



**DIRECTORATE-GENERAL FOR EXTERNAL POLICIES  
POLICY DEPARTMENT**



**WORKSHOP**

**EU - CANADA  
COMPREHENSIVE  
ECONOMIC AND  
TRADE AGREEMENT**

**INTA**



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

**DIRECTORATE B**

POLICY DEPARTMENT

WORKSHOP

**EU - CANADA COMPREHENSIVE ECONOMIC AND TRADE  
AGREEMENT**

This workshop was requested by the European Parliament's Committee on International Trade.

### **AUTHORS:**

Dr Robert DOVER, Function, DOVER AND JONES LTD, UNITED KINGDOM  
Ramesh CHAITOO, Researcher, UNIVERSITY OF GHENT, BELGIUM  
Kurt HUEBNER, Professor, UNIVERSITY OF BRITISH COLUMBIA, CANADA

### **ADMINISTRATOR RESPONSIBLE:**

Elfriede BIERBRAUER, Roberto BENDINI  
Directorate-General for External Policies of the Union  
Policy Department  
WIB 06 M 055  
rue Wiertz 60  
B-1047 Brussels

Editorial Assistant: Györgyi MÁCSAI

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### **ABOUT THE EDITOR**

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# WORKSHOP

Policy Department, DG EXPO  
for the Committee on International Trade (INTA)  
Wednesday, 10.10.2012  
PAUL-HENRI SPAAK BUILDING  
10.00-12.30 ROOM: P4B001

# EU - Canada Comprehensive Economic and Trade Agreement

**Chairman:**  
**Vital Moreira**

**Contacts and registration: [poldep-expo@ep.europa.eu](mailto:poldep-expo@ep.europa.eu)**



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## PROGRAMME OF THE WORKSHOP

### DIRECTORATE GENERAL FOR EXTERNAL POLICIES

Policy Department and Committee on International Trade



#### Round Table

#### EU - Canada Economic Relations

#### Comprehensive Economic and Trade Agreement (CETA)

Brussels

Paul-Henri Spaak Building

Room P4B 001

Wednesday, **10 October 2012**

10.00-12.30 h

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#### PROGRAMME

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- 10.00 **Welcome and introduction to the workshop by**  
**INTA Chairman Professor Vital MOREIRA**
- 10.15 Practitioner panel: **A reflection on the political and economic importance of CETA: Does it 'path-find' for trade and investment agreements amongst advanced economies?**
- Speakers:* **Mr Philipp DUPUIS**, European Commission, DG Trade  
**H.E. Mr David H. PLUNKETT**, Ambassador of Canada to the European Union
- 10.55 Scholar Panel: **A WINNING SECTORAL APPROACH TO EU-Canada COMMERCIAL RELATIONS**
- What synergies are there from the elimination of tariffs and closer cooperation on non-tariff issues?
- What will be the implications in the various sectors of opening up markets further to inward investment, the service sector, and public procurement?
- Speakers:* **Professor Kurt HUEBNER**, University of British Columbia  
**Mr. Ramesh CHAITOO**, University of Ghent
- 11.35 Presentations will be followed by a **Questions & Answers session**
- 12.15 Final remarks by **MEP Peter ŠŤASTNÝ**, INTA committee, Standing Rapporteur
- 12.20 Closure of the workshop by INTA Chairman **Prof. Vital MOREIRA**

## **BIOGRAPHICAL SUMMARIES OF THE SPEAKERS**

### **DIRECTORATE GENERAL FOR EXTERNAL POLICIES**

Policy Department and Committee on International Trade



### **WORKSHOP**

### **EU - CANADA COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT**

Brussels - Paul-Henri Spaak building, Room P4B001

**Wednesday, 10 October 2012 (10.00-12.30)**

#### **Biographical summaries of the speakers**

#### **Professor Kurt HÜBNER**

Kurt Hübner is professor of European Studies and the Jean Monnet Chair at the Institute for European Studies at University of British Columbia. Central to Hübner's research are topics of global and European currency regimes, international regimes of foreign direct investment, and the relations between innovation and sustainability.

His latest research focuses on the economic and socio-political foundations of technical innovations in a transatlantic perspective.

He is working on projected funded by the German Ministry of Economics and Technology titled: 'Canada and Germany/EU as Global Economic Policy Actors' and he is also working on a project on currency competition and currency co-operation, which analyses the relations between the US Dollar, the Euro and the Japanese Yen. His most recent book was titled: "Europe, Canada and the Comprehensive Economic and Trade Agreement", which was published by Routledge in 2011.

#### **Mr Ramesh CHAITOO**

Ramesh Chaitoo is an International Trade Policy and Negotiations expert who specializes in services and investment issues. He has provided trade-related technical assistance to numerous governments and private sector agencies.

From 2003-09 he was the Head of the Services Trade Unit at the Caribbean Regional Negotiating Machinery (CRNM) and researched and analyzed bilateral, regional and multilateral trade policy issues and advised Caribbean governments on negotiating strategies. Responsible for services and investment negotiations in the Economic Partnership Agreement (EPA) between CARIFORUM and the European Union that was signed in October 2008. Previously Senior Associate at Carleton University's Centre for Trade Policy and Law (CTPL) in Ottawa, Canada.

He has been a consultant to various multilateral and regional agencies and national governments. He participates in numerous conferences and seminars on trade and development issues and has published various articles on trade agreements and practitioner perspectives negotiating.

Chaitoo is a graduate of Carleton University, the University of Cambridge, and University of the West Indies.

He is currently working as a researcher at the University of Ghent in Belgium.

## **PART I: SUMMARY OF THE WORKSHOP -by Dr Robert Dover**

This workshop emphasized the importance of the Comprehensive Economic and Trade Agreement (CETA) to EU-Canada trade (and political) relations, but also as an emblem of the ambition and form of future trade agreements with important trading states and blocs, including the United States. One of the MEPs argued, in the third section of the workshop, that given the perceived failure of the Doha process that such trade agreements would become the new norm. The Canadian Ambassador, Mr Plunkett, described it as the most complex negotiation since the 1992 NAFTA agreement and that the CETA strongly signals to the world the EU and Canada's commitment to anti-protectionism and the further opening of markets. Commissioner De Gucht and Chancellor Merkel were both quoted as strong supporters of CETA, having given public statements to the effect that the CETA is currently the largest opportunity for economic growth available to the EU and Canada respectively. The assessed potential is that the agreement might result in a 20% increase in trade flows, the equivalent to the creation of an additional 80,000 jobs. The purpose of this summary is to explain how that argument developed over the course of the morning. Rather than to report verbatim proceedings or to follow the agenda of the morning, the summary builds on a four-part thematic structure. The first part emphasizes the context and ambition for the CETA and why this is an important initiative for the EU and Canada now. The second looks at the issue areas that require further work. The third sets out the particular views of different sectorial interest groups. And the fourth concludes with a sense of the state of the current position and how the European Parliament is playing an important role in providing both the technical support and scrutiny and democratic legitimacy to this important comprehensive trade agreement between mature trading blocs.

### **1. THE CONTEXT AND AMBITION OF CETA**

The EU and Canada are important trading partners. As Europe seeks to recover from the economic crisis that continues to beset it, a comprehensive economic and trade agreement with Canada is seen by member governments and the Commission negotiators as a good way to harness the positive externalities of a strong trade relationship with a strong and prosperous third country.

Having weathered the economic storm far better than most in the developed world, Canada sits in a good position in relation to many economic fundamentals, such as its growth forecasts, its debt to GDP ratio, its cash reserves (and the reserves of its business community) and its banking sector.

The Canadian government is rightly proud of its positive growth figures of 2.8% in 2010/11 (in contrast to the negative growth figures that existed across much of Europe in the same period), and the OECD predicts further, slower, growth for Canada in 2012 of 1.9%, but still nowhere near the contractions in economic activity being experienced across important economies in Europe (Economist 6 October 2012, 51). Canada also has a debt to GDP ratio of 35%, which is half that of other G7 members. There are, however, some possible frictions looming within the Canadian economy, particularly related to a property boom currently underway as low interest rates have spurred consumers to take on heavier debt burdens. The Canadian government is, however, trying to encourage its cautious business community (whose cash reserves equate to some 30% of GDP) to invest to accelerate economic growth. CETA provides an opportunity for inward investment from European businesses, whilst providing Canadian businesses with further reasons to expend some of their reserve capital on new markets and new ventures.

Within the current set of negotiations, over 90% of tariff lines have been tackled by the negotiating teams, with only the most sensitive issues being left to the final stages of the process. Both Ambassador Plunkett and Commission negotiator Philipp Dupuis were keen to point out that the negotiations had

achieved far more than any other comparable set of negotiations in recent times, and they both hoped that the negotiations would lead into further advances in areas such as investment. One of the challenges listed by Mr Dupuis, in particular, when compared to trade negotiations with developing states, was that both the EU and Canada have well developed, robust and tested rules surrounding trade. Developing states are often willing, so it was said, to adopt the European norms and rules wholesale, whereas developed states (such as Canada) are very resistant to this kind of transfer of norms. The issue on which this has the greatest potential to cause protracted negotiations is on 'the rules of origin model', which determines the extent to which manufacture can occur outside of the EU or Canada and still be labelled as 'European' or 'Canadian': crucial to the operation of preferential trading arrangements. The extent to which such issues can be resolved through these negotiations serves as a test case for future comprehensive trade agreements by developed trading states and blocs.

Some of the commentators at the workshop made the claim that the CETA did not have public support. Opinion polling data contradicts this view, however. An IPSOS-Reid poll conducted in Canada, between 10th-16th September 2012 found that 81% of Canadians 'support' a free trade agreement between Canada and the European Union (with a division of 20% strongly agreeing and 61% somewhat agreeing with this proposition), whilst of the 19% said to be in opposition to the CETA, with only 5% stating they were strongly opposed (IPSOS Reid, 16 September 2012). There is a good deal of evidence therefore, from the political elites in the EU, its member governments and Canada, from business groups, and from polling data that measures to liberalise trade are welcomed by large cross section of stake-holding communities.

## **2. AREAS REQUIRING FURTHER DEVELOPMENT**

### **2.1 Rules of Origin**

This is the most problematic area in which to try and seek convergence between the EU and Canada. Under Canadian rules, for a product to be considered Canadian it merely has to have 40% of materials and manufacturing costs based in Canada, whereas the rule of 60% applies to the EU. The main area in which this issue poses a substantial problem for the EU is in the business of car manufacturing. To open European markets to Canadian car manufacturers for whom only 40% of the materials or manufacturing costs are indigenous to Canada (and thus 60%, to take a random example, might be found in Mexico) means that an essentially Mexican car (under the EU's normal rules) would end up benefitting from favourable terms. To put it another way, currently a car produced jointly by firms operating in Canada and Mexico on a 40:60 basis would be viewed as a Canadian car on one side of the Atlantic and a Mexican car on the European side. Thus, there was general agreement in the room that it would be difficult to accept Canadian items into the EU which did not have a higher percentage of its content and process identifiably based in Canada than would be the case under Canadian rules.

### **2.2 Dispute Mechanism**

One of the MEPs expressed his initial concerns about the proposed investor-to-state dispute mechanism in relation to the investment protection chapter within CETA. In contrast, Mr Dupuis argued that the critiques of these measures were being overplayed. He stated the common-sense position that the ability to bring a complaint through the resolution process does not naturally equate to the complaint being upheld – it merely allows the complaint to be heard and adjudicated, and that this would be a mechanism that fitted the negotiated outcome between the EU and Canada.<sup>1</sup> Mr Chaitoo

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<sup>1</sup> This view was also strongly supported by the representative of the European Services Forum.

noted that the presence of a dispute mechanism within the CETA also does not preclude those seeking redress from raising complaints through WTO mechanisms, for example, which he went on to assert have provided very large pay-outs for complaints they have upheld.

