

## CANADA-U.K. FREE TRADE: BALANCING PROGRESSIVE TRADE POLICIES AND ECONOMIC BENEFITS

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### SUMMARY

One of the major factors that motivated a majority of Britons to vote in favour of leaving the EU was their disenchantment with Europe's current approach to trade. There is solid evidence of a link between the vote for Brexit and the feelings of dissatisfied voters who see themselves being left behind in the current economy.

However, the economic cost that Britain faces in departing the EU will be significant, and one key way to mitigate it will be by quickly replacing the loss of access to the EU's common market and all of the EU's trade agreements with new U.K. trade agreements.

Canada appears to be one of the most eager to sign an early deal with the U.K. However, if it is to be a successful free trade agreement, it should aim to address and alleviate the same concerns about trade that led so many British voters to turn against their deal with the EU. Otherwise, it could result in stoking the same anger and dissatisfaction that has fuelled recent political trouble in Britain. This appears to be an ideal opportunity for the Canadian government to advance the "progressive" trade agenda it has advocated for in recent agreements it has signed with the U.S., Europe and members of the Trans-Pacific Partnership.

Free trade agreements can be controversial and politicized issues. In signing a deal with Canada, Britain will have an interest in signalling through a progressive

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trade agenda that its desire to take control of rules and regulations previously ceded to the EU does not mean it plans to roll back social, health, safety or environmental protections. In addition, including strong standards for labour and the environment would make clear the U.K.'s commitment to fostering co-operation between countries, despite its decision to leave the EU. It would also benefit businesses if standards between the U.K. and Canada were as closely aligned as possible, to allow easier compliance with one set of regulations, rather than having to meet two different standards.

While Canada has had some success with recent agreements in expanding their focus to include entire chapters on the environment and labour, which had more commonly been relegated to side agreements in earlier trade deals, there is the opportunity in a Canada-U.K. deal to take things yet further. A regulatory co-operation mechanism would be a useful innovation to promote mutual recognition of one another's regulatory standards, and an independent body to enforce environmental and labour targets, or at least including explicit targets for each party, would provide a more meaningful commitment to the progressive agenda. However, the most expedient route to a deal is clearly to replicate much of what already exists in the progressive Canada-EU Comprehensive Economic and Trade Agreement. It is most likely that a future Canada-U.K. deal will be modelled closely after that.

## INTRODUCTION

Although the outcome of Brexit remains uncertain, the United Kingdom is preparing for a post-Brexit world, including planning for the trade policies that will replace European Union membership. Depending on the nature of Brexit, the U.K. will have to negotiate a trade relationship with the EU and with other trade partners for whom preferential access by the U.K. is currently governed by an EU agreement. This includes trade with Canada. Crucial to the future of Canada-U.K. relations is the possibility of a new Canada-U.K. free trade agreement (FTA).<sup>1</sup> The Canada-European Union Comprehensive Economic and Trade Agreement (CETA) will not apply to Canada-U.K. trade after the U.K. leaves the EU. Canadian Prime Minister Justin Trudeau and then U.K. prime minister Theresa May have said that both countries are working on a Canada-U.K. FTA for after Brexit. Meanwhile, Brexit should be a wake-up call for Canadian policy-makers to pay attention to the inequality and isolationist movements that can threaten the economic and social benefits of an open economy. Understanding these dynamics represents proactive steps that can be taken to prevent a future breakdown of a Canada-U.K. trade agreement.

In a referendum on June 23, 2016, the United Kingdom voted 51.9 to 48.1 per cent to leave the EU. It would be an understatement to say that, since then, there has been high political drama in Britain. Much has changed since the referendum, but the situation remains very uncertain. How did we get here? Very briefly: After he agreed to hold the referendum, then prime minister David Cameron resigned the day after the “leave” vote won. Theresa May became the prime minister and delivered a 12-point “Plan for Britain” while pushing for a “hard Brexit.” She triggered Article 50 of the Lisbon Treaty, which officially began the withdrawal process and called a snap general election for June 8, 2017. Rather than increasing her authority, the election delivered a minority government and Theresa May and her government were compelled to negotiate a withdrawal agreement to exit the EU on March 29, 2019. The agreement, however, did not pass a vote in parliament, but the May government survived a vote of non-confidence. Parliament rejected a “no-deal” Brexit and on March 14, 2019 voted to extend the deadline for withdrawal to June 30, 2019. Article 50 to withdraw was then extended to Oct. 31, 2019. On May 24, 2019, Theresa May announced her resignation (effective June 7) and Boris Johnson won the Conservative party leadership and became prime minister on July 24, 2019.

Prime Minister Johnson vowed that Brexit would happen on October 31 with or without a deal. Johnson prorogued parliament starting on September 10, in order to drastically narrow the time that parliament could block a no-deal Brexit. This prorogation was challenged in the Scottish and English courts and the Supreme Court ruled that the prorogation was unlawful. Meanwhile, parliament passed a law forbidding a no-deal Brexit, Johnson expelled 21 members of his party and parliament rejected Johnson’s proposal for a new election. In early October, Johnson proposed an alternative deal to the EU, but in a special Saturday session of parliament on October 19, Parliament rejected the deal and required the prime minister to request another extension from the EU. The new date for Brexit is now Jan. 31, 2020. On October 28, Parliament voted to go to the polls and hold a general election on Dec. 12, 2019.

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In addition to FTAs, we also refer to regional trade agreements (RTAs). We use the terms interchangeably.

As of this writing, a no-deal, or hard Brexit, is still possible; so is Brexit with a deal and a possible extension of the deadline. It is also possible that Brexit does not happen. This paper takes a careful look at the potential impacts of a Brexit and looks at who voted to leave and what this means for future U.K. trade policy and its trade relationship with Canada. It examines recent Canadian trade agreements and examines how Brexit and Canadian and U.K. trade priorities will shape a future trade agreement. Although uncertainty on Brexit persists, in most scenarios the U.K. will be looking to sign trade deals and Canada is positioned to be an early success in a post-Brexit trade environment. Our analysis of recent Canadian deals provides a framework for understanding what this agreement might look like. This paper examines whether and how a Canada-U.K. trade agreement can bring an early-harvest success story to the U.K. trade agenda post-Brexit and how Canada can push its progressive trade agenda in this new era of aggressive unilateralism in the U.S. As Canada's trade agenda has pivoted toward a focus on trade diversification, an agreement with the U.K. could meet both the diversification and progressive agendas of recent Canadian trade policy.

Brexit has additionally raised significant questions about how the U.K. will work with both the EU and the rest of the world to de-carbonize their economies, in light of the Paris climate agreement, and adapt to climate change. It also raises questions as to how labour rights will be upheld and effective mechanisms crafted to compensate and re-skill those dislocated by global trade. As the U.K. begins the complex task of crafting new regulation in the context of a very fluid and uncertain governance landscape, a progressive trade agreement between the U.K. and Canada could help to ensure that the U.K. will maintain strong standards and protections in these areas. It would send strong signals to citizens at home and abroad that “taking back control” of rules and regulations in the U.K., through Brexit, does not mean that the U.K. is seeking to gain competitive trade advantages by rolling back social protections or health, safety and environmental regulations.

Including strong labour and environmental provisions in a Canada-U.K. trade agreement would also reinforce and underpin the U.K.'s commitment to fostering co-operation between countries, despite the U.K. leaving the EU. Global co-operation on these non-economic issues is essential for sustainable-development goals. This is also in the interest of business, for if these regulations are comparable when it comes to achieving the same social outcomes, such as consumer safety, product reliability, worker safety and environmental protection, then there is scope to require businesses to comply with only one set. In the context of U.K.-Canada trading relations, a regulatory co-operation mechanism to promote mutual recognition is a useful innovation; it is a means to reduce business costs between two countries that both possess strong domestic institutions and profess a commitment to high environmental and labour standards.

