       o Not less than 50% of the cost of production of the goods is incurred by the industry of one or more countries that are beneficiaries of the MFNT, or by the industry of Canada; and
       o The goods were finished in a country that is a beneficiary of the MFNT in the form in which they were imported into Canada.” [266] [Source: Most Favoured Nation Regs, note 46 s.1. Also Memorandum D11-4-3, note 41]
   (b) General Preferential Tariff
      (i) Countries and Territories
“The General Preferential Tariff (“GPT”) was established in 1974, and applies to imports from most developing countries designated by the United Nations. The GPT was created in connection with Canada’s international obligations to provide market access to less developed countries, and provides reduced duty rates on selected products. The GPT applies to more than 180 developing countries and customs territories. Approximately ¾ of GPT eligible goods are duty free. The rest are subject to tariff treatments lower than MFNT.” [267] SKG Comment: applicable to least developed or developing states, and therefore it is assumed that it would not be applicable to Canada’s treatment of the UK.

(v) Extension or Withdrawal of General Preferential Tariff Treatment
- “The Governor in Council may amend the schedule to extend entitlement to the GPT to goods that originate in a country that is a beneficiary of the MFNT if, in the opinion of the Governor in Council, the country is a developing country. It may also amend the schedule to withdraw entitlement to the GPT.” [269] Source: Customs Tariff note 5, s. 34.

5. Negotiated Trade Agreements

(a) Commonwealth Caribbean Countries Tariff
- “In 1986 the Customs Tariff was amended to permit the duty-free importation of goods from most Caribbean Commonwealth countries. Canada has unilaterally extended the Commonwealth Caribbean Countries Tariff (CCCT) to countries that have unique geographic, political or economic conditions warranting reduced duty rates. It was established under the CARIBCAN program…Goods originating in a country set out in the List of Countries and Applicable Tariff Treatment as a beneficiary of the CCCT are entitled to the CCCT rates of customs duty.” [273] Source ➔ Customs Tariff, note 5 s. 41(1).

(b) Australia Tariff and New Zealand Tariff ➔ SKG Comment: treatment prior to the CPTPP
- “The Australia Tariff (“AT”) is based upon Canada’s close commonwealth trading relationship with Australia. The old Commonwealth preference system was negotiated in 1960 and amended in 1973. The Canada-Australia Trade Agreement (“CANATA”) was based on the old Commonwealth system. The rules of origin for the New Zealand Tariff (“NZT”) and AT treatments are set out in Australia Tariff and New Zealand Tariff Rules of Origin Regulation. Goods that originate in New Zealand are entitled to the NZT rates of customs duty subject to a specified exception.” [275] SKG Comment: CANATA is not identified on Global Affairs list of trade agreements with Australia. Australian websites claim that CANATA was superseded by WTO treatment and other multilateral negotiated tariffs.

6. Free Trade Agreements

(b) Free Trade Agreement Core Principles

(i) Originating “Goods” and “Materials”
- “A good that originates from a country that is a member of a free trade agreement with Canada is an “originating good”. An originating good satisfies the rules of origin and is eligible for preferential tariff treatment… A “non-originating good” does not satisfy the rules of origin and is not eligible for preferential treatment.

CHAPTER 7 – CUSTOMS VALUATION
2 – Overview
(a) The World Trade Organization
- The rules for customs valuation in Canada are based on the World Trade Organization … “Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994” (Valuation Agreement). As a WTO member state, Canada is bound by the Valuation Agreement. According, the rules set out in the Valuation Agreement are incorporated into Canadian law, specifically the Customs Act.
CUSTOMS TARIFF ACT - ANALYSIS


CANADA–EUROPEAN UNION COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT IMPLEMENTATION ACT

97 The Act is amended by adding the following after section 49.7 [of the Customs Tariff]:
Canada–European Union Tariff
Application of CEUT ➔ 49.8
Regulations ➔ 49.9 The Governor in Council may, on the recommendation of the Minister, make regulations defining the term EU country or other CETA beneficiary.
Extension and withdrawal of entitlement ➔ 49.91 (1)
Content of order ➔ 49.91(2)

CUSTOMS TARIFF

Definitions
2 (1) The definitions in this subsection apply in this Act. […]
List of Countries means the List of Countries and Applicable Tariff Treatments set out in the schedule.

DIVISION 3 - Tariff Treatments

General

Conditions
24 (1) Unless otherwise provided in an order made under subsection (2) or otherwise specified in a tariff item, goods are entitled to a tariff treatment, other than the General Tariff, under this Act only if
• (a) proof of origin of the goods is given in accordance with the Customs Act; and
• (b) the goods are entitled to that tariff treatment in accordance with regulations made under section 16 or an order made under any of the following provisions:
  o (i) paragraph 31(1)(a),
  o (ii) paragraph 34(1)(a),
  o (iii) paragraph 38(1)(a),
  o (iv) paragraph 42(1)(a),
  o (v) subsection 45(13),
  o (vi) section 48,
  o (vii) subsection 49.01(8),
  o (viii) section 49.2,
  o (ix) subsection 49.5(8),
  o (x) subsection 49.6(8).

Exemption
(2) The Governor in Council may, on the recommendation of the Minister, by order, exempt goods entitled to a tariff treatment other than the General Tariff from any condition set out in subsection (1), on such conditions as may be specified in the order.

Most favourable tariff
25 If, under this Act, goods are entitled to both the Most-Favoured-Nation Tariff and another Tariff and the amount of customs duty imposed under the Most-Favoured-Nation Tariff is lower than the amount imposed under the other Tariff, the rate of customs duty under the Most-Favoured-Nation Tariff applies to those goods in lieu of the rate under the other Tariff.

General Tariff

Application of General Tariff
29 (1) A General Tariff rate of customs duty of 35% applies to
• (a) goods that originate in a country that is not set out in the List of Countries;
• (b) goods that originate in a country set out in the List of Countries and that fail to meet the conditions for entitlement to any other tariff treatments provided for under this Act; and
• (c) goods to which the General Tariff applies under paragraph 31(1)(b) or any regulation or order made under this Act.

Exception
(2) Notwithstanding subsection (1), goods referred to in that subsection are subject to the Most-Favoured-Nation Tariff rate of customs duty in respect of those goods if
   (a) that rate is, or is equivalent to, more than 35%; or
   (b) a Note or Supplementary Note to a Chapter of the List of Tariff Provisions or a tariff item so provides.

Most-Favoured-Nation Tariff

Application of MFN Tariff
30 (1) Subject to section 24 and any order made under section 31, goods that originate in a country set out in the List of Countries are entitled to the Most-Favoured-Nation Tariff rates of customs duty.

Extension or withdrawal of entitlement
31 (1) The Governor in Council may, on the recommendation of the Minister, by order, amend the schedule to
   (a) extend entitlement to the Most-Favoured-Nation Tariff to any goods that originate in a country to which the General Tariff applies;
   (b) withdraw entitlement to the Most-Favoured-Nation Tariff from any goods that originate in a country that is entitled to that Tariff and make those goods subject to the General Tariff; and
   (c) indicate, to the extent required, the tariff treatment of the country to which the order applies.

Contents of order
(2) An order made under subsection (1) must
   (a) specify the date on which the order becomes effective;
   (b) if the order partially extends entitlement to the Most-Favoured-Nation Tariff, indicate the goods to which entitlement to that Tariff is extended; and
   (c) if the order partially withdraws entitlement to the Most-Favoured-Nation Tariff, indicate the goods that are made subject to the General Tariff.

Approval by Parliament
32 (1) An order made under paragraph 31(1)(b) the period of which is longer than 180 days ceases to have effect on the one hundred and eightieth day after the day on which it becomes effective or, if Parliament is not then sitting, the fifteenth day thereafter that Parliament is sitting unless, not later than that day, the order is approved by a resolution adopted by both Houses of Parliament.

Meaning of sitting day
(2) For the purposes of subsection (1), a day on which either House of Parliament sits is deemed to be a sitting day.

Rates restored
(3) If an order referred to in subsection (1) ceases to have effect under that subsection, entitlement to the Most-Favoured-Nation Tariff withdrawn by the order shall be restored.

Canada–European Union Tariff

Application of CEUT
49.8 (1) Subject to section 24, goods that originate in an EU country or other CETA beneficiary are entitled to the Canada–European Union Tariff rates of customs duty.

[...]
49.9 The Governor in Council may, on the recommendation of the Minister, make regulations defining the term “EU country or other CETA beneficiary”.

Extension and withdrawal of entitlement

49.91 (1) The Governor in Council may, on the recommendation of the Minister, by order, amend the schedule to

(a) extend entitlement to the Canada–European Union Tariff to any goods that originate in an EU country or other CETA beneficiary; or

(b) withdraw entitlement to the Canada–European Union Tariff from any goods that originate in a country if, in the opinion of the Governor in Council, those goods are not entitled to that Tariff under the Canada–European Union Comprehensive Economic and Trade Agreement.

Content of order

(2) An order made under subsection (1)

(a) must specify the date on which the order becomes effective;

(b) must, if the order partially extends entitlement to the Canada–European Union Tariff, indicate the goods to which entitlement to that Tariff is extended;

(c) may exempt goods from the conditions set out in subsection 24(1) and prescribe any conditions that apply; and

(d) must, if the order wholly or partially withdraws entitlement to the Canada–European Union Tariff, indicate the goods to which the Most-Favoured-Nation Tariff applies as a consequence.

<table>
<thead>
<tr>
<th>Country Name</th>
<th>MFN</th>
<th>GPT</th>
<th>LDCT</th>
<th>Other</th>
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<tr>
<td>United Kingdom</td>
<td>X</td>
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<td>CEUT</td>
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</table>
The Statutory Instrument Act defines which government issued documents are considered to possess legislative/statutory authority. Based on the Act, the regulations issued in accordance with the Customs Tariff by the Governor in Council pursuant to the directives of the Minister of Finance are considered to be examples of delegated legislation. Four (4) regulations in relation to amendments of the Customs Tariff Act have been introduced pursuant to the assent of the Canada–European Union Comprehensive Economic and Trade Agreement Implementation Act. Please see below for more details regarding these regulations.


Overview. Primary legislation refers to the statutes enacted by sovereign law-makers such as Parliament and the provincial legislatures. It is common for Parliament and provincial legislatures to delegate portions of their law-making authority to subordinate offices or institutions by conferring on them a power to make legislation with respect to a particular matter or for a particular purpose. The legislation made by such subordinate bodies is referred to as “subordinate” legislation or more frequently in recent years as “delegated” or “executive” legislation. Regulations, orders in council, most rules of court and municipal by-laws are all examples of delegated legislation. Official versions of Acts and regulations appear in the Gazettes published by the governments of Canada and all provinces and territories. In some jurisdictions official versions are published electronically.”

Definitions

2 (1) In this Act, […]

regulation means a statutory instrument
(a) made in the exercise of a legislative power conferred by or under an Act of Parliament, or
(b) for the contravention of which a penalty, fine or imprisonment is prescribed by or under an Act of Parliament,

and includes a rule, order or regulation governing the practice or procedure in any proceedings before a judicial or quasi-judicial body established by or under an Act of Parliament, and any instrument described as a regulation in any other Act of Parliament;

regulation-making authority means any authority authorized to make regulations and, with reference to any particular regulation or proposed regulation, means the authority that made or proposes to make the regulation;

statutory instrument
(a) means any rule, order, regulation, ordinance, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution or other instrument issued, made or established

   o (i) in the execution of a power conferred by or under an Act of Parliament, by or under which that instrument is expressly authorized to be issued, made or established otherwise than by the conferring on any person or body of powers or functions in relation to a matter to which that instrument relates, or
   o (ii) by or under the authority of the Governor in Council, otherwise than in the execution of a power conferred by or under an Act of Parliament,

but

(b) does not include …]

Determination of whether certain instruments are regulations
(2) In applying the definition regulation in subsection (1) for the purpose of determining whether an instrument described in subparagraph (b)(i) of the definition statutory instrument in that subsection is a regulation, that instrument shall be deemed to be a statutory instrument, and any instrument accordingly determined to be a regulation shall be deemed to be a regulation for all purposes of this Act.
Incorporation by Reference

Power to incorporate documents by reference

18.1 (1) Subject to subsection (2), the power to make a regulation includes the power to incorporate in it by reference a document — or a part of a document — as it exists on a particular date or as it is amended from time to time.

[...]

Meaning of regulation-making authority

(4) For the purposes of subsections (2) and (3), regulation-making authority includes the following:

(a) if the regulation-making authority is the Governor in Council or the Treasury Board,
   o (i) the minister who recommends the making of the regulation,
   o (ii) the minister who is accountable to Parliament for the administration of the regulation, and
   o (iii) any person or body — other than Statistics Canada and standards development organizations accredited by the Standards Council of Canada — for which either of those ministers is accountable to Parliament;

(b) if the regulation-making authority is a minister, any person or body — other than Statistics Canada and standards development organizations accredited by the Standards Council of Canada — for which that minister is accountable to Parliament; and

(c) in any other case, any minister who is accountable to Parliament for the regulation-making authority.

Impact of section 18.1

18.2 The powers conferred by section 18.1 are in addition to any power to incorporate by reference that is conferred by the Act under which a regulation is made and that section does not limit such a power.

[...]

Scrutiny by Parliament of Statutory Instruments

Statutory instruments referred to Scrutiny Committee

19 Every statutory instrument issued, made or established after December 31, 1971, other than an instrument the inspection of which and the obtaining of copies of which are precluded by any regulations made pursuant to paragraph 20(d), shall stand permanently referred to any Committee of the House of Commons, of the Senate or of both Houses of Parliament that may be established for the purpose of reviewing and scrutinizing statutory instruments.

[...]

Regulations

Regulations

20 The Governor in Council may make regulations,

• (a) exempting any proposed regulation or class of regulation from the application of subsection 3(1) where that regulation or class of regulation would, if it were made, be exempted from the application of subsection 5(1) or 11(1) as a regulation or class of regulation described in subparagraph (c)(ii);

• (b) exempting any class of regulation from the application of subsection 5(1) where, in the opinion of the Governor in Council, the registration thereof is not reasonably practicable due to the number of regulations of that class;

• (c) subject to any other Act of Parliament, exempting from the application of subsection 11(1)
   o (i) any class of regulation that is exempted from the application of subsection 5(1),
   o (ii) any regulation or class of regulation where the Governor in Council is satisfied that the regulation or class of regulation affects or is likely to affect only a limited number of persons and that reasonable steps have been or will be taken for the purpose of bringing the purport thereof to the notice of those persons affected or likely to be affected by it, or
   o (iii) any regulation or class of regulation where the Governor in Council is satisfied that the regulation or class of regulation is such that publication could reasonably be expected to be injurious to
      • (A) the conduct by the Government of Canada of federal-provincial affairs, or
• (B) the conduct of international affairs, the defence of Canada or any state allied or associated with Canada, as defined in subsection 15(2) of the Access to Information Act, or the detection, prevention or suppression of subversive or hostile activities, as defined in that subsection;

• (d) precluding the inspection of and the obtaining of copies of
  o (i) any regulation or class of regulation that has been exempted from the application of subsection 11(1) as a regulation described in subparagraph (c)(iii),
  o (ii) any statutory instrument or class of statutory instrument other than a regulation, where the Governor in Council is satisfied that the inspection thereof and the obtaining of copies thereof could reasonably be expected to have the injurious effect described in clause (c)(iii)(A) or (B), or
  o (iii) any statutory instrument or class of statutory instrument the inspection of which or the making of copies of which is not otherwise provided for by law, in respect of which the Governor in Council is satisfied that the inspection or making of copies thereof as provided for by this Act would, if it were not precluded by any regulation made under this section, result or be likely to result in injustice or undue hardship to any person or body affected thereby or in serious and unwarranted detriment to any such person or body in the matter or conduct of his or its affairs;

• (e) prescribing the manner in which a regulation-making authority shall transmit copies of a regulation to the Clerk of the Privy Council;

• (f) prescribing the form and manner in which any statutory instrument shall be registered and the form and manner in which and the period of time for which records of any statutory instrument shall be maintained;

• (g) authorizing the Clerk of the Privy Council to direct or authorize publication in the Canada Gazette of any statutory instrument or other document, the publication of which, in the opinion of the Clerk of the Privy Council, is in the public interest;

• (h) respecting the form and manner in which the Canada Gazette shall be published and prescribing the classes of documents that may be published therein;

• (i) requiring any regulation-making authority to forward to the Clerk of the Privy Council such information relating to any regulations made by it that are exempted from the application of subsection 11(1) as will enable the Clerk of the Privy Council to carry out the obligation imposed on him by subsection 14(1);

• (j) respecting the form and manner in which any index of statutory instruments or any consolidation of regulations shall be prepared and published;

• (k) prescribing the persons or classes of persons to whom copies of any consolidation of regulations may be delivered without charge and prescribing the charge that shall be paid by any other person for a copy of any such consolidation;

• (l) prescribing the fee that shall be paid by any person for any inspection of a statutory instrument or for obtaining a copy thereof or the manner in which any such fee shall be determined; and

• (m) prescribing any matter or thing that by this Act is to be prescribed.
MOST-FAVOURED-NATION TARIFF RULES OF ORIGIN REGULATIONS (SOR/98-33)

- Defines the rules of origin for goods that qualify for the MFN tariff identified within the Customs Tariff. Does not express a list of countries which are eligible for the MFN tariff. Should a hard Brexit occur, goods from the UK as per s. 30(1) and the Schedule of the Customs Tariff, would need to meet the rules of origins stipulated within this regulation in order to receive the MFN tariff rather than the general tariff of 35%.

