

# Guest Editorial

## **The Comprehensive Economic and Trade Agreement between Canada and the European Union**

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In May 2009, amidst a deep recession, officials from Canada and the European Union (EU) began talks on a free trade agreement. It was their third try in forty years. At the time, the EU was grappling with uncertainty in the areas of economic policy and budgetary discipline. There were serious concerns in Brussels regarding the performance of member economies, and there was mounting public scepticism regarding EU institutions and popular resentment toward the economic system as a whole. In Canada, markets were reeling from the rapid drop-off in trade with the United States. This was the unlikely context for the Canada-EU *Comprehensive Economic and Trade Agreement* (CETA), whose finalization comes as a salutary achievement. An agreement in principle was reached in October 2013, and in August 2014 the final negotiated text was delivered to authorities by the negotiators. It will enter into force after completion of the legal scrubbing exercise, translation into all EU languages, and ratification in Brussels and by national jurisdictions.

### 1 COMMON GROUND

The CETA brings closer a G7 member country and the EU, many of whose members are also members of the Organisation for Economic Co-operation and Development. Despite their vastly differing sizes, the parties to the CETA are alike in many ways, notably in the primacy they accord to the rule of law, with Civil Law and Common Law providing private law rules of general application throughout their territories. Both Canada and the EU are founded on principles of tolerance and openness; education is given pride of place in public policy, and sophisticated social safety nets are understood to be the responsibility of the state. Finally, Canada and the EU face similar challenges: an aging population, the

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importance of immigration, technological innovation, and intergenerational equity concerns in balancing budgets.

## 2 A MARKET DRIVEN AGREEMENT

The CETA rests upon a recognition of the role of markets in the world and in our respective economies. Its background is one of stated and implicit assumptions, notably that prosperity is achieved in an environment of expanding and open markets, fair competition, and transparency of state involvement in the economy.

It is therefore not surprising that when the agreement takes effect, some 98% (100% over seven years with exceptions for certain agricultural products) of Canada-EU tariff lines will be eliminated, rules of origin will be relaxed, and certifying products to standards that apply across the Atlantic will be a far less cumbersome exercise for manufacturers.

In addition to heightened transparency on border measures, the CETA will likely spur an increase in the movement of goods across the Atlantic. In fact, a study commissioned by Canada and the EU in 2008 anticipates that the treaty will lead to a 20% increase in bilateral trade.

In the services sector, the rules in place largely ensure that the needs of one party's markets can be met by providers from the other. By using a negative list approach, the CETA makes it easy to accommodate changes in the texture of the services economy over the long run, because only services excluded from the application of the treaty's disciplines of non discrimination are listed. This will provide for increased certainty in the areas of services as well as investment, even though the drafting technique does entail drawing up several hundred pages of annexes.

## 3 INVESTMENT PROVISIONS: ACHIEVING CERTAINTY WHILE PRECLUDING ABUSIVE CLAIMS

On investment, about 28% of known Canadian direct investment abroad is in the EU, while the EU accounts for approximately 24% of foreign direct investment in Canada. What is surprising is that the level of outgoing and incoming investment is roughly the same, at USD 181 billion versus USD 171 billion in 2012, signalling that there is a lot of room for expansion of EU investment in Canada.

During the CETA negotiations, there was an interest in providing a greater degree of certainty to those prepared to inject capital in ventures across the Atlantic. There was concern to ensure that in the unlikely event of an investor being made subject to a measure that is tantamount to expropriation without compensation, the investor will have access to a direct process for seeking a

remedy, and this was done. However, to preclude frivolous claims, the CETA investor-state dispute settlement provisions were made narrower, less favourable to business concerns, and more transparent than those found in other bilateral investment treaties, including Chapter XI of the North American Free Trade Agreement.

#### 4 MOVEMENT OF PERSONS

In order to facilitate the free movement of capital as well as the delivery of services in each other's markets, it was clear to negotiators from both parties to the CETA negotiations that temporary entry of foreign workers needed to be addressed and it is allowing for greater flexibility than at present. Significantly, mutual recognition agreements between professional and trade organizations will be facilitated through the establishment of a common platform at the EU level that leaves room for initiative by these often independent bodies. This should foster cooperation among organizations as they acknowledge their mutual interest in increased labour mobility across the Atlantic.

#### 5 A BALANCED APPROACH ON OFFENSIVE INTERESTS

Considering that the EU is home to 500 million consumers and generates annual economic activity in the order of USD 17 trillion, it is rather obvious that Canada's number one offensive priority in the CETA negotiations was access to markets. In fact, the value of EU imports in a given year exceeds Canada's entire gross domestic product! From the EU perspective, the jewel in the crown was access to public procurement at the national and sub national levels, while protection of intellectual property in its various forms was also a leading priority.

As in all negotiations, the offensive interests of each side had to yield to some degree to the defensive interests of the other. The resulting agreement gave way to a balanced outcome among entities that differ vastly in size, with some restrictions on agricultural products, a very broad opening of public markets, and innovative approaches in product certification, mobility of persons, and protection of investment. This will increase the movement of people, goods, and capital between Canada and EU. In addition, the agreement contains undertakings on matters not traditionally addressed in trade agreements: science, technology, research and innovation cooperation; a raw materials dialogue; biotechnology cooperation; and a forest products dialogue. The parties also commit to cooperate on technical barriers to trade, sustainable development, the environment, and labour.

## 6 A STRATEGIC PARTNERSHIP AGREEMENT

In parallel with the CETA, Canada and the EU have entered into a Strategic Partnership Agreement (SPA) intended to frame political relations between the parties.

By way of background, in 1976, the European Economic Community and Canada entered into a commercial and economic framework agreement. At the outset of the CETA negotiations, the EU sought to negotiate a new agreement that would take into account changes in the EU's institutional structure resulting from the 2009 Lisbon Treaty.

The SPA is a cooperation agreement which contemplates high level dialogue on various topics including human rights, sustainable development and security related subjects, and cooperation on tax matters. It is a standalone agreement.

## 7 NEXT STEPS

Looking forward, there remain several steps in the process of readying the agreement for ratification. The first involves a thorough 'legal scrub'. This means that legal specialists in treaty drafting – who have been kept at arm's length all these years in order to allow negotiations to move forward (!) – will finally be given the job of working over the text of the treaty to ensure use of appropriate and consistent terminology. Next, the agreement will be translated and made available in all the official languages of the EU (twenty-three languages) and Canada (two languages). Then comes the process of ratification.

It is now time for political actors to complete the major process which they initiated some five years ago. In Canada, provinces will be asked to signify their agreement to the treaty terms and Parliament will proceed to a vote. In the EU, the European Council must approve the agreement and then submit it to a vote by the European Parliament. At this time, it not known whether member states will hold similar votes and whether the European institutions will declare provisional implementation of the agreement in the interim. One hopes that the process of ratification will be expeditious and efficient.

Once the agreement takes effect, Canada will have consolidated its position as a partner of the world's largest trading block. As for the EU, the conclusion of the CETA marks a major precedent that is already influencing its trade talks with the United States of America and Japan.