

UK-Canada trade negotiations

**Submission to the Department of
International Trade**

July 2021

Introduction

The TUC exists to make the working world a better place for everyone. We bring together more than 5.5 million working people who make up our 48 member unions.

The TUC welcomes the opportunity to respond to the Department of International Trade's consultation on the UK's trade negotiations with Canada.¹

The TUC believes trade agreements must promote decent jobs and enforce protections for workers' and human rights, public services and democratic decision making. In order to achieve these goals it is crucial for trade unions to be involved in trade negotiations. The TUC regrets that trade unions were not consulted on the UK's Trade Continuity Agreement with Canada before it was finalised in December 2020. Consequently, the agreement contained the same threats to workers, public services and democratic decision that were contained in the EU-Canada agreement (CETA) it was based on. These are detailed below.

These concerns are shared by trade union centres in Canada with whom the TUC works closely.

The TUC and Canadian unions call on our governments to involve trade unions in the negotiation of any new trade agreement between the UK and Canada to address these concerns.

In our response to the consultation, the TUC will respond to questions most appropriate for us to answer.

Response to consultation questions

1. Are you / your business / your organisation aware of the Trade Continuity Agreement that came into effect between the UK and Canada in January this year?

Yes

2. Thinking about potential future trade negotiations between the UK and Canada, which of the following trade-related areas best describe the provisions of the current trading relationship that the UK government should aim to keep the same?

The TUC believes it is important for the tariff-free access negotiated by the UK-Canada Trade and Cooperation Agreement (TCA) to continue. In its negotiations over a potential free trade agreement the government should ensure that all levers of industrial policy remain open, including the potential use of tariffs to protect important industries in the UK from potentially increased imports.

3. Which of the following best describe the areas of the current UK-Canada trading relationship that the UK government should consider changing or improving during future negotiations?

¹ Department of International Trade (2021) 'Call for input - trade negotiations with Canada', available online at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/986975/canada-mexico-consult-canada-questions.pdf

The TUC believes the below areas in the UK-Canada Trade and Cooperation Agreement (TCA) must be changed in order to address threats to workers' rights, public services and democratic decision making.

Labour standards and gender equality

The TUC is concerned that the UK-Canada TCA, like CETA, does not contain a mechanism to effectively enforce its labour standards commitments. The Sustainable Development chapter of the agreement contains commitments to International Labour Organisation (ILO) standards. However unlike the rest of the agreement, these commitments are not subject to a Dispute Settlement mechanism – this means that no penalties can be awarded against a party to the agreement found to be breaching ILO standards. This means the agreement is also ineffective at promoting gender equality, as the agreement cannot be used to penalise governments that are failing to address gender discrimination.

The TUC believes that the Joint Interpretative Instrument for the UK-Canada TCA compels the government to address these shortcomings as it states that the government is 'committed to initiating an early review of [commitments related to trade and sustainable development, trade and labour and trade and environment], including with a view to the effective enforceability of CETA provisions on trade and labour and trade and the environment.'

The TUC calls on the government to engage with trade unions to ensure ILO commitments can be effectively enforced in any UK-Canada trade agreement. Trade unions must be able to trigger investigations when abuses of labour standards occur and there must be the possibility for sanctions to be imposed against companies as well as countries found to be abusing labour standards – as is now possible in the US-Mexico-Canada trade agreement.

Migrant workers

The TUC is concerned that the UK-Canada TCA replicates CETA's chapter on the temporary movement of natural persons for business purposes which contains no commitments to ensure these workers can claim fundamental rights at work.

The TUC calls on the government to ensure mobility provisions in any UK-Canada trade deal enable migrant workers to be able to claim the rights enshrined in core International Labour Organisation (ILO) standards which does not allow unfair encroachment in the domestic labour market or the undermining of collective agreements operating in the sector where they work.

Regulatory Cooperation

The TUC is concerned that the UK-Canada TCA incorporates the Regulatory Cooperation chapter of CETA which commits parties to 'eliminate unnecessary barriers to trade and investment'. The UK and Canadian governments have stated that through the agreement 'differences in regulatory approaches between the Parties will be reduced over time, resulting in fewer barriers to trade when regulations are implemented'.² The agreement also

² UK and Canada government (2020) Canada-UK Trade and Cooperation Agreement summary, available online at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cuktca-accru/summary-resume.aspx?lang=eng>

establishes a Regulatory Cooperation Forum and number of committees to eliminate regulatory barriers to trade. The TUC is concerned these groups will not be run transparently, will be dominated by industry representatives and used to push for regulatory protections for workers and the environment, including those applicable to the logistics supply chain, to be reduced. Regulatory cooperation provisions in the North America Free Trade Agreement were used to prevent the Canadian government from introducing safety regulations needed to stop harmful chemicals leaking from train containers.³

The TUC calls on the government to exclude regulatory cooperation commitments from any UK-Canada agreement and to pursue effective enforcement provisions for workers' rights, as discussed above.

Digital services and movement of data

The TUC is concerned that the UK-Canada TCA incorporates the Trust and Confidence in Electronic Commerce chapter of CETA which commits the government to 'clarity, transparency and predictability in their domestic regulatory frameworks in facilitating, to the maximum extent possible, the development of electronic commerce.' The TUC is concerned these rules may be used by multinational companies to challenge regulation that protects personal data from abuse or being used for commercial purposes – particularly personal data in public services databases. The TUC is also concerned this chapter could prevent the government being able to compel companies to make source code public or to share source code with union members – this is crucial to prevent discrimination.

The TUC calls on the government to remove data liberalisation rules from any UK-Canada agreement and ensure protections for personal data and ensure the government is able to compel companies to share source code.

This would be in line with the recommendation by the House of Commons International Trade select committee in its June report⁴ that the government addresses the practical risk of UK citizens' data being passed onto third countries without sufficient safeguards in its published assessments of the impact on the UK's data protection regime for future agreed trade agreements.

Investment

The TUC is concerned that the UK-Canada TCA contains the Investment Court System which would allow foreign investors to sue the government for actions that threaten their profits. This fundamentally undermines democratic decision making and threatens workers as well as public services as similar court systems in trade agreements have been used in the past to sue governments for renationalising health services and increasing the minimum wage.

The TUC notes that the Investment Court System is not currently applied as the TCA commits both parties to conduct a review of the investor-state dispute settlement

³ Canadian Centre for Policy Alternatives and PowerShift (2019) 'International regulatory cooperation and the public good', available online at: https://www.tni.org/files/publication-downloads/international_regulatory_cooperation-web.pdf

⁴ <https://committees.parliament.uk/publications/6451/documents/70389/default/>

provisions in the agreement for up to three years. The TUC calls on the government to use this review to disapply the Investment Court System from the UK-Canada TCA and any future UK-Canada trade agreement.

Public services

The TUC is concerned that the UK-Canada TCA takes a negative list approach towards service listing which means part-privatised services that are not exempted will be locked into liberalisation commitments by the agreement. This would mean the government could be challenged by the Canadian government for attempts to renationalise or regulate these services.

As noted above, if the Investment Court System is included in the agreement, foreign investors could also sue the government for attempts to renationalise public services or run them in a way which threatens company profits.

The TUC calls on the government to ensure any UK-Canada trade deal takes a positive list approach to completely exempt all public services.

Public Procurement

The TUC is concerned that the public procurement provisions in the UK-Canada TCA do not require respect for social and labour standards as a criteria for winning a public contract. The TUC believes any UK-Canada trade deal should require public contracts to only be awarded to those who show respect for key social criteria such as collective bargaining, high standards of workers' rights and support skills development.