

CETA, TCA, CPTPP AND CUKFTA - THE WEB OF TRADE AGREEMENTS BETWEEN CANADA AND THE UK

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Canada and the United Kingdom (“**UK**”) have a long history of trade and investment agreements and have maintained an influential trade relationship throughout that history. Following the UK’s announcement that it would be withdrawing from the European Union (“**EU**”) in January of 2020 (“**Brexit**”), the future of that trade relationship became uncertain, to the concern of importers and exporters. However, neither Canada nor the UK was willing to let their web of historical trade agreements untangle easily.

Following Brexit, both Canada and the UK sought to preserve the rights, obligations, and preferential market access that existed between them under the *Comprehensive Economic and Trade Agreement* (“**CETA**”). Canada and the UK agreed to maintain trade continuity and market access in the form of a *Trade Continuity Agreement* (“**TCA**”) while negotiations for a comprehensive bilateral free trade agreement (“**CUKFTA**”) are underway. Until these negotiations conclude, the TCA will govern bilateral trade relations between Canada and the UK, with the goal of maintaining a reciprocal competitive market advantage. The *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (“**CPTPP**”) will also impact Canada and the UK’s multilateral trade relationships, market access, and investor-state dispute settlement (“**ISDS**”).

The Canada-UK Trading Relationship is Critical for Trade in Goods, Services, and Investment

Canada and the UK maintain a large trading relationship. The UK is Canada’s third largest trading partner with imports projected to nearly double by 2035.^[1] The UK is one of Canada’s most important sources of foreign direct investment, the second largest destination for Canadian direct investment abroad, and is one of Canada’s key science, technology, and innovation partners.^[2] In 2022, bilateral trade in goods and services between Canada and the UK totaled approximately \$41.2 billion.^[3]

Canada’s exports of goods to the UK amounted to \$11.8 billion in 2021.^[4] The main goods Canada exported to the UK in 2021 were gold, radioactive chemicals, and crude petroleum.^[5] Canada’s imports of goods from the UK in 2021 totaled over \$6.7 billion, comprising of silver, cars, and aircraft parts.^[6] The value of bilateral trade in services between Canada and the UK totals over \$14.5 billion, making the UK Canada’s second-largest trading partner in services.^[7] Commercial, travel, and transportation services make up a large part of Canada’s imports

and exports of services.^[8]

Rights and Obligations Will Largely Continue Under the TCA as they Existed Under the CETA

The TCA entered into force on April 1, 2021, and substantively incorporates and replicates the rights and obligations under the CETA. In fact, both the Preamble and Article 1 of the TCA incorporate the CETA to preserve the rights and obligations thereunder.^[9] Annex A to the TCA outlines general modifications and Annex B contains chapter-specific modifications, both comprising mainly of changes to render the CETA's provisions into a bilateral TCA.

The TCA preserves the CETA's commitment to immediately eliminating 98% of tariffs on certain products and includes an additional commitment to eliminate an extra 1% of tariffs by January 1, 2024 to eliminate 99% of tariffs on Canadian exports to the UK. Like the CETA, the TCA contains specific provisions covering labour, sustainable development, the environment, intellectual property, and procurement.

There are not many differences between the language of the two agreements, however the parameters around tariff rate quotas ("TRQs") have shifted. TRQs allow a specific volume of certain goods to be imported into a country at a lower, or zero, rate of duty.^[10] The TCA maintains the same access to Canada's dairy, poultry, and egg sectors that exists under the CETA. There is no new market access granted for those sectors under the TCA. However, certain goods subject to TRQs under the CETA, including agricultural and seafood goods, have lower volumes under the TCA, reflecting trade flow data as a result of negotiations between Canada and the UK.^[11] The volumes under the tariff elimination annex of the CETA^[12] remain unchanged and unaffected by the resized TCA TRQs. Therefore, the TRQs contemplated under the TCA constitute additional duty-free, foreign access to the Canadian market.

The overall increase in volume of certain goods subject to TRQs is interesting in the context of Bill C-282, a Private Member's Bill currently undergoing a second reading in the Senate that would prevent any further supply management concessions under Canada's FTAs.^[13] Bill C-282 may have implications on future TRQs between Canada and the UK should it enter into force before negotiations on the CUKFTA conclude.

Additionally, origin quota administration is different under the TCA. The CETA stipulates a licencing system for beef, pork, and wheat TRQs. Under the TCA, TRQs are administered on a first-come first-served basis to encourage efficient market access. If both countries later agree, they may return to a licensing system.^[14]

Another potential change to supply managed goods between Canada and the UK may come at the end of this year if the countries do not conclude negotiations on the cheese TRQ that was granted under the CETA. Canada and the UK were operating under a side letter that ensured limited, tariff-free access to the Canadian cheese market for UK cheesemakers as under the CETA.^[15] If Canada and the UK do not conclude negotiations

before December 31, 2023, cheese imported from the UK will be imported under the reserve for non-EU World Trade Organization (“**WTO**”) Members under Canada’s cheese TRQ.^[16] Historically, the UK exported cheese to Canada under the EU reserve of Canada’s WTO TRQ.^[17] The reserve for non-EU Members makes up 30.1% of the total import volume, compared to the 69.9% that is allocated to EU Members.^[18] If negotiations fail to conclude, the UK will be importing cheese under the much smaller, non-EU allocation. This would impact duty rates, long-standing trading relationships, and trade flows for a large number of UK producers and Canadian importers.

