

TRADE CONTINUITY AGREEMENT (TCA) BETWEEN THE UK AND CANADA

Dr Maria Garcia, University of Bath

REPORT FOR THE
Welsh Parliament

EXECUTIVE SUMMARY

The Trade Continuity Agreement (TCA) between the UK and Canada signed on 9 December 2020, is a temporary agreement designed to guarantee the continuation of trade between the parties under the preferential terms established in the Comprehensive Economic Trade Agreement (CETA) between Canada and the European Union. With the end of the UK-EU Brexit Transition period on 31st December 2020, CETA ceased to apply to the UK.

The TCA ensures that tariff free trade in goods can continue across 98% of tariff lines, that regulations around certifications, customs procedures, sanitary and phytosanitary measures remain the same, and that commitments to services liberalization and mutual access to government procurement (GP) markets, as well as regulatory cooperation processes can continue.

An accompanying Memorandum of Understanding (MOU) ensures that the TCA part relating to goods will be applied provisionally as of 1st January 2021 to avoid disruptions to trade in goods. The MOU does not cover the services part of the TCA, which will enter into force once Canada and the UK have been able to ratify the TCA in their Parliaments (expected within the first months of 2021).

The TCA replicates the structure, chapters, and coverage of CETA, and does not create additional market access opportunities.

Importantly, the TCA is designed as a temporary agreement to ensure trade continuity whilst the parties negotiate a new bespoke bilateral trade agreement. The TCA commits the parties to start negotiating revisions to the TCA and to agree on a new replacement agreement within 3 years of entry into force of the TCA.

Trade between Wales and Canada is relatively modest, and as the TCA is about ensuring continuity of the status quo, the impact of the TCA on Welsh trade and economy is expected to be negligible.

Note on Sources and Approach

In the absence of detailed disaggregated data on exports by UK region, destination and product or service category, a combination of statistics on UK trade with Canada and Welsh exports in general, from the Welsh Government Trade Survey, Office for National Statistics, Department for International Trade, and Canadian Government Statistics have been used to give an indication of the economic relationship between Wales and Canada and how the TCA does not alter this.

The Report focuses solely on changes with respect to CETA, it therefore does not explore the impact or merits of CETA *per se*, but rather takes the relationship under CETA to be the status quo and considers if and how the TCA shifts the relationship away from that status quo.

SCOPE OF THE TCA

The Trade Continuity Agreement (TCA) signed between the UK and Canada on 9 December 2020 establishes the legal framework for trade between the UK and Canada to continue under the terms of the Comprehensive Economic Trade Agreement (CETA) between Canada and the EU that has been in application (initially provisionally) since 21 September 2017, beyond 31st December 2020, the date on which CETA ceases to apply in UK territories. The TCA mirrors CETA to prevent new trade barriers from emerging between the two states and includes minor changes with respect to quota sizes for products affected by tariff-rate quotas and special origin quotas under CETA. It also changes references to the EU and EU agencies to references to the relevant UK bodies.

Article IV of the TCA commits the parties to start negotiations for a tailored UK-Canada Free Trade Agreement no later than a year after the entry into force of the TCA, and to strive to conclude the negotiations within three years of the entry into force of the TCA,¹ stressing the temporary nature of the TCA.

The TCA is important in safeguarding the trading relationship between the UK and Canada. As an agreement was only reached in December, making it impossible for the agreement to go through required parliamentary scrutiny procedures in the parties in time for the end of the UK's transition period with the EU and of application of CETA on 1st January 2020, both Governments also agreed on a Memorandum of Understanding, enabling trade in goods (and the continuation of CETA provisions relating to trade in goods as specified in the TCA) to continue as of 1st January 2020.²

The content of the TCA follows that of CETA. It is written in short-form, i.e. rather than replicate the text of CETA, the TCA refers to relevant parts of CETA and merely notes changes to the CETA text and commitments. Consequently, the chapters in the TCA are exactly the same and have the same coverage as those in CETA.