Canada and the U.K. have prospered from a productive commercial relationship. Their two-way merchandise trade totaled more than \$25.3 billion in 2016, making the U.K. Canada's fifth-largest merchandise trade partner and making Canada the U.K.'s eighth-biggest export market outside the EU. It is worth pointing out that \$11.2 billion of this trade is Canadian gold exports to the U.K., representing about two-thirds of Canada's exports to the U.K. However, the commercial ties go deeper than just merchandise trade. The U.K. is the second-largest source of foreign direct investment (FDI) to Canada and

is Canada's second-most significant destination for FDI abroad. Although the U.K. is only Canada's eighth-largest trading partner, it is Canada's largest trading partner in Europe and was an important part of the success of CETA. Brexit has made the future of this relationship uncertain. Various trade and financial institutions, such as Export Development Canada (EDC), the Business Development Bank of Canada (BDC), and the Royal Bank of Canada (RBC) note that Brexit may affect Canadian exports and investments. Brexit could make the U.K. a less attractive destination for Canadian investment due to uncertainty over the U.K.'s market access to the EU. Further, Brexit could result in Canadian exporters facing the same tariff structure that was in place before CETA. This would raise the costs of doing business, particularly for exporters of Canadian services.

We examine the provisions and negotiating history of NAFTA, its successor, the U.S.-Mexico-Canada Free Trade Agreement (USMCA), CETA, and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) to identify the demands and limits of both business and civil society. For a Canada-U.K. FTA to be successful in the long run and provide a clear model for the future U.K. trade agenda, policy-makers must address the challenges created by FTAs and build an economic environment that is perceived to be more widely beneficial.

One option, therefore, is to maintain the bilateral market access between Canada and the U.K. gained with the implementation of CETA. This gives rise to the need to design a trade agreement that supports both business and social interests. Some believe that the U.K. and EU will end up with a CETA-like trade deal. Is the "progressive" nature of CETA a good fit for a Canada-U.K. trade deal as well? Or are there more appropriate approaches to take greater account of public concerns about the social and environmental effects of trade agreements? Does a Canada-U.K. FTA offer the U.K. an opportunity to forge a new FTA model that can more directly address the concerns of workers and environmentalists in a post-Brexit context?

The next section examines the recent surge in protectionism, as evinced in the U.K. and by Brexit. It presents an overview of the evidence on the impact of Brexit, including global value chains, and its predicted welfare effects. It examines the evidence of how there is a direct link between dissatisfaction with international trade and the vote for Brexit, although other factors were also important. Although both countries have strong labour and environmental standards, we are both countries that would benefit from including these progressive elements into a new Canada-U.K. trade agreement. Including strong labour and environmental provisions in a Canada-U.K. trade agreement would also reinforce and underpin the U.K.'s commitment to fostering co-operation between countries, despite leaving the EU.

The following section carefully examines the scope of what these labour and environmental provisions can look like by presenting a survey of the progressive development of environment and labour provisions in trade agreements. It seeks to identify the limits of regional rules on these sustainable-development provisions in terms of their scope and enforceability. The section discusses how a progressive trade agreement between the U.K. and Canada would build upon the strengths and mitigate the weaknesses of existing approaches. The briefing paper concludes that there is an

opportunity for the U.K. and Canada to create an innovative free trade agreement based on shared progressive and inclusive values that could simultaneously support citizens who have not benefited from globalization, while promoting trade and investment.

## **BREXIT AND THE ECONOMIC IMPACT OF LEAVING THE EU**

About half of U.K. trade is with the EU and overall this represents about 15 per cent of U.K. GDP. U.K. trade with the EU has expanded considerably since joining the EU. There is a well-established literature that measures the impact of multilateral and regional trade agreements on the volume of trade more generally. For example, Rose (2004) uses a gravity model to examine whether membership in the WTO increases trade and finds that it does. Subramanian and Wei (2007) revisit this question and also find that membership in the WTO increases international trade. More recently, Limao (2016) and Eggar et al. (2011) empirically examine the impact of RTAs on trade and again find significant increases in trade from membership in RTAs. This question has also been examined for the membership of the U.K. in the EU.

The basic economic theory to understand the impact of the U.K. leaving the EU is that there will be considerable uncertainty in the short run that will disrupt trade and investment. In the medium term, exiting the EU will increase the U.K.'s cost of doing business with the EU and there will be some negative static welfare effects of less and more costly trade. Over the long term, leaving the EU will include dynamic effects and have negative productivity effects. As the U.K. has become integrated into EU value chains, these value chains will be disrupted, and this will affect productivity and growth. Steinberg (2019) employs a dynamic general equilibrium model to quantify the impact of uncertainty about post-Brexit trade policies and finds a negative effect on the welfare cost of U.K. households and that part of this cost is due to uncertainty.

The preponderance of evidence is that being part of the EU has large economic benefits for the U.K. and that leaving the EU will be costly in terms of the uncertainty that is created and the costs of adjusting to a new regime, whatever that looks like. The longer-term costs of the separation will depend on the nature of the relationship with the EU, moving forward, as well as other factors. Crafts (2016) provides an excellent study on the economic benefits of deep economic integration with the EU and provides convincing evidence that membership in the EU has increased trade and has produced a British economy that is significantly integrated and part of the European value chain. The growth in trade, the expansion of value chains and the extent of deep integration have produced positive productivity effects for the U.K. of around 10 per cent. Crafts (2016) considers the economic costs of being part of the EU and calculates that the economic benefits exceed the costs by about seven times. Crafts (2016) also examines the costs of leaving and concludes that the extent of the costs of Brexit does depend on how the breakup is managed. The bottom line is that membership in the EU contributed significantly to the British economy.

Prior to the Brexit vote, there was very good evidence on the impact of the U.K. membership in the EU and the costs of leaving. The Confederation of British Industry (CBI) (2015) undertook a literature review on the economic impact of EU membership

and on the estimated impact of exiting, which covers 12 studies. The CBI (2015) review, on balance, shows strong economic benefits of being a member of the EU and the economic costs of exiting depend on the nature of the split and the way that the separation is managed. The studies cover a range of approaches and focus on different aspects of the economic union, from access to the single markets to FDI. It considers costs and benefits of membership with the costs primarily identified as the budget cost of the U.K.'s contribution to the EU budget and costs related to the EU regulatory environment. They find that the range of estimates on the long-term benefits of EU membership over the costs of membership range from a negative 2.5 per cent of GDP to 9.5 per cent of GDP with a mid-range of about four to five per cent of GDP, and this amounts to about £2,700 to £3,300 per household.

Ottavio et al. (2014) examine the economic welfare impacts on the U.K. from leaving the EU and find that there would be less trade with the EU because of higher tariff and non-tariff barriers and that this would lower income by around 3.1 per cent of GDP (£50 billion). That impact is based just on static welfare losses of reduced trade, and when they include dynamic effects and take into account the reduction in productivity, they find that income will decline by 6.3 to 9.5 per cent of GDP from leaving the EU. They point out that this impact is in the ballpark of the loss of income from the global financial crisis of 2008/09. It is important to note that Ottavio et al. (2014) run different scenarios and therefore get a range of results. So, for the static case, they run a very optimistic scenario in which the static impact of exit results in a 1.1-per-cent decline in income and that the dynamic effects under this scenario yield an income loss of 2.2 per cent. This highlights that there are different possible outcomes from Brexit depending on how Brexit is managed and that these different approaches to Brexit have different impacts on economic welfare. Ottavio et al. (2014) also point out that there are additional implications on immigration, foreign investment and regulations that will affect the U.K. economy. Some of these impacts are more difficult to quantify.