REGULATIONS AFFILIATED WITH CETA & THE CUSTOMS TARIFF ACT

There are four (4) regulations which supplement the domestic implementation of CETA into federal customs law. These include:


Preferential CETA tariffs ➔ expressed as ‘CEUT’ within the Customs Tariff and its Schedule.

CETA RULES OF ORIGIN REGULATIONS (SOR/2017-175)

S. 1 of this regulation annexes to the Customs Tariff (1) articles 1 and 2; (2) paragraphs 1-3 of article 3; (3) articles 4-17; and (4) annexes 1, 4, 5, 5-A and 7 of the Protocol on Rules of Origin and Origin Procedures of CETA.

PROBLEM ➔ The Protocol on Rules of Origin and Origin Procedures solely applies to the Parties/Party of the CETA. Parties is defined under art. 1 of CETA as: “[...] on the one hand, the European Union or its Member States or the European Union and its Member States within their respective areas of competence as derived from the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as the 'EU Party'), and on the other hand, Canada”. Post-Brexit, the UK will no longer fall into this definition, thus, would not meet the rules of origin criteria to qualify for the CEUT.

CETA TARIFF PREFERENCE REGULATIONS (SOR/2017-177)

Interpretation
1 In these Regulations, originating means qualifying as originating in the territory of a Party under the rules of origin set out in the Protocol on Rules of Origin and Origin Procedures of the Canada-European Union Comprehensive Economic and Trade Agreement.

General
2 For the purposes of paragraph 24(1)(b) of the Customs Tariff, originating products exported from an EU country or other CETA beneficiary are entitled to the benefit of the Canada-European Union Tariff if
   (a) the products are shipped to Canada from an EU country or other CETA beneficiary without shipment through another country, either
      (i) on a through bill of lading, or
      (ii) without a through bill of lading and the importer provides, when requested by an officer, documentary evidence that indicates the shipping route and all points of shipment and transshipment prior to the importation of the products; or
   (b) the products are shipped to Canada through another country and the importer provides, when requested by an officer,
(i) documentary evidence that indicates the shipping route and all points of shipment and transhipment prior to the importation of the products, and
(ii) a copy of the customs control documents that establish that the products remained under customs control while in that other country.

**REGULATIONS DEFINING “EU COUNTRY OR OTHER CETA BENEFICIARY” (SOR/2017-178)**

**ARGUMENT/PROBLEM ➔** The argument could’ve been made that since the regulation SOR/2017-178 does not define EU Country or CETA beneficiary in relation to the territory of the EU as per the TEU that it could be extended to the UK. Practically, if the UK is identified as an ‘Other CETA Beneficiary’ it would still not be eligible for the CEUT because goods coming from the UK would fail to meet the rules of origin expressed within SOR/2017-175/Protocol on Rules of Origin and Origin Procedures.

**Interpretation**

1 For the purposes of the Customs Tariff, EU country or other CETA beneficiary means a country or territory set out in the schedule to these Regulations.

**Coming into Force**

*2 These Regulations come into force on the day on which section 97 of the Canada–European Union Comprehensive Economic and Trade Agreement Implementation Act, chapter 6 of the Statutes of Canada, 2017, comes into force, but if they are registered after that day, they come into force on the day on which they are registered.

**CUSTOMS NOTICE REGARDING CETA (CUSTOMS NOTICE 17-30)**


“2. The complete list of countries eligible for the preferential tariff of the CETA is defined in the Regulations Defining “EU country or other CETA beneficiary”. This regulation will be published on the Department of Justice Canada website on or before September 21, 2017. In the interim, this regulation is available in Part II of the Canada Gazette, Canada Gazette – Regulations Defining “EU country or other CETA beneficiary” (Extra Vol. 151, No.1).”

**Tariff Provisions**

“6. Entitlement to the Canada-European Union Tariff treatment is determined in accordance with the rules of origin set out in the CETA Protocol on Rules of Origin and Origin Procedures.”

“7. Pursuant to the CETA, a new preferential tariff treatment is being introduced, namely the Canada-European Union Tariff. The newly assigned tariff treatment code is: Canada-European Union Tariff (CEUT) – Code 31.”
General Search of Treaties between Canada and the EU = Total 117  
Bilateral = 39  
Multilateral = 78


<table>
<thead>
<tr>
<th>Official Title</th>
<th>Date of Signature</th>
<th>Type</th>
</tr>
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<tbody>
<tr>
<td>Agreement between Canada and the European Union on security procedures for exchanging and protecting classified information (*)</td>
<td>04/12/2017</td>
<td>Bilateral</td>
</tr>
<tr>
<td>Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part (*)</td>
<td>30/10/2016</td>
<td>Bilateral</td>
</tr>
<tr>
<td>Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Canada, of the other part</td>
<td>30/10/2016</td>
<td>Bilateral</td>
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<tr>
<td>Agreement on Air Transport between Canada and the European Community and its Member States (*)</td>
<td>17/12/2009</td>
<td>Bilateral</td>
</tr>
<tr>
<td>Agreement on civil aviation safety between the European Community and Canada</td>
<td>06/05/2009</td>
<td>Bilateral</td>
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<tr>
<td>Agreement between the European Community and the Government of Canada establishing a framework for cooperation in higher education, training and youth</td>
<td>05/12/2006</td>
<td>Bilateral</td>
</tr>
<tr>
<td>Agreement between the European Community and the Government of Canada on the processing of Advance Passenger Information and Passenger Name Record data</td>
<td>03/10/2005</td>
<td>Bilateral</td>
</tr>
<tr>
<td>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</td>
<td>15/03/2005</td>
<td>Bilateral</td>
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<tr>
<td>Agreement between the European Community and Canada on trade in wines and spirit drinks</td>
<td>16/09/2003</td>
<td>Bilateral</td>
</tr>
<tr>
<td>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</td>
<td>31/03/2003</td>
<td>Bilateral</td>
</tr>
<tr>
<td>Agreement between the European Community and the Government of Canada renewing a cooperation programme in higher education and training</td>
<td>19/12/2000</td>
<td>Bilateral</td>
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<tr>
<td>Agreement between the European Communities and the Government of Canada regarding the application of their competition laws - Statement by the Commission - Exchange of Letters</td>
<td>17/06/1999</td>
<td>Bilateral</td>
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<tr>
<td>Agreement amending the Agreement for Scientific and Technological Cooperation between the European Community and Canada</td>
<td>17/12/1998</td>
<td>Bilateral</td>
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<tr>
<td>Agreement between Canada and the European Atomic Energy Community for cooperation in the area of nuclear research</td>
<td>17/12/1998</td>
<td>Bilateral</td>
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<tr>
<td>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</td>
<td>17/12/1998</td>
<td>Bilateral</td>
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<td>Agreement on mutual recognition between the European Community and Canada</td>
<td>14/05/1998</td>
<td>Bilateral</td>
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<td>Agreement between the European Community and Canada on customs cooperation and mutual assistance in customs matters</td>
<td>14/12/1997</td>
<td>Bilateral</td>
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<tr>
<td>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</td>
<td>31/03/1997</td>
<td>Bilateral</td>
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<tr>
<td>Agreement for the conclusion of negotiations between the European Community and Canada under Article XXIV:6</td>
<td>22/12/1995</td>
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<td>Exchange of letters between the European Community and Canada on the conclusion of negotiations under Article XXIV:6</td>
<td>22/12/1995</td>
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<tr>
<td>Implementing Agreement between the European Atomic Energy Community 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)</td>
<td>25/07/1995</td>
<td>Bilateral</td>
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<tr>
<td>Agreement for Scientific and Technological Cooperation between the European Community and Canada</td>
<td>17/06/1995</td>
<td>Bilateral</td>
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<tr>
<td>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)</td>
<td>31/01/1994</td>
<td>Bilateral</td>
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<tr>
<td>Agreement in the form of exchanges of letters between the European Community and the Government of Canada concerning fisheries relations - Memorandum of understanding</td>
<td>20/12/1993</td>
<td>Bilateral</td>
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<tr>
<td>Agreement between the European Economic Community and Canada concerning trade and commerce in alcoholic beverages - Exchange of Letters</td>
<td>28/02/1989</td>
<td>Bilateral</td>
</tr>
<tr>
<td>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 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</td>
<td>21/06/1985</td>
<td>Bilateral</td>
</tr>
<tr>
<td>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</td>
<td>18/12/1981</td>
<td>Bilateral</td>
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<tr>
<td>Agreement negotiated between the European Economic Community and Canada under Article XXVIII of GATT concerning certain products in the fruit and vegetables sector</td>
<td>16/10/1979</td>
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<tr>
<td>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</td>
<td>16/01/1978</td>
<td>Bilateral</td>
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<tr>
<td>Framework Agreement for commercial and economic cooperation between the European Communities and Canada</td>
<td>06/07/1976</td>
<td>Bilateral</td>
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<tr>
<td>Agreement with Canada negotiated under Article XXVIII (5) of GATT, signed on 19 August 1969</td>
<td>19/08/1969</td>
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<tr>
<td>Agreement with Canada negotiated under Article XXVIII (5) of GATT, signed in Geneva on 15 November 1968</td>
<td>15/11/1968</td>
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<tr>
<td>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</td>
<td>15/06/1967</td>
<td>Bilateral</td>
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<td>Cooperation agreement between the European Atomic Energy Community (EAEC Treaty) and the government of Canada concerning the peaceful uses of atomic energy</td>
<td>06/10/1959</td>
<td>Bilateral</td>
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<tr>
<td>Exchange of Letters between the Government of Canada and the European Atomic Energy Community (Euratom)</td>
<td>06/10/1959</td>
<td>Bilateral</td>
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<td>Technical agreement between the European Atomic Energy Community (Euratom) and the &quot;Atomic Energy of Canada Limited&quot; on the peaceful uses of atomic energy</td>
<td>06/10/1959</td>
<td>Bilateral</td>
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**Multilateral Treaties**

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<th>Agreement Title</th>
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<tbody>
<tr>
<td>Agreement extending the Framework Agreement for International Collaboration on Research and Development of Generation IV nuclear energy systems (*)</td>
<td>10/11/2016</td>
<td>Multilateral</td>
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<tr>
<td>Paris Agreement adopted under the United Nations Framework Convention on Climate Change</td>
<td>12/12/2015</td>
<td>Multilateral</td>
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<tr>
<td>Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled</td>
<td>27/06/2013</td>
<td>Multilateral</td>
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<tr>
<td>Food Assistance Convention</td>
<td>25/04/2012</td>
<td>Multilateral</td>
</tr>
<tr>
<td>Agreement on Port State measures to prevent, deter, and eliminate Illegal, Unreported and Unregulated fishing (*)</td>
<td>22/11/2009</td>
<td>Multilateral</td>
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<tr>
<td>Agreement</td>
<td>Date</td>
<td>Type</td>
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<tr>
<td>--------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>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</td>
<td>22/03/2007</td>
<td>Multilateral</td>
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<tr>
<td>Convention on the Protection and Promotion of the Diversity of Cultural Expressions</td>
<td>20/10/2005</td>
<td>Multilateral</td>
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<tr>
<td>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)</td>
<td>17/07/2001</td>
<td>Multilateral</td>
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<tr>
<td>United Nations Convention against Corruption</td>
<td>31/10/2003</td>
<td>Multilateral</td>
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<tr>
<td>WHO Framework Convention on Tobacco Control</td>
<td>21/05/2003</td>
<td>Multilateral</td>
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<tr>
<td>International Treaty on Plant Genetic Resources for Food and Agriculture</td>
<td>06/06/2002</td>
<td>Multilateral</td>
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<td>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</td>
<td>13/12/2004</td>
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<td>Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime</td>
<td>31/05/2001</td>
<td>Multilateral</td>
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<td>Stockholm Convention on Persistent Organic Pollutants</td>
<td>22/05/2001</td>
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<td>Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean</td>
<td>05/09/2000</td>
<td>Multilateral</td>
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<td>Cartagena protocol on biosafety to the convention on biological diversity</td>
<td>24/05/2000</td>
<td>Multilateral</td>
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<td>Amendment to the Montreal Protocol on substances that deplete the ozone layer</td>
<td>03/12/1999</td>
<td>Multilateral</td>
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<tr>
<td>Protocol to the 1979 Convention on long-range transboundary air pollution to abate acidification, eutrophication and ground-level ozone</td>
<td>30/11/1999</td>
<td>Multilateral</td>
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<td>Protocol of amendment to the International Convention on the simplification and harmonisation of customs procedures (Revised Kyoto Convention)</td>
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<td>Convention for the Unification of Certain Rules for International Carriage by Air</td>
<td>28/05/1999</td>
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<td>Food Aid Convention 1999</td>
<td>13/04/1999</td>
<td>Multilateral</td>
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<td>Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade</td>
<td>10/09/1998</td>
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<td>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)</td>
<td>25/06/1998</td>
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<td>Protocol on Heavy Metals to the 1979 Convention on Long-range Transboundary Air Pollution</td>
<td>24/06/1998</td>
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<td>Agreement on international humane trapping standards between the European Community, Canada and the Russian Federation</td>
<td>15/12/1997</td>
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<td>Kyoto Protocol to the UN Framework Convention on Climate Change</td>
<td>11/12/1997</td>
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<td>Amendment to the Montreal Protocol on substances that deplete the ozone layer, adopted at the ninth meeting of the Parties</td>
<td>17/09/1997</td>
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<tr>
<td>Protocol to amend the agreement to establish a science and technology centre in Ukraine (STCU)</td>
<td>07/07/1997</td>
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<tr>
<td>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 Community and the United States of America, Japan, Australia, Canada and the EFTA countries of Norway and Switzerland</td>
<td>01/04/1997</td>
<td>Multilateral</td>
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<td>Convention</td>
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<td>WIPO Copyright Treaty</td>
<td>23/12/1996</td>
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<tr>
<td>WIPO Performances and Phonograms Treaty</td>
<td>20/12/1996</td>
<td>Multilateral</td>
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<td>Agreement on trade in information technology products (ITA) implementation of the Ministerial Declaration on trade in information technology products (WTO)</td>
<td>13/12/1996</td>
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<td>Grains Trade Convention 1995</td>
<td>07/12/1994</td>
<td>Multilateral</td>
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<tr>
<td>Agreement on Nuclear Safety</td>
<td>17/06/1994</td>
<td>Multilateral</td>
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<tr>
<td>United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa</td>
<td>17/06/1994</td>
<td>Multilateral</td>
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<td>Protocol to the Convention on Long-Range Transboundary Air Pollution of 1979 on Further Reduction of Sulphur Emissions</td>
<td>14/06/1994</td>
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<td>Protocol on the provisional application of the Agreement establishing an International Science and Technology Centre (ISTC)</td>
<td>27/12/1993</td>
<td>Multilateral</td>
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<td>Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas</td>
<td>24/11/1993</td>
<td>Multilateral</td>
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<td>Agreement to establish a science and technology centre in Ukraine (STCU), as amended by the Protocol of 7 July 1997</td>
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<td>Agreement establishing an International Science and Technology Centre (ISTC)</td>
<td>27/11/1992</td>
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<td>Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer</td>
<td>25/11/1992</td>
<td>Multilateral</td>
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<td>Convention on biological diversity</td>
<td>05/06/1992</td>
<td>Multilateral</td>
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<td>United Nations Framework Convention on Climate Change</td>
<td>09/05/1992</td>
<td>Multilateral</td>
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<td>Convention on the Transboundary Effects of Industrial Accidents</td>
<td>17/03/1992</td>
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<td>Convention on environmental impact assessment in a transboundary context (Espoo Convention)</td>
<td>25/02/1991</td>
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<td>Amendment to the Montreal protocol on substances that deplete the ozone layer (London Amendment)</td>
<td>29/06/1990</td>
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<td>Agreement establishing the European Bank for Reconstruction and Development - EBRD</td>
<td>29/05/1990</td>
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<td>Basel Convention on the control of transboundary movements of hazardous wastes and their disposal</td>
<td>22/03/1989</td>
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<td>United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances</td>
<td>20/12/1988</td>
<td>Multilateral</td>
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<td>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)</td>
<td>31/10/1988</td>
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<td>Montreal Protocol on substances that deplete the ozone layer</td>
<td>16/09/1987</td>
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<td>Convention on Assistance in the case of a Nuclear Accident or Radiological Emergency</td>
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<td>Convention on Early Notification of a Nuclear Accident</td>
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<td>Vienna Convention for the protection of the ozone layer</td>
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<td>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)</td>
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<td>International Convention on the Harmonised Commodity Description and Coding System</td>
<td>14/06/1983</td>
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<td>Agreement establishing the Common Fund for Commodities</td>
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<td>Convention on the conservation of Antarctic marine living resources (CCAMLR)</td>
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<td>Convention on the physical protection of nuclear material</td>
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<td>Convention on long-range transboundary air pollution (Geneva Convention 1979)</td>
<td>13/11/1979</td>
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<td>Agreement on trade in civil aircraft</td>
<td>12/04/1979</td>
<td>Multilateral</td>
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<td>Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (NAFO)</td>
<td>24/10/1978</td>
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<td>International convention on the simplification and harmonisation of customs procedures (Kyoto Convention)</td>
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<td>International Convention for the Conservation of Atlantic Tunas (ICCAT Convention)</td>
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<td>Customs Convention on the temporary importation of private road vehicles (1954)</td>
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<td>Hague Conference on Private International Law</td>
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<td>Constitution of the Food and Agriculture Organisation of the United Nations (FAO)</td>
<td>16/10/1945</td>
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(*) This treaty has not entered into force yet.
# Analysis of Agreements Between Canada & the United Kingdom

## Sectoral Agreement


## Education

Agreement between the European Community and the Government of Canada establishing a framework for cooperation in higher education, training and youth

**Hyperlink**

<table>
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<tr>
<th>Date of Signature: 05/12/2006</th>
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### Text of Agreement

**Purpose:** Related to the *Declaration on Canada-European Community Transatlantic Relations (1990)*. This agreement establishes a framework for cooperation in higher education, training and youth between the European Community and Canada.