### **3. SECTORIAL INTEREST GROUPS**

#### **3.1 Public Procurement**

There was a strong point of disagreement between one of the experts – Mr Chaitoo – and the European Services Forum<sup>2</sup> regarding the prospects for growth in public procurement trade under the CETA. Whilst the European Services Forum said that they expected strong growth in the number of opportunities for their members in Canada, Mr Chaitoo was more pessimistic about the growth opportunities in this field due to the control of services by professional bodies; it was Chaitoo's view that the CETA would not impact on the public procurement of services, unless specific provision was made in the agreement to overcome these issues. By contrast, Ambassador Plunkett and Mr Dupuis argued that the provisions currently being negotiated over public procurement (and big procurement projects) were wide, unique, and offered a tangible example of the gains that should be made under the CETA. One of the MEPs who spoke was supportive of the efforts to open up public procurement, but wanted to ensure that all Canadian provinces would be subject to these provisions.

#### **3.2 Pharmaceutical industries**

Representatives from the pharmaceutical industries were present at the workshop. Whilst being covered by the common umbrella of 'big pharma' they demonstrated the diversity within their industry, which has to be captured either in the negotiation or in the implementation of the CETA. There were speakers from the Canadian generics industry (those manufacturers who cheaply mass-produce medicines which are out of patent protection), and from the EU's research intensive pharmaceutical industries who rely on restrictive patent periods to not only recoup the cost of their research and development but also to create sufficient surplus for profit and further research work. The representative from the Canadian generics industry was particularly concerned by two (linked) issues: 1) that the European regulatory system affords up to 15 years of patent protection (which is out of kilter with the Canadian average patent protection period of 12.4years, and the US average of 11years. The concern here was that if the negotiations settled on an adoption of the EU average the generics industry would be denied two and a half years of revenue from any particular manufactured medicine. Countering this claim, a Commission representative stated that the coverage of the patent did not equate to time on the market – there were many regulatory hurdles that prevented pharmaceutical companies bringing drugs to market quickly. 2) that the EU does not have a system of 'patent linkage', which means that a manufacturer can claim 24 months of patent protection without having to provide any evidence of originality, which again the representative from the Canadian generics industry feared would damage the Canadian pharmaceutical industry if adopted within the CETA. It is important to note that the opinion polling data compiled by IPSOS Reid in September 2012, showed that the support from CETA amongst the Canadian public dramatically dropped fifty points to 31%, with now 35% saying that they were strongly opposed, when the respondents were given the proposition that Canadian drug-pricing could potentially increase because of the CETA. Whilst these figures are stark, they merely demonstrate the sensitivity of the negotiations to certain sector-specific interests within the contracting parties. The representative of the European research intensive manufacturers said that his industry was

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<sup>2</sup> See, the European Services Forum website: <http://www.esf.be/> (accessed 22 October 2012).

sensitive to the need to reduce healthcare costs, particularly in this age of austerity, but that better health outcomes were served by advanced research into drugs technology.

### **3.3 Anti-globalisation NGOs, Business and Trade Union opinion**

It should be noted that there was representation from non-governmental organisations at the workshop. Those who spoke from civil society activist groups broadly held positions that were both opposed to the CETA and concerned – more generally – with free trade. This opposition to free market globalisation has manifested itself in this instance to concerns about the proposed EU-Canadian CETA, and in particular has clustered around three areas of concern: 1) the accusation that the negotiations are opaque, 2) the accusation that the negotiating parties are seeking to reactivate the rejected ACTA provisions through the CETA, and 3) that the CETA will have a particularly detrimental impact on the environment in Canada. The INTA Chairman, Professor Moreira, the Commission negotiator Philippe Dupuis, and the Canadian Ambassador Plunkett all replied to the accusations around transparency by pointing to the opportunities that had been afforded to all interested stake-holder parties to contribute to the policy process (including the workshop to which this report refers). Moreover, all international negotiations require a degree of trust between contracting parties which mitigates against an on-going public discourse about the state of the negotiation. Commission negotiator Dupuis rejected outright the accusation that the CETA was an attempt to bring ACTA back onto the legislative table, and his view was supported by Members such as Professor Moreira. The civil sanctions attached to the CETA concerning intellectual property were a matter for member governments, and whilst the Commission had recommended to member governments that these be removed they cannot compel them to do so.

The true weight of opposition presented by the anti-globalisation NGOs is difficult to judge. Whilst the ability of NGOs to project the impression of a large internet presence is not in doubt, particularly after the campaigning on ACTA, the degree to which these groups present a useful contribution to rational policy making or to representing a constituency of public opinion is open to challenge. The focus of scholarly and media attention around the public perceptions of CETA has unfortunately focussed on these NGOs, and has shied away from scrutinising the views of the business and labour community. The business community on both sides of the Atlantic has warmly welcomed the progress being made on CETA, with strong evidence of support being provided by the Canadian Manufacturers and Exporters body, the Canadian Federation of Independent Business and the Canadian Chamber of Commerce to name but a few. Similarly this research found that every major Canadian newspaper had published editorial comment supporting the liberalisation of trade with the EU. A Joint study from the European Federation of Public Service Unions, the Canadian Union of Public Employees, the National Union of Public and General Employees and the Public Service Alliance of Canada, published in 2010, focused on standard trade union concerns such as their desire to protect jobs on both sides of the Atlantic (from an analytical concern that free trade equates to a reduction in workforce numbers) and equally that they judge that free-market measures equate to a reduction in workforce protections and terms and conditions. This particular issue was not touched upon during the workshop, but in response it might be noted that the operation of the European single market has resulted in many additional protections for the European labour force (such as the working time directive, for example).

## **4. SUMMARY**

The European Parliament and the Canadian Parliament have important roles to play within the CETA process in providing technical scrutiny and a forum for stakeholder interests to be openly played out, prior to the CETA becoming a fully-fledged international treaty. This workshop was one of the ways in which the European Parliament, in particular, discharges this function. In taking a lead role in scrutinising and providing technical support to the negotiations both Parliaments are taking strong steps to creating a new pattern of mature trade agreements across developed trading states. It is clear that there would also be strong reasons for the EU to open talks with the United States to enter into a CETA with them as well. This would overcome some of the regulatory convergence and standardization issues that were raised during this workshop. The Canadian delegation stated during the workshop that they believed that they were a good entry point for the EU into a negotiated process with US. Either way, additional CETA are clearly desirable for the EU as it seeks to overcome its economic stresses at this time.

The involvement of the European and Canadian Parliament in providing scrutiny to these negotiations is the kind of advanced engagement that also makes it more likely that such a partnership would achieve its final goal, which is the creation of jobs and growth so that the voters can experience and improvement in their quality of life from EU ventures. The workshop heard an update from representatives of the negotiating parties of the Commission and Canadian government and all the participants offered a frank appraisal of where the current successes lie, as well as the current frictions and obstacles in the negotiations. The negotiators have set themselves an ambitious timetable for agreement, and there is every indication that they will meet these goals despite the challenges in converging divergent regulatory regimes. The importance of reaching such an agreement is clear though: He argued that the urgency of the situation is self-evident; the task is clear; now it is the responsibility of political leaders to show that progress is possible.

## **PART II: OVERVIEW OF SELECT ISSUES IN NEGOTIATIONS ON A COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT (CETA) BETWEEN THE EUROPEAN UNION AND CANADA - by Ramesh Chaitoo**

### **EXECUTIVE SUMMARY**

This briefing note will focus on selected issue areas covered by the CETA negotiations, in particular, services, regulatory convergence and mutual recognition of technical standards. It starts from the premise that the proposed CETA is a laudable attempt at further liberalising an important economic and trade relationship, but the analysis presented here attempts to provide a sobering and realistic account of the negotiations as they stand at the time of writing and the areas in which there seems to be a great deal of negotiating work to be done.

This note focuses on crucial second order issues, those which are of critical importance to particular stakeholder groups like pharmaceutical manufacturers, agriculture and its associated industries and the service sectors, and which will – in reality- be the outcomes of the negotiations that gain most traction in the public mind, and will be a popular benchmark of the success or failure of the provisions.

This note also provides an assessment of where the friction points in the negotiations exist, and where they might be overcome. For areas such as intellectual property, agricultural products, geographical indicators, rules of origin, and the trade in services, extensive analysis is provided on the detail of the policy sector and where stumbling blocks exist.

### **5. INTRODUCTION**

This briefing note will focus on selected issue areas covered by the CETA negotiations, in particular, services, regulatory convergence and mutual recognition of technical standards. Government procurement, investment and the views of civil society are addressed by the accompanying papers in this series prepared by Professor Huebner and Dr Dover. Government procurement (and the negotiations generally) has become a more difficult issue area with the Parti Quebecois (PQ) now in power in the province of Quebec and wanting to reassess their participation in the procurement chapter (although legally, it is not clear how the province can avoid its obligations). It should be remembered that the Canada-EU talks were originally pushed by Quebec, France and Germany, but that from these initial efforts the effort now exists within the EU and Canada in their widest configurations. From the initial enthusiasm for the proposed liberalisations, the Parti Quebecois may not be as sanguine about a trade deal, particularly given the political sensitivity of supply management in the dairy industry in Quebec and the role of government procurement in provincial politics.

#### **5.1 Overview of EU-Canada Trade Picture**

According to Eurostat data, in 2010, the EU-27 imported 9.2 billion from and exported 13.1 billion euros in commercial services to Canada with a trade surplus of 3.9 billion. Canada accounted for only 2.1 % of imports and 2.5% of services exports from the EU. In terms of merchandise trade, Canada is the EU's 15<sup>th</sup> largest trading partner, accounting for 1.4% of total imports (€22.9 billion) in 2011. Canada was the EU's 14<sup>th</sup> largest export market, accounting for €29.6 billion and 1.9% of total EU exports in 2011.

On the other hand, in 2010 the EU was Canada's second largest trading partner and accounted for 12.0% of total goods imports (€38.6 billion) and 8.6% of total goods exports (€25.1 billion) by Canada. Interestingly, in terms of investment, in 2010, EU-27 outward stocks of foreign direct investment in

Canada amounted to €197.4 billion and inward FDI stocks (Canadian investment in the EU) totaled €143.1 billion. So, although the trade figures may seem small compared to Canada's main trading partner, the United States, the EU is a very significant market and source of investment for Canada.

It is also important to note that while it is a small population (34 million) compared to the European Union (500 million), Canada is a major trading nation: it is, for example, a very significant producer of minerals and metals. It is also the world's second largest producer of hydroelectric energy, third largest producer of natural gas, and sixth largest producer of oil. Canada is also famous for some areas of hi-tech industry such as the robotic arm for the space station and other areas of telecommunications. Until recently, Blackberry (produced by Research in Motion, a company in Ontario) was the number one mobile communications device in the business world, and their devices are still ubiquitous in the developed world. With such a level of developed sophistication within both negotiating parties, the opportunities for enhanced trade of base commodities and for research and development synergies remain strong and auger well for the established public policy priorities of jobs and growth.

## **6. INTELLECTUAL PROPERTY ISSUES**

The EU's interest in intellectual property in the CETA seems to be focused on patents and European drug manufacturers have particular interest in extending the time granted to patent holders in Canada. From the Canadian perspective, changes to intellectual property rules is a very hard sell because Canadian stakeholders are content with both the research-intensive pharmaceutical players and the generics manufacturers in Canada. Moreover, Canada is following its WTO commitments on Trade-Related Intellectual Property Rights (TRIPs). So it is unclear why or how Canada (within its current constraints) can change its intellectual property regime under a CETA to meet what are perceived to be the current EU demands. In 2009, Canada imported C\$5.3 billion of pharmaceutical products from the EU and exported C\$1.3 billion to the EU (Grootendorst & Hollis 2011).