Dhingra et al. (2016a) employ a computable general equilibrium (CGE) model to examine how an increase in trade barriers to trade with Europe will affect Britain. The challenge of this approach is to model the counterfactual, that is to compare the status quo to a hypothetical world where Brexit has occurred. The authors take an innovative approach and use data from the EU and Norway to consider the possible impact of Brexit from different scenarios. They also examine a scenario where the trade barriers post-Brexit are set to WTO levels, where Britain is subject to "most favoured nation" tariff rules. They find that the impact on Brexit ranges from 1.3 per cent, based on the Norway scenario (where Britain achieves a deal with the EU equivalent to Norway's arrangement), and 9.5 per cent based on the WTO scenario. There is a range of possible outcomes, and the magnitude of the impact clearly depends on the nature of how the separation is managed, but their study does conclude that, under any reasonable scenario, Brexit will have serious negative consequences for the U.K. and its major trading partners.

Davies and Studnicka (2018) take a different approach and examine the impact on Brexit on the stock market returns of affected companies. They examine data from the FTSE 350 and examine how the market responded to Brexit, and they focus on firms that are integrated through global value chains (GVCs) to the European economy. They use trade

in intermediate goods to identify the industries that have stronger GVCs, and find that firms in more-exposed industries were negatively affected by Brexit. They find that the market response was swift and long-lasting and that larger firms are less affected than smaller firms. Davies and Studnicka (2018) point out that their analysis focuses on the trade impact of Brexit. They also argue that their evidence complements other studies; this includes Dhingra et al. (2016b), who examine the impact on FDI and conclude that Brexit will produce a 22-per-cent decline in FDI over the next decade and reduce GDP by between 1.8 and 4.3 per cent.

## **GLOBAL VALUE CHAINS AND BREXIT**

Head and Mayer (2016a) make the important point that it is not just the tariffs following Brexit that will impact on trade. They note that, with global value chains, there are other important implications, and they quantify these impacts. They employ rich micro data and focus on the auto sector to examine the impact of Brexit on where car manufacturers decide where to locate production and assembly plants and the impact of Brexit on production and auto prices. In addition to the implications of increased trade costs, there are important indirect implications stemming from the complex structure of multinational production that is the reality for many modern industries. For example, firms are continually making a broad range of deep decisions on allocating the production of different products to different plants in order to serve in the most efficient way the different markets they have decided to target. These decisions are affected by different frictions associated with crossing borders that include the traditional trade costs of tariffs and non-tariff barriers, in addition to the costs affecting the ease of co-ordinating the production process in each plant from the firm's headquarters and maintaining distribution networks in different countries.

Exiting from the EU, therefore, will have impacts on firm decisions that go well beyond the impact of tariffs on direct measures of trade; this more complex, industrial structure of free trade arrangements has been called "deep integration." Head and Mayer (2016a) focus on the auto sector as a prime example of the type of costs associated with pulling out of a free trade area. The type of implications related to deep integration issues revolve around the ease of travel or migration for professionals, FDI protection, and policies related to free trade in services. They estimate the elasticities related to changes in these costs and the impacts on where firms will locate and the implications on which cars consumers will choose to purchase related to impacts on costs. With these elasticities, they are able to undertake counterfactual experiments to measure the economic impact of Brexit - for this single industry - but taking a much broader approach in terms of quantifying the direct and indirect effects on the auto industry of Britain leaving the EU. They find that Brexit will have profound impacts on plant location as well as the level of production and prices in the car industry. Again, they look at different scenarios and find that consumer surplus falls between 2.9 and 4.9 per cent, while the impact on the car production in the U.K. varies between an increase of 0.4 per cent to a decrease of 12.2 per cent.

There is an additional, very important channel through which the uncertainty around how to implement Brexit can negatively affect the U.K. economy that is related to the work of



Head and Mayer (2016a,b) but applies recent theoretical developments in understanding the renegotiation of trade agreements. The key insight in the important work done by Limao and Maggi (2015) as well as Handy and Limao (2015) is that trade agreements not only boost trade by lowering trade barriers, as is well documented and well understood, but that trade agreements also create stability and certainty about future tariff rates. Another way to say this is that trade agreements reduce uncertainty and this is extremely important for the kinds of decisions firms have to make about location of plants, production, etc. Once a trade renegotiation is initiated, it creates uncertainty over future tariff rates, which raises the option value of delaying investment decisions. Crowley et al. (2018) have applied these new theoretical and empirical results to the U.K. in the context of Brexit. They provide a good overview of this recent literature and point out that the renegotiations of trade agreements have historically been straightforward until recently, when they have taken on a significant downside risk. Historically, agreements have been renegotiated with the fallback position on the renegotiations being the status quo. That has changed recently with the Korea-U.S. FTA, and very dramatically with NAFTA and Brexit. Crowley et al. (2018) put the Brexit case into context and point out that the Brexit vote to leave the EU on May 23, 2016 was completely unexpected.

The evidence from Brexit is very clear: there are important and substantial negative impacts of deciding to depart a free trade agreement. There are negative static trade effects of the traditional type that will result in more costly trade and the resulting trade will have negative effects on the U.K. economy. There will also be negative impacts in the long run as the U.K. economy adjusts and these costs will affect productivity. It is also very clear that U.K. membership in the EU goes beyond just trade costs and that, in the modern economy, there are important implications for businesses and consumers due to the integrated and transnational aspect of production. Increased costs associated with departure from an FTA include impacts on the movement of people, foreign investment and trade in services. Recent developments in economic theory and access to rich micro-data reveal that these deep integration effects are likely to be large. The British vote to leave the EU led to the renegotiation between the U.K. and the EU where the “threat point” or fallback position of not reaching an agreement on Brexit is a heightened level of tariffs.

More recently, the Bank of England has estimated the impact of various withdrawal scenarios. The Bank of England’s November 2018 report concluded that the implied change in the U.K.-EU trading relationship will to reduce the U.K. economy’s productive capacity and in most scenarios will reduce its rate of growth in the short term. The study also concluded that a no-deal Brexit, that is Brexit without a withdrawal agreement and implementation period, would amplify the negative effects and lead to an eight-per-cent reduction in GDP through a recession that will be worse than the 2008 financial crisis. More recently, the bank updated its analysis and found that, although the negative impact of a no-deal Brexit would still be large, it will be less severe than it estimated in November 2018, because the government and businesses have prepared for a no-deal departure and this has reduced the likely hit to the U.K. economy to a 5.5-per-cent reduction in GDP. This is still a sizable economic shock, but less so than predicated a year ago, as adjustments have already been made or planned. These results are consistent with the recent study. The U.K. in a Changing Europe (2019). This report finds that a no-deal Brexit will mean a

prolonged period of uncertainty and, importantly, the longer-term U.K.-EU relationship will still need to be negotiated and agreed upon. The U.K. will not be in a good bargaining position and this will greatly prolong the uncertainty of Brexit. The study estimates that half of U.K. exports will face disruption as U.K. exports to the EU would face border checks and new tariffs applying to a substantial proportion of export goods.

