

# Intelligence MEMOS



From: Daniel Schwanen  
To: Canadian businesses and diplomats in the EU  
Date: October 30, 2018  
Re: **CANADIAN INTEREST AND POSSIBILITIES IN AVOIDING A “HARD BREXIT”  
(PART TWO)** [Read part one of the memo.](#)

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Yesterday, we discussed the perils of a hard Brexit for both the UK and the European Union, along with Canada, with all its attendant consequences.

Today, I lay out a way forward that imagines a “Canada-style” (or CETA+) agreement that could provide a good basis for an EU-UK trade relationship that is as open as possible once the UK leaves the EU economic union.

For one thing, the CETA already provides for duty-free trade for goods meeting rules of origin. CETA is also the only EU agreement that takes a “negative list” approach to services liberalization – trade in services is open except for areas or regulations specifically listed in the agreement. This provides a good if basic framework for the EU and the UK to seek to keep goods and services trade as open as possible.

The UK Trade Bill currently before the House of Lords seeks to ensure a smooth transition in UK laws of the trade obligations incurred by the UK under EU trade agreements, including the CETA. At the same time, the EU is committed to facilitate “rolling over” these agreements to the UK during the transition period to the end of 2020.

CETA is high on the list of agreements that can be “rolled over” that way. Of course, Canada would have to agree to the specifics of transitioning the CETA effectively to two separate parties, the UK and the EU, and this means the three parties would have to agree on such matters as dividing up quotas allocated to Canadian products under CETA among themselves.

And so Canada’s attitude is crucial here. While certain Canadian sectors could conceivably gain competitive advantages from new trade barriers between the UK and the EU, as explained [here](#): potential short-term negotiating advantages stemming from the breakup should take the back seat to the broader, longer-term considerations of minimizing potentially much costlier economic disruption in Europe.

Indeed, although it could seek to press whatever advantage it has from the fact that the EU’s partners would have to roll over existing trade agreements with the EU to the UK, a more far-sighted agenda would see Canada seek to keep the CETA as whole as possible. In my view, this means seeking to turn it into a trilateral Canada-EU-UK free trade agreement.

Thus, a “Canada-style” solution could involve (in addition to an agreement on Northern Ireland as evoked in yesterday’s memo) could include the following elements:

- CETA would continue to apply as is between the EU, Canada and the UK, minus its controversial investor-state dispute settlement mechanism until all agree to it. It would become a tripartite free trade agreement. This would require some apportionment of EU quotas to the UK, etc. but the basic framework would remain in place.
- Regarding services, however, the EU and the UK would build their own bilateral negative lists over time, as necessary, with the CETA list only used as a backstop between them. Essentially, the UK-EU negative list would start as a blank slate (the current situation), which they would agree to populate (erect barriers) as needed, either if the UK imposes new restrictions to the cross-border delivery of services (in which case the EU could impose restrictions of equivalent effect), or when divergent UK regulations begin creating new risks for EU users of these services that would call for EU restrictions.
- Similarly, regulation applying to goods would be deemed compatible – until changes in the UK or the EU make them not so. Only when such changes happen and unfettered trade is deemed to pose an undue, demonstrable, risk to the population of one of the parties, could new barriers be imposed.
- To make the above work, a system of mutual notification of changes to rules and standards affecting goods and services could be instituted, similar to that of the new USMCA, plus technical panels through which reasons claimed by either party for re-imposing inspection or other barriers could be challenged.
- The UK and the EU could rely on trusted traveler and trusted shippers programs, as is the case between Canada and the US, with expedited visas for temporary business travelers, electronic monitoring of locked containers, as well as on new means (such as machine learning) of spotting illegal or risky activity.

As businesses and governments plan for various scenarios, they should both make plans for and support the possibility of a compromise, such as the one above, that could help secure as least- costly a Brexit as possible, for both the UK and the EU, and hence help preserve the value of Canada’s investments in and trade with Europe.

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