The original requests by the EU to Canada regarding intellectual property protection for drugs or pharmaceuticals in the CETA negotiations included the following (see Grootendorst & Hollis 2011):

- (i) Patent term extension – Canada should provide five and a half years of additional exclusivity for drug products if the time period during which a patent-protected product is on the market has been shortened by the lapse of time between the filing of a patent and the granting of market authorization by Health Canada.
- (ii) Extension of the term for data protection from eight to ten years – This means that Canada would have to provide at least 10 years of protection against the commercial use of data that was submitted for the initial approval of a pharmaceutical product. Canadian regulatory authorities would also not be able to receive an application for approval of a generic product until at least eight years after the brand product receives marketing approval.
- (iii) Right of appeal – The EU proposed that since Canada's drug approval system involved patent linkage, Canada must ensure that brand and generic companies are treated fairly, especially with regard to their respective rights of appeal from court decisions.
- (iv) Border measures – The EU requested that Canada adopt a procedure that would allow customs officials to detain shipments of imported drugs at the border if a brand company believes that the product may infringe one of its patents. Customs officials could also detain shipments without a request by the brand company if the officials have sufficient grounds to suspect violation of an intellectual property right.

The Canadian Generic Pharmaceutical Association (CGPA) has clearly stated that provincial governments and private insurers do not currently support these proposals as they are concerned about the three and a half year delay in the availability of “cost-saving generic pharmaceuticals that would result in an estimated cost of \$2.8 billion annually to Canadians.” Furthermore, the CGPA is skeptical about the claim that a CETA will bring greater investment to Canada. They point out that there is no proven link between increased intellectual property protection and increased R&D investments by brand-name pharmaceutical companies in Canada. They further argue that in reality, market monopolies in Canada for brand-name drug companies have increased eight times since 1987, yet investments continue to decline, with R&D spending in Canada by brand-name drug companies at its lowest level since 1988.

Therefore, it is not surprising that the generic drug industry in Canada, while in principle supporting the CETA negotiations indicated:

A successful conclusion to the CETA negotiations can and must be achieved without the extension of market monopolies for brand-name drug companies. CGPA remains committed to working with the Government of Canada in its efforts to conclude a CETA with the European Union that is in the best interests of Canadians (Canadian Generics 2012).

Civil society groups are also opposed to any extension of patent protection for European or other pharmaceutical companies in Canada. These measures will clearly form an area of important negotiating between the two parties and without significant movement in the negotiating positions of the Canadian delegation is unclear how much the EU (and European pharmaceutical companies) can gain in new benefits in the Canadian market in terms of intellectual property protection.

## **7. KEY ISSUES IN TRADE IN GOODS**

### **7.1 Agriculture**

From a trade policy perspective, Canada has a dualistic agricultural sector. The average applied Canadian most-favoured-nation (MFN) tariff rate is 4.7% (WTO/UNCTAD 2009). However, the WTO reported in 2011 that Canada's applied MFN tariffs on agricultural products (WTO definition) averaged 22.5% in 2010. Tariff protection remains highest for dairy products (averaging 237.3%), followed by animals and animal products (averaging 52.8%). Most of the 21 tariff quotas subject to WTO commitments are for supply-managed products (i.e. dairy products; chicken, turkey, eggs and related products; and broiler hatching eggs and chicks). In order to support the incomes of Canadian dairy farmers, the dairy regime is underpinned by a combination of tariff quotas, prohibitive out-of-quota tariffs, support prices (butter and skimmed milk powder), production quotas (milk), and export subsidies (WTO Secretariat 2011, 105).

Canada is a leading exporter of commodities, such as wheat, coarse grains, oilseeds (and related products), pork, beef and live cattle, which generally receive little government assistance and protection. This contrasts with mainly inward-looking "supply-managed" subsectors which are shielded from market forces through tariff quotas (with very high out-of-quota tariffs), export subsidies, production quotas, and other measures. Canada maintains some of the highest tariffs among developed countries on cheese, milk, ice cream, poultry products and eggs, and this is allowed under its WTO commitments.

In many respects the reasons for the special measures in these sectors were to address issues regarding stability of farm income, ensure consistent supply and promote predictability in market conditions. Similarly, the European Union has various other types of programs that also protect farmers' incomes

and ensure consistency of supply which make it difficult to export various agricultural products to some European countries.

The EU has one of the most lucrative markets in the world for agriculture and agri-food products because of its size, consumption patterns and generally high income per capita. Nevertheless, it is a difficult market to penetrate and in which to compete, in part because it is a mature market, but mainly because of relatively high protection through tariffs and non-tariff measures. The EU's average applied most-favoured-nation (MFN) tariff rate – the tariff it applies to all countries except those with which it has negotiated a preferential agreement – is 5.6%, but the average tariff rate for agriculture and agri-food products is much higher, at 16.0% (WTO/UNCTAD 2009). The EU import tariff on beef products is in the 50 percent range; and there is also a long-standing ban on imports of beef produced using growth hormones.

Generally speaking, foreign producers and companies seeking to penetrate the European market have noted that the EU restricts agriculture and agri-food trade through regulatory barriers (organic products<sup>3</sup>, seal products, ban on products resulting from genetic technologies such as canola, etc). While the objectives of technical regulations (e.g., protecting the health and safety of citizens) are generally accepted, the design and application of the regulations can make compliance difficult or time consuming for foreign companies. As trade in agri-food products is comprised of a rising proportion of processed foods, standards are increasingly important in the governance of trade.

Canada's supply-managed sectors (dairy and poultry) have a long tradition of protection from international trade agreements and although there has been increasing discomfort by consumers with some of the cost implications of supply management in recent years, it is highly unlikely that Canada will be able to open these sectors to European competition because of the extreme political sensitivity of these sectors. Given its obligations under the North American Free Trade Agreement (NAFTA) and the politics of the US as Canada's main trading partner, if supply management is ever to be dismantled, it will have to be done for the United States first, and not the EU. Nevertheless, Canada can increase the quotas or amount of products that are imported under lower agricultural tariffs.

From the EU perspective, the long-standing regime in Canada of provincial liquor boards which have monopoly rights for distribution of alcohol (even in Quebec which is a major wine-consuming market) is a major regulatory constraint to market access for European wines and spirits. But provincial governments receive very significant revenue from their liquor boards and are not prepared to change this or open the sector to competition. The European Commission believes liquor boards discriminate against European spirits through a lack of transparency when deciding which alcohols to sell and lower mark-ups for domestic spirits. If CETA removes discriminatory practices of the Canadian liquor control boards, this could result in improving the transparency of the Canadian regulatory regime and encouraging competition.

So, while tariff elimination on cheese and dairy products and better access for wines and spirits in the less than optimal distribution system of provincial liquor boards in Canada are major European demands in the agriculture negotiations in CETA, this requires political interventions since Canadian negotiators will need to seek the agreement of the provinces, domestically, before they can effectively deal with some of these critical issues. Most likely, they will be left to the very last stage of the negotiations.

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<sup>3</sup> The EU requires that for organic products to be accepted into its markets, exporters must have a national standard for organic products and it must be acceptable to the EU.

## 7.2 Geographical Indications

The EU has a well-known and pro-active approach to seeking special protection for its products through geographical indications (GIs). The EU is also the global leader in GIs, with more than 6,000 EU-registered indications of which more than 5,000 are for wines and spirits and more than 800 for food products (Giovannucci et al, 2009). Also, European authorities tend to confer exclusive use of a geographical name on makers of products that have historically originated in a particular region and products made elsewhere from comparable ingredients and using similar methods (often indistinguishable from the original) are not allowed to use the protected indication at all in their brand name. This has ramifications for many products now made in Canada which will no longer be able to be exported to the US for instance, if the EU demands for GIs are granted by Canada (Viju et al 2012). Similarly, Canadians will not be able to import various specialty cheeses from the US that will have to be protected in Canada under the CETA: something that will have an impact on US-Canadian relations and something of the cultural heritage of both North American countries.

The 2003 bilateral agreement on wines and spirits between Canada and the EU settled GIs in this sector. In the case of food products, there are several examples of European market access interests regarding GIs in Canada. For instance, EU producers of genuine "Prosciutto di Parma" have not been able to export their hams to Canada because of the use of the trademark "Parma" there.

In cases where there is truly something unique about a product's geographical origin that informs consumers about the quality of the product, then Canada should support the protection of GIs through its trademark system. But it will be politically problematic for the Canadian government to tell farmers (many of whom are of European background) that have been producing various cheeses in Canada for generations (Gouda, Parmesan, etc.) that they can no longer use these terms for their products. Furthermore, they will be required to stop exporting these products to the US market once the "genuine" European products are legally protected in Canada. In this regard, it is important to note that in the EU-South Korea FTA, 59 non-wine and spirits products were protected by GIs covering hams, cheeses, sausage, olive oil, nougat, confectionary, saffron, citrus, seasoning sauce, salami, beer, oyster, among others, including even horseradish root. Some of these products should not be problematic in the Canadian context.

Nevertheless, the example of "cava" (previously called Spanish champagne) which has gained a lot of popularity in recent years, suggests that rebranding can be a useful and successful tool in response to changes due to the protection of GIs. But Canadian producers may expect government support to make the relevant changes for switching from European food products that are protected by GIs under a CETA.

## 7.3 Rules of Origin

A purely bilateral deal on rules of origin (ROOs) in CETA is incredibly problematic given the extent to which Canadian companies manufacture products together with US partners. Without a deal that accommodates this reality, it is hard to see how some of the negotiations on tariffs and related issues can progress to a point where they create a significant shift in current trading patterns. It is not surprising that ROOs are a major sticking point in the negotiations especially for the textiles industry, or more sensitively for the automotive sector for Canada. Industry specialists argue that no matter how low a regional value content is agreed to – it will be hard for the Canadian automotive sector to meet it because this industry is integrated at the regional level within North America; and no matter how high regional value content might be set, the EU auto makers will be able to reach it. This intractable issue will require some creativity from the negotiators to resolve.

A related technical issue is differences in approaches to “cumulation” or the adding up of “content” from different jurisdictions to arrive at what constitutes an originating product – i.e., what is Canadian or European. To be frank, in the country of origin realm, Canadian automobile manufacturing firms are very skeptical about certain automotive firms in some EU Member States that like to give the impression that their cars are produced in national markets, as opposed to Eastern Europe where they judge there to be quality issues.

From Canada’s perspective, the EU should allow greater access (for instance, a tariff-free quota) for cars and car parts that contain significant Canadian content but that meet NAFTA (40 percent), rather than Canadian-EU rules of origin. But it is unlikely that European politicians will want to alienate the important automotive manufacturers and research and development and manufacturing interests to do so.

## **8. PROMOTING GROWTH AND EXCHANGE OF TRADE IN SERVICES**

While market access for trade in services is believed to offer the major part of gains in a CETA, the reality is that trade agreements are very limited in terms of what they can do to effectively liberalize services trade due to the complicated regulatory regimes for a wide range of services that are administered at various levels of government, even at the municipal level. Note for instance that after 15 years of a relatively very liberal trade regime under the NAFTA, trade in services among Canada, the United States and Mexico has barely increased in real terms compared to merchandise trade.

The EU is a demandeur in all services negotiations in large infrastructural areas such as transportation (mainly maritime), telecommunications, finance and in professional services. Canada maintains restrictions in the telecommunications sector, some areas of finance and in maritime transport and shipbuilding. Canada prides itself in its regulatory regime for financial services and its regulatory authorities whose diligence more or less shielded Canadian banks and financial firms from the less desirable practices which led to the worst financial crisis in Europe and the United States since the Great Depression. So, it remains to be seen what kind of **new** access, if any at all in practice, will be granted to EU firms in financial services: such a reality would undermine some of the projected gains from the CETA.