In sum, the impact of Brexit on the U.K. economy will be negative and profound, but the magnitude of the impact will depend greatly on what the U.K.'s new relationship with the EU looks like and what its relationships with other countries look like. Because the negative impact was well understood by most analysts and predicted by myriad studies, it is important to understand who voted for exit and who voted to stay and to try to link the vote to potential or predicted economic outcomes for the various constituents. It is also important to understand that the vote was about more than just trade and the economic impact of exiting.

## **BREXIT AND THE POLITICAL ECONOMY OF PROTECTIONISM**

As discussed above, the negative aggregate economic impact to Britain of leaving the EU was well understood prior to the referendum. This has led to several studies examining why the plurality of voters supported Brexit. Although this is a complex question, there is strong empirical evidence that several factors resulted in this outcome. Some of the evidence is from regional studies and some of it is from examining individual-level data on the referendum. It is clear from the evidence that voters supported Brexit due to dissatisfaction with immigration policy and the free movement of people in the EU (and therefore the U.K.) and with the amount of national sovereignty they perceived that Britain had ceded to EU governance. There is also solid evidence of a link between trade and Brexit and the vote of dissatisfied voters who feel left behind in the current economy.

Eichengreen et al. (2018) find that older voters were more likely than younger voters to vote for Brexit and they argue that this reflected Euroscepticism that grew stronger with age, and that recent cohorts are also more pro-European than their predecessors. Skinner and Gottfried (2016) examine the vote and draw five key conclusions from their analysis:

1. The referendum revealed large differences in voting intentions by age, class, education level and ethnicity. They found that younger, more middle class, more educated and BME (black, minority and ethnic) voters chose to remain; whereas older, working-class, less educated and white voters opted to leave.
2. They found that age and class were important. A majority of 18- to 34-year-olds in every social class voted to remain, while a majority of those aged 55 or over in every class voted to leave. They also found that, within each age group, the middle classes were more likely to vote to remain, and the working classes more likely to vote to leave and, within each class, younger people were more likely to vote remain and older people more likely to vote to leave.
3. They also found a gender difference in that a small majority of women voted to remain, while most men voted to leave. The biggest gender differences were

among what is categorized as the higher-skilled “AB” social classification<sup>2</sup> and among those aged 35-54, among both of whom women were 11 points more likely to vote to remain than men.

4. They found that employment status and home ownership mattered. Those in the workforce (full or part time, public sector or private sector), students, mortgage-holders and private renters voted to remain. Those who own their home outright, social renters, the retired and those looking after homes all voted to leave.
5. They found differences along party lines, but a majority of those who did not vote in the last general election chose to leave. Those who voted Conservative in 2015 voted to leave by roughly the same margin as 2015 Labour and Liberal Democrat voters voted to remain; 99 per cent of UKIP’s 2015 support voted to leave. Among those who did not vote in 2015 (but who were not too young to do so), there was a 16-point lead for leave.

Becker et al. (2017) take a slightly different approach and try to link the voting pattern to predicted economic exposure of exiting the EU. They examine both the vote and turnout shares across 380 local authority areas in the U.K. and link the local authority areas to exposure to the EU in terms of trade and immigration. They find that the immigration and trade exposure of the districts had very little explanatory power in determining the observed district-level voting patterns on Brexit. Similar to Skinner and Gottfried (2016), Becker et al. (2017) find that the demographic characteristics of the voting population were the primary determinants of the vote to leave based on district vote shares. That is, they find that the education profiles of the districts, along with their historic dependence on manufacturing employment, in addition to the income level and the unemployment rates of the districts, determined the voting pattern by district. They find that areas with (on average) lower levels of education, income and employment were more likely to vote leave. Interestingly, they also compare their results for the U.K. to the more recent voting patterns for the far-right leader Marine Le Pen in the 2017 French presidential election and find similar results. Alabrese et al. (2019) analyze individual and regional data on voting patterns and find similar results that voting for Brexit is associated with older age, white ethnicity, low educational attainment, infrequent use of smartphones and the internet, receiving benefits, adverse health and low life satisfaction.

Arnorsson and Zoega (2018) also find that output, education and the share of older people at the regional level can explain attitudes towards immigrants and the European Union. Regions were more likely to support Brexit where GDP per capita is low, a high proportion of the population has low education and is over the age of 65 and there is strong net immigration. They also find that the fear of immigration is not justified in terms of the evidence on the labour market effects of immigrants in the U.K. Zoega (2016) examines the relationship between support for Brexit and economic prosperity and finds that regions that have benefited most from immigration and trade voted most strongly

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Approximated Social Grade, with six categories A, B, C1, C2, D and E, is a socio-economic classification produced by the U.K. Office for National Statistics by applying an algorithm developed by members of the MRS Census & Geodemographics Group. AB is “higher and intermediate managerial, administrative, professional occupations.”

in favour of remaining. Colantone and Stanig (2018) find a clear link between exposure to international trade and voting for Brexit. They find that support for Brexit in the referendum was systematically higher in regions hit harder by economic globalization. They focus on the shock of surging imports from China over the past three decades as a structural driver of divergence in economic performance across U.K. regions.

We have argued that the U.K.'s decision to exit the EU will be a costly one for the U.K. economy overall. However, the extent of the economic impact will be affected by the type of exit and how U.K. trade policy evolves post-Brexit. The U.K. is trying to negotiate some form of economic relationship with the EU and Brexit means that the U.K. will not have preferential trading relations with any country. The U.K. currently benefits from the FTAs that the EU has, consisting of 36 trade agreements with more than 60 different non-EU countries, and when Brexit happens, not only does the U.K. lose its privileged access to the 500-million-person EU market, but it will also lose preferential access to the other 60 countries as well.

Some of the negative sentiment towards trade agreements has come from a feeling of not being included in the benefits of free trade. Meanwhile, trade agreements have evolved and have pivoted toward including more progressive elements designed to mitigate some of the negative elements of trade agreements. Therefore, trade agreements have started including environmental and labour market provisions. Canada has actively pursued a more progressive approach to free trade agreements, and this can be seen in the recent CETA and CPTPP agreements. It seems very likely that a Canada-U.K. FTA will be very similar in scope and form to CETA and reflect other agreements that Canada has been party to, such as the CPTPP. The next section examines the environmental and labour market provisions of CETA and CPTPP to provide a framework for what a Canada-U.K. FTA might look like. RTAs differ in their depth and scope, and Bourgeois, Dawar and Evenett (2007) provide an excellent overview of different RTAs. In the next section, we examine and compare recent Canadian RTAs to understand the scope and depth of a potential Canada-U.K. agreement.

In the U.K., Brexit has raised significant questions both about how the U.K. will work with both the EU and the rest of the world to de-carbonize their economies in light of the Paris climate agreement, and adapt to climate change, as well as how labour rights will be upheld and effective mechanisms will be crafted to compensate and reskill those dislocated by Brexit and changes in global trade patterns. As the U.K. begins the complex task of crafting new regulation in the context of a very fluid and uncertain governance landscape, a progressive trade agreement between the U.K. and Canada could ensure that the U.K. will maintain strong standards and protections in these areas.

Including strong labour and environmental provisions in a Canada-U.K. trade agreement would also reinforce and underpin the U.K.'s commitment to fostering co-operation between countries, despite leaving the EU, for global co-operation on these non-economic issues is essential for sustainable-development goals. This is also in the interest of businesses: if these regulations are comparable when it comes to achieving the same social outcomes, such as consumer safety, product reliability, worker safety and environmental friendliness, then there is scope to require businesses to comply with only one set. In the context of U.K.-Canada trading relations, a regulatory co-operation

mechanism to promote mutual recognition is a useful innovation as a means to reducing business costs between these two countries, which both possess strong domestic institutions and profess a commitment to high environmental and labour standards.