¹ Agreement on Trade Continuity between the United Kingdom of Great Britain and Northern Ireland and Canada, 9 December 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942941/CS_Canada_1.2020_Agreement_on_Trade_Continuity_UK_Canada.pdf

² Memorandum of Understanding between the UK and Canada, 23 December 2020, <https://www.gov.uk/government/publications/memorandum-of-understanding-between-the-uk-and-canada-on-the-trade-continuity-agreement/memorandum-of-understanding-between-the-uk-and-canada>

Figure 1: Coverage of TCA



Market Access- Goods

Other than the new EU-UK Trade Agreement, CETA is the EU’s most comprehensive preferential trade agreement. Upon entry into force it abolished 98% of Canadian tariff lines on European exports.³ The TCA replicates this high degree of market access in goods.

Given sensitivities in agriculture, CETA did not fully liberalise trade in agricultural products, and instead provided for more generous tariff rate quotas for the importation of certain products into the EU. The TCA maintains these restrictions, although new TRQs have been adapted to take account of the smaller size of the UK market, with some lower volumes of TRQs for some Canadian exports to the UK. The values have been arrived at after analysis of actual trade flows in these goods between the parties, and are therefore not expected to alter trade.⁴ The new TRQs are presented in Table 1.

³ EU-Canada Comprehensive Economic Trade Agreement (CETA) Overview, 2017, https://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156056.pdf

⁴ Report to Parliament by the Secretary of State for International Trade, ‘Continuing the UK’s Trade Relationship with Canada’, December 2020,

Table 1: New TRQs for Canadian imports into UK⁵

Product Description	UK Quota Volume (Tonnes) 2021	UK Quota Volume (Tonnes) from 2022	Transitional UK Quota (2021-2023) (Tariff-free from 2024)
Sweetcorn	3,380	4,056	
Bison	232		
Fresh/Chilled Beef and Veal	2,311	2,708	
Frozen Beef and Veal	968	1,161	
High Quality Fresh/Chilled Meat of Bovine Animals	4,838	5,805	
Wheat			51,600
Frozen Cod			791
Processed Shrimp			12,443

The UK has replaced the need for Canadian authorities to issue licenses to Canadian exporters wishing to utilize the UK’s TRQs for beef, pork⁶ and wheat in the TCA, with a simpler ‘first come first serve’ system, whereby Canadian exporters can benefit from reduced tariffs until the annual quota is filled. Exports to the UK above the quota are subject the UK’s Global Tariff for the product as notified to the WTO. The TCA does state that in the future, should the quotas be filled quickly, the UK can revise the system and require a licensing process to manage demand.

The TCA also replicates CETA’s arrangements for origin quotas, which allow a volume of specific product lines to be exported under less stringent rule of origin, enabling exporters who have not quite met the origin requirements in the list of product-specific rules to secure preferential access up to a specified threshold.⁷ For instance, under CETA Canada can export 100,000 passenger cars annually with only 30% of Canadian content qualifying for preferential access under CETA, beyond those 100,000 cars, the required content level to qualify for preferential treatment rises to 50%.⁸ These origin quotas have been copied, and in some cases adapted to the smaller market size (as the TRQs) taking account of the trade flows in these goods between the UK and Canada since the entry into force of CETA. There are origin quotas for Canadian exports into the UK of crustaceans, preserved and prepared sardines, herrings and salmon, frozen halibut, sugary products and confectionary, processed

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/943176/ccs1220696908-trade-agreement-canada-accessible.pdf

⁵ List including all the product variant HS tariff line numbers can be found in Report to Parliament ‘Continuing the UK’s Trade Relationship with Canada’, 2020, pp.17-19.

⁶ The actual TRQ for pork exports into the UK is still pending the finalization of UK negotiations within the WTO.

⁷ Special origin quotas relate mostly to textiles and garments, where the proliferation of international supply chains in the industry results in different stages of production taking place in different locations (raw materials, transformation into yarns, application of dyes, weaving, garment manufacture), making it challenging to reach the requirements for domestic originating content in order to comply with the product specific rules of origin, which for textile garments require that non-originating materials not exceed 40% of the transaction value of the product, or 45% for certain vehicles and 50% for passenger cars (CETA Protocol on Rules of Origin and Origin Provisions, 2017, <https://data.consilium.europa.eu/doc/document/ST-10973-2016-ADD-6/en/pdf#page=64>).