In recent years, the Canadian government has taken steps to strengthen the competitiveness of maritime transport, notably through investments in port infrastructure and by removing a 25% tariff on imported vessels. However, restrictive cabotage rules remain in place. A trade sustainability impact assessment (SIA) report on the CETA (European Commission 2011) commissioned by the EC and released in June 2011 concluded that transportation services, in particular, would enjoy large benefits, "producing significant and positive gains in output and exports for Canada's transportation services sector." The report also notes that an increase in maritime transportation will also lead, as expected, to increase in water traffic and increased demands for port infrastructure expansion. Although representing only an overall small percentage of transportation services in the Canadian economy, CETA is expected to produce the largest percentage increase in output in maritime transportation. However, the SIA report also predicted that there could be possible negative side-effects on water quality and coastal ecosystems through dredging, and the increase in water transportation could also lead to a spread of exotic diseases.

Canada's telecommunication services are projected to gain from the CETA deal, through an increase in output and exports. Researchers in this area concluded that removing foreign ownership restrictions could also spur competition and innovation. It should be noted that in the market for mobile telephone services, the Canadian Government has opened the door for more competition by setting aside radio

spectrum for new market entrants. This was to address concerns about relatively high prices and comparatively low penetration of wireless services in Canada, perhaps due to weak competition in this market segment. Canada also held public consultations on its remaining FDI restrictions on facilities-based telecom carriers intended to foster more competition (WTO Secretariat 2011, 11). The federal government is currently in the process of revising the foreign investment restrictions in the relevant telecoms legislation.

The trade SIA report also predicts that Canada will see similar gains in the financial and business services sector as a result of a CETA with Europe. For EU firms to take advantage of market access in these areas it will require that European firms be more competitive or more innovative than Canadian or American firms. In spite of the theoretical benefits of market access, one should also not forget practical concerns such as whether the relatively small Canadian market of 34 million will attract EU firms that already have a market of almost 500 million consumers. Furthermore, while services may be traded through four means or modes of supply (cross-border, consumption abroad, commercial presence and the presence of natural persons), the interests of European firms may be mainly in large infrastructural service sectors and in commercial presence. So, reductions in regulatory barriers to investment in specific sectors in Canada may be the most attractive option to EU businesses.

## 9. MOVEMENT OF PERSONS/MUTUAL RECOGNITION OF QUALIFICATIONS

Canada would like to extend the temporary entry arrangements negotiated between France and Quebec to CETA; but it is not clear how saleable is this to the rest of the EU Member States.

### 9.1 France-Quebec Agreement on Mutual Recognition of Qualifications

On October 17, 2008, the French president (Nicholas Sarkozy) and the Quebec premier (Jean Charest) signed an agreement on the mutual recognition of professional qualifications. This agreement is the first such initiative between a member of the European Union and a Canadian province, and supports efforts aimed at negotiating an economic partnership between the EU and Canada. According to a Quebec government press release, the recognition model developed in the agreement could be easily adapted to other territories. The agreement is not an international trade agreement, nor does it affect immigration or security rules, but is intended to remove one impediment to gaining access to the labour market in each territory. The agreement applies to all regulated professions and trades in France and Québec, and is based on the recognition of qualifications, not on the equivalence of degrees. It set a one-year time frame (December 31, 2009) for signing MRAs pertaining to some thirty trades and professions, and a two-year time frame (December 31, 2010) for the other regulated professions and trades (Québec Ministry of Foreign Relations and Trade). The Agreement covers slightly more than 100 professions and trades in France and Québec.

The agreement includes a three-step process for the recognition of professional qualifications, beginning with an overall general examination of qualifications of by competent authorities of Quebec and France, an assessment phase, and conditions for recognition (Québec MRI January 2012). The list of professions and trades in Quebec that have pledged to sign an arrangement leading to the mutual recognition of qualifications in the short term includes: **architects, chartered accountants, certified general accountants; engineers; and several construction trades**. Enabling legislation for the first such MRA, for professional engineers, was introduced in the Quebec legislature in March 2009.

The FQA addresses processes to be followed, specifying that any request for professional accreditation must be acknowledged within one month and applicants told what data is required to comply. Once all

the information required is provided, an applicant's dossier must be considered within three months, with a one month extension permissible if necessary. The FQA also sets out conditions allowing for professional accreditation even where qualifications and experience are somewhat different. For instance, a professional may be able to use experience as a substitute for training. An aptitude test may be required to prove equivalency. In certain cases of public safety there may be a requirement for on the job training (*formation d'appoint*), but these exceptions will be strictly limited.

According to the Quebec professional engineers' association (OIQ), admission will be as easy for an engineer from France who wants to practice in Québec as for a Québec graduate. As the President of the OIQ points out, "compared to foreign-trained professionals (FTPs) from countries without an agreement with the Ordre des ingénieurs du Québec, the time required for admission to the OIQ will be substantially shorter."<sup>4</sup> By January 26, 2010, the Premier of Quebec reported that twenty two mutual recognition agreements had already been signed since the original agreement in 2008.

## **9.2 Recent Changes Regarding Labour Mobility within Canada**

Historically, differences in professional standards and qualification, certification and licensing requirements across Canadian provinces have been infamous for their negative impact on labour mobility by Canadians, much more for foreign professionals. However, recent changes seem to present a glimmer of hope that this problem will eventually be addressed. Through the Agreement on Internal Trade (AIT) that was signed in 1996 federal, provincial and territorial governments agreed to eliminate inter-provincial barriers to the free movement of workers, goods, services and investments. In early 2009, all provincial governments finally approved amendments to Chapter 7 of the Agreement to achieve full labour mobility for workers in regulated professions and regulated trades.

The Chapter 7 provisions now require that a certified worker in one province or territory who wishes to relocate to another province or territory to work shall, upon application, be certified for that occupation by the destination province or territory, unless an additional pre-defined allowable certification requirement or limitation is imposed, or unless a province or territory has noted the need for an exception as necessary to achieve public, consumer or environmental protection. Provincial Governments have agreed that there can be different pathways for a worker to acquire and demonstrate the necessary skills, knowledge and abilities required for certification in a regulated occupation. Differences may therefore exist between jurisdictions in terms of the assessment processes and criteria that determine whether or not foreign qualifications will be recognized. However, recognition of foreign qualifications in one jurisdiction requires that other jurisdictions accept that licensing decision. In principle, once an internationally-trained individual is certified by a province or territory, he or she cannot be treated any differently for certification purposes than a domestically-trained worker.

These changes are outlined in the 2009 *Pan-Canadian Framework for the Assessment and Recognition of Foreign Qualifications* (HRDC Canada 2009). Under the new *Framework*, foreign-trained workers who submit an application to be licensed or registered to work in certain fields are supposed to be advised within one year whether their qualifications will be recognised. The objective of the *Framework* is to articulate a new joint national vision, guiding principles and desired outcomes for improving the assessment and recognition of newcomers' qualifications.

In the implementation of the *Framework*, the target occupations for December 31, 2010, included the following:

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<sup>4</sup> See La reconnaissance des qualifications professionnelles Entente France-Québec, for lists of trade and professions at: [www.oiq.qc.ca/whatsnew/display-press-release.html?559](http://www.oiq.qc.ca/whatsnew/display-press-release.html?559).

- Architects
- Engineers
- Financial Auditors and Accountants
- Medical Laboratory Technologists
- Occupational Therapists
- Pharmacists
- Physiotherapists
- Registered Nurses

Over the course of the implementation of the *Framework*, a list of medium term target occupations will be developed. This list targeted a date of December 31, 2012, for the following occupations:

- Dentists
- Engineering Technicians
- Licensed Practical Nurses
- Medical Radiation Technologists
- Physicians
- Teachers (K-12)

Skilled trades are also considered integral to the *Framework* which indicates that advice will be sought from the *Canadian Council of Directors of Apprenticeship* on how best to apply the Framework to skilled trade occupations.

However, the Framework seems intended to deal only with immigrants or permanent residents in Canada. In the bilateral negotiations with Canada it will therefore be critical for the EU to insist that this principle be extended to all professionals with relevant qualifications who wish to supply services in Canada.

While the initiatives mentioned above are promising, it should be noted that it is currently extremely difficult for foreign professionals to practice in Canada. For instance, if an engineer is trained in Canada and has experience there, it is a relatively straightforward process to meet the licensing requirements. But if one's credentials are foreign, it is practically impossible to do so without studying various courses in Canada. In fact, a survey of over 1,000 immigrants with engineering backgrounds drawn from 73 countries revealed that "less than 5 per cent of immigrants with engineering backgrounds actually became licensed and even fewer are able to practice as Professional Engineers in Canada." (Council for Access to the Profession of Engineering, 2) This epitomizes the problems posed by qualification requirements at all levels, much more so, for traders or service suppliers from the EU or elsewhere.

Table 1 below reveals the limited number of foreign professionals that worked temporarily in Canada in 2005-2008 out of the total numbers of temporary foreign workers. It does not augur well for the prospects of EU professionals being able to supply services in any of the traditional regulated professions such as architecture, engineering, legal or accounting services.

**Table 1 - Selected Temporary Professional Foreign Workers in Canada (HRSDC 2009)**

<b>National Occupational Classification</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>
1111 - Financial Auditors and Accountants	824	1,008	812	718
1122 - Professional Occupations in Business Services to Management	4,422	5,097	5,501	6,201
1212 - Supervisors, Finance and Insurance Clerks	24	24	31	61
1231 – Bookkeepers	7	23	35	46
2131 – Civil Engineers	526	587	547	670
2151 – Architects	177	236	209	248
<b>Total Temporary Foreign Workers (all categories)</b>	<b>122,694</b>	<b>139,047</b>	<b>164,792</b>	<b>192,281</b>

On the other hand, given the economic crisis in Greece, Spain, Portugal and the pedestrian economic growth in France, with high levels of unemployment in all countries, it remains to be seen whether any significant provisions on the movement of natural persons or mutual recognition of qualifications can be negotiated in the CETA. It appears that provisions on the movement of professionals in the agreement might be limited to those relating to investment.

## **10. CETA AND REGULATORY CONVERGENCE**

It is my view that it is unlikely that the CETA will be able to address regulatory convergence in any significant areas.

Negotiations on regulatory issues were supposed to be a key part of the CETA process and there is supposed to be a chapter on regulatory convergence. Chances are that there will be an eventual set of “rules” on this issue but it will simply be best endeavour.<sup>5</sup> Regulatory cooperation (much less, convergence) is a problematic area for CETA since the world seems to be increasingly divided between those who follow US standards and those who follow EU standards. This affects a very wide range of products from electronics and electrical appliances to construction equipment, automobiles, (emissions) and almost everything in between. Canada, of course, far too embedded with US standards to now switch their emphasis to European standards: it will make no practical or business sense to Canadian consumers or manufacturers who produce for the North American market. If the markets in the EU for specific products are large or lucrative enough, in time some Canadian manufacturers might retool their equipment to produce to European specific standards.

Also, on the health and safety front, the different regulatory processes in Canada and the EU regarding approval for food and drugs are also a major issue. But the most controversial issue for Canadians is the penchant in Europe, particularly Western Europe, to focus on process and production methods (PPMs). Many European NGOs argue, and some regulators as well, that they should have the right to ban products from entering the EU based on the process through which they are made, rather than on the product’s intrinsic qualities which pose a health, environmental or safety risk in the country in which they are used. These issues affect mainly agricultural products such as beef, milk, canola (rapeseed which is genetically modified and hence not accepted in the EU), and also the perennial bug-bear for

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<sup>5</sup> Interestingly, a well-connected Canadian in trade policy circles suggested jokingly that this chapter should probably be renamed “Best Efforts in Regulatory Convergence Sometime in the Very Long Distant Future.”