## **PROGRESSIVE TRADE POLICY: LABOUR AND ENVIRONMENTAL PROVISIONS IN FTAS**

The demand for the regulation of behind-the-border issues, such as labour and environmental standards, is an increasingly common feature of international trade negotiations. We examine recent trade agreements signed by Canada to assess how international labour and environmental law within RTAs has developed and identify areas of relevance for a future Canada-U.K. trade deal that is fair and progressive.

We find that the provisions regulating labour and the environment within Canadian RTAs are progressively expanding in both scope and legal enforceability. One of the reasons RTAs have become attractive forums from which to negotiate non-trade law in exchange for market-access concessions is because these agreements can link non-trade policy objectives within increasingly “judicialized” treaties (De Brière, 2006).<sup>3</sup> At the limit, such regulatory commitments can be made more enforceable when they are linked to trade agreements because, potentially, trade retaliatory measures could be permitted in the event of non-compliance, either as a result of dispute settlement or by unilateral action.

We argue that, although these regional developments can be considered “WTO plus” to the extent that the WTO does not directly seek to regulate either labour or the environment, even under the most recently negotiated USMCA there are still clear limits to how far these RTA provisions encroach on the domestic regulatory sovereignty of any of the parties to an agreement. That is, were the U.K. and Canada to negotiate an FTA with environmental and labour provisions, such provisions would be unprecedented if they were, for example, to include an independent enforcement body or explicit targets for the parties to achieve within the commitments of the trade agreement.

## **THE EMERGENCE OF ENVIRONMENTAL AND LABOUR PROVISIONS IN CANADIAN FTAS**

The preamble to an RTA does not contain any binding obligations upon the parties; the statements are not intended to be *operative* provisions in the sense of creating specific rights or obligations. Rather, the statements offer a context for the signatories’ overall objectives by introducing the agreement, setting out the motives of the contracting parties and the objectives to be accomplished by the provisions of the statutes.

Given that an agreement’s preamble objectives indicate how the subject is — or is not — related to the trade obligations of the regional members, it is significant that many of the early RTAs did not express themselves on the parties’ environmental objectives

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<sup>3</sup> “Judicialization” is seen as the increasing reliance on judicial or quasi-judicial solutions to international disputes and the strengthened enforcement of binding sets of objectives. The term “judicial” and its derivations have the advantage of distinguishing between legislative and judicial functions of international institutions.

in the preamble. However, all of the most recent RTAs that Canada has been a party to and are surveyed here (USMCA, CPTPP and CETA) include at least one expression on the environment and on labour standards in their preambles. The most minimal is the CPTPP preamble, which includes just one recital to reaffirm the importance of promoting corporate social responsibility, cultural identity and diversity, environmental protection and conservation, gender equality, Indigenous rights, labour rights, inclusive trade, sustainable development and traditional knowledge, as well as the importance of preserving the parties' rights to regulate in the public interest.

Based on recent agreements, the inclusion of environmental and labour standards in the preamble to a Canada-U.K. agreement is almost certain. Moreover, statements in the preamble are taking on more importance and may have more legal weight than previously understood. Given that a preamble is designed to establish a definitive record of the intention or purpose of the parties in entering into the agreement, these expressions by the parties inform or "colour" the interpretation of a treaty provision. Article 31 of the Vienna Convention on the Law of Treaties (VCLT) provides that the preamble forms part of the treaty text and, as such, forms part of the terms and "context" of the treaty for purposes of interpretation.<sup>4</sup> The Appellate Body of the WTO has also emphasized on several occasions that Article 31 VCLT is a fundamental reference point for WTO dispute settlement. There is, therefore, a basis in customary international law for the preamble objectives in these RTAs to be used as a source of interpretative guidance in the process of implementation and dispute settlement.

A Canada-U.K. FTA will build on and reflect recent Canadian FTAs and will likely have a similar preamble. All of Canada's recent agreements contain preamble statements on the environment and on labour. The USMCA preamble includes three expressions on the environment. The first recognizes the parties' "inherent right to regulate and resolve to preserve the flexibility of the Parties to set legislative and regulatory priorities, in a manner consistent with this Agreement, and protect legitimate public welfare objectives, such as public health, safety, the environment, the conservation of living or non-living exhaustible natural resources, the integrity and stability of the financial system and public morals, in accordance with the rights and obligations provided in this Agreement." Second, the parties agree to "(p)rotect human, animal, or plant life or health in the territories of the parties and advance science-based decision making while facilitating trade between them." The third statement is directed to "(p)romote high levels of environmental protection, including through effective enforcement by each party of its environmental laws, as well as through enhanced environmental cooperation, and further the aims of sustainable development, including through mutually supportive trade and environmental policies and practices."

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Article 31 of the VCLT provides: "1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes." Article 32 of the VCLT provides: "Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to Article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable."

The CETA agreement includes two similar expressions. Both preambles state that the parties are determined/committed to strengthen their economic, trade, and investment relations in accordance with the objective of sustainable development, in its economic, social and environmental dimensions, and to promote trade and investment in a manner mindful of high levels of environmental and labour protection and relevant internationally recognized standards and agreements to which they are parties. They also reaffirm each party's right to adopt and enforce measures necessary to pursue legitimate policy objectives such as social, environmental, security, public health and safety, promotion and protection of cultural diversity.

Canada's recent RTAs also include preamble statements on labour standards. USMCA promotes the protection and enforcement of labour rights, the improvement of working conditions, the strengthening of co-operation and the parties' capacity on labour issues. The CPTPP reaffirms the importance of promoting labour rights alongside other public interest issues. CETA commits the parties to implement the agreement in a manner consistent with the enforcement of their respective labour laws and that enhances their levels of labour protection, and building upon their international commitments on labour matters.

A Canada-U.K. FTA will likely include these kinds of statements in the preamble and, as mentioned above, there is a basis in customary international law for the preamble objectives in RTAs to be used as a source of interpretative guidance in the implementation of the agreement and in dispute settlement. So, the language and the statements in the preamble matter.

## **FROM SIDE AGREEMENTS TO CHAPTERS ON ENVIRONMENT AND LABOUR**

We now shift our focus from preamble statements to examining the provisions on labour and the environment contained within FTAs. There is a range of different approaches to the environment and labour in FTAs and such provisions have evolved in the FTAs that Canada has been party to. One key element in understanding recent FTAs is understanding the extent to which the FTAs enforce, or complement, the provisions in multilateral environment agreements (MEAs). The range of environmental obligations in earlier RTAs ranged from agreements without any provisions to those with a commitment to implement MEAs within a chapter or side agreement dedicated to regulating the environment. In between these extremes are provisions limited to detailing environmental co-operation activities and those linking environmental standards to investment activities between the parties to the agreement. Those RTAs with side agreements, such as NAFTA, chose to include provisions that maintain existing rights and obligations under other MEAs, including conservation agreements:

*Nothing in this Agreement shall be construed to affect the existing rights and obligations of the Parties under other international environmental agreements, including conservation agreements, to which such Parties are party" (NAAEC, Article 40)*

This NAFTA provision affirmed the rights of the parties under certain international and bilateral environmental agreements, including the right to use discriminatory trade

measures. These rights prevail over obligations in NAFTA in the event of an inconsistency. That is, market-access rights granted under NAFTA could potentially be undermined by rights to restrict trade according to an MEA, where NAFTA members are parties to the MEA. This contrasts with GATT and other agreements, which are superseded by NAFTA obligations as long as they are in conformity with Article XXIV of GATT.