**Article 11 - Territorial application of this Agreement**: This agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of Canada.

**Article 12 – Final Clauses:** This agreement shall remain in force for a period of eight years, following which it may be extended by written agreement of the Parties.

- Has not been renewed as it was in 1996 and 2000 and no evidence of similar provisions within CETA.

**Annex – Actions:** Actions regarding funding/financial support of various groups/institutions/consortia to support projects in the area of higher education and training, activities involving youth structures, mobility of professionals; alumni associations, etc.

### Analysis

- Cooperation Programs: (1) Erasmus Mundus; (2) Jean Monnet; (3) EU Centres of Excellence; (4) Public Diplomacy Initiative; and (5) EU Canada Young Journalist Award ➔ to be validated.
- Appears to have no domestic federal legislation used to implement the agreement. One could assume that given that the majority of the obligations under this agreement involve funding, that this would fall under the federal government’s constitutional authority regarding spending.
- Agreement supplements the Declaration on Canada-European Community Transatlantic Relations which states:
  - Their mutual cooperation shall also be strengthened in various other fields which directly affect the well-being of their citizens, such as exchanges and joint projects in science and technology, including space, research in medicine, environmental protection, energy conservation, and the safety of nuclear and other installations, and in communication, culture and education, including academic and youth exchanges.
- If no similar agreement is in place, no impact to the United-Kingdom or need for negotiation on the part of Canada.
- If a similar agreement is in place, then a similar agreement should/could be negotiated by Canada-UK; however, the impact of not having an agreement would not be detrimental to the trade relationship between Canada and the UK – any statements by institutions to confirm? Not found – possibly replaced by a multilateral initiative by the UN.
Agreement on Air Transport between Canada and the European Community and its Member States (*)

Hyperlink

List of Air Transportation Acts: [https://www.tc.gc.ca/eng/acts-regulations/acts-air.htm](https://www.tc.gc.ca/eng/acts-regulations/acts-air.htm)

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<td>Tabled in the House of Commons on May 8, 2013.</td>
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**TEXT OF AGREEMENT**

**Parties to this agreement?**

Agreement on air transport between Canada on the one part; and … The United-Kingdom of Great Britain and Northern Ireland, being parties to the Treaty Establishing the European Community and being Member States of the European Union (hereinafter the "Member States"), and the EUROPEAN COMMUNITY, on the other part; Canada and the Member States being parties to the Convention on International Civil Aviation opened for signature at Chicago, on the 7th day of December, 1944, together with the European Community; […]

"Party" means either Canada or the Member States and the European Community taken together or individually; […]

"Territory" means for Canada, its land areas (mainland and islands), internal waters and territorial sea as determined by its domestic law, and includes the air space above these areas; and for the Member States of the European Community, the land areas (mainland and islands), internal waters and territorial sea in which the Treaty Establishing the European Community is applied and under the conditions laid down in that Treaty and any successor instrument, and includes the air space above these areas; the application of this Agreement to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated, and to the continuing suspension of Gibraltar Airport from European Community aviation measures existing as at 18 September 2006 as between Member States, in accordance with the Ministerial statement on Gibraltar Airport agreed in Cordoba on 18 September 2006.

Agreement also referred to as a *Comprehensive Air Transport Agreement*

**WHITE PAPER**

S. 1.7.1 at para 131of the White Paper: The future relationship between the United Kingdom and the European Union states:

- “As set out in section 1.2 of this chapter, the UK will seek participation in EASA. In addition to ensuring that manufacturers should only need to undergo one series of tests in either market, this would also support collective work on aviation safety, reducing regulatory barriers for businesses and ensuring continued high standards for safety across Europe.”

**CANADIAN LEGISLATION**

Agreement compliant with Canada's Blue-Sky Policy:

Canada's Blue Sky International Air Policy – Canada’s new International Air Policy

*Unlu v. Air Canada*, [2012] ➔ establishes link between the *Transportation Act* and the Agreement on Air Transport between Canada and the European Community and its Members.

**Definitions**

55(1) […]

Canadian aviation document has the same meaning as in subsection 3(1) of the *Aeronautics Act*;

non-scheduled international licence means a licence issued under subsection 73(1);
non-scheduled international service means an international service other than a scheduled international service;

scheduled international licence means a licence issued under subsection 69(1);

scheduled international service means an international service that is a scheduled service pursuant to
(a) an agreement or arrangement for the provision of that service to which Canada is a party, or
(b) a determination made under section 70;

Licence for Scheduled International Service

Issue of licence
69 (1) On application to the Agency and on payment of the specified fee, the Agency shall issue a licence to operate a scheduled international service to the applicant if
(a) the applicant establishes in the application to the satisfaction of the Agency that the applicant
(i) is, pursuant to subsection (2) or (3), eligible to hold the licence,
(ii) holds a Canadian aviation document in respect of the service to be provided under the licence,
(iii) has the prescribed liability insurance coverage in respect of the service to be provided under the licence, and
(iv) where the applicant is a Canadian, meets the prescribed financial requirements; and
(b) the Agency is satisfied that the applicant has not contravened section 59 in respect of the service to be provided under the licence within the preceding twelve months.

Eligibility of Canadians
(2) The Minister may, in writing, designate any Canadian as eligible to hold a scheduled international licence. That Canadian remains eligible while the designation remains in force.

Eligibility of non-Canadians
(3) A non-Canadian is eligible to hold a scheduled international licence if the non-Canadian
(a) has been designated by a foreign government or an agent of a foreign government to operate an air service under the terms of an agreement or arrangement between that government and the Government of Canada; and
(b) holds, in respect of the air service, a document issued by a foreign government or agent that, in respect of the service to be provided under the document, is equivalent to a scheduled international licence.

Determination of scheduled international service
70 The Minister may, in writing to the Agency,
(a) determine that an international service is a scheduled international service; or
(b) withdraw a determination made under paragraph (a).

Licence for Non-scheduled International Service

Issue of licence
73 (1) Subject to any directions issued to the Agency under section 76, on application to the Agency and on payment of the specified fee, the Agency shall issue a licence to operate a non-scheduled international service to the applicant if
(a) the applicant establishes in the application to the satisfaction of the Agency that the applicant
(i) is a Canadian,
(ii) holds a Canadian aviation document in respect of the service to be provided under the licence,
(iii) has the prescribed liability insurance coverage in respect of the service to be provided under the licence, and
(iv) meets prescribed financial requirements; and
(b) the Agency is satisfied that the applicant has not contravened section 59 in respect of the service to be provided under the licence within the preceding twelve months.

Non-Canadian applicant
(2) Subject to any directions issued to the Agency under section 76, on application to the Agency and on payment of the specified fee, the Agency may issue a non-scheduled international licence to a non-Canadian applicant if the applicant establishes in the application to the satisfaction of the Agency that the applicant
(a) holds a document issued by the government of the applicant’s state or an agent of that government that, in respect of the service to be provided under the document, is equivalent to the non-scheduled international licence for which the application is being made; and
(b) meets the requirements of subparagraphs (1)(a)(ii) and (iii) and paragraph (1)(b).

[...]

Ministerial Directions for International Service
Minister may issue directions
76 (1) Where the Minister determines that it is necessary or advisable to provide direction to the Agency in respect of the exercise of any of its powers or the performance of any of its duties or functions under this Part relating to international service,

(a) in the interest of the safety or security of international civil aviation,
(b) in connection with the implementation or administration of an international agreement, convention or arrangement respecting civil aviation to which Canada is a party,
(c) in the interest of international comity or reciprocity,
(d) for the purpose of enforcing Canada’s rights under an international agreement, convention or arrangement respecting civil aviation or responding to acts, policies or practices by a contracting party to any such agreement, convention or arrangement, or by an agency or citizen of such a party, that adversely affect or lead either directly or indirectly to adverse effects on Canadian international civil aviation services, or
(e) in connection with any other matter concerning international civil aviation as it affects the public interest,

the Minister may, subject to subsection (3), issue to the Agency directions that, notwithstanding any other provision of this Part, are binding on, and shall be complied with by, the Agency in the exercise of its powers or the performance of its duties or functions under this Part relating to international service.

Nature of directions
(2) Directions issued under subsection (1) may relate to

(a) persons or classes of persons to whom licences to operate an international service shall or shall not be issued;
(b) the terms and conditions of such licences, or their variation;
(c) the suspension or cancellation of such licences; and
(d) any other matter concerning international service that is not governed by or under the Aeronautics Act.

Concurrence required for certain directions
(3) A direction by the Minister relating to a matter referred to in paragraph (1)(c), (d) or (e) may be issued only with the concurrence of the Minister of Foreign Affairs.

Duties and Powers of Agency
Duties and functions of Agency under international agreements, etc.
77 Where the Agency is identified as the aeronautical authority for Canada under an international agreement, convention or arrangement respecting civil aviation to which Canada is a party, or is directed by the Minister to perform any duty or function of the Minister pursuant to any such agreement, convention or arrangement, the Agency shall act as the aeronautical authority for Canada or perform the duty or function in accordance with the agreement, convention, arrangement or direction, as the case may be.

Agency powers qualified by certain agreements, etc.
78 (1) Subject to any directions issued to the Agency under section 76, the powers conferred on the Agency by this Part shall be exercised in accordance with any international agreement, convention or arrangement relating to civil aviation to which Canada is a party.

Variations from agreements, etc.
(2) Notwithstanding subsection (1) and subject to any directions issued to the Agency under section 76, the Agency may issue a licence or suspend a licence, or vary the terms and conditions of a licence, on a temporary basis for international air services that are not permitted in an agreement, convention or arrangement relating to civil aviation to which Canada is a party.

Aeronautic Act

Definitions
3(1) […]
**Canadian aviation document** means, subject to subsection (3), any licence, permit, accreditation, certificate or other document issued by the Minister under Part I to or with respect to any person or in respect of any aeronautical product, aerodrome, facility or service; […]

**Exception**

(3) The following documents are deemed not to be a Canadian aviation document for the purposes of sections 6.6 to 7.21:

(a) a security clearance;
(b) a restricted area pass that is issued by the Minister in respect of an aerodrome that the Minister operates; and
(c) a Canadian aviation document specified in an aviation security regulation for the purpose of this subsection

**ANALYSIS**

Based on the language in the *Canada Transportation Act*, the Minister may issue a scheduled international licence in accordance with articles 69(1) and (3) which requires that the applicant is eligible to hold the licence, and holds a Canadian aviation document as defined in the *Aeronautics Act* in respect to the service to be provided under the licence. To be eligible to hold the licence a non-Canadian applicant must in accordance with article 69(3)(a) be designated by a foreign government or an agent of a foreign government to operate an air service under the terms of an agreement or arrangement between that government and the Government of Canada; and (b) holds, in respect of the air service, a document issued by a foreign government or agent that, in respect of the service to be provided under the document, is equivalent to a scheduled international licence.

**PROBLEM**

Given that the UK will no longer be a member of the European Community after Brexit, it would no longer be bound by the *Agreement on Air Transport between Canada and the European Community and its Member States*, and as such, would likely not meet the criteria of article 69(3).

Questions to clarify/discuss

- Can the Minister, without international agreement, issue licenses to non-Canadian applicants?

Based on article 76(1) and (2), it is unclear whether UK based applicants would fall within the definition of “classes of persons to whom licenses to operate international service shall …be issued” and whether the authority the Minister has to issue directions to the Agency with regards to those classes would apply. Any directive from the Minister must be in concurrence with the Minister of Foreign Affairs [sect. 76(3)].

**Agreement on Civil Aviation Safety Between the European Community and Canada/Canada-European Union Bilateral Aviation Safety Agreement**

**Date of Signature:** 06/05/2009

On July 26, 2011, a Canada-European Union Bilateral Aviation Safety Agreement (BASA) came into force same agreement as the *Agreement on Civil Aviation Safety between Canada and the European Community*

**TEXT OF AGREEMENT**

The EUROPEAN COMMUNITY and CANADA hereinafter referred to collectively as ‘the Parties’ […]

**Article 14 Territorial Application**

Except where otherwise specified in the Annexes of this Agreement, this Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied, and under the conditions laid down in that Treaty and, on the other hand, to the territory of Canada.

**PURPOSE:**

Under the agreement, the European Aviation Safety Agency (EASA) will recognize certification of Canadian aviation products and services, allowing the Canadian aviation industry to be much more competitive in the European market. Civil aviation safety will also be enhanced, as EASA and Transport Canada will work cooperatively to resolve safety issues. The Agreement designates TCCA and EASA as the Competent Authorities for Canada and the European Union, respectively, so that they may perform the functions of either the Importing Party or Exporting Party, as applicable, for purposes of these Technical Implementation Procedures.

**Objectives** - To allow the Parties to adapt to the emerging trend toward multinational design, manufacture, maintenance, and interchange of Civil Aeronautical Products, involving the common interests of the Parties concerning civil aviation safety and environmental quality.
**FEDERAL LEGISLATION**

*Rulemaking Cooperation Guidelines for the TCCA and the EASA*

- Subsequent agreement between TCCA and EASA regarding the cooperative guidelines associated with the Canada-EU Agreement on civil aviation safety.
- The agreement in s. 2(1) expresses that the scope of the guidelines includes rulemaking initiatives related to the Canadian Aviation Regulations (CARs) and associated standards, and equivalent European Union rules for which proposals are developed by EASA, as well as to related acceptable means of compliance, certification specifications, advisory circulars, guidance materials, and technical standard orders.


- Enabling Statute: Aeronautics Act
- Canadian Aviation Regulations (SOR/96-433) also referred to as: Regulations Respecting Aviation and Activities Relating to Aeronautics

**ANALYSIS:**

A hard Brexit means that the UK would no longer be a part of EASA. While the UK has expressed its interest in remaining part of the aviation organization, treatment like that of Iceland, Norway, or Switzerland could be expected. Upon the completion of the Agreement on Civil Aviation Safety, Working Arrangements for the promotion of aviation safety between TCCA and the Civil Aviation Authorities of Iceland, Norway and Switzerland reflected the technical elements related to aviation safety contained in the Agreement between the EU and Canada. A similar arrangement could be established between Canada and the UK; however, it is questionable whether the UK would be ready for such collaboration on March 29, 2019. The UK may lack the institutional and procedural structures required to maintain such collaboration.

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**BORDER MANAGEMENT/TRANSPORT**

*Agreement between the European Community and the Government of Canada on the processing of Advance Passenger Information and Passenger Name Record data*

**AGREEMENT TEXT:**

THE GOVERNMENT OF CANADA AND THE EUROPEAN COMMUNITY, hereinafter referred to as the "Parties":

**Article 1 – Purpose**

1. The purpose of this Agreement is to ensure that API/PNR data of persons on eligible journeys is provided in full respect of fundamental rights and freedoms, in particular the right to privacy.

**Article 5 - Obligation to process API/PNR data**

1. In relation to the application of this Agreement within the Community, as it relates to the processing of personal data, air carriers operating eligible journeys from the Community to Canada shall process API/PNR data contained in their automated reservation systems and DCS as required by the competent Canadian authorities pursuant to Canadian law. The list of PNR data elements that air carriers operating eligible journeys shall transfer to the Canadian competent authority is contained in Annex II to this Agreement, which forms an integral part thereof.

2. The obligation set forth in paragraph 1 shall only apply for as long as the Decision is applicable, ceasing to have effect on the date that the Decision is repealed, suspended or expires without being renewed.

**ANNEX I - Competent authorities**

For the purpose of Article 3, the competent authority for Canada is the Canada Border Services Agency (CBSA).

