The Pitfalls and Promises of the Canada-European Union Comprehensive Economic and Trade Agreement

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The Politics and Pitfalls of the Canada-European Union Comprehensive Economic and Trade Agreement

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Abstract

This paper analyses the text (CETA, 2010) in the areas of agriculture, services and investment, procurement, regulations, and manufacturing competitiveness. We find that market access would be marginal and adjustment costs high in all of these areas. Canada's trade with the EU is already imbalanced, with resources comprising an increasing proportion or exports. Where Canadian manufacturing is already competitive, as in the case of transportation and aircraft, the CETA offers no new gains. If the goal of the CETA is to enhance Canadian competitiveness then the deal falls very short. Still it will have significant consequences for key Canadian sectors. . The principle hypothesis of the paper, however, is that Canadian negotiators have learned little from past experience. Despite a vast academic industry analyzing the shortcomings and strengths in Canada with respect to the EU, all commentators underscore the problem of asymmetry. In the present circumstances the government has ignored this basic warning.

For its part the EU is hoping to sign a "gold standard" economic pact that will build on its Korean and Indian experiences with free trade agreements. While giving European companies another stepping stone (after Mexico) into the U.S. market. But the regulatory and cultural baggage of NAFTA raises questions about whether the North American and European models can be bridged, and at what structural and political costs to both partners. As the smaller economy and weaker trading partner, Canada is treading new ground from its recent series of bilateral agreements with developing countries.

Keywords: comparative free trade agreements, Canada-European relations, asymmetry of power, welfare gains to trade, trade adjustment, public policy, social policy

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Introduction

Canada and the European Union are moving swiftly to complete an ambitious Comprehensive Economic and Trade Agreement (CETA) by the end of 2011. It is the second attempt at a trans-Atlantic deal after the 2004 Trade and Investment Enhancement Agreement with Brussels fell off the table two years later. The Canadian government predicts the CETA would increase exports in goods and services to the EU by $12.6 billion (20.6%), and total bilateral trade in goods could go up $38 billion (22.9%) by 2014.[2] If successful, the next generation trade pact would be the first between Europe and another G8 country. It is facilitated by continued deadlock at the WTO and a competitive drive among developed and emerging economies to sign new bilateral agreements in the absence of a viable multilateral alternative. In Canada, renewed fears of being too dependent on NAFTA, and the active support of the provinces, which have jurisdiction in areas important to the EU such as procurement and domestic regulation, has lured new political players in Ottawa and Brussels back to the table. The principle hypothesis of the paper, however, is that Canadian negotiators have learned little from past experience. Despite a vast academic industry analyzing the shortcomings and strengths in Canada with respect to the EU, all commentators underscore the problem of asymmetry. In the present circumstances the government has ignored this basic warning.

For its part the EU is hoping to sign a "gold standard" economic pact that will build on its Korean and Indian experiences with free trade agreements[3] while giving European companies another stepping stone (after Mexico) into the U.S. market. But the regulatory and cultural baggage of NAFTA raises questions about whether the North American and European models can be bridged, and at what structural and political costs to both partners. As the smaller economy and weaker trading partner, Canada is treading new ground from its recent series of bilateral agreements with developing countries.

The European Union has said it will walk away from a deal that is not comprehensive (Sinclair, 2010). In this kind of negotiating environment, it is very difficult to get a good deal which Canadian policymakers should know by now. Canadian news articles and opinion has highlighted the need to diversify trade away from NAFTA faced with a precarious U.S. economy

[2] See Department of Foreign Affairs and International Trade website: http://www.tradecommissioner.gc.ca/eng/document.jsp?did=97445&cid=113&oid=143

[3] Canada's two-way trade with the EU is roughly equivalent to EU-Korea trade though Canada's GDP is still much higher. A previously released version of the EU-India free trade agreement was almost identical to the Korean deal, but the text may have changed post Lisbon Treaty ratification. The Indian negotiations are into a ninth round with the European parliament problematizing human rights and environmental standards, and Indian NGOs concerned about the effect of a TRIPS-plus chapter on generic drug manufacture and trade. Europe has also signed deals with Peru and Colombia, and Central America (Costa Rica, Guatemala, Honduras, Nicaragua, Panama and El Salvador), which build on its deals with Mexico (2000) and Chile (2003).

and a severe dip in two-way trade following the 2008 economic recession (Clark and Reguly, 2010; Toronto Star, 2010). Canada's trade with FTA partners dropped nine percent between 2000 and 2008 (from 79.6 to 70.6 per cent (Cameron, 2010). That includes a 10.8 percentage point shift away from the United States specifically, which the government interprets to mean it should be signing more FTAs to offset the decline, particularly in Asia (ibid). Leaving aside for now the question whether free trade has been an effective policy for Canada, why has the Canadian government chosen the European Union?

In 2002 Dymond and Hart asked the same question, as a Canada-EU summit that year decided to launch a comprehensive review of relations which eventually led to negotiations on the Trade and Investment Enhancement Agreement. The prominent NAFTA negotiators suggested three conditions that any new free trade agreements should have to meet in order to justify shifting Canada's trade emphasis away from North America:

1. The agreement should provide market access equivalent or better than NAFTA.
2. More than market access, the business case would have to be good enough to overcome new voices against and public resistance to trade liberalization agreements.
3. The agreement would have to substantively add to Canada's current trade roster, not divert from U.S. or other partners.

Based on a leaked copy of the January 2010 CETA consolidated draft, these questions are critical to assess the new trans-Atlantic agreement. Asymmetry, adjustment, access and public acceptance are the independent variables of this study (Drache, 2008). This paper analyses the text (CETA, 2010) in the areas of agriculture, services and investment, procurement, regulations, and manufacturing competitiveness. We find that market access would be marginal and adjustment costs high in all of these areas. Canada's trade with the EU is already imbalanced, with resources comprising an increasing proportion or exports. Where Canadian manufacturing is already competitive, as in the case of transportation and aircraft, the CETA offers no new gains. If the goal of the CETA is to enhance Canadian competitiveness then the deal falls very short. Still it will have significant consequences for key Canadian sectors.

NEXT GENERATION TRADE AGREEMENTS

Since 2006 the EU has engaged in a series of "new generation" free trade agreements designed to achieve greater levels of liberalization than what would be possible under Doha, particularly in high growth emerging markets such as India and Korea. These agreements are more ambitious than the EU's previous deals with Mexico (in force 2000) and Chile (in force 2003), based as they are on the "gold standard" U.S. free trade model post-NAFTA. The EU has pursued this agenda under a the Global Europe banner aimed at opening new markets for high-value goods and services exports in key trading partners (EU Commission, 2006). A high premium is put on addressing non-tariff barriers to trade "behind the border" (Ibid, 5) and an effort to export "high-quality rules and standards" (Ibid, 4).

The EU Commission is highly selective in choosing a potential partner. It considers carefully such factors as market potential (the size and growth levels in the prospective trade partner), the level of existing protection against EU export interests, the potential partner's negotiations or agreements with EU competitors and its impact on EU markets, and the risk that preferential access to the European market for Least Developed Countries may be eroded (Ibid, 8). In that final respect, the EU has been negotiating Economic Partnership Agreements[4] with a large group of African, Caribbean and Pacific (ACP) countries since 2000 which were set to conclude in 2010 but many experts are doubtful and skeptical of the agreements. For example, only 10 of 47 African countries engaged in these negotiations have signed an EPA and nine others have stalled because of 'contentious' or 'unresolved' issues related to the liberalization of industrial and agricultural trade, and the policy restrictions demanded of the EU (South Centre, 2010).