More recent Canadian agreements have moved away from including a side agreement on the environment. CETA, USMCA and the CPTPP all have a chapter dedicated to the environment and/or sustainable development. These chapters address a wider scope of issues within the chapter. Nevertheless, what has not changed is the focus on implementing domestic regulation and, as with the traditional EU FTAs, the emphasis of the CETA agreement remains focused on co-operation and dialogue, rather than a sanction-based dispute settlement.

The scope of the new NAFTA (USMCA), has expanded considerably to address issues such as: protection of the ozone layer; protection of the marine environment from ship pollution; air quality; marine litter; biodiversity; sustainable fisheries management; conservation of marine species; illegal, unreported, and unregulated fishing; sustainable forest management; Indigenous Peoples; and impacts on local communities. However once again, the enforcement of environmental laws is still based at a domestic level as the parties recognize the sovereign right of each one to establish its own levels of domestic environmental protection and its own environmental priorities, and to establish, adopt or modify its environmental laws and policies accordingly. USMCA does specify that “(e)ach party shall strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection and shall strive to continue to improve its respective levels of environmental protection.”

The USMCA environment chapter continues to reference MEAs (Article 24.8: Multilateral Environmental Agreements), affirming each member’s commitment to implement the multilateral environmental agreements to which it is a party. The parties also “commit to consult and cooperate as appropriate with respect to environmental issues of mutual interest, in particular trade-related issues, pertaining to relevant multilateral environmental agreements.” This includes “exchanging information on the implementation of multilateral environmental agreements to which a Party is party; ongoing negotiations of new multilateral environmental agreements; and, each Party’s respective views on becoming a party to additional multilateral environmental agreements.”

The scope of issues covered in the CPTPP cover those in USMCA, with an additional provision covering “transition to a low emissions and resilient economy” (Article 20.15). The parties maintain domestic enforcement of environmental law. They “recognise the sovereign right of each Party to establish its own levels of domestic environmental protection and its own environmental priorities, and to establish, adopt or modify its environmental laws and policies accordingly.” Significantly, as with USMCA, the commitments explicitly do not empower a party’s authorities to undertake environmental law-enforcement activities in the territory of another party.

A different model has been identified in the EU-Canada CETA agreement. While the level of protection is also still based at the national level, the focus is on co-operation and



consultation rather than a formal dispute-settlement process. Fewer and different issues are covered relative to the CPTPP, such as provisions relating to trade in forest products, trade in fisheries, and aquaculture products,<sup>5</sup> The CETA trade-environment chapter is complemented by the chapter on trade in sustainable development, which establishes the Committee on Trade and Sustainable Development, discussed below. A Canada-U.K. FTA will likely take the CETA approach to the environment, however it is possible that it could look more like USMCA, especially if the U.K. also pursues an FTA with the U.S. It would be pioneering if a Canada-U.K. FTA included binding provisions and time frames with respect, for example, to implementing Paris-agreement commitments or eliminating subsidies to fossil fuels.

Labour provisions in FTAs have also evolved considerably. Early RTAs with a separate side agreement on labour<sup>6</sup> commit parties to enforce their domestic labour laws. The North American Agreement on Labour Cooperation (NAALC), for example, states that each party shall promote compliance and effectively enforce its labour laws through appropriate government action. Article 3 also affirms the right of each party to establish and/or modify its own domestic labour standards. The NAALC explicitly recognizes certain labour principles that are not included in the 1998 International Labour Organization (ILO) Declaration on Rights at Work.<sup>7</sup> The same principles are replicated in the Canada-Costa Rica and Canada-Chile RTAs.<sup>8</sup> While these RTAs do not hold labour provisions with non-discrimination rights that are as extensive as the ILO's fundamental rights,<sup>9</sup> they include additional rights with respect to minimum wages, hours, health and safety, migrant workers' rights, and compensation for workplace injuries.<sup>10</sup> These rights are embedded into the U.S. trade legislation and are a congressionally mandated negotiating objective.

Recent RTAs, such as USMCA, state that each party "shall adopt and maintain in its statutes and regulations, and practices" what is stated in the ILO Declaration (Article 23.3).<sup>11</sup> It also states that parties "shall also adopt and maintain statutes and regulations, and practices thereunder, governing acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health." USMCA also states that "no Party shall fail to address cases of violence or threats of violence against

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<sup>5</sup> See CETA Article 24.9 "Trade favouring environmental protection"; Article 24.10 "Trade in forest products"; Article 24.11 "Trade in fisheries and aquaculture product."

<sup>6</sup> NAFTA/NAALC (North American Agreement on Labour Cooperation) and Canada-Chile/CCALC (Canada-Chile Agreement on Labour Cooperation) RTAs.

<sup>7</sup> Including the prevention of occupational injuries and illnesses, compensation in cases of occupational injuries and illnesses and the protection of migrant workers.

<sup>8</sup> With the exception of the Canada-Chile agreement's omission of the protection of migrant workers.

<sup>9</sup> These include as a fundamental right the freedom from discrimination in employment based on race, gender, age or other characteristics.

<sup>10</sup> Also included in the NAALC and the CCALC agreements.

<sup>11</sup> Article 23.3 "Labor Rights": "(a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labor; (c) the effective abolition of child labor and, for the purposes of this Agreement, a prohibition on the worst forms of child labor; and (d) the elimination of discrimination in respect of employment and occupation."

workers, directly related to exercising or attempting to exercise (their) rights ... through a sustained or recurring course of action or inaction in a manner affecting trade or investment between the parties” (Article 23.7).

Of great significance, initially, are the provisions on sex-based discrimination in the workplace (Article 23.9). Here, “the Parties recognize the goal of eliminating sex-based discrimination in employment and occupation and support the goal of promoting equality of women in the workplace.” Moreover, each party agrees to implement policies that “protect workers against employment discrimination on the basis of sex, including with regard to pregnancy, sexual harassment, sexual orientation, gender identity, and caregiving responsibilities, provide job-protected leave for birth or adoption of a child and care of family members, and protect against wage discrimination.” These unprecedented gender protections were championed by the Canadian negotiators. However, backlash in the U.S. surfaced before ratification to limit the application of this provision. Some members of Congress argued that Article 23.9 would elevate “sexual orientation” and “gender identity” as special rights to the highest level and could be used to determine the outcome of cases inconsistent with existing law and legal precedent. This would circumvent the proper legislative process for determining matters regarding the redefinition of “sex” to include “sexual orientation” and “gender identity” in federal law. It would provide direct conflict with many existing laws, precedent, and religious liberty and conscience rights. As a result, a footnote was included at the insistence of the U.S. negotiators, which states that Title VII of the U.S. Civil Rights Act of 1964 is “sufficient to fulfill the obligations” on labour rights, and “thus requires no additional action” by the U.S. While, in the U.S., Title VII bars workplace discrimination on the basis of sex and courts are increasingly interpreting it as prohibiting anti-LGBT discrimination, there is still no explicit U.S. federal law in place against workplace discrimination on the basis of sexual orientation and gender identity.

Under CETA, the right of each party to set its labour priorities is preserved, although “each Party shall seek to ensure those laws and policies provide for and encourage high levels of labour protection and shall strive to continue to improve such laws and policies with the goal of providing high levels of labour protection” (CETA Article 23.2). Nevertheless, the parties “affirm their commitment to respect, promote and realize those principles and rights in accordance with the obligations” of the ILO Declaration on Fundamental Principles and Rights at Work “and its Follow-up of 1998,” the ILO Decent Work Agenda, and in “accordance with the ILO Declaration on Social Justice for a Fair Globalization of 2008.” This also includes “non-discrimination in respect of working conditions, including for migrant workers” (CETA Article 23.3). Each party also agreed that it “shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its labour law and standards to encourage trade or investment” (CETA Article 23.4).