**ANALYSIS**

- Under this agreement, Canada has an obligation to process passenger information and the EU has an obligation to provide it to the CBSA. Service providers upon Brexit would no longer be obliged to provide the information to the CBSA, however, the CBSA would retain the right under domestic law to deny passengers entry to Canada.

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**CRISIS MANAGEMENT**
Agreement Establishing a Framework for the Participation of Canada in EU Crisis Management Operations

Relevant to project?

PUBLIC AND ANIMAL HEALTH

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

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

TRADE AND COMPETITION

Does CETA replace the Agreement between the EC & Canada on Trade in Wines and Spirit Drinks?

What is the relationship between the Agreement between the EC & Canada on Trade in Wines and Spirit Drinks and the Agreement between the European Economic Community and Canada Concerning Trade and Commerce in Alcoholic Beverages & the associated Exchange Letters?

- On 1 August 2001 the Council authorised the Commission to negotiate an agreement on wine and to revise the Agreement dated 28 February 1989 between the European Economic Community and Canada concerning trade and commerce in alcoholic beverages.
  - **Source:** 2004/91/EC: Council Decision of 30 July 2003 on the conclusion of the agreement between the European Community and Canada on trade in wines and spirit drinks

- These negotiations have been concluded and the Agreement between the European Community and Canada on trade in wine and spirit drinks (hereinafter "the Agreement") was initialled by Canada on 24 April 2003 and by the Community on 25 April 2003. Interim provisions on labelling have been agreed between the Community and Canada and they will continue to negotiate rules applicable to labelling in the Joint Committee with a view to reaching a final agreement. The Agreement should be approved.

Agreement between the European Community and Canada on Trade in Wines and Spirit Drinks

- Revises the Agreement Between the European Economic Community and Canada Concerning Trade and Commerce in Alcoholic Beverages with respect to wine and spirit drinks only.

16/09/2003

Treaty Type: Bilateral Treaty

Halsbury's Laws of Canada - Liquor Control (2017 Reissue)

HLC-1 Overview. While the sale of liquor is independently controlled by provincial governments, the regime in each jurisdiction must comply with federal rules for importation, transportation of liquor, and product and packaging standards. The Importation of Intoxicating Liquors Act provides support for provincial controls on the distribution of alcohol imported into a province by controlling the distribution of alcohol imported into a province. It governs the sending, taking and transportation of intoxicating liquor within or outside Canada. The federal government further imposes labelling and packaging requirements, requires licences for manufacturing of alcohol, and imposes strict controls on the possession, storage and transfer of liquor in order to maintain an excise regime. Federal legislation also regulates liquor in respect of railways, reserve lands subject to the Indian Act and international agreements. The importation of intoxicating liquors is also subject to the Customs Act and custom duties applicable thereunder, which vary depending upon the type of intoxicating liquor and the rules with respect to country of origin.

Halsbury's Laws of Canada - Liquor Control (2017 Reissue) (Bourgeois, Litner)

HLC-17 Trade in wines and spirits drinks. Canada is currently a signatory to the Agreement between the European Community and Canada on Trade in Wines and Spirit Drinks. The purpose of the Agreement is to facilitate and promote trade in wines and spirit drinks produced in Canada and the European Community on the conditions provided for in the Agreement. Among other things, the Agreement includes terms with respect to the registration and protection of trade in wine and spirit drinks in signatory countries, requirements for the labelling of spirit drinks, requirements for wine labelling, and import certification and marketing requirements for wine.
**Impacted Federal Legislation:**

*Importation of Intoxicating Liquors Act*
- Refers to the EU country or other CETA beneficiary and establishes within its schedule that Canada–European Union Tariff in the List of Tariff Provisions set out in the schedule to the *Customs Tariff*
  - s. 49.8 of the *Customs Tariff* act refers to provisions regarding Canada–European Union Tariff

*Railway Safety Act*
*Indian Act*
*Customs Act*
*Excise Act*
*Trade-marks Act*

**Provincial Regimes**

**Relevant Case Law?**


**Agreement Between the European Economic Community And Canada Concerning Trade and Commerce in Alcoholic Beverages**

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<tr>
<td>28/02/1989</td>
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- “The existing trade relations between the UK and third countries are governed by two types of international agreements. The first consists of agreements concluded by the EU alone the content of which falls within the EU’s exclusive competence. These agreements only bind the UK as a matter of EU law pursuant to Article 216(2) TFEU. Trade agreements binding on the UK are also mixed, concluded by both the EU and the UK (along with the other Member States), given that parts of them fall within the scope of national competence.” [1]

- “As far as exclusive EU agreements are concerned, they would not applicable to it once the UK ceased to be a Member State. As for the mixed agreements, most would have to be renegotiated as they are, in essence, of a bilateral character.” [1]

- “It follows that, once the UK left the EU and lost its status as a Member State, it would also cease to be a party to the Agreement. This argument is also borne out by a clause in a large number of mixed agreements on their territorial application. The EU-Central America Association Agreement, for instance, makes it clear that it applies only, as far as the EU is concerned, ‘to the territories in which the Treaty on the European Union and the Treaty on the Functioning of the European Union are applied and under the conditions laid down in those Treaties’. ” [2]

- Mixed agreements: “Third contracting States may well argue that the withdrawal of the UK would amount to a fundamental change of circumstances pursuant to Article 62 of the Vienna Convention on the Law of Treaties.” [2]

- The option of ‘rolling over’
  - “It is difficult to envisage, for instance, the automatic rolling over of an existing trade agreement concluded by the EU without adjusting the quotas already applicable to trade between the UK and the third country concerned. Even if third countries felt no need to amend the substantive provisions of an existing agreement, the UK would be asking, in effect, to be bound by obligations previously negotiated by the EU in a completely different policy context. It is difficult to see how this arrangement would be consistent with the quest for flexibility in international trade negotiations that underpins the Brexit argument. The rolling over of existing trade agreements, therefore, would involve renegotiation of at least some of their provisions.” [2]

- The profound difficulties of renegotiating
  - First, the UK has not negotiated trade agreements in over 40 years. [2]
  - Second, there is an increasing tendency in international treaty-making for big package deals. [3] For example, CETA “will grant EU firms access to public procurement of federal, provincial and municipal authorities (with certain exceptions) in Canada. This is the most extensive access that Canada has given to any of its trading partners. Such big deals require big markets to support them. And whilst the UK market is not inconsiderable, it cannot compare to a market of 500m people. Neither can it compare to a market to which would also guarantee access to a market of 500 people.” [3]
  - Third, such agreements take longer to negotiate. [3] Even if the UK could leverage the agreements previously negotiated by the EU, there are limits to trade liberalization. “For instance, under CETA, UK beef and sheep exports to Canada above a certain quota are subject to a higher tariff. There are also restrictions on airlines and motor manufacturers. Would the UK fare better on its own? A country which is often praised as an example of an effective and lithe trade negotiator is Switzerland (with particular emphasis on its trade agreement with China). And yet, that agreement is unbalanced, whereas the trade agreements that the EU has concluded with South Korea or Canada are more ambitious and comprehensive.” [4]

- The position under WTO rules
  - “There is no contest that the UK would be a WTO member after it has left the EU, however, it would need to draw up “its own schedules of concessions and commitments on market access, as well as its own list of exemptions from the MFN treatment obligation. These would have to be accepted by all other WTO members.” [4]


- Relevant Chapters:
  - “The Prospects: The UK Trade Regime with the EU and the World: Options and Constraints Post-Brexit” by Giorgio Sacerdoti
    - 1. Introduction
 cocoa...this chapter highlights what type of post-Brexit trade agreement might be envisaged between the EU and the UK, considering the rules of the WTO notably as to free trade agreements (FTAs).” [p.71]

3. The UK and Trade with Countries Associated with the EU

3.1 What Destiny for the UK Participation in EU Agreements with Third Countries Post-Brexit?

- The UK government White Paper advocates an independent trade policy for the UK also through trade deals: ‘Our approach to trade policy will include a variety of levers including: bilateral FTAs and dialogues with third countries, participation in multilateral and plurilateral negotiations, market access and dispute resolution through the WTO, trade remedies, import and export controls, unilateral liberalisation, trade preferences and trade for development. Without the need to reflect the positions of the EU27, an independent trade policy gives us the opportunity to strike deals better suited to the UK and to make quicker progress with new partners, as well as those where EU negotiations have stalled’. [FN: White Paper, para 9.6-7]

3.2 State Succession Principles and Fundamental Change of Circumstances as an Obstacle to EU Treaties Remaining in Force in the UK

- “Separation, dissolution, and dismembering of states, as well as transfer of territories are all covered under the heading of ‘state succession,’ but it is not easy to select the applicable regime in the peculiar case of Brexit.” [p.84]
- “There are two different, even opposite regimes, in such a case. According to the one of Article 15 of the Convention [UN Vienna Convention on Succession of States in respect of Treaties of 1978], EU treaties would cease to be applicable to the UK. According to the regime of Article 34 instead, EU treaties would remain in operation also for the UK.” [p.84]
- “Applying the first paragraph of Article 15, which is referred to as the ‘mobility of borders as to treaty application’ or ‘the moving frontiers’ principle, EU treaties shall cease to apply to the territory of the UK since the UK will replace the EU as the territorial sovereign also in the matters previously pertaining to the EU competence.” [p.84]
- “According to Article 34 on ‘Succession of States in cases of separation of parts of a State,’ EU treaties would remain in force also for the UK except if (a) the states concerned otherwise agree; or (b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor state would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation”. [p.84]
- “The application of this provision would imply not only the continuity of the applications of the EU treaties in the EU 2738 but also in and by the UK. is result appears, however, to be prevented by the caveat of the last sentence, when such application by the successor state to a part of the territory where a treaty was applicable ‘would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation’.”

4. The UK Position in the WTO after Brexit: Operating as an ‘Independent’ WTO Member

[Reliance on Professor Bartel’s theories regarding unilateral tariff schedule imposition]

4.1 The UK as an Original Member of the WTO May Go on Keeping the EU Schedule

- “First of all, the EU will have to notify the WTO that one of its members, the UK, is not ‘represented’ any more by the EU, since that member and its territory have ceased to be part of the EU. Such notification seems not to be problematic at the WTO.” [p.86]
- “Discussions are ongoing among trade law experts whether the EU’s WTO tariff schedule can be automatically assumed as its own by the UK, possibly through a simply notification to the WTO, once the UK will cease to be a EU Member State, just declaring or notifying to the WTO that this tariff goes on being the one of the UK as an ‘independent’ member.” [p.86]

FN: Some ‘technical’ changes will be most probably [required], such as converting in British pounds the EU tariffs expressed currently in euros. Determining the ‘social’ EU schedules for each product at the WTO is not a simple matter. EU schedules had to be amended and renegotiated after
each expansion of the EU, by which new EU Member States adopted the EU common tariff, thereby causing losses or resulting in advantages to other WTO members. Currently, the EU tariffs ‘certified’ by the WTO at the end of this process (as recently as only December 2016) are still those following the enlargement of the EU from 15 to 25 members in 2004. See ‘12 Years On, EU’s Certified WTO Goods Commitments Now Up to Date to 2014’ https://tradeblog.worldpress.com/2017/02/04/ (last accessed 10 April 2017).

Citing Professor Bartels and arguing that the UK should be able to unilaterally impose the EU tariff schedule as its independent tariff schedule [p.87] Rationale: “The WTO Agreement, comprising the agreement establishing the WTO and the various multilateral and plurilateral agreements annexed to it have been concluded and ratified as ‘mixed agreements’, that is also by all the individual members of the EU… There is thus no issue of state succession, nor any need of admission of the UK as a spin-off part of an existing member of an international organization. e UK was, is, and remains a member of the WTO so that the EU schedule, which is currently also the UK’s schedule, remains its schedule.” [p.87]

Argument: “Although some WTO members might be tempted to ask for renegotiation, this position is unsupported by WTO law.”

- FNs: The reason therefor is possibly the one exposed by Jim Bacchus, the first US member of the WTO Appellate Body, in his Commentary ‘Making Room for Britain at the WTO’ in e Wall Street Journal of 7 February 2017. According to him, the legal argument that the UK could simply cut and paste its current obligations from the EU list ‘is more likely to persuade other legal scholars than canny trade negotiators seeking greater access to the UK market’.

- If the status of the UK as an original member of the WTO would not to be applicable to the GPA, then the principles of state succession of Article 34 of the 1978 Convention would result in the UK going on participating in it as a successor of the EU. For a contrary (unconvincing) view see UK Trade Policy Observatory (n 44).


- “This article posits that a UK divorce from the EU will inevitably move some deckchairs, and hence requires a rebalancing of the rights and obligations under the traffic rules of the WTO.” [87].

- “Only two issues will be discussed here, and only for agricultural trade (1) how to split the present EU-28 import quotas into EU-27 and UK quotas; similarly, for EU-28 quota rights on third markets? (2) idem for trade-distorting subsidy entitlements?” [88]

- “… There is only one recent precedent for a split of a WTO Member: the scission of the Federal Republic of Czechoslovakia into the Czech and the Slovak Republics, at the end of 1992. On this occasion two new WTO schedules were briefly negotiated and agreed separately. No substantial changes resulted for third countries; there was no opposition to the certification of these new schedules by the Secretary-General of the GATT Arthur Dunkel.” [88] But Brexit is a different kind of separation, especially in regards to agriculture.

- “Any formulas separating TRQs will have to satisfy the legitimate expectations of quota beneficiaries, and not be successfully rejected by European and UK producer groups. WTO Members with a ‘principal interest’ are not the same for the three most recent years as when TRQs for the WTO schedules were negotiated in 1993 and 1994. Moreover, timing will be crucial in order to reach WTO acceptance by consensus within the period of two years foreseen in Article 50 of the” TEU. [89]. “… the complexity of this undertaking demonstrates that a passage from the EU-28 TRQs to two new schedules without negotiations is hardly available. On the contrary, it emphasizes the need for, firstly, serious intra-EU bargaining and, after an agreement is reached, real negotiations with all concerned WTO Members. This is not only a ‘safer’ route, as suggested by Chris Downes who considers, like Bartels, that simple ‘rectifications’ would not require renegotiation – but then adds that a ‘simple non-negotiated certification of the new market access conditions would suffice’. Alan Winters of the UK Trade Policy Observatory at the University of Sussex agrees that even minor modifications would require assent, and that bigger modifications would require more negotiations.” [89-90]
• “Would a simple ‘schedule replication’ not require consensus at the WTO?” [90] “Absent typo corrections any schedule changes notified to the WTO Secretariat must go through a formal certification process involving information of, and tacit consent by the whole WTO membership of 164 countries and territories since 29 July 2016. In case of opposition, only (re-)negotiations, and if necessary litigation, can lead to this certification. A two-liner from any other WTO Member is sufficient to block certification. The Director-General can be asked to mediate an agreement but he or she has no competence to take a decision in this regard. Clearly and simply, Brexit is another case of schedule modifications subject to GATT-Article XXVIII…” [90]

https://www.economist.com/finance-and-economics/2017/01/07/the-wto-option-for-brexit-is-far-from-straightforward

• “To become a fully independent member, Britain needs to have its own “schedules”, WTO-speak for the lists of tariffs and quotas that it would apply to other countries’ products. Alan Winters, of the UK Trade Policy Observatory at the University of Sussex, says that, in theory, it would not be too hard for Britain to acquire its own schedules. Any change would require the acquiescence of other members. But, using a “rectification” procedure, the government would simply cut “EU” at the top of the page and paste in “UK” instead. Bigger changes—say, raising tariffs on certain goods—might require a more ambitious “modification” and more thorough negotiations.”

• “A related problem concerns the WTO’s “tariff-rate quotas” (TRQs). These allow a certain amount of a good to enter at a cheaper tariff rate. The EU has almost 100 of them. Peter Ungphakorn, formerly of the WTO secretariat, uses the example of the “Hilton” beef quota (named after a hotel where the agreement was reached) to illustrate how gnarly Brexit could be. The EU’s current official quota on beef imports is about 40,000 tonnes, charged 20% import duty, he reckons. Above the quota, the duty is much higher. Britain and the EU will need to divide those 40,000 tonnes. The EU might push Britain to take a big share, appeasing European beef producers. British farmers would howl at low- tariff beef flooded in. The quotas might need to be increased because Britain-EU trade would now come under them. Expect to hear more about TRQs in 2017. According to Luis González Garcia of Matrix Chambers, a legal-services firm, they are likely to become “the most contentious issue” in Britain’s re-establishment of its status as an independent WTO member.”