These agreements encompass countries which account for only four per cent of EU exports (Woolcock, 2007). The EU's region-to-region agreements have run into strong headwinds in the ASEAN, Mercusor and Central American cases.[5] In 2007, the EU began negotiations with Korea toward the first Global Europe era free trade agreement prior to WTO failure in Hong Kong and a year after the Canada-EU Trade and Investment Enhancement Agreement fizzled and died. Then as now, Canada is clearly a marginal player for the EU in relation to other trading partners (see Table 1) while EU countries combined represent 10 per cent of total trade for Canada. Despite trade with Canada representing a drop in the bucket for EU firms, Canada is strategically important as a gateway to NAFTA, according to business groups on both sides of the Atlantic. And though theoretically the deal looks good the symmetries and complementarities are few and far between, as we will explore in the next section.

TABLE 1: EU and Canadian trading partners ranked in value of two-way trade, 2008[6]

[4] When Canada-EU trade negotiations were launched in May 2009, the deal was originally called a Comprehensive Economic Partnership Agreement (http://www.pm.gc.ca/eng/media.asp?category=1&id=2559) but eventually became the Comprehensive Economic and Trade Agreement, which makes it a hybrid of sorts, though it is virtually identical to the EU's Free Trade Agreements with Korea and India. Evidently negotiators trying to avoid the contentious words 'free trade agreement' reserved now for developed-to-developing relations.

[5] EU and Latin American countries announced the resumption of Mercosur-EU trade negotiations, and the conclusion of Central America, Peru and Colombia trade agreements, during their annual joint summit, this year (2010) in Madrid: http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/10/244&format=HTML&aged=0&language=EN&guiLanguage=en

[6] EU two-way trade with Canada was €38.96 billion in 2000, representing 2 % of total EU trade. EU trade with China tripled, and with India and Brazil doubled between 2000 and 2008

EU			Canada		
Partner	**Mil of €**	**% trade**	**Partner**	**Mil of €**	**% trade**
US	435.995,5	15.2	**US**	401,255,1	65.6
China	326.325,0	11.4	**EU 27**	61,361,60	10
Russia	278.770,2	9.7	**China**	36.570,0	6
Japan	117.342,0	4.1	**Japan**	17.882,5	2.9
South Korea	65.063,6	2.3	**Mexico**	16.250,6	2.7
Brazil	61.908,2	2.1	**South Korea**	6.666,4	1.1
India	60.980,2	2.1	**Brazil**	3.540,5	0.6
Canada	49.900,8	1.7	**India**	3.063,1	0.5
Libya	39.969,8	1.4	**Russia**	2.437,1	0.4

Source: Eurostat (http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113363.pdf)

Canada's Global Commerce Strategy of 2008 mirrors Global Europe to some extant with its emphasis on responding to competitive pressures from China, India, Brazil and Russia. Governments in Europe and the United States "are increasingly competing against one another to help their businesses and investors gain an edge in the race for market share, technological advantage, foreign investment and other global value chain opportunities," says the report, suggesting that "Canada must do the same" (Government of Canada, 2008:3). Recognizing the importance of the North America as the foundation of the Canadian economy, the report outlines a market opening plan that includes free trade negotiations with Central and Latin America, the Caribbean, South Korea, the European Free Trade Association (Iceland, Norway, Switzerland and Liechtenstein), as well as closer economic partnerships with India and the EU, and Foreign Investment Protection Agreements with several developed and developing countries. Canada has since signed free trade agreements with Colombia, Peru, Jordan and Panama, and has made the

(http://trade.ec.europa.eu/doclib/docs/2005/february/tradoc_111591.pdf). But the EU has grown over this period, making it difficult to find precise statistics.

new EU free trade talks a cornerstone of its international trade policy.[7] Despite a continuing trade surplus with the United States, the 2008 financial and economic crash provided new fuel to business and public policy arguments for trade diversification.

Table 2 shows the numerous free trade agreements entered into by Canada and the EU over the past decade as the Doha round at the WTO languished in Geneva. Though their approaches differ, three elements stand out as common properties of Canadian and European Union FTAs: protection for national investors operating abroad; wider access, and; new legally enforceable

TABLE 2: Canadian and EU free trade agreements

	Countries	Goals
European Union	Mexico (2000), Chile (2003), Central America (2010 pending), Colombia and Peru (2010 pending), India (launched 2007), Korea (2009 pending), Singapore (launched 2010), ASEAN (launched 2007), Canada (launched 2009), Mercusor (resumed 2010)	WTO-plus access for agriculture and manufacturing, TRIPs-plus, procurement, regulatory convergence, investment guarantees (strengthened post-Lisbon Treaty)
Canada	NAFTA (1994), Panama (2010, pending), Jordan (2009 pending), Colombia (2008 pending), Peru (2009), European Free Trade Association (2009), Costa Rica (2002), Chile (1997), Israel (1997), EU (launched 2009), Korea (launched 2005), CARICOM (launched 2007), Central America (launched 2009), India (exploratory)	NAFTA model agreements, strong enforcement, investor-state dispute mechanism, agricultural exports important (not dairy). Likely India will be 'next-generation', based on CETA experience.

access to foreign markets for agricultural products facing high tariffs. For the EU, there is also a special focus on intellectual property rights, regulatory equivalence, and access to procurement

[7] Canadian trade minister Peter Van Loan made this point during a series of meetings with business groups in the spring of 2010. For example: http://www.international.gc.ca/media_commerce/comm/news-communiques/2010/147.aspx?lang=eng

markets. The EU is developing a new approach to investment after the 2009 ratification of the Lisbon Treaty made it the sole competence of the EU over its member states. Canada is in a sense a test case for how this investment approach will take form.

The Canada-EU agreement is in some areas a hybrid of the two approaches, with gains and losses on both sides. The way to understand the state of play in 2010 is to look at the five key sectors, many of them sticking points, in the negotiations: manufacturing, agriculture, intellectual property, services and investment, and procurement.

CETA UNPACKED

a) Manufacturing and competitiveness

The European Union is Canada's second biggest market, representing about 12 per cent of imports and six per cent of exports, while Canada is the EU's 11th largest market, behind India and South Korea. China is Canada's and Korea's third largest trading partner. Short term trends show that the EU's imports of machinery and transport equipment from Canada have declined about 10 per cent as percentage of total imports since 2004 while imports of fuels and mining products from Canada have grown from about 16 per cent of total fuel imports in 2004 to about 28 per cent in 2008. Machinery and transportation equipment did represented 23 per cent of Canadian imports to the EU valued at €5.6 billion in 2008.[8] But Canada shows a trade deficit with the EU in both areas that year. Isolating the top ten products using Canadian data, the Canadian Auto Workers discovered a more qualitatively imbalanced trading relationship as shown in Table 3.

TABLE 3: Canadian imports from and exports to the EU, 2008

Canada-EU Trade, Top Ten Products *2008, $billion, high-value-added products shaded*			
Top Exports to EU		**Top Imports From EU**	
Gold	$4.4	Petroleum	$8.2
Diamonds	$2.5	Pharmaceuticals	$5.4
Petroleum	$2.2	Motor Vehicles	$3.5
Aircraft	$1.5	Aircraft	$2.3
Uranium	$1.2	Wine	$0.8

[8] Source EUROSTAT: http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113363.pdf

Coal	$1.1	Wind Generators	$0.6
Iron Ore	$1.0	Construction Mach.	$0.4
Nickel	$0.8	Beer	$0.3
Ash	$0.6	Tractors	$0.3
Aluminum	$0.5	Turbines	$0.3
Source: CAW Research from Industry Canada Strategis site.			