⁸ Report to Parliament, ‘Continuing the UK’s Trade Relationship with Canada’, 2020, p.22.

foods, cat and dog food, yarn, wool products, fabrics and garments, and vehicles of capacity not exceeding 1000 cm³. For textiles and garments the same volume of quotas as in CETA have been included in the TCA, although the special origin quota for Canadian exports into the UK shrinks from CETA's 60,000 annual tonnes to 16,200 tonnes, and that for prepared shrimps and prawns is reduced from 4,000 to 2,700 tonnes, for sugar confectionary it goes from 10,000 to 4,200 tonnes, for prepared salmon from 3,000 to 2,400 tonnes. For vehicles the new UK special origin quota is 60,000 units (a reduction from the EU one of 100,000). Origin quotas for UK exports to Canada apply to textile products and materials and garments, and have remained the same as in CETA, essentially granting UK producers a higher quantity/volume of such products under the origin quota.⁹

Access to the Canadian market for cheese was a challenging matter in CETA negotiations,¹⁰ as dairy, poultry and eggs are products subject to Canada's supply management regime. The TCA does not grant new market access for these products. Instead, a side letter ensures that UK cheese producers can continue to export to Canada and participate in the TRQ reservation for EU cheeses that Canada has set out at the WTO (as they have until now).¹¹ However, access to this TRQ or specific access for UK cheese producers will need to be negotiated within the coming three years. The TCA represents a temporary solution, and future access for UK cheese exporters on a longer-term basis will result from future negotiations.

Market Access- Services

CETA represented the first agreement where the EU opted for a negative list in services, meaning that any service not explicitly listed in the agreement as excluded, such as cultural industries, is opened up to service providers from the other party. The TCA replicates the liberalizing commitments undertaken in CETA, removing some of the exceptions that had been included in CETA at the behest of other EU states, such as temporary safeguard measures (of up to 180 days) limiting capital movements and payments if it could interfere in the operations of the eurozone in cases of financial distress.

Although the TCA guarantees trade in services under the same conditions that have been in place since 2017, as services are not covered in the MOU between Canada and the UK designed to bridge the gap between 1st January 2021 and the date of entry into force of the TCA, in that short interim, UK service providers' access to the Canadian market will revert to the WTO terms in place prior to 2017. This means in the interim they will require licenses to practice in Canada as issued by Canadian authorities and may need to comply with Canadian nationality requirements.

The Office of the Chief Economist at Global Affairs Canada estimated the potential reduction in trade in services, accounting for increased uncertainty in the event of no TCA, as a loss of US\$491.2 million worth of UK service exports to Canada, and a loss of US\$82.2 in Canadian service exports to the UK.

⁹ The full tables of Origin Quotas under the TCA can be found in the Report to Parliament, 'Continuing the UK's Trade Relationship with Canada', 2020, pp. 23-27.

¹⁰ Cora di Pietro and Stéphan Galarneau, 'Cheese under CETA offers taste of free trade benefits' 16 October 2017, *JOC.com*, https://www.joc.com/regulation-policy/trade-policy/international-trade-policy/cheese-under-ceta-offers-taste-free-trades-benefits_20171016.html

¹¹ CETA increased the amount of EU cheese that can be exported to Canada under preferential quota from 13,000 to 32,000 tonnes. EU-Canada Comprehensive Economic Trade Agreement (CETA) Overview, 2017, https://trade.ec.europa.eu/doclib/docs/2017/september/tradoc_156056.pdf

As the TCA replicates CETA commitments in services, this is unlikely to materialize, however, between 1 January 2021 and the entry into force of the TCA, service providers will face increased uncertainty, which Canada's impact assessment estimated would be highest for business services, water transport services and construction services. During this interim period, CETA provisions, which are replicated in the TCA, enabling independent professionals, intra-company transferees, business visitors and investors to work in Canada without the need for a Canadian Labour Market Impact Assessment (LMIA) or meeting the requirements of an LMIA-exempt work permit category, will also not apply.

