

Canada-Ukraine FTA modernization: Summary of negotiated outcomes

April 2023

The Canada-Ukraine Free Trade Agreement (CUFTA) entered into force on August 1, 2017. The 2017 CUFTA is a comprehensive free trade agreement (FTA) from a trade in goods perspective but does not include chapters on investment, cross-border trade in services, or a number of other areas found in other more comprehensive Canadian FTAs.

On January 27, 2022, Canada's Minister of International Trade, Export Promotion, Small Business and Economic Development Mary Ng, and Ukraine's First Deputy Prime Minister and Minister of Economy Yulia Svyrydenko, announced the launch of modernization negotiations.

On April 11, 2023, Canada's Prime Minister Justin Trudeau and Ukraine's Prime Minister Denys Shmyhal, signed a Joint Declaration confirming the conclusion of substantive negotiations to modernize the CUFTA. The new agreement will build on the strong Canada-Ukraine bilateral relationship, and advance fair, inclusive and transparent trade with Ukraine while contributing to long-term security, stability, and broad-based economic development in Ukraine.

The modernized CUFTA will maintain the terms of market access for goods from the 2017 Agreement, and has been updated to include new and upgraded chapters, including on: investment, cross-border trade in services, temporary entry for business persons, financial services, digital trade, rules of origin cumulation with common FTA partners, trade and gender and, for the first time, a chapter on trade and Indigenous Peoples.

New chapters

Cross-border trade in services

Canada and Ukraine have negotiated a modern and comprehensive chapter on cross-border trade in services, including substantive obligations consistent with Canada's existing trade agreements. This FTA chapter provides market access, non-discriminatory treatment,

transparency, and predictability for both Canadian and Ukrainian service suppliers.

Development and administration of measures

The development and administration of measures chapter provides certainty and predictability for services providers and investors by ensuring that licensing and qualification requirements and procedures are objective, transparent, fair and timely.

Investment

The CUFTA investment chapter modernizes the framework of protections for investors and their investments. The chapter contains a comprehensive set of obligations in line with Canada's most ambitious trade agreements. Importantly, the new chapter features modern drafting ensuring that the Parties maintain their right to regulate, and required policy flexibility in key areas such as environment, health, safety, Indigenous rights, gender equality and cultural diversity. Finally, the new chapter also includes a modern dispute-settlement mechanism with, among other important updates, strengthened alternatives to avoid arbitration as well as enhanced transparency of proceedings commitments. Overall, this outcome represents a significant upgrade from the 1994 Canada-Ukraine FIPA that the investment chapter will replace.

Services and investment non-conforming measures

Canada and Ukraine negotiated a modern negative list of non-conforming measures (NCMs) for cross-border trade in services (CBTS) and investment. This negative list of NCMs reflects both Parties' regimes for CBTS and investment, providing transparency and predictability, for both Canadian and Ukrainian service suppliers and investors.

Temporary entry for business persons

The modernized CUFTA includes a new, dedicated chapter on temporary entry that aims to support economic opportunities for Canadians, including Permanent Residents, through facilitating temporary entry and labour mobility for certain categories of business persons. The temporary entry provisions remove barriers encountered at the border, such as economic needs tests or numerical quotas, and provide new and

reciprocal market access commitments covering four categories of business persons: Business Visitors, Investors, Intra-Corporate Transferees, and Professionals. Commitments are also included for accompanying spouses of Investors, Intra-Corporate Transferees, and Professionals. This ensures accompanying spouses are also granted temporary entry and have the ability to work.

As in Canada's other FTAs, the temporary entry provisions do not deal with permanent employment, citizenship, residency, or any visa requirements. Canada also maintains its flexibility to take measures to protect health, safety and national security. To maintain the integrity of the domestic labour market, the Temporary Entry chapter also includes wage, education and experience requirements. Foreign business persons must meet these requirements to be eligible to enter Canada under the modernized CUFTA.