• 2. The WTO: The UK’s Lifeline or Snarled Fishing Line?
  o 2.1 The UK’s Lifeline
    ▪ “The date on which the UK leaves the customs union Brexit becomes effective will fundamentally change the UK’s position in the WTO, in particular in respect to its schedule of commitments under GATT… The situation facing the UK in the WTO is quite literally unprecedented. Moreover, there are no provisions – not in the WTO Agreement, not in GATT, not in the General Agreement on Trade in Services (GATS) – which specifically address how to deal with a Member leaving a customs union.” [95]
  o 2.2 … or Snarled Fishing Line?
    ▪ “The central WTO issues concern in particular the UK’s (new?) schedules of concessions what the pre-Brexit schedules were (if any), how those are to be determined, how the certification/acceptance of the schedules is to be handled and how the other WTO Members may react e.g. by withdrawing concessions, (in particular raising tariffs or lowering tariff-rate quotas), demanding further concessions from the UK or bringing actions against the UK pursuant to the” DSU. [95-96]
  o 2.2.2 Must the UK’s Schedules Be (Re-)Negotiated?
    ▪ “There are two primary strands of legal thought leading to (re-)negotiation. First, the UK does not have any schedules of its own. In this case, quasi-accession negotiations would have to be conducted [Art. XII WTO Agreement in conjunction with Art. XI:1 WTO Agreement]. Second, the UK has a schedule of its own, namely that schedule under its membership in the EU, and the Brexit constitutes … a modification of this schedule which is not merely ‘formal’ or ‘purely technical in nature,’ and thereby us triggering the negotiation procedure pursuant to Article XXXVIII GATT and/or dispute settlement.” [97]
    ▪ 2.2.2.1 Does the UK have any schedules pre-Brexit and, if so, what are they?
      • “Leaving aside the nuances of Article XXIV:8 GATT, it is sufficient to note that, under EU law, the UK does not and indeed cannot have its own schedule of concessions or tariff schedule, as long as it is an EU Member State or a part of the customs territory; in this
sense ‘its’ schedule is that of the EU. If, after its withdrawal, the UK does not remain in the EU customs union or form a (comprehensive) customs union with the EU, the UK would have to lay down its own customs tariff, which may be identical to the CCT…” “There is no provision in the covered agreements which provides any guidance as to whether the EU’s schedules can be attributed to the UK, deemed to be the UK’s or otherwise considered as being the UK’s and, if so, in what form and/or whether any adjustments need to be made and on what basis or according what methodologies.” [97]

- Proposal by the authors, for the UK to adopt as a baseline the EU’s schedule [97]
  - “… the UK’s withdrawal from the EU cannot have the effect of simultaneously violating its WTO obligations. Rather, the UK’s obligations – assuming the EU’s schedules as a baseline – need to be assessed having due regard to their precise nature and taking into account any legitimate expectations created for the other WTO Members, bearing in mind that the UK cannot reasonably be considered to have guaranteed that it would remain an EU Member State in perpetuity.” [98]
  - From a practical standpoint, the UK would need to take the EU’s schedule because as a member of the WTO, outside of the EU, the UK would have never made any commitments at all. [98]

- “If, contrary to our proposal, one takes the view that all the EU’s commitments (including the single market and other commitments the UK can only fulfil as an EU Member State) are the UK’s commitments, then the Brexit will necessarily violate at least some of the UK’s WTO commitments and modify its schedules, meaning that it will have to renegotiate its schedules (i.e. offer greater concessions), may face higher barriers to trade if other Members exercise their right to enact compensatory measures and could face a number of violation complaints before the WTO’s Dispute Settlement Body.” [98]

- **2.2.2.3 Renegotiations, withdrawals of concessions and (non-)violation claims**
  - “Whether or not the UK’s new schedule necessarily entails a renegotiation pursuant to Article XXVIII GATT will depend on whether a modification of its schedules to the detriment of another WTO Member has occurred in comparison with the UK’s currently applicable schedules.” [99]
  - “Assuming that one is prepared to accept that, where the UK submits a schedule which is – apart from the amounts of tariff quotas – ‘identical’ in formal terms to ‘its’ schedule as an EU Member State, Article XXVIII GATT is not triggered because there has been no relevant modification of its schedules. The issue then becomes whether the other Members may rely on another provision to protect their legitimate interests. **Pursuant to Article XXIII:1 GATT**, consultations (and eventually dispute settlement proceedings) may be sought where a contracting party should consider that any benefit accruing to it directly or indirectly under the GATT is being nullified or impaired or that the attainment of any objective of the GATT is being impeded as the result of: (1) the failure of another contracting party to carry out its obligations under the GATT, or (2) the application by another contracting party of any measure, whether or not it conflicts with the provisions of the GATT, or (3) the existence of any other situation.” [100]
  - “The economic value of the UK’s membership in the single market (‘gateway to the EU’) will likely be under-stood by many WTO Members as an indirect benefit.” [100]

- **2.2.2.4 Disentangling the snarled line**
  - “Our approach is intended essentially as a two-step procedure: (1) Start with the EU’s current schedules as the applicable obligations, which will then serve (2) as baseline during the period of the negotiations, whereby the schedules during the interim period (phase 1) would not preclude non-violation complaints where the UK and EU formally do not adopt different schedules (including disputes about allocations of tariff quota volumes). This approach would, on the one hand, allow the Article XXVIII GATT negotiation process to proceed, while on the other maintain clear obligations and ‘rules of the road’ for the WTO Members and businesses and traders.” [100]

- **2.4 Ways Forward**
  - “There is no general principle of free trade under general international law nor is there any general principle pre- venting discrimination against the UK or products of UK origin.” [101]
  - Three possible outcomes for the UK in the WTO depending on the model it uses: (1) where the UK entirely or mostly avoids the problems associated with its new schedules, (2) is less certain and entails negotiations and (3) the nuclear option.
• (1) “…can be achieved if: the UK remains in the EU customs union (the Monaco model) or the UK and the EU form a customs union (the Turkish model but without the many exceptions), or the UK follows on an autonomous basis the EU Common Customs Tariff or the UK eliminates all tariffs (the Singapore model).” [101] + if the UK autonomously lowers its national tariffs sufficiently.
  o “The disadvantage of the Turkish and Monaco models, as well as the autonomous copying of the CCT for the UK is that is has no say on the determination of its tariff as the decisions are made by the EU institutions. On the other hand, the UK and EU may agree that such a solution be transitional until the new trade relations are finally set.” [101]
  o If the UK autonomously lowers its tariffs, it “would be locked into the offer as its new schedule of commitments and would, at least initially, have no protection against dumped or subsidized exports or unforeseen surges of imports seriously injuring domestic producers. The UK has no trade defence legislation of its own, so would not even be able to impose safeguard measures.” [102]

3. The Framework of the UK’s Future Relationship with the Union

  3.1 Transitional Phase
  - “… the only viable option which avoids customs procedures and formalities during the transitional period is … to [maintain] the UK as a whole in the customs territory of the EU.” [103]
  - “If this option is not chosen, then, for the transitional phase, the UK and the EU would have to copy for the transitional phase one of the existing FTAs (e.g. that with Norway or Switzerland), given that the negotiation and conclusion of a new ‘ambitious and comprehensive Free Trade Agreement’ which does not follow ‘a model already enjoyed by other countries’ requires more than two years, in particular with regard to the product scope and the origin rules. Transitional arrangements derogating from the GATT disciplines during negotiations of a free-trade area are permissible under WTO law.” [103] ➔ Art. XXIV:5 GATT permits the WTO Members to derogate from the otherwise applicable provisions of the GATT in order to form a customs union or free trade area, but any interim agreement must comply with the restrictions set forth in Art. XXIV:5(b) GATT and the final agreement must be completed ‘within a reasonable length of time’ (Art. XXIV:5(c) GATT), which is generally ten years pursuant to the Understanding on the Interpretation of Art. XXIV of the General Agreement on Tariffs and Trade 1994, para. 3.*

5. The Effect of the Brexit on Existing Trade Relations with Non-EU Countries

  5.1 The Fate of Agreements in Force
  - “There are two types of such agreements: exclusive agreements, i.e. those that fall within the exclusive competence of the EU, and mixed agreements, i.e. those that fall within shared competence of the EU and the Member States.” [107]
  - “In the case of exclusive agreements, even where the individual Member States are expressly considered par- ties to the agreement, they are parties only insofar as they are Member States. To put this another way, their status as a party is dependent on their membership in the EU. This means that the UK is a party to such agreements solely in its capacity as an EU Member State. Consequently, on the date on which the UK withdraws from the EU the agreement will cease to apply in respect of the UK since it will no longer be a party to the agreement”
  - “Where a mixed agreement is concerned, it would also be automatically terminated with regard to the UK upon its withdrawal from the EU because such agreements cover only the EU and countries which are Members of the EU. The only rationale for the UK to have signed the agreement separately is due to the division of competences within the EU system, whereby the sovereignty of the individual Member States requires them to give specific consent to the Agreements. However, this consent is not an indication that the EU Member State individually entered into an agreement with the third country.” [107]
  5.2 Strategies for the UK to Cope
  - Two strategies = (1) accede as an additional contracting party under existing agreements and/or (2) negotiate its own agreements. [108]
  5.2.1 Accession to Existing Agreements
  - If the UK wished to join an existing trade agreement, it would need to petition the parties to make the agreement trilateral versus bilateral. The example of Turkey has demonstrated that such a strategy can be rather challenging.
  5.2.2 Negotiating New Agreements: When Can the UK Begin?
“Wherever one falls within this spectrum, we believe that good legal arguments can be made that the UK can commence some form of talks immediately following the notification provided it is ensured that the agreements do not take effect until the Treaties cease to apply to the UK.” [109]

“… one could contemplate applying Chapter III of Regulation 1219/2012 mutatis mutandis. Member States are authorized under this Regulation to enter into negotiations to conclude new bilateral investment agreements with third countries, subject to prior written notification to the Commission of its intent and the provision of documentation and an indication of the provisions to be addressed in the negotiations or to be renegotiated, the objectives of the negotiations and any other relevant information. However, the Commission must authorize the Member State to open formal negotiations with a third country.” [109-110].


• 3. CETA Obligations and the UK Upon Brexit
  o “If EU Member States withdraw from the EU through Article 50, its ‘Treaties’ shall cease to apply to that Member State, i.e. the UK. CETA Article 1.3(b) that sets out the geographical application of CETA specifies that ‘for the European Union,’ CETA applies to territories in which the TEU and the TFEU apply. Reading CETA Article 1.3(b) and TEU Article 50(3) in conjunction, the UK is considered a territory for the purposes of CETA Article 1.3(b) until it negotiates an exit from the EU pursuant to the Article 50 process. If the TEU no longer applies to a country because it has withdrawn from the EU, then that country will no longer be captured in the geographic application provision of CETA. Consequently, when the UK leaves the EU, CETA will no longer apply to it unless the CETA is part of the Article 50 negotiations.” [129]

• 4. Concluding Observations: What Next?
  o “As a consequence of the time required to leave the EU under the Article 50 process, the UK will be required to comply with its obligations under the CETA.” [129]
  o “During the Article 50 negotiations, and in light of the provisional application of the CETA agreement, it does not appear legally possible for the UK to negotiate separate trade agreements with third countries including Canada.” [129]
  o “…there is nothing that legally prevents the UK launching preparatory discussions (i.e. not formal negotiations) with prospective partners including Canada regarding the form and coverage of any such agreement. What may such exploratory talks cover? With the UK ready to have CETA signed and ratified, the UK and Canada may consider that there already are agreed commitments in the CETA that can serve as a ready template for the eventual negotiations of a Canada-UK agreement when the UK has legal authority to negotiate such agreement.” [130]


• 4. Trade Relations with the WTO
  o “The WTO Director-General, Roberto Azevêdo, confirmed that the UK would continue being a WTO Member after Brexit, but that there will need to be trade negotiations.” [120]
  o “At a glance, the UK will need to renegotiate its own terms of WTO Membership with the other (currently) 164 WTO Members. During the renegotiation period, WTO Members could treat the UK as a non-WTO Member and raise significant trade barriers to British goods and services. The UK will likely first need to describe all aspects of its trade and economic policies related to WTO Agreements in a Memorandum that will be submitted to the other WTO Members. After analysis of this Memorandum, the UK and the WTO Members will begin talks covering tariff rates and specific market access commitments, and other policies on trade in goods and services. Once the British trade regime is evaluated by WTO Members and the bilateral market access negotiations completed, a report and list of commitments will be drafted. A Membership Treaty will not be necessary in this case. The WTO Ministerial Conference will need to vote the texts by two-thirds majority. In case of a positive result, the British Parliament would need to ratify the texts adopted at the WTO.” [121]
It is important to underline that this situation may also result in consequences vis-à-vis the WTO commitments of the EU, because its previous (EU 28) concessions may be seen by its trading partners as diminished in value by the fact that the UK is no longer part of the EU market. Because of this decrease in value, WTO Members could request the EU to renegotiate its WTO concessions as contained in its GATT and GATS Schedules.” [121]

Valerie Hughes, “Brexit and International Trade One Year after the Referendum” (British Insitute of International and Comparative Law, 2017), online: https://www.cigionline.org/sites/default/files/documents/Brexit%20Series%20Paper%20no.1WEB_0.pdf

- **Default to WTO Rules**
  - “Views differ as to what the legal situation of the UK schedules will be once the UK leaves the EU. Some argue that the UK’s rights and obligations set out in the schedules are contingent upon its status as a member state of the EU, with the result that it would need to develop new WTO goods and services schedules of its own, while others suggest that Brexit will not change the UK’s rights and obligations set forth in the existing EU schedules, but only which WTO member exercises them. In other words, according to the latter view, the UK does not need new schedules because its schedules already exist in the form of EU schedules, although some elements currently applicable to the EU as a whole (such as the right to subsidize agricultural production at certain levels and the TRQ commitments) would have to be adjusted to reflect rights and obligations applicable only to the UK.” [6] Reference to Bartels
  - “Moreover, it cannot be assumed that the UK would wish to “cut and paste” the complete set of EU services commitments, which were negotiated by the EU with the services industries of its entire membership in mind. The UK’s services industries are naturally of a different order than those of the EU membership. What is clear, however, is that if the UK wishes to lodge new goods and services schedules as the Conservative Party has suggested it will do, or if it seeks instead to exercise its rights under the EU schedules, but subject to adjustments such as with respect to TRQs, agricultural support and certain services commitments, in either case all WTO members (including the EU) must agree to the schedules submitted by the UK to the WTO.” [7]
  - “Beyond the issues respecting its own schedules, there is also the question of the UK’s right to access commitments found in other WTO members’ scheduled concessions, which are currently accessed by the UK via the EU. It can be anticipated that at least some WTO members (including perhaps the EU) will assert that the UK’s access is contingent upon the UK being a member of the EU, which could trigger negotiations to determine new access rights specific to the UK.” [7]

- **Modifications of Schedules in the WTO**
  - “Article XXVIII of the GATT 1994 provides for modification of goods schedules, while article XXI of the GATS provides for modification of services schedules. Given the unique situation presented by Brexit, it is not clear whether these provisions govern the negotiation and/or agreement by the UK and WTO members of UK-specific WTO schedules, for these provisions address the modification of existing schedules, but not the approval of new ones.” [7]
  - **Modification of Goods Schedules under Article XXVIII of the GATT 1994**
    - “According to article XXVIII of the GATT 1994, modification of goods schedules may be effected from time to time through negotiation and agreement with certain WTO members, namely those with whom the relevant concessions were “initially negotiated” (referred to as members with initial negotiating rights or INR) and any member that is determined to have a “principal supplying interest” (referred to as “principal suppliers”) in the concession(s). In addition, consultations must be held (although no agreement is necessary) with members that are determined to have a “substantial interest” in the concession(s).” [8]
    - “Changes in goods schedules “which reflect modifications resulting from action under... Article XVIII” of the GATT 1994 must be certified by the director-general of the WTO pursuant to the Procedures for Modification and Rectification of Schedules of Tariff Concessions, which were adopted by the WTO GATT Council in March 1980 (referred to as the “1980 Procedures”)...” [8]
  - **Amendments and Rectifications of a Purely Formal Character** option if modifications do not change the scope of concessions.
  - **Modification of Services Schedules under Article XXI of the GATS**
Regarding modification of services schedules, article XXI of the GATS provides that a member may modify or withdraw commitments in its services schedule upon notice to the Council for Trade in Services and subject to entering into negotiations with any “affected” member (defined as any member whose benefits under the GATS may be affected by the modification or withdrawal) “with a view to reaching agreement on any necessary compensatory adjustment.” Members concerned “shall endeavor” in such negotiations to “maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments prior to such negotiations.” If agreement on compensatory adjustment is not reached within a certain period of time, the “affected Member” can go to arbitration to determine the compensatory adjustment, and the modifying member cannot modify or withdraw the commitment until it has made compensatory adjustment in conformity with the arbitration findings. If the modifying member proceeds with the modification or withdrawal and does not comply with the arbitration findings, any affected member “may modify or withdraw substantially equivalent benefits in conformity with those findings” with respect to the modifying member.” [10]