The Conference Board also wrote of an imbalance in the quality of Canada's trade with the EU25 in its 2006 report on the Trade and Investment Enhancement Agreement. On the whole, the report showed that Canada exports raw materials and primary inputs to EU supply chains while importing finished higher value products. A surge in FDI since the 1990s means Canadian companies are selling more within the European community than they are exporting to it, which in itself is a valuable source of revenue and trade diversification (Lemaire and Wenguo, 2006). Ontario does list trade in goods as a negotiating priority for the province, specifically removing EU tariffs on chemicals, plastics and machinery, as well as sustainability certification on forestry precuts that discriminates against Ontario pulp and paper exports.[9] But as the 2008 EC-GOC joint report says, tariffs are low in most traded areas – on average three per cent. Of the eight most important sectors for Canada's exports to the EU, comprising 80 per cent of Canada's total goods exports to the EU, only processed foods face substantial tariff protection (30 per cent into Canada and 17 per cent into Europe). There are also tariff peaks on fish and seafood products into the EU, as well as on footware entering Canada as high as 20 per cent and 18 per cent on textiles. Removing these will not improve the quality of Canadian exports to Europe.

Combined with the non-tariff barriers, the EU and Canada have predicted[10] an annual real income gain by the year 2014 of about €11.6 billion ($14.68 billion CDN) for the EU (representing 0.8 per cent of EU GDP) and about €8.2 billion ($10.34 billion CDN) for Canada (representing 0.77 per cent of GDP). Total exports to Canada are predicted to go up 24.3 per cent (or €17 billion, or $21.5 billion CDN) by 2014 while Canadian exports are to go up by 20.6 per cent, or €8.6 billion ($10.89 billion CDN), so the greater gains will be for European companies even under the best-case-scenarios described in the joint report, as was the case in Mexico

[9] Ontario Government presentation, March 31, 2010, seeking input from Ontario businesses available as a PDF on the CETA Google Group website: ***groups*.*google*.*com/group*/*canada-eu-ceta***

[10] All stats from the joint European Commission-Government of Canada report, 2008 (see references)

(Reveles and Perez-Rocha, 2007). Jim Stanford, an economist with the CAW, doubting the government claims, outlined the scenario:

> Canada starts with 50% more imports than exports, and our average tariff is more than 50% higher. Therefore, mutual tariff elimination will almost certainly increase imports more than export (by 125% more, if the trade elasticities are similar in the two directions). That implies a wider trade deficit and hence lost jobs…[11]

The federal government's unilateral elimination of all Most Favoured Nation applied tariff rates on manufacturing inputs and machinery throws the CETA talks for another loop. Either, as labour economists predict, this will result in a net job loss in those sectors with no consequent gains overseas while at the same time removing another trade bargaining chip (Weir, 2009). Or, as a WTO communiqué suggests, it will benefit small and medium-sized businesses that must source from global supply chains. The communication from Canada to the WTO Committee on Market Access concluded in the typical anti-protectionist vein Canadians have come to expect from the current government: "While these measures are primarily aimed at enhancing the competitiveness and productivity of Canadian manufacturers, they also constitute concrete actions to open global markets and keep them open" (WTO, 2010). Writing seven months earlier, Weir described the move this way: "The Canadian government seems determined to brandish its unquestioning commitment to unbridled 'free trade' going into this week's [September 2009] G-20 Summit, even at the cost of eliminating more Canadian jobs" (Weir, 2009).

Part of the predicted $11 billion jump in GDP comes from services liberalization. Here Stanford says the authors of the 2008 joint report assume that it is as easy to sell services between Canada and the EU as it is within the EU. The joint report also hypothesizes second-order "dynamic gains" from trade, which predict that the income gains from free trade are reinvested in additional investment, "causing faster growth, and hence even larger income gains in the future." This is a very shaky assumption, warns Stanford. The additional problem is that the Canadian dollar has risen against the Euro by 25% since the beginning of 2010. Stanford shows just how much this disadvantages Canadian exporters. He says in a note to us, "combined with strict fiscal restraint in Europe (starting with the Greek "rescue package"), this will cut deeply into Canadian exports to Europe for years to come, thus considerably worsening our already-immense bilateral trade deficit." So it is strange to see that those "dynamic" effects account for over half of the total gains for Canada, and three-quarters of total gains for the EU.[12] Hübner also points out that the government outcome "depends crucially on the quality of the underlying general equilibrium

[11] Canada-EU Trade Economic Aspects (Stanford) – a preliminary analysis of the joint Canada-EU report on the predicted benefits of free trade, shared with the Trade and Investment Research Project in February 2010.

[12] Personal communication with Jim Stanford by email, June 2010.

model of world trade and, in particular, on the assumptions made therein" (2009:2). The EU and Canada assume that real oil prices will increase 82 per cent between 2004 and 2014 and that real grain prices will go up 68 per cent in the same period.

> Given the depth and breadth of the economic and financial crisis these assumptions may turn out to be too bold and consequently the welfare effects of trade liberalization smaller than simulated. Indeed, it would have been better to devise several scenarios that covered a variety of development paths for the global economy. (Ibid)

The gains, suggests Hübner, may be all for the EU, cementing the inferior position of Canada in the global division of labour, because "Intensifying the trade relationship with a resource-based economy is a rational strategy, particularly in a long-term perspective" (2009:5). It would not seem to be a rational strategy for Canada unless eastern manufacturers could increase their share European imports – a tall order as Ottawa commits the provinces to WTO procurement agreements that restrict offsets that would allow governments to support local industry.[13]

Net effect: the CETA offers no gains for already competitive Canadian industries selling to or operating inside Europe. Unilateral and negotiated tariff reductions on already low machinery and transportation tariffs risk increasing Canada's trade deficit in high-value goods even further.

b) Agriculture

Canada has butted heads with the European Union on agricultural issues at the WTO, particularly export subsidies, but also notably on EU member state restrictions to the import of genetically modified crops, as well as forestry products that do not meet strict EU certification regimes. EU negotiators would like to see tariffs on cheese and diary products reduced, which would require changes to Canada's supply management system – something the Canadian government has insisted it will not do. According to the joint Canada-EU study from 2008, the Canadian tariff quota set for cheese imports is 20,412 tonnes (of which the EU supplies 66% of the quota volume). Out-of-quota tariffs on cheeses are 245.6%, "which greatly inhibit the export of EU cheeses to Canada, despite consumer demand" (EC-GOC, 2008:34). Easing import restrictions in the EU could encourage new trade in basic agricultural products to the EU but

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[13] Ken Lewenza's Toronto Star op-ed: "In 2008, Canada held an $18 billion trade deficit in goods with the EU, mostly in high value-added commodities. Our European cousins are primarily interested in purchasing our raw materials like gold, diamonds, oil, uranium, nickel and coal. In turn, we mostly buy back big-ticket items like aircraft, pharmaceuticals, turbines, machinery, wind generators and cars. In fact, for every $1 we sell in autos to Europe, they sell $15. By the government's own modelling exercise, Canada's trade deficit with Europe will grow by a further one-third. This would essentially destroy — not create — many of Canada's most well-paying industrial jobs." (http://www.thestar.com/opinion/editorialopinion/article/806521)

tariff reductions without a solution to non-tariff regulatory barriers to Canadian agri-food exports would not be acceptable to industry groups in Canada. "The deal with the EU has to be meaningful," the Canadian Agri-Food Trade Alliance told a Canadian trade committee hearing into CETA in June 2010. "If we can't solve these issues we should not be moving forward" (Trew, June 2010).[14]