Telecommunications

Canada and Ukraine have negotiated a new telecommunications chapter that includes commitments that will provide enhanced regulatory certainty for telecommunications service suppliers when operating or investing. This chapter consists of obligations regarding the access to and use of telecommunications services, and ensures that service suppliers will be treated in a fair and objective manner when providing telecommunications services into Canadian and Ukrainian telecommunications markets. The chapter does not apply to broadcasting services, except to ensure that broadcasters will have access to and use of telecommunications services.

Financial services

Canada and Ukraine negotiated a comprehensive and progressive stand-alone financial services chapter as part of the CUFTA modernization. The chapter will provide a level-playing field between Canada and Ukraine through a framework of general rules tailored to the unique nature of the financial sector. This includes core obligations such as market access, national treatment and most-favoured nation treatment, and new commitments on electronic payments and processing of applications. The chapter also includes a robust prudential exception, ensuring the ability of financial sector regulators to take measures to preserve the integrity and stability of the financial system. Finally, in light of the illegal Russian

invasion, Canada has agreed to provide Ukraine with a 10-year period to transition from its existing GATS commitments to the proposed commitments of the modernized financial services chapter.

Trade and gender

The trade and gender chapter aims to promote gender equality, remove barriers to trade for women in all their diversity, and facilitate their access to the benefits and opportunities of the CUFTA. The chapter includes: an article on non-derogation committing Parties to enforce and not weaken their domestic laws and protections afforded to women in order to attract trade and investment; a commitment to undertake cooperation activities focused on achieving the objectives of the chapter; and, the establishment of a Committee to facilitate the chapter's implementation. Parties agreed that the FTA's dispute settlement mechanism may apply.

Trade and SMEs

The chapter on small and medium-sized enterprises (SMEs) recognizes the importance of SMEs to both economies and commits the Parties to work together to remove barriers so that SMEs may be better placed to participate in and benefit from international trade and investment. The chapter also includes commitments on information sharing, including a requirement to make relevant trade-related information available through a digital medium, undertake joint cooperation activities, and establish a Committee to oversee the chapter's implementation.

Trade and Indigenous Peoples

The trade and Indigenous Peoples chapter is the first such chapter for Canada or Ukraine in a concluded FTA. The chapter is economic-focused and cooperation-based, and establishes a bilateral committee to facilitate cooperation activities to remove barriers and challenges that Indigenous Peoples face when participating in trade. It also includes a commitment to enforce and not weaken domestic laws and protections on Indigenous Peoples' rights in order to attract trade and investment, and encourages responsible business conduct. The Parties also reaffirm the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Good regulatory practices

To achieve good regulatory outcomes, governments should follow good regulatory practices, which foster openness, transparency, and evidence-based decision-making. Countries that adhere to good regulatory practices can have confidence in one another's regulatory systems, which can in turn facilitate trade. The modernized CUFTA includes a new chapter on good regulatory practices to further the goal of working together to ensure transparent and predictable regulatory systems that foster stronger trade relations and protect citizens, while maintaining the ability of both partners to adopt and apply their own laws and regulations that regulate economic activity in the public interest.

Updates to existing chapters

Rules of origin and origin procedures (Activation of Article 3.3)

In modernizing the agreement, Canada and Ukraine also activated article 3.3 (Cumulation of Origin) of the CUFTA. This means that materials of any non-Party with which both Canada and Ukraine have FTAs (the European Free Trade Association countries, the European Union, Israel, and the United Kingdom) can be taken into consideration by the exporter when determining whether a product produced in Ukraine or Canada qualifies as originating under the CUFTA.

The rules of origin and origin procedure chapter has also been amended to include the procedures needed to administer the rule of origin to allow for the cumulation of materials from these common free trade partners. This includes an amendment to the Origin Declaration set out in Annex 3-B of the CUFTA to allow an exporter to indicate that materials from a common free trade agreement partner were used in the production of the product.