Continuity with Minor Changes in Provisions

Rules of Origin- In the TCA, the UK and Canada agree that EU components will count as UK origin or Canadian origin when determining origin. This cumulation facilitates the continuation of the existing trading relationship. However, unlike the situation before 1st January 2021, Canadian content used in UK products exported to the EU will not count as part of UK content for EU bound exports. In the TCA, the parties agree to permit cumulation for three years from the entry into force of the TCA, and agree to negotiate new Rules of Origin taking account of the existing respective supply chains and interests of the UK and Canada, or to decide to extend the Rules of Origin of the TCA beyond three years. These decisions will be made by the TCA Committee on Rules of Origin and Origin Procedures (ROOP Committee).¹²

Intellectual Property- Changes to the list of Geographic Indications, removing all non-UK EU GIs, and limiting the UK list of GIs to 'Scotch Whisky', 'Irish Whisky', 'Irish Whiskey'/'Uisce Beatha Eireannach', and 'Irish Cream'. 'Welsh vineyards' and 'English vineyards' are not protected denominations of origin (PDO) nor protected geographical indications (PGI), but in the TCA the parties agree to consider future amendments to include UK PDOs and PGIs.¹³

Government Procurement- Mutual access to GP as agreed in CETA is retained, although the UK's schedule of entities (under Annex 1) has been changed to include entities that did not exist at the time of the signature of CETA (Department of International Trade).

Investment- The investment chapter replicates CETA. Article V establishes a review of the procedures for investor-state disputes to start within 90 days of entry into force of the TCA, and to take no longer than three years. Investor-state disputes, including the novel tribunal and appeal system created in CETA, has not yet entered into force, as the European Court of Justice (Opinion 2/15) determined that investor-state dispute mechanisms and portfolio investment were not exclusive competences of the EU, and therefore that part of the CETA agreement has to be ratified through all EU member state parliaments before it can be applied.¹⁴

The parties have also put in place measures to avoid new non-tariff barriers to trade by continuing to accept each other's conformity assessments for radio, telecommunications equipment, recognizing

¹² Agreement on Trade Continuity between the United Kingdom of Great Britain and Northern Ireland and Canada, 9 December 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/942941/CS_Canada_1.2020_Agreement_on_Trade_Continuity_UK_Canada.pdf, p. 33

¹³ Ibid. p.48

¹⁴ Opinion 2/15 of the European Court of Justice, 16 May 2017, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=190727&doclang=EN>

each other’s electronic regulations and compatibility, as well good manufacturing practice of pharmaceutical products.

The TCA is accompanied by 5 Declarations on wines and spirits: on WTO negotiations, on Labelling, on Outlets, on Geographic Indications, and on the 2003 EU-Canada Wines and Spirits Agreement, which was incorporated into CETA. These declarations allow for the continuation of trade and marketing of wines and spirits to continue as until now.

Institutional set-up- The TCA replicates the various committees and structures created in CETA changing the name of some committees that included the term CETA. The various committees report to the Canada-UK Joint Committee that oversees the implementation of the agreement. The Committees will be important in working together to ascertain areas where the negotiations for a replacement bilateral trade agreement should seek improvements in provisions and functioning of the agreement. The institutional arrangements are summarized in Table 2. Names in blue indicate a change of name.

Table 2. TCA Institutional Arrangements

Canada-UK Joint Committee
Committee on Trade in Goods
Committee for Agriculture
Committee for Wines and Spirits
Joint Sectoral Group on Pharmaceuticals
Committee on Rules of Origin and Origin Provisions
Committee on Customs & Trade Facilitation (CCTF Committee)
Committee on Services & Investment
Canada-UK Committee on Geographic Indications
Joint Committee on Mutual Recognition of Professional Qualifications
Joint Management Committee on Sanitary and Phytosanitary Measures
Committee on Government Procurement
Financial Services Committee
Committee on Trade and Sustainable Development
Regulatory Cooperation Forum
Canada-UK Contact Points

IMPACT ON WELSH ECONOMY

Given the absence of detailed disaggregated trade statistics by sector, region and destination, it is not possible to calculate exact impact of the TCA on the Welsh economy. However, considering that in 2019, Canada accounted for only 1.7% of total UK exports (representing the 15th export market for the UK accounting for sales worth £11.5 billion),¹⁵ and that only 1.3% of Welsh exports were destined for Canada in 2019,¹⁶ no significant impact is expected from the agreement. Moreover, the TCA does not create additional market access, beyond what has been in place since the entry into force of CETA in late 2017. The elimination of tariffs and other barriers in CETA has translated into modest increases of UK-Canada trade flows in the few years, which could be expected to continue given the continuation of the status quo.