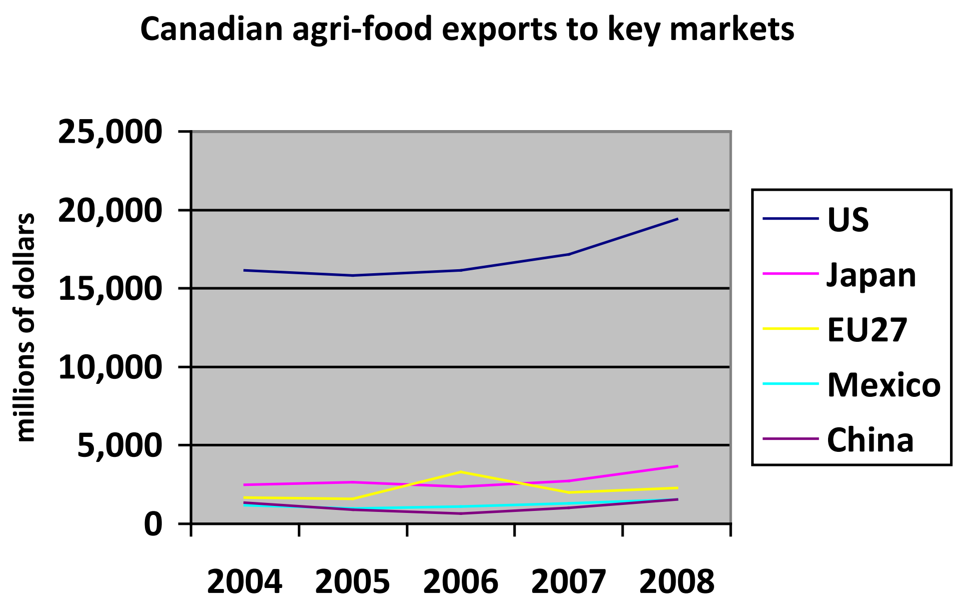

Table 4: Canadian Agri-Food exports to key markets (millions of dollars – rounded down)

Country	2004	2005	2006	2007	2008
United States	16,167	**15,810**	16,165	17,172	**19,940**
Japan	2,497	**2,631**	2,372	2,722	**3,652**
EU27[15]	1,692	1,609	3,301	1,982	2,264
Mexico	1,194	**971**	1,092	1,299	**1,567**
China	1,340	**891**	667	1,028	**1,535**

Source Agriculture and Agri-Food Canada (http://www.ats-sea.agr.gc.ca/stats/5033x-eng.pdf)

[14] Based on Statistics Canada sorted by the authors, available online.

[15] Totals calculated by adding exports from individual current EU member states.

The Canadian requests on Agricultural Subsidies within the National Treatment and Market Access for Goods chapter of the draft CETA are stronger than NAFTA on the need to eliminate all export subsidies originating in or shipped from its territory by December 31, 2013 (CETA: 20). But like in NAFTA, other forms of domestic support which may or may not be trade distorting, including supply management in certain sectors, are treated more kindly. However, the EU has requested that State Trading Enterprises and State Monopolies be treated in a separate chapter not included in the leaked January draft (ibid: 21). The National Farmers Union, commenting on the text, claims it would likely commit Canada to reducing or eliminating agricultural subsidies or other domestic supports over time, threatening the powers of the Canadian Wheat Board to set quotas and prices. According to reports, Canada was denied a seat at the negotiating table of the Trans-Pacific Partnership, negotiations toward a high-standard, broad-based Asia-Pacific regional free trade agreement,[16] because New Zealand opposes the federal government's official position in support of supply managed poultry, egg and dairy sectors (Simpson, 2010). These sectors employ an impressive 232,000 people across Canada and contribute over $13 billion to GDP annually,[17] which explains the unanimous support for supply management among Canada's main political parties. The EU of course has a very extensive system of farm subsidies which so far are not on the table and unlikely ever to be.

There are some high tariffs that could come down. Canadian seafood exporters are looking to reduce the 16 per cent tariff on lobster imports and 20 per cent on cooked peeled shrimp while gains in forestry would compensate for declining exports to the U.S (Truscott, 2008). But without the annexes it is difficult to see where tariff lines have already been settled, and agricultural tariffs have not been broached yet.[18] Where hard barriers exist, as in the case of EU member state bans or restrictions on genetically modified crops, the CETA offers no help for Canadian exporters as GMOs are, at least in the January draft, explicitly excluded from its scope. Canada and the European Union ended their WTO dispute over the approval and marketing of GMO products in the EU in July 2009 with the creation of a Dialogue on Market Access Issues that is parallel to but apparently not part of the CETA negotiations at present, though Canadian negotiators admit this may change in future negotiating rounds.[19] The EU is also seeking recognition of about 800 geographical indications in the food sector, including the controversial parma ham trademark owned by Canada's Maple Leaf Foods (Inside US Trade, 2010), but this will be discussed in the next section.

[16] United States Trade Representative description of the regional negotiations: http://www.ustr.gov/tpp

[17] From a website (http://farmsandfood.ca/) run by a coalition of dairy, poultry and egg farmers in Canada.

[18] Civil society briefing by lead Canadian CETA negotiator Steve Verheul, attended by Trew, April 26, 2010

[19] Ibid

Net effect: On balance agriculture will be the game-changer affecting hundreds of thousands of farmers particularly in Canada, particularly in the supply-managed sectors. European skepticism of Canadian beef and grain exports will play out in EU parliamentary debate, making access harder to come by than in recent Canadian FTAs with Colombia and Peru But without a reduction in non-tariff barriers to agri-food exports, Canadian industry groups will not support the deal.

c) Intellectual property

The Global Europe strategy on protecting intellectual property is based on rigorous enforcement of a TRIPs-plus framework in almost all areas, from copyright to patents to geographic indications. Like the United States, the EU Commission has placed Canada on an IPR infringer watchlist – granted at the bottom of that list – alongside Argentina, Brazil, India, Korea, Israel, Malaysia Russia, Vietnam and the United States.[20] The successful implementation of copyright reform legislation introduced by the Harper government in June 2010 could finally result in Canada's removal from these blacklists (Inside US Trade, June 2010), but it would still not be sufficient to satisfy the EU requests in CETA, which have evoked shock from trade lawyers[21] and followers of copyright reform in Canada.

While Industry Minister Tony Clement made efforts to add more consumer balance than previous versions of the legislation introduced by the Liberals and Conservatives over the past six years, "the legal protection for digital locks – unquestionably the biggest and most controversial digital copyright issue – is the one area where there is no compromise" (Geist, June 2010). Speedy passage of the Canadian copyright reform legislation would mean consumers would now be breaking the law in Canada for circumventing digital locks on CDs, DVDs, software and other products. It would also allow CETA to progress more smoothly, at least on the copyright components of the IP chapter. Given the history with this legislation, there are no guarantees Canadian negotiators will have a mandate in time for the final October CETA negotiating round in Ottawa.

Enforcement is also contentious when it comes to pharmaceutical drugs in Canada. The Canadian generic drug industry has been silent on the CETA negotiations. However, it has come out forcefully against expanding enforcement of patents in the parallel multilateral Anti-Counterfeiting Trade Agreement talks. The industry says enforcement as proposed in ACTA and the CETA draft is "a completely ineffective measure in combating counterfeit medicines in

[20] See EU Commission website: http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/enforcement/

[21] Todgham, Cyndee. 'Draft of Intellectual Property Chapter of Canada-EU CETA Different Than Other FTAs,' April 1, 2010: http://tradelawyersblog.com/blog/archive/2010/april/article/draft-of-intellectual-property-chapter-of-canada-eu-ceta-different-than-other-ftas/?tx_ttnews[day]=01&cHash=30c7257945

Canada, and would undermine well-established policies and business practices that support competition in Canada's pharmaceutical industry."[22]

Many other civil society actors, such as the National Farmers Union, Canadian Biotechnology Action Network, and Canadian Conference of the Arts have mounted public education campaigns on the dangers to farmers and artists of the EU's IP requests in the CETA. The NFU is raising concerns about the rights of biotech, pharmaceutical and seed companies to set seed prices, collect royalties at any point in the food chain, and "ultimately decide who farms and how."[23] And though the Canadian arts community would support many of the EU demands on copyright reform[24], notably ratification of the WIPO Internet treaties,[25] the Canadian Conference of the Arts has several concerns with the CETA IP chapter and its interaction with the proposed investment chapter.[26] For example, an investor-state dispute process would give European cultural industry firms a tool to challenge new rules designed to protect Canadian content.