Digital trade

The new digital trade chapter includes updated language previously contained within the CUFTA E-commerce chapter, which ensures that customs duties will not be applied to digital products transmitted electronically. The chapter further expands upon the previous chapter and includes, among others, commitments relating to cross-border data flows, data localization, source code disclosure, open government data, and

personal data protection. Overall, the chapter aims to improve regulatory certainty for businesses seeking to engage in the digital economy in both markets, as well as those specifically looking to engage in cross-border digital trade between Canada and Ukraine.

Competition policy

The modernised CUFTA features an updated standalone competition policy chapter. This chapter furthers both Parties' objectives for a fair, transparent, predictable, and competitive business environment. The chapter introduces enhanced obligations for procedural fairness to ensure competition authorities maintain transparent procedures around how competition investigations and enforcement proceedings are conducted, and to guarantee the rights of defendants during proceedings. It also includes new obligations for the identification and protection of confidential information in the possession of a competition authority. Finally, the chapter supports cooperation between the competition authorities of Canada and Ukraine.

Designated monopolies and state enterprises

The chapter substantively replicates the monopolies and state-owned enterprises provisions from the original CUFTA, but as a standalone chapter. It has modernized language, including important definitions for state-owned enterprises and designated monopolies. The new chapter also includes updated commitments on transparency and technical cooperation, as well as a threshold calculation for determining entities excluded from its scope.

Government procurement

The modernized CUFTA government procurement chapter builds upon existing obligations of the WTO Agreement on Government Procurement. The chapter includes a new article clarifying that Parties may take into account environmental, socio-economic, or labour-related considerations in the procurement process, provided they are non-discriminatory and do not constitute an unnecessary obstacle to international trade. The chapter also includes a new article on ensuring integrity in procurement processes (e.g. ensuring that criminal or administrative measures exist to address corruption in government procurement). In order to facilitate greater participation by Canadian and Ukrainian SMEs in government

procurement, the chapter also includes a new article on SMEs. Finally, a new article on cooperation has been agreed, whereby the Parties can exchange information and share best practices in areas such as sustainable procurement practices and streamlining procurement processes.

Environment

The modernized CUFTA builds on existing environment provisions with a new comprehensive environment chapter, which is subject to dispute settlement and aims to level the playing field by ensuring parties do not lower their levels of environmental protection to attract trade or investment. For the first time in a Canadian free trade agreement, the environment chapter includes provisions recognizing the importance of mutually supportive trade and climate change policies, including through market-based approaches and trade-related climate measures to achieve green growth objectives. The modernized chapter also introduces new articles to address global environmental challenges, including on plastic pollution and waste, biological diversity, air quality, chemicals management, the ozone layer, and ship pollution, as well as commitments on sustainable fisheries, forest management and agriculture and the promotion of environmental goods and services and a circular economy. To support effective implementation the Parties have also committed to working together to address environmental challenges.

Labour

The modernized CUFTA includes an updated, comprehensive labour chapter, fully subject to the dispute settlement provisions of the Agreement, which aims to improve labour standards and working conditions in the two countries by building on international labour principles and rights. Other key features of the updated labour chapter include: a non-derogation provision that prohibits parties to weaken or reduce the protections afforded in their respective labour laws; an import prohibition on goods made in whole or in part with forced labour; a commitment to the content of all core International Labour Organization conventions; and, a stand-alone article on violence against workers. The upgraded chapter also contains a broader definition of labour laws and an extensive article on fair and balanced labour laws, which specifies particular grey zone situations that may undermine the rights to freedom of association and collective bargaining.

Transparency, anti-corruption and responsible business conduct

The transparency, anti-corruption and responsible business conduct chapter includes updated provisions previously contained in the transparency chapter of the 2017 Agreement. This includes new commitments on publications of regulations (Section B), and in promoting integrity among public officials, participation of private sector and society, and application/enforceability of anti-corruption laws (Section C). Canada and Ukraine have also added a new section (Section D) to recognize the importance of responsible business conduct, and encourage enterprises to adopt internationally recognized standards, guidelines, and principles for responsible business conduct and corporate social responsibility.