## **MONITORING, ENFORCEMENT AND DISPUTE-SETTLEMENT MECHANISMS**

This section assesses how strong or binding the obligations are in terms of ensuring the parties fulfil the negotiated obligations. This can be shown by identifying the RTA provisions regulating how disputes are settled in the event of non-compliance.

Relevant questions include whether disputes relating to the commitments covering the environment fall under the same dispute-settlement provisions that cover the commitments regulating the trade in goods, or whether they have separate dispute-settlement mechanism (DSM) provisions of their own, which may not be as strong as those covering the trade provisions.

The characteristics of the DSM are also assessed for whether or not they extend beyond “good offices” and “conciliation,” to include an independent report and recommendations or directives for remedial action. The possible final remedies are identified to see whether actions or enforcement activities must be limited to the domestic legal order and whether private parties, producers or consumers can be made the beneficiary of a remedy, or whether remedies are limited only to the states involved in the dispute. In the event that a party fails to remedy a violation of its obligations, there may be a right of countervailing action in the agreement, in addition to the ultimate action of withdrawing from the overall agreement. Lastly, the agreements are scanned for conflict clauses or articles setting out the hierarchy of international agreements in the event of conflict of obligations. These indicate the ultimate priority accorded to the obligations of the various international agreements entered into by the parties to an RTA.

Article 104 of NAFTA states that in the event of an inconsistency between NAFTA and the trade provisions of multilateral environmental treaties, the latter shall “prevail to the extent of the inconsistency.” However, the actual significance of this provision is unclear. There are no formal dispute-settlement mechanisms available under multilateral environmental treaties should a member complain about trade sanctions taken against it because of the alleged lack of compliance with environmental obligations. The only potential legal recourse for countries is the dispute-settlement mechanism available under GATT. Yet it is not clear whether Article 104 applies to the parties’ GATT obligations and whether Article 103 includes GATT in its definition of “other agreements” (Howse and Trebilcock (2015, p. 549).

Under the USMCA dispute-settlement mechanism (USMCA Article 24.32), if parties fail to resolve a dispute through environmental consultations, senior representative consultations and ministerial consultations within 60 days, a party may request dispute-settlement consultations or request the establishment of a panel under the dispute-settlement chapter (USMCA Article 31.7). This panel can “seek technical advice or assistance, if appropriate, from an entity authorized under CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) to address the particular matter, and provide the consulting parties with an opportunity to comment on any such technical advice or assistance received...” This is similar to the CPTPP dispute-resolution mechanism for the environment provisions (CPTPP Article 20.23), which states that, ultimately, a dispute over the implementation of an environmental provision may be referred to “the relevant Ministers of the consulting Parties who shall seek to resolve the matter” (CPTPP Article 20.22).

Under the CETA dispute-settlement mechanism (CETA Article 24.16), any dispute that arises under the trade and environment chapter, the parties “only have recourse to the rules and procedures provided for in (the) Chapter,” not the dispute resolution chapter covering the trade commitments. The parties are therefore to rely on good offices, conciliation, or mediation to resolve that dispute.

The enforceability of labour provisions in the RTAs surveyed can also be arranged along a continuum. On one end, the labour obligations are covered under the general DSM and can therefore be viewed in the same light — and with the same level of enforceability — as the trade obligations in the agreement. At the other extreme, the parties simply desire to comply with their domestic labour laws and policies, without any enforcement mechanisms to promote these objectives beyond this hortatory commitment. The “median” model provides a set of remedies, including the potential for fines and trade sanctions, but only in the event that a party persistently fails to comply with its domestic labour obligations in a manner affecting trade between the parties.

The early model ascribed to RTAs that hold separate labour and environmental side agreements includes a distinct DSM for labour and the environment that is separated from the main trade agreement.<sup>12</sup> Within the side agreement’s DSM, again the focus is on enforcing domestic laws; one party is prohibited from enforcing labour law in the territory of another party. That is, private rights of action are not provided for under one party’s domestic law against another party on the grounds that it has not fulfilled its commitments under the labour agreement. Differences exist within the RTAs remedies. The fines collected in the Canada-Chile agreement must be paid into a fund to improve or enhance the labour law enforcement in the party complained against, consistent with its own law. The amount of the fine should relate to specific factors, including the pervasiveness of the persistent pattern of failure to effectively enforce its labour standards, the level of enforcement that can reasonably be expected of a party given its resource constraints, the reasons provided for not fully implementing an action plan and efforts made to remedy the pattern of non-enforcement since the final panel report. The Canada-Costa Rica RTA, on the other hand, precludes monetary remedies or any measure affecting trade (Article 23.5). Instead, the complaining party may modify its co-operative activities to encourage the other party to remedy the persistent pattern of non-enforcement of labour laws. Some indicative co-operative activities include seminars, conferences and training sessions, joint research projects and technical assistance (Canada-Costa Rica RTA Article 12).

The NAALC dispute-settlement provisions potentially provided the greatest rights of action by ensuring that anyone with a “legally recognized interest” should have access to tribunals for the enforcement of the party’s domestic labour law (NAFTA/NAALC Article 4). The National Administrative Office (NAO) in each signatory’s labour department receives and processes submissions concerning non-enforcement of labour law in either of the two other countries. The NAOs are obliged to provide information, if requested, from any of the other NAOs and, if necessary, request ministerial consultations. Crucially, for any problems involving the right of freedom of association, the right to bargain

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<sup>12</sup> The Canada-Chile, Canada-Costa Rica and NAFTA RTAs.

collectively and the right to strike, dispute settlement is confined to diplomatic avenues. That is, if diplomacy cannot resolve the dispute, no further action can be taken under the agreement.

More recent agreements, such as CETA, state that if there is disagreement on any labour matter arising under the trade and sustainable-development chapter, the parties only have recourse to government consultations and panel of experts. The panel of experts issues an interim and a final report setting out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations. The parties must then discuss appropriate measures to be implemented, taking into account the report and recommendations of the panel of experts.

An additional requirement is included that the parties understand that the labour obligations are binding and enforceable through the procedures for dispute resolution provided within the chapter. Within this context, the parties “shall discuss, through the meetings of the Committee on Trade and Sustainable Development, the effectiveness of the implementation of the Chapter...” (CETA Article 23.11). This model is similar to the EU-South Korea FTA. Significantly, the EU has requested a panel under this agreement, to address its long-standing concerns over labour standards in South Korea. This arbitration procedure was triggered after formal government consultations failed to provide a satisfactory solution.<sup>13</sup> If South Korea does not comply with its commitments in a timely manner, the panel of experts will deliver a public report with recommendations on achieving compliance. The implementation of the recommendations of the panel report will then be monitored by the trade and sustainable-development committee created under the terms of the EU-South Korea trade agreement.<sup>14</sup>

In contrast, under both USMCA (Article 23.17) and the CPTPP (Article 19.15), a party may request labour consultations with another regarding any matter arising under the dispute-settlement chapter. If the consulting parties have failed to resolve the matter, any party may request that the relevant ministers of the consulting parties convene to consider the matter at issue having “recourse to such procedures as good offices, conciliation or mediation.” If the consulting parties have failed to resolve the matter within 60 days, the requesting party may call for the establishment of a panel. However, “(n)o Party shall have recourse to the general dispute settlement ... for a matter arising under this Chapter without first seeking to resolve the matter in accordance with this Article.”