European policy makers: seal products. More recently, some activists both in Europe and Canada have been arguing that petroleum products from Alberta's oil sands should be blocked because of the polluting process for extracting oil from this resource (Sinclair 2011). Indeed, in 2011, the Canadian government commented on EU initiatives on climate change that sought to classify fuels derived from oil sands as the highest carbon emitters. The Government formally expressed concern with respect to the proposed treatment of Canadian oil sands resources under the EU Fuel Quality Directive. They argued that oil sands-derived fuel should be treated on a similar basis as other crude oil sources and decisions must be based on sound scientific evidence.

The European Union is an evolving experiment in a single market and in spite of all the various directives, regulations and administrative practices are far from consistent across national jurisdictions. The EC Services Directive which was supposed to streamline regulations governing a vast range of service sectors, including professional services, still under-achieves despite its good intentions (except perhaps for some significant success in legal services). When a trade agreement is signed between the EU and a foreign country, foreign firms have to deal with very different regulations in each EU Member state. [Note for instance the complexity of any EU services schedule, either in the context of the WTO or more recently the Economic Partnership Agreement (EPA) with the Caribbean in 2008 or the EU-South Korea FTA (2010)].

Furthermore, all EU trade agreements on services carve out domestic regulations from liberalization and the devil is indeed in the details of "domestic" regulations in European countries. Note for instance the vast array of differences in regulations governing all the professions such as accounting, architecture, engineering, and medicine to name but a few, which makes it practically impossible for a foreign professional service supplier to contest any European market. Similarly, Canada has different regulatory and administrative requirements for the traditional professions at the provincial level. And the federal government has very little, if any power to address that. Under trade agreements, foreign professionals really get little practical access to the Canadian markets for professional services since this is very tightly controlled by associations to whom powers have been devolved by the provincial governments. Furthermore, almost all the professional associations require Canadian experience before one can become licensed. This is a chicken and egg dilemma which makes it practically impossible for foreign-trained accountants, architects, lawyers, engineers, etc., to work in Canada. It also explains why thousands of professionals who emigrate to Canada cannot work in their fields and have to settle for lesser-skilled jobs and lower remuneration.

The Canadian economy is far from efficient in terms of standards and mobility of factors of production across all provinces. It is the only federal state that found it necessary to have an Agreement on Internal Trade (AIT) since 1996 which is taking a very long time to stimulate seamless trade across Canadian provinces. The Trade, Investment and Labor Mobility Agreement (TILMA), signed in April 2007 by the neighboring provinces of British Columbia and Alberta (and joined by Saskatchewan in March 2009), as well as the Trade and Cooperation Agreement (TCA), between Ontario and Quebec that was signed in September 2009, are the most recent examples of attempts to address this problem. But Canadian firms, regulators and the general public are more interested in working out these issues nationally rather than trying to deal with regulatory convergence with any foreign jurisdiction, including their greatest and most important trading partner, the United States.

The concerns in implementing the CETA is that there will still remain this lumpy implementation at the provincial (in the case of Canada) or national (in the case of the European) level. Thus improved systems of enforcement and compliance will need to be established, including perhaps that the European Commission takes a greater interest in the specificities of non-discriminatory regulations in their 27

Member States. Many national regulations in services that are run by industry or professional associations often frustrate market access granted to foreign service suppliers in trade agreements.

Nevertheless, in the chapters or sections on telecommunications, financial services and international maritime transport, it is likely that the EU and Canada will agree to some rules that will lead to similar regulations. These will be based on international best practices and industry standards. There may be areas for regulatory cooperation in these sectors after the CETA is signed.

## **11. POTENTIAL LOSSES FROM CETA**

This is a difficult assessment to make before the CETA is concluded. And it is unlikely that the CETA will lead to sweeping changes on either side of the Atlantic. But if Canadian core demands regarding market access for goods are met, then pork, beef and grain producers in some EU markets may face stiffer competition as Canadian farmers are larger and more efficient. Some of them may not be able to compete with Canadian imports. On the other hand, if greater market access is granted to EU dairy products in Canada then some Canadian producers will face increased commercial risk. The situation in manufactured products is complicated and will depend on the specificities of each product market and dynamic factors such as product innovation, differentiation, among others.

## **12. CONCLUDING REMARKS**

The CETA is a laudable attempt at liberalizing an important international trade market. With any complicated set of negotiations reaching across a large number of sectors, there will always be a large number of 'exceptional cases' made. The CETA is no different. However, lowest common denominator agreements across a large number of these 'exceptional case' areas has the potential to undermine the clear positive impact a CETA will make to economic growth of the EU and Canada. Stakeholders of all kinds will need to be assured that their particular industry or area has not been disadvantaged by the emergence of a new pattern of trade, and it is for officials and policy makers to make the case that the positive externalities of such a comprehensive agreement will be seen in reality.

## **BIBLIOGRAPHY**

Canadian Generics Pharmaceutical Association, 'Generic Pharmaceutical Industry Reaffirms Support for Government of Canada's Trade Agenda, 17 September 2012.  
[http://www.canadiangenerics.ca/en/news/sept\\_17\\_12.asp](http://www.canadiangenerics.ca/en/news/sept_17_12.asp).

Council for Access to the Profession of Engineering, *Engineering in Canada*, Toronto

European Commission. A Trade SIA Relating to the Negotiation of a Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada. (Trade 10/B3/B06), Final Report, June 2011.

France-Québec Agreement: The OIQ welcomes the tabling in the National Assembly of the Mobility Bill  
[www.oiq.qc.ca/whatsnew/display-press-release.html?559](http://www.oiq.qc.ca/whatsnew/display-press-release.html?559)

Paul Grootendorst and Aidan Hollis, The Canadian-European Union Comprehensive Economic & Trade Agreement: An Economic Impact Assessment of Proposed Pharmaceutical Intellectual Property Provisions. Report prepared for the CGPA, February 7, 2011.

HRSDC, A Pan-Canadian Framework for the Assessment and Recognition of Foreign Qualifications Forum of Labour Market Ministers, October 2011,  
[www.hrsdc.gc.ca/eng/workplaceskills/publications/fcr/pcf.shtml](http://www.hrsdc.gc.ca/eng/workplaceskills/publications/fcr/pcf.shtml)

HRSDC and Citizenship & Immigration Canada, *Facts and Figures 2009*, 2009.

La reconnaissance des qualifications professionnelles Entente France-Québec:  
[www.oiq.qc.ca/whatsnew/display-press-release.html?559](http://www.oiq.qc.ca/whatsnew/display-press-release.html?559) .

Relations internationales Quebec, France-Québec Agreement on the Mutual Recognition of Professional Qualifications,  
[www.mri.gouv.qc.ca/en/grands\\_dossiers/qualifications\\_professionnelles/index.asp](http://www.mri.gouv.qc.ca/en/grands_dossiers/qualifications_professionnelles/index.asp)

Relations internationales Quebec, France-Québec Agreement on the Mutual Recognition of Professional Qualifications  
[www.mri.gouv.qc.ca/en/pdf/procedure\\_commune\\_entente\\_qualif\\_prof\\_FrQc\\_en.pdf](http://www.mri.gouv.qc.ca/en/pdf/procedure_commune_entente_qualif_prof_FrQc_en.pdf)

Scott Sinclair, "Tar Sands and the CETA" in Canadian Centre for Policy Alternatives Briefing Paper, October 2011.

Crina Viju et al, "Geographical Indications, Barriers to Market Access and Preferential Trade Agreements." CATRPN Paper 2012-01, February 2012.

WTO/UNCTAD, *World Tariff Profiles 2009*.

WTO Secretariat, *Trade Policy Review: Canada 2011*, (WT/TPR/S/246)

## **PART III: CETA: OPPORTUNITIES AND CHALLENGES<sup>6</sup> - by Prof. Kurt Huebner**

### **EXECUTIVE SUMMARY**

1. The launch of CETA negotiations between Canada and the EU was preceded by a Joint Study, commissioned by the EU and the Government of Canada, to assess the costs and benefits of a closer economic partnership. The net benefits for both sides calculated by this exercise were based on strong assumptions, in particular a significant reduction of global tariffs. Some of those assumptions are no longer valid. Still, one can argue that in the medium-term the originally calculated net benefits will materialize.
2. CETA has the potential to create positive economic effects for both sides. The report highlights two critical areas that are currently under intense negotiations, namely inward foreign direct investment and public procurement issues. Both arenas seem to attract public attention, at least on the Canadian side.
3. Canada and the EU are relatively well integrated in regards to inward and outward foreign direct investment; behind the US, the EU is Canada's second largest provider of inward foreign direct investment. It is argued that, due to large reserves, as well as a political strategy that seeks to make the natural resource sectors the new growth poles in Canada, the interest of international investors in those sectors will further increase. In international comparison, the Canadian foreign direct investment regime shows a low level of openness. The regulations in the Canada Investment Act and the underlying *net benefit approach* towards inward foreign direct investment, as well as multi-level governance investment rules, are seen as potential hurdles to maximizing CETA effects.
4. The opening of public procurement markets has become a trademark of more recent EU trade policies. This holds for the ongoing CETA negotiations. This liberalization approach is based on the implicit assumption that EU public procurement markets are more open than their Canadian counterparts, but there are no substantive reasons to believe that this is markedly true. Still, the opening of public procurement markets promises significant gains in surplus from enhanced economic efficiency. In order to recognize these gains, it will be necessary for all sub-federal government levels to actively 'buy' into CETA procurement measures.
5. Unlike the former NAFTA project, CETA has not generated a strong political debate. A more recent poll shows that a vast majority of Canadians are in favour of CETA. In the recent months, some civil society organizations have become more active and public with their mostly fundamental criticisms. These efforts have not, however, translated in intensive public debates about CETA.

### **13. INTRODUCTION**

The global economy has changed in many ways since Canada and the EU agreed to start negotiations toward a *Comprehensive Economic and Trade Agreement* (CETA) in 2008. At the time those talks were launched the global financial crisis of 2008 was under way, but early signs of the upcoming economic storm were widely neglected by politicians on both sides of the Atlantic. Even further outside the political imagination was the thought that member states of the Eurozone could be confronted with sovereign debt default crises that in turn would become a serious threat for the common currency, and thus for the Single Market. Canada has been proud of its institutional distinctiveness, that has allowed it,

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<sup>6</sup> This paper benefitted enormously from the research input of Yuri Tricys and Corinna Fischbach. The standard caveats hold.

unlike the EU member states at large, to deal with the challenges stemming from the 'Great Recession' in successful ways.

Since May 2011, the Conservative majority government of Stephen Harper has sharpened the profile of the Canadian growth regime by aiming policy decisively toward an open economy that develops strong economic ties with partners other than the US, and by making the natural resource sectors its growth poles. CETA plays a critical role in this political strategy, in so far as such an agreement would reshape economic relations with the still largest market in the global economy and give Canada's narrow trade portfolio a deeper and broader scope. While pursuing CETA, Canada continues to look elsewhere in order to ramp up its trade policy and to engage in trade enhancing activities, like the Trans-Pacific Partnership. Unlike CETA, those initiatives are neither far advanced nor free of various political unknowns. From a EU perspective, Canada was not seen as a relevant 'target' when the Global Europe Strategy was presented in 2006. It took some lobbying from the Canadian side to change this perception and to get the EU to agree to commission a 'Joint Study' (European Commission & Government of Canada 2008) to look into the costs and benefits of an encompassing liberalization project.