Since the entry into force of CETA, UK exports to Canada have increased by 11.7% (or an additional 966 million worth of exports).¹⁷ Facilitating the continuation of trade under existing preferential arrangements ensures that UK exporters can continue to trade on the same terms and not be subject to higher tariffs or greater restrictions than competing exporters from EU member states. It has been estimated that retaining existing access, as opposed to having to revert to trading with Canada on WTO MFN terms had there been no TCA, could save total duties of around £67 million (£25 million on Canadian imports and £42 million on UK exports), which would have resulted from the application of Canada's WTO MFN tariffs and the new UK Global Tariff. As WTO MFN tariffs for many products are already very low, in relative terms this would have affected about 0.02% of the value of total trade with Canada (almost £22 billion in 2019), with UK exports of vehicles (£13 million in duties), perfumery and cosmetics (£4 million), and articles of apparel and clothing accessories (£3 million), and imports of Canadian plastic products (£3 million) preparations of meat and fish (£3 million) and fish and crustaceans (£3 million) being the sectors most affected.¹⁸

Nonetheless, it is important to note that estimated trade preference utilization rates under CETA have been relatively low, around 37.1% in 2018 and 45.9% in 2019 for EU exports to Canada, and just 30.3% for UK exports to Canada.¹⁹ Tariff preference utilization rates have been highest for food products (meats, cereals, fruits, dairy, fish) where MFN tariffs are higher, and lowest for manufactured goods and motor vehicles and parts (just 23.7%). The UK's, and Wales's main exports in general, and to Canada, are manufactured goods subject to lower MFN tariffs, where exporters have made less use of CETA preferential rates. In 2019, 46.9% of Welsh exports to Canada consisted of machinery (SITC 7), 11.7% of manufactured goods (SITC 6), and 11.6% of chemicals (SITC 5).²⁰ In other words, the

¹⁵ DIT, Trade & Investment Core Statistics 2020, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945496/201218_Trade_and_Investment_Core_Statistics_Book.pdf, p.18

¹⁶ Office for National Statistics, Patterns of Welsh Trade 2019, <https://www.ons.gov.uk/businessindustryandtrade/internationaltrade/articles/patternsofwelshtradebydestinationproductandbusinesscharacteristics/2019#trade-patterns-by-country>

¹⁷ Office of the Chief Economist, Global Affairs, Government of Canada, 'Canada's Merchandise Trade Performance with the EU after the Entry into Force of CETA', 22 July 2020, https://www.international.gc.ca/trade-commerce/assets/pdfs/economist-economiste/statistiques-statistiques/CETA_Study_June_4_2020.pdf, p. 6

¹⁸ Report to Parliament, 'Continuing the UK's Trade Relationship with Canada', 2020, p.10.

¹⁹ Office of the Chief Economist, Global Affairs, Government of Canada, 'Canada's Merchandise Trade Performance with the EU after the Entry into Force of CETA', 2020, p. 19.

²⁰ Office for National Statistics, Patterns of Welsh Trade 2019

additional preferential access for these goods created by CETA has not been deemed relevant enough for firms to complete the additional forms to benefit from the preferential access, and cannot be deemed to have been a key determinant of business trading decisions. It is beneficial that the TCA maintains the preferential access of CETA, however, it is unlikely to have a significant practical impact on trade and business decisions.