One way UK producers may avoid higher duty rates for UK exported cheese is if the producers export cheese under the CPTPP TRQ allocation once the CPTPP comes into force in mid-2024. However, UK producers will want to consider the fact that import access quantity is much smaller for the CPTPP than that for the CETA or the WTO.^[19] An alternative solution may still come from the ongoing CUKFTA negotiations,^[20] should they conclude before December 31, 2023.

The Canada-UK Relationship Under the TCA and the CPTPP

It is anticipated that the CPTPP will enter into force in the UK in the second half of 2024,^[21] making the UK the first European and non-CPTPP founding country to sign. Under the CPTPP, more than 99% of Canadian and UK goods currently being exported to CPTPP countries will be eligible for zero tariffs. Considering the rights and obligations under the TCA, it is unlikely the CPTPP will confer much more benefit to the Canada-UK relationship than what existed under the CETA, and exists under the TCA. However, by virtue of both countries being parties to the CPTPP, the pre-existing relationship and trade flows between Canada and the UK may be solidified and strengthened under an additional, multilateral FTA.

The CPTPP guarantees protections for investors in CPTPP countries^[22] and allows investors into and from CPTPP member states to resolve disputes through the CPTPP arbitration process.^[23] This is important in the context of the Canada-UK trade relationship because while the CETA contains investor-state dispute settlement (“**ISDS**”) provisions, the majority of such provisions have not entered into force. Therefore, Canada and the UK opted not to include the CETA’s ISDS provisions under the TCA^[24] but rather will separately and comprehensively review specific ISDS provisions for incorporation into an amended TCA or the CUKFTA. The TCA includes a specific provision that stipulates the review process may take up to three years, with the possibility of an additional extension.^[25] In the interim, it is likely that the UK will ratify the CPTPP before ISDS provisions under the TCA are reviewed and entered into force.

Presumably, Canadian investors in the UK and UK investors in Canada will have the additional benefit of a direct dispute resolution process under the investor-state arbitration provisions of the CPTPP.^[26] However, there has already been talk^[27] of a potential side letter between Canada and the UK under the CPTPP that will

exclude the ISDS provisions' application between Canada and the UK. Australia and New Zealand have already implemented such side letters with multiple CPTPP countries,^[28] there have been mixed views from within the UK on ISDS,^[29] and Canada has foregone ISDS under the CUSMA.^[30] It is therefore likely that Canada and the UK will also implement a side agreement to prevent ISDS application between them.

Both countries being members of the CPTPP will allow Canada and the UK to collaboratively expand supply chains, create export opportunities to new jurisdictions in the Pacific region, ease administrative and commercial trade barriers with trade partners outside of the EU, and foster a competitive advantage in the global market.

The Current Status of a Canada-UK FTA

Brexit resulted in changes to trade between Canada and the UK and necessitated changes to FTAs between the two countries. The CUKFTA is still in the negotiations stage and is not yet in force. As of March 2022, Canada and the UK are in formal negotiations for a comprehensive, bilateral FTA.^[31] This is intended to replace the interim Canada-UK TCA. However, there has been no update since the Government of Canada announced the launch of negotiations on March 24, 2022.^[32] In fact, it now remains to be seen whether Canada and the UK will continue their CUKFTA negotiations, or whether they will simply use the UK's accession and eventual membership to the CPTPP to govern their bilateral trade relationship. The TCA will continue to apply in the interim.

Canada's Unique Position in Global Trade

With CUKFTA negotiations still underway, companies may be considering their global trading positions. Canada and the UK have a unique trading relationship. They are key trading partners across many sectors in goods, services, and investment, and have been throughout a long history. Canada and the UK have multiple treaties already in place across varying sectors, including tax and regulatory co-operation, fisheries, transportation, and customs, among others.^[33] Canada and the UK's trading relationship plays a part in the countries' larger political and economic relationship. Companies will therefore want to leverage Canada and the UK's shared trade relationship to preserve preferential market access and their reciprocal competitive advantages in each respective market.

As part of its efforts to diversify its trade and investment flows, Canada, in addition to being a member of the CETA, the CPTPP, and the TCA, is also a member of CUSMA. It may make sense for companies to want to leverage these agreements to do business in Canada and receive preferential access to other, global markets as well. In addition, as of May 1, 2021, the UK and the EU entered into the EU-UK Trade and Cooperation Agreement, an FTA with the goal of continuing cooperation and preferential access to trade in goods and services, across various sectors.^[34] Once the EU-UK FTA enters into force, both the UK and Canada will have

FTAs with CPTPP partners and the EU, further expanding both countries' global market access.