The 'Joint Study' played a crucial role in kick-starting the negotiations. Even though the study projected that the benefits would be distributed unevenly and that both sides might get differing 'amounts' of benefits, it also suggested that the overall net benefits would be positive. One of the crucial assumptions in the Joint Study was a successful Doha round that would bring down tariffs and quotas in economically meaningful ways across sectors. In particular, the simulation assumed the " full elimination of goods trade protection as captured in the GTAP database...for all industrial and agricultural sectors (including elimination of all tariffs and tariff-rate quotas; notably, no exception is made for 'sensitive sectors', notwithstanding that trade and investment liberalization initiatives often contain provisions that exempt certain such sectors from liberalization or circumscribe the applicable extent of liberalization" (Joint Study 2008, 53). Such a global agreement has not materialized, and thus the actual CETA benefits may even be bigger than the simulation calculated. This extra positive effect, though, may be partially compensated by the negative import demand effects from the EU due to the implications of the sovereign debt default crises. In a medium-term perspective, though, it is possible to argue that the originally calculated net benefits still hold.

In the last couple of years we can observe the development of regional trade agreements, and on the lead of Canada and the EU are eager to participate in this activity. How much trade creation and trade diversion comes out of this wave of regional trade agreements is unclear in numerical terms. A 'Trade Sustainability Impact Assessment' (Kirkpatrick, C. et.al. 2011), commissioned by the EU, briefly touched on this question but without any efforts to quantify the issue. The CETA derived net benefits estimated in the study were seen by both sides as significant enough to warrant entering the negotiation process seriously. Despite changes in key parameters, the EU-commissioned study confirmed, in broad terms, the previous results of the Joint Study. According to this most recent quantitative study, a fully liberalized trade relationship would increase the real GDP of the EU by 0.02% to 0.03%; while the estimated gains in Canadian GDP are calculated to be in the range of 0.18% to 0.36%.

These numerical values result from the use of computable general equilibrium models (CGE models) that are fed with statistical information. Even though CGE models used for the two exercises are state-of-the-art, it is well known that such quantitative modeling has its shortcomings, most prominently due to its overall static nature. Costs and benefits are calculated by taking the difference between the outcomes of a 'baseline scenario' and the outcomes of a post-policy scenario. The 'baseline scenario' outcomes, as well as the post-policy scenario outcomes, require assumptions about key economic parameters and prices. This is not easy and assumptions should be kept in mind while interpreting the

estimated economic effects of CETA. For example, it seems from today's currency environment that the strong depreciation of the Euro vis-à-vis the Canadian Dollar may have trade implications that could alter the distribution of benefits should CETA come into operation.

Rather than trying to calculate a new baseline that would take into consideration the new economic realities since 2008, this research paper takes a qualitative approach and discusses three selective arenas in CETA that are relevant for the evaluation of any closer economic cooperation between Canada and the EU. Specifically, the report looks into the arenas of inward foreign direct investment (FDI) and public procurement, and finally gives an overview on the civil society debate in Canada about the costs and benefits of CETA. Inward FDI, as well as public procurement, have emerged as much more sensitive issues than the mere reduction of tariffs and quotas, not least in the eyes of a Canadian public that slowly turns its attention to the CETA project.

## **14. INWARD INVESTMENT ISSUES**

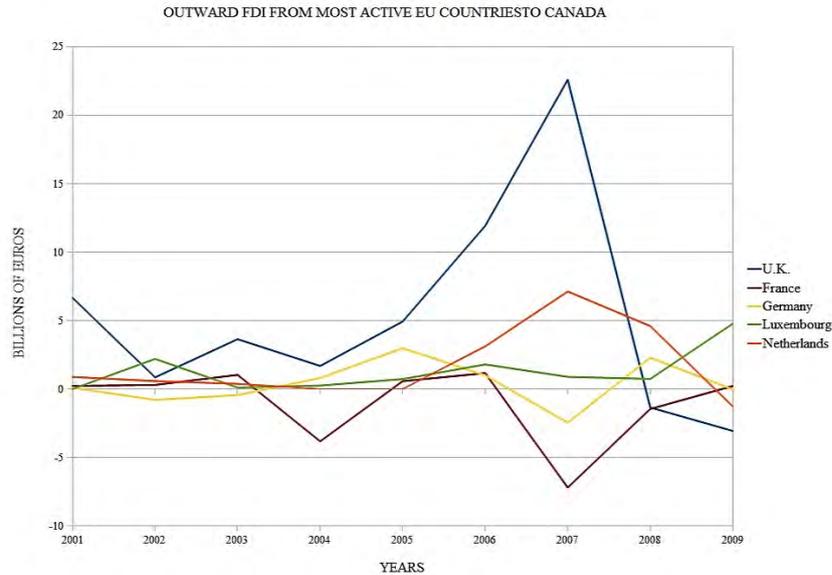
### **14.1 Canada's FDI Status**

Since the late 1980s, all developed market economies have experienced declines in their share of global inward FDI, mainly due to the rise of emerging market economies that have become enormously attractive for investors. This relative decline holds also for Canada whose share in global inward FDI decreased from 16% in 1970 to 3% in 2009 (Conference Board of Canada 2012). Even though Canada's inward FDI index, which measures its share in global inward FDI in relation to its share in global GDP, experienced a large drop over the last thirty to forty years (ibid), the index value is still positive and larger than one. In 1997, Canada experienced a change in its net FDI position when the stock of outward FDI was, for the first time, larger than its stock of inward FDI. Canadian outward FDI jumped in the course of the financial crisis, not least due to the appreciation of the Canadian Dollar that made foreign investments more attractive (Hejazi, W., 2010:12f.). Until 2009, the EU was the second largest destination for Canadian FDI; the bulk of Canadian outward FDI still goes to the US. The EU looms large as a source of inward FDI to Canada, again ranking as the second most important source, or 29.8%, of the overall stock of inward FDI in 2009 (ibid.). From the member economies of the EU it is the UK that holds by far the largest share of the total stock of FDI in Canada (11.6%), followed by the Netherlands (8.5%), France (3.3 %), Germany (2.5 %), and Luxembourg (1.8 %) (?). In 2010, Canada's FDI in the EU amounted to 143.1 billion Euro; EU FDI in Canada was 197.4 billion Euro. Not all EU FDI to Canada is directed towards the Canadian market. It can be argued that some FDI activities are made with the intent to participate in the North American Free Trade Agreement (NAFTA) value chain, by using Canadian outlets to supply NAFTA markets. Still, EU economies are engaged in Canada's inward FDI regime; though this brief overview suggests that inward FDI to Canada from the EU is restricted to a small number of economies. Private actors outside this small group of 'insider' nations spare Canada from their international investment policies.

If we turn to a perspective of EU FDI flows to Canada, the picture differs, mainly due to the effects of changes in investors' sentiments across the course of the financial crises and its aftermath. Graph 1 shows the development of outward FDI to Canada, for the period 2001 to 2009, from the most active group of EU investors in Canada.

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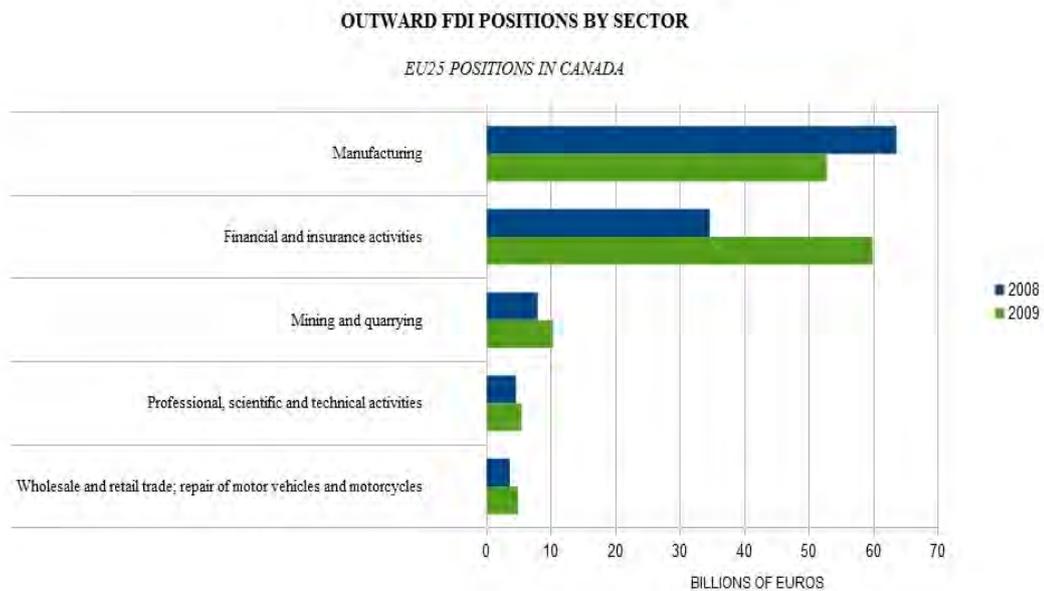
<sup>7</sup> All figures for 2009. See Kirkpatrick, C. et al, Trade sustainability impact assessment (SIA) on the comprehensive economic and trade agreement (CETA) between the EU and Canada: Final report, Munich Personal RePEc Archive, Munich, 2011, p. 337.

**Graph 1**

Source: Eurostat, various issues. Annual data points are connected. Data points at zero represent non-published data.

The graph shows quite a variation in flows to Canada, with France being a big dis-investor, in particular in 2007 when, in the wake of the financial crisis, French investors divested more than 7 billion Euro of FDI. In the same year, the Netherlands reported a similarly large outflow to Canada. Luxembourg is registered over this period as a steady source of investment inflow to Canada, mainly due to the role of Luxembourg's financial and holding sector as a FDI intermediary for European companies. It is obvious that, in terms of flows, the UK dominates the picture. Compared to the UK, the Netherlands, France, Luxembourg and Germany are minor players. UK FDI in Canada kick-started in 2004, reached an outflow of 5 billion Euro in 2005, and jumped in 2007 to more than 22 billion Euro. Since then, divestment has become the name of the game. UK investors may have been urged to withdraw from Canadian investment activities in the course of widespread strategic balance sheet deleveraging responses to the crisis.

In sectoral terms, EU-25 economies changed gears in the years 2008 and 2009 (Graph 2). Across this time period, financial and insurance activity positions in Canada registered explosive growth from almost 35 billion Euro to approximately 60 Euro billion. The Canadian manufacturing sector shrank by almost 10 billion. As a consequence, the financial and insurance sector became the number one EU FDI target. Mining and quarry FDI positions of EU economies are close to 10 billion Euros, reflecting the attractiveness of those sectors to investors from abroad. As I will go onto argue, this sector, which includes – amongst others – the controversial oil sands industry is attracting significant attention from investors abroad and it expected to attract large amounts of inward FDI in the future, not least due to rich reserves but also to the capital-intensive and long-term character of operations that require large capital investments.

**Graph 2**

Source: Eurostat

These sectoral findings should not be over-interpreted and read as a clear trend. However, they can help to direct attention to transformational processes in the Canadian economy. For quite some time Canadian industry and, in particular manufacturing sectors located in the Eastern part of the country, were integrated in a value chain with US producers, who made use of the relatively low exchange rate of the Canadian dollar and well-skilled human resources. The global boom in the natural resource sectors, triggered by the catch-up processes of emerging market economies, generated a sectoral shift in Canada in favor of oil and gas explorations and other mining activities. At least parts of the appreciation of the Canadian Dollar can be explained by the increasing prices of those commodities. Whether this has induced any 'Dutch Disease'-effects is a highly controversial debate in Canada. In regards to inward FDI, the sectoral shift may imply that, looking forward, manufacturing sectors are less likely to be targeted and that mining and quarrying will become much more prominent attractors for FDI. According to news reports, approximately 70% of the 28 billion Canadian dollar takeover operations reported since 2007 involved foreign buyers. Further, interest to invest in this sector is reportedly increasing (Currie 2012). The increased relevance of this sector is also reflected in Canada's shifting trade patterns. Between 1999 and 2010, the trade share of traditionally strong sectors like automotive, and machinery and equipment, shrunk significantly (by -12.4 % and -5.2 %, respectively), whereas the share of energy products increased strongly by 14.4 % (Hale, 2012:111).