A continuing feature in all of these agreements is that each party makes a commitment to protect the agreed-upon labour rights in its own domestic territory. None of the agreements creates a right of enforcement by one party to an agreement within the territory of another signatory party. The RTAs signed since 2010 continue to restrict the obligations of the parties to enforcing domestic legislation. The scope of the obligations has expanded in all the recent RTAs, most significantly under USMCA, which includes provisions guarding against discrimination in terms of gender and non-national migrant workers. It is not clear however, whether the flaws in the dispute-settlement mechanism

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<sup>13</sup> See <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2044>.

<sup>14</sup> *ibid.*

have been resolved adequately. In the case of CETA, consultation and co-operation remain the main form of settling disputes relating to labour standards.

The institutions created to deal with the procedural issues related to the implementation of the agreements' labour commitments range from what could be termed the "incorporation" model to a "minimalist" model. The former approach subsumes labour-regulation issues within the Joint Committee established to administrate the entire agreement.<sup>15</sup> The latter model consists of an individual government official acting as a national contact point. However, in the Canadian RTAs, a "ministerial council" comprised of the parties' respective labour affairs ministers is established to oversee and promote the implementation of the side agreement.<sup>16</sup> NAFTA's NAALC side agreement sets out the most elaborate regional structure in a commission (Article 8), aided by a national administrative office belonging to each party.<sup>17</sup>

Under the USMCA labour chapter, a labour council is established, composed of senior governmental representatives that "shall meet within one year of the date of entry into force of this Agreement and thereafter every two years, unless the parties decide otherwise" (Article 23.14). During the fifth year "the Council shall review the operation and effectiveness of this Chapter and thereafter may undertake subsequent reviews" and "shall issue a joint summary report or statement on its work at the end of each Council meeting." It also requires a contact point to be designated within each party's labour ministry or equivalent entity to "facilitate regular communication and coordination between the Parties, including responding to requests for information..." (USMCA Article 23.15). This arrangement is also established under the CPTPP agreement (Article 19.12, 19.13).

Under CETA, "each Party must designate an office to serve as the contact point for the implementation" of the trade and labour chapter, including with regard to "cooperative programmes and activities"; "the receipt of submissions and communications"; and "information to be provided to the other Party, the Panels of Experts and the public" (Article 23.8). This labour contact point is complemented by a committee on trade and sustainable development, which oversees the implementation of the labour chapter and reviews the progress achieved under it, including its operation and effectiveness.

It is evident that from this overview that there has been an expansion of environmental law and labour market provisions included in the latest RTAs. Recent agreements have chapters dedicated to labour and the environment or sustainable development, and these chapters address a wider scope of issues than has been the case in earlier agreements. Nevertheless, what has not changed is the focus on implementing domestic regulation and the emphasis of the EU-Canada CETA, as with the traditional EU FTAs, remains focused on co-operation and dialogue rather than sanctions-based dispute settlement.

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<sup>15</sup> U.S.-Singapore, U.S.-Oman and U.S.-Jordan model.

<sup>16</sup> The council is assisted by the national secretariat of each party, which in turn may set up national advisory committees. However, the Canada-Costa Rica agreement does not set out a specific requirement for this council to meet.

<sup>17</sup> This is to be comprised of labour ministers of the parties or their designees and must meet at least once a year.

While CETA's provisions on trade and sustainable development create enforceable obligations, they are subject to a dedicated dispute-settlement mechanism. This mechanism has a transparent, mandatory, participatory and time-bound procedure for resolving trade-related sustainable-development issues. However, it does not have the same level of sanctions as the trade provisions have. Whether through the initial influence of the U.S. negotiators, the CPTPP and USMCA possess strong dispute-resolution mechanisms that are applicable to their respective environmental provisions (CPTPP Article 20.23). If the consulting parties have failed to resolve the matter under the consultation provisions, they have recourse to the dispute-settlement chapter applicable to the other obligations and a complaining party can claim compensation if the issue has not been resolved in a reasonable time period.

It is very likely that a Canada-U.K. FTA will follow the recent Canadian models. The preamble statements on the environment and labour, as well as the provisions in new chapters on labour and the environment in recent Canadian FTAs, will likely be included in a Canada-U.K. agreement. Regulatory commitments can be made more enforceable when they are linked to trade agreements because, potentially, trade-retaliation measures could be permitted in the event of non-compliance, either as a result of dispute settlement or by unilateral action. It is probable that a Canada-U.K. FTA will look a lot like the CETA agreement, with progressive elements related to labour and the environment.

## CONCLUSIONS

The U.K. and Canada are well positioned, with shared values and customs, to commit to a fair and progressive free trade agreement. Under normal circumstances, free trade agreements can be controversial and politicized issues. In the current political economy, the U.K. and Canada will need to be mindful of various factors: civil society, including dichotomized fractions divided over support for protectionism and globalization; international precedents, such as the global architecture; and trends in RTAs. Above, we have analyzed the current political economy and a potential Canada-U.K. free trade agreement.

The near-term impact of Brexit on the U.K. economy will be negative and profound, but the magnitude of impact will depend greatly on what the U.K.'s new relationship with Europe looks like and what the U.K.'s relationships with other countries look like. Overall, Brexit will reduce income per capita in the U.K., and the best way to mitigate the economic costs of leaving will be for the U.K. to remain closely integrated into the European single market and to maintain access to countries that the U.K. currently enjoys access to through EU trade agreements.

As Brexit negotiations have yet to be concluded, it is difficult to know the limitations and opportunities the U.K. will have before it until a resolution has been decided. To what degree can the U.K. seek assurances from other potential RTA or bilateral trade partners as Brexit approaches? Some countries, like Canada have committed to transferring EU RTA provisions to the U.K. after Brexit. How long will it take for those agreements to be renegotiated and to what end? This instability creates business uncertainty, which will also have an adverse effect on the U.K. economy.

We find that displaced labour and populations who have not benefited from free trade support the current protectionist movements. Other public interest groups criticize globalization for failing to safeguard adequate environmental and human rights standards. With the aim of forging more progressive trade agreements, it is significant that governments, including Canada, now commonly include comprehensive labour and environmental chapters in RTAs, with provisions that the WTO is unlikely to be able to implement on its own in the foreseeable future. These RTAs explicitly try to develop textual coherence and legal integration with the wider body of international law, as well as referencing both the language and some agreements of GATT/WTO.

Nevertheless, even in the RTAs with the strongest obligations, these commitments are restricted to effective domestic law enforcement or the need to show the impact of a violation on trade between the parties to the agreement, or the threat of retaliatory action was removed by the exchange of side letters between the parties. That is, whether or not these legal provisions can meet their policy objectives still remains dependent on domestic factors such as the political will and resources to enforce these laws. For example, the difficulty in appointing panels through consensus under the old NAFTA Chapter 20 has not been effectively addressed in the text of USMCA, nor has the lack of transparency on the panel-appointment system.

The U.K. and Canada should negotiate an FTA with strong environmental and labour provisions. It would be progressive but unprecedented to include an independent enforcement body or explicit targets for the parties to achieve within the commitments of the trade agreement. More likely, a Canada-U.K. FTA will be modelled closely after CETA. Further research is necessary to identify how a more progressive FTA could be designed to more effectively address issues such as independent monitoring and enforcing labour, environmental and social rights, or achieving each government's emission targets under the Paris agreement. Ensuring a successful Canada-U.K. FTA requires efforts to garner buy-in from jurisdictions responsible for implementation. Strategies to achieve this could include consultations, collaborations and new institutional mechanisms for negotiations with subnational governments.



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