3. UK INTERNATIONAL TRADE

3.1 Brexit, trade and aggregate welfare
- "The economic consequences of leaving the EU will depend on the policies the UK adopts following Brexit. But the CEP's analysis finds that lower trade due to reduced integration with EU countries is likely to cost the UK economy far more than is gained from lower contributions to the EU budget, regardless of what form Brexit takes." [13]
- "Using a quantitative trade model that builds upon Caliendo and Parro (2015) and Costinot and Rodriguez-Clare (2014), Dhingra et al. (2016) estimate the effects of Brexit on trade and the UK's contribution to the EU's budget would be equivalent to a permanent fall in income per capita of between 1.3% and 2.6% (£850 to £1,700 per household per year). The lower estimate of 1.3% corresponds to an optimistic 'soft Brexit' case where the UK remains part of the Single Market following Brexit. The larger estimate of 2.6% is for a pessimistic ‘hard Brexit’ case where the UK and the EU do not agree a new trade deal and revert to trading under World Trade Organization (WTO) terms. This range is a lower bound on the effect of Brexit that does not account for changes in FDI, migration, and the dynamic consequences of reduced trade on productivity growth." [13]
  
  o FN: “In particular, in the optimistic case Dhingra et al. (2016) assume that: (i) there are no tariffs between the UK and EU; (ii) non-tariff barriers increase by one-quarter of the reducible non-tariff barriers on US-EU trade; (iii) intra-EU trade costs fall by 20% faster than in the rest of the world for ten years after Brexit; and (iv) the UK's per capita contribution to the EU budget is equal to Norway's contribution. In the pessimistic case they assume instead that: (i) the EU's MFN tariffs are imposed on UK-EU trade; (ii) non-tariff barriers increase by three-quarters of the reducible non-tariff barriers on US-EU trade; (iii) intra-EU trade costs continue to fall by 40% faster than in the rest of the world for ten years after Brexit; and (iv) the UK makes no budget payments to the EU. Their analysis does not consider the possible effects of Brexit on trade relations with non-EU countries. In a recent paper, Brakman et al. (2018) conclude that only a trade agreement with the EU can compensate for the negative trade consequences of Brexit.” [13]
- "Once the long-run effects of Brexit on productivity and investment are included, the decline in income per capita increases to between 6.3% and 9.5% (about £4,200 to £6,400 per household per year). Other possible economic benefits of Brexit, such as better regulation, would have to be very large to outweigh such losses." [13]

5 THE UK’S POLICY OPTIONS
- “Firms with substantial presence in the UK may not immediately re-locate their operations, as reflected in Ernst and Young's survey in January 2017 that found that 86% of foreign firms with a presence in the UK have no intention to relocate European operations in the next three years.” [18]
- “The different policy options for future UK-EU relations, and their various pros and cons are summarized in Table 3.” [19]
II. The UK and Trade with Countries Associated with the EU

A. What destiny for the UK participation in EU agreements with third countries post-Brexit?

“...The exit of the UK from agreements in force will in any case be an issue also for the EU, since the territorial application of any such agreement will be reduced, requiring at a minimum a notice to the other party. The dropping out of the UK may in some case impact the scope of their application from an economic and trade point of view, affecting the balance of mutual benefits and possibly leading to a request of renegotiation by the non-EU party.” [917]

“As to the participation of the UK to these agreements after Brexit (that is after the transition period in which they can, and most likely will remain in force for the UK), even if the UK might be interested in maintaining its participation in some of them, the answer cannot but be generally negative, both for reasons of substance and legal...After Brexit, the UK would cease to be bound by them [agreements], while the EU would be incapable of performing the agreement in respect of the territory of the UK”. [917-918]

B. State succession principles as an obstacle to EU treaties remaining in force in the UK

“The participation of the UK as an additional separate member would turn [bilateral agreements] into trilateral, that is multilateral agreements, a change that would be incompatible with the operation of such treaties. This conclusion finds support in international treaty law, specifically in the UN Vienna Convention on Succession of States in respect of Treaties of 1978. Although it is in force (since 1996) only between few countries (including however six members of the EU) we can assume that it reflects customary law.” [919]
“Separation, dissolution, dismembering of states, as well as transfer of territories, are all covered under the heading of ‘state succession’ but it is not easy to select the applicable regime … there are two different, even opposite regimes, potentially applicable in such a case. According to one of Article 15 of the Convention, EU treaties would cease to be applicable to the UK. According to the regime of Article 34 instead, EU treaties would remain in operation also for the UK. Applying first paragraph of Article 15… EU treaties shall cease to apply to the territory of the UK, since the UK will replace the EU as the territorial sovereign in the matters previously pertaining to the EU competence. According to Article 34.1 instead, dealing with ‘Succession of States in cases of separation of parts of a State,’ ‘When a part or parts of the territory of a State separate to form one or more States . . . (a) any treaty in force at the date of succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed.’ EU treaties would remain thus in force also for the UK, except if, as provided in Article 34.2, ‘(a) the States concerned otherwise agree; or (b) it appears from the treaty or is otherwise established that the application of the treaty in respect of the successor State would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation’.”

III. The UK Position in the WTO After Brexit: Operating as an ‘Independent’ WTO Member

A. The UK as an original member of the WTO may go on keeping the EU schedules

“Discussions have been ongoing among trade law experts whether the EU’s WTO tariff schedule can be automatically assumed as its own by the UK, possibly through a simple notification to the WTO, once the UK will cease to be a EU member, just declaring or notifying to the WTO that the EU tariff goes on being the one of the UK as an ‘independent’ member.”

I do not see why this should not be so. The UK, which was an original contracting party of the GATT in 1947, is also an original member of the WTO by virtue of both the WTO Agreement and EU law. The WTO Agreement, comprising the agreement establishing the WTO and the various multilateral and plurilateral agreements annexed to it, have been concluded and ratified as ‘mixed agreements’, that is also by all the individual members of the EU, as the ECJ held was required in its Opinion 1/94.

There is thus no issue of State succession, nor any need of admission of the UK as spin-off part of an existing member of an international organization. The UK was, is and remains a member of the WTO so that the EU schedule, which is also the UK’s schedule currently, remains its schedule.”

“If at least initially the UK will adopt as its own the current schedules applicable to it as a member of the EU, other members of the WTO could not object to having the EU (EU-28) split between the EU-27 and the UK since, in principle, this would not affect negatively the original, previous balance of benefits and obligations. Establishing a new WTO schedule would entail instead a painstaking process of negotiations, which would not necessarily lead to replicating the EU schedule, especially if the UK would aim at obtaining more concessions from other Members than those reflected in their schedule in force (and vice versa). Although some WTO member might be tempted to ask for renegotiation, this position is unsupported by WTO law.”

“The territorial extension of a WTO member can change and is not a relevant element of a concession.”

Brexit will also affect the UK’s trade with the rest of the world. Over the past twenty years, the EU has negotiated 36 free trade agreements with 58 non-EU countries, as the map on the right indicates. Several other trade agreements are in the process of being ratified or are under negotiation. The UK would not benefit from those agreements once it leaves the EU.”
Website Article: The United Kingdom: Market Overview  
Accessed: June 21, 2018  
Source: Trade Commissioner Service – United Kingdom  
- Why the UK Matters  
  o The UK is Canada’s largest export market in the European Union (EU) and its capital, London, is one of the world’s most important financial centres.  
  o The UK has the second largest economy in the EU, with a GDP of 2.6 trillion euros. Among the top 5 largest economies in the EU, it has the highest GDP/capita.  
  o The UK is Canada’s fourth-most important source of foreign direct investment worldwide.  
  o Key growth sectors in the UK include aerospace, agriculture, defence and security, sustainable technologies, and oil and gas.  
- TCS website provides general information on how to export to the UK, and specific sectoral opportunities in the UK.

Website Article: Canada and the United Kingdom relations  
Source: Government of Canada; Accessed June 14, 2018  
- Economic and trade information from: Factsheet  
- Political Relations  
  o “Canada and the UK work closely together as part of international organizations and are the only two countries that are members of NATO, the G7, the G20 and the Commonwealth. Canada is an active participant in the Commonwealth, and is the second largest financial contributor after the UK. Through the United Nations, World Bank, and other organizations, Canada and the UK continue to promote our shared values and our commitment to international development, particularly in areas such as health and education.”

- Commercial and Economic Relations  
  o The UK has been a consistent supporter of the Canada-EU Comprehensive Economic and Trade Agreement (CETA) that entered provisional application on Sept 21, 2017.  
  o With application of this gold-standard comprehensive trade agreement, the economic ties between Canada and UK are set to grow, as under CETA, tariffs will be eliminated on 98% of all goods traded between the our two countries upon provisional application.  
  o The UK is by far Canada’s most important commercial partner in Europe and our fifth largest globally, with two-way merchandise trade in 2016, reaching more than $25 billion CAD (£15.4 billion), the vast majority of which moved through UK ports.  
  o With CETA, the UK government has highlighted a predicted £1.3 billion (C$ 2.15 billion) annual boost to its economy as a result of the agreement. UK’s industries and consumers will continue to enjoy the advantages of CETA while it negotiates its departure from the European Union.  
  o The UK is also an important source of direct foreign investment for Canada, ranking second after the United States and there are more than 700 UK firms that have a presence in Canada that continue to contribute to our growing economy. Conversely, the UK is Canada’s second most important destination for investment abroad. Indeed, there are more than 1100 UK firms owned or controlled by Canadian interests. Therein lay the building blocks of our future economic relationship that will continue to flourish.
Website Article – “Brexit: What will the impact be on Canada’s economy?”
Source: bdc; Accessed June 14, 2018
Date: 2016

- “Brexit presents a negative risk for world economic growth. Clearly, the United Kingdom will suffer the most: According to the OECD, if it leaves the EU, its GDP could be 3% weaker by 2020 than if it stays. Secondly, by losing one of its most important members, the European Union is most likely to feel the after effects of the British decision. Countries that are not directly affected, like Canada, are not immune from the fallout from this event. It is creating uncertainty and could undermine investor confidence. The negative effects on their economies should, however, be far less significant.”

- “The United Kingdom is Canada’s third largest merchandise export destination, after the United States and China. In 2015, Canada’s exports to the country totalled $16 billion, some 3% of Canada’s total exports. Canadian purchases of British goods totalled $9.2 billion, or 1.7% of total imports.”
- “Canada mostly exports minerals and metals to the UK. Mining (mostly gold and silver ore) accounts for 60.6% of total Canadian exports to the United Kingdom, while primary metals rank second, at 11.6%. Transportation equipment exports (mostly aerospace products and their parts) rank third at 4.2%.”
- “To leave the European Union, the UK will have to proceed in accordance with Article 50 of the Treaty of European Union, which stipulates that any member state that wants to withdraw must first officially notify the European Council of its intention to do so. From that point, the EU and the state in question will have two years to negotiate a withdrawal agreement, unless the EU member states unanimously accept to extend this period.”

- “Several factors make the United Kingdom an ideal gateway to Europe, particularly the ease of doing business there (the country ranks 6th out of 189 on the World Bank’s Ease of Doing Business Index); the size of its financial sector (the London Stock Exchange is the largest in Europe and the third largest in the world); and, of course, UK membership in the European market.”

Website Page: United Kingdom and the WTO
Website Article: “Justin Trudeau: UK-Canada trade talks can begin ‘day after Brexit’ ”
Source: Politico
Date: April 12, 2018

- "Canadian Prime Minister Justin Trudeau said Brexit will allow Canada and the U.K. to forge a larger and “more impactful” trade relationship than the current agreement with the European Union, according to the Times.”
- "Canada said it will use the current agreement, the Comprehensive Economic and Trade Agreement (CETA), as the starting point for negotiations. But, Trudeau said they can go beyond that agreement for ‘an even better or larger or more impactful deal.’ ”
- “There will be things in CETA that are no longer as necessary between Canada and the U.K. and there’d be other areas where we would be interested in going further,” he said.

Website Article: “Canada champions UK trade deal but India doubts grow”

- "Brexit will allow Canada to negotiate a larger and "more impactful" trade agreement with Britain than its deal with the European Union, Justin Trudeau has said.”
- "In an interview with The Times he reiterated that Canada was willing to open formal trade negotiations with the UK "the day after" Brexit next March. "Trade deals are always challenging but it should be fairly easy for all of us to get to an improved approach on trade between Canada and the UK," he said.”
- “The Comprehensive Economic and Trade Agreement (CETA) "is obviously a deal that was designed for the entire European Union", he said. "There will be things in CETA that are no longer as necessary between Canada and the UK and there'd be other areas where we would be interested in going further." 
- “Canada hopes to use CETA, which took seven years to establish, as a starting point for its new deal with the UK. "The rolled-over or specific CETA arrangement between Canada and the UK is just the floor, or the first step," Mr Trudeau said. "After that, we very much look forward to negotiating an even better or larger or more impactful deal to encourage the deepening of trade ties between Canada and the UK."
- “Asked last night whether Britain would be ready to open formal trade talks with such countries immediately after Brexit, Liam Fox, the international trade secretary, insisted that his department would continue to train and recruit staff "so we can hit the ground running once we have left the EU". Dr Fox, who visited Vancouver this week, said there was "huge appetite for increased trade with the UK" in Canada.”

Website Article: “United Kingdom submits draft schedule to the WTO outlining post-Brexit goods commitments”

- On July 24, WTO members received the UK’s draft schedule setting out its WTO market access commitments for goods once the UK leaves the EU.
- The UK considers the notification to be a rectification of its concessions under the WTO. Under this process, known as the “1980 Procedures for modification and rectification of Schedules,” WTO members will have three months to review the schedule, which will be considered to be approved if there are no objections.
“Brexit: What would a Canada-style free-trade deal with EU mean for the UK economy?”
Source: Independent
Date: December 20, 2017

- “EU chief Brexit negotiator Michel Barnier has said the UK is likely only to get a trade deal with the EU “along the same lines” of what the EU has concluded with Canada, South Korea and Japan.
- He said that the UK’s own “red lines” on Brexit (no freedom of movement, no jurisdiction for the European Court of Justice, the right to sign independent UK trade deals with third countries, etc) ruled out anything more extensive.”
- “The EU-South Korea free-trade deal was concluded in 2009 and came into force partially in 2011. It is essentially a tariff-reduction trade deal covering goods such as cars, textiles, electronics, chemicals and some agricultural products. It is described by the EU as the bloc’s most ambitious overseas trade deal so far.”
- “Shipments to the EU from South Korea, Canada and Japan all have to be (and will continue to be) checked by EU customs authorities to ensure they are actually from those countries and that they conform to local safety rules, even if no tariffs are due.”
- “Within the EU customs union, goods cross borders without any checks at all.”

“Brexit: UK likely to end up with Canadian-style deal, warns Barnier”
Source: The Guardian
Date: October 24, 2017

“Theresa May's celebration of Ceta is telling of the type of Brexit we are heading toward”
Source: Independent
Date: September 20, 2017
- “The hard Brexiteers in the government are convinced that CETA represents a perfect model of corporate-led trade which, without the shackles of the EU and with not even a whiff of democratic control over trade policy, can replace Britain’s relationship with the EU post-Brexit.”
- “To remind ourselves, Ceta (the Comprehensive Economic and Trade Agreement) is the sister deal of the better known – and now defeated – TTIP trade deal between the US and EU. Just like its sibling, it’s not about conventional “free trade”, that’s to say, reducing tariffs. Rather, the whole purpose is reducing regulation on business, the idea being that it will make it easier to export.”

“CETA to form basis for post-Brexit trade relationship between U.K. and Canada: Trudeau and May”
Source: Radio Canada International
Date: September 18, 2017
- “Canada’s free trade deal with the European Union will form the basis for the post-Brexit economic relationship between Canada and the United Kingdom, Prime Minister Justin Trudeau and his British counterpart Theresa May said Monday.”
- “We believe it makes sense to take the trade agreements the U.K. is part of as part of the European Union with Canada and say that’s the basis, at the point we leave, for a bilateral relationship between the U.K. and Canada,” May said.

“Brexit: All you need to know about the UK leaving the EU”
Source: BBC
Date: June 21, 2018
- “[…] The UK and EU have provisionally agreed on the three "divorce" issues of how much the UK owes the EU, what happens to the Northern Ireland border and what happens to UK citizens living elsewhere in the EU and EU citizens living in the UK. Talks are now focusing on the detail of those issues and on future relations - after agreement was reached on a 21-month "transition" period to smooth the way to post-Brexit relations.”
- Transition period ➔ “It refers to a period of time after 29 March, 2019, to 31 December, 2020, to get everything in place and allow businesses and others to prepare for the moment when the new post-Brexit rules between the UK and the EU begin. It also allows more time for the details of the new relationship to be fully hammered out. Free movement will continue during the transition period, as the EU wanted. The UK will be able to strike its own trade deals - although they won't be able to come into force until 1 January 2021.”

“Britain and EU formally start splitting WTO membership agreements”
Date: July 25, 2018
- Seven agricultural suppliers – including the United States, Canada and Australia – have already said they disapprove of the terms of the divorce, since they will lose flexibility to switch exports between Britain and the rest of the EU.