Although, in relative terms, Canada represents a rather modest share of Welsh exports (1.3%) and imports (2.8%), the continuation of the trade relationship within existing rules is important to the companies engaged in bilateral trade in terms of value. Almost 15% of the UK's iron and steel exports to Canada in 2019 originated in Wales, and were worth £10 million, as did just over 10% of non-ferrous metals exports, worth £12 million, and 13% of UK cereal and cereal preparations exports, worth £5 million in 2019.²¹ The most valuable Welsh exports to Canada were petroleum products worth £26 million, which accounted for over 10% of Welsh exports to Canada, and medicinal and pharmaceutical products worth £12 million (5% of Welsh exports to Canada).²² For those firms that do export to or import from Canada, the continuity of arrangements and certainty that the TCA ensures will be a welcome relief.

According to the Welsh Trade Survey, in 2018 goods accounted for 95% (£18.5bn) of all Welsh international exports (with 60% destined to the EU, 25% to Asian countries and only 8% to North America, mainly to the USA).²³ Only 10% of Welsh service sales went outside the EU (and only 16% to the EU).²⁴ Large firms were responsible for the bulk of total sales of goods to all destinations (to Wales, UK, EU and rest of world) (61.8%), but small and medium firms accounted for the majority of sales of services (to Wales, UK, EU and rest of world) (with small firms accounting for 44.7% and medium firms for 18.6% of service exports to UK, EU and rest of world).²⁵

Trade in services can be marred by regulatory compliance costs and complexity (requiring licenses, data flow agreements, etc.), so it is not surprising that goods account for the bulk of Welsh international exports, especially as smaller firms account for the majority of overall service sales, and they are less likely than large firms to have the capacity to research new markets and to satisfy regulatory requirements in other jurisdictions to provide cross-border services. It is for this reason that modern trade agreements attempt to facilitate and liberalise trade in services.

The negative list approach to service liberalization in CETA, and copied into the TCA, should create a framework to facilitate service trade expansion between the UK and Canada in the long-term. However, in the very short term, the interruption of CETA provisions from 1 January 2020 until the ratification and entry into force of the TCA, will require UK service providers to seek additional licenses from Canada to conduct business in the initial months of 2021. Once the TCA is in force, UK service providers will again benefit from the conditions of CETA and from CETA's limited mobility provisions

²¹ Business News Wales, 'UK secures vital trade deal with Canada' 23 November 2020, <https://businessnewswales.com/uk-secures-vital-rollover-trade-deal-with-canada/>

²² Ibid.

²³ Welsh Government, Trade Survey for Wales 2018, Experimental Statistics, Statistical First Release, 16 July 2020, SRF 80/2020, <https://gov.wales/sites/default/files/statistics-and-research/2020-07/trade-survey-wales-2018-906.pdf>, p.30

²⁴ Ibid. p. 15

²⁵ Author's calculations of percentages based on data in Trade Survey for Wales 2018, SRF 80/2020, p. 17

allowing for the independent professionals, intra-company transferees, business visitors and investors to work in Canada without the need for a Canadian Labour Market Impact Assessment (LMIA).

The TCA also reproduces CETA's chapter on Mutual Recognition of Professional Qualifications. Unfortunately, the chapter does not actually recognize qualifications, instead it sets up procedures for the negotiation of mutual recognition. It will be important for negotiators and professional bodies to engage in these discussions, as not requiring additional registrations for architects, engineers, legal services can open cross-border business opportunities, especially for smaller service providers. As this is reciprocal, it would also mean increased competition for domestic professionals as Canadian professionals would also be able to offer their services in the UK market with greater ease.

The negotiation of a future bespoke UK-Canada trade agreement over the coming three years is where potential for additional business opportunities may arise, especially by agreeing on mutual recognition of professional qualifications and creating more advanced and ambitious digital trade chapters facilitating data transfers, and agreeing on further cooperation in the recognition of each parties regulations for products. It is worth remembering that further facilitation of trade in services in a future agreement will create opportunities for UK and Welsh businesses but will also expose them to greater competition from Canadian competitors. The TCA guarantees the high level of market access, and minimal tariffs that CETA achieved, but in order to make further gains, initiatives already started to promote awareness of the agreement and to promote Welsh products and services in Canada (e.g. Welsh trade office, Meat Promotion Wales virtual fairs, etc.) will need to continue.