The EU is seeking state protections for geographic indications – product names based on country of origin, for example Champagne, Scotch or Irish whisk(e)y, Grappa, Ouzo, Polska Wódka, Prosciutto di Parma, Manchego or Parmigiano Reggiano cheese, Vinho Verde or Tokaji wines as well as those from the Bordeaux and Rioja and other regions (EC, 2009). The Canadian and Korean chapters on geographic indications, while tailored to different regulatory regimes, appear consistent in scope and spirit. In Canada, GIs are currently protected by certification under the Trade-Marks Act, which emphasizes the responsibility the owner in the enforcement and use of the GI. The draft IPR chapter would adopt the European *sui generis* approach requiring the state to enforce the relevant articles nationally or at the request of the other party (EC-GOC, 2008). In the words of one of Canada's top experts and a critic of the IP chapter since it was first leaked in December 2009, "there are no Canadian requests here. Rather, the EU wants Canada to discard its approach to the enforcement of intellectual property almost completely and simply adopt the EU model" (Geist, March 2010). So far, with some examples in the new copyright legislation, Ottawa has sided with the EU's goals and objectives in this key area of the information economy.

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[22] Official position of the Canadian Generic Pharmaceutical Association: http://www.canadiangenerics.ca/en/advocacy/anti_counterfeiting_agreement_f.asp

[23] See fact sheet on Food Sovereignty, written by the National Farmers Union for the Trade Justice Network: http://www.tradejustice.ca/Food-Sovereignty?bl=y

[24] See ACTRA press release, dated May 6, 2010: http://www.actra.ca/actra/control/press_news1?id=10779

[25] Bill C-32, Harper's new copyright reform legislation, does not ratify the WIPO Internet treaties but would implement many of their substantive obligations, according to Inside US Trade, June 2010 (see references)

[26] For the communiqué, see: http://groups.google.ca/group/canada-eu-ceta/browse_thread/thread/4a6fa7921f6533b1?hl=en

Net effect: Mixed. New IP rights and enforcement provisions for EU pharmaceutical companies would frustrate the generic industry in Canada. Canadian artist and entertainment lobbies would applaud stronger EU-style protections for performers and content, as well as stricter rules on sharing content over the Internet. But in combination with the services and investment chapters, there is danger to artists from weakening cultural protections.

d) Investment and services

Services trade has been growing globally by eight per cent annually since 1994, mostly between developed countries who have a comparative advantage in many services sectors (Guerin and Napoli, 2008). In Canada, the services sector represents 72 per cent of GDP today compared to just over half in 1961.[27] Canada-EU ervices trade is focused primarily on the cross-border supply of business services and reached €20 billion in 2007 (EC-GOC, 2008).

Both jurisdictions have offensive financial services interests but as the Harper government is fond of pointing out, in Canada the sector is highly regulated. Foreign ownership caps and restrictions on the number and types of services that can be sold by these institutions in Canada are a big part of that regulation. Thus European Services Forum requests[28], many contained in the EU requests, would further liberalize the sector. Telecommunications is another area where the Canadian market is less open than in Europe but where the federal government is, independent of the CETA negotiations, moving to remove foreign ownership limits. A perceived barrier in Europe can be found in Canadian architectural firm complaints of "citizenship requirements and restrictions related to establishment of commercial legal entities and foreign investment" (EU-GOC, 2008:42). The joint scoping paper released by the Canadian government and EU in early 2009 stated that:

> Any agreement should provide for a considerably higher level of ambition than the current WTO commitments, with the aim of achieving market access, non-discrimination and compliance with Article V GATS. In this regard, the Scoping Group took the view that the services provisions of any agreement should apply to measures taken by all levels of government, as well as non-governmental bodies, in the exercise of powers delegated by any level of government. No mode of supply or services sector should be excluded a priori.[29]

[27] See Canadian Services Coalition brochure: http://www.canadianservicescoalition.com/CSC%20Brochure%20%20For%20Website_FINAL.pdf.

[28] Letter available online: http://www.esf.be/new/wp-content/uploads/2010/03/ESF-Priorities-for-EU-Canada-CETA-March-2010-Final.pdf

[29] See 'Joint Report on the EU-Canada Scoping Exercise,' March 5, 2009 (5): http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Canada-EUJointReport2009-03-05.pdf

The EU requests of Canada in CETA are then almost identical to the Korean free trade agreement in the general text on services, though in several places for Canada the EU has clarified national treatment to mean, "with respect to a regional/provincial or local/municipal government, treatment no less favourable than the most favourable treatment accorded by that regional/provincial or local/municipal government to its own like services and service suppliers" (CETA:121). This underscores the importance of municipalities and provinces in Canada as both service providers and regulators. The MFN section is also clarified to protect the EU's remaining preferential treatment agreements for least developed countries. The Canadian requests (CETA:144) are notable for incorporating the Market Access Article XVI of GATS (not included in NAFTA) but minus its sixth clause banning "limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment." Though the current federal government has indicated its desire to remove foreign ownership caps on uranium mining and telecommunications[30], this request in CETA could indicate an unwillingness to dispense with the practice entirely.

In the EU-Korea free trade agreement telecommunications rules were relaxed to allow 100 per cent foreign ownership within two years of the agreement's ratification, and to allow satellite broadcasters to offer service across borders without a Korean operator. In Canada, where there is considerable cross-ownership of cable, wireless, telephone and broadcasting, it is more difficult than in Europe or Korea to liberalize telecommunications rules without running into broadcasting and other rules – including national cultural content requirements, which is why cultural groups are concerned that there is no exemption in the CETA (so far) for cultural services. [31]There are also no guarantees the Harper government will be successful in removing foreign ownership caps to telecom.

Net Effect: Like with the intellectual property chapter, any final negotiation with The EU on telecommunications would have to wait until the domestic regulatory environment had been settled – a considerable roadblock to a "comprehensive" deal with the EU when both industry and labour are opposed to more foreign ownership of Canadian telecom.

i) Financial Services

Canada's financial services sector is made up of banks, trust and loan companies, credit unions, life, health and property insurance companies, securities dealers and exchanges, mutual fund

[30] See the 2010 Federal Canadian Budget, pg 84: http://www.budget.gc.ca/2010/pdf/budget-planbudgetaire-eng.pdf and the 'Compete to Win' final report of the Competition Policy Review Panel, which proposes "Liberalizing investment restrictions in the Canadian air transport, uranium mining, and telecommunications and broadcasting sectors, and removing the *de facto* ban on mergers in the financial services sector": http://www.ic.gc.ca/eic/site/cprp-gepmc.nsf/eng/home

[31] Personal communication with Garry Neil, vice-president of the Canadian Conference of the Arts.

companies and distributors, finance and leasing companies, as well as independent financial advisors, pension fund managers and independent insurance agents and brokers. These sectors employed 600,000 people in Canada and contributed $35 billion annually, or six per cent of GDP, in 2005.[32] Canada's banks in particular emerged from the recent crisis relatively well and have been using their relative competitiveness to expand and hire abroad. RBC alone had hired 530 new professionals by June 2010, including 140 in Europe, as part of a global expansion (Willis, 2010).

This Canadian expansion, which has included foreign acquisitions, is happening despite uncertainty around the shape of regulatory reforms to the financial services sector in many countries and by the G20. Paradoxically, the financial services section in CETA includes a necessity test on prudential measures designed by a state or in the Canadian case a federal or provincial regulator to protect investors and consumers or ensure the integrity or stability of the financial system (CETA: 135). This is a typical request in EU FTAs but some trade watchdogs claim it would jeopardize Harper's prized regulatory regime (Kelsey, 2010). For example, the financial services chapter as written in CETA would ban "measures which restrict or require specific types of legal entity or joint ventures through which an investor of the other Party may perform an economic activity" (CETA: 124).