## 14.2 Institutional Setting of Inward FDI in Canada

As a member of the World Trade Organization (WTO) Canada, like the EU, has to obey international agreements, including the 'Agreement on Trade Related Investment Matters' (TRIMS). Like other countries, Canada has entered into Foreign Investment Promotion and Protection Agreements (FIPAs), in order to protect national companies from investment risks abroad. Six FIPAs are with EU member states, namely: Czech Republic, Hungary, Poland, Latvia, Slovakia and Romania. Since the Treaty of Lisbon, has shifted competences from Member State to EU level, FDI now falls within the scope of EU commercial policy, and it is now up to the EU to grant absolute or restricted market access at the pan-national level. Respecting this authority, alongside newly generated CETA obligations, would make the re-writing of bilateral agreements unnecessary as CETA would encompass those regulations. Still, it is

argued in the literature that the redistribution of competencies due to the Lisbon Treaty creates legal uncertainties for pre-existing agreements between member economies and third parties (Wu 2012).

In the Canadian context the issue of investor-state relations has been moved into the centre of political attention due to the planned ratification of the Canada-China Investment Agreement (Martin 2012; van Harten 2012). Also, due to NAFTA, Canada has experience with its own investor-state dispute settlement, laid out in Chapter 11 of the agreement.<sup>8</sup> Provisions in this Chapter, like the national treatment (article 1102), have stirred political debates in Canada in the past. Critics have been highly cautious of any provisions that require Canadians to give up their right to regulate investor-state disputes (Trew 2012). Negotiators of both sides, however, indicated that they are well aware of implied problems and will take concerns into consideration when they come forward with language on such a settling mechanism.<sup>9</sup>

Compared to the EU and also to most of its member states, Canadian openness to inward FDI is considerably more restricted. The so-called FDI Regulatory Restrictiveness Index compiled by the Organization for Economic Co-operation and Development (OECD) uses categories like (i) equity restrictions, (ii) screening and prior approval requirements, (iii) restrictions on key foreign personnel, and (iv) 'other restrictions', in order to construct core of FDI countries ranked by relative restrictiveness (OECD 2012). The Canadian index value is far below the EU-average, and significantly below the index value of EU's high-achiever. In other words, despite political strategies to present Canada as an open market economy, the political and economic reality of the Canadian FDI regime is more closed than its EU counterparts.

The OECD makes it clear that this index does not fully capture the openness of a national FDI regime. In the Canadian case, the Investment Canada Act, from 1985, regulates the screening process of inward FDI (Holden, M. 2007). Any foreign direct investment in Canada that falls above a defined value threshold automatically triggers a review from the federal level of government, respectively the Industry Minister. The following factors are taken into consideration: (i) effect on level of economic activity, employment, resource processing, utilization of parts and services produced in Canada, and exports of Canada; (ii) significance of participation by Canadians in engaged business; (iii) effect on productivity, industrial efficiency, technological development, product innovation and product variety; (iv) effect on competition; (v) compatibility with national industrial, economic and cultural policies; and (vi) contribution to Canada's ability to compete globally. Only if the net benefit is positive will the proposed investment to get Canada's approval. This procedure gives the federal government, respectively the Industry Minister, an enormous leeway in performing 'the test', and seems overall to be a rather opaque political instrument (<sup>10</sup>).

In the recent past, the Industry Minister has not made use of his discretionary power to reject inward FDI. This record is changing. Currently, a fierce public debate is under way about the 15.1 billion Canadian dollar offer from state-owned Chinese National Offshore Oil Corp (CNOOC) to buy Nexen Inc., which, besides other regions, is operating in the oil sands of Alberta. No decision has yet been made. In 2010, Industry Canada blocked the hostile bid from Anglo-Australia's Billiton for Potash Corp, located in Saskatchewan. A potential merger of the London Stock Exchange and the Toronto Stock Exchange led to an announcement from Industry Minister Tony Clement to officially review the merger proposal. In

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<sup>8</sup>For a concise analysis see Kirkpatrick, C. et al, Trade sustainability impact assessment (SIA) on the comprehensive economic and trade agreement (CETA) between the EU and Canada: Final report, Munich Personal RePEc Archive, Munich, 2011, p. 335ff.

<sup>9</sup>Based on comments during the Workshop on CETA, Brussels October 2012.

<sup>10</sup> The updated Act from 2012 even increased the opaqueness as the government is now permitted to review any investment by non-Canadians in regards to national security concerns – a vague term.

brief, the 'net benefit' concept that underlies the Canada Investment Act provides the federal government with a powerful instrument that can be used to politically select inward FDI without having to disclose detailed testing criteria or project performance within testing parameters.

### **14.3 Policy Considerations**

- Foreign direct investment flows have dramatically increased in the last thirty years at the global level. Inward FDI can be a critical source of positive technology spillovers and thereby yield improvements in productivity, job enrichment, price and quality competition that can generate consumer surpluses, and also in the liquidity and depth of financial markets. The Canadian FDI regime gives the federal government the power to control inward FDI and to define performance criteria at the sectoral level. For example, according to Canadian Law, Canadians can only provide primary telecommunication services, i.e. 80% of the relevant management strata of a given company must be Canadian passport holders and at least 53.3 % of their shares must be held by Canadian citizens (Joint Study 2008:48). Such regulations can be seen as barriers to inward FDI.
- The net benefit concept underlying the Canada Investment Act is nontransparent and makes investment flows from private actors to Canada subject to an ill-defined political review process.

## **15. LIBERALIZATION OF PUBLIC PROCUREMENT**

The opening of Canadian public procurement markets is often stressed as one of the EU's baseline objectives. According to a report from the Standing Committee on International Trade of the House of Commons, the chief EU negotiator on CETA made it clear that guaranteed access to government procurement markets in Canadian provinces, territories and municipalities, to EU bidders, is essential for the approval of the agreement (Standing Committee on International Trade 2012). This position reflects the EU's desire in general to include open access to public procure markets as part of its new trade strategy. It is in this context that the European Commission, in March 2012, requested from the member states the mandate for closing EU public procurement markets to firms located in economies with restrictive public procurement practices. A basic assumption for this strategy seems to be that EU public procurement markets are relatively more open than partner markets. Preliminary research shows, however, that holding the so-called FDI Regulatory Restrictiveness Index aside, this assumption is not based on empirical facts. A comparative study, commissioned by the DG Internal Market and Services, shows that the European public procurement market is in similar degree open than most comparable markets of Western economies. According to this study, Canada's public procurement markets are as open as the EU-average (Ramboll 2012).

The driving motif for stressing its reciprocal approach is to provide private companies from the EU access to what are seen as well resourced but relatively protected markets. Public procurement, in regards to international agreements, is one of the most debated and contested issues in the Canadian public. There is a fear that governments at all levels will lose a powerful policy tool for selective growth and job creation and political-economic influence.

## 15.1 Market Size

Complaints about closed public procurement markets are very much driven by political considerations, and not well anchored in empirical data. As a matter of fact, empirical data on the subject are rather murky and subjective, as a WTO committee on Government Procurement Agreements only recently complained (Messerlin, P. and Morodout, S., 2012). Moreover, the actual size of public procurement markets is not well defined and there have been few improvements in the development of a factual knowledge base for public procurement openness studies. This informational gap invites opposing interests to seemingly unresolvable political quarrels. Clearly more exhaustive research is required on this issue.

Public procurement reporting in Canada is done under two agreements. First, federal reporting follows the Government Procurement Agreement (GPA) that extends the principles of the General Agreement on Tariffs and Trade (GATT). Both, Canada and the EU are signatories to the GPA, but it should be mentioned that GPA procedures are not seen as stringent, and are rarely followed by signatory states. Canada is one of the few GPA signatory states still submitting regular reports to the GPA. Second, provincial reporting is done under the Agreement for Internal Trade (AIT). Both reporting procedures have separate thresholds and separate exclusion and exception clauses. For this reason the two reporting procedures do not result in complementary data. What is consistent across both agreements is that recorded public procurement numbers are mere percentages of public procurement markets. In other words, the effective size of Canadian public procurement markets at the national, provincial and municipal levels are much higher than official figures insinuate.

A reasonable guideline for the ratio of recorded public procurement (often called “contestable” public procurement) markets to actual total public procurement markets is given by examining data of highly recorded comparable economies and estimating a percentage range. Shingal (2012) lists contestable EU public procurement markets at 14% of total markets, Korea's contestable markets at 32.6% and Japan's at 33.8%. It seems reasonable to conclude that total Canadian public procurement market sizes lie somewhere between four and six times recorded market sizes. The AIT contestable public procurement market sizes are listed on the Marketplace Canada initiative website (MARCAN), though numbers are not given post 2007/2008.

Graph 3 shows that the total AIT recorded contestable public procurement market in 2007/2008 was 24.85 billion Canadian dollars. An OECD report on Canadian public procurement market sizes lists national procurement markets as a percentage of GDP (OECD 2011). Canada's 2008 contestable public procurement was estimated to be 12% of total GDP. Applying this measure to Canada's 2011 GDP yields a market size of 20.8 billion Canadian dollars. If we use the data for the EU, Japan, and Korea we can calculate in a back-of-the-envelope procedure an overall public procurement market size of about CAD 100 billion<sup>11</sup>.

In terms of relative market sizes, more than 30% of the contestable market was federally administered. The four largest sub-national markets, Alberta, Quebec, Ontario and British Columbia combined to count for almost 55% of the total contestable internal public procurement market.

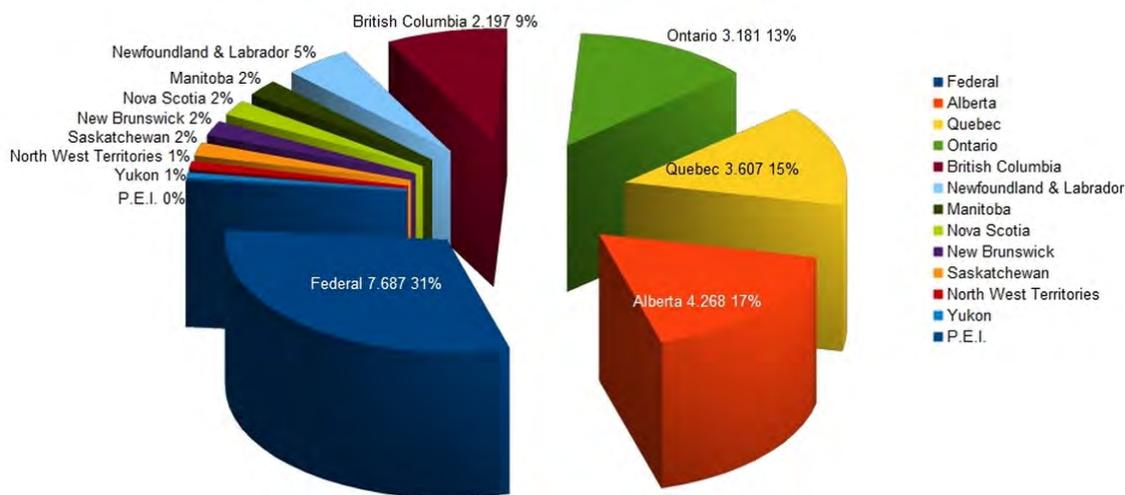
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<sup>11</sup> Calculations making use of a WTO estimation that governments of developed market economies spent between 10 to 15 % of GDP for purchases of goods and services result in considerable higher estimations of the Canadian public procurement market, namely an amount between CAD 130 billion to CAD 200 billion per year (See Sinclair, S., 2011).