- [1] UK Department for International Trade, *UK launches negotiations with Canada on a new, modernised trade deal*, [online](#).
- [2] Government of Canada, *United Kingdom market summary*, [online](#).
- [3] UK Department for Trade and Business, *Trade and Investment Factsheet*, [online](#). Note that £24.6 billion was converted to CAD using the exchange rate for 2022 posted by the Bank of Canada, [online](#).
- [4] Observatory of Economic Complexity, *Canada and United Kingdom Trade*, [online](#).
- [5] Observatory of Economic Complexity, *Canada and United Kingdom Trade*, [online](#).
- [6] Observatory of Economic Complexity, *Canada and United Kingdom Trade*, [online](#).
- [7] Global Affairs Canada, *Minister Ng announces Canada is ratifying the Canada-United Kingdom Trade Continuity Agreement*, [online](#).
- [8] Statistic Canada, *Annual international trade in services*, [online](#).
- [9] *Canada-UK Trade Continuity Agreement* at Preamble and Article 1.
- [10] For further information on TRQs, see *Government of Canada, Tariff rate quotas explained: A guide to answering consultation questions*, [online](#).
- [11] *Canada-UK Trade Continuity Agreement* at Annex B, Tariff Elimination (8). See also Secretary of State for International Trade, *Continuing the United Kingdom's Trade Relationship with Canada*, paras 66 and 67, [online](#).
- [12] *Comprehensive Economic and Trade Agreement* at Annex 2-A.
- [13] Bill C-282, *An Act to amend the Department of Foreign Affairs, Trade and Development Act (supply management)*, [online](#).
- [14] *Canada-UK Trade Continuity Agreement* at Chapter 2. See also Canada Border Services Agency Memorandum D11-4-37: *Origin Quotas and Alternatives to the Product-Specific Rules of Origin under the Canada – European Union Comprehensive Economic and Trade Agreement and the Canada-United Kingdom Trade Continuity Agreement*, [online](#).
- [15] Government of Canada, *WTO Cheese TRQ – UK Transitional Access to the European Union Reserve*, [online](#).
- [16] Government of Canada, *WTO Cheese TRQ – UK Transitional Access to the European Union Reserve*, [online](#).
- [17] Secretary of State for International Trade, *Continuing the United Kingdom's Trade Relationship with Canada*, para 72, [online](#).
- [18] Government of Canada, *WTO: Cheeses of All Types TRQ – Serial No. 998*, [online](#).
- [19] Government of Canada, *Key dates and access quantities 2023-2024: TRQs for Supply-Managed Products*, [online](#).
- [20] Secretary of State for International Trade, *Continuing the United Kingdom's Trade Relationship with Canada*, paras 68 and 73, [online](#).

- [21] The UK formally signed the CPTPP on July 16, 2023. See *UK Department for Business and Trade and the Department for International Trade, The UK and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)*, [online](#).
- [22] UK Department for Business and Trade, *UK signs treaty to join vast Indo-Pacific trade group as new data shows major economic benefits*, [online](#).
- [23] *Comprehensive and Progressive Agreement for Trans-Pacific Partnership*, at Chapter 9.
- [24] *Canada-UK Trade Continuity Agreement* at Article 5(1).
- [25] *Canada-UK Trade Continuity Agreement*, at Article 5(3).
- [26] *Comprehensive and Progressive Agreement for Trans-Pacific Partnership*, at Chapter 9 Section B.
- [27] See Trade Justice Movement, *UK at risk of lawsuits if Pacific trade deal not amended, warn civil society organisations and academics*, [online](#).
- [28] See New Zealand Government, *New Zealand signs side letters curbing investor-state dispute settlement*, [online](#); “[T]he Gillard Government vowed that it will no longer include provisions on investor-state dispute settlement (ISDS) in bilateral and regional trade agreements,” *Investment Treaty News, Australia’s rejection of Investor-State Dispute Settlement: Four potential contributing factors*, [online](#).
- [29] See UK Department for International Trade, *UK Accession to CPTPP: The UK’s Strategic Approach*, at §12.1, [online](#).
- [30] See Government of Canada, *GBA+ of the Canada-United States-Mexico Agreement*, at §14, [online](#).
- [31] Global Affairs Canada, *Minister Ng launches negotiations toward a bilateral free trade agreement with the United Kingdom*, [online](#). See also the Government of Canada, *Canada-United Kingdom Free Trade Agreement negotiations timeline*, [online](#).
- [32] Government of Canada, *Canada-United Kingdom Free Trade Agreement negotiations timeline*, [online](#).
- [33] Government of Canada Social Sciences and Humanities Research Council, *Trade Relations between Canada and the UK in the event of Brexit*, [online](#).
- [34] European Commission, *The EU-UK Trade and Cooperation Agreement*, [online](#).

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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