Net Effect: It is unlikely that there will be any changes to Canadian banking policy which has performed excellently to protect Canadian interests in the Great Recession of 2008-9. Banks are off limits to any significant regulatory change for the moment.

ii) Investment

Canada and the EU are both net exporters of foreign direct investment. Canada is the fourth largest exporter of foreign direct investment to Europe while Europe is the second largest investor in Canada after the United States. But European FDI is now expanding more quickly in Canada than vice versa and stands at €120 billion versus Canada's €80 in the EU – the same as it was in 2000 (EC-GOC, 2008). More notable from a European perspective is Canada's inclusion of an investment chapter taken straight from NAFTA, which includes a Chapter 11-type investor-state dispute process.[33] Prior to the ratification of the Lisbon Treaty in December 2009, the EU Commission did not have the authority to negotiate Bilateral Investment Treaties

[32] See Finance Canada report on the Canadian Financial Sector from 2005: http://www.fin.gc.ca/toc/2005/fact-cfss-eng.asp

[33] This paper did not look at the general dispute mechanism proposed in the CETA. The EU has requested to use the EU-Korea agreement model – a sped up WTO process. It's worth noting that past EC agreements with Mexico, CARIFORM and Chile have included exemptions from the dispute process for all or some of the following chapters: SPS, Antidumping, Countervailing Measures, and TRIPs. The EC-Chile agreement has exemptions for State Trading Enterprises and State Aid, unlike most U.S. trade agreements which are, with the exception of SPS in 10 agreements, more legally enforceable (Horn, Mavroidis, Sapir, 2009).

like member states could, though it could negotiate MFN for investors in market access agreements with other partners. Article 207 of the Treaty brings Foreign Direct Investment under the sole competence of the Commission, which has led to suggestions that existing Foreign Investment Protection Agreements (FIPA) between Canada and new EU member states could now be illegal (Woolcock, 2010).

In the spring of 2010, Yannick Jadot, a Green member of the European Parliament, said his party was taken aback by the inclusion of a Chapter 11 provision because the EU had yet to establish a new investment policy. Jadot was concerned that the EU Commission was using the Canadian negotiations to make an important policy decision that he said should be settled by Parliament (Trew, March 2010), much in the same way Canadian critics feel the Harper government is using CETA to facilitate domestic reforms and deregulation (Sinclair, 2010). The EU Commission has ensured in the Korean agreement that there is room for negotiations, after three years, to "assess any obstacles to investment that have been encountered and shall undertake negotiations to address such obstacles, with a view to deepening the provisions of this Chapter, including with respect to general principles of investment protection."[34] If the EU does successfully include investor-state in CETA, it would have far-reaching consequences in Europe, where environmental and health policy could face investor lawsuits as they have in Canada. But importantly in Canada, investor guarantees would apply to new areas – culture being just one example – and new jurisdictions, such as municipal services and procurement. ~~would be opened to the EU.~~

Net effect: On balance uncertain gains and unnecessary risks. With limited data on Canada-EU services trade, or the effect of BITs in encouraging FDI, it is difficult to determine where there may be gains. There are gains on both sides to an investment chapter but its inclusion is worrisome if it will allow companies to threaten arbitration on bothersome environmental and health policy, as they have in North America.

e) Regulation and safeguards

Canada shares more in common with the United States' regulatory regime than it does with the EU in a number of areas, notably toxic chemicals. Dymond and Hart explain that under the NAFTA model, Canada allows products onto the market much more quickly than the EU and relies on industry to make sure the products are safe (2002). Canada has adopted this risk management approach through a policy of regulatory harmonization with the US (Mittelstaedt, 2007). Experts point out the systems cannot be easily reconciled – one reason why Dymond and Hart argued an EU deal risked undermining existing North American supply chains. Mexico, with its civil law system, already had a regime closer to The EU's when it signed a free trade agreement with the EU in 1999 but neither its legal system nor relationship with a major U.S.

[34] EU-Korea Free Trade Agreement, Article 7.16: Review of the Investment Legal Framework: http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145166.pdf

competitor interfered with NAFTA because Mexico's exports were oriented to the U.S. market and therefore built to U.S. specifications.[35] In 2005, 30.3 percent of Canada-U.S. trade in goods was intra-firm (related firms operating on both sides of the border), down from almost 45 percent in the late 1980s.[36] This statistic is used by Canadian business lobbies to fight overzealous US border security on the grounds that Canada and the U.S. "build things together" (George, 2009:2).

The dynamic means that products made for the North American market will be made to different standards than in the EU and shifting to meet those European standards without a continental shift that way could be tricky. In the EU-Korea deal, on the other hand, Korean negotiators accepted EU fuel efficiency standards and the EU toxic chemicals regulation as the norm. But according to the leaked copy of the CETA, the European Commission is proposing that all regulatory cooperation take place on a voluntary basis, without recourse to dispute resolution (CETA: 273). The EU is insisting that no separate body be created, as it was in NAFTA, to coordinate regulatory issues. For its part Canada is seeking some form of advance notice from the EU on new regulations while the more difficult technical barriers to trade will be discussed in the later negotiating rounds.

In an interesting twist, European parliamentarians are attempting to link the trade negotiations with Canada to greenhouse gas emissions from Canada's Alberta tar sands. "It would be unacceptable not to place the environmental consequences of tar sands oil extraction on the negotiating table," said Greek lawmaker Kriton Arsenis in a statement to Catherine Ashton, vice-president of the EU Commission. "This activity is the reason why Canada doesn't honour its international commitments on climate change" (Harrison, 2010). Though opposition in Canada to the EU free trade agreement has been less vocal than during the U.S. FTA debates, there remains opposition to deepening regulatory convergence in North America, for example through failed initiatives such as the Security and Prosperity Partnership. European opposition on Canada's environmental record is almost guaranteed to become more pronounced as the negotiations progress. The strength of civil society informed opposition, particularly

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[35] For an assessment of the impact of the EU-Mexico "global agreement" on Mexico's economy, see Reveles and Pérez Rocha, who argue that regional development, though a stated goal of the Mexican agreement, was never a real priority for the EU, which was more concerned with countering U.S. influence in Latin America and reaching through bilateral agreements commitments on the Singapore issues (investment, competition, procurement and trade facilitation) that were difficult to achieve at the WTO. The Mexican agreement gave EU companies privileged access to cheap Mexican labour for production to the U.S. market, the authors claim. Between 2000 and 2006, Mexico's trade deficit with Europe increased from $9.4 to $16.9 billion USD, while Mexico imports more and more intermediate goods not produced in the country. Foreign direct investment has been concentrated in already developed areas.

[36] See Canada's "State of Trade and Investment Update 2008": http://www.international.gc.ca/economist-economiste/performance/state-point/2008.aspx?lang=eng#a4-2-1-1-1.

environmental groups in Europe on regulations means there may be few gains for Canadian firms exporting controversial products to the EU, including beef and genetically modified crops.