“A 'hard Brexit' creates uncertainty for Canada on what's next for trade”
Source: CBC
Date: March 29, 2017
- David Kleimann, a trade law researcher with the European University Institute ➔ “But simply "grandfathering" CETA isn't really an option, Kleimann said. That's an idea "generated in haste and panic." CETA can't be applied to a single country.”
- “Because of the level of integration that Europe has gone through over the years, supply chains criss-cross the Continent,’ Brian Kingston, the vice-president of policy and international issues for the Business Council of Canada said. ‘Trying to pull that apart will be extremely challenging.’

HOUSE OF COMMONS DEBATES

| October 30, 2017 | International Trade Committee (Standing Committee on International Trade)  
Chair: Mark Eyking  
Topics of Discussion:  
- Immigration of skilled labour to Canada  
- Accessibility of knowledge of FTAs |
| April 11, 2017 | International Trade Committee |

The Chair Mark Eyking
- Thank you.
- Before we go to the second round, I have a quick question for you. You said you were speaking to the BBC, so one would assume you were speaking mostly to the British. Did the conversation come up...? You were talking about the lobster, but they are planning on leaving the union. What did you say to the British audience about former agreements? How did that play out?

François-Philippe Champagne Saint-Maurice—Champlain, QC
- As you would expect, in London people are focusing on Brexit. What we have been saying is that we will have a free trade agreement with the U.K. very soon. It's called CETA.
- As long as the U.K. remains in Europe, and depending on the time of their process, they will have a free trade agreement. Even Dr. Liam Fox recommitted to me to push that along in their own Parliament, to ratify CETA.
- What I have been saying, as well, is that this is our largest trading partner in Europe, so we are very committed to continuity, stability, and predictability. This is in Canada's best interest, as well as in their own interest.
- What I have been saying to them—there are informal discussions taking place—is that things that work well should continue. Now, in what form they will continue, we'll
have to see over time, but certainly on both sides we want to ensure stability and predictability, and continue that very good relationship that has been beneficial for both Canada and the U.K. This is what I repeated when I was in the U.K., and this is what I say when I'm in Canada. I think that's a message that people understand very well on both sides of the Atlantic.

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| March 21, 2017 | Richard Cannings South Okanagan—West Kootenay, BC | - Mr. Speaker, I would like to ask the member a question I asked earlier, simply because I think the member's colleague might have misinterpreted what I was asking. It was about the fact that when we finished negotiations for this treaty, it happened concurrently with the Brexit vote in the U.K.  
- In negotiating this treaty with the European Union, we obviously made some concessions because of the fact that we have a huge amount trade with the European Union, but almost half of that is with Britain. I wonder what the member feels about giving up concessions in this treaty, which now we may not get the benefits from, because Britain is not part of this treaty. I know we can do another treaty with the U.K., but we obviously need some assurances that this will not be a negative consequence. |
| February 13, 2017 | Harold Albrecht Kitchener—Conestoga, ON | - Mr. Speaker, in terms of the uncertainty around Brexit and those particular issues, I do not, as a member of Parliament, speculate as to the outcome of not having Britain as part of the EU free trade agreement. I am still convinced that the free trade agreement with the EU, even without Britain being part of it, will be a major advantage for all Canadians. |
| February 8, 2017 | Tracey Ramsey Essex, ON | - Madam Speaker, I share with my colleague a passion for trade and the importance of understanding that we are a trading nation, and I appreciate his global perspective.  
- When we look at what is happening across the globe right now, certainly there are implications for CETA. When we look at what has happened in the U.K., with Brexit, it is something we have to address. It is not something we can simply gloss over. If we sign CETA, we now have an unknown in the U.K., and 42% of Canadian exports are to the U.K. The Canadian concessions in CETA were based on the premise that the U.K. would be in the agreement. However, after Brexit, the Liberal government failed to re-evaluate the net benefit of CETA without the U.K. If the U.K. triggers its exit from EU, and also leaves CETA, is the member comfortable with the concessions Canada has made in CETA, given that the U.K. represents nearly half of Canada's exports to the EU? |
| | Tom Kmiec Calgary Shepard, AB | - Madam Speaker, I want to be respectful in my response, because I will disagree in principle.  
- I think the government has made the right move to push ahead with this agreement, because eventually there will be a Brexit. It is not perhaps; it is definitely when. Theresa May, the Prime Minister of the United Kingdom, has been very clear that there will be an exit. However, the U.K. will be signing some type of agreement with continental Europe. It will be the best position for Canada to be in to already have an agreement ready to go with continental Europe and from there to negotiate an agreement with the United Kingdom. I do not see a reason not to move ahead with it, when we know that our partners in the United Kingdom want to negotiate an agreement with us, which will be to the advantage of Canadians. |
| | Kevin Lamoureux Parliamentary Secretary to the Leader of the Government in the House of Commons | - Madam Speaker, trade is critically important to Canada. We are a trading nation. Many of the jobs we have today are directly linked, and many thousands more are indirectly linked, to it. As the minister indicated a little while ago, CETA is the gold standard. This is no doubt something that will assist Canada's middle class, and by helping |
Canada's middle class grow, we are helping the economy. That is good news for Canada.
- Does the member recognize that one bonus is that the European Union is looking to Canada to continue to demonstrate leadership, especially on the trade file? We have a wonderful opportunity to be the linchpin between the U.S. and Europe. By using this agreement, there could be some additional benefit for Canada to move forward in opening new markets for our many manufacturers, services, and so forth.

February 6, 2017

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<th>Erin Weir of Regina—Lewvan, SK</th>
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<td>…In terms of the United Kingdom leaving the European Union, a big question is what that means for CETA. It is a question the NDP has been asking throughout this debate, because of course, the United Kingdom is the one major economy in the EU with which Canada currently enjoys a trade surplus.</td>
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<td>I was interested to note on Friday that a Conservative colleague, the member for Sarnia—Lambton, actually asked that question during question period and did not get much of a response from the government. What the parliamentary secretary to the minister of international trade said was:</td>
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<td>If CETA is passed by the EU, we will have a deal with the U.K. until things unfold in that country. Canada, of course, has an interest in maintaining access to the significant U.K. marketplace, and we believe very strongly that CETA provides an excellent baseline for future negotiations.</td>
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<td>Here we have the government actually acknowledging that CETA is not a done deal, that it is unclear whether or how it might apply to the United Kingdom, and that in all likelihood, Canada would have to enter into new negotiations with the U.K. after the Brexit process plays out. Why, then, would we want to establish that baseline now? Will this be a baseline from which we make further concessions in negotiations with the United Kingdom?</td>
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<td>It seems to me that after Brexit, the United Kingdom will actually be under pressure to formulate new trade agreements. It will no longer be part of free trade deals through the EU, and the British will be the ones who really need to make concessions to get trade deals. Why would Canada set the baseline now? Would it not be more prudent to see what happens with Brexit and then negotiate with Britain from a position of strength? Agreeing to CETA before Brexit has played out actually puts Canada in a much weaker position for prospective negotiations with the United Kingdom…</td>
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<th>Scott Simms Coast of Bays—Central—Notre Dame, NL</th>
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<td>Madam Speaker, I appreciate many of the concerns the member has, certainly about the private property issue he brought up from the Conservative debate. I thought that was well done, and I thank him for that. However, from the logic of one stronger dominant partner over the other in any particular trade deal, I do not quite follow the logic about the Brexit situation.</td>
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<td>Now that section 50 has been triggered and will, no doubt, come to pass, when it comes into force following a vote in Europe on February 14, I believe, following Bill C-30, if it passes, we will have entrenched quite a bit in a very substantial trade agreement, along with a strategic partnership agreement that is more political in nature but certainly very important. To me, that puts Great Britain on the other side of his logic, where it has to negotiate something with us as it leaves the European Union.</td>
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<td>Perhaps he could explain to me further where his logic prevails over mine.</td>
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<td>Madam Speaker, the member across the way points out that with this legislation, we will already have entrenched many aspects of CETA, and that is precisely my concern. We would be in a much stronger bargaining position dealing with Britain after it is out of the EU and after it is desperate to get into some trade deals than we are in negotiating with the entire European Union, as is currently the case.</td>
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| The Parliamentary Secretary to the Minister of International Trade said in the House on Friday that CETA would provide a baseline for negotiations with a post-Brexit U.K.
I am submitting that it is a bad baseline and that we could do better in negotiating with the U.K. after Brexit.

February 3, 2017  
**Georgina Jolibois Desnethé—Missinippi—Churchill River, SK**
- Mr. Speaker, my question is in line with world changes happening currently with the election of President Donald Trump and with the Brexit vote. If the U.K. triggers its exit from the EU and also leaves CETA, is the member comfortable with the concessions Canada has made in CETA, given that the U.K. represents nearly half of Canada's export market to the EU?

**Dan Albas Central Okanagan—Similkameen—Nicola, BC**
- Mr. Speaker, first, the United Kingdom cannot engage in any new trade deals until after it has formally triggered Brexit. Given our long-standing ties with the many Commonwealth countries, particularly the United Kingdom, it would be helpful, and I would hope other members would support this. My understanding is the United Kingdom was very key in the negotiations of CETA, and perhaps we could come to terms rather quickly and maintain that market access. Of course, that would take the government to engage with the United Kingdom. The United Kingdom has been talking to many other liberal western democracies, such as the United States, because it believes it is in its interest to keep trade lines open.
- Therefore, I really hope the government will be quick on its feet and that it has pounded on the door to let the United Kingdom know that Canada wants to not only continue that relationship but increase it.

December 9, 2016  
**Erin Weir Regina—Lewvan, SK**
- Mr. Speaker, trade between Canada and Europe is already free. There are very few tariffs between Canada and the European Union, which raises the question of why we need this comprehensive economic and trade agreement. However, if we are to evaluate it as a trade agreement, then a logical starting point is to look at the current pattern of trade between Canada and the European Union.
- In 2015, Canada exported $38 billion of merchandise to the EU and imported $61 billion of merchandise from the European Union. That meant a trade deficit of $23 billion. This imbalance means that if CETA functions as advertised and increases two-way trade, it will also aggravate our trade deficit. For example, a 10% increase in bilateral trade would increase our exports by $4 billion and would increase our imports by $6 billion. That would make our trade deficit with the European Union $2 billion higher, a subtraction from output and employment in Canada.
- The economic models that were used to argue for CETA simply assume balanced trade and full employment, but we know that those assumptions are unrealistic in the real world. Furthermore, these models do not take into account, and indeed the government has made no effort to take into the account, the consequences of Brexit. The United Kingdom was the only major European economy with which Canada ran a trade surplus.
- In 2015, we exported $16 billion to the U.K. and imported $9 billion from the U.K. Of course, the United Kingdom is no longer part of the European Union. Therefore, if we look just at the remaining EU countries, we find that Canada exported only $22 billion of merchandise to them, but imported $52 billion. What this means is that taking the United Kingdom out of the equation, we imported more than twice as much as we exported to the rest of the European Union. Indeed, with those countries, we suffered a trade deficit of $30 billion.
- In this new scenario without the U.K., a 10% increase in bilateral trade would boost Canada's exports by only $2 billion and would increase our imports by $5 billion. That would make our trade deficit with what remains of the EU $3 billion higher, an even larger subtraction from Canadian output and employment.
- In terms of trade flows, it is not at all clear that this agreement could deliver a benefit to Canada. Even if we imagine that CETA does boost Canadian output and employment, we should remember that it will also make it easier for European companies to bring in temporary foreign workers. There is absolutely no reason to expect that any potential increase in employment would actually benefit Canadian workers.
Kennedy Stewart Burnaby South, BC
- Mr. Speaker, I very much enjoyed my colleague's speech. I think he has a very in-depth knowledge of not just this trade deal, but of many other trade deals. That is the kind of discussion we need here in the House, to hear the pros and cons of both sides that are well informed.
- I had two things that struck me while the member was speaking that I would perhaps like him to comment on, if he cares to.
- The first would be that, to me, it seems that when this deal was starting to be negotiated, Britain was in the EU. It was pre-Brexit. It was also before the election of Donald Trump as the president. It seems the world has kind of moved on from where we were when we were first negotiating this trade deal.
- I wonder if perhaps by signing this deal, the Liberals are committing us to the past. The Conservatives certainly negotiated this deal under a different global setting. The Liberals kind of picked it up and are taking credit for it, but I wonder if they could have done a better deal, looking more at what is coming down the pipe. Trade with Europe is too important to get wrong
- I am wondering if my colleague could perhaps comment on the Brexit side of things, how the world has changed, and how Canada might suffer if we sign this agreement.

Erin Weir Regina—Lewvan, SK
- Mr. Speaker, my colleague is certainly correct that past Conservative and Liberal governments have taken the attitude that they should just sign any and all free trade agreements, without much regard for whether they are good deals, and without much regard for the actual provisions of those agreements. That is one of the ways we have been in trouble with things like investor-state provisions.
- My colleague is also correct to note that there has been a shift away from this logic of free trade all the time and at all costs. There is a sort of re-evaluation of corporate globalization and what it means for working people. Rather than rushing ahead with this deal, I do think it would make sense for Canada to re-evaluate our position as well, and to re-evaluate our position in this changed world.
- Certainly in terms of Brexit, as I pointed out in my speech, it removes from the European Union the one major economy with which we were running a trade surplus. The trade imbalance that Canada will suffer with what is left of the European Union is even worse, and the potential negative consequences of getting this deal wrong are even more dire.
- My colleague has added some very good reasons to vote against Bill C-30.

November 22, 2016
Brian Masse Windsor West, ON
- … With CETA, the interesting thing to consider right now, as it is on the table, is that we have Brexit. Let us talk about Brexit with regard to how important it is to CETA.
- Obviously, the United Kingdom is a very close ally and trading partner. It is part of the foundation of our modern society here. However, it has decided to exit from European trade. When we sat down to look at this agreement and started working on it, this was not the case. It has taken so long to get here that it has gone from being a partner in the agreement, to actually holding a referendum, and now to exiting from the arrangement.
- Some members may think that, oh, it is just the U.K. Do not worry about it. It is just one nation over there. However, that is 42% of our trade with Europe. Therefore, 42% of the deal is off the table and has been cast to the wind.
- If one were to negotiate the sale of one's house, or purchase a house, and all of a sudden 42% of the house was no longer saleable, it would probably change the way one would go about business. If one were to buy a car but it was 42% different than what one actually wanted to buy in the first place, one would probably look for a different car. This 42% is a significant amount. It actually creates an opportunity that the government does not even realize with regard to trading.
- The Liberals always say that NDP members are against trade and all that kind of stuff, which is absolutely ridiculous. Humans have been trading from the beginning and
continue to trade now under different types of agreements. However, we disagree about the fact that we do not have labour and environment in those agreements. When we create a partnership, the partner should not use child labour or subsidize the environment, like dumping oil, chemicals, and so forth in the water. In fact, we have enough of our own domestic problems with that stuff, and perhaps some competition would do us some good.

- The reality is that under CETA right now, 42% of the agreement has been blown up, it is out the window, and we are going to have to create a separate binational agreement with the U.K. I see that as an opportunity. I see that as a possibility, and those elements are being sought out right now. Instead, we are going to grind ourselves away into an agreement that will still take years to be ratified. Not only will it take years to be ratified, it is different than when we started.

- In fact, one of the major objections we have is the investor-state provision in CETA, which is huge. It is related to the controllability of the public sector versus that of the private sector. We see chapter 11 under NAFTA where we gave it up, having so many lawsuits.

- To conclude, even by us approving CETA, our partners in this will approve something different, because they actually stood up to for their communities and their people, and they got a better deal than what we are willing to even talk about at the table.

**Kevin Lamoureux**
Parliamentary Secretary to the Leader of the Government in the House of Commons

- Madam Speaker, the member has indicated that because England has pulled out of the agreement, Canada should pull out as well. The United Kingdom makes up 42% of trade, but according to my math that still leaves 58%, which is a significant amount of trade. It takes time for these things to evolve.

- Is the government to believe that the position of the NDP is based strictly on the fact that the EU has broken up because of England and therefore we should not pass this trade legislation? We know that 58% or more of our exports cross the Atlantic, and we benefit immensely from that. This agreement will enhance the amount of trade between the EU and Canada. Why would we tear up the EU agreement because one of the countries has left, albeit a significant one?

**Alistair MacGregor**
Cowichan—Malahat—Langford, BC

- … I want to ask the member a question. He has a lot of experience on this file. I want to bring his attention to the specifics of one country, and that is the United Kingdom. As he may very well be aware, 42% of Canada's exports to the EU go to the U.K., and a large part of the CETA negotiations were based on the premise that the U.K. would still be a part of CETA. The Liberal government has not properly evaluated CETA without the U.K. If the U.K. triggers its exit from the EU and leaves CETA, is my colleague comfortable with the concessions that Canada has made in CETA, given that the U.K. represents nearly half of Canada's exports to the EU?

