

Trade, Intellectual Property and Innovation: Policy Implications for the Canada-UK Relationship after Brexit

About the project

Both Canada and the United Kingdom (UK) are determined to promote innovation-driven growth and have recently ratified trade agreements that encompass a broad Intellectual Property (IP) protection rules. These include the Canada and European Union Comprehensive Economic and Trade Agreement (CETA), the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and the United States-Mexico-Canada Agreement (USMCA). Economic evidence shows that the changes in the Intellectual Property Rights (IPR) have a direct impact on trade volumes and their composition.

In this knowledge synthesis report, we describe the nature of the IP protections implemented through recent trade deals involving Canada or the UK, and provide a broad analysis of the impacts of Intellectual Property Rights (IPR) on trade. We discuss the rationale for international coordination of the IPR policy and review the nature and the scope of IPR clauses in the recent mega-regional trade deals focusing on CETA, CPTPP and USMCA. We stress the relevance of the new IP clauses for the current British and Canadian IP regimes. Importantly, we discuss IP areas that will be affected by Brexit (e.g., exhaustion of IP rights). Finally, we provide a focused literature review of the effects of the IPR on trade patterns. We discuss the evidence and impact of IPR strengthening on trade volumes and their composition, cross-sectoral differences, and technology diffusion and innovation. When possible, we relate those findings to the UK and Canadian context.

Key findings

- Stronger IPR in destination countries benefit exports and encourage expansion of the extensive margin of trade, such as the exports of new product varieties, particularly from IP-sensitive industries and sectors. The impact of IPR strengthening could be non-uniform, even within the IP-sensitive industries; for example, due to the within-industry composition of firms, their concentration and market power, or firms' product mix.
- The absorptive capacities of a given country—such as high levels of economic development, sufficient education and substantive economic freedom— influence the scale of benefits from stronger IPR. The positive impact of stronger IPR on innovation is often conditional on the initial innovative activity levels or on the supply of a skilled workforce. A country with a sufficient scale of innovation-intensive industries is able to benefit more from stronger IPR. However, the international competitiveness of domestic firms could also be affected by the costs of IP protection within a national legal framework.
- Stronger IPRs enable technology transfer, particularly in IP-sensitive industries. However, there is an optimal IP protection level beyond which domestic innovation may be discouraged.
- The scope of IP policy is very broad, ranging from patents and trademarks to geographical indicators. This is further complicated by the co-existence of the areas controlled by the multilateral rules and a 'Most Favoured Nation' clause, and the areas within the national jurisdiction, such as exhaustion policy. Whereas the multilateral IPR reforms, as triggered by trade agreements, have attracted a fair amount of academic attention, the role of the national policy has been relatively under-researched. Both

academics and policy-makers would benefit from more evidence on the importance of national IP policy and its intersection with the multilaterally regulated IPR.

- Brexit and the potential departure of the UK from the European Economic Area (EEA) illustrate the importance of per nation patent exhaustion policies. If the UK leaves the EEA, the shaping of the patent exhaustion policy would be within the remit of the UK government, with potentially large implications for the pricing decisions of innovative firms.
- In many advanced economies the stock of intangible investment has exceeded the stock of tangible investment. Outlines of both Canadian and UK industrial strategies recognize the role of intangible assets as the key driver of innovation and productivity growth. To constructively discuss the implementation of those strategies, more evidence is needed of the importance of IPR for the intangible investment, such as on the complementarities between the different forms of IP protection.
- Both Canada and the UK rely on well-developed regional and international supply chains. However, the role of IPR strength on the firms' sourcing decisions is under-researched. More studies based on the firm-level or industry-level data would help take stock of the last decade's rapid Global Value Chains expansion and IPR reforms across the world. ■

Policy implications

- Economic evidence highlights the role of absorptive capacities of a given country in influencing the scale of benefits from stronger IPR. It is crucial for both Canada and the UK to aim at creating and maintaining a favourable climate for innovation to maximize the benefits from their relatively strong IP regimes.
- The international competitiveness of domestic firms depends on the national costs of IP protection. Both Canada and the UK could consider revisiting some of its regulatory processes that pose barriers to innovation. Under the principles of national treatment and a Most Favoured Nation clause, Canada and the UK

cannot grant to domestic IP a more favourable treatment than that applied to foreign IP. Nevertheless, the reductions in IP costs could be achieved through carefully designed tax credits or grants systems.

- The use of national IP policy, both in Canada and in the UK, is limited by international IP systems and IP-related international trade agreements. However, the governments are allowed to apply some discretion in establishing national IPR policy, such as by taking advantage of the flexibilities allowed under the World Trade Organization rules. While respecting the limits, both countries could explore these possibilities to serve the best interests of the national stakeholders.
- After leaving the EU, the UK will be free to decide on its patent exhaustion policy. It may choose to apply exhaustion in the UK only, in the UK and the EEA, or internationally. Each of these choices could have important implications for production and pricing decisions of domestic and foreign firms, and for the innovative efforts in the UK. ■

FURTHER INFORMATION

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