Net effect: The regulatory divide between Canada and the EU cannot be easily bridged without significant concessions. Mutual recognition would require the EU to import products that do not meet their higher safety or environmental standards. It is not an option for Canada to adopt the EU's REACH model for regulating toxic chemicals, for example, which is much stricter than the harmonized NAFTA version, and therefore higher safety standards will continue to be in permanent limbo and not easily upgraded in Canada.

f) Procurement

The EU is seeking new access to subnational procurement in Canada, or public tenders for goods and services by Canadian provinces, state enterprises, cities and other government agencies until now excluded from procurement obligations in NAFTA or the WTO's Agreement on Government Procurement (AGP). Procurement is important to both sides according to industry representatives (Hansen and de Mestral, 2008). Government spending represents 16 per cent of GDP in The EU with an estimated $15 to $19 billion in federal contracts in Canada and an unspecified but probably much larger amount in subnational spending (EC-GOC, 2008). Canadian municipalities spend over $50 billion a year in goods, services and construction, a number that is rising by an average 8.4 per cent each year[37]. While the European Union has committed member-states and many of their agencies to the AGP, under the terms of the plurilateral WTO agreement access for Canadian firms can be restricted until reciprocal access opens in Canada. Canada moved some way to matching the EU's commitments when on February 16, 2010 the federal government committed the provinces and a large number of provincial government entities to its Annex II of the AGP as part of a three-part procurement agreement with the United States.[38] Canadian negotiators could simply offer European firms the same access under the AGP. However, the EU Commission has requested that municipalities and spending by hospitals, school boards, Crown corporations and other public entities also be included in Canada's commitments.[39]

The provinces will try to exempt sensitive areas such as transportation, shipbuilding, Crown corporations in some cases and energy production in others from GPA bans on offsets, including local preferences or minimum local content quotes in public tenders. But the joint scoping

[37] From a 2009 advertising rates guide for Forum: Canada's national municipal affairs magazine: http://www.fcm.ca/CMFiles/FCM_MediaKit%20091KFV-2102009-106.pdf

[38] A copy of the Canada-US Agreement on Government Procurement can be found here: http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/ENG-Canada-USA%20Government%20Procurement%20(clean%2011%20Feb%202010%20printed).pdf

[39] Based on a leaked copy of the EU requests on government procurement at www.tradejustice.ca.

exercise released in 2009 several months before the official start of negotiations stated, "The agreement should include, as a minimum, all the chapters of the most ambitious EU and Canadian bilateral economic agreements to date."[40] On procurement, the most ambitious agreement to date is the recent Canada-U.S. Agreement on Government Procurement, which temporarily granted WTO protections to U.S. investors bidding on municipal construction contracts. This agreement left out Ontario's Green Energy Act, which has been directly attacked by EU officials (Saunders, 2010) for its feed-in tariff system that includes local content quotas on renewable projects. In April 2010, the Harper government asked Ontario businesses to put pressure on Ontario regarding the CETA negotiations.[41] The door has been opened in the Canadian public psyche to more procurement liberalization with uncertain impacts on municipal and provincial economic governance.

Net effect: Substantially reduced policy space for cities and provinces banned from using offsets and local preferences still deployed in countries globally as an economic development tool (Sinclair, 2010). Since EU procurement markets are relatively open, with exceptions, to Canadian firms, the benefits run largely one way – to EU companies.

THE POLITICS OF TRADE

As we've seen so far, the economic case is simply not there for a Canada-EU free trade deal. So the politics of trade naturally explain a lot about the state of negotiations. Paradoxically, the free trade deal has as its target a constituency—big business and Canadian entrepreneurs—which has not been mobilized as we would suspect in support of the deal. They clearly do not see the deal as a trade counterweight in the same way that Canadian media and policymakers do. Instead, Canadian business groups by and large support the CETA negotiations for strategic reasons: the deal would offer the EU a critical stepping stone to negotiating a greater North Atlantic free trade zone.[42]

Significantly the business community can take little credit for driving the negotiating process forward. Despite a statement of support in principle for CETA signed by 101 Canadian and European companies[43], and a list of priorities submitted by 40 member organizations of the Canada-EU Roundtable for Business (CERT, 2009), business input on concrete barriers to access

[40] Joint Report on the EU-Canada Scoping Exercise, March 5, 2009: http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/Canada-EUJointReport2009-03-05.pdf

[41] See Trade Minister Peter Van Loan's address to the Economic Club of Canada, April 30, 2010: http://www.international.gc.ca/media_commerce/comm/speeches-discours/2010/2010-22.aspx?lang=eng

[42] Account from Alain Pineau, executive director of the Canadian Conference of the Arts, of a Canada-EU forum in April 2010, organized by the Canadian Chamber of Commerce.

[43] Undated statement available here: http://www.canada-europe.org/en/pdf/CERT_Canada-EU_Trade_Investment_Declaration.pdf

in the EU has been lackluster, according to Canada's lead negotiator (Trew, April 2010:2). As we've seen in the services and procurement chapters, on the other hand, EU negotiators have detailed requests backed by powerful lobbies including BUSINESSEUROPE and the European Services Forum. It is also clear from statements in the media, and the leaked CETA text itself, that EU negotiators expect Canada, the smaller economy, to make most concessions (Leblond, 2008).

a) Interprovincial Barriers To Trade

By contrast, the role of the provinces is paramount. Provincial jurisdiction in the areas of procurement and investment was a major hurdle during the Trade and Investment Enhancement Agreement negotiations in the mid-2000s. But inter-provincial trade cooperation and a willingness to collaborate with Ottawa on the groundbreaking procurement agreement with the United States have turned past adversity into new opportunity for Canada and the EU. Not mentioned in the Canadian Global Commerce Strategy but featured in consecutive Harper budgets since 2007 has been support for efforts to dismantle so-called internal barriers to trade between the provinces.[44] It was the goal of the 1995 Agreement on Internal Trade (AIT) to make sure the benefits of NAFTA were not undermined by provincial differences in regulations and other measures affecting trade, investment, procurement and competition policy. The AIT provided an outlet for provinces to challenge regulatory, certification or other measures in other provinces that were perceived to unfairly restrict trade or investment or labour mobility.

Business groups and think tanks such as the C.D. Howe Institute lobbied without success to convince the Chretien Liberals that internal trade barriers were still unacceptably high. In fact they remain insignificant (Shrybman, 2008). However, barriers are perceived to be high by EU and other foreign firms (Macmillan and Grady, 2). Commonly used examples by business and policymakers in Canada are the recently scrapped requirement that margarine sold in Quebec should be free of colourants, or that hay bales shipped over the Alberta-B.C. border would have to be restacked to meet different provincial norms (Boutilier, 2007). EU officials have also highlighted the lack of a national securities regulator in Canada as a turn-off for European investors, but here as in other areas the Harper government is moving swiftly to consolidate the various provincial regulators, and facing considerable backlash from Quebec and Alberta. The inclusion of labour mobility – the recognition of professional credentials – in new interprovincial agreements is more of a business request than a labour request.[45] Canadian unions and some

[44] Example, the Advantage Canada report from 2008, in which the Harper government wrote: "The development of a strong and competitive internal market is necessary for Canada to be successful in the global economy. For example, businesses operating across Canada could realize cost savings and expanded markets if regulatory differences across provinces were eliminated. Similarly, individuals could more easily take a job in another part of Canada if their qualifications were recognized nationally."

[45] See the Robert Knox backgrounder for the C.D. Howe Institute on labour mobility barriers in Canada (see references)

professional associations have opposed binding labour mobility guarantees in the TILMA and revised AIT labour chapters as an attempt to force certification standards down to the lowest provincial levels.

To address the perception more than the reality of barriers, in 2007 the provinces of British Colombia and Alberta signed a comprehensive Trade, Investment and Labour Mobility Agreement that went further than the AIT by including MUSH sector procurement, and by allowing corporations or individuals to directly invoke disputes, which could lead to $5-million fines against the provinces. The AIT-plus agreement inspired other premiers and the federal government to make improving 'the economic union' a priority.[46] At a 2007 Council of the Federation meeting, provinces agreed to 'strengthen' the AIT dispute mechanism by including financial penalties against provinces found to be impairing trade, investment or labour mobility, and to adopt much of the TILMA's stronger wording on mutual recognition of labour certifications.[47] While removing the so-called barriers to internal trade, the provinces were also laying a sturdier, more attractive foundation for EU trade negotiators should they decide to take another look at Canada.[48] It is not a stretch to say the EU has made it a project to change the Canadian federation (federal-provincial relations), to make Canada work more like Europe.[49] Decentralization of responsibilities and legalization of public policy are therefore stated priorities of the EU and Harper government. But it is still unclear how it will play out. In fact, the feds would rather the market self regulate, with investor challenges ultimately setting the parameters of acceptable public policy. The consequences are more complex than often recognized. For example, some provinces have leaped ahead of others on environmental protection while Harper and his home province of Alberta lag behind.