**Ed Fast**
Abbotsford, BC

- …I have been involved in some public fora where I have expressed my concern over what Brexit will mean for the Canada-EU free trade agreement. If the U.K. exits, what happens to the market access that we had expected to get? The U.K. is our largest export market in the European Union. Canada's trade relationship with the United Kingdom is one of its most significant trade relationships, so Brexit puts us into uncharted waters. **This agreement had essentially been negotiated before Brexit. There were not a lot of people who expected Brexit to happen, but it did.**

- The member is asking me what the impacts would be if the U.K. exits the agreement and whether I believe that the Liberal government has undertaken the due diligence to understand what this means. I do not know. I am skeptical as to whether the government has done that work. When we were dealing with carbon pricing and a carbon tax, the Prime Minister made it clear that the government did no economic impact analysis on that. I suspect that the announcement the government made about abandoning coal-fired electricity had no economic impact analysis. I suspect that the Brexit impact on this trade negotiation with the EU has also not been well understood by the Liberal government, so I share my colleague's concerns.
Dr. Hurrelmann,

- I want to briefly remind us of the status quo. The U.K., as a member of the European Union, is part of the world’s largest single market defined by the free movement of goods, services, capital and labour. The EU has a dense regulatory regime covering products, health and environmental standards, amongst other things. It is a customs union with the exclusive competence to conclude external trade agreements, such as the CETA agreement with Canada; and all member states are subject to binding European Union law that is interpreted by the Court of Justice of the European Union.

- I mention all this because the objectives of Brexit are to leave some but not all of these arrangements. If the Government of the United Kingdom gets its way, they would like to end the free movement of labour; replace EU regulation with British rules; leave the customs union and conclude their own external trade agreements; and end jurisdiction of the Court of Justice in the United Kingdom, but they would like to retain access to the EU market for British goods, services and capital...

- I want to note that any future arrangement that is a comprehensive economic agreement -- CETA or more -- will likely not be negotiated under article 50 but will require a separate negotiation which would very likely require unanimous agreement by member states of the European Union, as well as ratification according to domestic constitutional procedures, just like CETA. As we see, this takes a long time.

- This is why we have recently seen a lot of discussion about transition periods, which would see continued application of EU rules to the United Kingdom for a certain period of time beyond March 2019 and ideally stretching until a new long-term agreement comes into force. But the terms of a potential transition period are still very unclear and also extremely contested within the British government. At the ongoing Tory Party conference, various ministers have been giving very contradictory statements on whether the transition period will be full single-market membership or customs union membership and how exactly it will look. If the U.K. ministers cannot even agree on this amongst themselves, then, of course, negotiations will not make progress quickly...

- CETA will no longer apply to the United Kingdom when it leaves the European Union, unless the transition period includes U.K. membership in the customs union.

Dr. Leblond

- …Professor Hurrelmann already began to discuss various scenarios. For Canada, the best scenario in the short and medium term would indeed be for Great Britain and the European Union to come to an understanding on a transition period lasting from two to three years and that, while negotiating that transition agreement, the Comprehensive Economic and Trade Agreement, or CETA, will continue to apply. So, Great Britain will continue to be part of the agreement between Canada and the European Union, and the status that Canadian businesses enjoy today, in terms of doing business with Great Britain, will continue for at least a few more years.

- Otherwise, with no similar transition agreement under which CETA continues to apply, the major question is knowing what is going to happen. Two scenarios are possible. The first is that Canada and the United Kingdom agree to “copy and paste” CETA, which was negotiated between Canada and the European Union, and apply it directly to Great Britain, effectively replacing the European Union with the United Kingdom. That would be the easiest and best solution, both for British companies doing business in Canada and for Canadian companies doing business in the United Kingdom. As Professor Hurrelmann said, for Canada, the European market is the bigger.

- Nevertheless, even if we managed to transpose CETA directly between Canada and the United Kingdom, there would still be things to negotiate. First, there are the commercial quotas where customs duties are not applied. For one thing, Canada has granted the European Union some dairy quotas. What would the United Kingdom’s quotas be? Would the European Union agree to give the United Kingdom a share of those quotas negotiated under CETA? That would be part of the negotiation between the United Kingdom and the European Union. Would any resulting distribution be acceptable to Canada? That remains to be seen. If the European Union ever refuses, Canada and the United Kingdom will have to negotiate new quotas themselves. In the other direction, the European Union has
granted Canada some quotas to export beef and pork to the European market. There again, what share of those quotas would Canada grant to the United Kingdom? Would the European Union agree to reduce its own quotas?

- We know that these two issues have been hot topics for Canada. To an extent, they could delay the implementation of a free trade agreement or a comprehensive trade agreement being signed between Canada and the United Kingdom. That is one example of where negotiations would be needed. There are others. For example, there could be discussions about the exceptions that the European Union has granted to Canada or that Canada has granted to the European Union. Do we want to have the same exceptions in an agreement between Canada and the United Kingdom?

- The danger arises when we open negotiations on one aspect of the agreement. The danger is in saying that, if we are negotiating one thing, why don’t we negotiate another? Pressure groups will insist on certain points and the danger is that, in the absence of that transition period, during which CETA would apply between Canada and the United Kingdom, even if we tried to “copy and paste” the agreement, we will end up without one. There, we revert to another scenario that Professor Hurrelmann mentioned: the World Trade Organization agreements.

- So the tariffs and customs duties that would apply would be those of the European Union. Since it is not possible for the United Kingdom to negotiate tariffs in time, it would agree to apply the European Union’s tariffs to its trading partners. So Canadian companies exporting to the British market would see various tariffs applied, and they would be those of the European Union.

- Then there would be other factors, because CETA would no longer apply. There would be less access to government procurement in Canada for British companies. It would be the same for Canadian companies in the British market because, at that point, the applicable rules would no longer be those of CETA, but of the plurilateral agreement on government procurement negotiated through the WTO.

Q&A

Senator Woo: … The question of the impact of Brexit on Canada is less about the impact on the Canada-U.K. relationship and more on the Canada-EU-minus-U.K. relationship. That's how I look at it. The U.K. will be the demandeur when they leave under whatever terms, and they're going to be desperate to negotiate agreements with other countries, including Canada, before they try to start negotiations with us, and obviously we cannot do so until we understand where they will stand.

As Professor Hurrelmann told us, the EU is a much larger market, so what will be really important is the way the EU minus the U.K. evolves its trade policy vis-à-vis the world, having already negotiated the CETA with us.

How do you see the evolution of trade policy thinking in the EU, having gone through this very traumatic experience with the U.K.?

Mr. Leblond: The answer to the question, from my perspective, is that I do not think the EU’s trade policy will change as a result of Brexit. In fact as a result of Brexit, the EU is trying to send very clear messages that it wants to continue negotiating trade or economic partnership agreements with other parts of the world…

Senator Marwah: […] I would like to further probe the impact of Brexit on Canada. Given the fact that CETA is done -- we have our trade relationships with Europe taken care of and the U.K. is on its own -- does this put Canada in a better bargaining position to negotiate something with the U.K.? They’re going to need some friends somewhere. Do we move quickly to that point, or do we give them exactly what we give the EU? Should we push for EU plus or CETA+? What’s your thought in terms of the strategy there?

Mr. Leblond: The answer is that it does put Canada in a good position. As was mentioned, the U.K. would be in a demandeur position, so it does give us some leverage. Yes, the U.K. will be looking for friends. It will be looking to try and maintain its trade relationships as quickly as possible. The fact that there is already a free trade agreement between Canada and the EU to which the U.K. has signed on makes it easier.

Then I guess it will be a question as to how much Canada thinks it can get from the U.K. by trying to use this leverage and whether we really want to use it. I think the general view — at least this would be my perspective — is that we would rather have the U.K. within the EU than outside, but it’s still an important economic and political partner on trade, investment, security issues, foreign policy, et cetera.

In the context of that relationship, some groups will probably ask for something more than we got from the Europeans or maybe give less than what we gave the Europeans so that we can, in a way, gain a little bit more. That’s possible. Ultimately I think it will be the responsibility of the government to decide how long we want to hold off on getting a deal and therefore
have WTO rules apply, potentially, and create this uncertainty around our most important economic relationship with a European country.

It’s going to be a bit of a trade-off where what we gain, on the one hand, by negotiating might be a slightly better deal than CETA. You mentioned CETA+ with the U.K. Does it mean we have to wait longer before we get to that agreement? In the meantime, it means investments are not happening on both sides of the Atlantic. Maybe trade is not happening because of the uncertainty and trade barriers that would, in a way, reappear between Canada and the U.K. because now, of course, CETA applies.

I think it will be for the negotiators to determine which way to go and how much we think we can get. My view is that maybe it’s better to go forward with what CETA offers right now, negotiate quotas and a few things — in a way, the tweaks that Mr. Trump was talking about — and make sure we have an agreement as quickly as possible so that the current situation that applies in terms of CETA continues to apply afterward so there’s continuity of business with Canadian firms and British firms.

Senator Pratte: […] You brought up the various parts of CETA, quotas for dairy products in exchange for quotas for beef products, and so on. What do we know about the precise role that the United Kingdom played in the various compromises during the negotiations? That would be useful to know when renegotiating a modified CETA with the United Kingdom. What could their demands be, for example? What could be new or different, compared to the current CETA?

Mr. Leblond: […]. Ideally, you should ask the negotiators, as they would probably know better than I do. But we must not forget that we really know very little because the European Commission negotiates on behalf of the European Union. So, unlike Canada, where the provinces participated in the CETA negotiations, the member states of the European Union were not there, having actually given the commission quite a broad mandate to negotiate. Then, it was just a question of deciding whether to sign or not.

We know that lobbies were putting pressure on the European Union, the European Commission, certainly in terms of quotas on Canadian exports of beef and pork to the European Union. However, to my knowledge, it was mostly the French and the Irish who were somewhat apprehensive about more Canadian beef arriving on the European market. I think that, to a certain extent, there were also British producers, mostly in Scotland, who saw that there would be more competition and who were a little less enthusiastic about the idea. On the other hand, however, dairy and cheese producers in France, Italy and Britain, welcomed the export quotas to Canada.

We may well see many of the same dynamics on aspects that are a little more sensitive. Overall, we would have to find out in the very specific sectors whether or not there had been significant demands by Great Britain during the negotiations. […]

Chair: The politics and dynamics within Britain have been changing and in Europe. Some of the rhetoric we’re hearing from parliamentarians is that it’s disrupting their lives and there will be a price to pay for Britain to leave Europe. Is that rhetoric, or do you think that’s going to be translated into policies driving governments?

Mr. Leblond: […] Yes, the departure of the United Kingdom from the EU has an impact economically and politically. Nevertheless, it’s going to hurt the U.K. more than the EU because in this sense the U.K. is the junior partner, and the U.K. is more highly economically dependent on the European Union. I think a lot of the rhetoric that we’re hearing from the Parliament and other EU leaders is a reflection of that reality.

It is true that for the U.K. it’s going to have negative impacts. We’re already seeing those impacts economically and much more than certainly the Brexeters anticipated. Probably not as much as the remainder threatened would happen, but this is nonetheless the reality. I think a lot of the rhetoric that is happening is a reflection of that.

In addition, let’s not forget that the EU has to be tough in this negotiation because, of course, it wants to show that there is a cost to leaving the European Union. If it’s shown to be too soft vis-à-vis the U.K. in terms of, “Yes, you leave, but you can still get a good deal by choosing à la carte,” as Professor Hurrelmann was saying at the beginning, this doesn’t send a very strong signal to other member states who might be thinking or groups within those member states who might be in favour of leaving the European Union. […]

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Senator Housakos: My last question is in regard to Brexit. Are there unique opportunities or new opportunities bilaterally for Canada that were not there before?

Mr. Dion: Regarding the viability of the EU and what Brexit means for Canada, we were numerous in thinking that the EU was a tremendous success but they made a mistake when they decided to be a monetary union without what we have in the United States, that is, a strong labour force and what we have in Canada, namely a strong fiscal solidarity ensured by a federal government that is responsible to a Parliament elected by all Canadians. You don’t have that in the EU. It is half a federation because they don’t have a federal executive representative of the whole people. That means their mobility is 10 times less than the U.S. for the workforce. They don’t have an equalization program like that of Canada or an employment insurance program like the one we have, which ensures that if different regions in the country are in difficulty, the rest of the country will rescue that part of our country. They don’t have the equivalent at the same level, that’s true.

Despite that, surprisingly maybe, it worked. It worked better than many of us thought. Even the European Central Bank did its job, by rescuing countries like Ireland, Spain and Portugal. You are correct. They will have to discuss how far they want to go toward integration, but I think it would be a mistake to think that if they don’t find a way to be better integrated, then they will disintegrate. I think the EU is stronger than what many of us had thought. Of course, they will have a lively debate between those who want more budgetary discipline and those who want more social solidarity. That’s a debate that we have in Canada. It’s a debate that we have in the House of Commons and a debate in the Senate that you have among yourselves. I think the EU is able to find ways to solve these tensions. Perhaps they will succeed by looking at what we are doing in Canada and by learning from us — and us from them. That is part of my role and the role of diplomacy that we have in Europe, namely, to ensure that Canada’s interest in these debates in the EU are well considered.

There are three things about Brexit and Canada. The first one is we can be thankful that governments of Canada in the past have been able to negotiate CETA before Brexit started to be negotiated, so CETA is safe and we will make sure that it continues to be safe and is not involved in these negotiations. Our friends in the U.K. are a great help with that.

The second thing is, once these negotiations are concluded, we will know what Brexit means, which is not the case today. We will find a way, I’m sure, to negotiate a strong link with the U.K. because it is our history and our interest in the future. The negotiations cannot be started today because the U.K. is not in a situation to negotiate according to EU law and because we don’t know with whom we will negotiate as long as we don’t know what will be in Brexit because today the U.K. is fully part of CETA.

The third point I would make is if Brexit means that U.K. is out of the single market and out of the reality of this European Union, then we will need to find a way to convince our business community to be more directly involved in France, in Germany, in Italy, in the Netherlands and in Poland because today almost 40 per cent of our trade with the EU goes through the U.K. as a window to the EU because we have a lot of acquaintance with the U.K. This may not be possible in two years and at this moment we need to be ready to be winners directly in the member states of the EU market. […]

FYI/INTERESTING INFORMATION

Video: “Turbo Talks: Trading places: avoiding controls after Brexit”, 2017
Speaker: Lorand Bartels

UK Department for International Trade
https://www.gov.uk/government/organisations/department-for-international-trade


BREXIT - Policy analysis from the Centre for Economic Performance from the London School of Economics and Political Science [http://cep.lse.ac.uk/BREXIT/](http://cep.lse.ac.uk/BREXIT/)
- “Four principles for the UK’s Brexit trade negotiations”
- “The consequences of Brexit for UK trade and living standards”

Implemented amendments to:

- Related Amendments
  - Export and Import Permits Act
  - Financial Administration Act
  - Food and Drugs Act
  - Importation of Intoxicating Liquors Act
  - Patent Act
  - Trade-marks Act
  - Investment Canada Act
  - Customs Act
  - Commercial Arbitration Act
  - Coasting Trade Act
  - Customs Tariff
  - Pest Control Products Act

- Consequential Amendments
  - Canada Corporations Act
  - Nuclear Energy Act
  - Bankruptcy and Insolvency Act
  - Competition Act
  - Defence Production Act
  - Federal Courts Act
  - Public Servants Inventions Act
  - Olympic and Paralympic Marks Act
  - Canada-Korea Economic Growth and Prosperity Act

- Coordinating Amendments
  - Canada Not-for-profit Corporations Act
  - Canadian Environmental Protection Act
  - Canada Consumer Product Safety Act

Customs Tariff Act => EU Country and other CETA Beneficiary

With regards to the White Paper published on Jul 24, I find paragraph 94 to be the most intriguing. Based on the paper, it appears that during the 19 months following March 29, 2019 (transition period) that international agreements will be given domestic effect under UK law. Based on this strategy, under the Customs Tariff Act, Canada would not be required to amend the act as the UK would still be considered an EU Country (based on paragraph 92 of the white paper, and if the Governor in Council accepts such a definition). My question is however, in regards to other domestic legislation that defines the term "EU Country" based on a territorial definition, whether or not this planning would be in conflict with that definition? If so, the Canadian government might still face the challenge of having to amend domestic legislation.

Regulations Defining “EU country or other CETA beneficiary” – August 31, 2017

With regards to the authority of the government to treat the UK as a 'CETA beneficiary' under the Customs Tariff Act, the Minister of Finance issued on August 31, 2017 a regulation [SOR/2017-178] as per article 49.9 of the Customs Tariff Act, to define EU country or other CETA beneficiary. The regulation defines such term as "means a country or territory set out in the schedule to these Regulations”. The schedule to the regulation does not include the terms “European Union” or “European Community(ies)”, it solely lists the 31 states that fall within the definition (page 6/7). Territories included in the schedule that are not part of the EU28 include Andorra, Monaco, and San Marino.

Given that there is nothing within this schedule that segregates the states into 'EU Country' and 'other CETA beneficiary', could it be argued that no amendment would be required to (a) the regulation; (b) the Customs Tariff Act and (c) any other customs legislation that refers to the Customs Tariff Act definition? Meaning, could Canada domestically treat the UK as
it would Andora, Monaco or San Marino, as ‘other CETA beneficiary’ benefitting from the CETA tariff schedule in the Customs Tariff Act?