**Graph 3**

PUBLIC PROCUREMENT 2007/2008 TOTAL 24.85 BILLION CANADIAN DOLLARS

As reported under the Agreement on Internal Trade



\*Data Source: MARCAN

How much of this pie is accessible to private companies from abroad is empirically not clear. According to the WTO's GPA, the federal procurement market should have open access when contracts exceed particular US-Dollar values. Current thresholds are (i) 25,000 US dollars or more for supply contracts; (ii) 77,494 US dollars or more for eligible service contracts; and (iii) 10,074,262 US dollars or more for construction contracts.<sup>12</sup> How these thresholds are handled in practice is neither well examined nor well reported. However, the aggregate public procurement market across Canada is of an attractive enough size that it seems well worth EU efforts to get more open access. The same argument holds true from a Canadian perspective of the EU, and thus it is no surprise that Canada also operates with reciprocity in its negotiations with the EU.

## 15.2 Regulations

The procurement regime in Canada is highly fragmented as different sets of procurement rules and procedures at the federal and various sub-federal levels are in place. Rules and procedures also differ between sub-federal levels. Only in the last few years have provincial governments shown a willingness to cooperate and create harmonized standards, rules, and practices. The Trade, Investment and Labor Mobility Agreement (TILMA), between the neighboring provinces of British Columbia and Alberta, as well as the Trade and Cooperation Agreement (TCA), between Ontario and Quebec, are the most recent examples of this cooperation. Less recently, in 1996, the Atlantic Procurement Agreement (APA), between New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island, aimed to reduce inter-provincial public procurement access barriers.

<sup>12</sup> See, for example, Government of Canada, Trade Agreements, [sell2usgov.ca](http://sell2usgov.ca), Ottawa, 2012. [http://www.canadainternational.gc.ca/sell2usgov-vendreaugouvusa/procurement-marches/trade\\_agreem-acc\\_cciaux.aspx?lang=eng&view=d](http://www.canadainternational.gc.ca/sell2usgov-vendreaugouvusa/procurement-marches/trade_agreem-acc_cciaux.aspx?lang=eng&view=d), retrieved October 1, 2012.

It should be noted that, though Canada, as I have already mentioned, is a signatory state to the WTO's GPA, this commitment does not include provinces, municipalities, and public sector enterprises. Additionally, specific goods and construction services, as well as utility sector expenditures are exempted. Certain commitments in the GPA have been excluded for the US as well as for the EU, based on the reciprocity principle (Kirkpatrick, 2012, p. 262). Canada was successfully lobbying against the US governments to soften the US Recovery Act that included strong buy America provisions that would have excluded Canadian suppliers (like other suppliers from abroad) from benefitting from US stimulus bills. The Agreement on Government Procurement (AGP), between Canada and the US, exempted Canadian companies, until the end of September 2011, from buy American clauses for, in total, seven projects. Even though the AGP foresaw the possibility to extend such exemptions, this has not happened, and thus the GPA rules still govern public procurement relations between Canada and the US. This form of American protectionism can only contribute to Canada's willingness to enter into CETA.

The definition of thresholds is part of any public procurement regime. A comparison of EU and Canadian thresholds, across similar procurement groups, shows that Canada protects certain smaller public procurement contracts awarded by sub-federal enterprises significantly more than the EU does; the EU, on the other side, has higher degrees of protection for goods and services outside the construction sector, as well as for certain smaller procurement activities (Kirkpatrick et al 2011, 268).

Public procurement is a relevant and often critical policy tool. By initiating various economic effects it can generate effective demand and lesson unemployment. For these reasons, governments at all levels want to maintain authority over public procurement openness procedures. Often, efficiency considerations are second to political considerations when public procurement activities are awarded. What for one jurisdiction is a critical policy tool to support or stimulate local economic activities, is for other jurisdictions a protectionist measure that restricts market access to specific economic actors. An often-cited example is Ontario's Green Energy Act that aims to boost renewable energy and to drastically reduce the emission of greenhouse gases. This act came with outspoken local content provisions and was immediately identified as a policy that would not fit the EU's public procurement criteria (Jacob 2011). The most recent plans to design a 'strategic procurement' policy to govern military purchases under a 'Canada First' mandate follow share a similar objective that aims to keep positive employment and income effects inside Canadian borders (Chase 2012). In addition, the change in government in Quebec, and a potential change in government in British Columbia after elections in May 2013, may have further implications for the public procurement chapter. Comments from relevant political parties indicate that in both provinces governments are preparing initiatives to keep their public procurement privileges (see more in section 4). Such efforts are running into problems, though. According to the International Centre for Trade and Sustainable Development, Geneva, the WTO just ruled in favor of Japan and the EU in regards to the green energy policy of Ontario that foresees local content purchases (Globe and Mail, 15 October 2012).

### **15.3 Policy Considerations**

- *Opening public procurement markets promises efficiency gains in the public sector, due to increases in the intensity of competition.*
- *Generating positive efficiency effects will require a comprehensive approach that no longer exempts sub-federal levels from access commitments.*
- *Thresholds need to be defined in a sensible way that balances potential efficiency gains with the administrative costs of organizing procurement calls.*
- *A reciprocity mechanism needs to be installed in order to secure mutual access possibilities.*

## 16. THE CIVIL SOCIETY DEBATE

Unlike the negotiations about a free trade agreement with the US, that spurred bitter battles and even a constitutional crisis in Canada in the 1980s, the ongoing CETA negotiations so far have not stirred public emotions. According to an Ipsos Reid poll conducted in September 2012, 81% of Canadians are in overall-favor. This favourable attitude is in contrast to the attitudes a vast majority of Canadian civil society organizations, who are vocal in their opposition. Those organizations pose fundamental critique that urged the Canadian federal government to dedicated website space to 'counter myths' about CETA implications.<sup>13</sup> Despite these vocal criticisms (and accompanying social media campaign) it needs to be stressed that the public at large are not overly concerned about the CETA.

The low levels of political excitement about CETA may reflect the settled support for free-market economics that Canadians hold. Canada, as a matter of fact, is very much engaged in trade of goods and services, foreign direct investment relations and in global labor markets. It may also reflect the simple political fact that the EU is not the US, and that any agreement with the EU is not likely to draw the usual negative ire reserved by the broader public for a-typical globalization initiatives. Low levels of political excitement do not mean political silence. Already in 2010, the Canadian Autoworker Union's economic research expert, Jim Stanford (2010), published a study, with the Canadian Centre for Policy Alternatives, that estimated Canadian job losses due to CETA at around 150, 000. Jacobs (2012) calculates an interval of net total lost jobs in Ontario between 13,000 and 68,500. Simultaneously, the political debates at the provincial level are building up steam. The New Democratic Party in British Columbia, that is widely expected to take over government after elections in May 2013, has declared openly that it would not support CETA because it promises liberalization of the provincial public procurement market. The new minority government of the Bloc Quebecois in Quebec has not yet announced whether the province will stick to the strictly supportive policies of the former government or whether it too will ask for special public procurement regulations that will protect the interests of its critical hydro power sector. Such political statements need to be read with a grain of salt, though, as they seem to address concerns raised by civil society organizations without having the effect to disturb the ongoing negotiations. The provincial governments of Quebec as well as of British Columbia have signaled that they will remain positively engaged with the CETA process.

CETA substantial political support from the Canadian export-oriented business sector. Founded in 1999, the Canada Europe Business Roundtable has been instrumental in promoting an encompassing EU-Canada trade and investment agreement. Its campaign to get strong business support resulted in a declaration signed by more than 100 Canadian and European chief executives. This declaration reads like a pre-text of the currently negotiated CETA document, and it is clear that the Business Roundtable, as well as the Conference Board of Canada, are strongly favoring the successful ratification of CETA. Both organizations are active lobbyists in Ottawa and in Brussels.

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<sup>13</sup> See, for example, Foreign Affairs and International Trade Canada, *Myths and Realities About Canada's Free Trade Agreements*, international.gc.ca, Ottawa, 2012. <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/eu-ue/myths-mythes.aspx?lang=eng&view=d#one>

## BIBLIOGRAPHY

- Conference Board of Canada, Canadian Outward Foreign Direct Investment and Its Implications for the Canadian Economy, May 2012
- Currie, A., An International Hit: Canadian Oil Sands Assets and Foreign Ownership, Resource Investing News, Vancouver, 2012, <http://resourceinvestingnews.com/43887-an-international-hit-oil-sands-assets-and-foreign-ownership.html>
- European Commission and the Government of Canada, Assessing the costs and benefits of a closer EU-Canada economic partnership, 2008
- Foreign Affairs and International Trade Canada, Myths and Realities About Canada's Free Trade Agreements, international.gc.ca, Ottawa, 2012. <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/eu-ue/myths-mythes.aspx?lang=eng&view=d#one>
- Government of Canada, Trade Agreements, sell2usgov.ca, Ottawa, 2012. [http://www.canadainternational.gc.ca/sell2usgov-vendreaugouvusa/procurement-marches/trade\\_agreem-acc\\_cciaux.aspx?lang=eng&view=d](http://www.canadainternational.gc.ca/sell2usgov-vendreaugouvusa/procurement-marches/trade_agreem-acc_cciaux.aspx?lang=eng&view=d)
- Hejazi, W., Dispelling Canadian Myths about Foreign Direct Investment, IRPP Study, January 2010
- Kirkpatrick, C. et al, Trade sustainability impact assessment (SIA) on the comprehensive economic and trade agreement (CETA) between the EU and Canada: Final report, Munich Personal RePEc Archive, Munich.
- Martin, L., Why aren't we debating the Canada-China investment pact?, Globe and Mail, October 23, 2012
- Messierlin, P., Morodout, S., EU public procurement markets: How open are they?, GEM, Policy Brief, August 10, 2012
- OECD, Government at a Glance 2011, OECD Publishing, Paris, 2011. doi: 10.1787/gov\_glance-2011-en
- OECD, FDI Regulatory Restrictiveness Index, OECD Publishing, Paris, 2012, [www.oecd.org/daf/internationalinvestment/investmentstatisticsandanalysis/fdiregulatoryrestrictivenessindex.htm](http://www.oecd.org/daf/internationalinvestment/investmentstatisticsandanalysis/fdiregulatoryrestrictivenessindex.htm)
- Ramboll Management Consulting, Cross-border procurement above EU threshold, Copenhagen 2012
- Shingal, A., Estimating market access in non-GPA countries: A suggested methodology, Swiss National Center of Competence in Research, Bern, 2012
- Sinclair, S., Municipalities, Progressive Purchasing Policies and the Canada-EU Comprehensive Economic and Trade Agreement (CETA), Canadian Centre for Policy Alternative, Ottawa, June 2011. <http://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2011/06/Municipalities%20and%20the%20CETA.pdf>
- Trew, S., DFAIT's latest civil society update on CETA negotiations, Council of Canadians, Ottawa, 2012, <http://canadians.org/blog/?p=15010>
- Van Harten, G., What if the Canada-China investment treaty is unconstitutional?, Globe and Mail, October 23, 2012
- Wu, C.-H., Foreign Direct Investment as Common Commercial Policy: EU External Economic Competence after Lisbon, in P.J. Cardwell (ed.), EU External Relations Law and Policy in the Post-Lisbon Era, The Hague 2012

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