Net Effect: Unclear until the final text is made public though any agreement is likely to accelerate decentralization and reduced powers of Ottawa as a national regulator.

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[46] See Prime Minister Stephen Harper's speech to the International Conference on Gateways and Corridors, May 7, 2007, in which he said, "here are other things we can and should do to build a stronger economic union in Canada. They include working towards the removal of internal trade barriers, increasing labour mobility and creating a common securities regulator": http://www.pm.gc.ca/eng/media.asp?id=1648.

[47] See the Council's communiqué of August 10, 2007: http://www.councilofthefederation.ca/pdfs/Competitiveness_Trade_Aug8_EN.pdf

[48] Not attractive enough, according to Canada's chief negotiator Steve Verheul, who told a civil society briefing following the third round of Canada-EU negotiations that the EU would like to change Canada's constitution to make federal-provincial relations more akin to EU-member state relations.

[49] Canadian CETA negotiator Steve Verheul told a civil society briefing these were the precise words of the EU negotiators who, according to Verheul, had trouble naming any real barriers to trade or investment between the provinces.

b) The Role of Quebec

Quebec's leading role in the CETA negotiations is a second political paradox. Its trade relations with Europe mirror the Canadian picture. In 2006, Quebec exported $8 billion in goods to the EU in 2006, representing 11 per cent of total exports, but imported $20-billion worth of products, or 25 per cent of total imports. Again like Canada, foreign direct investment is more significant, with the EU representing a third of FDA in Quebec.[50] Yet when past EU negotiations ended in 2006, Quebec officials and business moved quickly to get everyone back to the table. Starting in 2007, after some coaxing from his permanent representative to Brussels, Jean Charest, the Quebec premier, went on a lobbying campaign among other Canadian provinces and in Europe. Along with political allies in Manitoba and Ontario, he convinced the premiers that an EU Canada trade pact would be a way to make the provinces less dependent on the American market while increasing their international powers and responsibilities (Nadeau, 2009). Charest's own priorities also included a labour mobility accord to help ease the transition from an aging population. In June 2007, a Canadian provincial delegation including Charest went to Europe to convince Brussels the provinces wanted a deal.

Provincial and territorial governments have now submitted their offers on procurement to the federal government. As we write this, federal negotiators are working with the provinces to produce a package the EU will accept.Tricky agricultural tariffs will be broached near the end of the negotiations.[51] Quebec's enthusiastic support for the CETA is paradoxical because it is difficult to imagine the province agreeing to the EU's procurement, services and agricultural requests without a fight – or significant reciprocal access in the EU, which as we've seen is doubtful to materialize. On procurement, as in Ontario, there will be pressure on Quebec to weaken or remove local content and development quotas from energy projects (Sinclair, 2010). Quebec's public automobile insurance monopoly will also be challenged, according to Pascal Kerneis of the European Services Forum (Radio-Canada, 2009). And supply management is most prominent in eastern Canadian dairy where EU negotiators typically have offensive interests. Charest, having stuck his neck out on this, will find it difficult to retract his support. The premier's dropping popularity in Quebec also risks dampening any public confidence in his trade project with the EU.[52]

c) Indifference and opposition

[50] All states from the Quebec government website: http://www.mri.gouv.qc.ca/en/relations_quebec/europe/union_europeenne/relations.asp#Economic%20relations

[51] Based on comments by Steve Verheul, Canada's lead CETA negotiator, during a June 2010 trade committee hearing.

[52] According to a May 2010 Leger Marketing poll, Quebec voters would reject the Liberals with 31 per cent of the popular vote if an election were held. See the National Post, May 10, 2010: http://www.nationalpost.com/opinion/story.html?id=3011122

Despite the stakes for Canada, media attention has been indifferent to the CETA negotiations. However, there is debate, monitoring and public education among civil society happening off the radar screen on both sides of the Atlantic and by all parties. Trade activists are using social media and Web 2.0 programs such as Twitter and Google Groups[53] to get the word out and make the negotiations intelligible. They were responsible for leaking the draft CETA text in April 2009 on both continents with help from Public Services International. Public sector unions in Canada and the EU also jointly released a report in January 2010 that was highly critical of the effects of free trade agreements on workers and social services, in contrast to ITUC and ETUC support for FTAs as sources of increased trade and competitiveness for European workers. A subsequent Canadian civil society declaration[54] on CETA made the following demands of the Harper government:

- That negotiations be fully transparent
- A comprehensive impact assessment of the effect CETA will have on jobs, the environment, poverty, gender, human rights and culture
- No new subnational commitments on procurement
- No investor-state mechanism
- Respect for Indigenous rights recognized by the United Nations
- Protection for public services
- Protection for cultural sovereignty

The point is that civil society in Canada is working with limited resources to produce intelligent policy recommendations and legal opinions on the CETA that are having an impact. In speeches to various chambers of commerce since the third round of negotiations at the end of April, Canada's trade minister has consistently highlighted the need to "face down critics who feel that increased business ties lead to an erosion of national sovereignty, or are somehow harmful to a country's economy" (Van Loan, 2010). The Harper government will have to do much better to meet Dymond and Hart's second requirement for CETA – that the concerns of 'new voices' opposed to free trade be adequately and fully addressed.

Conclusion

[53] See ***groups**.**google**.com/**group**/canada-eu-**ceta***

[54] See Trade Justice Network for the declaration, signed by 24 Canadian organizations to date: http://www.tradejustice.ca/JointStatement?bl=y

Trade negotiations in an information age can no longer be secret. Negotiators will always be looking over their shoulder, concerned about the devil in the details while policymakers fret about the state of play of public understanding. Web 2.0 information technologies means that the latest text ultimately appears in the public sphere for all too read, react and challenge. Dymond and Hart posed the critical questions in testing the metrics of potential free trade agreements from a policy perspective. A close reading of the proposed CETA reveals that when we apply a net benefit analysis to its most important chapters the results are mixed.

In manufacturing we see an imbalanced Canada-EU trade relationship becoming more so, with Canadian competitiveness relegated to resource extraction. Where high-value industries currently trade with the EU there are few gains from liberalization and a good chance that Canada's trade deficit in machinery and transportation will increase. In services, where data is not as easily available as for trade in goods, there are potential access gains for Canadian architectural and financial firms but with related losses at home. Potential consumer benefits to added competition must be considered alongside losses to Canadian content and other cultural policies that will be vulnerable to investment challenges. Procurement is a European request for the most part and adjustment will be sharp in Canada where subnational governments have been sheltered from international bans on local preferences and other economically useful offsets. In the intellectual property chapter, it is clear there are no Canadian requests – just a list of EU demands that will be welcomed and warned off by different Canadian sectors. In agriculture, the devil truly will be in the details and we will see how far Europe is willing to go to accept controversial Canadian exports in return for access to protected sectors in Canada for European exports.

The independent variable is the role of the provinces and of the ideological Harper government, which has given European negotiators new leverage. Both parties are interested in decentralization, which is a second best strategy for a federal government with few economic tricks up its sleeve beyond trade openness and low taxes. When you look at the economics, Canada's place in European trade is quite small but the value added is very large if the CETA is to be a first step towards an EU-US FTA. The single most striking argument in favour of the CETA is that it would be a counterweight to the US market and perhaps US political influence. But business groups and the Harper government have shown no interest in making the hard case for diversification.

Civil society has a more complex view of the negotiations, the negotiating process still too secretive and is critical of the deregulatory features of the CETA. It would appear that Canadian policymakers have learned few lessons from NAFTA about negotiating with a more larger power where asymmetries abound and access is fleeting rather than real for Canadian firms and industry. In the absence of a vocal national and media debate on whether the benefits are worth the game in CETA, Canadians will have to rely on good sense, provincial intransigence and political uncertainty to test the mettle of Charest and Harper's best laid plans.

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