

The post-Brexit Transitional Trade Agreement – What to expect post-CETA

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Authors: [Alan Kenigsberg](#), [Danielle Chu](#), [Chelsea Rubin](#), [Gajan Sathananthan](#)

In our last [international trade brief](#), we discussed the U.S. suspending the Section 232 tariff on Canadian aluminum. In this international trade brief, we explore what parties engaging in Canada-UK trade should expect now that Brexit has officially come into force, and discuss the transitional agreement between Canada and the UK – the *Trade Continuity Agreement between Canada and the United Kingdom of Great Britain and Northern Ireland*.

As of January 1, 2021, Brexit has officially come into force. As the United Kingdom leaves the European Union, it is no longer covered by the *Canada-European Comprehensive Economic and Trade Agreement* (CETA). The governments of the two countries have signed a transitional agreement, which will remain in place until a final bilateral trade agreement can be reached. This agreement, which along with a Memorandum of Understanding (MOU) that has been put into place until the transitional agreement can be ratified by the two countries, effectively continues the trading conditions available to Canada and the UK under CETA. While parties engaging in Canada-UK trade should expect continuity, there are some minor changes on the horizon.

The agreement and transitional measures

On December 10, 2020, the governments of Canada and the UK signed a transitional agreement to maintain free trade – the *Trade Continuity Agreement between Canada and the United Kingdom of Great Britain and Northern Ireland* (the TCA) – which the government of Canada proposes to implement by means of an *Act to Implement the Trade Continuity Agreement between Canada and the United Kingdom of Great Britain and Northern Ireland* (Bill C-18). The TCA is not yet in force – at the time of writing, Bill C-18 has only been through a first reading in the House of Commons.

In the interim, the governments of Canada and the UK signed an [MOU](#) on December 22, 2020, to ensure trade continuity. This MOU is to remain in effect until the TCA comes into force.^[1] The TCA commits the UK and Canada to enter into negotiations on a new trade agreement within one year of the TCA coming into force, with a goal of reaching a new comprehensive bilateral trade agreement within three years.^[2] This timeframe can be extended by both countries. The final bilateral agreement will be subject to the same ratification process.

Differences from CETA

The implementation of CETA marked the beginning of a preferential trading relationship

between Canada and the EU. The EU is Canada's third-largest trading partner, while bilateral trade between Canada and the UK from 2017-2019 averaged \$27.1 billion per year, making the UK Canada's fifth-largest trading partner. CETA immediately removed 98% of tariffs on Canadian goods, and over time will remove approximately 99% of tariffs. CETA also includes other benefits, such as improved access for services, greater certainty and transparency, protection for investments and intellectual property and opportunities for Canada in EU procurement markets.

The TCA is intended to reflect both governments' stated desire that the rights and obligations between them as provided for by CETA should continue following the departure of the UK from the EU. The language of the preamble of the TCA, and the reaffirmation of the CETA preamble, reflects this. While the final text of the agreement has still not been ratified, the current text includes the majority of the trade arrangements provided for in CETA, including the elimination of 98% of tariffs on Canadian products exported to the UK, including specific agricultural products, and the inclusion of provisions regarding labour, the environment, regulatory co-operation and dispute settlement. Key aspects of CETA have been bilateralized, including:

- The current level of tariff reductions between Canada and the UK will be maintained, where requirements are met. Eligible Canadian-origin goods that qualify for benefits will continue to enjoy CETA-level tariff benefits when exported to the UK.
- Tariff treatment for eligible UK-origin goods will remain at the CETA tariff preference rates when exported to Canada.
- The TCA's rule of origin provisions will include CETA-origin goods, allowing Canadian and UK manufacturers to source EU-origin materials. Otherwise, the rules of origin in the TCA generally mirrors that in CETA. However, where origin quotas exist under CETA, these

quotas will not be directly reproduced under the TCA, but will likely differ slightly.^[3] Until the TCA comes into force, the MOU will govern trade relations between the two countries. The MOU covers provisions on preferential tariffs, tariff rate quotas, rules of origin and technical barriers to trade, particularly in the areas of pharmaceuticals and telecommunications.^[4] Preferential tariffs between the UK and Canada will continue to apply so long as the MOU is in force. Tariff rate quotas will apply from January 1, 2021.

While the agreement does not contain language providing new market access for Canada's supply-managed products system (e.g., Canada's dairy or cheese market), the agreement does make reference to the incorporation of an agreement between the governments entitled the *WTO Cheese TRQ-UK Transitional Access to the European Union Reserve*. This is incorporated into the TCA in place of existing tariff rate quotas for cheese.^[5] Under both the MOU and the TCA, UK cheese exports to Canada will continue to be eligible under the EU reserve of Canada's WTO cheese quota until December 31, 2023.

The MOU does not include language concerning:

- services and investment, including providing services in Canada, recognition of professional qualifications, financial services and investment;
- intellectual property, including geographical indications;
- regulations; or
- procurement.

These areas should be covered by the TCA when the agreement comes into effect.^[6]

Key takeaways for business

The Canada-UK trade relationship remains largely unchanged post-January 1, 2021. While the bilateral TCA has not yet come into force, the MOU has been implemented to maintain the trading status quo in the interim. The governments of the two countries are expected to begin negotiations on the bilateral agreement in 2021. Importantly, while the parties have agreed to attempt to reach a bilateral agreement within one-to-three years, the governments can choose to delay further. While Canadian businesses can expect to enjoy a stable trade environment under the MOU, and eventually the ratified TCA until a bilateral trade agreement is signed and ratified, they should expect it will be a few years before a bilateral agreement is reached. In the interim, Canadian businesses should closely review their supply chains and investment strategies with the UK and determine how the TCA will guide their business decisions.

[1] "Canada announces steps to ensure stability for Canada-United Kingdom trade in goods", Global Affairs Canada, December 22, 2020, online:

<https://www.canada.ca/en/global-affairs/news/2020/12/canada-announces-steps-to-ensure-stability-for-canada-united-kingdom-trade-in-goods.html>.

[2] "Canada-UK Trade Continuity Agreement (Canada-UK TCA) – Agreement on Trade Continuity", Global Affairs Canada, as of December 9, 2020, online:

https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cuktca-accr/agreement_trade_continuity-accord_continuite_commerciale.aspx?lang=eng.

[3] "Canada-UK Trade Continuity Agreement (Canada-UK TCA) – Summary", Global Affairs Canada, as of December 9, 2020, online:

<https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cuktca-accr/summary-resume.aspx?lang=eng>.

[4] "Guidance: Trade with Canada from 1 January 2021", Government of the UK, December 10, 2020 (Updated December 23, 2020), online:

<https://www.gov.uk/guidance/summary-of-the-uk-canada-trade-continuity-agreement>.

[5] "Canada-UK Trade Continuity Agreement (Canada-UK TCA) – Agreement on Trade Continuity", at Article VI, Global Affairs Canada, as of December 9, 2020,

https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cuktca-accr/agreement_trade_continuity-accord_continuite_commerciale.aspx?lang=eng.

[6] "Guidance: Trade with Canada from 1 January 2021", Government of the UK, December 10, 2020 (Updated December 23, 2020), online:

<https://www.gov.uk/guidance/summary-of-the-uk-canada-trade-continuity-agreement>.